

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

**If You Purchased Certain Disposable Contact Lenses For Your Own Use From June 1, 2013 to December 4, 2018, this Litigation and a Class Action Settlement Could Affect Your Rights.**

*A federal court has authorized this Notice. This is not a solicitation from a lawyer.*

Please read this Notice carefully and in its entirety. You may be a member of the Classes described below and your rights may be affected by a pending class action lawsuit. This Notice advises you of your options regarding the class action and the Settlement.

The purpose of this Notice is to provide information regarding a settlement with ABB Optical Group LLC (“ABB”) and also to notify certain consumers of an extended period of time in which they can opt-out of the Litigation Classes. ABB is an authorized distributor of disposable contact lenses manufactured by Alcon Vision LCC f/k/a Alcon Laboratories, Inc. (“Alcon”); Bausch & Lomb, Inc. (“B&L”); Johnson & Johnson Vision Care, Inc. (“JJVC”); and Cooper Vision, Inc. (“CVI”) (collectively the “Manufacturers”) who adopted “Unilateral Pricing Policies” (or “UPPs”) on certain brands of disposable contact lenses. ABB and the Manufacturers are or were Defendants in antitrust litigation regarding the UPPs.

In 2019, notice was provided regarding settlements with B&L and CVI and on the formation of the Litigation Classes. ABB has since agreed to a settlement and the Court has permitted those who purchased only contact lenses manufactured by B&L an additional opportunity to opt-out of the Litigation Classes. If you are a Settlement Class Member, you can participate in the ABB Settlement regardless of whether you did or did not participate in the B&L and/or CVI Settlement(s).

This Notice provides you with a deadline to object to the ABB Settlement and an opportunity to exclude yourself. This Notice also provides consumers who purchased only contact lenses manufactured by B&L (and are also a member of the Litigation Classes) with an extended deadline to request to be excluded from the Litigation Classes.

If you already submitted a timely and valid Proof of Claim for the B&L and/or CVI Settlements, you do not need to submit another Proof of Claim. You will automatically be included in the ABB Settlement. If you did not submit a timely and valid Proof of Claim as part for the B&L and/or CVI Settlement(s), you must submit a Proof of Claim in order to share in the ABB Settlement by **March 10, 2021**. You will not be able to share in the B&L Settlement if you did not submit a timely and valid Proof of Claim in the B&L Settlement, and you will not be able to share in the CVI Settlement if you did not submit a timely and valid Proof of Claim in the CVI Settlement. See below for how to file your claim.

Please do not call or write the court. If you have any questions after reading this Notice, you should contact lead counsel or the administrator, as discussed further below.

## **IMPORTANT**

To participate in the ABB Settlement Class, your purchases must be of certain disposable contact lenses (listed below in Paragraph 18) manufactured by any of the following manufacturers: Alcon, B&L, CVI, or JJVC, between June 1, 2013 and December 4, 2018.

You must decide at this time if you want to exclude yourself from (1) the ABB Settlement Class described in this Notice; and/or (2) the Litigation Classes (if you are a consumer who *purchased only* contact lenses manufactured by B&L), as defined below in Paragraph 11. More detailed information about opting-out can be found in Paragraphs 35-52 below.

If you exclude yourself from the Settlement Class, you will not be eligible for any benefits from the ABB Settlement. If you exclude yourself from the Litigation Classes (if you are a consumer who purchased only contact lenses manufactured by B&L), you will not be eligible for benefits from any future settlements with or judgments in this Action.

## **WHAT IS THIS LAWSUIT ABOUT?**

1. This multidistrict antitrust litigation was centralized before this Court on June 10, 2015, by order of the United States Judicial Panel on Multidistrict Litigation (“MDL Panel”) (ECF No. 1; Transfer Order). It arises out of minimum retail pricing policies adopted by contact lenses manufacturers starting in June 2013 with regard to the distribution and sale of certain contact lenses. These policies were referred to as “Unilateral Pricing Policies” (“UPP”) by the Defendants. The operative complaint, filed on March 1, 2017, alleges that the Defendants used the UPPs to restrain competition from discount and online stores on consumer prices in the retail market for disposable contact lenses.<sup>1</sup> The safety and effectiveness of contact lenses manufactured by the Defendants are not at issue in this litigation.

2. The Class Representatives allege claims for violations of (1) the United States Sherman Act, 15 U.S.C. §§ 1 and 3; (2) the California Cartwright Act, Cal. Bus. & Prof. Code §§ 16720, *et seq.*; (3) the Maryland Antitrust Act, Md. Com. Law §§ 11-201, *et seq.*; (4) the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*; and (5) the Maryland Consumer Protection Act, Md. Com. Law §§ 13-301, *et seq.*

3. A settlement was reached with CVI for \$3 million on August 30, 2017 (the “CVI Settlement”), and the Court preliminarily approved that settlement on July 10, 2018 (ECF No. 841). In that preliminary approval order, the Court deferred “consideration and approval of the proposed forms of Notice and Summary Notice, Proof of Claim and Release Form, the Plan of Allocation, the Fee and Expense Application, and Plaintiffs’ Service Award Application” until “after (i) settlement with other Defendants are reached and have been granted preliminary approval; and/or (ii) the Court rules on Plaintiffs’ pending Motion to Certify Class and an interlocutory appellate review of such ruling is exhausted.” The Court provided final approval of the CVI settlement on March 4, 2020 (ECF No. 1164).

