

1 Teresa C. Chow, Esq. (SBN 237694)  
2 Marcus McCutcheon, Esq. (SBN 281444)  
3 BAKER & HOSTETTLER LLP  
4 1900 Avenue of the Stars, Suite 2700  
5 Los Angeles, CA 90067  
6 Telephone: (310) 820-8800  
7 Facsimile: (310) 820-8859  
8 Email: [tchow@bakerlaw.com](mailto:tchow@bakerlaw.com)  
[mmccutcheon@bakerlaw.com](mailto:mmccutcheon@bakerlaw.com)  
9 Attorneys for Defendants  
10 TOTAL VISION, LLC; JOHN C. PACK, O.D. AND  
11 BEVERLY BIANES O.D., INC.; JOHN C. PACK,  
12 O.D.; and BEVERLY BIANES, O.D.  
13 [Additional counsel listed on next page]  
14  
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 COUNTY OF SAN DIEGO, CENTRAL DIVISION  
17  
18 ANJANETTE RAMEY, and JANE DOE, on  
19 behalf of themselves and all other persons  
20 similarly situated,  
21  
22 Plaintiffs,  
23  
24 v.  
25  
26 TOTAL VISION, LLC, a Delaware limited  
27 liability company, and JOHN C. PACK, O.D.  
28 AND BEVERLY BIANES O.D., INC.; JOHN  
C. PACK, O.D.; BEVERLY BIANES, O.D.;  
and DOES 1 through 100,  
Defendants.

Case No.: 37-2021-00002017-CU-MC-CTL  
[Consolidated with Case No.:  
37-2021-00018344-CU-BT-CTL]  
Assigned To: Hon. Judge Carolyn Caietti  
**SETTLEMENT AND RELEASE  
AGREEMENT**  
Date Action Filed: Jan. 15, 2021  
Amended Complaint Filed: Nov. 18, 2021

1  
SETTLEMENT AND RELEASE AGREEMENT

1 David S. Casey, Jr., Esq. (SBN 060768)  
2 Gayle M. Blatt, Esq. (SBN 122048)  
3 P. Camille Guerra, Esq. (SBN 326546)  
4 Catherine McBain, Esq. (SBN 303911)  
5 CASEY GERRY  
6 FRANCAVILLA BLATT, LLP  
7 110 Laurel Street  
8 San Diego, CA 92101  
9 Telephone: (619) 238-1811  
10 Facsimile: (619) 544-9232  
11 Email: [dcasey@cglaw.com](mailto:dcasey@cglaw.com)  
[gmb@cglaw.com](mailto:gmb@cglaw.com)  
12  
13 [camille@cglaw.com](mailto:camille@cglaw.com)  
[kmc Bain@cglaw.com](mailto:kmc Bain@cglaw.com)  
14 Joshua B. Swigart, Esq. (SBN 225557)  
15 SWIGART LAW GROUP, APC  
16 2221 Camino del Rio S., Suite 308  
17 San Diego, CA 92108  
18 Telephone: (866) 219-3343  
19 Email: [josh@swigartlawgroup.com](mailto:josh@swigartlawgroup.com)  
20 Attorneys for Plaintiff  
21 ANJANETTE RAMEY and  
22 THE PUTATIVE CLASS  
23  
24 Patrick N. Keegan, Esq. (SBN 167698)  
25 KEEGAN & BAKER, LLP  
26 2292 Faraday Avenue, Suite 100  
27 Carlsbad, CA 92008  
28 Telephone: (760) 929-9303  
Facsimile: (760) 929-9260  
Email: [pkeegan@keeganbaker.com](mailto:pkeegan@keeganbaker.com)  
Attorneys for Plaintiff  
JANE DOE and  
THE PUTATIVE CLASS

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SETTLEMENT AND RELEASE AGREEMENT  
4910-3981-7054.1

1 This Settlement and Release Agreement ("Agreement" or "Settlement Agreement") is  
2 entered into by and between plaintiffs Anjanette Ramey ("Ramey") and Jane Doe, a pseudonym  
3 for Lanelle Kidd-Tackaberry, ("Doe") (collectively, "Plaintiffs"), individually and on behalf of the  
4 Settlement Class (as defined below), by and through their counsel Gayle Blatt, of Casey Gerry  
5 Francavilla Blatt, LLP; Joshua B. Swigart, of Swigart Law Group, APC; and Patrick N. Keegan, of  
6 Keegan & Baker, LLP (together, "Class Counsel"), on one hand, and defendants Total Vision, LLC  
7 ("Total Vision"), John C. Pack, O.D. and Beverly BIANES, O.D., Inc. ("Inc."), John C. Pack, O.D.  
8 ("Pack"), and Beverly BIANES, O.D. ("BIANES," and together with Pack, the "Individual  
9 Defendants") (collectively, the "Defendants") on the other hand, in the above-captioned  
10 consolidated putative class actions ("Litigation"). Defendants and Plaintiffs are each referred to as  
11 a "Party" and are collectively referred to herein as the "Parties." The Settlement Agreement is  
12 subject to Court approval and is intended by the Parties to fully, finally, and forever resolve,  
13 discharge, and settle the Released Claims (as defined below), upon and subject to the terms and  
14 conditions hereof.  
15  
16 **I. RECITALS**  
17  
18 1. Total Vision is a network of eye care providers in California. Plaintiff Ramey alleges  
19 that she is a patient of Total Vision.  
20  
21 2. Inc. is an optometry provider in the Total Vision network.  
22  
23 3. Pack is a Doctor of Optometry and a principal of Inc.  
24  
25 4. BIANES is a Doctor of Optometry and a principal of Inc. Plaintiff Doe alleges that she  
26 is a patient of Inc. and the Individual Defendants.  
27  
28 5. As alleged by Plaintiffs, the Litigation arises out of a data incident suffered by Total  
Vision in October 2020 involving the potential access of medical and personal information of  
approximately 88,722 California residents (the "Data Security Incident").<sup>1</sup> Specifically, Plaintiffs

<sup>1</sup> Total Vision confirms that it sent via direct mail notices of the Data Security Incident to 88,722  
individuals with California addresses, an exemplar of which is attached as Exhibit A to Plaintiffs'  
Amended Consolidated Class Action Complaint, dated November 18, 2021. While Total Vision  
responded to written discovery stating it sent patient notice letters to 234,944 individuals as a result  
of the Data Security Incident, this settlement and the Settlement Class (as defined below) includes

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1 and other the Settlement Class members were sent notification letters ("Data Security Incident  
2 Notification Letters") by Total Vision dated December 4, 2020 regarding the Data Security  
3 Incident." Plaintiffs also alleged that Total Vision failed to properly protect the confidential  
4 medical and personal information they collected, created, used, and stored, and that as a direct result  
5 of Total Vision's negligence and failures, an unauthorized person or persons gained full access to  
6 one or more of Total Vision's computer database servers in October 2020, allowing at least one  
7 unauthorized person to access, view, exfiltrate, steal and/or disclose unencrypted medical and  
8 personal identifying information ("PII")—including names, addresses, dates of birth, Social  
9 Security numbers, and prescription information—of Plaintiffs and other similarly situated  
10 individuals. On November 18, 2021, Plaintiffs filed their Amended Consolidated Class Action  
11 Complaint ("Complaint"). Plaintiffs allege six causes of action: (1) Violation of California's Unfair  
12 Competition Law, Cal. Bus. and Prof. Code § 17200, *et seq.*; (2) Negligence; (3) Breach of Implied  
13 Contract; (4) Violation of the Confidentiality of Medical Information Act, Cal. Civ. Code § 56, *et*  
14 *seq.* as to Defendant Total Vision; (5) Violation of the Confidentiality of Medical Information Act,  
15 Cal. Civ. Code § 56, *et seq.* on behalf of the Subclass against Defendants Pack and BIANES, John C.  
16 Pack (individually), and Beverly BIANES (individually); and (6) Breach of California Security  
17 Notification Laws, Cal. Civil Code § 1798.82.  
18  
19 6. Defendants deny the claims asserted against it in the Litigation, deny all allegations of  
20 wrongdoing and liability, and deny all material allegations of the operative Complaint. Defendants  
21 contend that, after transmitting the Data Security Incident Notification Letters, Total Vision's  
22 forensic investigation concluded that there was no evidence that any medical information or PII  
23 was accessed or exfiltrated during the Data Security Incident.  
24  
25 7. Plaintiffs and Class Counsel (as defined below) believe that the legal claims asserted  
26 in the Litigation have merit. Class Counsel have investigated the facts relating to the claims and  
27 defenses alleged and the underlying events in the Litigation, have made a thorough study of the  
28 only those persons who were sent notification letters addressed to a California address.

