

# Exhibit G

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*Attorneys for Plaintiffs and the Proposed Class  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Linda Hulewat; Karen Foti Williams;  
Ralph Gallegos; Michael Martinez;  
Lynnae Anderson; Candia Franklin; Marie  
Therese Montoya; Charles Peterson;  
Robert Kirk; Marilyn Zajacka; Lynda  
Israel; Latricia Pelt; Barry Pelt; Ken  
Waters; Brenda Moreno-Decerra; Robert  
Ahrens Dorf; and David Yeager;  
individually, and all others similarly  
situated,

Plaintiffs,

v.

Medical Management Resource Group,  
L.L.C.; Barnet Dulaney Perkins Eye  
Center, PC; Marc Ellman, M.D., P.A.  
d/b/a Southwest Eye Institute;  
Southwestern Eye Center, Ltd.; Eye  
Associates of Nevada d/b/a Wellish  
Vision Institute

Defendant.

Case No. 2:24-cv-00377-DJH

**CLASS ACTION SETTLEMENT  
AGREEMENT**

This Settlement Agreement is made and entered into by and among the following  
Settling Parties (defined below): Linda Hulewat; Karen Foti Williams; Ralph Gallegos;  
Michael Martinez; Lynnae Anderson; Candia Franklin; Marie Therese Montoya; Charles  
Peterson; Robert Kirk; Marilyn Zajacka; Lynda Israel; Latricia Pelt; Barry Pelt; Ken

1 Waters; Brenda Moreno-Decerra; Robert Ahrens Dorf; and David Yeager (collectively,  
2 “Plaintiffs”), individually and on behalf of the Settlement Class (defined below), by and  
3 through their counsel of record, and Medical Management Resource Group, L.L.C.; Barnet  
4 Dulaney Perkins Eye Center, PC; Marc Ellman, M.D., P.A. d/b/a Southwest Eye Institute;  
5 Southwestern Eye Center, Ltd.; Eye Associates of Nevada d/b/a Wellish Vision Institute.  
6 (collectively the “Defendant” or “American Vision”), by and through its counsel of record.  
7  
8 The Settlement Agreement (defined below) is subject to Court approval and is intended by  
9 the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released  
10 Claims (defined below), upon and subject to the terms and conditions thereof.  
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### 13 **I. THE LITIGATION**

14 This litigation arises from a cyberattack which Defendant discovered on or about  
15 November 14, 2023, wherein an unauthorized third party gained access to Defendant’s  
16 computer network and the sensitive information of approximately 2,350,000 individuals  
17 (the “Data Incident”). Specifically, Plaintiffs allege that as a result of the Data Incident, the  
18 cybercriminals gained access to Plaintiffs’ and the Settlement Class Member’s information  
19 including names, dates of birth, Social Security Numbers and contact information  
20 (“personally identifying information” or “PII”) and medical treatment and health insurance  
21 information, which is protected health information (“PHI”, and collectively with PII,  
22 “Private Information”) as defined by the Health Insurance Portability and Accountability  
23 Act of 1996 (“HIPAA”).  
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27 On November 14, 2023, Plaintiffs filed a class action complaint against defendants  
28 Medical Management Resource Group, L.L.C.; Barnet Dulaney Perkins Eye Center, PC;

1 Marc Ellman, M.D., P.A. d/b/a Southwest Eye Institute; Southwestern Eye Center, Ltd.;  
2 Eye Associates of Nevada d/b/a Wellish Vision Institute to remedy the injuries caused by  
3 Defendant's misconduct. Defendant subsequently filed a Motion to dismiss, which was  
4 granted as to Defendants Eye Associates of Nevada d/b/a Wellish Vision Institute and Marc  
5 Ellman, M.D. P.A. d/b/a Southwest Eye Institute on May 16, 2025.  
6

7  
8 Prior to filing appeals, the Parties agreed to discuss possible resolution of this  
9 matter. The Parties engaged in informal discovery to ensure that their negotiations were  
10 adequately information and on August 28, 2025, filed their Notice of Settlement, informing  
11 the Court that they had agreed on the material terms of the Settlement and requesting an  
12 additional 45 days to negotiate the finer points of the agreement and move for preliminary  
13 approval. During this time, the Parties continued to discuss settlement. The Parties have  
14 now finalized their settlement, which is memorialized in this settlement agreement and  
15 attached exhibits ("Settlement Agreement").  
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## 18 **II. THE CLAIMS OF REPRESENTATIVE PLAINTIFFS AND BENEFITS OF** 19 **SETTLING**

20 Plaintiffs believe the claims asserted in the Litigation, as set forth in the  
21 Consolidated Class Action Complaint, have merit. Plaintiffs and Class Counsel (defined  
22 below) recognize and acknowledge, however, the expense and length of continued  
23 proceedings necessary to prosecute the Litigation against American Vision through  
24 continued motion practice, trial, and potential appeals. They have also considered the  
25 uncertain outcome and risk of further litigation, as well as the difficulties and delays  
26 inherent in such litigation, especially in complex class actions. Class Counsel are highly  
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1 experienced in class action litigation and very knowledgeable regarding the relevant  
2 claims, remedies, and defenses at issue generally in such litigation and in this Litigation.  
3  
4 They have determined that the settlement set forth in this Settlement Agreement is fair,  
5 reasonable, and adequate, and in the best interests of the Settlement Class.

### 6 **III. DENIAL OF WRONGDOING AND LIABILITY**

7  
8 American Vision denies each and all of the claims and contentions alleged against  
9 it in the Litigation. American Vision denies all charges of wrongdoing or liability as  
10 alleged, or which could be alleged, in the Litigation. Nonetheless, American Vision has  
11 concluded that further litigation would be protracted and expensive, and that it is desirable  
12 that the Litigation be fully and finally settled in the manner and upon the terms and  
13 conditions set forth in this Settlement Agreement. American Vision has considered the  
14 uncertainty and risks inherent in any litigation. American Vision has, therefore, determined  
15 that it is desirable and beneficial that the Litigation be settled in the manner and upon the  
16 terms and conditions set forth in this Settlement Agreement.

### 17 **IV. SETTLEMENT TERMS & DEFINITIONS**

18  
19 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and  
20 among Plaintiffs, individually and on behalf of the Settlement Class, Class Counsel, and  
21 American Vision that, subject to the approval of the Court, the Litigation, and the Released  
22 Claims shall be finally and fully compromised, settled, and released, and the Litigation  
23 shall be dismissed with prejudice as to the Settling Parties and the Settlement Class, except  
24 those members of the Settlement Class who timely opt-out of the Settlement, upon and  
25 subject to the terms and conditions of this Settlement Agreement, as follows:  
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1           **1. Definitions**

2           As used in the Settlement Agreement, the following terms have the meanings  
3 specified below:  
4

5           1.1    “Action” or “Litigation” means the action titled, *Hulewat et al. v. Medical*  
6 *Management Resource Group LLC d/b/a American Vision Partners, et al.*, Case No. 2:24-  
7 cv-00377-DJH (D. Ariz.).  
8

9           1.2    “Agreement” or “Settlement Agreement” means this agreement, exhibits,  
10 and the settlement embodied herein.