4. A settlement was reached with B&L for \$10 million on August 19, 2019 (the “B&L Settlement”), and the Court preliminarily approved that settlement on October 8, 2019 (ECF No. 1046), and the Court granted final approval of the B+L settlement on March 4, 2020 (ECF No. 1164).

5. The Court certified the Litigation Classes on December 4, 2018 (ECF No. 940) and the last of Defendants’ requests for interlocutory appellate review was denied by the United States Court of

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<sup>1</sup> Please note that this Notice does not describe all of the claims and defenses asserted by the Class Representatives. The operative complaint is posted on the website, [www.ContactLensSettlement.com](http://www.ContactLensSettlement.com).

Appeals for the Eleventh Circuit on June 20, 2019. The Court subsequently issued a Notice apprising consumers of the CVI and B&L Settlements and its certification of the Litigation Classes.

6. This Notice is now being issued because another Defendant, ABB reached a settlement for \$30.2 million on September 22, 2020, and the Court preliminarily approved that settlement on **November 10, 2020** (ECF No. 1224).

## **WHO IS THE DEFENDANT, WHY IS THERE A SETTLEMENT, AND WHY IS THERE ONGOING LITIGATION?**

7. The settling Defendant is ABB (ABB Optical Group LLC). B&L and CVI previously settled this action. The Non-Settling Defendants are Alcon (Alcon Vision, LLC), and JJVC a/k/a/ “Vistakon” (Johnson & Johnson Vision Care, Inc.).

8. The Court has not decided any issue on the merits in favor of the Class Representatives or ABB. Instead, the Class Representatives and ABB engaged in lengthy negotiations and have agreed to the Settlement. By agreeing to settle, the parties avoid the costs and uncertainty of a trial, and the Settlement Class Members affected will get a chance to receive compensation. The Class Representatives and their attorneys think the Settlement is best for all members of the Settlement Class. The proposed Settlement does not mean that any law was broken or that ABB did anything wrong.

9. The Action remains ongoing against the Non-Settling Defendants. Lead Counsel will have to prove the Class Representatives’ claims in Court. Alternatively, the Action may be resolved in favor of the Non-Settling Defendants, in which case no additional money would become available. There is no guarantee as to what will happen.

## **THE CLASS REPRESENTATIVES AND THE CLASSES**

10. In a class action, one or more people called “Class Representatives” sue on behalf of themselves and other people with similar claims. All of these people together are the “class” or “class members.” The Class Representatives are: Rachel Berg, Alexis Ito, Miriam Pardoll, Jennifer Sineni, Joseph Felson, Tamara O’Brien, Susan Gordon, Catherine Dingle, Elyse Ulino, Amanda Cunha, Sheryl Marean, Brett Watson, Kathleen Schirf, Cora Beth Smith, and John Machikawa. Class actions avoid the necessity of each member of a class having to file his, her, or its own separate lawsuit to obtain relief. Class actions are used to decide legal and factual issues that are common to all members of a class, and one court resolves the issues for all class members, except for those who exclude themselves from the class(es).

11. By Order dated December 4, 2018 (ECF No. 940), the Court certified the following Litigation Classes:

### Horizontal Class:

All persons and entities residing in the United States who made retail purchases of disposable contact lenses manufactured by Alcon, JJVC, or B&L from June 1, 2013 to the present (the “Class Period”) for their own use and not for resale, where the prices for such contact lenses were subject to a “Unilateral Pricing Policy” and the purchase occurred during the period when the Unilateral Pricing Policy was in effect. Excluded from the Class are any purchases from 1-800 Contacts of disposable contact lenses subject to B&L’s Unilateral Pricing Policy, where the purchase occurred on or after July 1, 2015. Also excluded from the Class are Defendants, their parent companies, subsidiaries and affiliates, any coconspirators, all governmental entities, and any judges or justices assigned to hear any aspect of this action.

The Horizontal Class consists of the following subclasses:

(1) Maryland Subclass:

All persons and entities residing in Maryland who made retail purchases of disposable contact lenses manufactured by Alcon, JJVC, or B&L from June 1, 2013 to the date the Court certifies the Class for their own use and not for resale, where the prices for such contact lenses were subject to a "Unilateral Pricing Policy" and the purchase occurred during the period when the Unilateral Pricing Policy was in effect. Excluded from the Class are any purchases from 1-800 Contacts of disposable contact lenses subject to B&L's Unilateral Pricing Policy, where the purchase occurred on or after July 1, 2015. Also excluded from the Class are Defendants, their parent companies, subsidiaries and affiliates, any coconspirators, all governmental entities, and any judges or justices assigned to hear any aspect of this action.

(2) California Subclass:

All persons and entities residing in California who made retail purchases of disposable contact lenses manufactured by Alcon, JJVC, or B&L from June 1, 2013 to the date the Court certifies the Class for their own use and not for resale, where the prices for such contact lenses were subject to a "Unilateral Pricing Policy" and the purchase occurred during the period when the Unilateral Pricing Policy was in effect. Excluded from the Class are any purchases from 1-800 Contacts of disposable contact lenses subject to B&L's Unilateral Pricing Policy, where the purchase occurred on or after July 1, 2015. Also excluded from the Class are Defendants, their parent companies, subsidiaries and affiliates, any coconspirators, all governmental entities, and any judges or justices assigned to hear any aspect of this action.

