UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALAN FRANK, O.D., on Behalf of Himself and All Others Similarly Situated, Plaintiff, vs. DAVIS VISION, INC., -and- HVHC, INC., -and- HIGHMARK HEALTH, Defendants.	**CIVIL ACTION NO: _____** **CLASS ACTION** **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

Plaintiff Alan Frank, O.D., by and through undersigned counsel, on behalf of himself and all persons similarly situated, brings this lawsuit against Defendants Davis Vision, Inc. ("Davis Vision"), HVHC, Inc., and Highmark Health (collectively, "Defendants"), and complains and alleges as follows based upon personal knowledge, investigation of counsel, and information and belief:

NATURE OF THE CASE

1. This is a putative antitrust class action case. The proposed class is comprised of independent ophthalmologists, optometrists, and opticians, and their practices, in Pennsylvania (collectively, "Independent Pennsylvania Eyecare Providers"). Davis Vision, one of the largest (if not the largest) providers of vision insurance benefits in the Commonwealth of Pennsylvania, has abused its market dominance by subjecting Independent Pennsylvania Eyecare Providers to anticompetitive and other unlawful practices in relation to eyecare services rendered to patients covered by a Davis Vision insurance benefit product.

2. Davis Vision uses unlawful, unfair, and anticompetitive contractual and related restrictions to prohibit Independent Pennsylvania Eyecare Providers from steering patients to eyeglass frames and lenses that are less expensive, more convenient to obtain, or better quality than those Davis Vision mandates Independent Pennsylvania Eyecare Providers must offer patients with Davis Vision insurance.

3. Specifically, under Davis Vision's "mandatory laboratory policy," Independent Pennsylvania Eyecare Providers must direct all Davis Vision-insured patients' eyeglass frame and lens orders to a laboratory owned by Davis Vision for fabrication, which results in needless cost and delay for patients and Independent Pennsylvania Eyecare Providers. This constitutes an unlawful "anti-steering" restriction because it prevents Independent Pennsylvania Eyecare Providers from "steering" patients to less expensive or better-quality frames and lenses and related laboratory services.

4. Because of Davis Vision's anti-steering restriction, Independent Pennsylvania Eyecare Providers cannot compete on price and quality. That is, they cannot offer to fabricate patients' eyeglass frames and lenses through a competing non-Davis Vision fabrication laboratory, even if doing so would be quicker, less expensive, or otherwise more beneficial for patients.

5. Davis Vision also requires Independent Pennsylvania Eyecare Providers to maintain a rack of Davis Vision-approved eyeglass frames in their offices and to steer patients with Davis Vision insurance to these frames, regardless of whether different frames might be less expensive or otherwise preferable.

6. Davis Vision has instituted these anticompetitive practices to unfairly steer patients away from Independent Pennsylvania Eyecare Providers, and instead towards Davis Vision's corporate affiliate, Visionworks. Visionworks, owned by Defendant HVHC, Inc., operates retail eyecare and eyeglass locations that directly compete with Independent Pennsylvania Eyecare

Providers. Davis Vision does not require Visionworks to adhere to the mandatory laboratory policy. In fact, Davis Vision even lets Visionworks fabricate eyeglass frames and lenses onsite for same-day service, which is exceptionally convenient for patients. The mandatory laboratory policy, however, forecloses Independent Pennsylvania Eyecare Providers from doing the same.

7. Davis Vision discriminates against Independent Pennsylvania Eyecare Providers and steers patients to Visionworks for a transparent reason – Davis Vision and Visionworks' owner, HVHC, Inc., are both subsidiaries of Defendant Highmark Health.

8. By virtue of Defendants' vertical integration, their anti-steering and other restrictions let them capture more money for themselves at every step of distribution – patients are steered to pay for eye exams at Highmark-owned Visionworks locations, and to buy frames and lenses fabricated at Visionworks or Davis Vision-controlled laboratories. This scheme lets Davis Vision pocket or re-capture a substantial percentage of its frame or lens "dispensing fee" for itself, instead of paying that fee to Independent Pennsylvania Eyecare Providers or competing laboratories.

9. But for Defendants' scheme, Independent Pennsylvania Eyecare Providers could compete on price and quality, which would benefit themselves and patients alike. That is, Independent Pennsylvania Eyecare Providers would earn more, and still be able to save patients more money, if they were allowed to use other non-Davis Vision laboratories.

10. Unfortunately, Independent Pennsylvania Eyecare Providers essentially have no choice but to accept Davis Vision's unfair and anticompetitive mandatory laboratory policy and other exclusionary terms because of Davis Vision's market dominance. Davis Vision provides vision insurance to at least 65% or more of insured patients in Pennsylvania. This means Independent Pennsylvania Eyecare Providers cannot refuse to accept Davis Vision-insured patients in response to the mandatory laboratory policy, because doing so would mean Independent

Pennsylvania Eyecare Providers would be foregoing reimbursement for treating such a high percentage of their patients with Davis Vision insurance benefits.

11. Davis Vision has not imposed its mandatory laboratory policy on other, larger providers of eyeglass examinations, frames, and lenses, such as "big box" retailers including Wal-Mart or Costco, presumably because they may possess countervailing market or negotiating power – unlike Independent Pennsylvania Eyecare Providers (e.g., those not employed by someone else like Wal-Mart or Costco), who are at Davis Vision's mercy.

12. On information and belief, Davis Vision is the only vision insurance benefit provider in the entire United States that has so brazenly excluded competition in this manner. For instance, when a competing vision insurance benefit provider recently planned to implement a "frame reimbursement policy" that bore similarities to Davis Vision's mandatory laboratory policy, the competitor tabled its plans over potential federal anti-kickback and related concerns.

13. Davis Vision's mandatory laboratory policy and other conduct challenged herein are facially anticompetitive, which is further evidenced by the fact that several other states have banned some or all of the practices that Davis Vision has engaged in.

14. Plaintiff therefore brings this action on behalf of himself and similarly situated Independent Pennsylvania Eyecare Providers, asserting that Davis Vision's anticompetitive and other conduct violates federal and state laws.

PARTIES

15. Plaintiff Alan Frank, O.D., is, and at all times relevant hereto was, a citizen and resident of Pennsylvania. Plaintiff is a party to a PPA with Davis Vision, and renders medical care to patients covered by Davis Vision insurance benefits products.

16. Defendant Davis Vision, Inc. is a New York corporation with its principal place of business in Texas. Davis Vision, Inc. does business throughout Pennsylvania and elsewhere,

including through a variety of affiliates and subsidiaries. On information and belief, Davis Vision, Inc. is a subsidiary of Highmark Health.

17. Defendant HVHC, Inc. is a Delaware corporation with its principal place of business in Texas. HVHC, Inc. does business throughout Pennsylvania and elsewhere, including through a variety of affiliates and subsidiaries. On information and belief, HVHC, Inc. is a subsidiary of Highmark Health.

18. Highmark Health is a Pennsylvania corporation with its principal place of business in Pittsburgh, Pennsylvania. Highmark Health does business throughout Pennsylvania and elsewhere, including through a variety of affiliates and subsidiaries that include, on information and belief, Davis Vision, Inc. and HVHC, Inc.

JURISDICTION AND VENUE

19. This complaint is brought pursuant to, among other things, Sections 1 and 2 of the Sherman Act, 15 U.S.C. § 1, *et seq.*, and Pennsylvania common law.

20. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331, 1337, and 1367, as well as 15 U.S.C. §§ 15 and 26. This Court also has jurisdiction under 28 U.S.C. § 1332(d) because minimal diversity exists, there are more than 100 class members, and the amount in controversy exceeds $5 million.

