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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re DISPOSABLE CONTACT LENS
ANTITRUST LITIGATION

) MDL Docket No. 1030

) SETTLEMENT AGREEMENT

This Document Relates To:

ALL ACTIONS.

Ex. C

THIS SETTLEMENT AGREEMENT is entered into as of the 22nd day of May, 2001, between (1) defendant, the American Optometric Association ("AOA"); (2) the plaintiffs, both individually and in their capacities as class representatives (the "class plaintiffs"), and their counsel, in Civil Action Nos. 94-657-CIV-J-20C, 94-635-CIV-J-20, 94-1214-CIV-J-20, and 94-780-CIV-J-20 (collectively, the "Class Action"), pending in *In re: Disposable Contact Lens Antitrust Litigation*, 94-MDL-1030-J-20A, in the United States District Court for the Middle District of Florida, Jacksonville Division ("MDL 1030"); (3) the plaintiff-States of Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Idaho, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Texas, Utah, West Virginia and Wisconsin, and the commonwealths of Massachusetts, Pennsylvania and Virginia (collectively, with any state or commonwealth, including the District of Columbia, that joins this Settlement Agreement under paragraph 8(b) hereof, the "States") in their capacities as sovereigns, as *parens patriae* on behalf of natural persons for whom the States may act, and as *parens patriae* on behalf of the States' economies and general welfare in Civil Action No. 97-299-CIV-J-20A; 97-698-CIV-J-21C; 97-861-CIV-J-20A; 97-928-CIV-J-20A; 98-93-CIV-J-21A; 98-511-CIV-J-21B; 98-515-CIV-J-21C; 98-536-CIV-J-20A; and 98-638-CIV-J-21A (the "States Action"), pending in MDL 1030; and (4) the State of Florida ("Florida"), in its capacity as sovereign, as *parens patriae* on behalf of natural persons for whom Florida may act, and as *parens patriae* on behalf of Florida's economy and general welfare in Case No. 94-619-CIV-J-20 (the "Florida Action") pending in MDL-1030;

WHEREAS, the Florida action and the Class Action allege that the AOA conspired with Johnson & Johnson Vision Products, Inc. ("Vistakon"), and/or CIBA Vision Corporation ("CIBA Vision"), and/or Bausch & Lomb Incorporated ("Bausch & Lomb") (collectively, contact lens manufacturers) and/or certain individual defendants not to sell

replacement contact lenses (as defined herein) directly to alternative channels of distribution (as defined herein), and to restrain authorized distributors of the contact lens manufacturers from reselling such lenses directly to such alternative channels of distribution, with the alleged effect of artificially raising or maintaining the retail prices for Bausch & Lomb, Vistakon and/or CIBA Vision replacement contact lenses sold to consumers through those companies' authorized channels of distribution;

WHEREAS, the States Action (i) alleges that the AOA conspired with Vistakon, Bausch & Lomb, CIBA Vision, Contact Lens and Anterior Segment Society, Inc., American Society of Contact Lens Specialists, Society of Eye Care Specialists, Eye Care Management Group, Vision Enhancement Council International, Society of Contact Lens Specialists, National Association of Contact Lens Specialists, the California Optometric Association, Optometric Society of the City of New York, the Wisconsin Optometric Association and/or the eleven individuals in the complaint not to sell replacement contact lenses directly to alternative channels of distribution, to restrain authorized distributors of the contact lens manufacturers from reselling such lenses directly to such alternative channels of distribution, and to restrain consumer access to prescriptions or work orders needed to obtain contact lenses, with the alleged effect of artificially raising or maintaining the retail prices for Bausch & Lomb, Vistakon and CIBA Vision replacement contact lenses sold to consumers through those companies' authorized channels of distribution and alternative channels of distribution and (ii) does not seek damages or other relief based on the purchase of contact lenses manufactured by persons or entities other than Bausch & Lomb, Vistakon or CIBA Vision;

WHEREAS, the AOA denies each and every allegation of unlawful conduct in the Class, States and Florida Actions;

WHEREAS, on or about September 5, 1996, the Court in MDL 1030, after briefing and argument, certified a consumer class in the Class Action consisting of: "All purchasers of Vistakon, Bausch & Lomb and CIBA replacement contact lenses from eye care

practitioners during the period 1988 to the present, excluding consumers in Florida represented by the Florida Attorney General in *State of Florida v. Johnson & Johnson Vision Products, et al.*, Case No. 94-619-CIV-J-20" (the "Class"), and determined that the class plaintiffs were adequate representatives of the Class and had claims which were typical of those of its members;