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SETTLEMENT AND RELEASE AGREEMENT

legal principles applicable to the claims and defenses asserted in the Litigation, and have conducted a thorough assessment of the strengths and weaknesses of the Parties' respective positions.

8. The Parties desire to settle the Litigation and all existing and potential claims arising out of or related to the allegations or subject matter of the Complaint and the Litigation on the terms and conditions set forth herein for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing to litigate the Litigation.

9. On November 21, 2023, Counsel for the Parties engaged in a mediation before Bruce A. Friedman, Esq. concerning a possible settlement of the claims asserted or that could have been asserted in the Litigation. This mediation resulted in a settlement in principle, the terms of which are reflected in this Settlement Agreement.

10. Plaintiffs and Class Counsel, on behalf of the Settlement Class, have concluded, based upon their investigation, and taking into account the contested issues involved, the expense and time necessary to prosecute the Litigation through trial, the risks and costs associated with further prosecution of the Litigation, the uncertainties of complex litigation, the desired outcome from continued litigation, and the substantial benefits to be received pursuant to this Settlement Agreement, that a settlement with Defendants on the terms set forth herein is fair and reasonable and in the best interest of Plaintiffs and the Settlement Class. Plaintiffs and Class Counsel believe that the Settlement confers substantial benefits upon the Settlement Class.

11. The Parties agree and understand that neither this Settlement Agreement, nor the settlement it represents, shall be construed as an admission by Defendants of any wrongdoing whatsoever, including an admission of a violation of any statute or law or of liability on the claims or allegations in the Litigation or any other similar claims in other proceedings, or that any such claims would be suitable for class treatment.

12. The Parties, by and through their respective duly authorized counsel of record, and intending to be legally bound hereby, agree that the Litigation, and all matters and the claims in the Complaint, and all matters and claims potentially arising out of or related to the allegations or subject matter of the Complaint and Litigation, shall be settled, compromised, and dismissed, on the merits and with prejudice, upon the following terms and conditions.

i. "Defendant's Counsel" means Paul G. Karlsgodt and Teresa C. Chow of Baker & Hostetler LLP, located at 1801 California Street, Suite 4400, Denver, CO, 80202; and 1900 Avenue of the Stars, Suite 2700, Los Angeles, CA 90067, respectively.

j. "Effective Date" means the date defined in Paragraph 86 of this Settlement Agreement.

k. "Attorneys' Fees, Costs, and Expenses Award" means the amount of attorneys' fees, expenses, and reimbursement of Litigation Costs awarded by the Court to Class Counsel.

l. "Final" with respect to a judgment or order means that all of the following have occurred: (i) the time expires for noticing any appeal; (ii) if there is an appeal or appeals, completion, in a manner that finally affirms and leaves in place the judgment or order without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration, rehearing *en banc*, or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) final dismissal of any appeal or the final dismissal of any proceeding on certiorari.

m. "Final Approval Hearing" means the hearing to determine whether the Settlement should be given final approval and whether the applications of Class Counsel for attorneys' fees, costs, and expenses should be approved.

n. "Final Approval Order" means the order of the Court finally approving this Settlement.

o. "Final Judgment" means the dismissal with prejudice in the Litigation, entered in connection with the Settlement and Final Approval Order.

p. "Litigation" means the lawsuit entitled *Anjanette Ramey, and Jane Doe v. Total Vision, LLC; John C. Pack, O.D. and Beverly BIANES, O.D., Inc.; John C. Pack, O.D., Beverly BIANES, O.D., and DOES 1 through 100*, pending in the Superior Court for the State of California, County of San Diego, filed on November 18, 2021.

q. "Litigation Costs" means costs and expenses incurred by Class Counsel in connection with commencing, prosecuting, mediating, settling the Litigation, and obtaining an order of final judgment.

## II. DEFINITIONS

13. As used herein and in the related documents attached hereto as exhibits, the following terms have the meanings specified below:

a. "Administration Costs" shall include all costs related to carrying out the notice plan and administering the claims and settlement fund distribution process.

b. "Claims Deadline" means the deadline for filing claims set at a date certain ninety (90) Days from the Notice Date, as defined in Paragraph 44.

c. "Claim Form" means the form members of the Settlement Class must complete and submit on or before the Claims Deadline to be eligible for the benefits described herein, and substantially in the form of **Exhibit A** to this Settlement Agreement. The Claim Form shall require a sworn affirmation under penalty of perjury but shall not require a notarization or any other form of verification.

d. "Claims Period" means the period for filing claims up until a date certain ninety (90) Days from the Notice Date.

e. "Claimants" shall have the meaning given in Paragraph 34.

f. "Class Counsel" shall mean Gayle Blatt of Casey Gerry Francavilla Blatt, LLP, 110 Laurel Street, San Diego, CA 92101; telephone (619) 238-1811, e-mail: gmb@cglaw.com; Joshua B. Swigart of Swigart Law Group, 2221 Camino del Rio S., Suite 308, San Diego, CA, 92108, telephone: (866) 219-3343, email: josh@swigartlawgroup.com; and Patrick N. Keegan, Esq. of Keegan & Baker, LLP, 2292 Faraday Avenue, Suite 100, Carlsbad, CA 92008, telephone: (760) 929-9303, email: pkeegan@keeganbaker.com.

g. "Court" means the Superior Court of the State of California, County of San Diego.

h. "Day(s)" means calendar days, but does not include the day of the act, event, or default from which the designated period of time begins to run. Further and notwithstanding the above, when computing any period of time prescribed or allowed by this Settlement Agreement, "Days" includes the last day of the period unless it is a Saturday, a Sunday, or a federal legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or federal legal holiday.

r. "Long-Form Notice" means the written notice that will be available on the Settlement Website (as defined below), substantially in the form of **Exhibit B** to this Settlement Agreement.

s. "Non-Profit Residual Recipient" means the State Bar of California's Greg E. Knoll Justice Gap Fund.

t. "Notice and Claims Administration Costs" means all approved reasonable costs incurred or charged by the Settlement Administrator in connection with providing notice to members of the Settlement Class and administering the Settlement. This does not include any separate costs incurred directly by Defendants or any of Defendants' attorneys, agents or representatives in this Litigation.

u. "Net Settlement Fund" means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) any taxes owed by the Settlement Fund, (ii) Notice and Claims Administration Costs, (iii) the cost of identity theft protection, credit monitoring, and/or fraud resolution services, if offered, (iv) any Service Awards approved by the Court, and (iii) any Attorneys' Fees, Costs, and Expenses approved by the Court.