Vertical Classes:

(1) The JJVC Class

All persons and entities residing in the United States who made retail purchases of disposable contact lenses manufactured by JJVC from June 1, 2013 to the date the Court certifies the Class for their own use and not for resale, where the prices for such contact lenses were subject to a "Unilateral Pricing Policy" and the purchase occurred during the period when the Unilateral Pricing Policy was in effect. Excluded from the Class are Defendants, their parent companies, subsidiaries, and affiliates, any co-conspirators, all governmental entities, and any judges, justices, or jurors assigned to hear any aspect of this action.

(2) The Alcon Class:

All persons and entities residing in the United States who made retail purchases of disposable contact lenses manufactured by Alcon from June 1, 2013 to the date the Court certifies the Class for their own use and not for resale, where the prices for such contact lenses were subject to a "Unilateral Pricing Policy" and the purchase occurred during the period when the Unilateral Pricing Policy was in effect. Excluded from the Class are Defendants, their parent companies, subsidiaries, and affiliates, any co-conspirators, all governmental entities, and any judges, justices, or jurors assigned to hear any aspect of this action.

(3) The B&L Class:

All persons and entities residing in the United States who made retail purchases of disposable contact lenses manufactured by B&L from June 1, 2013 to the date the Court certifies the Class for their own use and not for resale, where the prices for such contact lenses were subject to a "Unilateral Pricing Policy" and the purchase occurred during the period when the Unilateral Pricing Policy was in effect. Excluded from the Class are any purchases from 1-800 Contacts of

disposable contact lenses subject to B&L's Unilateral Pricing Policy, where the purchase occurred on or after July 1, 2015. Also excluded from the Class are Defendants, their parent companies, subsidiaries and affiliates, any co-conspirators, all governmental entities, and any judges or justices assigned to hear any aspect of this action.

12. By Order dated **November 10, 2020** (ECF No. 1224), the Court certified the following Settlement Class for the ABB Settlement:

All persons and entities residing in the United States who made retail purchases of disposable contact lenses manufactured by Alcon, JJVC, CVI, or B&L during the Settlement Class Period for their own use and not for resale, where the prices for such contact lenses were subject to a "Unilateral Pricing Policy" and the purchase occurred during the period when the Unilateral Pricing Policy was in effect.

Excluded from the Settlement Class are any purchases from 1-800 Contacts of disposable contact lenses subject to B&L's Unilateral Pricing Policy, where the purchase occurred on or after July 1, 2015. Also excluded from the Settlement Class are Defendants, their parent companies, subsidiaries and affiliates, any alleged co-conspirators, all governmental entities, and any judges or justices assigned to hear any aspect of this action.

The Settlement Class Period is from June 1, 2013 to December 4, 2018.

13. You may be a member of one or more of the Classes. If you are a member of one or more of the Classes, your rights will be affected by this Action. If you do not meet any of the class definitions, this Notice does not apply to you. If you are uncertain whether you are a member of any of the Classes, contact Lead Counsel listed in Paragraph 57, the Administrator, or your own attorney.

14. This notice is not an admission by Defendants or an expression of any opinion by the Court as to the merits of the claims made in this Action, or a finding by the Court that the claims asserted by the Class Representatives in this Action are valid. This Notice is intended solely to inform you of the pendency of this Action and of your rights in connection with it, including the right to request exclusion from the Settlement Class or to object to the ABB Settlement. Defendants have denied all claims and contend that they are not liable for the harm alleged by the Class Representatives.

15. The Class definitions may be subject to change by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

### **ARE YOU A MEMBER OF ONE OR MORE OF THE CLASSES?**

16. You are a member of one or more of the Classes if you purchased disposable contact lenses manufactured by one of the Defendant Manufacturers for your personal use (*i.e.*, not for resale), the purchase(s) occurred during the period when the Unilateral Pricing Policy, or UPP, was in effect, and those disposable contact lenses were subject to a UPP.

17. You are *not* a member of any of the Classes if you purchased disposable contact lenses (a) manufactured by a company other than the named Defendants, (b) for resale, (c) that were not subject to a UPP, or (d) at a period when the UPP was not in effect. You are also *not* a member of any of the Classes if you are (i) one of the Defendants, their parent companies, subsidiaries or affiliates, or an alleged co-conspirator, (ii) a governmental entity, (iii) counsel for the parties, or (iv) a judge or justice assigned to hear any aspect of this Action.

18. The disposable contact lenses that were subject to the UPPs, and the period during which each UPP was in effect, are set forth below:

#	Contact Lens	UPP Price	Time Period in Effect
<b>Alcon</b>			
1	Air Optix Colors	6 Pack: \$84.00	April 2014 - December 2016
		2 Pack: \$30.00	June 2015 - December 2016
2	Dailies AquaComfort Plus Multifocal	30 Pack: \$39.00	January 2014 - December 2016
		90 Pack: \$89.00	
3	Dailies AquaComfort Plus Toric	30 Pack: \$34.00	January 2014 - December 2016
		90 Pack: \$79.00	
4	Dailies Total 1	30 Pack: \$39.00	June 2013 - December 2016
		90 Pack: \$95.00	
5	Dailies Total 1 Multifocal	30 Pack: \$50.00	July 2016 - December 2016
		90 Pack: \$124.00	
<b>B&amp;L</b>			
6	BioTrue ONEday for Presbyopia	30 Pack: \$33.00	June 2014 - February 2017
		90 Pack: \$89.00	December 2016 - February 2017
7	Ultra	6 Pack: \$60.00	February 2014 - February 2017
8	Ultra for Presbyopia	6 Pack: \$85.00	March 2016 - February 2017
Excluded from the Class are any purchases from 1-800 Contacts of disposable contact lenses subject to B&L's Unilateral Pricing Policy, where the purchase occurred on or after July 1, 2015.			
<b>CVI</b>			
9	Biofinity Energys	6 Pack: \$60.00	July 2016 - December 2017
10	Biofinity XR Toric	6 Pack: \$140.00	January 2016 - March 2017
11	Clariti 1 Day	90 Pack: \$65.00	January 2014 - March 2017
12	Clariti 1 Day Multifocal	30 Pack: \$39.00	January 2014 - March 2017
		90 Pack: \$89.00	
13	Clariti 1 Day Toric	30 Pack: \$34.00	January 2014 - March 2017
		90 Pack: \$79.00	
14	MyDay	90 Pack: \$85.00	June 2015 - March 2017
		180 Pack: \$149.00	
<b>JJVC</b>			
15	1-Day Acuvue Define	30 Pack: \$40.00	March 2015 - April 2016
		90 Pack: \$94.00	
16	1-Day Acuvue Moist	30 Pack: \$33.00	August 2014 - April 2016
		90 Pack: \$63.50 - \$66.00	August 2014 - April 2016

Questions? Call 1-877-253-3649 or visit [www.ContactLensSettlement.com](http://www.ContactLensSettlement.com)

		720 Pack: \$450.00 - \$460.00	November 2014 - April 2016
17	1-Day Acuvue Moist for Astigmatism	30 Pack: \$34.50 - \$36.00	August 2014 - April 2016
		90 Pack: \$82.50 - \$85.50	October 2014 - April 2016
		720 Pack: \$600.00	June 2015 - April 2016
18	1-Day Acuvue Moist Multifocal	30 Pack: \$45.00	May 2015 - April 2016
		90 Pack: \$99.00	
19	1-Day Acuvue TruEye	90 Pack: \$82.50	August 2014 - April 2016
		720 Pack: \$610.00	November 2014 - April 2016
20	Acuvue Oasys for Astigmatism	6 Pack: \$40.00 - \$41.50	August 2014 - April 2016
		48 Pack: \$270.00 - \$280.00	June 2015 - April 2016
21	Acuvue Oasys for Presbyopia	6 Pack: \$40.00 - \$41.50	August 2014 - April 2016
22	Acuvue Oasys with Hydraclear	6 Pack: \$36.00	October 2014 - April 2016
		12 Pack: \$67.50 - \$70.00	July 2014 - April 2016
		24 Pack: \$110 - \$114.50	August 2014 - April 2016
		54 Pack: \$210.00 - \$218.00	
23	Acuvue Oasys with Hydraluxe (a/k/a 1-Day Acuvue Oasys)	90 Pack: \$88.50	August 2015 - April 2016

19. If you are not sure whether you are included in the Classes, you may call 877-253-3649 with questions or visit [www.ContactLensSettlement.com](http://www.ContactLensSettlement.com). You may also write with questions to Disposable Contact Lens Settlement Administrator, P.O. Box 2995, Portland, OR 97208-2995 or email [info@ContactLensSettlement.com](mailto:info@ContactLensSettlement.com).

## **OVERVIEW OF THE LITIGATION TO DATE**

20. On October 7, 2015, the Court granted Class Representatives' motion appointing Hausfeld LLP, Scott+Scott Attorneys at Law LLP, and Robins Kaplan LLP as interim lead counsel. (ECF No. 116).

21. On November 23, 2015, Lead Counsel, on behalf of Class Representatives, filed the Consolidated Class Action Complaint ("Consolidated Complaint").

22. On December 23, 2015, Defendants filed their Motion to Dismiss the Consolidated Complaint. (ECF No. 146). Following briefing and oral argument, the Court denied Defendants' motion. (ECF Nos. 185, 190). On July 27, 2016, Defendants filed their Answers and Affirmative Defenses. (ECF Nos. 266-70).

23. The operative complaint, Plaintiffs' Interlineation to Corrected Consolidated Class Action Complaint (ECF No. 395; Complaint), was filed on March 1, 2017.

24. On December 4, 2018 (ECF No. 940), the Court issued an Order certifying the Litigation Classes, appointing Hausfeld LLP, Scott+Scott, Attorneys at Law, LLP, and Robins Kaplan LLP as Lead Counsel, and formally designated the plaintiffs as the Class Representatives for the Litigation Classes.

The Court's Order certifying the Litigation Classes does not guarantee Class Members will receive money or benefits; that will be decided later in the Action.

25. The \$3 million CVI Settlement was reached on August 30, 2017, and the \$10 million B&L Settlement was reached on August 19, 2019. The Court preliminarily approved the B&L and CVI Settlements on July 10, 2018 (ECF No. 841) and October 8, 2019 (ECF No. 1046), respectively.

26. In 2019, notice was provided regarding the B&L and CVI Settlements and the formation of Litigation Classes. On February 25, 2020, the Court held a Fairness Hearing. On March 4, 2020, the Court issued an Order granting final approval and a final judgment for the B&L and CVI Settlements (ECF No. 1164).

27. On November 27, 2019, the Court denied the Defendants' motions for summary judgment (ECF No. 1091). The Court has not yet made a ruling on the merits of the allegations made in the Complaint or on Defendants' denials and defenses. The Action is ongoing and a trial date has not been set.