WHEREAS, on July 28, 1997, the Court modified its class certification order to exclude consumers residing in Georgia or Tennessee;

WHEREAS, the Class, the States and Florida entered into a settlement agreement with CIBA Vision in May of 1997, which this Court finally approved on February 28, 2001 ("CIBA Vision Settlement");

WHEREAS, the Class, the States and Florida entered into a settlement agreement with Bausch & Lomb on February 16, 2001, which this Court preliminarily approved on March 16, 2001 ("Bausch & Lomb Settlement");

WHEREAS, in connection with the CIBA Vision Settlement and the Bausch & Lomb Settlement, the Court approved use of a "Settlement Class" which is defined the same as the Class is defined above, and which includes consumers in Georgia or Tennessee;

WHEREAS, in the States Action and the Florida Action, the States and Florida represent State residents (as defined herein) pursuant to 15 U.S.C. §15c;

WHEREAS, the class plaintiffs, the States and Florida and their respective counsel have concluded, after extensive discovery, approximately two weeks of trial, and a thorough review of the facts and the relevant law, that it would be in the best interests of the Settlement Class and the residents of the States (as defined herein) and of Florida to enter into this Settlement Agreement in order to avoid the risk and uncertainty of continued litigation against the AOA, and to assure a benefit to the Settlement Class and residents of the States and of Florida;

WHEREAS, this Settlement Agreement is the result of arm's length negotiations, and the class plaintiffs, the States and Florida and their respective counsel consider this Settlement Agreement to be fair, reasonable, adequate and in the best interests of the Settlement Class and residents of the States and of Florida;

WHEREAS, the AOA has concluded that, despite its denials of wrongdoing and liability, it is in its best interest to enter into this Settlement Agreement to eliminate the expense, inconvenience, burden and inherent risk and uncertainty of continued litigation;

WHEREAS, this Settlement Agreement shall not be deemed or construed as an admission or evidence of any violation of law or any liability or wrongdoing by the AOA;

NOW, THEREFORE, it is agreed by the undersigned, on behalf of the AOA, the class plaintiffs, the States and Florida that, subject to the approval of the Court as provided herein, the Class, States and Florida Actions and all claims of the class plaintiffs, the States and of Florida, shall be settled, compromised and dismissed with prejudice as to the AOA and, except as hereinafter provided, without costs or attorneys' fees, on the following terms and conditions:

1. **Definitions.** For purposes of this Settlement Agreement only, the following terms have the following meanings:

(a) The term "alternative channel of distribution" means any mail order company, pharmacy, buying club, department store, mass merchandise outlet or other distribution alternative which does not require that an eye care practitioner (as defined herein), be either available on or side-by-side to, its premises, and/or examine the purchaser's eyes in connection with the sale of contact lenses.

(b) The term "Settlement Class" means all purchasers of Vistakon, Bausch & Lomb and CIBA replacement contact lenses from eye care practitioners during the period 1988 to the present excluding consumers in Florida represented by the Florida Attorney

General in State of Florida v. Johnson & Johnson Vision Products, et al., Case No. 94-619-Civ-J-20.

(c) The term "Settlement Class member" means a member of the Settlement Class.

(d) The term "contact lens" means a medical device made of plastic that is placed on the eye.

(e) The term "eye care practitioner" means an optometrist, ophthalmologist or optician, including, but not limited to, any such person employed by or associated with a retail optical store (as defined herein).

(f) The term "Florida resident" means any natural person who was a resident of the State of Florida at the time he or she, or someone on his or her behalf, purchased CIBA Vision, Bausch & Lomb and/or Vistakon contact lenses.

(g) The term "purchasers of Vistakon, Bausch & Lomb and CIBA replacement contact lenses from eye care practitioners" means any natural person who bought, or on whose behalf someone bought, CIBA Vision, Bausch & Lomb and/or Vistakon replacement contact lenses (as defined herein) from an eye care practitioner (as defined herein).

(h) The term "replacement contact lenses" means contact lenses that are sold or dispensed to replace the initial contact lenses.

