

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

<b>In Re:</b>  <b>DISPOSABLE CONTACT LENS ANTITRUST LITIGATION</b>	<b>Case No. 3:15-md-2626-HES-LLL</b>  <b>Judge Harvey E. Schlesinger Magistrate Judge Laura Lothman Lambert</b>
<b>THIS DOCUMENT RELATES TO: All Class Actions</b>	

**ORDER GRANTING LEAD COUNSEL'S APPLICATION  
FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF  
EXPENSES FROM THE COOPERVISION, INC., BAUSCH & LOMB, INC.,  
ALCON VISION, LLC, AND JOHNSON & JOHNSON VISION CARE, INC.  
SETTLEMENT FUNDS**

This Action<sup>1</sup> is pending before this Court:

Plaintiffs<sup>2</sup> have entered into and executed Stipulations and Agreements of Settlement (“Settlement Agreements”) with Alcon Vision, LLC (“Alcon”), and Johnson & Johnson Vision Care, Inc. (“JJVCI”) (“Defendants” together with Plaintiffs, the “Settling Parties”), which, if finally approved by the Court, will result in the settlement of all claims against Defendants and bring the Action to an end;<sup>3</sup>

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<sup>1</sup> As defined in the Settlement Agreements, 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.

<sup>2</sup> As defined in the Settlement Agreements, “Plaintiffs” are 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. Pamela Mazzarella was a plaintiff in the CooperVision, Inc. (“CVI”) settlement, but not the Bausch & Lomb Inc. (“B&L”) or ABB Optical Group, LLC (“ABB”) settlements because she withdrew as a named class representative; however, she continues to be a member of the Settlement Classes.

<sup>3</sup> Alcon Vision, LLC vs. Lens.com, C.A. No. 1:18-407, was filed in the Eastern District of New York. The case is a trademark infringement action against discount retailer Lens.com, a “gray market” purchaser, which allegedly bought certain Alcon products overseas and sold them in the United States. Defendant Lens.com brought several counterclaims that generally (1) refute Alcon’s accusation of trademark infringement and suggest instead that changes Alcon made to products exclusively sold in the U.S. were pretextual changes aimed at eliminating gray market competitors, (2) challenge Alcon’s proposed exclusive-dealing arrangements and its alleged attempts to tie the sale of products it exclusively sells in the U.S. to an agreement that Lens.com purchase all Alcon products at its U.S. prices, and (3) connect Alcon’s filing of the trademark action against Lens.com to its alleged prior efforts to prevent resellers from distributing Alcon products to the detriment of eye care professionals. Two of Lens.com’s claims relate to the universal pricing policies (UPPs) at issue in MDL No. 2626. These two UPP-related counterclaims were transferred to this Court. The two counterclaims, Alcon Vision, LLC v. Lens.com,

The Court previously certified litigation classes pursuant to Federal Rule of Civil Procedure 23 (Doc. 940);

The Court has appointed Scott+Scott Attorneys at Law LLP, Hausfeld LLP, and Robins Kaplan, LLP (“Lead Counsel”) as class counsel (*id.*);

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 (*id.*);

By Order dated May 9, 2022 (Doc. 1343) (the “Preliminary Approval Order”) this Court: (a) preliminarily approved the Settlement Agreements with Alcon and JJVCI; (b) preliminarily certified those Settlement Classes; (c) ordered that notice of the Settlement Agreements be provided to potential members of the Settlement Classes; (d) provided members of the Settlement Classes with the opportunity either to exclude themselves from the Settlement Classes or to object to the proposed Settlement Agreements; (e) provided members of the Settlement Classes with the opportunity to object to the Application for Attorneys’ Fees and Reimbursement of Costs, and (f) designated Scott+Scott Attorneys at Law LLP, Hausfeld LLP, and

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case number 19-cv-706, remain pending before this Court and the claims are not dismissed by this Order. Final briefing on dispositive motions is due September 13, 2023 (Doc. 1345). The Parties have stipulated that ten days after this Court’s ruling on all dispositive motions, this matter shall be remanded to the United States District Court for the Eastern District of New York for any trial (Doc. 1344).

