

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re DISPOSABLE CONTACT LENS
ANTITRUST LITIGATION

) MDL Docket No. 1030

) SETTLEMENT AGREEMENT

This Document Relates To:

ALL ACTIONS.

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

WHEREAS, the Florida action and the Class Action allege that Bausch & Lomb conspired with Johnson & Johnson Vision Products, Inc. ("Vistakon"), and/or CIBA Vision Corporation ("CIBA Vision"), and/or the American Optometric Association ("AOA") and/or certain individual defendants not to sell replacement contact lenses (as defined herein) directly to alternative channels of distribution (as defined herein), and to restrain Bausch &

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

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

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

WHEREAS, on or about September 5, 1996, the Court in MDL 1030, after briefing and argument, certified a consumer class in the Class Action consisting of: "All purchasers of Vistakon, Bausch & Lomb and CIBA replacement contact lenses from eye care practitioners during the period 1988 to the present, excluding consumers in Florida

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

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

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

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

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

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

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

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

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

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

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

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

(b) The term "Settlement Class" means all purchasers of Vistakon, Bausch & Lomb and CIBA replacement contact lenses from eye care practitioners during the period 1988 to the present excluding consumers in Florida represented by the Florida Attorney General in State of Florida v. Johnson & Johnson Vision Products, et al., Case No. 94-619-Civ-J-20.

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

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

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

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

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

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

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

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

2. **Joint Motion for Preliminary Approval.** Within five (5) business days of the execution of this Settlement Agreement, the class plaintiffs, Bausch & Lomb, the States

and Florida shall submit a joint motion to the Court requesting preliminary approval of this Settlement Agreement and entry of an order in the form annexed hereto as Exhibit A.

3. **Plan for Dissemination of Notice.** Simultaneously with the parties' joint motion for preliminary approval, the class plaintiffs, the States and Florida shall submit to the Court a plan for dissemination of notice to Settlement Class members, State residents and Florida residents. The costs of court-approved notice will be paid out of the Bausch & Lomb Settlement Fund, as described in paragraph 4 below. The form of notice shall be, in relevant part, substantially the same as the form of notice for the CIBA Vision Settlement. The plan for dissemination of notice shall provide for dissemination of notice at least as broadly as was provided for in the CIBA Vision Settlement. In addition, notice of the Bausch & Lomb Settlement shall be mailed personally to each person who requested notice of the CIBA Vision Settlement, or who made a claim or otherwise registered for the CIBA Vision Benefits Package.

4. **The Settlement Fund.**

(a) Subject to final approval of this Settlement Agreement under paragraph 11 hereof and Bausch & Lomb's right of termination under paragraph 9 hereof, in addition to provision of the Benefits Package described in paragraph 5 hereof, Bausch & Lomb agrees to pay \$8,000,000 in cash in full, complete and final settlement of the Class Action, the States Action, the Florida Action, all Released Claims (as defined in paragraph 12(a) hereof) and any obligations Bausch & Lomb might otherwise have to pay, including the cost of any notice to Class members, State residents or Florida residents, the payment of claims to Class members, State residents or Florida residents, and the costs of suit, including reasonable attorneys' fees, as approved by the Court pursuant to Fed. R. Civ. P. 23 and 15 U.S.C. §§15, 15c and 26, as follows: upon execution of this Settlement Agreement, Bausch & Lomb shall deposit \$8,000,000 in immediately available funds into an escrow account to be maintained by San Diego National Bank (the "Account") which, together with the interest

which thereafter accrues in the Account plus any funds deposited in the Account under the terms of paragraph 5(e) shall constitute the Bausch & Lomb Settlement Fund (the "Settlement Fund"). The Settlement Fund will be invested in a money market fund that invests solely in United States Treasury securities that are direct obligations of the United States of America or obligations the principal of, and the interest on which, are unconditionally guaranteed by the United States of America. The Settlement Fund shall be administered pursuant to the Escrow Agreement annexed hereto as Exhibit B (the "Escrow Agreement"). Except for the payment of Court-approved notice and the fees and costs of administration incurred pursuant to the Escrow Agreement, the Settlement Fund will remain intact until final approval of this Settlement Agreement pursuant to paragraph 11 hereof. The Settlement Fund shall be administered for the benefit of Settlement Class members, State residents and Florida residents as ordered by the Court.