21. This Court has personal jurisdiction over Defendants because they systematically and continuously transact substantial business in Pennsylvania.

22. At all relevant times, Defendants employed various devices to commit illegal acts described herein, including U.S. mail, interstate travel, interstate telephone communications, and interstate commerce. Defendants' complained-of activities occurred within the stream of, and have substantially affected, state and interstate commerce.

23. Venue is proper in this District pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391 because Defendants can be found and transact business in this District, and a substantial part of the interstate trade, commerce, events, and omissions giving rise to this action occurred in this District. Further, Defendants have substantial relevant operations, *e.g.*, Davis Vision operates a large laboratory, in this District.

FACTUAL ALLEGATIONS

A. Davis Vision's Mandatory Laboratory Policy Is Anticompetitive

24. Davis Vision forces any Independent Pennsylvania Eyecare Provider who renders services to patients covered by Davis Vision insurance benefit product, and who has an expectation of being reimbursed for rendering such services, to agree to Davis Vision's Participating (or Professional or Preferred) Provider Agreement and related policies and procedures (collectively, the "PPA"). The PPA is comprised of standardized forms drafted by Davis Vision. Davis Vision will not reimburse an Independent Pennsylvania Eyecare Provider who does not agree to the PPA.

25. Davis Vision does not negotiate any terms of the PPA with Independent Pennsylvania Eyecare Providers. Similarly, Davis Vision does not negotiate the reimbursement rates it will pay Independent Pennsylvania Eyecare Providers for rendering services to Davis Vision-covered patients; because of its market dominance in providing coverage to patients in Pennsylvania, it has no need to negotiate. Davis Vision simply thrusts the PPA, and whatever reimbursement rates it feels like paying, upon Independent Pennsylvania Eyecare Providers. Davis Vision does not disclose its reimbursement rates to Independent Pennsylvania Eyecare Providers at the time it forces an Independent Pennsylvania Eyecare Provider to accept the PPA. Even after a PPA is signed, Davis Vision continues to obfuscate the process by which it determines reimbursement rates, and how much it will reimburse for a particular service or product.

26. Under the PPA, Davis Vision forces Independent Pennsylvania Eyecare Providers to abide by Davis Vision's "mandatory laboratory policy." This anti-steering policy prohibits Independent Pennsylvania Eyecare Providers from using their other competing laboratories under any circumstances.

27. Davis Vision's excuse for its mandatory laboratory policy – that it results in savings or other benefits for patients – is completely pretextual, and masks Davis Vision's true anticompetitive purpose and intent.

28. Davis Vision's proclamation of so-called "savings" is false and illusory. A direct consequence of Davis Vision's mandatory laboratory policy is that Independent Pennsylvania Eyecare Providers cannot fabricate frames or lenses through a competing laboratory – even if doing so would be less expensive, more convenient, or otherwise more beneficial for patients.

29. The touted "quality" benefits of Davis Vision's laboratories are similarly pretextual. A number of convenience and quality-related issues plague Davis Vision's laboratories. As an initial matter, mailing frames or lenses to a Davis Vision laboratory simply cannot compare to the efficiency or convenience of on-site, and especially same-day, fabrication. Independent Pennsylvania Eyecare Providers are completely forbidden from offering this more convenient service because of Davis Vision's mandatory laboratory policy.

30. In addition, numerous Independent Pennsylvania Eyecare Providers and patients have received poor-quality frames or lenses from Davis Vision's laboratories that require re-fabrication or replacement, which causes avoidable delay and expense for patients and Independent Pennsylvania Eyecare Providers.

31. On multiple occasions, Independent Pennsylvania Eyecare Providers have publicly complained that they could procure laboratory services more cheaply, resulting in higher-quality product, but for Davis Vision's mandatory laboratory policy. As one Independent Pennsylvania

Eyecare Provider has put it, Davis Vision has Independent Pennsylvania Eyecare Providers "over a barrel."

32. Davis Vision's anticompetitive conduct has drawn the scrutiny of other entities as well. In *Acuity Optical Laboratories, LLC v. Davis Vision, Inc.*, No. 14-cv-3231 (C.D. Ill.), an independent laboratory, Acuity Optical, sued Davis Vision, arguing that the mandatory laboratory policy harmed Acuity Optical and competition because Davis Vision's policy prevented eyecare professionals from using Acuity Optical's superior, and less costly, laboratories.

33. Davis Vision admitted to the existence and enforcement of its mandatory laboratory policy in this lawsuit. In the "undisputed facts" section of Davis Vision's motion for summary judgment in the *Acuity Optical* case, Davis Vision stated: "Under this [mandatory laboratory] policy, each time Davis Vision is obliged to cover costs incurred when one of its members is prescribed a pair of eyeglasses by an optometrist subject to the policy, the optometrist is required to source the lenses for those eyeglasses from a laboratory owned by Davis Vision." Davis Vision further admitted that in-network optometrists "agree to [Davis Vision's] 'Mandatory Lab Policy.'" Davis Vision quickly and privately settled the *Acuity Optical* matter in December 2016, after that court denied in part Davis Vision's motion for summary judgment.

34. Independent Pennsylvania Eyecare Providers have no choice but to acquiesce to Davis Vision's mandatory laboratory policy because of the latter's unlawful exercise of market, monopoly, or monopsony[1] power in Pennsylvania.

35. There is a product market for the sale of vision insurance benefits to patients, as well as a product market for the purchase or reimbursement of eyecare services rendered to such

[1] Monopsony power (substantial power on the buy-side of a market, i.e., the ability to exercise market power to reduce the prices paid for a product or service) is the mirror image of monopoly power (substantial power on the sell-side of a market, i.e., the ability to exercise market power to raise the prices charged for a product or service).

covered patients, that comprises the geographic region of Pennsylvania (or smaller geographic regions therein).

36. Davis Vision's market share in the market for the provision of vision insurance benefits to patients, as well as for the purchase or reimbursement of eyecare services rendered to covered patients, in Pennsylvania is at least 65% or more. Davis Vision is the exclusive vision insurance benefit provider for its parent entity, Highmark, which is the single largest insurer in Pennsylvania. Davis Vision also provides vision insurance benefit for patients covered under Independence Blue Cross ("IBC"), the second largest insurer in Pennsylvania.

37. Through longstanding licensing and joint-operating arrangements relating in part to the "Blue Cross" and "Blue Shield" trademarks, Highmark and IBC do not meaningfully compete with each other geographically in Pennsylvania. Because of this, IBC principally operates in Southeastern Pennsylvania only, whereas Highmark does not materially compete there. Conversely, Highmark principally operates throughout the rest of Pennsylvania (including by virtue of its acquisition of Blue Cross of Northeastern Pennsylvania), whereas IBC does not.

38. While this lawsuit does not specifically challenge the geographic allocation and related arrangements between Highmark and IBC, the fact remains that these arrangements effectively magnify Davis Vision's market share, given that it is the incumbent vision insurance benefits provider for both Highmark and IBC.

39. Accordingly, Davis Vision possesses a dominant, monopolistic or monopsonistic share in the relevant product market in Pennsylvania.

40. Independent Pennsylvania Eyecare Providers cannot practicably turn to other vision insurance benefit providers (or insureds) because of Davis Vision's dominant market position. Davis Vision covers such a significant number of actual and potential patients that Independent Pennsylvania Eyecare Providers cannot forego treating (and receiving reimbursement

for services rendered to) patients covered by a Davis Vision insurance benefit product, or rely on uninsured patients. Such options are not economically viable for Independent Pennsylvania Eyecare Providers in Pennsylvania.