(i) The term "retail optical store" means a store or a chain of stores that sells contact lenses to consumers and employs or has associated an eye care practitioner either available on, or side-by-side to, its premises to examine the purchaser's eyes in connection with the sale of contact lenses, including all stores or chains of stores to which CIBA Vision, Vistakon and/or Bausch & Lomb or their authorized distributors sold contact lenses.

(j) The term "State resident" means any natural person who was a resident of any State at the time he or she, or someone on his or her behalf, purchased Bausch & Lomb, CIBA and/or Vistakon contact lenses.

2. **Motion for Preliminary Approval.** Within twenty (20) business days of the execution of this Settlement Agreement, the class plaintiffs, the States and Florida shall submit a motion to the Court requesting preliminary approval of this Settlement Agreement and entry of an order in the form annexed hereto as Exhibit A.

3. **Plan for Dissemination of Notice.** Simultaneously with the parties' motion for preliminary approval, the class plaintiffs, the States and Florida shall submit to the Court a plan for dissemination of notice to Settlement Class members, State residents and Florida residents. The form of notice for this settlement shall be, as far as is practicable, a part of and included in the form of notice for the Bausch & Lomb Settlement. The plan for dissemination of notice for the Bausch & Lomb Settlement provides for dissemination of notice at least as broadly as was provided for in the CIBA Vision Settlement. In addition, notice of the Bausch & Lomb Settlement (including notice of the AOA Settlement) is to be mailed personally to each person who requested notice of the CIBA Vision Settlement, or who made a claim or otherwise registered for the CIBA Vision Benefits Package.

4. **The Settlement Fund.**

(a) Subject to final approval of this Settlement Agreement under paragraph 10 hereof and the AOA's right of termination under paragraph 7 hereof, the AOA agrees to pay \$750,000 in cash, no later than five (5) days from the date of this agreement, in full, complete and final settlement of the Class Action, the States Action, the Florida Action, all Released Claims (as defined in paragraph 11(a) hereof) and any obligations the AOA might otherwise have to pay, including the cost of any notice to Class members, State residents or Florida residents, the payment of claims to Class members, State residents or Florida residents, and the costs of suit, including reasonable attorneys' fees, as approved by

the Court pursuant to Fed. R. Civ. P. 23 and 15 U.S.C. §§15, 15c and 26, as follows: before execution of this Settlement Agreement, the AOA sent a check for \$750,000 payable to the Milberg Weiss Bershad Hynes & Lerach LLP Trust Account. Upon execution of this Settlement Agreement, Milberg Weiss is authorized to deposit the \$750,000 into an escrow account to be maintained by San Diego National Bank (the "Account") which, together with the interest which thereafter accrues in the Account shall constitute the AOA Settlement Fund (the "Settlement Fund"). The Settlement Fund will be invested in a money market fund that invests solely in United States Treasury securities that are direct obligations of the United States of America or obligations the principal of, and the interest on which, are unconditionally guaranteed by the United States of America. The Settlement Fund shall be administered pursuant to the Escrow Agreement annexed hereto as Exhibit B (the "Escrow Agreement"). Except for the payment of the fees and costs of administration incurred pursuant to the Escrow Agreement, the Settlement Fund will remain intact until final approval of this Settlement Agreement pursuant to paragraph 10 hereof. The Settlement Fund shall be administered for the benefit of Settlement Class members, State residents and Florida residents as ordered by the Court.

(b) If at the end of any claim submission period monies remain in the Settlement Fund, net of costs of administration and costs of suit, including reasonable attorneys' fees, as approved by the Court, the remaining amount shall be distributed in a manner, which may include a *cypres* distribution, and on terms and conditions, determined by the Court in the exercise of its reasonable discretion; provided, however, that the AOA shall be given written notice of any application requesting the Court's exercise of discretion pursuant to this subparagraph.

(c) If, prior to the giving of Court-approved notice, (i) the Court declines to approve this Settlement Agreement preliminarily, (ii) the Court preliminarily approves the Settlement Agreement but withdraws such preliminary approval, or (iii) this Settlement

Agreement is terminated under paragraph 7 hereof, then the Settlement Fund, including all income earned thereon, shall be returned to the AOA within ten (10) business days of such event, less only (a) the fees and costs of administration incurred under the Escrow Agreement; and (b) any accrued tax liability.

(d) It is intended that any taxes due as a result of income earned by the Settlement Fund will be paid from the Settlement Fund. In the event that federal or state income tax liability is finally assessed against and paid by the AOA as a result of income earned by the Settlement Fund, the AOA shall be entitled to reimbursement of such payment from the Settlement Fund. The AOA will use its best effort to resist any such payment.

