

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re DISPOSABLE CONTACT LENS
ANTITRUST LITIGATION

This Document Relates To:

ALL ACTIONS.

) MDL Docket No. 1030

)

) SETTLEMENT AGREEMENT WITH
) JOHNSON & JOHNSON VISION CARE,
) INC.

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THIS SETTLEMENT AGREEMENT is entered into as of the 23rd day of April, 2001, between (1) defendant Johnson & Johnson Vision Products, Inc., now known as Johnson & Johnson Vision Care, Inc. ("Johnson & Johnson" or "Vistakon"); (2) the State of Florida ("Florida"), in its capacity as sovereign, as *parens patriae* on behalf of natural persons for whom Florida may act, and on behalf of Florida's economy and general welfare in Civil Action No. 94-619-CIV-J-20 (the "Florida 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 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 MDL 1030; (4) the plaintiff, both individually and in her capacity as a putative class representative ("Downey/Washington") and her counsel, in Civil Action No. 94-1215-CV-J-20 (the "Downey/Washington Action") pending in MDL 1030; (5) the plaintiff, both individually and in his capacity as a putative class representative ("Morris") and his counsel, in Civil Action No. 94-1214-CV-J-20 (the "Morris Action") pending in MDL 1030; and (6) 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, the "States") in their capacities as sovereigns, as *parens patriae* on behalf of natural persons for whom the States may act, and on behalf of the States' economies and general welfare in Civil Action Nos. 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;

WHEREAS, the Class Action alleges that Johnson & Johnson conspired with Bausch & Lomb Incorporated ("Bausch & Lomb"), and/or CIBA Vision Corporation ("CIBA Vision"), and/or the American Optometric Association ("AOA") and/or the Contact Lens and Anterior Segment Society ("CLASS"), and/or certain individuals not to sell replacement contact lenses (as defined herein) directly to alternative channels of distribution, and to restrain Johnson & Johnson'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 Johnson & Johnson, Bausch & Lomb and/or CIBA Vision replacement contact lenses sold to consumers through those companies' authorized channels of distribution;

WHEREAS, the Florida Action, the Morris Action, and the Downey/Washington Action allege that Johnson & Johnson conspired with Bausch & Lomb, and/or the AOA and/or CLASS, and/or certain individuals not to sell replacement contact lenses (as defined herein) directly to alternative channels of distribution, and to restrain Johnson & Johnson'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 Johnson & Johnson and Bausch & Lomb lenses sold to consumers through those companies' authorized channels of distribution and through alternative channels of distribution;

WHEREAS, the States Action (i) alleges that Johnson & Johnson conspired with CIBA Vision, Bausch & Lomb, AOA, CLASS 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 certain individuals not to sell replacement contact lenses directly to alternative channels of distribution and to restrain Johnson & Johnson's authorized distributors from reselling such lenses directly to such

alternative channels of distribution; and/or to limit consumers' ready access to the prescription, work order, and/or other information a consumer would need to purchase contact lenses from alternative channels of distribution; and/or to form exclusive dealing arrangements between optometrists and contact lens manufacturers; and/or to tie the sale of contact lenses to the sale of vision services, all with the alleged effect of artificially raising or maintaining the retail prices for Johnson & Johnson, Bausch & Lomb and CIBA Vision replacement contact lenses sold to consumers through 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 Johnson & Johnson, Bausch & Lomb, or CIBA Vision;

WHEREAS, Johnson & Johnson denies each and every allegation of unlawful conduct in the Class, States, Florida, Downey/Washington, and Morris 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, B&L 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 finally 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 represent State residents (as defined herein) and Florida represents Florida 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 five weeks of trial, that it would be in the best interests of the Settlement Class and the residents of the States (as defined herein) and of Florida (as defined herein) to enter into this Settlement Agreement to avoid the risk and uncertainty of continued litigation, 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, Johnson & Johnson has concluded that, while denying all 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 Johnson & Johnson;

NOW, THEREFORE, it is agreed by the undersigned, on behalf of Johnson & Johnson, the class plaintiffs, the States, Florida, Downey/Washington, and Morris that, subject to the approval of the Court as provided herein, the Class, States, Florida, Downey/Washington, and Morris Actions and all claims of the class plaintiffs,

Downey/Washington, Morris, the States and of Florida, shall be settled, compromised and dismissed with prejudice as to Johnson & Johnson 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 appropriate distribution alternative that 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 Vision 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 Johnson & Johnson, CIBA Vision, and/or Bausch & Lomb contact lenses.