### **SETTLEMENT BENEFITS**

28. The ABB Settlement will establish a Settlement Fund totaling \$30.2 million that will be used to pay eligible Settlement Class Members who submit valid claims or already submitted a valid claim to the B&L and/or CVI Settlement(s). The cost to administer the ABB Settlement, attorneys' fees, service payments for the Class Representatives (if any are requested and approved by the Court), taxes and other expenses approved by the Court will come out of the Settlement Fund. The Settlement requires ABB to deposit \$500,000 into an Escrow Account within 15 days following Preliminary Approval. ABB will then deposit the remainder of the Settlement Amount (\$29,700,000) into the Escrow Account as follows: 50% of the remainder (\$14,850,000) by April 15, 2021, and 50% of the remainder, (\$14,850,000) by January 14, 2022.

29. In order to minimize the administrative expenses, Class Representatives intend to distribute the Net Settlement Funds for the ABB, B&L, and CVI Settlements at a later stage of the case, such as after any future settlement with or judgment against the Non-Settling Defendants.<sup>2</sup> Please be patient.

30. The ABB Net Settlement Fund will be distributed to qualifying members of the ABB Settlement Class *pro rata* (proportional share). Lead Counsel estimates that there are up to 40 million purchasers of disposable contact lenses that were subject to Defendants' UPPs. In the event that Lead Counsel determines that it will be economically infeasible to directly distribute the ABB Net Settlement Fund to the ABB Settlement Class, they may propose alternative plans of distribution to the Court, including a *cypres* distribution, of the ABB Net Settlement Fund. In the event that Lead Counsel propose an alternative plan of distribution to the Court, the motion will be posted at [www.ContactLensSettlement.com](http://www.ContactLensSettlement.com), and an email will be sent to any email address registered with the Administrator prior to the hearing on the motion.

31. Settlement Class Members will have the option to comment on or object to any aspect of the ABB Settlement at the Fairness Hearing (see "The Fairness Hearing," below).

32. If you already submitted a timely and valid Proof of Claim as part of the earlier B&L and/or CVI Settlement(s), you do not need to submit another Proof of Claim. You will automatically be included in the ABB Settlement to receive a payment from the ABB Net Settlement Fund. However, if

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<sup>2</sup> Net Settlement Fund(s) means the money paid by the Settling Defendant(s) plus any interest and income earned and less any attorneys' fees, expenses, and service awards permitted by the Court (if requested), (ii) class notice and administration expenses, (iii) taxes and tax expenses, and (iv) any other fees or expenses approved by the Court. ABA Settlement at ¶ 1.16; B&L Settlement at ¶ 1.16; CVI Settlement at ¶ 1.17. The Settlements are available for review at [www.ContactLensSettlement.com](http://www.ContactLensSettlement.com).

you did not submit a timely and valid Proof of Claim as part of either of the B&L and/or CVI Settlement(s), you must submit a Proof of Claim to share in the ABB Net Settlement Fund by **March 10, 2021**. You will not be able to share in the B&L Settlement if you did not submit a timely and valid Proof of Claim in the B&L Settlement, and you will not be able to share in the CVI Settlement if you did not submit a timely and valid Proof of Claim in the CVI Settlement. Claims may be submitted online at [www.ContactLensSettlement.com](http://www.ContactLensSettlement.com). The deadline to file your Proof of Claim is **March 10, 2021**.

33. Unless you exclude yourself from the ABB Settlement Class, you will give up your right to sue ABB for the claims being resolved by the Settlement. The specific claims (“Released Claims”) you are giving up against ABB and its related parties are described in paragraphs 1.28, 1.30, and 7.1 of the ABB Settlement Agreement. The ABB Settlement Agreement is available at [www.ContactLensSettlement.com](http://www.ContactLensSettlement.com).

34. If you have any questions, you can talk to Lead Counsel listed herein for free or you can, of course, talk to your own lawyer about what this means.

### **EXCLUDING YOURSELF FROM THE ABB SETTLEMENT AND/OR THE LITIGATION CLASSES**

35. If you are a member of the ABB Settlement Class, you have the right to decide whether to remain a member of the ABB Settlement Class. You must decide at this time if you want to exclude yourself from the ABB Settlement Class.

36. If you purchased *only* contact lenses manufactured by B&L, you have an additional opportunity to decide whether to remain a member of the Litigation Classes. You must decide at this time if you want to exclude yourself from the Litigation Classes.

37. **Excluding Yourself from the ABB Settlement Class:** If you want to keep the right to file or maintain your own lawsuit against ABB about the Released Claims, then you must take steps to get out of the Settlement with ABB. This is called excluding yourself – or sometimes referred to as opting out of the class. If you ask to be excluded from the ABB Settlement, you will not receive any benefits from the ABB Settlement, and you cannot object to the ABB Settlement Agreement.

38. **Excluding Yourself from the Litigation Classes if You are a Consumer who purchased only Contact Lenses Manufactured by B&L:** If you are included in the definition of any of the Litigation Classes and you want to sue the Defendants on your own about the claims alleged by Class Representatives in this Action, you must exclude yourself from the Litigation Classes. If you exclude yourself, you won’t get any money from future distributions if Class Representatives obtain any money as a result of a trial or any future settlements.

39. If you have a pending or contemplated lawsuit against any of the Defendants involving the same legal issues in this Litigation or the Released Claims in the ABB Settlement Agreement, speak to your lawyer immediately. You must exclude yourself from the ABB Settlement in order to continue or initiate your own lawsuit against ABB. You must exclude yourself from the Litigation Classes (if you are a consumer who purchased only contact lenses manufactured by B&L) in order to continue or initiate your own lawsuit.