5. **Injunctive Relief.** The AOA hereby agrees to the following injunctive terms, which shall be in effect for a period of four years:

(a) Consistent with state law, the AOA will not object to the release of contact lens prescriptions, except in the affirmative exercise of an optometrist's own medical judgment related to the specific, identified and documented health needs of a particular patient. The AOA will not develop, disseminate, or urge the use of forms designed to limit either the availability or utility of prescriptions. A form may contain reasonable expiration dates, limitations on refills and other provisions which are consistent with state law and good optometric practice;

(b) The AOA will not ask or encourage any contact lens manufacturer to refuse to sell contact lenses to any channel of trade;

(c) The AOA will not encourage nor support a refusal by optometrists (i) to do business with any contact lens manufacturer; or (ii) to write prescriptions for a particular contact lens manufacturer's contact lenses, based upon the manufacturer's contact lenses being sold by or to non-ECP retail outlets;

(d) The AOA will make no agreement with any manufacturer to restrict the supply of contact lenses to any channels of trade;

(e) The AOA will resist any invitation by any contact lens manufacturer to enlist the AOA's aid in enforcing any manufacturer's distribution policy refusing to sell contact lenses to any channel of trade;

(f) The AOA will not endorse or pass on to others complaints about the sale of replacement disposable lenses to non-ECP retail outlets by any entity or about the sale of such lenses by a non-ECP retail outlet to any person or entity, other than about violations of federal or state laws;

(g) The AOA, for a period of four years, shall continue to maintain and adhere to its written Antitrust Compliance Program;

(h) The AOA shall not represent directly or indirectly that the incidence or likelihood of eye health problems arising from the use of replacement disposable contact lenses is affected by or causally related to the channel of trade from which the buyer obtains such lenses. Specifically, AOA shall not represent directly or indirectly that increased eye health risk is inherent in the distribution of replacement disposable contact lenses by mail order, pharmacies, or drug stores. This paragraph shall not prohibit the AOA from making such representations where such representations are supported by valid, clinical or scientific data;

(i) Notwithstanding the foregoing, the AOA shall be permitted to (i) engage in collective actions protected under the *Noerr-Pennington* doctrine; (ii) present news, information or the views of its members to the public, manufacturers and others, and conduct surveys, collect data and disseminate such information, provided that such activities do not violate the proposed limitations on AOA conduct discussed above; and (iii) disseminate information about, or encourage compliance with, any federal or state laws and government regulations, including dispensing, antitrust, FTC and FDA laws; and

(j) The AOA shall publish a letter from the president of the AOA setting forth the injunctive terms of this Settlement Agreement in the *AOA News* for four consecutive months, alternating between the "A" and "B" issues of the *AOA News*.

6. **Exclusive Remedies.**

(a) Settlement Class members, State residents and Florida residents who have not timely exercised their right to opt out as provided in the Court-approved notice shall look solely to the Settlement Fund and injunctive relief for settlement and satisfaction of all Released Claims, as defined in paragraph 11(a) hereof, as against the AOA.

(b) Except as provided in this Settlement Agreement, the AOA shall not be liable for any costs, fees or expenses of the class plaintiffs, the States, Florida or their counsel, experts, advisors, agents or representatives.

(c) Since the AOA's payment of the Settlement Fund will fully discharge any obligation it may otherwise have with respect to the payment of the costs, expenses and attorneys' fees in the Class, States and Florida Actions, the AOA agrees not to take any position or participate in the fee and expense approval process.

7. **Termination.** Notwithstanding any other provision hereof, the AOA may terminate this Settlement Agreement if, prior to the entry of the Final Order and Judgment pursuant to paragraph 10(b) hereof, any Non-Signatory State commences an action against the AOA or advises the AOA, or any State pursuant to paragraph 8(a) hereof, that it intends to initiate an investigation under federal or state law arising out of or relating to the AOA's alleged policy, practice, course of dealing, agreement with contact lens manufacturers and/or pressure on contact lens manufacturers not to sell contact lenses directly to alternative channels of distribution and/or to restrain such manufacturers' authorized distributors from doing so and/or to restrain consumer access to prescriptions or work orders needed to obtain contact lenses. In the event the AOA exercises its rights to terminate this Settlement Agreement under this paragraph, it shall notify the class plaintiffs, the States and Florida

within ten (10) business days of the commencement of the Non-Signatory State's action or of being advised of the Non-Signatory State's intention to initiate an investigation.