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

2. **Motions for Preliminary Approval.** On May 22, 2001, at the time of the 3:00 p.m. hearing scheduled in this matter, the class plaintiffs, the States, Florida, Downey/Washington, Morris, and Johnson & Johnson, shall submit motions 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' motions 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 as described in paragraph 4(a) 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 Johnson & Johnson Settlement shall be mailed personally to each person who requested notice of the CIBA Vision or Bausch & Lomb Settlements, or who made a claim or otherwise registered for the CIBA Vision or Bausch & Lomb Benefits Package.

4. The Settlement Fund.

(a) Subject to final approval of this Settlement Agreement under paragraph 12 hereof, in addition to provision of the Benefits Package Fund and Drop-Out Compensation Fund described in paragraphs 5 and 6 hereof and otherwise complying with this Settlement Agreement, Johnson & Johnson agrees to pay \$25,000,000 in cash in full, complete and final settlement of the Class Action, the States Action, the Florida Action, the Morris Action, the Downey/Washington Action, all Released Claims (as defined in paragraph 13(a) hereof) and any obligations Johnson & Johnson 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: Johnson & Johnson deposited \$25,000,000 on or before April 30, 2001 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 Johnson & Johnson 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 12 hereof. Notice cost will be paid ratably from the Bausch & Lomb, AOA and Johnson & Johnson Settlement Funds. 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 *cypres* distribution, and on terms and conditions, determined by the Court in the exercise of its reasonable discretion; provided, however, that Johnson & Johnson 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) the Settlement Agreement is terminated pursuant to paragraph 10 hereof, then the Settlement Fund, including all income earned thereon, shall be returned to Johnson & Johnson 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 Federal, State, Municipal, or local taxes due as a result of income earned by, or assets in, the Settlement Fund will be paid from the Settlement Fund. In the event that any Federal, State, Municipal, or local tax liability is finally assessed against and paid by Johnson & Johnson as a result of income earned by, or

assets in, the Settlement Fund, Johnson & Johnson shall be entitled to reimbursement of such payment, including without limitation, interest, penalties, taxes payable by reason of any such reimbursement, and Tax Expenses (as defined in paragraph 17 of the Escrow Agreement attached hereto as Exhibit B, from the Settlement Fund, or shall be indemnified for such payment by the Escrow Agent as set forth in paragraph 17 of the Escrow Agreement. In all events, Johnson & Johnson shall have no liability or responsibility for taxes or Tax Expenses. Johnson & Johnson will use all reasonable efforts to resist any such payment of tax liability. Amounts Johnson & Johnson is required to incur in efforts to resists such payment shall be deemed "Tax Expenses" and shall be reimbursed from the Settlement Fund.

5. The Benefits Package Fund.

(a) Johnson & Johnson will provide to all eligible claimants, as provided in paragraph 5(c) below, a Benefits Package consisting of products and services related to contact lenses. Members of the Settlement Class and State and Florida residents may receive initial notice of the Benefits Package through the plan of dissemination of notice approved by the Court; provided, however, that Johnson & Johnson's obligation to provide the Benefits Package shall be contingent upon the Settlement becoming final pursuant to paragraph 12 hereof. The Benefits Package shall consist of: \$50.00 off four or more multipacks, \$25.00 off an eye care practitioner visit, plus one (1) additional coupon for \$25.00 off a future purchase of four or more multipacks.

(b) The costs of administering the Benefits Package Fund shall be borne exclusively by Johnson & Johnson.

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

(d) Claims may be made during the 12 months from the date of preliminary Court approval of the Settlement. In the event that the claims made during that

period have not reached \$30 million, Johnson & Johnson, in its sole discretion, may extend the claims period for an additional six months.

