

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In Re: DISPOSABLE CONTACT LENS ANTITRUST LITIGATION	Case No. 3:15-md-2626-HES-JRK Judge Harvey E. Schlesinger Magistrate Judge James R. Klindt
THIS DOCUMENT RELATES TO: All Class Actions	

**FINAL APPROVAL ORDER OF SETTLEMENT AND FINAL
JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE AS TO
ABB OPTICAL GROUP LLC**

THIS CAUSE is before the Court upon Plaintiffs' Motion for Final Approval of Settlement Agreement with Defendant ABB Optical Group LLC (Doc. 1241). Upon consideration, the motion is granted. Thus, it is

ORDERED:

WHEREAS, the Action¹ is pending before this Court;

WHEREAS, Plaintiffs² have entered into and executed a Stipulation and

¹ As defined in the Settlement Agreement, the "Action" means the above-captioned litigation pending in the United States District Court for the Middle District of Florida, Jacksonville Division, and any other actions that may be transferred or consolidated into this litigation.

² As defined in the Settlement Agreement, "Plaintiffs" are Rachel Berg,

Agreement of Settlement (“Settlement Agreement”) with ABB Optical Group LLC (“ABB” and together with Plaintiffs, the “Settling Parties”), which, if finally approved by the Court, will result in the settlement of all claims against ABB;

WHEREAS, in full and final settlement of the claims asserted against ABB in this Action, ABB agreed to pay the amount of \$30,200,000 and to provide limited cooperation as set forth in the Settlement Agreement;

WHEREAS, Plaintiffs, having made an application, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an order granting final approval of the Settlement Agreement, which sets forth the terms and conditions of the Settlement of the Action against ABB and for dismissal of the Action against ABB with prejudice upon the terms and conditions set forth in the Settlement Agreement;

WHEREAS, the Court has previously certified litigation classes pursuant to Fed. R. Civ. P. 23 (Doc. 940);

WHEREAS, the Court has appointed Scott+Scott Attorneys at Law LLP, Hausfeld LLP, and Robins Kaplan, LLP (“Lead Counsel”) as class counsel (Doc.

Miriam Pardoll, Jennifer Sineni, Elyse Ulino, Susan Gordon, Cora Beth Smith, Brett Watson, Tamara O’Brien, Sheryl Marean, Catherine Dingle, Amanda Cunha, Alexis Ito, Kathleen Schirf, John Machikawa, and Joseph Felson. Pamela Mazarella was a plaintiff in the CVI settlement, but not the B&L or ABB settlements because she withdrew as a named class representative; however, she continues to be a member of the Settlement Classes.

940);

WHEREAS, the Court has appointed Rachel Berg, Miriam Pardoll, Jennifer Sineni, Elyse Ulino, Susan Gordon, Cora Beth Smith, Brett Watson, Tamara O'Brien, Sheryl Marean, Catherine Dingle, Amanda Cunha, Alexis Ito, Kathleen Schirf, John Machikawa, and Joseph Felson as class representatives (Doc. 940);

WHEREAS, the Settling Parties have agreed to the entry of this Final Approval Order of Settlement and Final Judgment and Order of Dismissal with Prejudice as to ABB;

WHEREAS, "Released Parties" has the same meaning as set forth in the Settlement Agreement;

WHEREAS, by Order dated November 13, 2020 (the "Preliminary Approval Order") this Court: (a) preliminarily approved the Settlement Agreement; (b) preliminarily certified the Settlement Class; (c) ordered that notice of the Settlement Agreement be provided to potential members of the Settlement Class; (d) provided members of the Settlement Class with the opportunity either to exclude themselves from the Settlement Class or to object to any aspect of the proposed Settlement Agreement; and (e) designated Scott+Scott Attorneys at Law LLP, Hausfeld LLP, and Robins Kaplan, LLP as settlement class counsel for the Settlement Class ("Class Counsel") and Plaintiffs as class representatives of the Settlement Class.