v. "Notice Program" means the notice program described in Section VIII.

w. "Objection Deadline" shall have the meaning set forth in Paragraph 52 or as otherwise ordered by the Court.

x. "Parties" means Plaintiffs and Defendants collectively, and a "Party" means one of the Plaintiffs or Defendants.

y. "Plaintiffs' Released Claims" means all claims and other matters released in and by Section XVI of this Settlement Agreement.

z. "Postcard Notice" means the written notice that will be provided on postcards to be mailed to Settlement Class Members (as defined below) via U.S. Mail, substantially in the form of **Exhibit C** to this Settlement Agreement.

aa. "Preliminary Approval Date" means the date the Preliminary Approval Order has been executed and entered by the Court.

bb. "Preliminary Approval Order" means the order certifying the proposed Class for settlement purposes, preliminarily approving this Settlement Agreement, approving the Notice Program, and setting a date for the Final Approval Hearing, entered in a format the same as or substantially similar to that of the Proposed Preliminary Approval Order attached hereto as **Exhibit D**.

cc. "Related Entities" means Defendants' respective past or present parents, subsidiaries, divisions, and related or affiliated entities of any nature whatsoever, whether direct or indirect, as well as each of Defendants' and these entities' respective predecessors, successors, members, directors, officers, employees, principals, agents, attorneys, providers, customers, 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 this Litigation.

dd. "Released Claims" means all of Plaintiffs' Released Claims and Released Class Claims.

ee. "Released Class Claims" means all class claims and other matters released in and by Section XVI of this Settlement Agreement.

ff. "Released Persons" means Defendants and the Related Entities, and each of their present and former parents, subsidiaries, divisions, departments, affiliates, predecessors, successors, assigns, insurers, and each of the foregoing's former or present directors, trustees, officers, employees, representatives, agents, providers, consultants, advisors, attorneys, accountants, partners, vendors, customers, insurers, reinsurers, and subrogees.

gg. "Settlement" means the settlement reflected by this Settlement Agreement.

hh. "Settlement Administrator" means the class action settlement administrator retained to carry out the notice plan and administer the claims and settlement fund distribution process. After reviewing bids, the Parties, subject to Court approval, have agreed to use ILYM Group, Inc. as Settlement Administrator in this matter.

ii. "Settlement Agreement" means this Settlement Agreement, including releases and all exhibits hereto.

jj. "Settlement Class" means "All persons to whom Total Vision sent via direct mail notice of the Data Security Incident addressed to a California address." Total Vision agrees not to oppose certification of the Settlement Class, conditionally and for settlement purposes only. The Data Security Incident Notification Letters sent by Total Vision were dated December 4, 2020 and were mailed in or about December 2020. The Settlement Class is made up of 88,722 persons who were sent Data Security Incident Notification Letters to a California address. Excluded from the Settlement Class are Defendants and their respective affiliates, parents, subsidiaries, officers, and directors, as well as the judge(s) presiding over this matter and the clerks of said judge(s). This exclusion does not apply, and should not be read to apply, to any employees of Defendants and their respective Related Entities who received a Data Security Incident Notification Letter in or about December 2020 and who do not validly opt out of the Settlement as set forth in Section IX of this Settlement Agreement.

kk. "Settlement Class Member[s]" means all persons who are members of the Settlement Class. Persons who validly opt out of the Settlement by following the procedures set forth in Section IX of this Settlement Agreement are not Settlement Class Members.

ll. "Settlement Fund" means the non-reversionary sum of four hundred and seventy-five thousand dollars and no cents (\$475,000.00), to be paid by Defendant as specified in this Agreement, including any interest accrued thereon after payment.

mm. "Settlement Website" means a dedicated website created and maintained by the Settlement Administrator, which will contain relevant documents and information about the Settlement, including this Settlement Agreement, the Long-Form Notice, and the Claim Form, among other things as agreed upon by the Parties and approved by the Court as required.

### III. CERTIFICATION OF THE SETTLEMENT CLASS

14. For settlement purposes only, the Parties will request that the Court certify the Settlement Class.

15. If this Settlement Agreement is terminated or disapproved, or if the Effective Date should not occur for any reason, then the Parties' request for certification of the Settlement Class

will be withdrawn and deemed to be of no force or effect for any purpose in this or any other proceeding.

### IV. THE SETTLEMENT FUND

16. The Settlement Fund: Total Vision agrees to make a payment of four hundred and seventy-five thousand dollars and no cents (\$475,000.00) and deposit into an FDIC insured, interest bearing account (for the benefit of the Settlement Class) established and administered by the Parties' mutually selected Settlement Administrator within thirty (30) Days after this Court enters the Preliminary Approval Order, which shall be available to cover Notice and Claims Administration Costs incurred prior to entry of the Final Approval Order and Final Judgment. For the avoidance of doubt, and for purposes of this Settlement Agreement only, Defendant's liability shall not exceed four hundred and seventy-five thousand dollars and no cents (\$475,000.00), inclusive of Administration Costs, attorneys' fees, costs, and expenses. The timing set forth in this provision is contingent upon the receipt by Total Vision of a W-9 from ILYM Group, Inc. for the Settlement Fund by the date that the Preliminary Approval Order is issued. If Total Vision does not receive this information by the date that the Preliminary Approval Order is issued, the payments specified by this paragraph shall be made within thirty (30) Days after Total Vision receives this information.

17. Custody of the Settlement Fund: The Settlement Fund shall be deposited in an appropriate trust account established by the Settlement Administrator but shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Agreement or returned to those who paid the Settlement Fund in the event this Agreement is voided, terminated, or cancelled.

a. In the event this Agreement is voided, terminated, or cancelled due to lack of approval from the Court or any other reason: (i) the Class Representatives and Class Counsel shall have no obligation to repay to Total Vision any of the Notice and Claims Administration Costs that have been paid or incurred in accordance with the terms and conditions of this Agreement; (ii) any amounts remaining in the Settlement Fund, including all interest earned on the Settlement Fund net of any taxes, shall be returned to Total Vision within ten (10) Days of the final order denying

approval of the Settlement; and (iii) no other person or entity shall have any further claim whatsoever to such amounts. The Parties will cooperate in good faith in an effort to obtain final approval of the Settlement including to reach agreement on any modification to the Settlement necessary to obtain final approval.

18. Non-Reversionary: This settlement is not a reversionary settlement. As of the Effective Date, all rights of Total Vision in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is voided, cancelled, or terminated, as described in Section XV of this Agreement. In the event the Effective Date occurs, no portion of the Settlement Fund shall be returned to Total Vision.

19. Use of the Settlement Fund: As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for: (i) any taxes owed by the Settlement Fund, (ii) any Service Awards approved by the Court, (iii) any Attorneys' Fees, Costs, and Expenses Award as approved by the Court, and (iv) any other benefits to Settlement Class Members, pursuant to the terms and conditions of this Agreement.

20. Financial Account: The Settlement Fund shall be an account established and administered by the Settlement Administrator, at a financial institution recommended by the Settlement Administrator and approved by Class Counsel and Defendant and shall be maintained as a qualified settlement fund pursuant to Treasury Regulation § 1.468 B-1, *et seq.*

21. Payment/Withdrawal Authorization: No amounts may be withdrawn from the Settlement Fund unless (i) expressly authorized by the Settlement Agreement, or as may be (ii) approved by the Court. The Settlement Administrator shall provide Class Counsel and Defendant Total Vision with notice of any withdrawal or other payment the Settlement Administrator proposes to make from the Settlement Fund before the Effective Date at least seven (7) business days prior to making such withdrawal or payment.