(e) Johnson & Johnson guarantees that the value of the Benefits Package Fund to claimants will be \$30 million. Johnson & Johnson will be credited \$100.00 against the guarantee for each person who has registered a claim during the claim period and been sent a Johnson & Johnson Benefits Package. In the event that the value of all credits against the guarantee as calculated above does not reach \$30 million, Johnson & Johnson will pay to the Johnson & Johnson Settlement Fund any difference between that value and \$30 million within 30 days after the end of the claim period. Nothing in this paragraph shall permit any party to this agreement to describe this Benefits Package Fund as having a value of anything other than \$30 million.

(f) Johnson & Johnson 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. "Registered" for purposes of the Settlement Agreement and all notices and orders related thereto shall include claimants who register directly by calling the toll free number or through the website, and claimants who have requested a benefits package through Johnson & Johnson's website Acuvue.com or otherwise through a promotion or program sponsored by Johnson & Johnson, for whom Johnson & Johnson has provided names, contact information, and eligibility to the claims administrator from time to time. No other party to this Settlement shall publicize or advertise the availability of the Benefits Package other than with respect to the initial press announcement and the Court-approved notice. This clause shall not impact the ability of class counsel, counsel for Florida and the States or the claims administrator to communicate with prospective or actual class members concerning the settlements, including through the Court approved notice program.

6. **The Drop-Out Compensation Fund.** Upon presentation of a claim in appropriate form, and with the appropriate documentation of a valid prescription for Vistakon lenses or eye care practitioner verification thereof, Johnson & Johnson will provide \$50.00 in Johnson & Johnson product coupons or \$35.00 in cash to any person who formerly wore Johnson & Johnson brand contact lenses and who no longer wears contact lenses ("Drop-Outs"). To be eligible for the Johnson & Johnson product coupons or cash payment, claimants must demonstrate eligibility by completing a claim form which includes the claimant's name, address, telephone number, a statement that the claimant wore Johnson & Johnson contact lenses but no longer wears contact lenses, claimant's signature verifying the information above under penalty of perjury, and attaching the appropriate documentation as set forth above in the form of either (1) a copy of a valid written prescription for Johnson & Johnson-brand contact lenses dated on or after January 1, 1988; (2) a copy of a vendor or credit card receipt reflecting purchase of Johnson & Johnson-brand contact lenses on or after January 1, 1988; or (3) a signed statement from an eye care practitioner verifying that the consumer wore Johnson & Johnson-brand contact lenses on or after January 1, 1988. Johnson & Johnson's obligation under this paragraph shall in no event exceed a total of \$5 million in value.

7. **Injunctive Relief**

(a) Johnson & Johnson will sell and distribute its replacement contact lenses to alternative channels of distribution (as defined in this Settlement Agreement) for a period of five (5) years from the date this Settlement Agreement becomes final under paragraph 12 hereof.

(b) Subject to subparagraph (a) above, Johnson & Johnson will sell to alternative channels of distribution in a commercially reasonable and non-discriminatory manner, provided that any such alternative channel of distribution, like any other authorized account, will sell contact lenses only to consumers based upon a valid prescription and in

compliance with all federal and state laws and regulations regarding the sale or dispensing of contact lenses, and agrees not to substitute diagnostic lenses for a revenue-producing product.

8. 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 Fund, Drop-Out Compensation Fund and the Settlement Fund for settlement and satisfaction of all Released Claims, as defined in paragraph 13(a) hereof, as against Johnson & Johnson.

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

(c) Because Johnson & Johnson's payment of the Settlement Fund, Benefits Package Fund and Drop-Out Compensation 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, Florida, Morris, and Downey/Washington Actions, Johnson & Johnson agrees not to take any position or participate in the fee and expense approval process.

9. Non-Signatory States

(a) No later than fifteen (15) days after preliminary approval by the Court of this Settlement Agreement, the States and Florida will disclose 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") and shall provide a written invitation to each Non-Signatory State to become a signatory to this Settlement Agreement. In the event any Non-Signatory State informs a State or Florida that it intends to investigate, assert or pursue any claim against Johnson & Johnson arising out of or relating to Johnson & Johnson'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, or on the basis of allegations that Johnson & Johnson took any action to limit consumers' ready access to the prescription, work order, and/or other information a consumer would need to purchase contact lenses from alternative channels of distribution, such State or Florida shall immediately notify Johnson & Johnson of such Non-Signatory State's intention.