8. **Non-Signatory States.**

(a) The States and Florida represent and warrant that they have disclosed the general terms and conditions of this Settlement Agreement to each state and commonwealth that is a non-signatory to this Settlement Agreement and the District of Columbia (collectively, the "Non-Signatory States"); that no later than fifteen (15) days after preliminary approval by the Court of this Settlement Agreement, the States and Florida will provide a written invitation to each Non-Signatory State to become a party to this Settlement Agreement; and that, in the event any Non-Signatory State informs a State or Florida that it intends to investigate, assert or pursue any claim against the AOA arising out of or relating to the AOA's alleged policy, practice, course of dealing, agreement with contact lens manufacturers and/or pressure on contact lens manufacturers not to sell contact lenses directly to alternative channels of distribution and/or to restrain such manufacturers' authorized distributors from doing so and/or to restrain consumer access to prescriptions or work orders needed to obtain contact lenses, such State or Florida shall immediately notify the AOA of such Non-Signatory State's intention.

(b) Any Non-Signatory State may subsequently become a party to this Settlement Agreement (to which the AOA agrees to waive any objection) by signing a copy of the Joinder in Settlement Agreement annexed hereto as Exhibit C no later than three (3) days before the actual publication of the Court-approved dissemination of notice, and then delivering such signed copy to the AOA and each other party to this Settlement Agreement in accordance with paragraph 17 hereof.

9. **Entry of Final Order and Judgment.** If the Court finally approves this Settlement Agreement under paragraph 10 hereof, the class plaintiffs, the States, Florida and

the AOA shall jointly request entry of a Final Order and Judgment in the form annexed hereto as Exhibit D.

10. **Finality of Settlement.** This Settlement Agreement shall become final upon the occurrence of all of the following events:

(a) It is approved in all respects by the Court as required by Fed. R. Civ. P. 23(e) and 15 U.S.C. §15c(c);

(b) Entry, as provided for in paragraph 9 hereof, is made of the Final Order and Judgment (Exhibit D hereto); and

(c) The time for appeal or to seek permission to appeal from the Court's approval of this Settlement Agreement as required by subparagraph (a) hereof and entry of a Final Order and Judgment as required by subparagraph (b) hereof has expired or, if appealed, approval of this Settlement Agreement and the Final Order and Judgment have been affirmed in their entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. The provisions of Fed. R. Civ. P. 60 shall not be taken into account in determining the times herein.

11. **Releases, Covenants Not to Sue and Judgment Reduction.**

(a) Upon this Settlement Agreement becoming final pursuant to paragraph 10 hereof, the class plaintiffs and all Settlement Class members, State residents and Florida residents who have not timely exercised their right to opt out as provided by the Court-approved notice, their successors, heirs and assigns, the States and Florida, in their capacities as sovereigns, as *parens patriae* on behalf of natural persons for whom they may act, and as *parens patriae* on behalf of their economies and general welfare, and their assigns, and anyone acting on their behalf, including in a representative or derivative capacity, shall release and forever discharge the AOA and its present and former divisions, affiliates, committees, sections, centers, and benefit plans, and its officers, directors, trustees,

