

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
CASE NO. 0:21-cv-61275-RAR

WENSTON DESUE, *individually and as
legal guardian of N.D. and M.D. and all
others similarly situated,*

Plaintiff,

v.

20/20 EYE CARE NETWORK, INC., *et al*

Defendants.

AND ALL CONSOLIDATED ACTIONS

Consolidated with:

0:21-cv-61292

0:21-cv-61302

0:21-cv-61357

0:21-cv-61406

0:21-cv-61755

**DECLARATION OF GAYLE M. BLATT IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

I, Gayle M. Blatt, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California and appear pro hac vice in this matter. I am a partner in the law firm of Casey Gerry Schenk Francavilla Blatt & Penfield, LLP and I am currently serving as one of the interim co-lead counsel for the putative class. I have personal knowledge of the matters stated herein and, if called upon, I could and would testify competently to those matters. I submit this Declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.

FACTUAL AND PROCEDURAL BACKGROUND

2. This is a class action brought by current and former customers of health plans serviced by 20/20 Eye Care Network, Inc. (“ECN”) and iCare Acquisition, Inc. (“iCare”) (collectively, “Defendants”) who were notified by 20/20 Eye Care or 20/20 Hearing Care on or about May 28, 2021, via letter that their personally identifiable information was accessed by an

unauthorized third party. Defendants have identified approximately 4.2 million people affected by the Data Incident.

3. Following the dissemination of the notice, six class actions were filed in this court. These lawsuits include the above-captioned matter, *Desue v. 20/20 Eye Care Network, Inc.* No. 21-cv-61275-RAR; *Bowen v. 20/20 Eye Care Network, Inc.*, No. 21-cv-61292; *Fraguada v. 20/20 Eye Care Network, Inc.*, No. 21-cv-61302; *Runkle v. 20/20 Eye Care Network, Inc.*, No. 21-cv-61357; *Hoffman-Mock v. 20/20 Eye Care Network, Inc.*, No. 21-cv-61406-WPD; and *Johnson v. 20/20 Eye Care Network, Inc.*, No. 21-cv-61755-RAR (Johnson). These matters were consolidated by Court order. [Order Consolidating Cases and Setting Status Conf., June 28, 2021, ECF No. 11; *see also* ECF Nos. 22, 35.]

4. On September 1, 2022, Plaintiffs filed their First Amended Consolidated Class Action Complaint, alleging four causes of action: (1) negligence and negligence *per se*; (2) unjust enrichment; (3) breach of confidence; and (4) violation of the Florida Deceptive Trade Practices Act (FDTPA). [ECF No. 37.]

5. Defendants filed a motion to dismiss the amended complaint, which the Court granted in part on March 15, 2022. [ECF No. 51.] In the Order, the Court held that Plaintiffs had established Article III standing because two Plaintiffs had established concrete and particularized injuries, including substantial risk of imminent identity, financial, and health fraud and theft; emotional anguish and distress resulting from the Data Breach, and increased time spent reviewing financial statements and credit reports to assess whether fraudulent activity occurred. [*Id.* at 6.] Other Plaintiffs also alleged actual misuse of their personal data. [*Id.* at 9-10.] And the Court held that Plaintiffs adequately pleaded traceability. [*Id.* at 11-12.]

6. Plaintiffs filed a Second Amended Consolidated Class Action Complaint on March 29, 2022. [ECF. No. 52.] Plaintiffs asserted negligence counts against ECN and negligence against iCare, negligent supervision by ECN of its employees entrusted with access to the PII and PHI of Plaintiffs and Class Members, and a count under FDTPA. On April 25, 2022, following a joint motion by the parties to extend the briefing dates for pleading challenges,

Defendants filed a Motion to Strike Punitive Damages and Special Relationship Allegations [ECF No. 59], and on April 26, 2022, Defendants again moved to dismiss the complaint. [ECF No. 60.]

7. In response, Plaintiffs filed an Unopposed Motion for Leave to File Third Amended Consolidated Class Action Complaint to refine factual allegations, amend legal claims, and address concerns Defendants raised in its motions. [ECF No. 62.] On May 9, 2022, the Court granted the unopposed motion to file a new amended complaint. Thereafter, the parties filed a Joint Motion to Stay Proceedings so they could engage in settlement efforts. [ECF No. 65.] The Parties engaged a mediator, the Honorable John W. Thornton, Jr. (Ret.), to assist the parties in attempting to resolve the case. [ECF No. 67]

8. Mediation took place remotely on July 25, 2022, with the appropriate persons in attendance or otherwise available to the parties.

SETTLEMENT AGREEMENT

9. Throughout the pendency of this case, the parties had numerous discussions regarding the facts and circumstances of the case, the circumstance of Defendants, and the documentation that was and was not available to be exchanged. Though the parties were operating under a discovery stay, the parties nonetheless had initially exchanged limited information informally. Once the mediation was contemplated, the Parties then engaged in more expansive informal discovery in anticipation of settlement negotiations.