41. Independent Pennsylvania Eyecare Providers in Pennsylvania cannot practicably turn to patients or vision insurance benefit providers outside this area. Vision insurance benefits products and eyecare are localized, insofar as patients outside Pennsylvania are unlikely to travel into these areas for eyecare services or care due to the time and effort involved. Similarly, some Independent Pennsylvania Eyecare Providers may rely on referral networks or hospital staff privileges, which are focused within Pennsylvania.

42. Significant barriers also insulate Davis Vision from any meaningful or vigorous competition within Pennsylvania. For example, other vision insurance benefit providers have not or cannot meaningfully expand in Pennsylvania, and do not intend (or do not have the ability) to do so because of Davis Vision's market dominance and entrenched position with its parent entity Highmark and affiliated entity IBC.

43. In short, Independent Pennsylvania Eyecare Providers in Pennsylvania cannot practicably turn to any other alternate source of patients or reimbursements besides Davis Vision-covered patients and reimbursements in Pennsylvania. Similarly, patients within Pennsylvania cannot practicably turn to other vision insurance benefit providers because of the scope and breadth of Davis Vision's networks. Independent Pennsylvania Eyecare Providers lack any other realistic choice but to accept Davis Vision's mandatory laboratory policy and whatever other monopolistic or monopsonistic conditions Davis Vision wishes to impose upon them.

44. But for Davis Vision's mandatory laboratory policy and other anticompetitive terms or practices, both Independent Pennsylvania Eyecare Providers and patients would benefit. Patients could obtain less expensive and/or higher-quality products. Independent Pennsylvania

Eyecare Providers also would benefit by having the freedom to compete against Davis Vision's own laboratories on price or quality metrics. They also potentially would be able to net a greater share of the total reimbursement cost for eyecare services, without a commensurate increase in the prices charged to the patients.

B. The Mandatory Laboratory Policy Is Part of Davis Vision's Broader Anticompetitive Scheme In Pennsylvania

45. Davis Vision's mandatory laboratory policy is but one of multiple acts in furtherance of Davis Vision's scheme to exploit Independent Pennsylvania Eyecare Providers, and to suppress competition in Pennsylvania. Davis Vision has engaged in various other exclusionary and anticompetitive acts to exploit Independent Pennsylvania Eyecare Providers.

46. For instance, Davis Vision does not require Visionworks to adhere to the mandatory laboratory policy. Visionworks is a leading retail provider of eyecare services with more than 700 locations, including dozens of Pennsylvania locations that directly compete with Independent Pennsylvania Eyecare Providers.

47. Visionworks touts its "in-store labs which provide one-hour service." It can do this because Davis Vision does not enforce its mandatory laboratory policy against Visionworks because they are corporate affiliates – Defendant HVHC owns and operates Visionworks, and both HVHC and Davis Vision are subsidiaries of Defendant Highmark Health. In other words, Defendants force Independent Pennsylvania Eyecare Providers and their patients to endure the inconvenience and costs associated with mailing frames and lenses to Davis Vision-owned laboratories, but spares its corporate affiliate, Visionworks, from having to do this.

48. Defendants' vertical integration thus allows them to anticompetitively dominate the entire distribution chain: they have locked up the vast majority of vision insurance benefit patients in Pennsylvania (through Highmark and IBC); they force competing Independent Pennsylvania Eyecare Providers to use more costly and less convenient Davis Vision-controlled laboratories;

and they let their own retail arm be free to use on-site or other laboratories that are less expensive or more convenient for patients.

49. This reality undercuts Davis Vision's fiction that the mandatory laboratory policy benefits consumers. If that were so, an economically rational actor in Defendants' position would certainly ensure that its own retail locations would use Davis Vision's own laboratories.

50. Davis Vision also coerces Independent Pennsylvania Eyecare Providers to sell more expensive or less desirable eyeglass frames to patients. Davis Vision's PPAs often contain a "frame collection" clause. This clause requires an Independent Pennsylvania Eyecare Provider to display Davis Vision's frames, and further requires Independent Pennsylvania Eyecare Providers to steer patients covered under a Davis Vision insurance benefit product to these products. Davis Vision does not impose this same condition on Plaintiff's "big box" competitors, such as Wal-Mart or Costco, presumably because they may possess countervailing market or negotiating power that Independent Pennsylvania Eyecare Providers lack.

51. Further, when covered patients ask Davis Vision to identify nearby eyecare providers that are in-network, Davis Vision deliberately steers them to Visionworks first, irrespective of whether an Independent Pennsylvania Eyecare Provider is closer to a patient.

52. The individual and collective effect of Defendants' anticompetitive conduct is to unfairly steer patients to Visionworks, and away from Independent Pennsylvania Eyecare Providers who could provide or recommend less expensive, more convenient, or higher quality frames and lenses and related fabrication services. This has had, and continues to have, an adverse effect on competition, and on Independent Pennsylvania Eyecare Providers.

53. Davis Vision also unfairly exerts market pressure on Independent Pennsylvania Eyecare Providers by reducing the amounts it reimburses Independent Pennsylvania Eyecare Providers, and without regard to the quality of care or services provided; subjects Independent

Pennsylvania Eyecare Providers to an unusually high number of audits or other administrative reviews or requirements, which disrupts their businesses and provision of eyecare services; and avoids making reimbursement adjustments for cost-of-living or inflation.

54. Davis Vision has also cloaked the process by which it sets and pays reimbursement rates in secrecy to obscure its anticompetitive aims. Indeed, Davis Vision often changes reimbursement rates for particular procedures with little to no warning or explanation, and without tethering such changes to market conditions, competitive market forces, or quality of care.[2]

55. Additionally, on information and belief, Defendants coerce employers into accepting Davis Vision insurance benefit products, and dissuade use of competitors' products, so Defendants can maintain or expand their dominant market position.

C. Plaintiff's Experiences

56. Plaintiff has been victimized, along with other Class members, by Defendants' anticompetitive and other unlawful practices.

57. Plaintiff, Dr. Alan Frank, was forced to enter into a PPA with Davis Vision if he had any expectation of being reimbursed by Davis Vision for treating patients covered by a Davis Vision insurance benefit product.

58. Davis Vision has enforced its mandatory laboratory policy to restrict Plaintiff from utilizing competing frame or lens fabrication laboratories, besides Davis Vision's own laboratories, even though he can obtain for patients frames and lenses or related laboratory services that are not as expensive or of higher quality.

[2] Davis Vision further cloaks its actions in secrecy by inserting a confidentiality clause into the PPA.

59. Plaintiff has also been subjected to Davis Vision's other anticompetitive conduct alleged herein, such as being forced to display and steer patients to the Davis Vision "frame collection," regardless of cost or other product characteristics.

60. Plaintiff has also been the target and victim of Davis Vision's other coercive and exclusionary practices discussed herein. For instance, when would-be patients search Davis Vision's website for the closest in-network provider, Davis Vision steers them to an affiliated Visionworks retail location that is farther away than Plaintiff's locations.

CLASS ALLEGATIONS

61. Plaintiff brings this action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of himself and on behalf of the following proposed class:

> All Independent Pennsylvania Eyecare Providers in Pennsylvania who treat patients covered by a Davis Vision insurance benefit product.

62. Excluded from the Class are (i) governmental entities, (ii) Defendants and their officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, assigns, and entities in which Defendants have a controlling interest; and (iii) the judge, justices, magistrates or judicial officers presiding over this matter.