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

(c) If, prior to the giving of Court-approved notice, (i) the Court declines to approve this Settlement Agreement preliminarily, (ii) the Court preliminarily approves the Settlement Agreement but withdraws such preliminary approval, or (iii) this Settlement Agreement is terminated under paragraph 9 hereof, then the Settlement Fund, including all income earned thereon, shall be returned to Bausch & Lomb within ten (10) business days of such event, less only (a) the fees and costs of administration incurred under the Escrow

Agreement; (b) any accrued tax liability; and (c) the costs incurred in giving Court-approved notice.

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

5. The Benefits Package.

(a) Bausch & Lomb will provide to all eligible claimants, as provided in paragraph 5(c) below, a Benefits Package, which will include the following:

(i) a single \$50.00 rebate per claimant on the purchase of four (4) multipacks, and an additional \$25.00 per claimant rebate on an additional purchase of four (4) multipacks, of any Bausch & Lomb® 2 week, SofLens66® Toric, PureVision™, SofLens® one day or Optima FW® contact lenses;

(ii) a single \$25.00 rebate per claimant on an eye examination, provided that the claimant also provides proof of purchase of Bausch & Lomb contact lenses (which may be purchased from an alternative channel of distribution and need not be purchased from the eye-care professional providing the examination);

(iii) a single coupon for one free four-ounce bottle of Renu Multiplus® lens care solution;

(iv) a single coupon for \$5.00 off the purchase of a 12 oz. Renu Multiplus® lens care solution;

(v) a free Bausch & Lomb® lens care kit sent in the Benefits Package (no coupon necessary);

(vi) a coupon book for the purchase of various Bausch & Lomb® eye-care products;

(vii) a free Renu® Rewetting drops sample and a coupon for \$1.00 off purchase of additional rewetting drops; and

(viii) a free ReNu Multiplus® Preservative Free drops sample.

The Benefits Package shall be offered through the plan for dissemination of notice approved by the Court; provided, however, that Bausch & Lomb's obligation to provide the Benefits Package shall be contingent upon this Settlement Agreement becoming final pursuant to paragraph 11 hereof.

(b) The costs of administering the Benefits Package will be borne by Bausch & Lomb.

(c) Any purchaser of any replacement contact lenses manufactured by Bausch & Lomb, Vistakon, or CIBA Vision from January 1, 1988, through the date of claim will be eligible for a Benefits Package.

(d) Claims may be made until two years from the date of preliminary court approval of this Settlement Agreement.

(e) Bausch & Lomb guarantees that the value of the Benefits Package to claimants will be at least equal to \$9.5 million. Bausch & Lomb will be credited in the amount of \$120.81 against the guarantee for each person who has registered a claim during the claim period and been sent a Bausch & Lomb Benefits Package. In the event that the value of all credits against the guarantee as calculated above is not equal to or greater than \$9.5 million, Bausch & Lomb will pay to the Bausch & Lomb Settlement Fund any difference between that value and \$9.5 million within 30 days after the end of the claim period.

(f) Bausch & Lomb will promote or advertise the availability of the Benefits Package, at its own expense, and in any manner it chooses, provided that the Benefits Package will be made available only to eligible and registered claimants.

6. Injunctive Relief.

(a) Bausch & Lomb agrees to sell and distribute its replacement contact lenses to alternative channels of distribution on the terms and conditions set forth in paragraph 7(f) of the Final Order and Judgment annexed hereto as Exhibit D for a period of five (5) years from the date this Settlement Agreement becomes final under paragraph 11 hereof.

(b) Bausch & Lomb will agree to sell its lenses directly to alternative channels of distribution on terms and conditions equally applicable to all accounts, which terms and conditions shall not discriminate against alternative channels of distribution.

