

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS**

KENNETH DAVIS, JOANN TAYLOR,
JONATHAN GWIN, KRISTA GWIN,
JENNIFER SHELER, CHRISTINA BAYS,
BRUCE BOECK, CHARLES BRIM,
SARAH BRIM, E.B., M.B., KIMBERLY
MILLS, and KANDY BURGESS
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

VISIONPOINT EYE CENTER, PLLC,

Defendant.

Case No. 2024LA000185

Consolidated with Case Nos:
2025CH000001
2025CH000002
2025CH000003
2025LA000006

CLASS ACTION

JURY TRIAL DEMANDED

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement is made and entered into by and among the following Settling Parties (as defined below): (i) Kenneth Davis, Joann Taylor, Jonathan Gwin, Krista Gwin, Jennifer Sheler, Christina Bays, Bruce Boeck, Charles Brim, Sarah Brim, E.B., M.B., Kimberly Mills, and Kandy Burgess (collectively “Representative Plaintiffs”), individually and on behalf of the Settlement Class (as defined below), by and through their counsel Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC., Ben Barnow of Barnow and Associates, P.C., and Nickolas J. Hagman of Cafferty Clobes Meriwether & Sprengel LLP (“Class Counsel”); and (ii) VisionPoint Eye Center, PLLC (“VisionPoint” or “Defendant”) by and through its counsel of record, O’Hagan Meyer PLLC. The Settlement Agreement is subject to Court approval and is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof.

I. THE ACTION

Defendant is a provider of ophthalmology and optometry services in central Illinois, with its principal place of business located at 1107 Airport Road, Bloomington, Illinois 61704. On or around October 3, 2024, cybercriminals gained unauthorized access to Defendant's network, and potentially accessed and/or acquired files containing the personally identifying information ("PII") and personal health information ("PHI") of Plaintiffs and Settlement Class Members. Approximately 66,924 individuals were affected by the Data Breach.

In response to the Data Breach, five putative class actions were filed in this Court: *Davis, et al. v. VisionPoint Eye Center, PLLC*, No. 2024LA000185 (filed Dec. 30, 2024), *Sheler v. VisionPoint Eye Center, PLLC*, No. 2025CH000001 (filed Dec. 30, 2024), *Bays v. VisionPoint Eye Center, PLLC*, No. 2025CH000002 (filed Jan. 7, 2025), *Boeck v. VisionPoint Eye Center, PLLC*, No. 2025CH000003 (filed Jan. 8, 2025), *Brim, et al. v. VisionPoint Eye Center, PLLC*, No. 2025LA000006 (filed Jan. 9, 2025). On April 3, 2025, this Court consolidated these matters, and appointed Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC, Ben Barnow of Barnow and Associates, P.C., and Nickolas J. Hagman of Cafferty Clobes Meriwether & Sprengel LLP as Interim Lead Counsel, and, on April 28, 2025, Plaintiffs filed their Consolidated Complaint.

Shortly thereafter, the Parties determined that early resolution of this matter could be beneficial and began engaging in arm's-length negotiations. After months of hard-fought negotiations, a settlement was reached between Defendant and the Released Persons (as defined below) and by and on behalf of Representative Plaintiffs and Settlement Class Members (defined below) relating to the Data Breach.

II. CLAIMS OF REPRESENTATIVE PLAINTIFFS AND BENEFITS OF SETTLING

Representative Plaintiffs believe the claims asserted in the Action, as set forth in each respective complaint, have merit. Representative Plaintiffs and Class Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Action against Defendants through motion practice, trial, and potential appeals. They have also considered the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation. Class Counsel are highly experienced in class action litigation and very knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such litigation and in this Action. They have determined that the terms set forth in this Settlement Agreement are fair, reasonable, and adequate, and in the best interests of the Representative Plaintiffs and the Settlement Class Members.

