

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

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

**CLASS COUNSEL'S RESPONSE TO
CARLOS TORRES' MOTION FOR RECONSIDERATION**

Class Counsel respectfully submit this response (“Response”) to Mr. Carlos Torres’ (“Torres”) Motion for Reconsideration and Motion to Take Judicial Notice (“Torres Motion,” ECF No. 1411).

For the reasons set forth below and in Class Counsel’s Response to Certain Claimants’ Objections to the Supp. Distribution of Net Settlement Funds (the “Objection Response,” ECF No. 1406) and Class Counsel’s Response to Certain Claimants’ Motions for Reconsideration (the “First Reconsideration Response,” ECF No. 1409), which Class Counsel incorporate as if fully set forth herein, the Court should deny Torres’ Motion and affirm its November 29, 2023 Order Authorizing Second Distribution of the Net Settlement Funds to Claimants (the “Second Distribution Order,” ECF No. 1403).¹

I. ARGUMENT

A. Torres is a Re-Issue Claimant and Not Negatively Impacted by the Second Distribution Order

Torres claims that he has been “affected negatively” by the Second Distribution Order and that Epiq has somehow failed to “provide a remedy.” *See* Torres Mot. at II. Not so. As with the other Objectors, Torres is a Re-Issue Claimant and will receive his *pro rata* distribution under the Second Distribution Order. *See* Third Supp. Decl. of Jeanne Chernila Regarding Carlos Torres Objection to the

¹ As noted previously, Class Counsel has instructed the Court appointed Claims Administrator, Epiq Class Action & Claims Solutions (“Epiq”), to not make any payments authorized by the Second Distribution Order until the various motions for reconsideration are resolved by the Court. *See* First Reconsideration Resp. at 1.

Supp. Distribution of Net Settlement Funds at ¶ 2 (“Third Chernila Declaration”). That is, and as set forth more fully in the First Reconsideration Response and Objection Response, the Second Distribution Order does *not* redistribute Objectors’ funds; instead, it explicitly allows Epiq to make distributions to the Objectors and other Re-Issue Claimants in the original *pro rata* amounts. *See* Objection Resp. at III-C; First Recons. Resp. at I-A. Because Torres has not been “affected negatively,” there is no harm to remedy. This argument should be rejected.

B. Torres’ “Notice” Arguments Are Without Merit.

Torres also alleges a lack of notice. *See* Torres Mot. at V & VI.² This argument also lacks merit. Class Counsel fully addressed this “notice” argument previously and incorporate that argument herein. *See* Objection Resp. at III-B; First Recons. Resp. at I-B.

C. Torres and Other Authorized Claimants Are Not Entitled to More than a Single *Pro Rata* Distribution

As with the other Objectors, Torres incorrectly argues that he should receive more than his *pro rata* distribution. *See* Torres Mot. at VII. But, again, all claimants who received or will receive their *pro rata* allocations under the initial distribution order have, on average, been more than fully compensated for the

² It is also unclear whether the Torres Motion’s Exhibit A is true and accurate, as it has not been attested to, and appears to be a conglomeration of language found on the settlement website at different times. *See* Torres Mot., Ex. A. The Court should ignore this attachment in favor of the authenticated landing pages already submitted by Class Counsel. *See, e.g.,* Obj. Response at 7-8 (citing to Second Chernila Decl. at 14-15, Ex. E).

harm incurred. *See* Objection Resp. at III-D. The law does not support allocating funds over that amount, *see id.*, and this argument should, therefore, be rejected.

D. The Court Properly Released Epiq and Class Counsel

Torres claims that the Court has no authority to enter an Order releasing the Claims Administrator or Class Counsel from potential claims arising from the distribution of these settlement funds. *See* Torres Mot. at III. This is also incorrect.³ It is well accepted that attorneys and claims administrators are released from liability concerning the distribution of settlement funds. *See, e.g., Pritchard v. Apyx Med. Corp.*, No. 8:19-cv-00919, 2021 WL 2451356 at *2 (M.D. Fla. June 15, 2021) (“[A]ll persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the claims submitted herein, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, are released and discharged from any and all claims arising out of such involvement”); *In re Takata Airbag Prods. Liab. Litig.*, No. 14-cv-24009, 2018 WL 11422998 at *4 (S.D. Fla. Dec. 20, 2018) (“[D]ecisions of the Settlement Special Administrator relating to the review, processing, determination and payment of Claims submitted pursuant to the Settlement Agreement are final

³ To the extent Torres’ argument on this issue could be construed as about a failure to notice, this argument would also fail. Class Members have received more than sufficient notice, *see* Part I-B, *supra*, and indeed, this same language was included in the Court’s earlier distribution order. *See* Order Authorizing Distribution of the Net Settlement Funds to Claimants at ¶ 7 (ECF No. 1371, filed June 5, 2023). To the extent Torres wished to make this argument, he should have done so nearly a year ago in connection with that order. He did not.

and not appealable.”).