40. You must request exclusion in accordance with the procedures set forth in Paragraphs 45-52.

41. *If you purchased only contact lenses manufactured by B&L and want to remain a member of the Litigation Classes, you do not need to do anything at this time other than to retain your documentation reflecting your purchases of disposable contact lenses subject to a UPP during the Class Period, as discussed in Paragraph 43 below.*

42. *If you are a member of the ABB Settlement Class and you did not submit a Proof of Claim to the B&L and/or CVI Settlement(s), you must submit a Proof of Claim no later than March 10, 2021, in order to participate in any distribution of funds from the ABB Settlement. If you already submitted a timely and valid Proof of Claim to the B&L and/or CVI Settlement(s), you do not need to submit another Proof of Claim.*

43. Your decision is important for the following reasons:

- a. **If you choose to remain a member of the ABB Settlement Class and/or the Litigation Classes (if you are a consumer who purchased only contact lenses manufactured by B&L),** you will be bound by all past, present and future orders and judgments in this Action, whether favorable or unfavorable. If any money is awarded, either through a settlement with Defendants or a judgment of the Court after a trial, you may be eligible to receive a share of that award. However, if you remain a member of the ABB Settlement Class and/or the Litigation Classes (if you are a consumer who purchased contact lenses manufactured by B&L only), you may not pursue a lawsuit on your own behalf with regard to any of the legal claims in this Action. Pursuant to Rule 23(e)(4) of the Federal Rules of Civil Procedure, it is within the Court's discretion whether to allow a second opportunity to request exclusion from the Litigation Classes if there is a settlement in the Action involving the claims of the members of the Litigation Classes. Please note that if you remain a member of the ABB Settlement Class and/or the Litigation Classes (if you are a consumer who purchased only contact lenses manufactured by B&L), you will not be personally responsible for Lead Counsel's attorneys' fees or costs. Lead Counsel has agreed to represent the Classes on a contingent fee basis, which means that they will be awarded fees and costs to be approved by the Court only if they succeed in obtaining a recovery from one or more Defendants. Any attorneys' fees for Lead Counsel will be awarded by the Court. As a member of ABB Settlement Class and/or the Litigation Classes (if you are a consumer who purchased only contact lenses manufactured by B&L), you will be represented by Lead Counsel. Alternatively, you may remain a member of the ABB Settlement Class and/or the Litigation Classes (if you are a consumer who purchased only contact lenses manufactured by B&L) and elect to be represented by counsel of your own choosing. If you do retain separate counsel, you will be responsible for that attorney's fees and expenses.
- b. **If you choose to be excluded from the ABB Settlement Class and/or the Litigation Classes (if you are a consumer who purchased only contact lenses manufactured by B&L),** you will not be bound by any orders or judgment in this Action applicable to the ABB Settlement Class and/or the Litigation Classes (if you are a consumer who purchased only contact lenses manufactured by B&L), to which you exclude yourself, nor will you be eligible to share in any recovery that might be obtained on behalf of the ABB Settlement Class and/or the Litigation Classes (if you are a consumer who purchased only contact lenses manufactured by B&L) to which you exclude yourself. You will retain any right you have to individually pursue any unreleased legal rights that you may have against Defendants. Please refer to Paragraphs 42-52 if you would like to request exclusion from ABB Settlement Class and/or the Litigation Classes (if you are a consumer who purchased only contact lenses manufactured by B&L).

44. Members of the respective Classes will be eligible to participate in any recovery that might be obtained on their behalf. While this Notice is not intended to suggest any likelihood that the Class Representative or members of the Litigation Classes will obtain any recovery, should there be a recovery, members of the Litigation Classes may be required to support their requests to participate in the distribution of the recovery by demonstrating their membership in of the Litigation Classes and

documenting their purchases of disposable contact lenses subject to UPPs during the Class Period. ***For this reason, please be sure to keep all records of your contact lens purchases.***

## **HOW TO EXCLUDE YOURSELF**

45. To exclude yourself from the ABB Settlement Class and/or the Litigation Classes (if you are a consumer who purchased only contact lenses manufactured by B&L), you must file a timely written request for exclusion (“Request for Exclusion”) by mailing a letter or sending an email to the Administrator.

46. Your Request for Exclusion must:

- a. Be in writing;
- b. Be signed by you or your authorized representative;
- c. State your name, address, and phone number;
- d. Include (i) proof of membership in the ABB Settlement Class and/or the Litigation Classes (if you are a consumer who purchased only contact lenses manufactured by B&L), and (ii) a signed statement that says “I/we hereby request that I/we be excluded from (one or more of the following) classes in *In Re: Disposable Contact Lens Antitrust Litigation*, 3:15-md-02626-HES-JRK (M.D. Fl.):  
The ABB Settlement Class; *and/or*  
The Litigation Classes; and
- e. Be mailed or emailed to the Claims Administrator at the address provided below and postmarked no later than **March 10, 2021**.

Disposable Contact Lens Settlement Administrator  
EXCLUSIONS  
P.O. Box 2995  
Portland, OR 97208-2995

Or

[info@ContactLensSettlement.com](mailto:info@ContactLensSettlement.com)

47. ***In the event that you wish to be excluded from the ABB Settlement Class and/or the Litigation Classes (if you are a consumer who purchased only contact lenses manufactured by B&L), you must specify which class or classes are the subject of your exclusion request. If your exclusion request does not specify the class or classes from which you wish to be excluded, you may be excluded from both.***

48. You must also provide any other information reasonably requested by the Administrator.

49. You cannot exclude yourself by telephone or facsimile. Requests for exclusion that do not comply with the above requirements will be invalid, unless otherwise accepted by the Court, subject to any objections of the parties to be resolved by the Court.