III. DENIAL OF WRONGDOING AND LIABILITY

Defendant denies each and all of the claims and contentions alleged against it in the Action. Defendant denies all charges of wrongdoing or liability as alleged, or which could be alleged, in the Action. Nonetheless, Defendant has concluded that continuing with the Action would be protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. Defendant has also considered the uncertainty and risks inherent in any litigation. Defendant has, therefore, determined that it is desirable and beneficial that the Action be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

IV. TERMS OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Representative Plaintiffs, individually and on behalf of the Settlement Class Members, Class

Counsel, and Defendant that, subject to the approval of the Court, the Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice as to the Settling Parties and the Settlement Class Members, except those Settlement Class Members who timely opt-out of the Settlement Agreement, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

1. Definitions

As used in the Settlement Agreement, the following terms have the meanings specified below:

1.1 “Agreement” or “Settlement Agreement” means this agreement.

1.2 “Approved Claims” means Settlement Claims in an amount approved by the Claims Administrator or found to be valid through the Dispute Resolution process.

1.3 “Claims Administration” means the processing and payment of claims received from Settlement Class Members by the Claims Administrator.

1.4 “Claims Administrator” means Simpluris, Inc., a company experienced in administering class action claims generally and specifically those of the type provided for and made in data breach litigation.

1.5 “Claims Deadline” means the postmark deadline for valid claims.

1.6 “Claim Form” means the form that the Settlement Class Members must complete and submit on or before the Claim Deadline in order to be eligible for the benefits described herein. The Claim Form shall be reformatted by the Claims Administrator in order to permit the option of filing of claims electronically. The Claim Form shall require a sworn signature or electronic verification under penalty of perjury, but shall not require a notarization. The Claim Form template is attached as **Exhibit A** to this Settlement Agreement.

1.7 “Costs of Claims Administration” means all actual costs associated with or arising from Claims Administration.

1.8 “Court” means the Circuit Court of the Eleventh Judicial Circuit for McLean County, Illinois.

1.9 “Data Breach” means the cyberattack suffered by Defendant on or about October 3, 2024, wherein cybercriminals potentially accessed and/or stole files containing the Private Information of approximately 66,924 individuals from Defendant’s network.

1.10 “Dispute Resolution” means the process for resolving disputed Settlement Claims as set forth in this Agreement.

1.11 “Effective Date” means the first date by which all of the events and conditions specified in ¶ 9.1 herein have occurred and been met.

1.12 “Final” means the occurrence of all of the following events: (i) the settlement pursuant to this Settlement Agreement is approved by the Court; (ii) the Court has entered a Judgment (as that term is defined herein); and (iii) the time to appeal or seek permission to appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any attorneys’ fee award or service award made in this case shall not affect whether the Judgment is “Final” as defined herein or any other aspect of the Judgment.

1.13 “Notice” means the written notice to be sent to the Settlement Class Members pursuant to the Preliminary Approval Order.

1.14 The “Notice Commencement Date” means thirty (30) days after the entry of the Preliminary Approval Order.

1.15 “Objection Date” means the date by which Settlement Class Members must file with the Court and mail to Class Counsel and counsel for Defendant their objection to the Settlement for that objection to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes. The Objection Date shall be sixty (60) days after the Notice Commencement Date.

1.16 “Opt-Out Date” means the date by which requests for exclusion from the Settlement Class must be postmarked in order to be effective and timely. The postmark date shall constitute evidence of the date of mailing for these purposes. The Opt-Out Date shall be sixty (60) days after the Notice Commencement Date.

1.17 “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

1.18 “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement and ordering that notice be provided to the Settlement Class. The Settling Parties’ proposed form of Preliminary Approval Order is attached hereto as **Exhibit F**.

1.19 “Class Counsel” means Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC, Ben Barnow of Barnow and Associates, P.C., and Nickolas J. Hagman of Cafferty Clobes Meriwether & Sprengel LLP.

1.20 “Related Entities” means Defendant’s past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of Defendant’s predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers, and includes, without limitation, any Person related to any such entity who is, was or could have been named as a defendant in any of the actions in the Action, other than any Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Breach or who pleads *nolo contendere* to any such charge.