11           1.3    “Claim” means a claim for Settlement benefits made under the terms of this  
12 Settlement Agreement.  
13

14           1.4    “Claims Deadline” means the postmark and/or online submission deadline  
15 for Valid Claims submitted pursuant to ¶¶ 2.1 and 2.2.  
16

17           1.5    “Claim Form” means the claim form to be used by Settlement Class  
18 Members to submit a Claim, either through the mail or online through the Settlement  
19 Website, substantially in the form as shown in Exhibit A attached hereto.  
20

21           1.6    “Class Counsel” means Gary M. Klinger of Milberg Coleman Bryson  
22 Phillips Grossman PLLC, Raina C. Borrelli of Strauss Borrelli PLLC, Terence Coates of  
23 Markovits, Stock & DeMarco LLC.  
24

25           1.7    “Court” means the United States District Court for the District of Arizona.

26           1.8    “Damages Class Benefits” means the Settlement benefits (as described  
27 below) available to the Damages Settlement Class Members. The Damages Class Benefits  
28 will be funded by American Vision in an amount not to exceed \$1,750,000, inclusive of (i)

1 all Valid Claims for Settlement benefits made under ¶ 2.1; (ii) reasonable Notice and  
2 Settlement Administration Costs (including publication notice for the Injunctive Relief  
3 Class) (defined below); (iii) any attorneys' fees, costs, and expenses, as approved by the  
4 Court; and (iv) any Service Awards approved by the Court.

6 1.9 "Damages Settlement Class Members" means the approximately 258,070  
7 U.S. residents whose Social Security numbers and/or other personal information were  
8 compromised in the Data Breach. Excluded from the Damages Class are Defendants, their  
9 representatives, any judicial officer presiding over the matter, and such judicial officers'  
10 immediate family members and staff. The Damages Settlement Class Members are eligible  
11 to submit a claim under the Damages Class Benefits.

14 1.10 "Dispute Resolution" means the process for resolving disputed Claims as set  
15 forth in this Settlement Agreement.

17 1.11 "Effective Date" means the first date by which all of the events and  
18 conditions specified in ¶ 1.14 herein have occurred and been met.

19 1.12 "Final" means the occurrence of all of the following events: (i) the settlement  
20 pursuant to this Settlement Agreement is approved by the Court; (ii) the Court has entered  
21 a Judgment (as that term is defined below); and (iii) the time to appeal or seek permission  
22 to appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in  
23 its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to  
24 which such appeal may be taken, and such dismissal or affirmance has become no longer  
25 subject to further appeal or review. Notwithstanding the above, any order modifying or  
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1 reversing any attorneys' fee award or service award made in this case shall not affect  
2 whether the Judgment is "Final" as defined herein or any other aspect of the Judgment.

3  
4 1.13 "Injunctive Relief Class" means the approximately 1.6 million U.S. residents  
5 whose personal information was compromised in the Data Breach. Excluded from the  
6 Injunctive Relief Class are Defendants, their representatives, any judicial officer presiding  
7 over the matter, and such judicial officers' immediate family members and staff.

8  
9 1.14 "Judgment" means a judgment rendered by the Court.

10 1.15 "Long Form Notice" means the long form notice of settlement posted on the  
11 Settlement Website, substantially in the form as shown in Exhibit C attached hereto.

12  
13 1.16 "Notice Date" means 45 days following entry of the Preliminary Approval  
14 Order. The Notice Date shall be used for purposes of calculating the Claims Deadline, Opt-  
15 Out Date and Objection Date deadlines, and all other deadlines that flow from the Notice  
16 Date.

17  
18 1.17 "Notice and Settlement Administration Cost" means all costs incurred or  
19 charged by the Settlement Administrator in connection with providing Notice to Settlement  
20 Class Members and costs of administering the Settlement Fund.

21  
22 1.18 "Notice Program" means steps taken by the Settlement Administrator to  
23 notify members of the Damages Settlement Class and Injunctive Relief Class of the  
24 Settlement as set forth below.

25  
26 1.19 "Objection Date" means the date by which the Settlement Class Members  
27 must mail to Class Counsel and Defendant's Counsel, or in the alternative, file with the  
28



1 Court their objection to the Settlement Agreement for that objection to be effective. The  
2 postmark date shall constitute evidence of the date of mailing for these purposes.

3  
4 1.20 “Opt-Out Date” means the date by which the Settlement Class Members must  
5 mail their requests to be excluded from the Settlement Class for that request to be effective.  
6 The postmark date shall constitute evidence of the date of mailing for these purposes.

7  
8 1.21 “Person” means an individual, corporation, partnership, limited partnership,  
9 limited liability company or partnership, association, joint stock company, estate, legal  
10 representative, trust, unincorporated association, government or any political subdivision  
11 thereof, and any business or legal entity, and their respective spouses, heirs, predecessors,  
12 successors, representatives, agents and/or assignees.

13  
14 1.22 “Preliminary Approval Order” means the order preliminarily approving the  
15 Settlement Agreement and ordering that notice be provided to the Settlement Class. The  
16 Settling Parties’ proposed form of Preliminary Approval Order is attached as Exhibit D  
17 attached hereto.

18  
19 1.23 “Released Claims” shall collectively mean any and all past, present, and  
20 future claims and causes of action including, but not limited to, any causes of action arising  
21 under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or  
22 common law of any country, state, province, county, city, or municipality, including 15  
23 U.S.C. §§ 45 *et seq.*, and all similar statutes in effect in any states in the United States as  
24 defined below; violations of the California Unfair Competition Law, Cal. Bus. & Prof. Code  
25 §§ 17200, *et seq.* and all similar state consumer-protection statutes; violations of the  
26 California Consumer Protection Act of 2018, Cal. Civ. Code § 1798, *et seq.* and all similar  
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1 state privacy-protection statutes; violations of the California Customer Records Act, Cal.  
2 Civ. Code § 1798.84, *et seq.* and all similar notification statutes in effect in any states in the  
3 United States; negligence; negligence *per se*; breach of contract; breach of implied contract;  
4 breach of fiduciary duty; breach of confidence; invasion of privacy; fraud;  
5 misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment;  
6 wantonness; failure to provide adequate notice pursuant to any breach notification statute  
7 or common law duty; and including, but not limited to, any and all claims for damages,  
8 injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees and  
9 expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future  
10 damages, statutory damages, punitive damages, special damages, exemplary damages,  
11 restitution, and/or the appointment of a receiver, whether known or unknown, liquidated or  
12 unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, and any other  
13 form of legal or equitable relief that either has been asserted, was asserted, or could have  
14 been asserted, by any member of the Settlement Class against any of the Released Parties  
15 based on, relating to, concerning or arising out of the Data Incident and alleged theft of  
16 other personal information or the allegations, transactions, occurrences, facts, or  
17 circumstances alleged in or otherwise described in the Litigation. Released Claims shall not  
18 include the right of any Settlement Class Member or any of the Released Parties to enforce  
19 the terms of the settlement contained in this Settlement Agreement, and shall not include  
20 the claims of the Settlement Class Members who have timely excluded themselves from the  
21 Settlement Class.  
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1           1.24 “Related Entities” means Defendant’s past or present parents, subsidiaries,  
2 divisions, and related or affiliated entities, and each of their respective predecessors,  
3 successors, directors, officers, principals, agents, attorneys, insurers, and reinsurers, and  
4 includes, without limitation, any Person related to any such entity who is, was or could  
5 have been named as a defendant in any of the actions in the Litigation, other than any  
6 Person who is found by a court of competent jurisdiction to be guilty under criminal law  
7 of initiating, causing, aiding or abetting the criminal activity occurrence of the Data  
8 Incident or who pleads *nolo contendere* to any such charge.  
9

