

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

ALAN FRANK, O.D., on Behalf of
Himself and All Others Similarly Situated,

Plaintiff,

vs.

DAVIS VISION, INC.,

-and-

HVHC, INC.,

-and-

HIGHMARK HEALTH,

Defendants.

CIVIL ACTION NO: _____

**CLASS ACTION
JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

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

NATURE OF THE CASE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PARTIES

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

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

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

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

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

JURISDICTION AND VENUE

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

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

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

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

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

FACTUAL ALLEGATIONS

A. Davis Vision's Mandatory Laboratory Policy Is Anticompetitive

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

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

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

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

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

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

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

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

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

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

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

34. Independent Pennsylvania Eyecare Providers have no choice but to acquiesce to Davis Vision’s mandatory laboratory policy because of the latter’s unlawful exercise of market, monopoly, or monopsony¹ power in Pennsylvania.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Plaintiff's Experiences

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

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

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

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

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

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

CLASS ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT THREE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT ELEVEN
(Unjust Enrichment)
(Against All Defendants)

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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

Dated: June 12, 2017

Respectfully submitted,

/s/  (DJS8892)

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