7. Exclusive Remedies.

(a) Settlement Class members, State residents and Florida residents who have not timely exercised their right to opt out as provided in the Court-approved notice shall look solely to the Benefits Package and the Settlement Fund for settlement and satisfaction of all Released Claims, as defined in paragraph 12(a) hereof, as against Bausch & Lomb.

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

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

8. **Non-Signatory States**

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

(b) Any Non-Signatory State may subsequently become a party to this Settlement Agreement (to which Bausch & Lomb agrees to waive any objection) by signing a copy of the Joinder in Settlement Agreement annexed hereto as Exhibit C no later than three (3) days before the actual publication of the Court-approved dissemination of notice, and then delivering such signed copy to Bausch & Lomb and each other party to this Settlement Agreement in accordance with paragraph 18 hereof.

9. **Termination.** Notwithstanding any other provision hereof, Bausch & Lomb may terminate this Settlement Agreement if prior to the entry of the Final Order and Judgment pursuant to paragraph 11(b) hereof, any Non-Signatory State commences an action against Bausch & Lomb under federal or state law arising out of or relating to Bausch & Lomb's policy, practice, course of dealing and/or decision not to sell its contact lenses directly to alternative channels of distribution and/or to restrain its authorized distributors from doing so. In the event Bausch & Lomb exercises its rights to terminate this Settlement

Agreement under this paragraph, it shall notify the class plaintiffs, the States and Florida within ten (10) business days of the commencement of the Non-Signatory State's action.

10. **Entry of Final Order and Judgment.** If the Court finally approves this Settlement Agreement under paragraph 11 hereof, the class plaintiffs, the States, Florida and Bausch & Lomb shall jointly request entry of a Final Order and Judgment in the form annexed hereto as Exhibit D.

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

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

(b) Entry, as provided for in paragraph 10 hereof, is made of the Final Order and Judgment (Exhibit D hereto); and

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

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

(a) Upon this Settlement Agreement becoming final pursuant to paragraph 11 hereof, the class plaintiffs and all Settlement Class members, State residents and Florida residents who have not timely exercised their right to opt out as provided by the Court-approved notice, their successors, heirs and assigns, the States, in their capacities as sovereigns, as *parens patriae* on behalf of natural persons for whom they may act, and as

parens patriae on behalf of their economies and general welfare, and their assigns, and anyone acting on their behalf, including in a representative or derivative capacity, shall release and forever discharge Bausch & Lomb and its present and former parents, subsidiaries, divisions, affiliates, stockholders, benefit plans, officers, directors, employees, agents and any of their legal representatives, and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing (the "Released Parties"): (i) in the case of the class plaintiffs, Settlement Class members, State residents, the States, Florida residents and Florida from all manner of claims, liabilities, demands, actions, suits and causes of action, for damages, restitution, disgorgement, injunctive and/or declaratory relief, whether class, individual, representative or otherwise in nature, including costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that accrued prior to the date of the Court's final approval of this Settlement Agreement as required by paragraph 11 hereof and that the class plaintiffs, Settlement Class members, State residents, Florida residents and the States and Florida ever had, now have or hereafter can, shall or may have, which have been asserted or could have been asserted in the Class Action, States Actions or Florida Action, including, but not limited to, claims under the Sherman Antitrust Act, 15 U.S.C. §1 *et seq.*, Alabama Restraint of Trade or Production Act, §8-10-1 *et seq.*, Code of Alabama (1975), Alaska Monopolies and Restraint of Trade Act, AS §45.50.562, Arizona's Uniform State Antitrust Act, A.R.S. §44-1402 *et seq.*, Ark. Code Ann. §4-75-201 *et seq.*, California Business and Professions Code Section 16700 *et seq.*, California Business and Professions Code Sections 17200 (including Business and Professions Code §17206.1), Sections 35-26 and 35-28 of the Connecticut General Statutes, Sections 35-32, 35-34, 35-35 and 35-38 of the Connecticut General Statutes, the Delaware Antitrust Act, 6 Del. C. Chapter 21, the Idaho Antitrust Law, Idaho Code §§48-101 *et seq.*, Idaho Code §48-603(18) of the Idaho Consumer Protection Act, the Illinois Antitrust Act, 740 I.L.C.S. 10/1 *et seq.*, Iowa Law, Iowa Code §§553.4, 553.5, Kansas Restraint of Trade