10  
11           1.25 “Released Parties” means Defendant and its Related Entities and each of their  
12 past or present parents, subsidiaries, divisions, and related or affiliated entities, and each  
13 of their respective predecessors, successors, directors, officers, principals, agents,  
14 attorneys, insurers, and reinsurers.  
15

16  
17           1.26 “Settlement Administration” means the processing of Notice and the  
18 processing and payment of Claims received from Settlement Class Members by the  
19 Settlement Administrator.  
20

21           1.27 “Settlement Administrator” means Kroll Settlement Administration, a  
22 company experienced in administering class action claims generally and specifically those  
23 of the type provided for and made in data breach litigation.  
24

25           1.28 “Settlement Class” means both the Injunctive Relief Class and the Damages  
26 Settlement Class.  
27

28           1.29 “Settlement Class Members” means all persons who are members of the  
Injunctive Relief Class and the Damages Settlement Class.

1           1.30 “Settlement Fund” means a non-reversionary common fund to be funded by  
2 American Vision in the amount of \$1,750,000.

3  
4           1.31 “Settlement Website” means a website, the URL for which to be mutually  
5 selected by the Settling Parties, that will inform Settlement Class Members of the terms of  
6 this Settlement Agreement, their rights, dates and deadlines and related information, as  
7 well as provide the Settlement Class Members with the ability to submit a Claim online.  
8

9           1.32 “Settling Parties” means, collectively, American Vision and Plaintiffs,  
10 individually and on behalf of the Settlement Class, and all Released Parties.

11           1.33 “Short Form Notice” means the short form notices of the proposed class  
12 action settlement, substantially in the form as shown in Exhibit B attached hereto. The  
13 Short Form Notice will direct recipients to the Settlement Website and inform Settlement  
14 Class Members of, among other things, the Claims Deadline, the Opt-Out and Objection  
15 Deadlines, and the date of the Final Fairness.  
16  
17

18           1.34 “Unknown Claims” means any of the Released Claims that Plaintiffs do not  
19 know or suspect to exist in their favor at the time of the release of the Released Parties that,  
20 if known by them, might have affected their settlement with, and release of, the Released  
21 Parties, or might have affected their decision not to object to and/or to participate in this  
22 Settlement Agreement. With respect to any and all Released Claims, the Settling Parties  
23 stipulate and agree that upon the Effective Date, Plaintiffs intend to and expressly shall  
24 have waived the provisions, rights, and benefits conferred by California Civil Code § 1542,  
25 (or any similar comparable, or equivalent provision of any federal, state or foreign law, or  
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1 principle of common law which is similar, comparable, or equivalent to California Civil  
2 Code §1542), which provides:

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

12 Plaintiffs may hereafter discover facts in addition to, or different from, those that  
13 they, and any of them, now know or believe to be true with respect to the subject matter of  
14 the Released Claims, but Plaintiffs expressly shall have, upon the Effective Date, fully,  
15 finally and forever settled and released any and all Released Claims. The Settling Parties  
16 acknowledge that the foregoing waiver is a material element of the Settlement Agreement  
17 of which this release is a part.

18 1.35 “Valid Claims” means Claims in an amount approved by the Settlement  
19 Administrator or found to be valid through the claims processing and/or Dispute Resolution  
20 process.

## 21 **2. Settlement Structure**

22 2.1.3. Use of the Settlement Fund: The Settlement Fund shall be used to pay  
23 for (i) reasonable Notice and Settlement Administration Costs incurred in the  
24 administration of both the Damages Settlement Class and the Injunctive Relief Class,  
25 including all taxes owed by the Settlement Fund and publication notice to the Injunctive  
26 Relief Class; (ii) any attorneys’ fees, costs, and expenses, as approved by the Court; (iii)  
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1 any Service Awards approved by the Court; and (iv) any Damages Class Benefits to  
2 Damages Settlement Class Members, pursuant to the terms and conditions of this  
3 Agreement. In no event shall the total costs of Damages Class Benefits exceed \$1,750,000.  
4

5 2.1 Damages Class Benefits

6 2.2.1 The Damages Settlement Class Members shall have the opportunity  
7 to submit a Claim for Damages Class Benefits on or before the Claims Deadline. The  
8 Damages Class Benefits, as described below, shall include (1) Pro-Rata Cash Payments; or  
9 (2) Out-of-Pocket Expense Claims. These benefits shall be paid from the \$1,750,000 non-  
10 reversionary Settlement Fund.  
11

12 a) Pro-Rata Cash Payment: Damages Settlement Class Members may  
13 submit a Claim for a \$ cash payment. The Settlement  
14 Administrator will make *pro rata* settlement payments, which may  
15 increase or decrease the \$ Cash Payment, subject to the  
16 Settlement Fund cap (described below).  
17

18 b) Out-of-Pocket Expense Claims: Damages Settlement Class Members  
19 may submit a Claim for reimbursement of documented out-of-pocket  
20 losses reasonably and fairly traceable to the Data Incident. Out-of-  
21 Pocket-Expense Claims will include, without limitation,  
22 unreimbursed losses relating to fraud or identity theft; professional  
23 fees including attorneys' fees, accountants' fees, and fees for credit  
24 repair services; costs associated with freezing or unfreezing credit  
25 with any credit reporting agency; credit monitoring costs that were  
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1 incurred on or after November 2023 that the claimant attests were  
2 caused or otherwise incurred as a result of the Data Incident, through  
3 the date of claim submission; and miscellaneous expenses such as  
4 notary, data charges (if charged based on the amount of data used)  
5 fax, postage, copying, mileage, cell phone charges (only if charged  
6 by the minute), and long-distance telephone charges. Damages  
7 Settlement Class Members with Out-of-Pocket-Expense Claims  
8 must submit documentation and attestation supporting their claims.  
9 This may include receipts or other documentation, not “self-  
10 prepared” by the claimant, that documents the costs incurred. “Self-  
11 prepared” documents such as handwritten receipts are, by  
12 themselves, insufficient to receive reimbursement, but may be  
13 considered to add clarity or support to other submitted  
14 documentation. Out-of-Pocket Expense Claims must include an  
15 attestation that the monetary losses are fairly traceable to the Data  
16 Incident and were not incurred due to some other event or reason.