50. Do not request exclusion from the ABB Settlement Class if you wish to participate in the ABB Settlement, and do not request exclusion from the Litigation Classes (if you are a consumer who purchased contact lenses manufactured by B&L only) if you want to be eligible to recover benefits in this Action from the Non-Settling Defendants.

51. Please note, if you decide to exclude yourself, you may be time-barred from asserting the claims by a statute of limitations.

52. If you do nothing, you will remain in the ABB Settlement Class and/or the Litigation Classes (if you are a consumer who purchased only contact lenses manufactured by B&L). You will not be able to separately sue, or continue to sue — as part of any other lawsuit — for the Released Claims or the conduct alleged in the Complaint. You will also be legally bound by all of the Orders the Court issues and judgments the Court makes concerning this class action. If you are a Settlement Class Member, and you file a valid Proof of Claim, you will be able to share in the ABB Settlement and any future recovery in this case. If you already submitted a timely and valid Proof of Claim as part of the B&L and/or CVI Settlement(s), you do not need to submit another Proof of Claim.

### **OBJECTING TO THE SETTLEMENT**

53. If you are a member of the ABB Settlement Class, you can object to the ABB Settlement if you disagree with the Settlement or some part of it. To object to the Settlement you must submit a letter or other written document that includes the following:

- a. Your name, address, and telephone number;
- b. A statement saying that you object to the ABB Settlement, in *In Re: Disposable Contact Lens Antitrust Litigation*, 3:15-md-02626-HES-JRK (M.D. Fl.);
- c. Whether you plan to appear at the Fairness Hearing;
- d. Proof of membership in the ABB Settlement Class, including documentation evidencing the purchase of a disposable contact lens subject to a UPP;
- e. The specific reasons you object to the Settlement, along with any supporting materials or documents that you want the Court to consider; and
- f. Your signature.

54. You cannot object to the ABB Settlement if you exclude yourself from the Settlement Class you are objecting to. If you exclude yourself from the Settlement Class, you are telling the Court that you don't want to be part of the Settlement. If you exclude yourself from the Settlement Class, you will not receive any benefits from the ABB Settlement. Objecting is simply telling the Court that you don't like something about the ABB Settlement. You can only object to the ABB Settlement if you remain in the Settlement Class. If you exclude yourself from the Settlement Class, you have no basis to object to the ABB Settlement because its terms no longer affect you.

55. An objection to the ABB Settlement must be mailed to the addresses listed below, postmarked no later than **March 10, 2021**. Note that you may mail your objection to the Court, but it must be received by the Court and filed by **March 10, 2021**.

<p><b><u>Court</u></b></p> <p>Hon. Harvey Schlesinger Bryan Simpson United States Courthouse 300 North Hogan Street Jacksonville, FL 32202</p>	<p><b><u>Class Counsel</u></b></p> <p>Joseph P. Guglielmo <b>SCOTT+SCOTT</b> <b>ATTORNEYS AT LAW LLP</b> The Helmsley Building 230 Park Avenue, 17th Floor New York, New York 10169 Telephone: (212) 223-6444 Facsimile: (212) 223-6334 jguglielmo@scott-scott.com</p>	<p><b><u>ABB's Counsel</u></b></p> <p>Edwin John U, P.C. <b>KIRKLAND &amp; ELLIS LLP</b> 1301 Pennsylvania Ave., N.W. Washington, DC 20004 Telephone: 202-389-5000 Facsimile: 202-389-5200</p>
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56. If your objection is not postmarked and received by the deadline and does not include the information listed above, it will not be valid.

## THE LAWYERS REPRESENTING YOU

57. The Court appointed the law firms of Hausfeld LLP, Scott+Scott, Attorneys at Law, LLP, and Robins Kaplan LLP as Lead Counsel. If you have any questions concerning the matters raised in this Notice, you may contact Lead Counsel, as follows:

<p>Nathaniel C. Giddings <b>HAUSFELD LLP</b> 888 16th Street, N.W.; Suite 300 Washington, DC 20006 Telephone: 202-540-7200 Facsimile: 202-540-7201 ngiddings@hausfeld.com</p>	<p>Joseph P. Guglielmo <b>SCOTT+SCOTT</b> <b>ATTORNEYS AT LAW LLP</b> The Helmsley Building 230 Park Avenue, 17th Floor New York, New York 10169 Telephone: (212) 223-6444 Facsimile: (212) 223-6334 jguglielmo@scott-scott.com</p>	<p>Eamon O’Kelly <b>ROBINS KAPLAN LLP</b> 399 Park Avenue, Suite 3600 New York, NY 10022 Telephone: (212) 980-7400 Facsimile: (212) 980-7499 eokelly@robinskaplan.com</p>
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58. You will not be charged for contacting these lawyers. As noted above, unless you elect to retain your own personal lawyer, if you remain in the Settlement Class, you will not have any direct obligations to pay the costs of this Action. If there is a recovery by one or more of the Classes in this Action, all costs and expenses, including Lead Counsel’s attorneys’ fees, will be paid from that recovery in an amount approved by the Court.