volunteers, employees and agents who are not defendants in this action, and any of their legal representatives, and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing (the "Released Parties") from all manner of claims, liabilities, demands, actions, suits and causes of action, for damages, restitution, disgorgement, injunctive and/or declaratory relief, whether class, individual, representative or otherwise in nature, including costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that accrued prior to the date of the Court's final approval of this Settlement Agreement as required by paragraph 10 hereof and that the class plaintiffs, Settlement Class members, State residents, Florida residents and the States and Florida ever had, now have or hereafter can, shall or may have, which have been asserted or could have been asserted in the Class Action, States Actions or Florida Action, including, but not limited to, claims under the Sherman Antitrust Act, 15 U.S.C. §1 *et seq.*, Alabama Restraint of Trade or Production Act, §8-10-1 *et seq.*, Code of Alabama (1975), Alaska Monopolies and Restraint of Trade Act, AS §45.50.562 *et seq.*, Arizona's Uniform State Antitrust Act, A.R.S. §44-1402 *et seq.*, Ark. Code Ann. §4-75-201 *et seq.*, California Business and Professions Code Sections 16700 *et seq.*, California Business and Professions Code Sections 17200 (including Business and Professions Code §17206.1), Sections 35-26 and 35-28 of the Connecticut General Statutes, Sections 35-32, 35-34, 35-35 and 35-38 of the Connecticut General Statutes, the Delaware Antitrust Act, 6 Del. C. Chapter 21, Florida Statutes §§501.201 *et seq.*, 542.15 *et seq.*, the Idaho Antitrust Law, Idaho Code §§48-101 *et seq.*, Idaho Code §48-603(18) of the Idaho Consumer Protection Act, the Illinois Antitrust Act, 740 I.L.C.S. 10/1 *et seq.*, Iowa Competition Law, Iowa Code §§553.1 *et seq.* (2001), Kansas Restraint of Trade Act, K.S.A. §§50-101. *et seq.*, Louisiana Rev. Stat. title 51, part IV, §1401, *et seq.*, Maine mini-Sherman Act, 10 M.R.S.A. §§1101, *et seq.*, 5 M.R.S.A., §§205-A *et seq.*, Maryland Antitrust Act, Maryland Comm. Law Code Ann. 11-201, *et seq.*, Mass. Gen. Laws Ann. ch. 93, §§1-14A, and Ch. 93A, §§2, 4, §2 of the Michigan Antitrust

Reform Act, MCL 445.772; MSA 28.70(2), the Minnesota Antitrust Law of 1971, Minn. Stat. §§325D.49-325D.66, the Missouri Antitrust Law, §§416.011 *et seq.*, the Missouri Merchandising Practices Act, §§407.010 *et seq.*, Nevada Unfair Trade Practices Act, NRS 598A.010 *et seq.*, New Jersey Antitrust Act, N.J.S.A. 56:9-3, New York General Business Law §§340-347, North Carolina Antitrust Act, N.C. Gen. Stat., 75-1 *et seq.* North Dakota's Uniform State Antitrust Act, N.D. Cent. Code §§51-08.1-01 *et seq.*, Ohio Antitrust Law, the Ohio Valentine Act, Ohio Rev. Code §§1331.01 *et seq.*, Oregon Antitrust Law, ORS 646.705 *et seq.*, Texas Free Enterprise and Antitrust Act of 1983, Tex. Bus. Com. Code §§15.01, *et seq.*, Utah Antitrust Act, Utah Code Ann. §§76-10-911, *et seq.*, the Virginia Antitrust Act, Va. Code §59.1-9.1 *et seq.*, the West Virginia Antitrust Act, W. Va. Code §47-18-1 *et seq.*, the West Virginia Consumer Credit and Protection Act, W. Va. Code §46A-1-101 *et seq.*, the Wisconsin Trust and Monopolies Law, §§133.03(1), 133.04, 133.16, 133.17 and 133.18, Stats., or any state antitrust and/or consumer protection law, arising out of or relating to the AOA's alleged policy, practice, course of dealing, agreement with contact lens manufacturers, and/or pressure on contact lens manufacturers not to sell contact lenses directly to alternative channels of distribution and/or to restrain such manufacturers' authorized distributors from doing so, and/or to restrain consumer access to prescriptions or work orders needed to obtain contact lenses ("Released Claims");

(b) The class plaintiffs and all Settlement Class members, State residents and Florida residents who have not timely exercised the right to opt out as provided in the Court-approved notice, their successors, heirs and assigns, the States and Florida (in their capacities as sovereigns, as *parens patriae* on behalf of natural persons for whom they may act, and as *parens patriae* on behalf of their economies and general welfare) and their assigns, and anyone acting on their behalf, including in a representative or derivative capacity: (i) shall not bring any proceeding to establish liability against any Released Party based, in whole or in part, upon any Released Claim; and (ii) upon this Settlement

Agreement becoming final pursuant to paragraph 10 hereof, covenant and agree not to seek thereafter to establish liability against any Released Party based, in whole or in part, upon any Released Claim.