E. Class Members Have Not Been Misled

Finally, Torres’ claim that he and other Class Members have been “misled” because they have not been provided an opportunity to object to the *pro rata* distribution of settlement funds is similarly incorrect. *See* Torres Mot. at IV. Class Members received notice with instructions on how to object to Class Counsel’s plan to distribute the Net Settlement Funds *pro rata* to eligible claimants in June 2022. *See* First Recons. Resp. at I-B. Class members were subsequently informed of the distribution notice with the same instructions and opportunity to object. *Id.* At no point did any Class Members object to the proposed *pro rata* distribution of the Net Settlement Funds. *Id.* Because the Second Distribution Motion simply sought to distribute funds in the same manner previously approved by the Court—***which was done without a single objection***—there was no need to re-notice Class Members. *Id.* In sum, any suggestion that Class Members have been misled is specious at best.

II. CONCLUSION

For the foregoing reasons, Class Counsel respectfully request the Court enter an order denying the Torres Motion and reaffirming its Second Distribution Order.

Dated: January 10, 2024

/s/ Michael E. Lockamy

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

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

**THIRD SUPPLEMENTAL DECLARATION OF JEANNE CHERNILA
REGARDING CARLOS TORRES OBJECTION TO THE
SUPPLEMENTAL DISTRIBUTION OF NET SETTLEMENT FUNDS**

I, Jeanne Chernila, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a Project Manager employed by Epiq Class Action & Claims Solutions (“Epiq”) in Beaverton, Oregon. I am familiar with the actions taken by Epiq with respect to the settlements (“Settlements”) reached in this case between Plaintiffs and the Alcon Vision LLC f/k/a Alcon Laboratories, Inc. (“Alcon”), Johnson & Johnson Vision Care, Inc. (“J JVCI”), Bausch & Lomb, Inc. (“B&L”), and Cooper Vision, Inc. (“CVI”), and ABB Optical Group, LLC (“ABB”) (collectively the “Defendants”), and the corresponding Claim Forms submitted and the processing of the Claim Forms and subsequent activities. I submit this Third Supplemental Declaration in response to the objection filed by Carlos

Torres. This Third Supplemental Declaration is based upon my personal knowledge and information provided to me by Class Counsel, and associates and staff under my supervision, and is accurate and truthful to the best of my knowledge.

2. Mr. Torres is included in the Re-Issue Claimant group identified in my previous Second Supplemental Declaration Regarding Certain Claimants' Objections to the Supplemental Distribution of Net Settlement Funds and will receive his initial *pro rata* distribution as part of this supplemental distribution.

3. On July 9, 2023, Mr. Torres contacted Epiq to update his address. On July 12, 2023, Mr. Torres requested Epiq reissue his award check to his updated address. On September 20, 2023, Epiq reissued Mr. Torres' award check and mailed it to the updated address on file. **Exhibit A** is a true and correct redacted copy of Mr. Torres' re-issued award check and cover letter. The re-issued award check was returned as having an undeliverable mailing address on October 13, 2023.

4. On November 11, 2023, Mr. Torres contacted Epiq for a status update on his reissued award payment. On December 1, 2023, Epiq informed Mr. Torres that his reissued check was returned as undeliverable mail. Epiq has had no further communication from or with Mr. Torres.

5. Mr. Torres did not contact Epiq regarding his payment after the Court approved the supplemental distribution. Mr. Torres will have opportunity

to receive his re-issued award payment electronically (via EpiqPay) or via paper check.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 10, 2024 at Rio Nido, California.

Jeanne Chernila
Jeanne Chernila

EXHIBIT A

DISPOSABLE CONTACT LENS
SETTLEMENT ADMINISTRATOR
PO BOX 4199
PORTLAND OR 97208-4199

CHECK DATE:
CHECK NUMBER:
CHECK AMOUNT:
TRACKING NUMBER:
CLAIM NUMBER:

SEPTEMBER 20, 2023



4674127245775
000 0000012 00000000 0001 0001 00012 INS: 0 0
CARLOS TORRES



AI4631

This check is issued pursuant to the terms of the class action settlement *DISPOSABLE CONTACT LENS ANTITRUST LITIGATION* Case No. 3:15-md-02626. You submitted a claim for a settlement award, and it was determined to be timely and valid. The enclosed check constitutes full satisfaction of your claim.

The enclosed check is only valid for **90 days** from the issue date. Please deposit promptly.

If you have any questions about your award, please contact the Settlement Administrator at (877) 253-3649, visit the settlement website at ContactLensSettlement.com, or write to PO Box 2995, Portland, OR 97208-2995.

DISPOSABLE CONTACT LENS
SETTLEMENT ADMINISTRATOR
PO BOX 4199
PORTLAND OR 97208-4199

The Huntington National Bank

25-2
440

CHECK NUMBER



DATE

09/20/2023

Void if not negotiated within ninety (90) days of date of issue

PAY EXACTLY *****



AMOUNT



PAY TO THE ORDER OF:
CARLOS TORRES

This check may not be cashed at a check cashing agency or money service business.

VOID

Nicole Han
Authorized Signature