63. Said definitions may be further defined or amended by additional pleadings, evidentiary hearings, a class certification hearing, and orders of this Court.

64. *Numerosity*. The members of the Class are so numerous that separate joinder of each member is impracticable. Plaintiff does not know the exact number of members in the Class, but based upon information and belief, Plaintiff reasonably believes that Class members number at a minimum in the many hundreds, if not thousands.

65. *Commonality*. The claims of Plaintiff raise questions of law or fact common to the questions of law or fact raised by the claims of each member of the Class. Plaintiff's claims arise

from the same practice or course of conduct that gives rise to the claims of the Class members. The questions of law and fact common to Plaintiff and the Class predominate over questions affecting only individual Class members, and include, but are not limited to, the following:

- Whether Defendants' conduct constitutes an illegal restraint of trade in violation of Section 1 of the Sherman Act and/or Pennsylvania antitrust common law;
- Whether Defendants' conduct constitutes a violation of Section 2 of the Sherman Act and/or Pennsylvania antitrust common law;
- Whether a relevant market needs to be defined in this case in light of the existence of direct evidence of Davis Vision's or Defendants' power to control price or exclude competition;
- If a relevant market needs to be defined, the definition of the relevant market for analyzing Defendants' monopoly or monopsony power, and whether Defendants had monopoly or monopsony power in the relevant market; and
- Whether Plaintiff and the Class have been injured as a result of Defendants' conduct; and
- the amount and nature of damages.

66. *Typicality*. The claims of Plaintiff are typical of the claims of each member of the Class. Defendants engaged in a standardized course of conduct affecting the Class members, and Plaintiff's alleged injuries arise out of that conduct. All Class members, including Plaintiff, have the same or similar injury to their property as a result of Defendants' anticompetitive conduct.

67. *Adequacy*. Plaintiff can fairly and adequately protect and represent the interests of each member of the Class. Plaintiff fits within the class definition and their interests do not conflict with the interest of the members of the Class they seek to represent. Plaintiff is represented by experienced and able attorneys. The undersigned Class Counsel have litigated numerous class actions and complex cases and intend to prosecute this action vigorously for the benefit of the entire Class. Plaintiff and Class Counsel can and will fairly and adequately protect the interests of all members of the Class.

68. *Predominance.* Common issues predominate. As set forth in detail above, common issues of fact and law predominate because all of Plaintiff's claims are based on identical anticompetitive conduct.

69. *Superiority*. A class action is superior to other available methods for fair and efficient adjudication of the controversy. The damages sought by each Class member are such that individual prosecution would prove burdensome and expensive given the complex and extensive litigation necessitated by Defendants' conduct. It would be virtually impossible for the members of the Class to effectively redress the wrongs done to them on an individual basis. Even if the members of the Class themselves could afford such individual litigation, it would be an unnecessary burden on the courts.

70. Defendants have acted on grounds generally applicable to the entire Class, thereby making final injunctive relief and/or corresponding declaratory relief appropriate with respect to the Class as a whole. The prosecution of separate actions by individual Class members would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants.

71. Injunctive relief is necessary to prevent further anticompetitive conduct by Defendants. Money damages alone will not afford adequate and complete relief, and injunctive relief is necessary to restrain Defendants from continuing to engage in conduct which restrains, suppresses, and/or eliminates competition in Pennsylvania.

72. The trial and litigation of Plaintiff's claims are manageable. Individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system. By contrast, the class action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve numerous

individual claims and the legal and factual issues presented by Defendants' conduct based upon a single set of proofs in just one case.

73. Further, Defendants has acted on grounds generally applicable to the Class, thereby making final injunctive relief with respect to the Class as a whole appropriate. Moreover, on information and belief, Plaintiff alleges that the conduct complained of herein is substantially likely to continue in the future if an injunction is not entered.

74. *Notice to the Class.* Notice to the Class may be made by publication and/or other practicable means, including notice accomplished by use of Defendants' database(s) and other records.

COUNT ONE
(Unlawful Restraint of Trade – *Per Se* Violation of Section 1 of the Sherman Act)
(Against All Defendants)

75. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same as if set forth herein at length.

76. Defendants have entered into one or more contracts, combinations, or conspiracies to unreasonably restrain trade in violation of 15 U.S.C. § 1, including Davis Vision's PPAs with Independent Pennsylvania Eyecare Providers that implement the mandatory laboratory policy.

77. Defendants' agreements, combinations, or conspiracies, individually and collectively, are unlawful *per se* under Section 1 of the Sherman Act.

78. Defendants' conduct had and continues to have an anticompetitive purpose and effect on competition, was not offset by any procompetitive benefits, and was not the least restrictive means of achieving any procompetitive benefits. Defendants have erected substantial barriers to entry and competition, and their procompetitive justifications are pretextual or are substantially outweighed by the anticompetitive effects of their conduct.

79. Competition, actual and potential, has been, and will continue to be, unreasonably restrained as a result of Defendants' unlawful conduct.

80. Defendants' unlawful arrangement affected a not insubstantial amount of state and interstate commerce.

81. As a direct and proximate result of Defendants' continuing violation of Section 1 of the Sherman Act, Plaintiff and other Class members have suffered injury and damages in an amount to be proven at trial. Damages may be quantified on a classwide basis, and should be trebled under Section 4 of the Clayton Act. *See* 15 U.S.C. § 15. Damages include but are not limited to customer diversion, margin loss on laboratory-related services, and suppressed reimbursement rates.

82. Plaintiff, on behalf of itself and other Class members, also seeks injunctive relief to remedy the past, present, and future effects of Defendants' conduct alleged herein.

COUNT TWO
(Unlawful Restraint of Trade – *Per Se* Violation of Pennsylvania Common Law)
(Against All Defendants)

83. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same as if set forth herein at length.

84. Defendants have entered into one or more contracts, combinations, or conspiracies to unreasonably restrain trade in violation of Pennsylvania common law, including Davis Vision's PPAs with Independent Pennsylvania Eyecare Providers that implement the mandatory laboratory policy.

85. Defendants' agreements, combinations, or conspiracies, individually and collectively, are unlawful *per se* under Pennsylvania common law.

86. Defendants' conduct had and continues to have an anticompetitive purpose and effect on competition, was not offset by any procompetitive benefits, and was not the least

restrictive means of achieving any procompetitive benefits. Defendants have erected substantial barriers to entry and competition, and their procompetitive justifications are pretextual or are substantially outweighed by the anticompetitive effects of its conduct.

87. Competition, actual and potential, has been, and will continue to be, unreasonably restrained as a result of Defendants' unlawful conduct.

88. Defendants' unlawful arrangement affected a not insubstantial amount of state and interstate commerce.

89. As a direct and proximate result of Defendants' continuing violation of Pennsylvania common law, Plaintiff and other Class members have suffered injury and damages in an amount to be proven at trial. Damages may be quantified on a classwide basis, and should be trebled. Damages include but are not limited to customer diversion, margin loss on laboratory-related services, and suppressed reimbursement rates.

90. Plaintiff, on behalf of itself and other Class members, also seeks injunctive relief to remedy the past, present, and future effects of Defendants' conduct alleged herein.

COUNT THREE
(Unlawful Restraint of Trade – Non-*Per Se* Violation of Section 1 of the Sherman Act)
(Against All Defendants)

91. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same as if set forth herein at length.