(c) In the event Vistakon, as a non-settling defendant, obtains judgment, in whole or in part, against the AOA for contribution or indemnity based upon any claim a class plaintiff, a State, Florida or a Settlement Class member, State resident or Florida resident who has not timely exercised the right to opt out as provided in the Court-approved notice: (i) has asserted under state law against Vistakon in any action in MDL 1030; or (ii) has asserted or may assert under state law against Vistakon arising out of or relating to the AOA's alleged policy, practice, course of dealing, agreement with contact lens manufacturers, and/or pressure on contact lens manufacturers not to sell contact lenses directly to alternative channels of distribution and/or to restrain such manufacturers' authorized distributors from doing so, and/or to restrain consumer access to prescriptions or work orders needed to obtain contact lenses, (1) such class plaintiff or Settlement Class member, in the case of a judgment arising out of a class plaintiff or Settlement Class member's claim, (2) such State or State resident, in the case of a judgment arising out of a claim by a State or State resident who is not a Class member, or (3) Florida or such Florida resident, in the case of a judgment arising out of a claim by Florida or a Florida resident, shall reduce any judgment or proportion thereof obtained against Vistakon by the proportionate amount of such judgment attributable to the AOA. In the event the judgment or proportion thereof is not so reduced, such class plaintiff, State, Florida or such Settlement Class member, State resident or Florida resident shall not attempt to collect from Vistakon such amount attributable to the AOA.

(d) Nothing in this Settlement Agreement is intended to constitute, or shall be construed as, a release of or a covenant not to sue any party other than the Released Parties, including, but not limited to, Vistakon for any claim or cause of action whatsoever,

including, but not limited to, claims founded, in whole or in part, upon the conduct of the Released Parties.

12. **Waiver and Released Rights Under California Civil Code Section 1542.**

(a) Upon this Settlement Agreement becoming final pursuant to paragraph 10 hereof, the class plaintiffs and all Settlement Class members, States residents and Florida residents who have not timely exercised the right to opt out as provided in the Court-approved notice, their successors, heirs and assigns, the States and Florida (in their capacities as sovereigns, as *parens patriae* on behalf of natural persons for whom they may act, and as *parens patriae* on behalf of their economies and general welfare) and their assigns, and anyone acting on their behalf, including in a representative or derivative capacity, expressly waive and release any and all provisions, rights and benefits conferred by §1542 of the California Civil Code, which provides:

Section 1542. *Certain Claims Not Affected by General Release.* A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to §1542 of the California Civil Code.

(b) The class plaintiffs and all Settlement Class members, State residents and Florida residents, their successors, heirs and assigns, and anyone acting on their behalf, including in a representative or derivative capacity, and the States and Florida and their assigns, may, after final approval of this Settlement Agreement pursuant to paragraph 9 hereof, discover facts other than or different from those which he, she or it knows or believes to be true with respect to Released Claims. Nevertheless, upon this Settlement Agreement becoming final under paragraph 9 hereof, the class plaintiffs and all Settlement Class members, State residents and Florida residents who have not timely exercised the right to opt out as provided in the Court-approved notice, their successors, heirs and assigns, and the States and Florida in their capacities as sovereigns, as *parens patriae* on behalf of natural

persons for whom they may act, and as *parens patriae* on behalf of their economics and general welfare, and their assigns, and anyone acting on their behalf, including in a representative or derivative capacity, waive and fully, finally and forever settle and release, any known or unknown, suspected or unsuspected, contingent or non-contingent Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such other or different facts.

13. **Termination by Reason of Court Action.** In the event that this Settlement Agreement does not become final pursuant to paragraph 10 hereof, it shall become null and void and have no force and effect, except as expressly provided otherwise herein.

14. **Rescheduling of Events in Scheduling Order.** In the event this Settlement Agreement is terminated pursuant to paragraph 7 or paragraph 13 hereof, the class plaintiffs, the States, Florida and the AOA shall use their best efforts to reschedule events in MDL 1030 that have been suspended as to the AOA, in a manner that will reasonably accommodate the litigation interests of the class plaintiffs, the States, Florida, and the AOA. In such event, the AOA reserves the right to move for a separate trial of the Class Action, the States Action and/or Florida Action against it.

15. **Inadmissibility of Settlement Agreement.** This Settlement Agreement, including all exhibits, whether or not it becomes final pursuant to paragraph 10 hereof, and any and all negotiations, documents and discussions associated with it, shall not constitute or be construed as an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by the AOA or of the truth of any of the claims or allegations in the Class Action, the States Action, the Florida Action or any other action in MDL 1030.