WHEREAS, by Notice dated April 15, 2021, this Court scheduled a hearing regarding final approval of the ABB Settlement on May 19, 2021;

WHEREAS, due and adequate notice has been given to the Settlement Class;

WHEREAS, pursuant to the Preliminary Approval Order, an Escrow Account was established;

WHEREAS, pursuant to the Settlement Agreement and the Preliminary Approval Order, ABB timely deposited \$500,000 of the Settlement Amount into the settlement Escrow Account on December 16, 2020 and timely deposited 50% of the remainder of the Settlement Amount (\$14,850,000) on April 15, 2021;

WHEREAS, pursuant to the Settlement Agreement, ABB will deposit the remainder of the Settlement Amount (\$14,850,000) into the Escrow Account by January 14, 2022;

WHEREAS, the 90-day period provided by the Class Action Fairness Act, 28 U.S.C. §1715(d), has expired;

WHEREAS, the March 10, 2021 deadline to file claims, object, or opt-out of the Settlement has now passed;

WHEREAS, the Claims Administrator received some claims after the March 10, 2021 deadline and Lead Counsel have requested that the tardy claims be allowed so long as they were otherwise valid and were received by

the Claims Administrator on or before April 7, 2021;

WHEREAS, the Court conducted a hearing on May 19, 2021 (the “Fairness Hearing”) to consider, among other things, (a) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate to the Settlement Class, and should therefore be approved; and (b) whether a judgment should be entered dismissing the Action with prejudice as against ABB; and

WHEREAS, the Court has read and considered the Settlement Agreement and the exhibits annexed thereto and other documents submitted in connection with the Final Approval Order of Settlement and Final Judgment and Order of Dismissal with Prejudice as to ABB, and good cause appearing therefore;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. All terms in initial capitalization used in this Order shall have the same meanings as set forth in the Settlement Agreement, unless otherwise noted or defined herein.

2. **Jurisdiction** – This Court has jurisdiction over the subject matter of the Action and all matters relating to the Settlement Agreement, as well as personal jurisdiction over all Parties and each of the Settlement Class Members with respect to such matters.

3. **CAFA Notice** – The notice provisions of the Class Action Fairness

Act, 28 U.S.C. §1715, have been satisfied.

4. **Incorporation of Settlement Documents** – This Final Order and Judgment incorporates and makes a part hereof: (a) the Settlement Agreement; and (b) the Mail Notice, Claim Form, and Publication Notice, which were each approved by the Court in the Preliminary Approval Order.

5. **Separate Settlement Funds** – The \$30,200,000 Settlement Amount pursuant to the ABB settlement shall be maintained in a separate fund from previous or future settlements with the other defendants.

6. **Class Certification for Settlement Purposes** – Pursuant to Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, and based on the record before the Court, including the submissions in support of the settlement and objections and responses thereto, the Court hereby affirms its determinations in the Preliminary Approval Order and certifies, for the purposes of settlement only, the following ABB Settlement Class:

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.

7. The Court finds that the requirements of Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied solely for settlement purposes, as follows:

- a. Pursuant to Rule 23(a)(1), the Court determines that the Settlement Class Members are so numerous that their joinder before the Court would be impracticable.
- b. Pursuant to Rule 23(a)(2), the Court determines that there are one or more questions of fact or law common to the Settlement Class.
- c. Pursuant to Rule 23(a)(3), the Court determines that Plaintiffs' claims are typical of the claims of the Settlement Class.
- d. Pursuant to Rule 23(a)(4), the Court determines that Plaintiffs will fairly and adequately protect the interests of the Settlement Class. Plaintiffs are certified as class representatives.
- e. Pursuant to Rule 23(b)(3), the Court determines that common questions of law and fact predominate over questions affecting only individual members of the Settlement Class.

f. Also pursuant to Rule 23(b)(3), the Court determines that a class action is superior to other available methods for the fair and efficient adjudication of this Action with respect to the Settlement Class.

8. Pursuant to Rule 23(g) of the Federal Rules of Civil Procedure, Class Counsel are certified as settlement class counsel for the Settlement Class.