10. By July 25, 2022, the parties had enough information to have thoroughly examined and evaluated the relevant law and facts to assess the strengths and weaknesses of the merits of the Plaintiffs' claims and the Defendants' defenses. The parties thoroughly briefed the issues in preparation for mediation and Plaintiffs, by and through their counsel, participated in arm's-length negotiations.

11. Following a day-long mediation session with Judge Thornton, and continued negotiations of the essential settlement terms over the subsequent months, the parties reached

agreement on final terms of the proposed resolution. The settlement terms are reflected in the Class Action Settlement Agreement and Release (“Settlement Agreement” or “SA”) attached to my declaration as **Exhibit 1**.

12. The Settlement Agreement sets forth in full detail monetary and nonmonetary benefits to Plaintiffs and the proposed Settlement Class under the Settlement Agreement.

13. In my opinion, the resulting proposed settlement is fair, reasonable, and adequate and represents an excellent resolution for the Settlement Class Members. As is stated in the Settlement Agreement (Attachment 1), Defendants will pay \$3,000,000 into a common fund which will pay settlement benefits that include: (i) Reimbursement for ordinary Out of Pocket losses reasonably traceable to the data incident in an amount up to \$2500 upon documentation; (ii) At the Class Members’ election, either 36 months of Identity Monitoring Services with IDX, or an alternative cash payment of \$50.00; (iii) Reimbursement for Time Spent addressing issues relating to the security incident for up to 10 hours at \$25.00 per hour, and attorneys’ fees and expenses as approved by the court. SA ¶¶ IV.2.a.1-4. The Class Member benefits to be paid from the common fund are subject to proration upward or downward depending on the number of valid claims submitted by Class Members. *Id.* at ¶¶ IV.2.a.5-6.

14. The proposed Settlement Class Representatives are members of the Settlement Class and do not possess any interests antagonistic to the Settlement Class.

15. To the extent the total amount of the Approved Claims at the end of the Claims Period exceeds or is less than the amount in the Settlement Fund, the cash benefits will be decreased or increased on a pro- rata basis. *Id.* at ¶ IV2.a.5-6.

16. In addition, and separately, the Defendants will provide reimbursement for Class Member claimed documented losses due to identity theft in an amount up to \$5,000 per individual, subject to a maximum aggregate cap of \$600,000. *Id.* at ¶ IV.2.b.

17. And as a further part of the Settlement, Defendants will separately pay all costs of Notice and Settlement Administration. *Id.* at ¶ IV.2.c.

18. The notice program is designed to provide a direct-mailed summary notice of the Settlement to each Class Member, and the notice program has a built-in process for following up on undelivered mail. (Decl. of Cameron R. Azari, Esq. on Notice Plan and Notices (“Azari Decl.”) ¶ 23. The summary Notice will refer Class Members to the dedicated Settlement Website for viewing, downloading, and printing of the Long Form Notice, Claim Form and other important case documents. *Id.* at ¶ 29. The dedicated case Settlement Website which will be created and maintained by Epiq, is where all Class Members can file claims, print paper claim forms, upload documents, find answers to frequently asked questions, review important documents related to this case, and will have all of the options and services available to the Class Members as set forth in the Declaration of Cameron R. Azeri, Senior Vice President of Epiq Class Action and Claims Solutions, and the Director of Legal Notice for Hilsoft Notifications, attached to Plaintiffs’ motion.

19. The Release is narrowly tailored to release only those claims which could have been brought in this action. In particular, the Released Claims against Defendants include those arising out of the security incident which is the subject of this proceeding. (*See* Exhibit 1 at ¶ IV.1.p).

20. Attorneys’ fees were not discussed until after the parties reached an agreement on all material terms related to Settlement Class benefits. Plaintiffs will seek attorneys’ fees of up to 25% of the Settlement Fund, plus reasonable out-of-pocket costs and litigation expenses incurred, not to exceed \$35,000.

21. There are no agreements outside of the Settlement that must be identified by Rule 23(e)(3).

22. The Settlement treats Class Members equitably because all Settlement Class Members are eligible for reimbursement for out of pocket losses, including those incurred attendant to identity fraud, time spent, and an election of either important Identity Monitoring Services with insurance and fully managed identity theft recovery services for three years from the Effective Date or an alternative cash payment. *Id.* at ¶ IV.2.a.2.

PROSECUTION OF THIS ACTION

23. The Settlement Agreement is the result of competent representation and vigorous arms' length negotiations with Defendants (by and through their counsel of record), the assistance of a neutral mediator to reach the best possible outcome for the Settlement Class. Based on my experience, and after taking into account the disputed factual and legal issues involved, I believe the proposed Settlement is fair, reasonable, and adequate for the Settlement Class and it was unquestionably free of collusion.

24. Plaintiffs and Class Members allege harm due to the Data Incident on the ECN network. Their interests are directly aligned, as evidenced by the fact that Named Plaintiffs have the same claims, vigorously prosecuted this case for the benefit of all Settlement Class Members by filing the underlying actions, reviewing pleadings, conferring with Counsel, and providing input in crafting and approving the Settlement.