16. **Return of the AOA Discovery Materials.** The class plaintiffs, the States, Florida and their respective counsel agree that, except as otherwise required by law, all materials produced by, or information discovered from, or records of information discovered from, or produced by, the AOA or any of its present or former directors, trustees volunteers,

officers or employees who are not defendants in this action, pursuant to the Federal Rules of Civil Procedure or any state law or rule authorizing civil investigation demands, including all copies thereof (collectively, "AOA Materials"), in the possession or control of the class plaintiffs, the States, Florida or their counsel, experts, consultants or agents shall, within sixty (60) days after the final termination of the Class Action, the States Action and the Florida Action, be destroyed or, at the election of the respective plaintiffs, returned to the AOA. Upon the AOA's request, counsel for the class plaintiffs, counsel for the States and counsel for Florida shall provide a written declaration certifying that all the AOA Materials have been destroyed or returned to the AOA, as the case may be.

17. **Notices.** All notices, demands, requests and other communications (collectively "Notices") given or served by any party in connection with this Settlement Agreement shall be in writing. Notices shall be given by hand delivery, with receipt, or by nationally recognized overnight courier, with receipt, to each of the following:

Notices to Class Plaintiffs:

Dennis Stewart, Esq.
Joy Ann Bull, Esq.
Milberg Weiss Bershad
Hynes & Lerach LLP
600 West Broadway, Suite 1800
San Diego, California 92101

George W. Sampson, Esq.
Hagens & Berman
1301 Fifth Avenue, Suite 2929
Seattle, Washington 98101

Stuart D. Wechsler, Esq.
Wechsler Harwood Halebian
& Feffer LLP
488 Madison Avenue, 8th Floor
New York, NY 10022

Notices to the States and Florida provided to the persons set forth below on the signature pages of this Settlement Agreement at the addresses set forth on such pages.

Notices to the AOA:

Edward C. LaRose
Trenam, Kemker, Scharf, Barkin, Frye,
O'Neill & Mullis, P.A.
Post Office Box 1102
Tampa Florida 33601-1102

D. Biard MacGuineas
Dykema Gossett
Franklin Square
Suite 300 West Tower
1300 "I" Street N.W.
Washington DC 20005-3306

18. **Binding Nature of Agreement.** This Settlement Agreement shall be binding upon, and inure to the benefit of, the AOA's successors and assigns. Upon this Settlement Agreement becoming final under paragraph 10 hereof, it shall be binding upon, and inure to the benefit of, all Settlement Class members, State residents and Florida residents who have not timely exercised the right to opt out as provided in the Court-approved notice, their heirs and assigns, and upon the States and Florida and their assigns.

19. **Complete Agreement.** This Settlement Agreement contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties; it is not subject to any condition not provided for herein; and it supersedes all prior agreements between the parties with respect to its subject matter, including, but not limited to, the AOA Preliminary Settlement Agreement dated as of March 27, 2001. This Settlement Agreement shall not be modified in any respect except by a writing executed by all of the parties.

20. **Mutual Drafting of Agreement.** None of the parties to this Settlement Agreement shall be considered its drafter for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

21. **Exclusive Jurisdiction.** Upon this Settlement Agreement becoming final pursuant to paragraph 10 hereof, the AOA, the class plaintiffs and all Settlement Class members, State residents and Florida residents who have not timely exercised the right to opt out as provided in the Court-approved notice, the States and Florida agree irrevocably: (i) to submit to the exclusive jurisdiction of the United States District Court for the Middle District of Florida, Jacksonville Division, for any suit, action, proceeding or dispute arising

out of or relating to this Settlement Agreement, including its applicability; and (ii) not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the United States District Court for the Middle District of Florida, Jacksonville Division, or that such Court is an improper venue or an inconvenient forum.

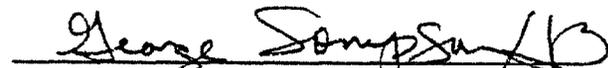
22. **Counterparts.** This Settlement Agreement may be executed in multiple counterparts, each of which shall be deemed original, and all of which shall constitute one and the same instrument.

Co-Lead Counsel for Class Plaintiffs:

MILBERG WEISS BERSHAD
HYNES & LERACH LLP
DENNIS STEWART
JOY ANN BULL

HAGENS BERMAN LLP
GEORGE SAMPSON


DENNIS STEWART


GEORGE SAMPSON

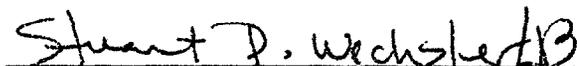
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ATTORNEY GENERAL
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