22. Payments to Class Members: The Settlement Administrator, subject to such supervision and direction of the Court and Class Counsel as may be necessary or as circumstances may require, shall administer and oversee distribution of the Settlement Fund to Claimants pursuant to this Agreement.

23. Treasury Regulations and Fund Investment: The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any taxes owed by the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation ("FDIC") at a financial institution determined by the Settlement Administrator and approved by the Parties. Funds may be placed in a non-interest-bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

24. Taxes: All taxes owed by the Settlement Fund shall be paid out of the Settlement Fund, and shall be timely paid by the Settlement Administrator without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for taxes (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by any Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative and Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

#### 25. Limitation of Liability

a. Defendants and their counsel shall not have any responsibility for or liability whatsoever with respect to (i) any act, omission, or determination of Class Counsel, the Settlement Administrator, or any of their respective designees or agents, in connection with the administration

of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns. Defendants and their counsel also shall have no obligation to communicate with Settlement Class Members and others regarding amounts paid under the Settlement.

b. The Class Representatives and Class Counsel shall not have any liability whatsoever with respect to (i) any act, omission, or determination of the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

### V. BENEFITS TO SETTLEMENT CLASS MEMBERS

26. Compensation to Settlement Class Members. Settlement Class Members must timely submit a valid Claim Form in order to receive a settlement benefit. Claims will be subject to review for completeness and plausibility by the Settlement Administrator. For claims deemed invalid, the Settlement Administrator will provide claimants an opportunity to cure in the manner set forth below. All Settlement Class Members who submit a valid claim form will receive a *pro rata* share of the Settlement Fund, which will be paid in accordance with Paragraph 16 above.

27. Cash Compensation. Settlement Class Members may submit a claim for a cash payment and/or a claim for documented Out-of-Pocket Expenses that are fairly traceable to the Data Incident up to one thousand dollars and no cents (\$1,000.00), that shall be allocated by proration as described in Paragraphs 38 and 92.

28. Business Practice Commitments and Statement of Financial Condition. As an integral part of this Settlement, concurrently with execution of the Settlement Agreement Total Vision will provide a confidential declaration to Class Counsel, which need not be filed unless required by the Court, satisfactorily attesting to improved data security measures implemented in response to the Litigation and after the Data Security Incident, which Total Vision agrees to maintain for a minimum period of two years ("Business Practice Commitments"). Costs related to the implementation and maintenance of the Business Practice Commitments are the responsibility of Total Vision separate and apart from its payment of the GSA/Common Fund. Additionally, concurrently with execution of the Settlement Agreement, Total Vision will provide a confidential declaration to Class Counsel, which need not be filed unless required by the Court, satisfactorily attesting to the financial position of the Company in support of the Settlement.

### VI. SETTLEMENT ADMINISTRATION

29. All agreed upon and reasonable Notice and Settlement Administration Costs will be paid by Total Vision.

30. The Parties agree to solicit and did solicit competitive bids for settlement administration, including Notice and Claims Administration Costs.

31. The Settlement Administrator will provide written notice via U.S. Mail to the most mailing address in Defendants' records associated with each Settlement Class Member. Total Vision will provide a list of Settlement Class Members including mailing addresses to the Settlement Administrator within five (5) business days of entry of an order granting preliminary approval of the settlement.

32. The Settlement Administrator will cause the Notice Program to be effectuated in accordance with the terms of the Settlement Agreement and any orders of the Court. The Settlement Administrator may request the assistance of the Parties to facilitate providing notice and to accomplish such other purposes as may be approved by both Class Counsel and Defendants' Counsel. The Parties shall reasonably cooperate with such requests.

33. The Settlement Administrator will administer the claims process in accordance with the terms of the Settlement Agreement and any additional processes agreed to by both Class

Counsel and Defendants' Counsel, subject to the Court's supervision and direction as circumstances may require.

34. To make a claim, a Settlement Class Member must complete and submit a valid, timely, and sworn Claim Form. A Claim Form shall be submitted via U.S. Mail or online at the Settlement Website.

35. The Settlement Administrator will review and evaluate each Claim Form, including any required documentation submitted, for validity, timeliness, and completeness.

36. If, in the determination of the Settlement Administrator, the Settlement Class Member submits a timely but incomplete or inadequately supported Claim Form, the Settlement Administrator shall give the Settlement Class Member notice of the deficiencies, and the Settlement Class Member shall have twenty-one (21) Days from the date of the written notice to cure the deficiencies. The Settlement Administrator will provide notice of deficiencies concurrently to Defendant's Counsel and Class Counsel. If the defect is not cured within the 21- Day period, then the Claim will be deemed invalid. All Settlement Class Members who submit a valid and timely Claim Form, including a Claim Form deemed defective but timely cured, shall be considered "Claimants."

37. The Settlement Administrator will maintain records of all Claim Forms submitted at least until three hundred and sixty (360) Days after entry of the Final Judgment. Claim Forms and supporting documentation may be provided to the Court upon request and to Total Vision, Class Counsel and Defendants' Counsel to the extent necessary to resolve claims determination issues pursuant to this Settlement Agreement. Class Counsel or the Settlement Administrator will provide other reports or information that the Court may request or that the Court or Defendants' Counsel may reasonably require.

38. Subject to the terms and conditions of this Settlement Agreement, forty-five (45) Days after the Effective Date, the Settlement Administrator shall make a payment by check via U.S. Mail, or a digital or electronic payment (each, alternatively, a "Claim Payment") to each Claimant for their *pro rata* share of the Net Settlement Fund, in accordance with the following distribution procedures. The Settlement Administrator shall utilize the Net Settlement Fund to make all Cash

1 Compensation payments and/or Out-of-Pocket Expenses reimbursements as described in Paragraph  
2 28 and 92. The approved amount of each Cash Compensation claim and/or Out-of-Pocket Expenses  
3 reimbursement claim shall be determined by the Settlement Administrator, and payments and/or  
4 reimbursements shall be made from the Net Settlement Fund on a *pro rata* basis.

5 39. Each Claim Payment shall be made by check delivered via U.S. Mail, or by other  
6 electronic means provided by the Claimant on his or her Claim Form.

7 40. All Claim Payments shall automatically be void one hundred twenty (120) Days after  
8 the initial distribution of Claim Payments to the Claimants. If an initial Claim Payment becomes  
9 void for any reason, the Claimant shall have until one hundred and fifty (150) Days after the initial  
10 distribution of Claim Payments to request re-issuance. All requests for re-issuance shall be made  
11 to the Settlement Administrator. A Claimant is entitled to make only one request for re-issuance.  
12 All re-issued Claim Payments shall be void thirty (30) Days after re-issuance. If no request for re-  
13 issuance is made within the earlier of one hundred and fifty (150) Days after the initial distribution  
14 of Claim Payments or thirty (30) Days after re-issuance of a Claim Payment, the Claimant's right  
15 to receive monetary relief shall be extinguished, and the funds shall instead be disbursed to the  
16 Non-Profit Residual Recipient agreed upon by the Parties and approved by the Court, or, in the  
17 event the Non-Profit Residual Recipient is not approved by the Court, to a *cy pres* recipient selected  
18 by the Court. To the extent any monies remain in the Net Settlement Fund after all Claim Payments  
19 are paid or become void, after the distribution of Claim Payments to the Claimants, such monies  
20 shall be distributed to the Non-Profit Residual Recipient agreed upon by the Parties and approved  
21 by the Court, or, in the event the Non-Profit Residual Recipient is not approved by the Court, to a  
22 *cy pres* recipient selected by the Court.