Act, K.S.A. §§50-101. *et seq.*, Louisiana Rev. Stat. title 51, part IV, §1401, *et seq.*, Maine Antitrust Statutes, 10 M.R.S.A. §§1101, *et seq.*, 5 M.R.S.A., §205-A Maryland Antitrust Act, Maryland Comm. Law Code Ann. 11-201, *et seq.*, Mass. Gen. Laws Ann. ch. 93, §§1-14A, and Ch. 93A, §2, 4, §2 of the Michigan Antitrust Reform Act, MCL 445.772; MSA 28.70(2), the Minnesota Antitrust Law of 1971, Minn. Stat. §§325D.49-325D.66, the Missouri Antitrust Law, §§416.011 *et seq.*, the Missouri Merchandising Practices Act, §§407.010 *et seq.*, Nevada Unfair Trade Practices Act, N.R.S. CH. 598A, New Jersey Antitrust Act, N.J.S.A. 56:9-3, New York General Business Law §§340-347, North Carolina Antitrust Act, N.C. Gen. Stat., 75-1 *et seq.* North Dakota's Uniform State Antitrust Act, N.D. Cent. Code §§51-08.1-01 *et seq.* (1995 Supp.), the Ohio Valentine Act, Ohio Rev. Code §§1331.01 *et seq.*, Oregon Antitrust Law, ORS 646.705 *et seq.*, Texas Free Enterprise and Antitrust Act of 1983, Tex. Bus. Com. Code §§15.01, *et seq.* Utah Antitrust Act, Utah Code Ann. §§75-10-911, *et seq.* the Virginia Antitrust Act, Va. Code §59.1-9.1 *et seq.*, the West Virginia Antitrust Act, W. Va. Code §47-18-1 *et seq.*, the West Virginia Consumer Credit and Protection Act, W. Va. Code §46A-1-101 *et seq.*, the Wisconsin Trust and Monopolies Law, §§133.03(1), 133.04, 133.16, 133.17 and 133.18, Stats., or any state antitrust law, arising out of or relating to Bausch & Lomb's policy, practice, course of dealing and/or decision not to sell its contact lenses directly to alternative channels of distribution and/or to restrain its authorized distributors from doing so; and (ii) in the case of Florida residents, from all manner of claims, liabilities, demands, actions, suits and causes of action, for damages, restitution, disgorgement, injunctive and/or declaratory relief, whether class, individual, representative or otherwise in nature, including costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that accrued prior to the date of the Court's final approval of this Settlement Agreement as required by paragraph 10 hereof and that such Florida residents ever had, now have or hereafter can, shall or may have, including, but not limited to, claims under the Sherman Antitrust Act, 15

U.S.C. §1 *et seq.*, Florida Statutes §§501.201 *et seq.*, 542.15 *et seq.*, or any state antitrust law, arising out of or relating to Bausch & Lomb's policy, practice, course of dealing and/or decision not to sell its contact lenses directly to alternative channels of distribution and/or to restrain its authorized distributors from doing so;

(b) The class plaintiffs and all Settlement Class members, State residents and Florida residents who have not timely exercised the right to opt out as provided in the Court-approved notice, their successors, heirs and assigns, the States and Florida (in their capacities as sovereigns, as *parens patriae* on behalf of natural persons for whom they may act, and as *parens patriae* on behalf of their economies and general welfare) and their assigns, and anyone acting on their behalf, including in a representative or derivative capacity: (i) shall not bring any proceeding to establish liability against any Released Party based, in whole or in part, upon any Released Claim; and (ii) upon this Settlement Agreement becoming final pursuant to paragraph 11 hereof, covenant and agree not to seek thereafter to establish liability against any Released Party based, in whole or in part, upon any Released Claim.