Robins Kaplan, LLP as settlement class counsel for the Settlement Classes (“Class Counsel”) and Plaintiffs as class representatives of the Settlement Classes;

Consistent with the Court’s Order, notice has been disseminated to potential members of the Alcon and JJVCI Settlement Classes;

In full and final settlement of the claims asserted against Alcon in this Action, Alcon agreed to pay the amount of \$20,000,000 (twenty million dollars) as set forth in the Alcon Settlement Agreement;

In full and final settlement of the claims asserted against JJVCI in this Action, JJVCI agreed to pay the amount of \$55,000,000 (fifty-five million dollars) as set forth in the JJVCI Settlement Agreement;

Pursuant to the Preliminary Approval Order, Escrow Accounts were established for the Settlement Agreements;

Pursuant to the Alcon Settlement Agreement, Alcon deposited \$20,000,000 (twenty million dollars) into an Escrow Account;

Pursuant to the JJVCI Settlement Agreement, JJVCI deposited \$55,000,000 (fifty-five million dollars) into an Escrow Account;

In the Preliminary Approval Order, the Court ordered that all settlement funds held in the escrow account shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Settlement Agreements and further order(s) of the Court;

In the Preliminary Approval Order, the Court ordered that all reasonable expenses incurred in identifying and notifying potential Class Members as well as in

administering the Alcon and JJVCI Settlements (“Settlement Administration Expenses”) should be paid as set forth in the Settlement Agreements up to \$1,500,000;

The Court appointed Epiq Class Action & Claims Solutions, Inc. (“Epiq”) as the notice provider and approved the proposed plan of notice, which provided for notice to members of the Settlement Classes using funds from the Settlements;

On July 22, 2022, Class Counsel filed an Application for an Award of Attorneys’ Fees and Reimbursement of Expenses (Doc. 1349);

The August 22, 2022 deadline to object to the Application for Attorneys’ Fees and Reimbursement of Expenses has now passed and no objections were filed and neither Class Counsel nor Epiq is otherwise aware of any objections;

By Notice dated July 26, 2022, this Court scheduled a hearing regarding final approval of the Alcon and JJVCI Settlements and Application for Attorneys’ Fees and Costs on October 12, 2022 at 9:30 AM at Bryan Simpson United States Courthouse, 300 North Hogan Street, Jacksonville, Florida, Courtroom 10C (Doc. 1353);

Due and adequate notice has been given to potential members of the Settlement Classes;

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

The Court conducted the hearing on October 12, 2022 (the “Fairness Hearing”) to consider, among other things, (a) whether the terms and conditions of the Settlement Agreements are fair, reasonable, and adequate to the Settlement Classes, and should therefore be approved; (b) whether a judgment should be entered

dismissing the Action with prejudice against Alcon and JJVCI; and (c) whether Plaintiffs' Attorneys' Fees and Costs should be granted;

The Court previously granted final approval of settlements releasing all claims against B&L (\$10,000,000) and CVI (\$3,000,000) (Doc. 1164) and both Funds were fully funded by CVI and B&L;

Notice for the CVI and B&L Settlements informed the Settlement Class Members that Lead Counsel may request up to one-third of the Settlement Funds as attorneys' fees;

Lead Counsel never requested compensation for their time spent litigating this Action from the CVI and B&L Settlement Funds;

No CVI or B&L Settlement Class Member objected to Lead Counsel's ability to request up to one-third of the Settlement Funds as attorneys' fees;

Class Counsel have requested as attorneys' fees one-third of the combined \$88,000,000 CVI, B&L, Alcon, and JJVCI Settlement Funds (\$29,333,333.33), as well as payment of costs and expenses reasonably incurred in litigating this Action (\$1,649,702.38);

Class Counsel also notified the Alcon and JJVCI Settlement Classes that they would seek up to one-third of the those Settlement Funds as reimbursement for attorneys' fees, and notified members of the Settlement Classes of the specific percentage of the Settlement Funds to be requested in advance of the respective deadlines for each settlement for objections and exclusion requests;

As described in the Plaintiffs' Application for Attorneys' Fees and Costs filed February 26, 2021, the Court has read and considered the reasonableness and necessity of the fees and costs; and

The Court has considered the applicable case law and finds that awarding the requested attorneys' fees is fair and reasonable and just compensation for the work done and risks taken in this litigation and is well within the range of reasonableness under the factors established by the Eleventh Circuit in Camden I Condo. Ass'n, Inc. v. Dunkle, 946 F.2d 768 (11th Cir. 1991).

NOW, THEREFORE, IT IS HEREBY ORDERED:

The Court authorizes Class Counsel to withdraw the following from the Settlement Fund Escrow Accounts:

- a. \$29,333,333.33 in attorneys' fees, with one-third to be withdrawn from each of the CVI (\$1,000,000), B&L (\$3,333,333.33), Alcon (\$6,666,666.67), and JJVCI (\$18,333,333.33) Settlement Funds; and
- b. \$1,649,702.38 in general incurred and litigation costs to be withdrawn from Alcon (\$439,920.63) and JJVCI (\$1,209,781.75) Settlement Funds.

**DONE AND ENTERED** in Jacksonville, Florida this 12<sup>th</sup> day of October 2022.

  
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HARVEY E. SCHLESINGER  
UNITED STATES DISTRICT JUDGE

Copies to:  
Counsel of Record