23 41. For any Claim Payment returned to the Settlement Administrator as undeliverable, the  
24 Settlement Administrator shall make reasonable efforts to find valid electronic payment  
25 information and resend the Claim Payment within thirty (30) Days after the payment is returned to  
26 the Settlement Administrator as undeliverable. The Settlement Administrator shall only make one  
27 attempt to resend a Claim Payment.  
28

1 42. Except as expressly set forth herein, no portion of the Net Settlement Fund shall revert  
2 or be repaid to Total Vision after the Effective Date. Any residual funds remaining in the Net  
3 Settlement Fund, after all payments and distributions are made pursuant to the terms and conditions  
4 of this Agreement shall be distributed according to the provisions outlined in Paragraph 39.

5 **VII. NOTICE TO SETTLEMENT CLASS MEMBERS**

6 43. The Parties agree the following Notice Program provides reasonable notice to the  
7 Settlement Class.

8 44. Direct Notice shall be provided to Settlement Class Members via U.S. Mail.

9 45. Within five (5) business days of the entry of the Preliminary Approval Order, Total  
10 Vision shall provide the Settlement Administrator with the name and the most recent mailing  
11 address in Defendants' records associated with each Settlement Class Member (the "Class List").

12 46. Within thirty (30) Days following entry of the Preliminary Approval Order ("Notice  
13 Date"), the Settlement Administrator shall utilize the Class List to provide the Postcard Notice via  
14 U.S. Mail to all Settlement Class Members.

15 47. No later than thirty (30) Days following entry of the Preliminary Approval Order, and  
16 on or before the date of the mailing of the Postcard Notice to all Settlement Class Members, the  
17 Settlement Administrator will create a dedicated Settlement Website. The Settlement Administrator  
18 shall cause the Complaint, Long-Form Notice, Postcard Notice, Claim Form, this Settlement  
19 Agreement, and other relevant settlement and court documents to be available on the Settlement  
20 Website. Any other content proposed to be included or displayed on the Settlement Website shall  
21 be approved in advance by Class Counsel and Defendants' Counsel, which approval shall not be  
22 unreasonably withheld.

23 48. Claimants shall be able to submit their claims via the Settlement Website.

24 49. The Settlement Website shall be maintained from the Notice Date until after all Claim  
25 Payments are paid or become void.

26 50. Claim Forms shall be returned to the Settlement Administrator by mail and postmarked  
27 or received by the Claims Deadline or submitted to the Settlement Administrator online by the  
28 Claims Deadline, or shall be forever barred as untimely unless such untimely Claim Form is

1 otherwise approved by the Court at the Final Approval Hearing, for good cause shown as  
2 demonstrated by the applicable Settlement Class Member.

3 51. Prior to the Final Approval Hearing, the Settlement Administrator shall provide to  
4 Class Counsel to file with the Court, an appropriate affidavit or declaration from the Settlement  
5 Administrator concerning compliance with the Court-approved Notice Program.

6 **VIII. OBJECTIONS TO THE SETTLEMENT**

7 52. Any Settlement Class Member who wishes to object to the proposed Settlement  
8 Agreement must file with the Court and serve a written objection(s) to the Settlement  
9 ("Objection(s)") on Class Counsel and Defendants' Counsel, at the addresses set forth in the Long-  
10 Form Notice.

11 53. Each Objection must (i) set forth the Settlement Class Member's full name, current  
12 address, telephone number, and email address; (ii) contain the Settlement Class Member's original  
13 signature; (iii) contain proof that the Settlement Class Member is a member of the Settlement Class  
14 (e.g., copy of settlement notice, copy of original December 2020 data incident notification letter);  
15 (iv) state that the Settlement Class Member objects to the Settlement, in whole or in part; (v) set  
16 forth a statement of the legal and factual basis for the Objection; (vi) provide copies of any  
17 documents that the Settlement Class Member wishes to submit in support of his/her position; (vii)  
18 identify all counsel representing the Settlement Class Member, if any; (viii) contain the signature  
19 of the Settlement Class Member's duly authorized attorney or other duly authorized representative,  
20 along with documentation setting forth such representation; and (ix) contain a list, including case  
21 name, court, and docket number, of all other cases in which the objector and/or the objector's  
22 counsel has filed an objection to any proposed class action settlement in the past three (3) years.

23 54. Objections must be filed with the Court and served on Class Counsel and Defendant's  
24 Counsel no later than the Objection Deadline. The Objection Deadline shall be included in the  
25 Postcard Notice and Long-Form Notice.

26 55. Class Counsel and Defendant's Counsel may, but need not, respond to the Objections,  
27 if any, by means of a memorandum of law served prior to the Final Approval Hearing.  
28

1 56. An objecting Settlement Class Member has the right, but is not required, to attend the  
2 Final Approval Hearing. If an objecting Settlement Class Member intends to appear at the Final  
3 Approval Hearing, either with or without counsel, he or she must also file a notice of appearance  
4 with the Court (as well as serve the notice on Class Counsel and Defendant's Counsel) by the  
5 Objection Deadline.

6 a. If the objecting Settlement Class Member intends to appear at the Final Approval  
7 Hearing through counsel, he or she must also identify the attorney(s) representing the objecting  
8 Settlement Class Member who will appear at the Final Approval Hearing and include the  
9 attorney's(s') name, address, phone number, e-mail address, state bar(s) to which counsel is  
10 admitted, as well as associated state bar numbers in his or her Objection.

11 b. Any Settlement Class Member who fails to timely file and serve an Objection and  
12 notice, if applicable, of his or her intent to appear at the Final Approval Hearing in person or through  
13 counsel pursuant to this Settlement Agreement, as detailed in the Long-Form Notice, and otherwise  
14 as ordered by the Court, shall not be permitted to object to the approval of the Settlement at the  
15 Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the  
16 terms of the Settlement Agreement by appeal or other means.

17 57. Any Settlement Class Member who does not submit a timely Objection in complete  
18 accordance with this Settlement Agreement, Postcard Notice, and Long-Form Notice, or as  
19 otherwise ordered by the Court, shall not be treated as having filed a valid Objection to the  
20 Settlement and shall forever be barred from raising any objection to the Settlement.

21 **IX. OPT OUT PROCEDURES**

22 58. Each Settlement Class Member wishing to opt out of the Settlement Class shall  
23 individually sign and timely submit written notice of such intent to the designated Post Office box  
24 established by the Claims Administrator, or via the Settlement Website. The written notice must  
25 clearly manifest a Settlement Class Member's intent to opt-out of the Settlement Class. To be  
26 effective, written notice must be postmarked no later than the Opt-Out Date.

27 59. All Settlement Class Members who submit valid and timely notices of their intent to  
28 optout of the Settlement Class, as set forth in paragraph 57 above, referred to herein as "Opt-Outs,"

1 shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. All  
2 persons falling within the definition of the Settlement Class who do not opt-out of the Settlement  
3 Class in the manner set forth in paragraph 57 above shall be bound by the terms of this Settlement  
4 Agreement and Judgment entered thereon.