(c) In the event a Non-Settling Defendant obtains judgment, in whole or in part, against Bausch & Lomb for contribution or indemnity based upon any claim a class plaintiff, a State, Florida or a Settlement Class member, State resident or Florida resident who has not timely exercised the right to opt out as provided in the Court-approved notice: (i) has asserted under state law against such Non-Settling Defendant in any action in MDL 1030; or (ii) has asserted or may assert under state law against such Non-Settling Defendant arising out of or relating to Bausch & Lomb's policy, practice, course of dealing and/or decision not to sell its contact lenses to alternative channels of distribution and/or to restrain its authorized distributors from so doing, (1) such class plaintiff or Settlement Class member, in the case of a judgment arising out of a class plaintiff or Settlement Class member's claim, (2) such State or State resident, in the case of a judgment arising out of a claim by a State or

State resident who is not a Class member, or (3) Florida or such Florida resident, in the case of a judgment arising out of a claim by Florida or a Florida resident, shall reduce any judgment or proportion thereof obtained against such Non-Settling Defendant by the proportionate amount of such judgment attributable to Bausch & Lomb. In the event the judgment or proportion thereof is not so reduced, such class plaintiff, State, Florida or such Settlement Class member, State resident or Florida resident shall not attempt to collect from such Non-Settling Defendant such amount attributable to Bausch & Lomb.

(d) Nothing in this Settlement Agreement is intended to constitute, or shall be construed as, a release of or a covenant not to sue any party other than the Released Parties, including, but not limited to, any Non-Settling Defendant for any claim or cause of action whatsoever, including, but not limited to, claims founded, in whole or in part, upon the conduct of the Released Parties.

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

(a) Upon this Settlement Agreement becoming final pursuant to paragraph 11 hereof, the class plaintiffs and all Settlement Class members, States residents and Florida residents who have not timely exercised the right to opt out as provided in the Court-approved notice, their successors, heirs and assigns, the States and Florida (in their capacities as sovereigns, as *parens patriae* on behalf of natural persons for whom they may act, and as *parens patriae* on behalf of their economies and general welfare) and their assigns, and anyone acting on their behalf, including in a representative or derivative capacity, expressly waive and release any and all provisions, rights and benefits conferred by §1542 of the California Civil Code, which provides:

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

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

(b) The class plaintiffs and all Settlement Class members, State residents and Florida residents, their successors, heirs and assigns, and anyone acting on their behalf, including in a representative or derivative capacity, and the States and Florida and their assigns, may, after final approval of this Settlement Agreement pursuant to paragraph 11 hereof, discover facts other than or different from those which he, she or it knows or believes to be true with respect to Released Claims. Nevertheless, upon this Settlement Agreement becoming final under paragraph 11 hereof, the class plaintiffs and all Settlement Class members, State residents and Florida residents who have not timely exercised the right to opt out as provided in the Court-approved notice, their successors, heirs and assigns, and the States and Florida in their capacities as sovereigns, as *parens patriae* on behalf of natural persons for whom they may act, and as *parens patriae* on behalf of their economics and general welfare, and their assigns, and anyone acting on their behalf, including in a representative or derivative capacity, waive and fully, finally and forever settle and release, any known or unknown, suspected or unsuspected, contingent or non-contingent Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such other or different facts.

14. **Termination by Reason of Court Action.** In the event that this Settlement Agreement does not become final pursuant to paragraph 11 hereof, it shall become null and void and have no force and effect, except as expressly provided otherwise herein.

15. **Rescheduling of Events in Scheduling Order.** In the event this Settlement Agreement is terminated pursuant to paragraph 9 or paragraph 14 hereof, the class plaintiffs, the States, Florida and Bausch & Lomb shall use their best efforts to reschedule events in MDL 1030 that have been suspended as to Bausch & Lomb, in a manner that will reasonably accommodate the litigation interests of the class plaintiffs, the States and Bausch & Lomb.