1.21 “Released Claims” shall collectively mean any and all past, present, and future liabilities, rights, claims, counterclaims, actions, causes of action, demands, damages, penalties, costs, attorneys’ fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, including, but not limited to negligence, negligence *per se*, breach of implied contract, breach of the implied covenant of good faith and fair dealing, breach of third-party beneficiary contract, unjust enrichment, breach of fiduciary duty, any state or federal consumer protection statute, misrepresentation (whether fraudulent, negligent, or innocent), bailment, wantonness, failure to provide adequate notice pursuant to any breach notification statute, regulation, or common law duty, and all relevant statutes in effect in any states in the United States as defined herein, and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys’ fees, costs and expenses, set-offs, losses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, the appointment of a receiver, and any other form of relief that either has been asserted, or could have been asserted, or relate to the exposure of private information in the Data Breach, including conduct

that was alleged or could have been alleged in the Action, without limitation, any claims, actions, causes of action, demands, damages, penalties, losses, or remedies relating to, based upon, resulting from, or arising out of the disclosure of Private Information, which the Class Representatives or any member of the Settlement Class ever had, now has, or hereinafter may have, prior to entry of the final order and judgment in this Action. Released Claims shall not include the right of Named Plaintiffs, Settlement Class Members, or any Released Person to enforce the terms of the Settlement Agreement and claims not arising from the facts alleged in the Action, provided that nothing in this Release is intended to, does or shall be deemed to release any claims not arising out of, based upon, resulting from, or related to the Data Breach. Released Claims shall include Unknown Claims as defined in ¶ 1.28. Released Claims shall not include the right of any Settlement Class Member or any of the Released Persons to enforce the terms of the settlement contained in this Settlement Agreement, and shall not include the claims of Settlement Class Members who have timely excluded themselves from the Settlement Class.

1.22 “Released Persons” means Defendant, its Related Entities, and each of its past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers.

1.23 “Representative Plaintiffs” means Kenneth Davis, Joann Taylor, Jonathan Gwin, Krista Gwin, Jennifer Sheler, Christina Bays, Bruce Boeck, Charles Brim, Sarah Brim, E.B., M.B., Kimberly Mills, and Kandy Burgess.

1.24 “Settlement Claim” means a claim for settlement benefits made under the terms of this Settlement Agreement.

1.25 “Settlement Class” means all individuals who were notified that their PII/PHI was potentially compromised in the October 2024 Data Breach of Defendant’s systems. The Settlement Class specifically excludes: (i) Defendant and Defendant’s parents, subsidiaries, affiliates, officers and directors, and any entity in which Defendant has a controlling interest; (ii) all individuals who make a timely election to be excluded from this proceeding using the correct protocol for opting out; (iii) any and all federal, state, or local governments, including but not limited to their departments, agencies, divisions, bureaus, boards, sections, groups, counsels and/or subdivisions; (iv) the attorneys representing the Parties in the Action; (v) all judges assigned to hear any aspect of the Action, as well as their immediate family members; and (vi) any person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the Data Breach, or who pleads *nolo contendere* to any such charge.

1.26 “Settlement Class Member(s)” means a Person(s) who falls within the definition of the Settlement Class.

1.27 “Settling Parties” means, collectively, Defendant and the Representative Plaintiffs, individually and on behalf of the Settlement Class.

1.28 “Unknown Claims” means any of the Released Claims that any Settlement Class Member, including the Representative Plaintiffs, does not know or suspect to exist in his/her favor at the time of the release of the Released Persons that, if known by him or her, might have affected his or her settlement with, and release of, the Released Persons, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Representative Plaintiff expressly shall have, and each of the other Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, waived the provisions,

rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Settlement Class Members, including Representative Plaintiffs, any of them, may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Representative Plaintiffs expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims. The Settling Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

1.29 “United States” as used in this Settlement Agreement includes the District of Columbia and all territories.

1.30 “Valid Claims” means Settlement Claims in an amount approved by the Claims Administrator or found to be valid through the claims processing and/or Dispute Resolution process.