21  
22 2.2.2 Damages Settlement Class Members may either (1) submit a claim for  
23 the Pro-Rata Cash Payment or (2) submit a claim for Out-of-Pocket Expenses

24 2.2.3 Damages Settlement Class Members’ claims for Out-of-Pocket  
25 Losses are subject to an individual cap of \$3,000 per claimant.

26  
27 2.3 Injunctive Relief: As additional consideration for the dismissal and release of  
28 injunctive claims by the Injunctive Relief Class, Defendants agree to implement and

1 maintain the following cybersecurity measures for a minimum period of time to be  
2 addressed in a long-form settlement agreement. The value of these cybersecurity measures  
3 is \$ . These business practice commitments shall constitute contractually enforceable  
4 obligations of the Settlement Agreement, with all costs of implementation and maintenance  
5 to be borne solely by Defendants, separate and apart from the Damages Class Settlement  
6 Fund:  
7

8  
9 a) Chief Information Officer. Creation and maintenance of  
10 a Chief Information Officer (CIO) role, responsible for managing  
11 AVP's information technology environment and mitigating  
12 cybersecurity risks, working in coordination with AVP's Security  
13 Officer.  
14

15 b) Information Security Training Specialist. Retention of a  
16 dedicated Information Security Training Specialist, specifically  
17 responsible for managing cybersecurity training across the enterprise  
18 in consultation with the Security Officer.  
19

20 c) Cybersecurity Steering Committee. Operation of a  
21 cross-functional Cybersecurity Steering Committee, consisting of  
22 the company's Security Officer, CIO, CEO, General Counsel, and  
23 other senior management personnel, tasked with overseeing AVP's  
24 cybersecurity program and meeting periodically to manage and  
25 coordinate cybersecurity governance and risk management issues.  
26  
27  
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1 d) Enhanced Cybersecurity Training. Implementation and  
2 maintenance of an enterprise-wide cybersecurity training program,  
3 including a supplemental Security Awareness Policy and course for  
4 all employees.  
5

6 e) Penetration Testing. In addition to weekly vulnerability  
7 scanning, engagement of an independent third-party vendor to  
8 conduct periodic penetration testing of AVP's systems, leveraging  
9 the Common Vulnerability Scoring System (CVSS) framework to  
10 classify the severity of identified risks, did not identify any critical,  
11 high, medium, or low risks.  
12

13 f) Enhanced Data Classification Policies. Implementation  
14 and maintenance of enhanced data classification policies and  
15 backend data classification solutions to streamline management of,  
16 and access to, electronic protected health information (ePHI),  
17 including additional access controls to reduce AVP's potential attack  
18 surface. '  
19

20 g) Security Risk Assessments. Performance of regular  
21 security risk assessments with external vendors to evaluate the  
22 effectiveness of AVP's cybersecurity program and remediate  
23 identified vulnerabilities.  
24

25 h) Amended Security Policies. Adoption, implementation,  
26 and ongoing maintenance of amended security policies, including an  
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1 updated incident response policy and related protocols to govern  
2 detection, response, and remediation of future security incidents.

3  
4 2.4 Notice Deadline: Damages Settlement Class Members seeking reimbursement  
5 under ¶¶ 2.1 or 2.2 must complete and submit a Claim Form to the Settlement  
6 Administrator, postmarked or submitted online on or before the 90th day after the Notice  
7 Date. The notice to the Damages Settlement Class will specify this deadline and other  
8 relevant dates described herein. The Claim Form must be verified by the Settlement Class  
9 Member with a statement that his or her claim is true and correct, to the best of his or her  
10 knowledge and belief. Notarization shall not be required.

11  
12  
13 2.5 Dispute Resolution

14 2.5.1 The Settlement Administrator, in its sole discretion to be reasonably  
15 exercised, will determine whether: (1) the Claimant is a Damages Settlement Class  
16 Member; (2) the Claimant has provided all information needed to complete the Claim  
17 Form, including any documentation that may be necessary to reasonably support the Out-  
18 of-Pocket Expenses Claims described above; and (3) the information submitted could lead  
19 a reasonable person to conclude that more likely than not the Claimant has suffered the  
20 claimed losses as a result of the Data Incident (collectively, “Facially Valid”). The  
21 Settlement Administrator shall have the sole discretion and authority to determine whether  
22 and to what extent documentation for Out-of-Pocket Expenses reflect valid Out-of-Pocket  
23 Expenses actually incurred that are fairly traceable to the Data Incident, but may consult  
24 with Class Counsel and Defendant’s Counsel in making individual determinations. Out-of-  
25 Pocket Expenses will be presumed “fairly traceable” if: (1) the timing of the losses  
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1 occurred on or after November 2023; and (2) the personal information used to commit  
2 identity theft or fraud consisted of the same type of personal information that was provided  
3 to Defendant prior to the Data Incident. The Settlement Administrator is authorized to  
4 contact any Settlement Class Member to seek clarification regarding a submitted claim  
5 prior to making a determination as to its validity. Out-of-Pocket Expenses are not eligible  
6 for reimbursement to the extent a Settlement Class Member has already been reimbursed  
7 for the same expense by any other source, including any compensation provided in  
8 connection with the credit monitoring product previously offered by Defendant.  
9

11           2.5.2 To the extent the Settlement Administrator determines a claim is  
12 deficient in whole or in part, within a reasonable time of making such a determination, but  
13 no later than 14 days after the Claims Deadline, the Settlement Administrator is authorized  
14 to contact the Settlement Class Member via telephone or e-mail in an attempt to informally  
15 resolve the deficiency prior to sending a formal deficiency notice. If the deficiency is not  
16 resolved in this manner, the Settlement Administrator shall formally notify the Settlement  
17 Class Member of the deficiencies and give the Settlement Class Member 21 days to cure  
18 the deficiencies. Such notifications shall be sent via e-mail, unless the Claimant did not  
19 provide an e-mail address, in which case such notifications shall be sent via U.S. mail.  
20

23           2.5.3 If the Settlement Class Member attempts to cure the deficiencies but,  
24 at the sole discretion and authority of the Settlement Administrator, fails to do so, the  
25 Settlement Administrator shall notify the Settlement Class Member of that determination  
26 within 10 days of the determination that the deficiencies have not been cured. The  
27 Settlement Administrator may consult with counsel for both Parties prior to making such  
28

1 determinations. The notice shall inform the Settlement Class Member of his or her right to  
2 dispute in writing the deficiency determination and of his or her right to request an appeal  
3 of this determination within 30 days of the deficiency determination.  
4

5           2.5.4 If a Settlement Class Member disputes in writing a determination and  
6 requests an appeal, the Settlement Administrator shall provide Class Counsel and  
7 Defendant's Counsel a copy of the Settlement Class Member's dispute and his or her Claim  
8 Form along with all documentation or other information submitted by the Settlement Class  
9 Member. Class Counsel and Defendant's Counsel shall confer regarding the claim  
10 submission, and their agreement on approval or denial of the Settlement Class Member's  
11 claim, in whole or in part, will be final.  
12  
13

### 14           **3. Notice and Settlement Administration Expenses**

15           3.1 All Notice and Settlement Administration Costs, including, without  
16 limitation, the fees and expenses of the Settlement Administrator, shall be paid for from  
17 the Settlement Fund.  
18