5 **X. ATTORNEYS' FEES, COSTS, AND EXPENSES, AND SERVICE AWARDS**

6 60. Class Counsel shall request, and Defendants will not oppose, Court approval of an  
7 award of attorneys' fees, costs, and expenses (including but not limited to mediation fees and expert  
8 witness fees) not to exceed one-third (1/3) of the amount Settlement Fund, *i.e.*, one hundred fifty-  
9 eight thousand, three hundred and thirty-three dollars and thirty-three cents (" \$158,333.33) incurred  
10 in prosecuting the Litigation. For the avoidance of doubt, the Court approved amount of any  
11 attorneys' fees, costs, and expenses shall be paid from the Net Settlement Fund. Class Counsel  
12 agree to a division of attorneys' fees as awarded by the Court as follows: counsel for Plaintiff  
13 Ramey, Casey Gerry Francavilla Blatt, LLP and Swigart Law Group, APC shall collectively receive  
14 50%; and counsel for Plaintiff Lanelle Kidd-Tackaberry (pseudonymously referred to as Jane Doe),  
15 Keegan & Baker, LLP, shall receive 50%. The Parties did not discuss or agree upon payment of  
16 attorneys' fees, costs, and expenses until after they agreed on all materials terms of relief to the  
17 Settlement Class.

18 61. Class Counsel shall request the Court to approve a service award of five thousand  
19 dollars and no cents (\$5,000.00) for each of the named Plaintiffs, Ramey and Doe, which award is  
20 intended to recognize Plaintiffs for their efforts in the litigation and commitment on behalf of the  
21 Settlement Class ("Service Award"). For the avoidance of doubt, the Court approved amount for  
22 any Service Awards shall be paid from the Net Settlement Fund. The Parties did not discuss or  
23 agree upon payment of service awards until after they agreed on all materials terms of relief to the  
24 Settlement Class.

25 62. Class Counsel will file applications with the Court for the requested Service Awards  
26 and attorneys' fees, costs, and expenses no later than fourteen (14) Days prior to the Objection  
27 Deadline.  
28

1 63. The Parties agree that the Court's approval or denial of any request for the Service  
2 Awards or attorneys' fees are not conditions to this Settlement Agreement and are to be considered  
3 by the Court separately from final approval, reasonableness, and adequacy of the settlement. Any  
4 reduction to the Service Award or award of attorneys' fees, costs, or expenses shall not operate to  
5 terminate or cancel this Settlement Agreement.

6 **XI. NOTICES**

7 64. All notices to the Parties required by the Settlement Agreement shall be made in writing  
8 and communicated by mail to the following addresses:

9 All notices to Class Counsel or Plaintiffs shall be sent to:

10 Gayle M. Blatt

11 Casey Gerry

12 Francavilla Blatt, LLP

13 110 Laurel Street

14 San Diego, California 92101

15 *and*

16 Patrick N. Keegan

17 Keegan & Baker, LLP

18 2292 Faraday Avenue, Suite 100

19 Carlsbad, California 92008

20 All notices to Defendants' Counsel or Defendant shall be sent to:

21 Paul G. Karlsgodt

22 Baker & Hostetler LLP

23 1801 California Street, Suite 4400

24 Denver, Colorado, 80202

25 *and*

26 *///*

27 *///*

28 *///*

1 Teresa C. Chow

2 Baker & Hostetler LLP

3 1900 Avenue of the Stars, Suite 2700

4 Los Angeles, California 90067

5 65. Other than attorney-client communications or communications otherwise protected  
6 from disclosure pursuant to law or rule, the Parties shall promptly provide to each other copies of  
7 comments, Objections, or other documents or filings received from a Settlement Class Member as  
8 a result of the Notice Program.

9 **XII. SETTLEMENT APPROVAL PROCESS**

10 66. After execution of this Settlement Agreement, the Parties shall promptly move the  
11 Court to enter the Preliminary Approval Order, which:

12 a. Preliminarily approves this Settlement Agreement;

13 b. Provisionally certifies the Settlement Class;

14 c. Finds the proposed settlement is sufficiently fair, reasonable, adequate, and in the best  
15 interests of the Settlement Class;

16 d. Finds the Notice Program constitutes valid, due, and sufficient notice to the Settlement  
17 Class Members, and constitutes the best notice practicable under the circumstances, complying  
18 fully with the requirements of the laws of California, the Constitution of the United States, and any  
19 other applicable law and that no further notice to the Class is required beyond that provided through  
20 the Notice Program;

21 e. Appoints the Settlement Administrator;

22 f. Directs the Settlement Administrator to provide notice to Settlement Class Members in  
23 accordance with the Notice Program provided for in this Settlement Agreement;

24 g. Approves the Claim Form and directs the Settlement Administrator to administer the  
25 Settlement in accordance with the provisions of this Settlement Agreement;

26 h. Approves the Objection procedures as outlined in this Settlement Agreement;

27 i. Schedules a Final Approval Hearing to consider the final approval, reasonableness, and  
28 adequacy of the proposed settlement and whether it should be finally approved by the Court; and

1 j. Contains any additional provisions agreeable to the Parties that might be necessary or  
2 advisable to implement the terms of this Settlement Agreement.

3 **XIII. FINAL APPROVAL HEARING**

4 67. The Parties will recommend that the Final Approval Hearing shall be scheduled no  
5 earlier than one hundred thirty (130) Days after the entry of the Preliminary Approval Order.

6 68. The Parties may file a response to any objections and a Motion for Final Approval no  
7 later than fourteen (14) Days prior to the Objection Deadline.

8 69. Any Settlement Class Member who wishes to appear at the Final Approval Hearing,  
9 whether pro se or through counsel, must, by the Objection Deadline, either mail or hand-deliver to  
10 the Court or file a notice of appearance in the Litigation, take all other actions or make any  
11 additional submissions as may be required in the Long-Form Notice, this Settlement Agreement,  
12 or as otherwise ordered by the Court, and mail that notice and any other such pleadings to Class  
13 Counsel and Defendant's Counsel as provided in the Postcard and Long-Form Notice.

14 70. The Parties shall ask the Court to enter a Final Approval Order and Judgment which  
15 includes the following provisions:

16 a. A finding that the Notice Program fully and accurately informed all Settlement Class  
17 Members entitled to notice of the material elements of the settlement, constitutes the best notice  
18 practicable under the circumstances, constitutes valid, due, and sufficient notice, and complies fully  
19 with the laws of California, the United States Constitution, and any other applicable law;

20 b. A finding that after proper notice to the Settlement Class, and after sufficient  
21 opportunity to object, no timely objections to this Settlement Agreement have been made, or a  
22 finding that all timely objections have been considered and denied;

23 c. Approval of the settlement, as set forth in the Settlement Agreement, as fair, reasonable,  
24 adequate, and in the best interests of the Settlement Class, in all respects, finding that the settlement  
25 is in good faith, and ordering the Parties to perform the Settlement in accordance with the terms of  
26 this Settlement Agreement;

d. A finding that neither the Final Judgment, the settlement, nor the Settlement Agreement shall constitute an admission of liability by any of the Parties, or any liability or wrongdoing whatsoever by any Party;

e. Subject to the reservation of jurisdiction for matters discussed in subparagraph (h) below, a dismissal with prejudice of the Litigation;

f. A finding that Plaintiffs shall, as of the entry of the Final Judgment, conclusively be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from the Plaintiffs' Released Claims;

g. A finding that all Settlement Class Members shall, as of the entry of the Final Judgment, conclusively be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from the Released Class Claims; and

h. A reservation of exclusive and continuing jurisdiction over the Litigation and the Parties for the purposes of, among other things, (i) supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement, the Preliminary Approval Order, and the Final Judgment; and (ii) supervising the administration and distribution of the relief to the Settlement Class and resolving any disputes that may arise with regard to the foregoing.

71. If and when the Settlement becomes Final, the Litigation shall be dismissed with prejudice, with the Parties to bear their own costs and attorneys' fees, costs, and expenses not otherwise awarded in accordance with this Settlement Agreement.