2. Settlement Benefits

2.1 Expense Reimbursement. All Settlement Class Members who submit a Valid Claim using the Claim Form (**Exhibit A** to this Settlement Agreement) are eligible to receive reimbursement for the following documented out-of-pocket losses, if not already reimbursed

through any other source and caused by the Data Breach, not to exceed \$2,500.00 per Settlement Class Member: (i) unreimbursed costs to obtain credit reports; (ii) unreimbursed fees relating to a credit freeze; (iii) unreimbursed card replacement fees; (iv) unreimbursed late fees; (v) unreimbursed over-limit fees; (vi) unreimbursed interest and fees on payday loans taken as a result of the Data Breach; (vii) unreimbursed bank or credit card fees; (viii) unreimbursed postage, mileage, and other incidental expenses resulting from the Data Breach; and (ix) unreimbursed costs associated with up to one year of credit monitoring or identity theft insurance purchased after October 4, 2024, and prior to the Effective Date, with certification that it was purchased primarily as a result of the Data Breach. Pursuant to ¶ 2.4, the amount of the expense reimbursement may be decreased on a *pro rata* basis, depending upon the number of valid claims filed and the amount of funds available for these payments. Settlement Class Members with expense reimbursement claims must submit documentation supporting their claims. This can include receipts or other documentation not “self-prepared” by the claimant that document the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation.

2.2 Alternative Cash Payment. Settlement Class Members can elect to make a claim for a \$45 alternative cash payment in lieu of the settlement benefits outlined in ¶ 2.1. To receive this benefit, Settlement Class Members must submit a Valid Claim using the Claim Form (**Exhibit A** to this Settlement Agreement), but no documentation is required to make a claim. Pursuant to ¶ 2.4, the amount of the alternative cash payment may be decreased on a *pro rata* basis, depending upon the number of valid claims filed and the amount of funds available for these payments.

2.3 Credit Monitoring. All Settlement Class Members are eligible to enroll in two (2) years of one-bureau Credit Monitoring Services upon submission of a Valid Claim using the Claim

Form (**Exhibit A** to this Settlement Agreement). The Settlement Administrator shall send an activation code to each valid Credit Monitoring Services claimant within forty-five (45) days of receipt of the Claim Form, that can be used to activate Credit Monitoring Services. Such enrollment codes shall be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such codes shall be sent via U.S. mail. Codes will be active for 180 days after the date of mailing, and may be used to activate the full term if used at any time during that 180 day period. The provider shall provide Credit Monitoring Services to all valid claimants who timely activate those services for a period of two (2) years from the date of activation.

2.4 Aggregate Cap and Claims Process. All Claims under ¶¶ 2.1, 2.2, and 2.3, and all Settlement Expenses, Costs of Notice and Claims Administration, Attorneys' Fees and Costs, and Expenses, and Service Awards to Representative Plaintiffs under ¶¶ 2.8, 7.2, 7.3, and 7.4 of the Settlement Agreement are subject to an aggregate cap of \$750,000.00—which is the amount of Defendant's available insurance. If the total of payments above exceeds \$750,000.00, the amounts paid to Settlement Class Members for valid Claims pursuant to ¶ 2.1 and ¶ 2.2 will be prorated downwards so that the total amount to be paid under this Settlement Agreement shall not exceed \$750,000.00.

2.5 The Claim Form must be verified by the claimant with a statement that his or her claim is true and correct, to the best of his or her knowledge and belief, and is being made under penalty of perjury. Notarization shall not be required. If the Settlement Class Member seeks the reimbursement option, the Settlement Class Member must plausibly attest that the out-of-pocket expenses and charges claimed were both actually incurred and arose from the Data Breach. Failure to provide supporting attestation and documentation as requested on the Claim Form, and after a reasonable opportunity to cure after notice from the Claims Administrator as described below,

shall result in denial of a claim. Disputes as to claims submitted under this paragraph are to be resolved pursuant to the provisions stated in ¶ 2.7.

2.6 To be valid, claims must be complete and submitted to the Claims Administrator on or before the 90th day after the deadline for the completion of Notice to Settlement Class Members (the “Claims Deadline”). The Notice will specify this deadline and other relevant dates described herein.

2.7 Dispute Resolution for Claims.

2.7.1 The Claims Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the claimant’s class membership and the expenses claimed; and (3) the information submitted could lead a reasonable person to conclude that it is more likely than not the claimant has suffered the claimed losses as a result of the Data Breach (collectively, “Facially Valid”). The Claims Administrator may, at any time, request from the claimant, in writing, additional information (“Claim Supplementation”) as the Claims Administrator may reasonably require in order to evaluate the claim, *e.g.*, documentation requested on the Claim Form, information regarding the claimed losses, available insurance and the status of any claims made for insurance benefits, and claims previously made for identity theft and the resolution thereof.