### 19           **4. Opt-Out Procedures**

20           4.1 Each Settlement Class Member wishing to opt-out of the Settlement Class  
21 shall individually sign and timely submit written notice of such intent to the designated  
22 Post Office box established by the Settlement Administrator. The written notice must  
23 clearly manifest the Settlement Class Member's intent to opt-out of the Settlement Class.  
24 To be effective, written notice must be postmarked no later than 60 days after the Notice  
25 Date.  
26  
27  
28

1           4.2     All Persons who submit valid and timely notices of their intent to opt-out of  
2 the Settlement Class, as set forth in ¶ 4.1 above, referred to herein as “Opt-Outs,” shall not  
3 receive any benefits of and/or be bound by the terms of this Settlement Agreement. All  
4 Persons falling within the definition of the Settlement Class who do not opt-out of the  
5 Settlement Class in the manner set forth in ¶ 4.1 above shall be bound by the terms of this  
6 Settlement Agreement and Judgment entered thereon.  
7

8  
9           4.3     In the event that within 10 days after the Opt-Out Date as approved by the  
10 Court, there have been more than 250 timely and valid Opt-Outs submitted, Defendant  
11 may, by notifying Settlement Class Counsel and the Court in writing, void this Settlement  
12 Agreement. If Defendant voids the Settlement Agreement pursuant to this paragraph,  
13 Defendant shall be obligated to pay all settlement expenses already incurred, excluding any  
14 attorneys’ fees, costs, and expenses of Class Counsel and service awards.  
15

## 16           **5.     Objection Procedure**

17  
18           5.1     Each Settlement Class Member desiring to object to the Settlement  
19 Agreement shall submit a timely written notice of his or her objection by the Objection  
20 Date. Such notice shall state: (i) the objector’s full name and address; (ii) the case name  
21 and docket number: *Hulewat et al. v. Medical Management Resource Group LLC d/b/a*  
22 *American Vision Partners, et al.*, Case No. 2:24-cv-00377-DJH; (iii) a written statement of  
23 all grounds for the objection, including whether the objection applies only to the objector,  
24 to a subset of the Settlement Class, or to the entire Settlement Class, accompanied by any  
25 legal support for the objection the objector believes applicable; (iv) the identity of any and  
26 all counsel representing the objector in connection with the objection; (v) a statement  
27  
28

1 whether the objector and/or his or her counsel will appear at the Final Fairness Hearing;  
2 and (vi) the objector's signature or the signature of the objector's duly authorized attorney  
3 or other duly authorized representative (if any) representing him or her in connection with  
4 the objection. To be timely, written notice of an objection in the appropriate form must be  
5 mailed, with a postmark date no later than 60 days from the Notice Date, to the Settlement  
6 Administrator at the address provided in the Notice. The Settlement Administrator will  
7 promptly inform Class Counsel and Counsel for the Defendant of the objection. The  
8 objector or his or her counsel may also file their Objection with the Court through the  
9 Court's ECF system, with service on Class Counsel and Defendant's counsel, to be made  
10 through the ECF system. For all objections mailed to the Settlement Administrator, Class  
11 Counsel will file them with the Court as an exhibit to Plaintiffs' motion for final approval.

12  
13  
14  
15       5.2 Any Settlement Class Member who fails to comply with the requirements for  
16 objecting in ¶ 5.1 shall waive and forfeit any and all rights he or she may have to appear  
17 separately and/or to object to the Settlement Agreement, and shall be bound by all the terms  
18 of the Settlement Agreement and by all proceedings, orders and judgments in the  
19 Litigation. The exclusive means for any challenge to the Settlement Agreement shall be  
20 through the provisions of ¶ 5.1. Without limiting the foregoing, any challenge to the  
21 Settlement Agreement, the final order approving this Settlement Agreement, or the  
22 Judgment to be entered upon final approval shall be pursuant to appeal under the Federal  
23 Rules of Appellate Procedure and not through a collateral attack.

## 24       **6. Settlement Class Certification**

1           6.1    The Settling Parties agree, for purposes of this settlement only, to the  
2 certification of the Settlement Class. If the settlement set forth in this Settlement  
3 Agreement is not approved by the Court, or if the Settlement Agreement is terminated or  
4 cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement,  
5 and the certification of the Settlement Class provided for herein, will be vacated and the  
6 Litigation shall proceed as though the Settlement Class had never been certified, without  
7 prejudice to any Person's or Settling Party's position on the issue of class certification or  
8 any other issue. The Settling Parties' agreement to the certification of the Settlement Class  
9 is also without prejudice to any position asserted by the Settling Parties in any other  
10 proceeding, case or action, as to which all of their rights are specifically preserved.  
11

## 14           7.       **Releases**

15           7.1    Upon the Effective Date, each Settlement Class Member, including  
16 Plaintiffs, shall be deemed to have, and by operation of the Judgment shall have, fully,  
17 finally, and forever released, relinquished, and discharged all Released Claims. Further,  
18 upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class  
19 Member, including Plaintiffs, shall, either directly, indirectly, representatively, as a  
20 member of or on behalf of the general public or in any capacity, be permanently barred and  
21 enjoined from commencing, prosecuting, or participating in any recovery in any action in  
22 this or any other forum (other than participation in the settlement as provided herein) in  
23 which any of the Released Claims is asserted.  
24

25           7.2    Upon the Effective Date, American Vision shall be deemed to have, and by  
26 operation of the Judgment shall have, fully, finally, and forever released, relinquished, and  
27  
28

1 discharged, Representative Plaintiffs, each and all of the Settlement Class Members, Class  
2 Counsel, of all claims, including Unknown Claims, based upon or arising out of the  
3 institution, prosecution, assertion, settlement, or resolution of the Litigation, except for  
4 enforcement of the Settlement Agreement. Any other claims or defenses American Vision  
5 may have against such Persons including, without limitation, any claims based upon or  
6 arising out of any contractual, employment, or other business relationship with such  
7 Persons that are not based upon or do not arise out of the institution, prosecution, assertion,  
8 settlement, or resolution of the Litigation are specifically preserved and shall not be  
9 affected by the preceding sentence.  
10  
11

12  
13 7.3 Notwithstanding any term herein, neither American Vision nor its Released  
14 Parties shall have or shall be deemed to have released, relinquished or discharged any claim  
15 or defense against any Person other than Plaintiffs, each and all of the Settlement Class  
16 Members, and Class Counsel.  
17

18 **8. Plaintiffs' Counsel's Attorneys' Fees, Costs, and Expenses; Service**  
19 **Awards to Representative Plaintiffs**

20 8.1 The Parties have agreed that, as part of the Settlement, the Court shall  
21 determine the amount of any award of attorneys' fees, costs, and service awards.  
22

23 8.2 Class Counsel shall submit a motion to the Court requesting attorneys' fees,  
24 costs, and service awards no later than 14 days before the Objection and Opt-Out  
25 Deadlines.