92. Plaintiff asserts this Count in the alternative to Count One, in the event it is found that Plaintiff must establish a relevant antitrust market in connection with its claim under Section 1 of the Sherman Act.

93. Defendants have entered into one or more contracts, combinations, or conspiracies to unreasonably restrain trade in violation of 15 U.S.C. § 1, including Davis Vision's PPAs with Independent Pennsylvania Eyecare Providers that implement the mandatory laboratory policy.

94. Defendants' agreements, combinations, or conspiracies, individually and collectively, constitute an unreasonable restraint under "quick look" or "rule of reason" analysis. In this alternative, an antitrust market need not be defined exhaustively because of the direct evidence of Defendants' ability to control prices or to exclude competition, *e.g.*, its exclusion of competing fabrication services discussed herein. Yet, to the extent necessary, there is a product market for the sale of vision insurance benefits to patients, as well as a product market for the purchase or reimbursement of eyecare services rendered to such covered patients, that comprises the geographic region of Pennsylvania (or smaller geographic markets therein). Defendants, individually or collectively, possess a significant market share in excess of 65% in the relevant antitrust market(s). Within the market(s), Davis Vision-insured patients may be a demonstrable sub-market within which Davis Vision possesses the most significant (if not exclusive) market share.

95. Defendants' conduct had and continues to have an anticompetitive purpose and effect on competition, was not offset by any procompetitive benefits, and was not the least restrictive means of achieving any procompetitive benefits. Defendants have erected substantial barriers to entry and competition, and their procompetitive justifications are pretextual or are substantially outweighed by the anticompetitive effects of their conduct.

96. Competition, actual and potential, has been, and will continue to be, unreasonably restrained as a result of Defendants' unlawful conduct.

97. Defendants' unlawful arrangement affected a not insubstantial amount of state and interstate commerce.

98. As a direct and proximate result of Defendants' continuing violation of Section 1 of the Sherman Act, Plaintiff and other Class members have suffered injury and damages in an amount to be proven at trial. Damages may be quantified on a classwide basis, and should be

trebled. Damages include but are not limited to customer diversion, margin loss on laboratory-related services, and suppressed reimbursement rates.

99. Plaintiff, on behalf of itself and other Class members, also seeks injunctive relief to remedy the past, present, and future effects of Defendants' conduct alleged herein.

COUNT FOUR
(Unlawful Restraint of Trade – Non-*Per Se* Violation of Pennsylvania Common Law)
(Against All Defendants)

100. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same as if set forth herein at length.

101. Plaintiff asserts this Count in the alternative to Count Two, in the event it is found that Plaintiff must establish a relevant antitrust market.

102. Defendants have entered into one or more contracts, combinations, or conspiracies to unreasonably restrain trade in violation of Pennsylvania common law, including Davis Vision's PPAs with Independent Pennsylvania Eyecare Providers that implement the mandatory laboratory policy.

103. Defendants' agreements, combinations, or conspiracies, individually and collectively, constitute an unreasonable restraint under "quick look" or "rule of reason" analysis. In this alternative, an antitrust market need not be defined exhaustively because of the direct evidence of Defendants' ability to control prices or to exclude competition, *e.g.*, its exclusion of competing fabrication services discussed herein. Yet, to the extent necessary, there is a product market for the sale of vision insurance benefits to patients, as well as a product market for the purchase or reimbursement of eyecare services rendered to such covered patients, that comprises the geographic region of Pennsylvania (or smaller geographic markets therein). Defendants, individually or collectively, possess a significant market share in excess of 65% in the relevant antitrust market(s). Within the market(s), Davis Vision-insured patients may be a demonstrable

sub-market within which Davis Vision possesses the most significant (if not exclusive) market share.

104. Defendants' conduct had and continues to have an anticompetitive purpose and effect on competition, was not offset by any procompetitive benefits, and was not the least restrictive means of achieving any procompetitive benefits. Defendants have erected substantial barriers to entry and competition, and their procompetitive justifications are pretextual or are substantially outweighed by the anticompetitive effects of their conduct.

105. Competition, actual and potential, has been, and will continue to be, unreasonably restrained as a result of Defendants' unlawful conduct.

106. Defendants' unlawful arrangement affected a not insubstantial amount of state and interstate commerce.

107. As a direct and proximate result of Defendants' continuing violation of Pennsylvania common law, Plaintiff and other Class members have suffered injury and damages in an amount to be proven at trial. Damages may be quantified on a classwide basis, and should be trebled. Damages include but are not limited to customer diversion, margin loss on laboratory-related services, and suppressed reimbursement rates.

108. Plaintiff, on behalf of itself and other Class members, also seeks injunctive relief to remedy the past, present, and future effects of Defendants' conduct alleged herein.

COUNT FIVE
(Unlawful Monopolization and Monopsonization in Violation of Section 2 of the Sherman Act)
(Against All Defendants)

109. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same as if set forth herein at length.

110. Defendants have violated Section 2 of the Sherman Act.

111. Defendants' agreements, combinations, or conspiracies, individually and collectively, constitute an unreasonable restraint under "quick look" or "rule of reason" analysis. In this alternative, an antitrust market need not be defined exhaustively because of the direct evidence of Defendants' ability to control prices or to exclude competition, *e.g.*, its exclusion of competing fabrication services discussed herein. Yet, to the extent necessary, there is a product market for the sale of vision insurance benefits to patients, as well as a product market for the purchase or reimbursement of eyecare services rendered to such covered patients, that comprises the geographic region of Pennsylvania (or smaller geographic markets therein). Defendants, individually or collectively, possess a significant market share in excess of 65% in the relevant antitrust market(s), as alleged herein. Within the market(s), Davis Vision-insured patients may be a demonstrable sub-market within which Davis Vision possesses the most significant (if not exclusive) market share.

112. Defendants' conduct had and continues to have an anticompetitive purpose and effect on competition, was not offset by any procompetitive benefits, and was not the least restrictive means of achieving any procompetitive benefits. Defendants have erected substantial barriers to entry and competition, and their procompetitive justifications are pretextual or are substantially outweighed by the anticompetitive effects of their conduct.

113. Defendants have gained and exercised unlawful monopoly or monopsony power over the relevant product market(s) in Pennsylvania. But for Defendants' exclusionary practices alleged herein, Defendants would not have been able to maintain their monopoly or monopsony power over the relevant product(s) market in Pennsylvania.

114. Defendants have willfully and unlawfully maintained monopoly or monopsony power by controlling prices and excluding competition as alleged herein. The goal, purpose, or effect of Defendants' scheme was to artificially reduce reimbursement rates to Independent

Pennsylvania Eyecare Providers and to exclude competition. Defendants willfully acquired and/or maintained its monopoly or monopsony power over Pennsylvania not through superior skill or product, business acumen, or enterprise, but rather through the foregoing anticompetitive and exclusionary conduct.

115. There is no appropriate, procompetitive, or legitimate business justification for the actions and conduct that have facilitated Defendants' monopolization and monopsonization.

116. Competition, actual and potential, has been, and will continue to be, unreasonably restrained as a result of Defendants' unlawful conduct.

117. Defendants' unlawful arrangement affected a not insubstantial amount of state and interstate commerce.

118. As a direct and proximate result of Defendants' continuing violation of Section 2 of the Sherman Act, Plaintiff and other Class members have suffered injury and damages in an amount to be proven at trial. Damages may be quantified on a classwide basis, and should be trebled. Damages include but are not limited to customer diversion, margin loss on laboratory-related services, and suppressed reimbursement rates.

119. Plaintiff, on behalf of itself and other Class members, also seeks injunctive relief to remedy the past, present, and future effects of Defendants' conduct alleged herein.