2.7.2 Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation to determine whether the claim is Facially Valid, the Claims Administrator shall request Claim Supplementation and give the

claimant thirty (30) days to cure the defect before rejecting the claim. If the defect is not cured, then the claim will be deemed invalid and there shall be no obligation to pay the claim.

2.7.3 Following receipt of additional information requested as Claim Supplementation, the Claims Administrator shall have thirty (30) days to accept, in whole or lesser amount, or reject each claim. If, after review of the claim and all documentation submitted by the claimant, the Claims Administrator determines that such a claim is Facially Valid, then the claim shall be paid. If the claim is not Facially Valid because the claimant has not provided all information needed to complete the Claim Form and evaluate the claim, then the Claims Administrator may reject the claim without any further action.

2.7.4 Settlement Class Members shall have thirty (30) days from receipt of the offer to accept or reject any offer of partial payment received from the Claims Administrator. If a Settlement Class Member rejects an offer from the Claims Administrator, the Claims Administrator shall have fifteen (15) days to reconsider its initial adjustment amount and make a final, non-appealable determination.

2.8 Settlement Expenses. All costs for notice to the Settlement Class as required under this Settlement Agreement, and Costs of Claims Administration shall be paid by Defendant.

2.9 Settlement Class Certification. The Settling Parties agree, for purposes of this settlement only, to the certification of the Settlement Class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Action shall proceed as though the Settlement Class had never been certified, without prejudice to any Person's

or Settling Party's position on the issue of class certification or any other issue. The Settling Parties' agreement to the certification of the Settlement Class is also without prejudice to any position asserted by the Settling Parties in any other proceeding, case or action, as to which all of their rights are specifically preserved.

2.10. Equitable Terms: Together with the data security measures Defendant had employed prior to the alleged confidentiality breach, which Defendant contends were adequate, reasonable, and legally compliant, Defendant has employed, or will employ, additional security measures including resetting all passwords, enabling multi-factor authentication for all users, implementing new technical safeguards, and training or retraining workforce members on cybersecurity practices.

3. Order of Preliminary Approval and Publishing of Notice of Fairness Hearing

3.1. As soon as practicable after the execution of the Settlement Agreement, Class Counsel shall file a motion for preliminary approval of the settlement with the Court, with this Settlement Agreement attached as an exhibit, requesting entry of a Preliminary Approval Order in the form attached hereto as **Exhibit F**, or an order substantially similar to such form in both terms and cost, requesting, *inter alia*:

- a) certification of the Settlement Class for settlement purposes only;
- b) preliminary approval of the Settlement Agreement as set forth herein;
- c) the scheduling of a Final Fairness Hearing and briefing schedule for Motion for Final Hearing and Application for a Class Representative Service Awards and Attorneys' Fees and Costs;
- d) appointment of Class Counsel as Class Counsel;
- e) appointment of Representative Plaintiffs as Class Representatives;

- f) approval of a customary form of short notices to be mailed to Settlement Class Members (“Short-Form Notice”) substantially similar to the ones attached hereto as **Exhibit B** (email) and **Exhibit C** (postcard by mail only if email is undeliverable), and a customary long form notice to be posted on the settlement website (“Long-Form Notice”) in a form substantially similar to the one attached hereto as **Exhibit D**, which together shall include a fair summary of the parties’ respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, the process and instructions for making claims to the extent contemplated herein, and the date, time and place of the Final Fairness Hearing;
- g) appointment of a Claims Administrator, or such other provider of claims administrative service, as may be jointly agreed to by the Settling Parties; and
- h) approval of a claim form substantially similar to that attached hereto as **Exhibit A**.

The Notice and Claim Form shall be reviewed by the Claims Administrator and may be revised as agreed upon by the Settling Parties prior to such submission to the Court for approval.