26 8.3 Plaintiffs shall seek and Defendant agrees to pay Service Awards of \$2,500  
27 for each named Plaintiff in each Lawsuit, which award is intended to recognize Plaintiffs  
28



1 for their efforts in the litigation and commitment on behalf of the Settlement Classes  
2 (“Service Awards”). The Service Awards were negotiated after the primary terms of the  
3 Settlement were negotiated.  
4

5 8.4 Plaintiffs shall also seek, and Defendant agrees to pay, attorneys’ fees and  
6 costs in the amount of 33.33 of the value of the Settlement, inclusive of the value of the  
7 relief made available to the Injunctive Relief Class.  
8

9 8.5 Any attorneys’ fees and costs awarded by the Court, as well as any service  
10 awards awarded by the Court, shall be due and payable within 30 days after the Effective  
11 Date. Any attorneys’ fees, costs, and/or Service Awards awarded by the Court shall be paid  
12 by American Vision from the Settlement Fund.  
13

14 **9. Preliminary Approval Order and Publishing of Notice of Final Fairness**  
15 **Hearing**

16 9.1 Contemporaneously with Plaintiffs’ Motion for Preliminary Approval Class  
17 Counsel and Defendant’s Counsel shall jointly submit this Settlement Agreement to the  
18 Court, and Class Counsel will file a motion for preliminary approval of the settlement with  
19 the Court requesting entry of a Preliminary Approval Order in the form substantially  
20 similar to Exhibit D in both terms and cost, requesting, *inter alia*:  
21

- 22 a) certification of the Settlement Class for settlement purposes only  
23 pursuant to ¶ 6.1;  
24  
25 b) preliminary approval of the Settlement Agreement as set forth herein;  
26  
27 c) appointment of Class Counsel as Settlement Class Counsel;  
28  
d) appointment of Plaintiffs as Class Representatives;

- 1 e) approval of the Short Form Notice to be mailed to Damages  
2 Settlement Class Members in a form substantially similar to the one  
3 attached as Exhibit B to this Settlement Agreement;  
4  
5 f) Approval of the Publication Notice described in the Notice plan  
6 attached as Exhibit E to this Settlement Agreement;  
7  
8 g) approval of the Long Form Notice to be posted on the Settlement  
9 Website in a form substantially similar to the one attached as Exhibit  
10 C to this Settlement Agreement, which, together with the Short Form  
11 Notices, shall include a fair summary of the Parties' respective  
12 litigation positions, statements that the settlement and Notice are  
13 legitimate and that the Settlement Class Members are entitled to  
14 benefits under the settlement, the general terms of the settlement set  
15 forth in the Settlement Agreement, instructions for how to object to or  
16 opt-out of the settlement, instructions for the process and instructions  
17 for making claims to the extent contemplated herein, and the date,  
18 time and place of the Final Fairness Hearing;  
19  
20  
21  
22 h) approval of the Claim Forms to be used by Settlement Class Members  
23 to make a claim in a form substantially similar to the one attached as  
24 Exhibit A to this Settlement Agreement; and  
25  
26 i) appointment of Kroll Settlement Administration, LLC as the  
27 Settlement Administrator.  
28

1           9.2. The Short Form Notice, Publication Notice, Long Form Notice, and Claim  
2 Forms have been reviewed and approved by the Settlement Administrator but may be  
3 revised as agreed upon by the Settling Parties prior to submission to the Court for approval.  
4 Immaterial revisions to these documents may also be made prior to dissemination of  
5 Notice.  
6

7  
8           **10. Settlement Administration and Class Notice**

9           10.1 Notice shall be provided to Settlement Class Members by the Settlement  
10 Administrator as follows:

11                   a)    *Class Member Information:* No later than 21 days after entry of the  
12 Preliminary Approval Order, Defendant shall provide the Settlement  
13 Administrator with the name and last known physical address of each  
14 Damages Settlement Class Member (collectively, “Class Member  
15 Information”) that Defendant possesses.  
16

17                   b)    The Class Member Information and its contents shall be used by the  
18 Settlement Administrator solely for the purpose of performing its  
19 obligations pursuant to this Agreement and shall not be used for any  
20 other purpose at any time. Except to administer the settlement as  
21 provided in this Settlement Agreement or provide all data and  
22 information in its possession to the Settling Parties upon request, the  
23 Settlement Administrator shall not reproduce, copy, store, or  
24 distribute in any form, electronic or otherwise, the Class Member  
25 Information.  
26  
27  
28

1                   c)     *Settlement Website*: Prior to the dissemination of the Notice, the  
2                             Settlement Administrator shall establish the Settlement Website that  
3                             will inform Settlement Class Members of the terms of this Settlement  
4                             Agreement, their rights, dates and deadlines and related information  
5                             ("Settlement Website"). The Settlement Website shall include, in .pdf  
6                             format and available for download, the following: (i) the Short Form  
7                             Notice; (ii) the Long Form Notice; (iii) the Claim Forms; (iv) the  
8                             Preliminary Approval Order; (v) this Settlement Agreement; and (vi)  
9                             any other materials agreed upon by the Parties and/or required by the  
10                            Court. The Settlement Website shall provide Settlement Class  
11                            Members with the ability to complete and submit the Claim Form  
12                            electronically.

13  
14  
15  
16                   d)     *Short Form Notice*: Within 45 days after the entry of the Preliminary  
17                             Approval Order ("Notice Date"), and subject to the requirements of  
18                             this Settlement Agreement and the Preliminary Approval Order, the  
19                             Settlement Administrator will provide Notice to the Damages  
20                             Settlement Class via mail to the postal address in Defendant's  
21                             possession. Before any mailing under this paragraph occurs, the  
22                             Settlement Administrator shall run the postal addresses of Settlement  
23                             Class Members through the United States Postal Service ("USPS")  
24                             National Change of Address database to update any change of address  
25                             on file with the USPS;

1 e) In the event that a Short Form Notice is returned to the Settlement  
2 Administrator by the USPS because the address of the recipient is no  
3 longer valid, and the envelope contains a forwarding address, the  
4 Settlement Administrator shall re-send the Short Form Notice to the  
5 forwarding address within a reasonable period of time after receiving  
6 the returned Short Form Notice;  
7

8  
9 f) In the event that subsequent to the first mailing of a Short Form  
10 Notice, and at least 14 days prior to the Opt-Out Date and Objection  
11 Date, a Short Form Notice is returned to the Settlement Administrator  
12 by the USPS because the address of the recipient is no longer valid,  
13 i.e., the envelope is marked “Return to Sender” and does not contain  
14 a new forwarding address, the Settlement Administrator shall perform  
15 a standard skip trace, in the manner that the Settlement Administrator  
16 customarily performs skip traces, in an effort to attempt to ascertain  
17 the current address of the particular Settlement Class Member in  
18 question and, if such an address is ascertained, the Settlement  
19 Administrator will re-send the Short Form Notice within seven days  
20 of receiving such information. This shall be the final requirement for  
21 mailing;  
22

23  
24 g) *Publication Notice*; Notice will be provided to the Injunctive Relief  
25 Settlement Class Members in the manner specified in the Notice plan  
26 attached to this Settlement Agreement as Exhibit E.  
27  
28