COUNT SIX
(Unlawful Monopolization and Monopsonization in Violation of Pennsylvania Common Law)
(Against All Defendants)

120. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same as if set forth herein at length.

121. Defendants have violated Pennsylvania common law concerning unlawful monopolies and exclusionary practices.

122. Defendants' agreements, combinations, or conspiracies, individually and collectively, constitute an unreasonable restraint under "quick look" or "rule of reason" analysis. In this alternative, an antitrust market need not be defined exhaustively because of the direct evidence of Defendants' ability to control prices or to exclude competition, *e.g.*, its exclusion of competing fabrication services discussed herein. Yet, to the extent necessary, there is a product market for the sale of vision insurance benefits to patients, as well as a product market for the purchase or reimbursement of eyecare services rendered to such covered patients, that comprises the geographic region of Pennsylvania (or smaller geographic markets therein). Defendants, individually or collectively, possess a significant market share in excess of 65% in the relevant antitrust market(s), as alleged herein. Within the market(s), Davis Vision-insured patients may be a demonstrable sub-market within which Davis Vision possesses the most significant (if not exclusive) market share.

123. Defendants' conduct had and continues to have an anticompetitive purpose and effect on competition, was not offset by any procompetitive benefits, and was not the least restrictive means of achieving any procompetitive benefits. Defendants have erected substantial barriers to entry and competition, and their procompetitive justifications are pretextual or are substantially outweighed by the anticompetitive effects of their conduct.

124. Defendants have gained and exercised unlawful monopoly or monopsony power over the relevant product market(s) in Pennsylvania. But for Defendants' exclusionary practices alleged herein, Defendants would not have been able to maintain their monopoly or monopsony power over the relevant product(s) market in Pennsylvania.

125. Defendants have willfully and unlawfully maintained monopoly or monopsony power by controlling prices and excluding competition as alleged herein. The goal, purpose, or effect of Defendants' scheme was to artificially reduce reimbursement rates to Independent

Pennsylvania Eyecare Providers and to exclude competition. Defendants willfully acquired and/or maintained its monopoly or monopsony power over Pennsylvania not through superior skill or product, business acumen, or enterprise, but rather through the foregoing anticompetitive and exclusionary conduct.

126. There is no appropriate, procompetitive, or legitimate business justification for the actions and conduct that have facilitated Defendants' monopolization and monopsonization.

127. Competition, actual and potential, has been, and will continue to be, unreasonably restrained as a result of Defendants' unlawful conduct.

128. Defendants' unlawful arrangement affected a not insubstantial amount of state and interstate commerce.

129. As a direct and proximate result of Defendants' continuing violation of Pennsylvania common law, Plaintiff and other Class members have suffered injury and damages in an amount to be proven at trial. Damages may be quantified on a classwide basis, and should be trebled. Damages include but are not limited to customer diversion, margin loss on laboratory-related services, and suppressed reimbursement rates.

130. Plaintiff, on behalf of itself and other Class members, also seeks injunctive relief to remedy the past, present, and future effects of Defendants' conduct alleged herein.

COUNT SEVEN
(Unlawful Attempted Monopolization and Monopsonization in Violation of Section 2 of the Sherman Act)
(Against All Defendants)

131. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same as if set forth herein at length.

132. Defendants have violated Section 2 of the Sherman Act.

133. Defendants' agreements, combinations, or conspiracies, individually and collectively, constitute an unreasonable restraint under "quick look" or "rule of reason" analysis.

In this alternative, an antitrust market need not be defined exhaustively because of the direct evidence of Defendants' ability to control prices or to exclude competition, *e.g.*, its exclusion of competing fabrication services discussed herein. Yet, to the extent necessary, there is a product market for the sale of vision insurance benefits to patients, as well as a product market for the purchase or reimbursement of eyecare services rendered to such covered patients, that comprises the geographic region of Pennsylvania (or smaller geographic markets therein). Defendants, individually or collectively, possess a significant market share in excess of 65% in the relevant antitrust market(s), as alleged herein. Within the market(s), Davis Vision-insured patients may be a demonstrable sub-market within which Davis Vision possesses the most significant (if not exclusive) market share.

134. Defendants' conduct had and continues to have an anticompetitive purpose and effect on competition, was not offset by any procompetitive benefits, and was not the least restrictive means of achieving any procompetitive benefits. Defendants have erected substantial barriers to entry and competition, and its procompetitive justifications are pretextual or are substantially outweighed by the anticompetitive effects of its conduct.

135. Defendants have gained and exercised, or have attempted to gain and exercise, unlawful monopoly or monopsony power over the relevant product market(s) in Pennsylvania. But for Defendants' exclusionary practices alleged herein, Defendants would not have been able to maintain, or to come dangerously close to maintaining, their monopoly or monopsony power over the relevant product(s) market in Pennsylvania.

136. Defendants have willfully and unlawfully maintained, or have willfully and unlawfully attempted to maintain, monopoly or monopsony power by controlling prices and excluding competition as alleged herein. The goal, purpose, or effect of Defendants' scheme was to artificially reduce reimbursement rates to Independent Pennsylvania Eyecare Providers and to

exclude competition. Defendants willfully acquired and/or maintained, or come dangerously close to acquiring or maintaining, their monopoly or monopsony power over Pennsylvania not through superior skill or product, business acumen, or enterprise, but rather through the foregoing anticompetitive and exclusionary conduct.

137. There is no appropriate, procompetitive, or legitimate business justification for the actions and conduct that have facilitated Defendants' attempted monopolization and monopsonization.

138. Competition, actual and potential, has been, and will continue to be, unreasonably restrained as a result of Defendants' unlawful conduct.

139. Defendants' unlawful arrangement affected a not insubstantial amount of state and interstate commerce.

140. As a direct and proximate result of Defendants' continuing violation of Section 2 of the Sherman Act, Plaintiff and other Class members have suffered injury and damages in an amount to be proven at trial. Damages may be quantified on a classwide basis, and should be trebled. Damages include but are not limited to customer diversion, margin loss on laboratory-related services, and suppressed reimbursement rates.

141. Plaintiff, on behalf of itself and other Class members, also seeks injunctive relief to remedy the past, present, and future effects of Defendants' conduct alleged herein.

COUNT EIGHT
(Unlawful Attempted Monopolization and Monopsonization in Violation of Pennsylvania Common Law)
(Against All Defendants)

142. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same as if set forth herein at length.

143. Defendants' have violated Pennsylvania common law prohibiting actual and attempted monopolization and monopsonization.

144. Defendants' agreements, combinations, or conspiracies, individually and collectively, constitute an unreasonable restraint under "quick look" or "rule of reason" analysis. In this alternative, an antitrust market need not be defined exhaustively because of the direct evidence of Defendants' ability to control prices or to exclude competition, *e.g.*, its exclusion of competing fabrication services discussed herein. Yet, to the extent necessary, there is a product market for the sale of vision insurance benefits to patients, as well as a product market for the purchase or reimbursement of eyecare services rendered to such covered patients, that comprises the geographic region of Pennsylvania (or smaller geographic markets therein). Defendants, individually or collectively, possess a significant market share in excess of 65% in the relevant antitrust market(s), as alleged herein. Within the market(s), Davis Vision-insured patients may be a demonstrable sub-market within which Davis Vision possesses the most significant (if not exclusive) market share.