3.2 Defendant shall pay for all of the costs associated with the Claims Administrator, and for providing Notice to the Settlement Class in accordance with the Preliminary Approval Order, as well as the costs of such notice. Attorneys’ fees, costs, and expenses of Class Counsel, and a service award to the Class Representative, shall be paid by Defendant as set forth herein, subject to Court approval. Notice shall be provided to Class Members in accordance with the Notice plan set forth in **Exhibit E**. The Notice plan shall be subject to approval by the Court as meeting constitutional due process requirements. The Claims Administrator shall establish a dedicated settlement website and shall maintain and update the website throughout the claim

period, with the Notice and Claim Form approved by the Court, as well as this Settlement Agreement. A toll-free help line staffed with a reasonable number of live operators shall be made available to address Settlement Class Members' inquiries. The Claims Administrator also will provide copies of the forms of the Notice and Claim Form approved by the Court, as well as this Settlement Agreement, upon request. Prior to the Final Fairness Hearing, Class Counsel and Defendant shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with this provision of Notice. The Notice and Claim Form approved by the Court may be adjusted by the Claims Administrator, respectively, in consultation and agreement with the Settling Parties, as may be reasonable and not inconsistent with such approval. Within thirty (30) days after the entry of the Preliminary Approval Order and to be substantially completed not later than forty-five (45) days after entry of the Preliminary Approval Order, and subject to the requirements of this Agreement and the Preliminary Approval Order, the Claims Administrator will provide notice to the Settlement Class via the Notice Program.

3.3 Class Counsel and Defendant's counsel shall request that after notice is completed, the Court hold a hearing (the "Final Fairness Hearing") and grant final approval of the settlement set forth herein.

4. Opt-Out Procedures

4.1 Each Person wishing to exclude themselves (or "opt out") of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Claims Administrator. Settlement Class Members will only be able to submit an opt-out request on their own behalf; mass or class opt-outs will not be permitted. The written notice must clearly manifest a Person's intent to be excluded from the Settlement Class. To be effective, written notice must be postmarked no later than the Opt-Out Date.

4.2 All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class, referred to herein as “Opt-Outs,” shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class in the manner set forth above shall be bound by the terms of this Settlement Agreement and Judgment entered thereon.

4.3 In the event that within ten (10) days after the Opt-Out Date as approved by the Court, there have been more than 50 timely and valid Opt-Outs submitted, Defendant may, by notifying Class Counsel in writing, void this Settlement Agreement. If Defendant voids the Settlement Agreement pursuant to this paragraph, Defendant shall be obligated to pay all settlement expenses already incurred, excluding any attorneys’ fees, costs, and expenses of Class Counsel and incentive awards.

5. Objection Procedures

5.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection by the Objection Date. Such notice shall state: (i) the objector’s full name, address, telephone number, and email address (if any); (ii) the case name and case number; (iii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (*e.g.*, copy of original notice of the Data Breach or a statement explaining why the objector believes he or she is a Settlement Class Member); (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of all counsel representing the objector in connection with the objection; (vi) a statement whether the objector and/or his or her counsel will personally appear at the Final Fairness Hearing; and (vii) the

objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative. To be timely, written notice of an objection in the appropriate form must be mailed, with a postmark date no later than the Objection Date, to Class Counsel and to Defendant's counsel as set forth below. For all objections mailed to Class Counsel and counsel for Defendant, Class Counsel will file them with the Court with the Motion for Final Approval of the Settlement.

Upon Class Counsel via mail and e-mail at:

**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN PLLC**

Gary M. Klinger
227 W. Monroe St., Ste. 2100
Chicago, IL 60606
gklinger@milberg.com

Upon Defendant's counsel via mail and e-mail at:

O'HAGAN MEYER, PLLC

James W. Davidson
One East Wacker Drive
Suite 3400
Chicago, IL 60601
j davidson@ohaganmeyer.com

5.2 Any Settlement Class Member who fails to comply with the requirements for objecting shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Action. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions set forth herein.

6. Releases

6.1 Upon the Effective Date, each Settlement Class Member, including the Representative Plaintiff, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims. Further, upon

the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including the Representative Plaintiff, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any Released Claim is asserted.

6.2 Upon the Effective Date, Defendant shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged, the Representative Plaintiffs, each and all of the Settlement Class Members, and Class Counsel, of all claims, including Unknown Claims, based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims, except for enforcement of the Settlement Agreement. Any claims based upon or arising out of any retail, banking, debtor-creditor, contractual, or other business relationship with such Persons that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims are specifically preserved and shall not be affected by the preceding sentence.