(b) Any Non-Signatory State may subsequently become a party to this Settlement Agreement 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 Johnson & Johnson and each other party to this Settlement Agreement in Accordance with paragraph 20 hereof.

10. **Termination.** Notwithstanding any other provision hereof, Johnson & Johnson may terminate this Settlement Agreement if prior to the entry of the Final Order and Judgment pursuant to paragraph 12 hereof, any Non-Signatory State commences an action against Johnson & Johnson under federal or state law arising out of or relating to Johnson & Johnson'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/or on the basis of allegations that Johnson & Johnson took any action to limit consumers' ready access to the prescription, work order, and/or other information a consumer would need to purchase contact lenses from alternative channels of distribution. In the event Johnson & Johnson exercises its rights to terminate this Settlement Agreement under this paragraph, it shall notify the class plaintiffs, the States, Downey/Washington, Morris, and Florida within ten (10) business days of receiving notice of the commencement of the Non-Signatory State's action.

11. **Entry of Final Order and Judgment.** If the Court finally approves this Settlement Agreement under paragraph 12 hereof, the class plaintiffs, the States, Florida, Downey/Washington, Morris, and Johnson & Johnson shall jointly request entry of a Final Order and Judgment in the form annexed hereto as Exhibit D.

12. **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 11 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 is 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.

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

(a) Upon this Settlement Agreement becoming final pursuant to paragraph 10 hereof, the class plaintiffs (both individually and in their capacities as class representatives) 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, Downey/Washington, Morris, and all their successors, heirs and assigns, and anyone acting on their behalf, including in a representative or derivative capacity; the States, in their capacities as sovereigns, as *parens patriae* on behalf of natural persons for whom they may act, and on behalf of their economies and general welfare, and their assigns, and anyone

acting on their behalf, including in a representative or derivative capacity; and Florida, in its capacity as a sovereign, as *parens patriae* on behalf of natural persons for whom it may act, and on behalf of its economy and general welfare, and its assigns, and anyone acting on its behalf, including in a representative or derivative capacity, shall release and forever discharge Johnson & Johnson 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") from all manner of claims, liabilities, demands, actions, suits, and causes of action, for damages, restitution, disgorgement, unjust enrichment, civil penalties, statutory penalties, 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 12 hereof and that the class plaintiffs, Settlement Class members, Downey/Washington, Morris, 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, Florida Action, Downey/Washington Action, or Morris 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 §§16700 *et seq.*, (including Business and Professions Code §16720), California Business and Professions Code §17200 (including Business and Professions Code §§17203, 17204, 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,

Florida Deceptive and Unfair Trade Practices Act, Florida Statutes §§501.201 *et seq.*, (including §501.204), Florida Antitrust Act, Florida Statutes §§542.15 *et seq.*, (including §542.18), 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 Competition Law, Iowa Code §§553.1 *et seq.* (including §§553.4, 553.5), Kansas Restraint of Trade Act, K.S.A. §§50-101. *et seq.*, Kansas Consumer Protection Act, K.S.A. §§50-623 *et seq.*, Louisiana Rev. Stat. title 51, part IV, §§1401, *et seq.*, Maine Antitrust Statutes, 10 M.R.S.A. §§1101, *et seq.*, Maine Unfair Trade Practices Act, 5 M.R.S.A., §§205-A, *et seq.* (including §207), 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, section 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.010 *et seq.*, 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.* (including §§75-1.1, 75.2), 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.*, Revised Code of Washington §§19.86 *et seq.* (including §§19.86.030, 19.86.020), 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, unfair competition, unfair or deceptive trade practices, consumer protection, or similar law, arising out of or relating to Johnson & Johnson'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/or arising out of or relating to allegations that Johnson & Johnson took any action to limit consumers' ready access to the prescription, work order, or other information a consumer would need to purchase contact lenses from alternative channels of distribution (collectively, the "Released Claims").

(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 on behalf of their economies and general welfare), Morris, Downey/Washington, 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 12 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) 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.