9. Notice – The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Order; (b) constitutes the best notice practicable under the circumstances; (c) constitutes notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class of (i) the pendency of the Action; (ii) the effect of the Settlement Agreement (including the Releases to be provided thereunder); (iii) Class Counsel’s possible motion for an award of attorneys’ fees and reimbursement of expenses; (iv) the right to object to any aspect of the Settlement Agreement, the Plan of Distribution, and/or Class Counsel’s motion for attorneys’ fees and reimbursement of expenses; (v) the right to opt out of the Settlement Class; (vi) the right to appear at the Fairness Hearing; and (vii) the fact that Plaintiffs may receive incentive awards; (d) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the Settlement Agreement; and (e) satisfies the requirements of Rule

23 of the Federal Rules of Civil Procedure and the United States Constitution (including the Due Process Clause).

I. FINAL APPROVAL OF SETTLEMENT AGREEMENT

10. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court hereby grants final approval of the Settlement Agreement in all respects (including, without limitation: the Settlement Fund amount; the releases; and the dismissal with prejudice of the claims asserted against ABB in the Action), and finds that the Settlement Agreement is, in all respects, fair, reasonable, and adequate to the Settlement Class. In reaching this conclusion, the Court considered the factors set forth in *Leverso v. Southtrust Bank of AL, Nat'l Assoc.*, 18 F.3d 1527, 1530 (11th Cir. 1994). Moreover, the Court concludes that:

- a. the Settlement Agreement was fairly and honestly negotiated by counsel with significant experience litigating class actions and is the result of vigorous arm's-length negotiations undertaken in good faith;
- b. the Action involves contested issues of law and fact, such that the value of an immediate monetary recovery, in conjunction with the value of the cooperation stated in the Settlement Agreement, outweigh the mere possibility of future relief after protracted and expensive litigation;

- c. this is a partial settlement of the Action in a multi-defendant antitrust case, meaning that if Plaintiffs' claims are proven at trial, non-settling defendants will remain liable for all class damages under principles of joint and several liability, subject to any applicable rules of set off, and, as such, the Settlement Agreement provides a guaranteed cash recovery and other benefits to the Settlement Class without substantially diminishing the value of the case going forward;
- d. success in antitrust cases such as this one is inherently uncertain, and there is no guarantee that continued litigation would yield a superior result; and
- e. the Court agrees with Class Counsel's judgment that the Settlement Agreement is fair and reasonable for the reasons stated in the record on file.

11. **Dismissal of the Action and Release** – Except as to any claim of those Persons (identified in Exhibit A attached hereto) who have validly and timely requested exclusion from the ABB Settlement Class (“Opt-Outs”), the Court orders that the Action and all claims contained therein, as well as all of the Released Claims against any of the Released Parties by Plaintiffs, Settlement Class Members, and Releasing Parties are each hereby dismissed

with prejudice. The Parties are to bear their own costs, except as otherwise provided in the Settlement Agreement.

12. The Opt-Outs identified in Exhibit A are excluded from the ABB Settlement Class pursuant to properly made requests, are not bound by the Settlement Agreement, or this Final Order and Judgment, and may not make any claim or receive any benefit from the Settlement Agreement, whether monetary or otherwise.

13. The releases set forth in the Settlement Agreement, together with the Definitions contained in the Settlement Agreement relating thereto, are expressly incorporated herein in all respects. The releases are effective as of the Effective Date.

14. Upon the Effective Date, each of the Released Parties: (a) shall be deemed to have, and by operation of this Final Order and Judgment shall have fully, finally, and forever waived, released, relinquished, and discharged (i) Plaintiffs, Class Lead Counsel, and each and all Settlement Class Members from each and every one of the Settling Defendant's claims, and (ii) any rights to the protections afforded under California Civil Code §1542 and/or any other similar, comparable, or equivalent laws; (b) shall forever be enjoined from prosecuting the Settling Defendant's claims; and (c) agrees and covenants not to sue on the basis of any Settling Defendant's claims, or to assist any third

party in commencing or maintaining any such suit related to any Settling Defendant's claims.