**XIV. TERMINATION OF THIS SETTLEMENT AGREEMENT**

72. Each Party shall have the right to terminate this Settlement Agreement if:

a. The Court denies preliminary approval of this Settlement Agreement (or grants preliminary approval through an order that materially differs in substance to **Exhibit D** hereto);

b. The Court denies final approval of this Settlement Agreement (or grants final approval through an order that materially differs in substance from **Exhibit E** hereto);

c. The Final Approval Order and Final Judgment do not become final by reason of a higher court reversing final approval by the Court, and the Court thereafter declines to enter a further order or orders approving the settlement on the terms set forth herein; or

d. The Effective Date cannot occur.

73. The Parties agree to work in good faith to effectuate this Settlement Agreement.

74. If a Party elects to terminate this Settlement Agreement under this Section XV, that Party must provide written notice to the other Party's counsel, by hand delivery, mail, or e-mail within ten (10) Days of the occurrence of the condition permitting termination.

75. Nothing shall prevent Plaintiffs or Defendants from appealing or seeking other appropriate relief from an appellate court with respect to any denial by the Court of final approval of the Settlement.

76. If this Settlement Agreement is terminated or disapproved, or if the Effective Date should not occur for any reason, then: (i) this Settlement Agreement, the Preliminary Approval Order, the Final Approval Order (if applicable), and all of their provisions shall be rendered null and void; (ii) all Parties shall be deemed to have reverted to their respective status in the Litigation as of the date and time immediately preceding the execution of this Settlement Agreement; (iii) except as otherwise expressly provided, the Parties shall stand in the same position and shall proceed in all respects as if this Settlement Agreement and any related orders had never been executed, entered into, or filed; and (iv) no term or draft of this Settlement Agreement nor any part of the Parties' settlement discussions, negotiations, or documentation (including any declaration or brief filed in support of the motion for preliminary approval or motion for final approval), nor any rulings regarding class certification for settlement purposes (including the Preliminary Approval Order and, if applicable, the Final Approval Order and Final Judgment), will have any effect or be admissible into evidence for any purpose in the Litigation or any other proceeding.

77. If the Court does not approve the Settlement or the Effective Date cannot occur for any reason, Defendants shall retain all its rights and defenses in the Litigation. For example, Defendants shall have the right to object to the maintenance of the Litigation as a class action, to move for summary judgment, and to assert defenses at trial, and nothing in this Settlement Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any Party concerning whether the Litigation may properly be maintained as a class action, or for any other purpose.

78. If more than 888 Settlement Class Members submit valid opt-out forms, Defendants may, at their sole discretion, void the Settlement Agreement.

**XV. RELEASE**

79. The Final Approval Order and Final Judgment shall provide that the Litigation is dismissed with prejudice as to the Plaintiffs and all Settlement Class Members.

80. On the Effective Date, Plaintiffs and each and every Settlement Class Member shall be bound by this Settlement Agreement and shall have recourse only to the benefits, rights, and remedies provided hereunder. No other action, demand, suit, arbitration, or other claim or proceeding, regardless of forum, may be pursued against Released Persons with respect to the Plaintiffs' Released Claims or the Released Class Claims.

81. On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, Plaintiffs will be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from any and all past, present, and future claims, counterclaims, lawsuits, set-offs, costs, expenses, attorneys' fees and costs, losses, rights, demands, charges, complaints, actions, suits, causes of action, obligations, debts, contracts, penalties, damages, or liabilities of any nature whatsoever, known, unknown, or capable of being known, in law or equity, fixed or contingent, accrued or unaccrued and matured or not matured that reasonably arise out of the same set of operative facts alleged in the Complaint (dated November 18, 2021) filed in the Litigation, and set forth in the Data Security Incident Notification Letters (dated December 4, 2020) sent by Total Vision that were or could have been asserted in the Litigation (the "Plaintiffs' Release"). The Plaintiffs' Release shall be included as part of the Final Approval Order so that all claims released thereby shall be barred by principles of *res judicata*, collateral estoppel, and claim and issue preclusion (the "Plaintiffs' Released Claims"). The Plaintiffs' Released Claims shall constitute and may be pled as a complete defense to any proceeding arising from, relating to, or filed in connection with the Plaintiffs' Released Claims.

82. On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, each Settlement Class Member will be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from any and

all past, present, and future claims, counterclaims, lawsuits, set-offs, costs, expenses, attorneys' fees and costs, losses, rights, demands, charges, complaints, actions, suits, causes of action, obligations, debts, contracts, penalties, damages, or liabilities of any nature whatsoever, known, unknown, or capable of being known, in law or equity, fixed or contingent, accrued or unaccrued and matured or not matured that reasonably arise out of the same set of operative facts alleged in the Complaint (dated November 18, 2021) filed in the Litigation, and set forth in the Data Security Incident Notification Letters (dated December 4, 2020) sent by Total Vision that were or could have been asserted in the Litigation (the "Settlement Class Release"). The Settlement Class Release shall be included as part of the Final Approval Order so that all claims released thereby shall be barred by principles of *res judicata*, collateral estoppel, and claim and issue preclusion (the "Released Class Claims," and together with Plaintiffs' Released Claims, the "Release Claims"). The Released Class Claims shall constitute and may be pled as a complete defense to any proceeding arising from, relating to, or filed in connection with the Released Class Claims.

83. Subject to Court approval, as of the Effective Date, Plaintiffs and all Settlement Class Members shall be bound by this Settlement Agreement and the Settlement Class Release and all of Released Claims shall be dismissed with prejudice and released.

84. The Released Claims include the release of Unknown Claims. "Unknown Claims" means any of the Released Claims that any Settlement Class Member, including Plaintiffs, does not know or suspect to exist in his or 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 the Settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Plaintiffs 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:

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

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

14 85. On entry of the Final Approval Order and Final Judgment, the Plaintiffs and Settlement  
15 Class Members shall be enjoined from prosecuting, respectively, the Plaintiffs' Released Claims  
16 and the Released Class Claims, in any proceeding in any forum against any of the Released Persons  
17 or based on any actions taken by any Released Persons authorized or required by this Settlement  
18 Agreement or the Court or an appellate court as part of this Settlement.

19 86. Without in any way limiting the scope of the Plaintiffs' Release or the Settlement Class  
20 Release (the "Releases"), the Releases cover, without limitation, any and all claims for attorneys'  
21 fees, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs  
22 or Settlement Class Members, or any of them, in connection with or related in any manner to the  
23 Litigation, the Settlement, the administration of such Settlement and/or the Plaintiffs' Released  
24 Claims or the Released Class Claims as well as any and all claims for the Service Award to  
25 Plaintiffs.

26 87. Nothing in the Releases shall preclude any action to enforce the terms of this Settlement  
27 Agreement, including participation in any of the processes detailed herein. Nor shall the Releases  
28

1 be construed to release claims arising out of physical injuries alleged to arise from the treatment  
2 Plaintiffs and Settlement Class Members received from Defendants.

#### 3 XVI. EFFECTIVE DATE

4 88. The "Effective Date" of this Settlement Agreement shall be the first Day after the date  
5 all of the following conditions have occurred:

- 6 a. This Settlement Agreement has been fully executed by all Parties and their counsel;
- 7 b. Orders have been entered by the Court certifying the Settlement Class, granting  
8 preliminary approval of this Settlement Agreement and approving the Notice Program and Claim  
9 Form, all as provided above;
- 10 c. The Court-approved Postcard Notice has been mailed, and the Settlement Website has  
11 been duly created and maintained as ordered by the Court;
- 12 d. The Court has entered a Final Approval Order finally approving this Settlement  
13 Agreement, as provided above; and
- 14 e. The Final Approval Order and Final Judgment have become Final, as defined in  
15 Paragraph 13(l).