14. Waiver and Released Rights Under California Civil Code Section 1542.

(a) Upon this Settlement Agreement becoming final pursuant to paragraph 12 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), Downey/Washington,

Morris, 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. ***General Release; extent.*** 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;

and also expressly waive and release any and all provisions, rights and benefits conferred 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, Downey/Washington, Morris, 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 10 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 12 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 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.

15. State Law Enforcement

(a) In accordance with their jurisdiction, Attorneys General for the States and Florida agree to continue to administer or enforce their state laws regarding the sale, dispensing and/or furnishing of contact lenses.

(b) Nothing in this paragraph is intended to create a private right of action.

16. Termination by Reason of Court Action. In the event that this Settlement Agreement does not become final pursuant to paragraph 12 or is terminated pursuant to paragraph 10 hereof, it shall become null and void and have no force and effect, except as expressly provided otherwise herein.

17. Rescheduling of Events in Scheduling Order. In the event this Settlement Agreement does not become final pursuant to paragraph 12 or is terminated pursuant to paragraph 10 hereof, the class plaintiffs, the States, Florida and Johnson & Johnson shall use their best efforts to reschedule the trial, in a manner that will reasonably accommodate the litigation interests of the class plaintiffs, the States, Florida and Johnson & Johnson.

18. Inadmissibility of Settlement Agreement. This Settlement Agreement, including all exhibits, whether or not it becomes final pursuant to paragraph 12 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 Johnson & Johnson or of the truth of any of the claims or allegations in the Class Action, the States Action, the Florida Action, the Downey/Washington Action, the Morris Action, or any other action in MDL 1030. Neither this Settlement Agreement nor any of its provisions may be offered or received in evidence in any action or proceeding, or otherwise used in any court or other tribunal, as an admission or concession of the merit or lack of merit of any claim against Johnson & Johnson or of the liability or wrongdoing of any nature on the part of Johnson & Johnson. The terms of this

paragraph do not limit the right of any party to use this Settlement Agreement in any proceeding to enforce the terms hereof.

19. **Return of Johnson & Johnson Discovery Materials.** The class plaintiffs, the States, Florida, Downey/Washington, Morris 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, Johnson & Johnson 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, "Johnson & Johnson Materials"), in the possession or control of the class plaintiffs, the States, Florida, Downey/Washington, Morris, or their counsel, experts, consultants or agents shall, within sixty (60) days after the Judgment becomes final, be destroyed or, at the election of the respective plaintiffs, returned to Johnson & Johnson. Counsel for the class plaintiffs, Downey/Washington, and Morris, counsel for the States and counsel for Florida shall provide a written declaration to Johnson & Johnson certifying that all Johnson & Johnson Materials have been destroyed or returned to Johnson & Johnson, as the case may be.

20. **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.
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San Diego, California 92101

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

Stewart D. Wechsler
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 Johnson & Johnson:

Kathryn A. Meisel
Assistant General Counsel
Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933

Margaret M. Zwisler
Robert F. Ruyak
Howrey Simon Arnold & White LLP
1299 Pennsylvania Ave., NW
Washington, DC 20004

21. **Binding Nature of Agreement.** This Settlement Agreement shall be binding upon, and inure to the benefit of, Johnson & Johnson's successors and assigns, and upon 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, Morris, Downey/Washington, their heirs and assigns, and upon the States and Florida and their assigns.

22. **Complete Agreement.** This Settlement Agreement and its Exhibits contain the 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 In Camera Memorandum of Understanding and Order dated as of April 23, 2001. This Settlement Agreement shall not be modified in any respect except by a writing executed by all of the parties.

23. **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.

24. **Exclusive Jurisdiction.** Upon this Settlement Agreement becoming final pursuant to paragraph 10 hereof, Johnson & Johnson, 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, Morris, Downey/Washington, the States and Florida agree irrevocably for a period of five years from the date the Settlement

Agreement becomes final: (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 enforcement; 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.

25. **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.

26. **States Counsel.** All States acknowledge that the Attorney General of Maryland acting through Assistant Attorney General John Tennis, or such other representative as the Maryland Attorney General may designate in writing, has full and complete authority to enter into the Escrow Agreement attached hereto as Exhibit B, and has full and complete authority to act as "States Counsel" under the Escrow Agreement on each State's behalf.

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