- 1 h) Publishing, on or before the Notice Date, the Claim Forms, Long  
2 Form Notice and this Settlement Agreement on the Settlement  
3 Website, as specified in the Preliminary Approval Order, and  
4 maintaining and updating the website throughout the claim period;  
5  
6 i) A toll-free help line with an IVR system and a live call-back option  
7 shall be made available to provide Settlement Class Members with  
8 additional information about the settlement. The Settlement  
9 Administrator also will provide copies of the Long Form Notice and  
10 paper Claim Form, as well as this Settlement Agreement, upon  
11 request; and  
12  
13 j) Contemporaneously with seeking Final Approval of the Settlement,  
14 Proposed Settlement Class Counsel and American Vision shall cause  
15 to be filed with the Court an appropriate affidavit or declaration with  
16 respect to complying with these provisions regarding notice.  
17  
18

19 10.2 The Settlement Administrator shall administer and calculate the claims  
20 submitted by Settlement Class Members under ¶¶ 2.1 and 2.2. The Settlement  
21 Administrator shall provide Class Counsel and American Vision reports as to both claims  
22 and distribution and Class Counsel and American Vision have the right to review and  
23 obtain supporting documentation and challenge such reports if they believe them to be  
24 inaccurate or inadequate. The Settlement Administrator's determination of whether a  
25 Settlement Claim is a Valid Claim shall be binding, subject to the Dispute Resolution  
26  
27  
28

1 process set forth in ¶ 2.4. All claims agreed to be paid in full by Defendant shall be deemed  
2 valid.

3  
4 10.3 Payment of Valid Claims, whether via mailed check or electronic  
5 distribution, shall be made within 30 days of the Effective Date.

6 10.4 All Damages Settlement Class Members who fail to timely submit a claim  
7 for any benefits hereunder within the time frames set forth herein, or such other period as  
8 may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving  
9 any payments or benefits pursuant to the settlement set forth herein, but will in all other  
10 respects be subject to, and bound by, the provisions of the Settlement Agreement, the  
11 releases contained herein and the Judgment.  
12

13  
14 10.5 No Person shall have any claim against the Settlement Administrator,  
15 Defendant, Class Counsel, Plaintiffs, and/or Defendant's Counsel based on distributions of  
16 benefits to Settlement Class Members.  
17

18 10.6 *Establishment of Settlement Fund.* Within 30 days of the Final Approval  
19 Order, Defendant shall deposit the amount necessary to fund Settlement Administration  
20 into an account established and administered by the Settlement Administrator. The  
21 remainder of the settlement fund shall be funded within 15 days following final approval  
22 by the Court and the expiration of any appeals period.  
23

24 10.7 Non-Reversionary. The Settlement Fund is non-reversionary. As of the  
25 Effective Date, all rights of Defendant in or to the Settlement Fund shall be extinguished,  
26 except in the event this Settlement Agreement is terminated, as described in Paragraph  
27 11.2.  
28

1           10.8     Qualified Settlement Fund. The Parties agree that the Settlement Fund is  
2 intended to be maintained as a qualified settlement fund within the meaning of Treasury  
3 Regulation § 1.468 B-1, and that the Settlement Administrator shall invest the Settlement  
4 Fund exclusively in instruments or accounts backed by the full faith and credit of the United  
5 States Government or fully insured by the United States Government or an agency thereof,  
6 including a U.S. Treasury Fund or a bank account that is either (a) fully insured by the  
7 Federal Deposit Insurance Corporation (“FDIC”) or (b) secured by instruments backed by  
8 the full faith and credit of the United States Government. Defendant and Defendant’s  
9 Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to  
10 investment decisions executed by the Settlement Administrator. All risks related to the  
11 investment of the Settlement Fund shall be borne solely by the Settlement Fund and its  
12 Escrow Agent. Further, the Settlement Administrator, within the meaning of Treasury  
13 Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax  
14 reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any  
15 taxes and tax-related expenses owed with respect to the Settlement Fund. The Parties agree  
16 that the Settlement Fund shall be treated as a qualified settlement fund from the earliest  
17 date possible and agree to any relation-back election required to treat the Settlement Fund  
18 as a qualified settlement fund from the earliest date possible. The Settlement Administrator  
19 shall provide an accounting of any and all funds in the Settlement Fund, including any  
20 interest accrued thereon and payments made pursuant to this Agreement, upon request of  
21 any of the Parties.  
22  
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1           10.9     Custody of Settlement Fund. The Settlement Fund shall be deemed to be in  
2     the custody of the Court and shall remain subject to the jurisdiction of the Court until such  
3     time as the entirety of the Settlement Fund is distributed pursuant to this Settlement  
4     Agreement or the balance returned to those who paid the Settlement Fund in the event this  
5     Settlement Agreement is terminated in accordance with Paragraph 11.2.

6  
7           10.10    Use of the Settlement Fund. As further described in this Agreement, the  
8     Settlement Fund shall be used by the Settlement Administrator to pay for the following:  
9  
10    (a) notice and administration expenses (including publication notice for the Injunctive  
11    Relief Class), as approved by the Court; (b) service award payments to Class  
12    Representatives, as approved by the Court; (c) attorneys' fees, costs, and expenses, as  
13    awarded by the Court; and (d) settlement benefits to be distributed to the Settlement Class,  
14    as proposed by Plaintiffs and approved by the Court. Following payment of all of the above  
15    expenses, any amount remaining in the Settlement Fund shall be paid to the Non-Profit  
16    Residual Recipient in accordance with Paragraph 10.12. No amounts may be withdrawn  
17    from the Settlement Fund unless expressly authorized by this Agreement or approved by  
18    the Court.

19  
20  
21           10.11    Taxes and Representations. Taxes and tax-related expenses relating to the  
22    Settlement Fund shall be considered Notice and Administrative Expenses and shall be  
23    timely paid by the Settlement Administrator out of the Settlement Fund without prior order  
24    of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties,  
25    their counsel, and their insurers and reinsurers for taxes and tax-related expenses  
26    (including, without limitation, taxes payable by reason of any such indemnification  
27  
28

1 payments). The Parties and their respective counsel have made no representation or  
2 warranty with respect to the tax treatment by any Class Representative or any Settlement  
3 Class Member of any payment or transfer made pursuant to this Agreement or derived from  
4 or made pursuant to the Settlement Fund. Each Class Representative and Settlement Class  
5 Member shall be solely responsible for the federal, state, and local tax consequences to  
6 him, her, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.  
7

8  
9 10.12 “Non-Profit Residual Recipient” means [REDACTED], subject to  
10 approval by the Court.  
11

## 12 **11. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

13 11.1 The Effective Date of the settlement shall be conditioned on the occurrence  
14 of all of the following events:  
15

- 16 a) the Court has entered the Preliminary Approval Order and Publishing  
17 of Notice of a Final Fairness Hearing, as required by ¶ 9.1;
- 18 b) Defendant has not exercised its option to terminate the Settlement  
19 Agreement pursuant to ¶ 4.3;
- 20 c) the Court has entered the Judgment granting final approval to the  
21 settlement as set forth herein; and
- 22 d) the Judgment has become Final, as defined in ¶ 1.14.  
23