59. Lead Counsel will ask the Court for attorneys’ fees of up to one-third (33.3%) of the ABB, B&L, and CVI Settlement Funds, after payment of Court-approved costs and expenses. In addition, Lead Counsel will ask the Court for reimbursement from the ABB Settlement Fund of costs and expenses for their work in the Action, and may also seek service awards for the Class Representatives for their time and work spent prosecuting this Action. Any fees and expenses awarded by the Court will be paid out of the Settlement Funds.

## THE SETTLEMENT FAIRNESS HEARING

60. The Court will hold a hearing to decide whether to approve the ABB Settlement and any request for fees and expenses. You may attend and you may ask to speak, but you do not have to.

61. The Court has yet to set a date and time for the fairness hearing on final approval of the settlement and any motions for fees and costs. As soon as the Court schedules the fairness hearing, the website will be updated with the date, time, location, and means of attendance. Before attending the Hearing in person, check [www.ContactLensSettlement.com](http://www.ContactLensSettlement.com). The website will provide updated information if the Court changes the Hearing date or decides to hold the Hearing online (telephonically or via a web-based service such as Zoom or Skype). At this hearing, the Court will consider whether the ABB Settlement is fair, reasonable, and adequate and separately consider whether to approve the Settlement’s plan of distribution and any proposed attorneys’ fees, expenses, and/or incentive awards. If there are objections, the Court will consider them and will listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the ABB Settlement. We do not know how long these decisions will take.

62. You do not have to attend the Fairness Hearing. Lead Counsel will answer questions the Court may have. But, you or your own lawyer are welcome to attend at your expense. If you send an

objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also have your own lawyer attend, but it is not necessary.

63. You may ask the Court for permission to speak at the Fairness Hearing. To speak at the Fairness Hearing, you must send a letter or other written document saying that the letter or document is your “Notice of Intention to Appear” in *In Re: Disposable Contact Lens Antitrust Litigation*, 3:15-md-02626-HES-JRK (M.D. Fl.). Be sure to include your name, address, telephone number, and your signature. You must send your “Notice of Intention to Appear” to the addresses listed in Paragraph 55, so it is postmarked and received no later than **March 10, 2021**.

### **LITIGATION CLASSES TRIAL**

64. If the Action is not dismissed or settled, the Class Representatives will have to prove their claims at trial.

65. On February 26, 2020, the Court entered an order finding that a trial on the federal claims should proceed before any trial on the state law claims (ECF No. 1156); however, due to the Covid-19 pandemic, the pending trial with the Non-Settling Defendants has been delayed, and a firm trial date has not yet been scheduled. Please check [www.ContactLensSettlement.com](http://www.ContactLensSettlement.com) to be kept up-to-date on the date, time, and location of the trial.

66. During the trial(s), a decision will be reached about whether the Class Representatives or Defendants are right about the claims in the lawsuit. There is no guarantee that the Class Representatives will win at trial, and any outcome can be appealed.

67. Lead Counsel will present the case for the Class Representatives and the Classes, and the Defendants will present the defenses. You and/or your own lawyer are welcome to come at your own expense.

68. There is no way to know whether you will get money after the trial(s). If you have not excluded yourself from the Litigation Classes, and if the Class Representatives win at trial, you will need to prove that you are a member of one or more of the Litigation Classes to recover any money or other benefits from the Non-Settling Defendants.

69. If the Class Representatives win at trial, notice will be provided about how and when to make your individual claim for money or other benefits and what your other options are at that time. If the Non-Settling Defendants win at trial, you will not be able to make an individual claim for money or other benefits. Important information about the case will be posted on the website, [www.ContactLensSettlement.com](http://www.ContactLensSettlement.com), as it becomes available.

### **PLEASE KEEP YOUR ADDRESS CURRENT**

70. To assist the Court and the parties in maintaining accurate lists of Settlement Class Members, you are requested to keep your email and physical address up to date with the Administrator. You may update your addresses on the website, [www.ContactLensSettlement.com](http://www.ContactLensSettlement.com).

71. If this Notice was forwarded to you by the postal service, or if it was otherwise sent to you at an address that is not current, you should immediately contact the Administrator at Disposable Contact Lens Settlement Administrator, P.O. Box 2995, Portland, OR 97208-2995 or by calling the Administrator toll free at 877-253-3649 and providing them with your correct address. If the

Administrator does not have your correct address, you may not receive notice of important developments in this Action.

**WHERE YOU CAN FIND ADDITIONAL INFORMATION**

72. This Notice provides only a summary of the lawsuit and the claims asserted by Class Representatives. For more detailed information regarding the Action, you may contact Lead Counsel or visit [www.ContactLensSettlement.com](http://www.ContactLensSettlement.com). You may also contact the Administrator at the address listed at [info@ContactLensSettlement.com](mailto:info@ContactLensSettlement.com).

73. Copies of the important pleadings, orders, and other documents filed in this Action are available at [www.ContactLensSettlement.com](http://www.ContactLensSettlement.com) or at <http://www.pacer.gov> or at the office of the Clerk of the Court, United States District Court for the Middle District of Florida, Jacksonville Division, 300 North Hogan Street, Jacksonville, Florida 32202, under Case No. 3:15-md-02626-HES.

**PLEASE DO NOT CALL OR WRITE  
THE COURT OR CLERK OF THE COURT REGARDING THIS NOTICE.**

DATED: November 10, 2020

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT MIDDLE  
DISTRICT OF FLORIDA