#### 16 XVII. MISCELLANEOUS PROVISIONS

17 89. The recitals and exhibits to this Settlement Agreement are integral parts of the  
18 Settlement and are expressly incorporated and made a part of this Settlement Agreement.

19 90. This Settlement Agreement is for settlement purposes only. Neither the fact of nor any  
20 provision contained in this Settlement Agreement nor any action taken hereunder shall constitute  
21 or be construed as an admission of the validity of any claim or any fact alleged in the Complaint or  
22 Litigation or of any wrongdoing, fault, violation of law or liability of any kind on the part of  
23 Defendants or any admission by Defendants of any claim in this Litigation or allegation made in  
24 any other proceeding, including regulatory matters, directly or indirectly involving the December  
25 2020 Data Security Incident notification letter or allegations asserted in the Complaint and  
26 Litigation. This Settlement Agreement shall not be offered or be admissible in evidence against the  
27 Parties or cited or referred to in any action or proceeding between the Parties, except in an action  
28 or proceeding brought to enforce its terms. Nothing contained herein is or shall be construed or

1 admissible as an admission by Defendants that Plaintiffs' claim, or any similar claims, are suitable  
2 for class treatment.

3 91. In the event that there are any developments in the effectuation and administration of  
4 this Settlement Agreement that are not dealt with by the terms of this Settlement Agreement, then  
5 such matters shall be dealt with as agreed upon by the Parties, and failing agreement, as shall be  
6 ordered by the Court. The Parties shall execute all documents and use their best efforts to perform  
7 all acts necessary and proper to promptly effectuate the terms of this Settlement Agreement and to  
8 take all necessary or appropriate actions to obtain judicial approval of this Settlement Agreement  
9 to give this Settlement Agreement full force and effect.

10 92. In the event the aggregate amount of all approved Cash Compensation payments  
11 exceeds the total amount of the Settlement Fund, then the value of those payments shall be reduced  
12 on a *pro rata* basis, such that the aggregate value of the Cash Compensation payments does not  
13 exceed the Net Settlement Fund. All such determinations shall be performed by the Settlement  
14 Administrator.

15 93. No person shall have any claim against Plaintiffs, Class Counsel, Defendants,  
16 Defendants' Counsel, the Settlement Administrator, or the Released Persons, or any of the  
17 foregoing's agents or representatives based on the administration of the Settlement substantially in  
18 accordance with the terms of the Settlement Agreement or any order of the Court or appellate court.

19 94. This Settlement Agreement constitutes the entire Settlement Agreement between and  
20 among the Parties with respect to the Settlement of the Litigation. This Settlement Agreement  
21 supersedes all prior negotiations and Settlement Agreements and may not be modified or amended  
22 except by a writing signed by the Parties and their respective counsel. The Parties acknowledge,  
23 stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement,  
24 negotiation, or understanding concerning any part of the subject matter of this Settlement  
25 Agreement has been made or relied on except as expressly set forth in this Settlement Agreement.

26 95. There shall be no waiver of any term or condition in this Settlement Agreement absent  
27 an express writing to that effect by the non-waiving Party. No waiver of any term or condition in  
28

1 this Settlement Agreement shall be construed as a waiver of a subsequent breach or failure of the  
2 same term or condition, or waiver of any other term or condition of this Settlement Agreement.

3 96. In the event a third-party, such as a bankruptcy trustee, former spouse, or other third-  
4 party has or claims to have a claim against any payment made to a Settlement Class Member, it is  
5 the responsibility of the Settlement Class Member to transmit the funds to such third-party. Unless  
6 otherwise ordered by the Court, the Parties will have no, and do not agree to any, responsibility for  
7 such transmittal.

8 97. This Settlement Agreement shall not be construed more strictly against one Party than  
9 another merely because it may have been prepared by counsel for one of the Parties, it being  
10 recognized that because of the arm's-length negotiations resulting in this Settlement Agreement,  
11 all Parties hereto have contributed substantially and materially to the preparation of the Settlement  
12 Agreement. All terms, conditions, and exhibits are material and necessary to this Settlement  
13 Agreement and have been relied upon by the Parties in entering into this Settlement Agreement.

14 98. This Settlement Agreement shall be construed under and governed by the laws of the  
15 State of California without regard to its choice of law provisions.

16 99. If any press release is to be issued by the Parties, including their respective counsel,  
17 concerning the Settlement, it will be a joint press release for which the Parties will agree upon the  
18 language therein prior to release.

19 100. In the event that one or more of the provisions contained in this Settlement Agreement  
20 shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity,  
21 illegality, or unenforceability shall not affect the other provisions of the Settlement Agreement,  
22 which shall remain in full force and effect as though the invalid, illegal, or unenforceable  
23 provision(s) had never been a part of this Settlement Agreement as long as the benefits of this  
24 Settlement Agreement to Defendant or the Settlement Class Members are not materially altered,  
25 positively or negatively, as a result of the invalid, illegal, or unenforceable provision(s).

26 101. This Settlement Agreement will be binding upon and inure to the benefit of the  
27 successors and assigns of the Parties, Released Persons, and Settlement Class Members.  
28



1 102.The headings used in this Settlement Agreement are for the convenience of the reader  
2 only and shall not affect the meaning or interpretation of this Settlement Agreement. In construing  
3 this Settlement Agreement, the use of the singular includes the plural (and vice-versa) and the use  
4 of the masculine includes the feminine (and vice-versa).

5 103.The Parties stipulate to stay all proceedings in the Litigation until the approval of this  
6 Settlement Agreement has been finally determined, except the stay of proceedings shall not prevent  
7 the filing of any motions, affidavits, and other matters necessary to obtain and preserve judicial  
8 approval of this Settlement Agreement.

9 104.This Settlement Agreement may be executed in one or more counterparts, each of  
10 which shall be deemed an original as against any Party who has signed it and all of which shall be  
11 deemed a single Settlement Agreement.

12 105.Each Party to this Settlement Agreement and the signatories thereto warrant that he,  
13 she, or it is acting upon his, her or its independent judgment and the advice of his, her, or its counsel  
14 and not in reliance upon any warranty or representation, express or implied, of any nature or kind  
15 by any other Party, other than the warranties and representations expressly made in this Settlement  
16 Agreement.

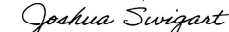
17 106.Each signatory below warrants that he or she has authority to execute this Settlement  
18 Agreement and bind the Party on whose behalf he or she is executing the Settlement Agreement.

1 Dated: August 14, 2025

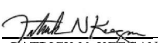
**CASEY GERRY**  
**FRANCAVILLA BLATT, LLP**

2  
3 By:   
4 GAYLE M. BLATT

**SWIGART LAW GROUP, APC**

5  
6 By:   
7 JOSHUA B. SWIGART

**KEEGAN & BAKER, LLP**

8  
9 By:   
10 PATRICK N. KEEGAN

11  
12  
13 Dated: August 14, 2025

*Attorneys for Plaintiffs*  
ANJANETTE RAMEY and JANE DOE

**BAKER & HOSTETLER LLP**

14  
15  
16 By:   
17 TERESA C. CHOW

*Attorneys for Defendants*  
TOTAL VISION, LLC; JOHN C. PACK, O.D. AND  
18 BEVERLY BIANES O.D., INC.; JOHN C. PACK,  
19 O.D.; and BEVERLY BIANES, O.D.  
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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [\\$475K Total Vision Settlement Wraps Up Class Action Lawsuit Over October 2020 Data Breach](#)

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