24 11.2 If all conditions specified in ¶ 11.1 hereof are not satisfied, the Settlement  
25 Agreement shall be canceled and terminated subject to ¶ 11.4 unless Class Counsel and  
26 Defendant’s Counsel mutually agree in writing to proceed with the Settlement Agreement.  
27  
28

1           11.3     Within seven days after the Opt-Out Date, the Settlement Administrator  
2 shall furnish to Class Counsel and to Defendant's Counsel a complete list of all timely and  
3 valid requests for exclusion (the "Opt-Out List").  
4

5           11.4     In the event that the Settlement Agreement or the releases set forth in ¶¶ 7.1,  
6 7.2, and 7.3 above are not approved by the Court or the settlement set forth in the Settlement  
7 Agreement is terminated in accordance with its terms, (i) the Settling Parties shall be  
8 restored to their respective positions in the Litigation and shall jointly request that all  
9 scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice  
10 to any Settling Party or Settling Party's counsel, and (b) the terms and provisions of the  
11 Settlement Agreement shall have no further force and effect with respect to the Settling  
12 Parties and shall not be used in the Litigation or in any other proceeding for any purpose,  
13 and any judgment or order entered by the Court in accordance with the terms of the  
14 Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any  
15 statement in this Settlement Agreement to the contrary, no order of the Court or  
16 modification or reversal on appeal of any order reducing the amount of attorneys' fees,  
17 costs, expenses, and/or service awards shall constitute grounds for cancellation or  
18 termination of the Settlement Agreement. Further, notwithstanding any statement in this  
19 Settlement Agreement to the contrary, Defendant shall be obligated to pay amounts already  
20 billed or incurred for costs of notice to the Settlement Class above and shall not, at any  
21 time, seek recovery of same from any other party to the Litigation or from counsel to any  
22 other party to the Litigation.  
23  
24  
25  
26  
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28

## **12.     Miscellaneous Provisions**

1           12.1 The Settling Parties (i) acknowledge that it is their intent to consummate this  
2 agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and  
3 implement all terms and conditions of this Settlement Agreement, and to exercise their best  
4 efforts to accomplish the terms and conditions of this Settlement Agreement.  
5

6           12.2 The Settling Parties intend this settlement to be a final and complete  
7 resolution of all disputes between them with respect to the Litigation. The settlement  
8 compromises claims that are contested and shall not be deemed an admission by any  
9 Settling Party as to the merits of any claim or defense. The Settling Parties each agree that  
10 the settlement was negotiated in good faith by the Settling Parties and reflects a settlement  
11 that was reached voluntarily after consultation with competent legal counsel. The Settling  
12 Parties reserve their right to rebut, in a manner that such party determines to be appropriate,  
13 any contention made in any public forum that the Litigation was brought or defended in  
14 bad faith or without a reasonable basis. It is agreed that no Party shall have any liability to  
15 any other Party as it relates to the Litigation, except as set forth herein.  
16  
17  
18

19           12.3 Neither the Settlement Agreement, nor the settlement contained herein, nor  
20 any act performed or document executed pursuant to or in furtherance of the Settlement  
21 Agreement or the settlement (i) is or may be deemed to be or may be used as an admission  
22 of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing  
23 or liability of any of the Released Parties; or (ii) is or may be deemed to be or may be used  
24 as an admission of, or evidence of, any fault or omission of any of the Released Parties in  
25 any civil, criminal or administrative proceeding in any court, administrative agency or  
26 other tribunal. Any of the Released Parties may file the Settlement Agreement and/or the  
27  
28

1 Judgment in any action that may be brought against them or any of them in order to support  
2 a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release,  
3 good faith settlement, judgment bar, or reduction or any other theory of claim preclusion  
4 or issue preclusion or similar defense or counterclaim.  
5

6 12.4 The Settlement Agreement may be amended or modified only by a written  
7 instrument signed by or on behalf of all Settling Parties or their respective successors-in-  
8 interest.  
9

10 12.5 This Agreement contains the entire understanding between American  
11 Vision and Plaintiffs regarding the payment of the Litigation settlement and supersedes all  
12 previous negotiations, agreements, commitments, understandings, and writings between  
13 American Vision and Plaintiffs in connection with the payment of the Litigation settlement.  
14 Except as otherwise provided herein, each party shall bear its own costs.  
15

16 12.6 Class Counsel, on behalf of the Settlement Class, is expressly authorized by  
17 Plaintiffs to take all appropriate actions required or permitted to be taken by the Settlement  
18 Class pursuant to the Settlement Agreement to effectuate its terms, and also are expressly  
19 authorized to enter into any modifications or amendments to the Settlement Agreement on  
20 behalf of the Settlement Class which they deem appropriate in order to carry out the spirit  
21 of this Settlement Agreement and to ensure fairness to the Settlement Class.  
22

23 12.7 Each counsel or other Person executing the Settlement Agreement on behalf  
24 of any party hereto hereby warrants that such Person has the full authority to do so.  
25  
26  
27  
28

1           12.8    The Settlement Agreement may be executed in one or more counterparts.  
2 All executed counterparts and each of them shall be deemed to be one and the same  
3 instrument. A complete set of original executed counterparts shall be filed with the Court.  
4

5           12.9    The Settlement Agreement shall be binding upon, and inure to the benefit  
6 of, the successors and assigns of the parties hereto.  
7

8           12.10   The Court shall retain jurisdiction with respect to implementation and  
9 enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the  
10 jurisdiction of the Court for purposes of implementing and enforcing the settlement  
11 embodied in the Settlement Agreement.  
12

13           12.11   As used herein, “he” means “he, she, or it;” “his” means “his, hers, or its,”  
14 and “him” means “him, her, or it.”  
15

16           12.12   All dollar amounts are in United States dollars (USD).  
17

18           12.13   Cashing a settlement check is a condition precedent to any Settlement Class  
19 Member’s right to receive settlement benefits. All settlement checks shall be void 90 days  
20 after issuance and shall bear the language: “This check must be cashed within 90 days,  
21 after which time it is void.” If a check becomes void, the Settlement Class Member shall  
22 have until 180 days after the Effective Date to request re-issuance. If no request for re-  
23 issuance is made within this period, the Settlement Class Member will have failed to meet  
24 a condition precedent to recovery of settlement benefits, the Settlement Class Member’s  
25 right to receive monetary relief shall be extinguished, and Defendant shall have no  
26 obligation to make payments to the Settlement Class Member for expense reimbursement  
27 under ¶¶ 2.1 or 2.2 or any other type of monetary relief. The same provisions shall apply  
28

1 to any re-issued check. For any checks that are issued or re-issued for any reason more than  
2 180 days from the Effective Date, requests for re-issuance need not be honored after such  
3 checks become void.  
4

5 12.14 All agreements made and orders entered during the course of the Litigation  
6 relating to the confidentiality of information shall survive this Settlement Agreement.  
7  
8

9 /s/

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