145. Defendants' conduct had and continues to have an anticompetitive purpose and effect on competition, was not offset by any procompetitive benefits, and was not the least restrictive means of achieving any procompetitive benefits. Defendants have erected substantial barriers to entry and competition, and its procompetitive justifications are pretextual or are substantially outweighed by the anticompetitive effects of its conduct.

146. Defendants have gained and exercised, or have attempted to gain and exercise, unlawful monopoly or monopsony power over the relevant product market(s) in Pennsylvania. But for Defendants' exclusionary practices alleged herein, Defendants would not have been able to maintain, or to come dangerously close to maintaining, their monopoly or monopsony power over the relevant product(s) market in Pennsylvania.

147. Defendants have willfully and unlawfully maintained, or have willfully and unlawfully attempted to maintain, monopoly or monopsony power by controlling prices and

excluding competition as alleged herein. The goal, purpose, or effect of Defendants' scheme was to artificially reduce reimbursement rates to Independent Pennsylvania Eyecare Providers and to exclude competition. Defendants willfully acquired and/or maintained, or come dangerously close to acquiring or maintaining, their monopoly or monopsony power over Pennsylvania not through superior skill or product, business acumen, or enterprise, but rather through the foregoing anticompetitive and exclusionary conduct.

148. There is no appropriate, procompetitive, or legitimate business justification for the actions and conduct that have facilitated Defendants' attempted monopolization and monopsonization.

149. Competition, actual and potential, has been, and will continue to be, unreasonably restrained as a result of Defendants' unlawful conduct.

150. Defendants' unlawful arrangement affected a not insubstantial amount of state and interstate commerce.

151. As a direct and proximate result of Defendants' continuing violation of Pennsylvania common law, Plaintiff and other Class members have suffered injury and damages in an amount to be proven at trial. Damages may be quantified on a classwide basis, and should be trebled. Damages include but are not limited to customer diversion, margin loss on laboratory-related services, and suppressed reimbursement rates.

152. Plaintiff, on behalf of itself and other Class members, also seeks injunctive relief to remedy the past, present, and future effects of Defendants' conduct alleged herein.

COUNT NINE
(Breach of Implied Covenant of Good Faith and Fair Dealing)
(Against Davis Vision)

153. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same as if set forth herein at length.

154. Davis Vision requires all Independent Pennsylvania Eyecare Providers to adhere to the mandatory laboratory policy and other exclusionary terms in the PPA.

155. Davis Vision has required and continues to require that all Independent Pennsylvania Eyecare Providers adhere to the mandatory laboratory policy and other exclusionary terms in the PPA including those alleged herein if they have a realistic expectation of reimbursement for rendering eyecare services to patients covered by a Davis Vision insurance benefit product. It is essentially an arrangement of adhesion.

156. Every agreement imposes on the parties a duty of good faith and fair dealing. This duty requires that neither party will do anything to injure the right of the other to enjoy the benefits of the agreement. It imposes on each party the obligation to do everything the contract presupposes they will do to accomplish its purpose, to make effective the agreement's promises in accordance with the spirit of the parties' bargain. Here, by unilaterally imposing an exclusionary mandatory laboratory policy and engaging in other unfair, anticompetitive conduct, Davis Vision has violated this implied covenant.

157. Plaintiff and other Class members have materially performed in accordance with the terms of the PPA except and to the extent performance has been excused, or rendered impracticable or impossible.

158. As a direct and proximate result of Davis Vision's conduct, Plaintiff and the other Class members have and continue to suffer direct and consequential damages, and are also entitled to declaratory and injunctive relief.

COUNT TEN
(Reformation or Rescission)
(Against Davis Vision)

159. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same as if set forth herein at length.

160. In the event a valid agreement is found to exist between Davis Vision and Plaintiff and other Class members, any such agreement should either be reformed or partially or fully rescinded.

161. Consent by Plaintiff and other Class members to the terms in the PPA, including the mandatory laboratory policy and other related exclusionary provisions, was not real or free, and/or was given under force, coercion, and/or without consent or mutual material consideration.

162. The terms governing Davis Vision's relationship with counterparties, including the mandatory laboratory policy, were not fully disclosed to Plaintiff and members of the Class. Thus, Plaintiff and members of the Class lacked proper notice concerning such terms.

163. The terms of the PPA contain undisclosed, confusing, and abstruse conditions or terminology. Davis Vision unilaterally drafted and impose the mandatory laboratory policy and other exclusionary provisions on Plaintiff and the Class, which renders any agreement between Davis Vision and Plaintiff and members of the Class an unenforceable contract of adhesion.

164. Moreover, Plaintiff and other Class members were forced or induced to enter into a PPA insofar as Davis Vision coercively required and/or omitted the full terms or actual arrangement concerning the mandatory laboratory policy and other exclusionary conditions.

165. By common law or statute, the terms governing each PPA, and the parties' course of dealing, also impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit – not merely the letter – of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Here, by unilaterally imposing the mandatory laboratory policy and engaging in other unfair, anticompetitive conduct, Davis Vision has violated this implied covenant.

166. As a direct and proximate result of Davis Vision's conduct alleged herein, Plaintiff and other Class members believed, and reasonably so, that they had no choice but to agree to the PPA and other exclusionary terms or conditions.

167. With any possible consent given only under force, oppression or other inappropriate conditions, as set forth above, Plaintiff, on behalf of itself and other Class members seeks reformation of the PPA, or rescission of any offending terms, so that the terms are reasonable, fair, not anticompetitive, specific, and/or determinable.

COUNT ELEVEN
(Unjust Enrichment)
(Against All Defendants)

168. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same as if set forth herein at length.

169. Defendants have knowingly received and retained wrongful benefits from Plaintiff and other Class members in multiple forms, including the difference in the amount the dispensing fees Defendants have paid to Independent Pennsylvania Eyecare Providers for fabrication services that Defendants required to be performed at Davis Vision-controlled laboratories, and any other wrongly withheld amounts. In so doing, Defendants acted intentionally or with conscious disregard for the rights of Plaintiff and other Class members.

170. As a result of Defendants' wrongful conduct as alleged herein, Defendants have been unjustly enriched at the expense, and to the detriment, of Plaintiff and other Class members.

171. Defendants' unjust enrichment is traceable to, and resulted directly and proximately from, the wrongful conduct alleged herein.

172. It is unfair and inequitable for Defendants to be permitted to retain the benefits it has withheld, and is still withholding, without justification, from the wrongful conduct alleged herein. Defendants'' retention of such benefits under the circumstances is inequitable.

173. The financial benefits derived by Defendants rightfully belong to Plaintiff and other Class members, in whole or in part. Defendants should be compelled to account for and disgorge in a common fund for the benefit of Plaintiff and other Class members all wrongful or inequitable proceeds withheld from them. A constructive trust should be imposed upon all wrongful or inequitable sums withheld by Defendants traceable to Plaintiff and the members of the Class.

174. Plaintiff and other Class members have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class demand a jury trial on all claims so triable and judgment as follows:

- An order certifying that the action may be maintained as a Class Action;
- A decree that the acts alleged herein be adjudged and decreed to be anticompetitive or otherwise unlawful in violation of federal and state law;
- A judgment to be entered against Defendants, jointly and severally as appropriate, for damages as a result of Defendants' violations of federal and state law;
- A judgment to be entered against Defendants and in favor of Plaintiff and the proposed Class on Plaintiff's claims, for actual, double, or treble damages, actual and consequential damages, and equitable relief, including restitution or disgorgement;
- Declaratory and injunctive relief requiring Davis Vision to reform or rescind the mandatory laboratory policy and other exclusionary terms, as well as other appropriate declaratory and injunctive relief;
- Pre-judgment and post-judgment interest from the date of filing this suit;
- Reasonable attorneys' fees;
- Costs of this suit; and
- Such other and further relief as the Court may deem necessary or appropriate.

