

a period of five years from, in any manner, directly or indirectly, continuing, maintaining, or renewing these agreements, or from engaging in any other combination, conspiracy, agreement, understanding, plan, program, or other arrangement having the same effect as the alleged violation.

3. That the United States have such other relief as the nature of the case may require and the Court may deem just and proper.

Dated: December 15, 1994.

For Plaintiff:

Anne K. Bingaman,

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Robert E. Litan,

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#### **In the United States District Court for the District of Columbia**

United States of America, Plaintiff, vs. Vision Service Plan, Defendant. Civil Action No. 942693.

#### **Stipulation**

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Eastern District of California;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court; and

3. Defendant agrees to be bound by the provisions of the proposed Final Judgment pending its approval by the Court. If plaintiff withdraws its consent, or if the proposed Final Judgment is not

entered pursuant to the terms of the Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

4. Defendant agrees to send, within 15 days of the filing of the proposed Final Judgment, a copy of the attached letter, which has been approved by the Antitrust Division, by first-class mail to every VSP Panel Doctor participating at any time since January 1, 1993.

5. Defendant agrees to provide to plaintiff a certificate of compliance with the preceding paragraph within 20 days of the filing of the proposed Final Judgment.

For Plaintiff:

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#### **In the United States District Court for the District of Columbia**

United States of America, Plaintiff, vs. Vision Service Plan, Defendant. Civil Action No. 94 2693.

#### **Final Judgment**

Plaintiff, United States of America, filed its Complaint on December 15, 1994. Plaintiff and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against or an admission by any party about any issue of fact or law or that any violation of law has occurred. Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law

herein, and upon consent of the parties, it is hereby

Ordered, Adjudged, and Decreed, as follows:

*I*

#### **Jurisdiction**

This Court has jurisdiction over the subject matter of this action and over each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the Defendant under section 1 of the Sherman Act, 15 U.S.C. 1.

*II*

#### **Definitions**

As used herein, the term:

(A) "Defendant" or "VSP" means Vision Service Plan;

(B) "Panel Doctor's Agreement" means the VSP Panel Member Agreement by which Defendant contracts with optometrists or ophthalmologists, including all amendments and additions, in effect at any time since January 1, 1992, and during the term of this Final Judgment;

(C) "Most Favored Nation Clause" means:

(1) The clause characterized as a Fee Non-Discrimination Clause in paragraph 6 of the VSP Panel Doctor's Agreement, pursuant to which each VSP member doctor agrees:

(a) Not to charge fees to VSP that are any higher than those charged to the doctor's non-VSP patients, nor those that the doctor accepts from any other non-governmental group, group plan, or panel;

(b) If a published VSP fee schedule would cause payment in excess of the doctor's usual and customary fee, to notify VSP and accept such lower fee as is consistent with the doctor's usual and customary fees; and

(c) If VSP determines that the doctor is charging fees to VSP that are higher than those charged non-VSP patients, VSP shall reduce the doctor's fees accordingly; or

(2) Any other existing or future clause in the VSP Panel Doctor's Agreement, VSP policy, or VSP practice having the same purpose or effect, in whole or in part.

(D) "Non-VSP patients" means patients who are not members of a plan insured or administered by VSP.

(E) "Non-VSP plan" means any plan (other than VSP) responsible for all or part of any expense for vision care services, provided to plan members, pursuant to contractual terms with providers of vision services limiting the fees that providers collect for serving the plan's members.