7. Attorneys' Fees, Costs, and Expenses; Service Awards to Representative Plaintiffs

7.1 The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or service award to the Representative Plaintiffs until after the substantive terms of the settlement had been agreed upon, other than that Defendant would pay reasonable attorneys' fees, costs, expenses, and service awards to the Representative Plaintiffs as may be agreed to by Defendant and the Class Counsel and/or as ordered by the Court. Defendant and Class Counsel then negotiated and agreed to the procedure described herein.

7.2 Class Counsel has agreed to request, and Defendant has agreed to pay, subject to Court approval, the amount not to exceed Two Hundred and Fifty Thousand Dollars and No Cents (\$250,000.00) to Class Counsel for attorneys' fees and costs and expenses.

7.3 Subject to Court approval, Defendant has agreed to pay service awards in the amount of one thousand dollars and no cents (\$1,000.00) to each of the Representative Plaintiffs.

7.4 Defendant shall pay the Court-approved amount of attorneys' fees, costs, expenses, and service awards to the Representative Plaintiffs to an account established by Class Counsel within thirty (30) days after the entry of an order of Final Approval, regardless of any appeal that may be filed or taken by any Settlement Class Member or third party.

7.5 If this Settlement Agreement is terminated or otherwise does not become Final (*e.g.*, disapproval by the Court or any appellate court), Defendant shall have no obligation to pay attorneys' fees, costs, expenses, or service awards and shall only be required to pay costs and expenses related to notice and administration that were already incurred. Under no circumstances will Class Counsel or any Settlement Class Member be liable for any costs or expenses related to notice or administration.

7.6 The amount(s) of any award of attorneys' fees, costs, and expenses, and the service awards to the Representative Plaintiffs, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any attorneys' fees, costs, expenses, and/or service award ordered by the Court to Class Counsel or the Representative Plaintiffs shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Settlement Agreement.

8. Administration of Claims

8.1 The Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members under § 2. Class Counsel and Defendant shall be given reports as to both claims and distribution. The Claims Administrator's determination of the validity or invalidity of any such claims shall be binding, subject to the dispute resolution process set herein. All claims agreed to be paid in full by Defendant shall be deemed valid.

8.2 Payment of Valid Claims, whether via mailed check or electronic distribution, shall be made within forty-five (45) days of the Effective Date, or within thirty (30) days of the date that the claim is approved, whichever is later. If this Settlement Agreement is terminated or otherwise does not become Final (*e.g.*, disapproval by the Court or any appellate court) prior to the payment of Valid Claims, Defendant shall have no obligation to pay such claims and shall only be required to pay costs and expenses related to notice and administration that were already incurred.

8.3 All Settlement Class Members who fail to timely submit a claim for any benefits hereunder within the time frames set forth herein, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein and the Judgment.

8.4 No Person shall have any claim against the Claims Administrator, Defendant, Class Counsel, Representative Plaintiffs, and/or Defendant's counsel based on distributions of benefits to Settlement Class Members.

9. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination

9.1 The Effective Date of the settlement shall be conditioned on the occurrence of all of the following events:

- a) the Court has entered the Order of Preliminary Approval and Publishing of Notice of a Final Fairness Hearing;
- b) Defendant has not exercised its option to terminate the Settlement Agreement;
- c) the Court has entered the Judgment granting final approval to the settlement as set forth herein; and
- d) the Judgment has become Final.

9.2 Within seven (7) days after the Opt-Out Date, the Claims Administrator shall furnish to Class Counsel and to Defendant's counsel a complete list of all timely and valid requests for exclusion (the "Opt-Out List").

9.3 In the event that the Settlement Agreement is not approved by the Court or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms, (i) the Settling Parties shall be restored to their respective positions in the Action and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or Settling Party's counsel, and (b) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of attorneys' fees, costs, expenses, and/or service awards shall constitute grounds for cancellation or

termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, Defendant shall be obligated to pay amounts already billed or incurred for costs of notice to the Settlement Class, Claims Administration, and Dispute Resolution above and shall not, at any time, seek recovery of same from any other party to the Action or from counsel to any other party to the Action.