15. Upon the Effective Date, each of the Releasing Parties: (a) shall be deemed to have, and by operation of this Final Order and Judgment, shall have fully, finally, and forever waived, released, relinquished, and discharged (i) all Released Claims against the Released Parties, regardless of whether such Releasing Party executes and delivers a proof of claim and release form, and (ii) any rights to the protections afforded under California Civil Code §1542 and/or any other similar, comparable, or equivalent laws; (b) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties; and (c) agrees and covenants not to sue any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Party related in any way to any Released Claims.

16. Upon the Effective Date, claims against the Released Parties for contribution or indemnification (however denominated) for all or a portion of any amounts paid in the Action by way of settlement, judgment, or otherwise, are barred.

17. This Final Order and Judgment shall not affect, in any way, the right of Plaintiffs, Settlement Class Members, or Releasing Parties to pursue claims, if any, outside the scope of the Released Claims.

18. Nothing in this Final Order and Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Settlement Agreement or this Final Order and Judgment.

19. All rights of Plaintiffs, Settlement Class Members, and Releasing Parties against non-settling defendants or any Persons other than the Released Parties with respect to any of the Released Claims are specifically reserved by Plaintiffs, Settlement Class Members, or Releasing Parties. The commerce from ABB's UPP domestic sales of lenses within the Class Period shall remain in the case as a potential basis for joint and several liability damages claims against non-settling defendants, or any other Persons other than the Released Parties.

20. **No Admission** – Neither the Settlement Agreement nor the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement contained therein: (a) is or may be deemed to be or may be used as an admission or evidence of the validity of any Released Claim, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. The Settlement Agreement may be filed in an action to enforce or interpret the terms of the Settlement

Agreement, the settlement contained therein, and any other documents executed in connection with the performance of the agreement embodied therein. The Released Parties may file the Settlement Agreement and/or this Final Order and Judgment in any action that may be brought against them in order to support a defense or counterclaim based on the principles of *res judicata*, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

II. OTHER PROVISIONS

21. The Court approves of Plaintiffs' designated Claims Administrator, Epiq Class Action & Claims Solutions, Inc. Absent further order of the Court, the Claims Administrator shall have such duties and responsibilities as are set forth in the Settlement Agreement.

22. The Court approves of Plaintiffs' designation of Huntington National Bank as Escrow Agent. Absent further order of the Court, the Escrow Agent shall establish the Escrow Account at Huntington National Bank and have such duties and responsibilities in such capacity as are set forth in the Settlement Agreement.

23. The Claims Administrator may process claims received by the Claims Administrator on or before April 7, 2021.

24. The Court's certification of the Settlement Class as provided

herein is without prejudice to, or waiver of, the rights of any non-settling defendant to contest certification of any non-settlement class proposed in this Action. The Court's findings in this Order shall have no effect on the Court's ruling on any motion to certify any non-settlement class in this Action; and no party may cite or refer to the Court's approval of any Settlement Class as persuasive or binding authority with respect to any motion to certify any non-settlement class or any other dispositive motion filed by a non-settling defendant. Nor shall such approval prejudice any rights, claims, or defenses of any non-settling defendant.

25. All members of the Settlement Class shall be bound by all determinations and judgments in the Action concerning the settlement set forth in the Settlement Agreement, whether favorable or unfavorable to the Settlement Class.

26. A separate order shall be entered regarding awarding attorneys' fees and litigation costs. Such an order shall in no way disturb or affect this Final Order and Judgment and shall not affect or delay the Effective Date of the Settlement.

27. There is no just reason for delay in the entry of this Final Order and Judgment, and immediate entry by the Clerk of the Court is expressly directed.

DONE AND ENTERED at Jacksonville, Florida, this 31st day of May, 2021.


HARVEY E. SCHLESINGER
United States District Judge

Copies to:
Counsel of Record

EXHIBIT A



Disposable Contacts Opt Out Report for ABB Settlement

Epiq ID(s)	Name	Timely
2153530	JACKIE JONES	Yes
1640292	PHILIP R. GINDI	Yes
2233233	STACEY COBURN	Yes
1907434	CYNTHIA MILLS	Yes
25967	TAMARA MICHAD	Yes
1998329	ZHANNA CHUBARI	Yes
1149385	MARIANNE PRIMOZICH	Yes
1670154	MONIK DIONISIO	Yes