Dated: June 12, 2017

Respectfully submitted,

/s/ *(DJS8892)*

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Attorneys for Plaintiff and the Proposed Class

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

ALAN FRANK, O.D., ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED,	:	CIVIL ACTION
v.	:	
DAVIS VISION, INC.; HVHC, INC.; AND HIGHMARK HEALTH,	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

(a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )

(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )

(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )

(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )

(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )

(f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

06/12/2017		PLAINTIFF
Date	Attorney-at-law	Attorney for
(215) 985-9177	(215) 985-4169	dstanoch@golombhonik.com
Telephone	FAX Number	E-Mail Address

(Civ. 660) 10/02

Civil Justice Expense and Delay Reduction Plan
Section 1:03 - Assignment to a Management Track

(a) The clerk of court will assign cases to tracks (a) through (d) based on the initial pleading.

(b) In all cases not appropriate for assignment by the clerk of court to tracks (a) through (d), the plaintiff shall submit to the clerk of court and serve with the complaint on all defendants a case management track designation form specifying that the plaintiff believes the case requires Standard Management or Special Management. In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

(c) The court may, on its own initiative or upon the request of any party, change the track assignment of any case at any time.

(d) Nothing in this Plan is intended to abrogate or limit a judicial officer's authority in any case pending before that judicial officer, to direct pretrial and trial proceedings that are more stringent than those of the Plan and that are designed to accomplish cost and delay reduction.

(e) Nothing in this Plan is intended to supersede Local Civil Rules 40.1 and 72.1, or the procedure for random assignment of Habeas Corpus and Social Security cases referred to magistrate judges of the court.

SPECIAL MANAGEMENT CASE ASSIGNMENTS
(See §1.02 (e) Management Track Definitions of the
Civil Justice Expense and Delay Reduction Plan)

Special Management cases will usually include that class of cases commonly referred to as "complex litigation" as that term has been used in the Manuals for Complex Litigation. The first manual was prepared in 1969 and the Manual for Complex Litigation Second, MCL 2d was prepared in 1985. This term is intended to include cases that present unusual problems and require extraordinary treatment. See §0.1 of the first manual. Cases may require special or intense management by the court due to one or more of the following factors: (1) large number of parties; (2) large number of claims or defenses; (3) complex factual issues; (4) large volume of evidence; (5) problems locating or preserving evidence; (6) extensive discovery; (7) exceptionally long time needed to prepare for disposition; (8) decision needed within an exceptionally short time; and (9) need to decide preliminary issues before final disposition. It may include two or more related cases. Complex litigation typically includes such cases as antitrust cases; cases involving a large number of parties or an unincorporated association of large membership; cases involving requests for injunctive relief affecting the operation of large business entities; patent cases; copyright and trademark cases; common disaster cases such as those arising from aircraft crashes or marine disasters; actions brought by individual stockholders; stockholder's derivative and stockholder's representative actions; class actions or potential class actions; and other civil (and criminal) cases involving unusual multiplicity or complexity of factual issues. See §0.22 of the first Manual for Complex Litigation and Manual for Complex Litigation Second, Chapter 33.

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
ALAN FRANK, O.D., on behalf of himself and all other similarly situated,

(b) County of Residence of First Listed Plaintiff **LACKAWANNA COUNTY**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
David J. Stanoch, Esquire, Golomb & Honik, P.C., 1515 Market Street, Suite 1100, Philadelphia, PA 19102; Phone: (215) 985-9177

DEFENDANTS
DAVIS VISION

County of Residence of First Listed Defendant **DELAWARE COUNTY**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☒ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 422 Appeal 28 USC 158	☐ 375 False Claims Act
☐ 120 Marine	☐ 310 Airplane	☐ 365 Personal Injury - Product Liability	☐ 690 Other	☐ 423 Withdrawal 28 USC 157	☐ 400 State Reapportionment
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability			☒ 410 Antitrust
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability		PROPERTY RIGHTS	☐ 430 Banks and Banking
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY		☐ 820 Copyrights	☐ 450 Commerce
☐ 151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud		☐ 830 Patent	☐ 460 Deportation
☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending		☐ 840 Trademark	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	LABOR	SOCIAL SECURITY	☐ 480 Consumer Credit
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	☐ 710 Fair Labor Standards Act	☐ 861 HIA (1395ff)	☐ 490 Cable/Sat TV
☐ 190 Other Contract	☐ 360 Other Personal Injury		☐ 720 Labor/Management Relations	☐ 862 Black Lung (923)	☐ 850 Securities/Commodities/ Exchange
☐ 195 Contract Product Liability	☐ 362 Personal Injury - Medical Malpractice		☐ 740 Railway Labor Act	☐ 863 DIWC/DIWW (405(g))	☐ 890 Other Statutory Actions
☐ 196 Franchise			☐ 751 Family and Medical Leave Act	☐ 864 SSID Title XVI	☐ 891 Agricultural Acts
			☐ 790 Other Labor Litigation	☐ 865 RSI (405(g))	☐ 893 Environmental Matters
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	☐ 791 Employee Retirement Income Security Act	FEDERAL TAX SUITS	☐ 895 Freedom of Information Act
☐ 210 Land Condemnation	☐ 440 Other Civil Rights	Habeas Corpus:		☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 896 Arbitration
☐ 220 Foreclosure	☐ 441 Voting	☐ 463 Alien Detainee	IMMIGRATION	☐ 871 IRS—Third Party 26 USC 7609	☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 230 Rent Lease & Ejectment	☐ 442 Employment	☐ 510 Motions to Vacate Sentence	☐ 462 Naturalization Application		☐ 950 Constitutionality of State Statutes
☐ 240 Torts to Land	☐ 443 Housing/ Accommodations	☐ 530 General	☐ 465 Other Immigration Actions		
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 535 Death Penalty			
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other	Other:			
	☐ 448 Education	☐ 540 Mandamus & Other			
		☐ 550 Civil Rights			
		☐ 555 Prison Condition			
		☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C Sections 1331, 1337 and 1367

Brief description of cause:
Antitrust Litigation

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $ **5,000,000.00**

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:

JUDGE _____ DOCKET NUMBER _____

DATE
06/12/2017

SIGNATURE OF ATTORNEY OF RECORD
/s/ DJS8892

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

JS 44 Reverse (Rev. 12/12)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. **Origin.** Place an "X" in one of the six boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 731 Scranton Carbondale Highway, Eynon, PA 18403

Address of Defendant: 3805 West Chester Pike, Newtown, Square, PA 19073

Place of Accident, Incident or Transaction: Pennsylvania

(*Use Reverse Side For Additional Space*)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes☐ No☒

Does this case involve multidistrict litigation possibilities? Yes☐ No☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes☐ No☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes☐ No☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes☐ No☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes☐ No☒

CIVIL: (Place ✔ in ONE CATEGORY ONLY)

A. *Federal Question Cases*:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☒ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
    (Please specify) _____

B. *Diversity Jurisdiction Cases*:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
    (Please specify) _____

ARBITRATION CERTIFICATION

(*Check Appropriate Category*)

I, David J. Stanoch, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of $150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 06/12/2017 _____ Attorney-at-Law 91342 Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 6/12/2017 _____ Attorney-at-Law 91340 Attorney I.D.#

CIV. 609 (5/2012)