10. Miscellaneous Provisions

10.1 The Settling Parties (i) acknowledge that it is their intent to consummate this agreement; and (ii) agree to cooperate in good faith to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement, and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

10.2 The Settling Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Action. The settlement is a compromise of claims that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith by the Settling Parties and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Action was brought or defended in bad faith or without a reasonable basis. It is agreed that neither Party shall have any liability to one another as it relates to the Action, except as set forth herein.

10.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the

Released Persons; or (ii) 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 Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any of the Released Persons may file the Settlement Agreement and/or the Judgment in any action that may be brought against them or any of them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10.4 The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

10.5 The exhibits to this Settlement Agreement and any exhibits thereto are a material part of the Settlement and are incorporated and made a part of the Agreement.

10.6 The Settlement Agreement, together with the exhibits attached hereto, constitutes the entire agreement among the Settling Parties regarding the payment of the Action settlement and supersedes all previous negotiations, agreements, commitments, understandings, and writings between Defendant and Representative Plaintiffs in connection with the payment of the Action settlement. Except as otherwise provided herein, each party shall bear its own costs. This Settlement Agreement supersedes all previous agreements made between Defendant and Representative Plaintiffs.

10.7 Class Counsel, on behalf of the Settlement Class, is expressly authorized by the Representative Plaintiffs to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement

on behalf of the Settlement Class which they deem appropriate in order to carry out the spirit of this Settlement Agreement and to ensure fairness to the Settlement Class.

10.8 Each counsel or other Person executing the Settlement Agreement on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

10.9 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of executed counterparts shall be filed with the Court.

10.10 The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

10.11 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement. The Court shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice and the Claims Administrator. As part of its agreement to render services in connection with this Settlement, the Claims Administrator shall consent to the jurisdiction of the Court for this purpose.

10.12 The Settlement Agreement shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of Illinois, and the rights and obligations

of the parties to the Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Illinois

10.13 As used herein, “he” means “he, she, or it;” “his” means “his, hers, or its;” and “him” means “him, her, or it.” “She” means “she, he, or it;” “hers” means “hers, his, or its;” and “her” means “her, him, or it.” “It” means “it, he, or she, him, or her;” and “its” means “its, his, or hers.”

10.14 All dollar amounts are in United States dollars (USD).

10.15 Cashing a settlement check is a condition precedent to any Settlement Class Member’s right to receive settlement benefits. All settlement checks shall be void ninety (90) days after issuance and shall bear the language: “This check must be cashed within 90 days, after which time it is void.” If a check becomes void, the Settlement Class Member shall have until one hundred eighty (180) days after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Settlement Class Member’s right to receive monetary relief shall be extinguished, and Defendant shall have no obligation to make payments to the Settlement Class Member or expense reimbursement under Section 2, or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than one hundred eighty (180) days from the Effective Date, requests for re-issuance need not be honored after such checks become void.

10.16 All agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto have caused the Settlement Agreement to be executed, by their duly authorized attorneys.

AGREED TO BY:

/s/ Gary M. Klinger

Gary M. Klinger

MILBERG COLEMAN BRYSON

PHILLIPS GROSSMAN, PLLC

227 W. Monroe St., Ste. 2100

Chicago, Illinois 60606

Telephone: (866) 252-0878

gklinger@milberg.com

/s/ Nicholas J. Hagman

Nickolas J. Hagman

CAFFERTY CLOBES

MERIWETHER & SPRENGEL LLP

135 S. LaSalle, Suite 3210 Chicago, Illinois

60603

Telephone: (312) 782-4880

Facsimile: (312) 782-4485

nhagman@caffertyclobes.com

/s/ Ben Barnow

Ben Barnow

BARNOW AND ASSOCIATES, P.C.

205 West Randolph Street, Suite 1630

Chicago, IL 60606

Tel: 312-621-2000

Fax: 312-641-5504

b.barnow@barnowlaw.com

Counsel for Plaintiffs and the Proposed Class

AND

/s/ J. Davidson

O'HAGAN MEYER, PLLC

James W. Davidson

One East Wacker Drive

Suite 3400

Chicago, IL 60601

jdavidson@ohaganmeyer.com

***Counsel for Defendant VisionPoint Eye
Center, PLLC***