In such event, Bausch & Lomb reserves the right to move for a separate trial of the Class Action, the States Action and/or Florida Action against it.

16. **Inadmissibility of Settlement Agreement.** This Settlement Agreement, including all exhibits, whether or not it becomes final pursuant to paragraph 11 hereof, and any and all negotiations, documents and discussions associated with it, shall not constitute or be construed as an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Bausch & Lomb or of the truth of any of the claims or allegations in the Class Action, the States Action, the Florida Action or any other action in MDL 1030.

17. **Return of Bausch & Lomb Discovery Materials.** The class plaintiffs, the States, Florida and their respective counsel agree that, except as otherwise required by law, all materials produced by, or information discovered of, or records of information discovered of, or produced by, Bausch & Lomb or any of its present or former directors, officers or employees pursuant to the Federal Rules of Civil Procedure or any state law or rule authorizing civil investigation demands, including all copies thereof (collectively, "Bausch & Lomb Materials"), (a) in the possession or control of the class plaintiffs, the States, Florida or their counsel, experts, consultants or agents shall, within sixty (60) days after the final termination of the Class Action, the States Action and the Florida Action, be destroyed or, at the election of the respective plaintiffs, returned to Bausch & Lomb; and (b) in the possession or control of the States and Florida or their counsel, experts, consultants or agents shall be destroyed in the ordinary course of business or, at the election of the States and Florida, returned to Bausch & Lomb. Upon Bausch & Lomb's request, counsel for the class plaintiffs, counsel for the States and counsel for Florida shall provide a written declaration certifying that all Bausch & Lomb Materials have been destroyed or returned to Bausch & Lomb, as the case may be.

18. **Notices.** All notices, demands, requests and other communications (collectively "Notices") given or served by any party in connection with this Settlement

Agreement shall be in writing. Notices shall be given by hand delivery, with receipt, or by nationally recognized overnight courier, with receipt, to each of the following:

Notices to Class Plaintiffs:

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

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

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

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

Notices to Bausch & Lomb:

Robert B. Stiles, Esq.
Senior Vice President and
General Counsel
BAUSCH & LOMB, INC.
One Bausch & Lomb Place
Rochester, New York 14604

Thomas F. Cullen, Jr. Esq.
William V. O'Reilly, Esq.
JONES, DAY, REAVIS & POGUE
51 Louisiana Avenue, N.W.
Washington, DC 20001-2113

19. **Binding Nature of Agreement.** This Settlement Agreement shall be binding upon, and inure to the benefit of, Bausch & Lomb's successors and assigns. Upon this Settlement Agreement becoming final under paragraph 11 hereof, it shall be binding upon, and inure to the benefit of, all Settlement Class members, State residents and Florida residents who have not timely exercised the right to opt out as provided in the Court-approved notice, their heirs and assigns, and upon the States and Florida and their assigns.

20. **Complete Agreement.** This Settlement Agreement contains an entire, complete, and integrated statement of each and every term and provision agreed to by and

among the parties; it is not subject to any condition not provided for herein; and it supersedes all prior agreements between the parties with respect to its subject matter, including, but not limited to, the Bausch & Lomb Memorandum of Understanding dated as of January 26, 2001. This Settlement Agreement shall not be modified in any respect except by a writing executed by all of the parties.

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

22. **Exclusive Jurisdiction.** Upon this Settlement Agreement becoming final pursuant to paragraph 11 hereof, Bausch & Lomb, the class plaintiffs and all Settlement Class members, State residents and Florida residents who have not timely exercised the right to opt out as provided in the Court-approved notice, the States and Florida agree irrevocably: (i) to submit to the exclusive jurisdiction of the United States District Court for the Middle District of Florida, Jacksonville Division, for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement, including its applicability; and (ii) not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the United States District Court for the Middle District of Florida, Jacksonville Division, or that such Court is an improper venue or an inconvenient forum.

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

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