25. Proposed Class Counsel have vigorously pursued this litigation on behalf of Plaintiffs and the putative class since its inception and dedicated time and resources to this litigation—and will continue to do so through final approval. The prosecution of this action was done solely on a contingent fee basis, and proposed class counsel have been completely at risk that they would not receive any compensation for prosecuting claims against the Defendants.

26. I have extensively investigated Plaintiffs' claims and facts surrounding the Security Incident; reviewed and analyzed public information and information provided by Defendants; and thoroughly examined the legal principles applicable to the claims asserted. We participated in drafting the pleading and the briefing and worked with co-counsel to develop sufficient information and documentation to attend mediation. We participated fully in negotiations, in editing and approving settlement documents, including the notice, claim form, and settlement agreement and drafting the motion for preliminary approval and additional attachments thereto.

27. I am unaware of any conflicts of interest between Plaintiffs and the putative Class Members or proposed Class Counsel. I have not previously represented Defendants in any matter

and am not related to the representative Plaintiffs. We do not represent opposing factions within the Class in that all claims are predicated on the same facts and theories of liability, and benefit Class Members equally. On these grounds, I believe I am appropriate and qualified as Class Counsel, as are proposed Co-Lead Counsel Bryan Bleichner, and the remaining attorneys appointed as liaison counsel and Executive Committee Chair and members. We will continue to vigorously and fairly represent the interests of the putative class.

28. Proposed Class Counsel have zealously litigated and successfully negotiated this Settlement in the best interests of the Class. The settlement is the product of months of arm's length negotiations. At all times, these negotiations were at arm's length and, while courteous and professional, the negotiations were intense and hard-fought on all sides. I and the Proposed Class Counsel have served as class counsel in multiple class actions, and we are competent to serve as class counsel in this action.

29. I am not aware of any other lawsuits commenced by any other persons against Defendants regarding these claims.

30. Based on my experience, I believe this Settlement is a positive resolution for the Settlement Class and falls comfortably within the range of reasonableness. It is also my considered opinion that the Claim Form, Postcard Notice, and Long-Form Notice accurately and plainly explain the settlement benefits and how to obtain them, offer clear opportunity for members of the Class to exclude themselves if they so choose, and provide a mechanism for the Class to share their opinions about the Settlement with the Court. I also believe the Claim Form is straightforward and that the Settlement Agreement provides a reasonable process to assist Class Members whose initial submissions are deficient.

31. Data breach cases have limited precedential class certification decisions, and some of Plaintiffs' class-wide damage models remain untested. The path to recovery for Class Members is not otherwise assured because experts will disagree, and Daubert motions are likely to be filed. Defendants have and continue to deny any liability associated with the incident at issue. This Settlement provides Class Members substantive benefits—benefits they can receive

soon. The alternative to this Settlement is ongoing litigation without the same certainty of recovery. Based on the tangible benefits this Settlement provides the Class Members, and weighing the benefits against the risks, time, and expense of litigating this case, based on my experience, I fully support the Settlement as proposed and respectfully request this Court grant Plaintiffs' motion.

QUALIFICATIONS OF CLASS COUNSEL

32. Plaintiffs' counsel are well experienced in class actions and data breach litigation, and believe this Settlement represents a fair resolution of this matter, and is in the best interests of the Plaintiffs and the Settlement Class.

33. I have practiced for over 30 years and have represented injured clients and consumers in a wide range of complex and class action cases. I am also the head of Casey Gerry's complex litigation practice group, a diverse team of experienced class action professionals. In that capacity, I have led, or helped lead, a wide range of class action litigations. Proposed Class Counsel here are also experienced class action attorneys with extensive data breach experience. This Court had the opportunity to evaluate their résumés in accordance with Plaintiffs' request for appointment of leadership structure. [ECF No. 24 Exs. 1-8]. We have put forth substantial effort in representing the Plaintiffs and the Class, and believe we have achieved a positive outcome for them in the form of this proposed Settlement.

34. Relative to data breach litigation, I served on the five-member Plaintiffs' Executive Committee appointed to oversee the litigation related to the massive *Yahoo!* data breaches, collectively at the time, the largest data breach in the world. (*In re: Yahoo! Inc. Customer Data Security Breach Litigation*, Case No. 16-MD-02752 (N.D. Cal.)). I served as Class Counsel in the *In re: Citrix Data Breach Litigation*, Case No. 19-cv-61350-RKA (S.D. Fla.), on the law and briefing committee in the consolidated data breach class action *Adkins v. Facebook, Inc.*, Case No. 18-05982 WHA (N.D. Cal.); I was appointed to serve on the leadership team in *In re: Sony Gaming Networks and Customer Data Security Breach Litigation*,

Case No. 11-md-02258-AJB (S.D. Cal.), class counsel in *Sung et al., v. Schurman Fine Papers d/b/a Schurman Retail Group*, Case No. 17-cv-02760-LB (N.D. Cal.), and was appointed to lead or help lead numerous other privacy and data breach class actions with similar legal and factual issues to the case at bar, including *Pfeiffer et al. v. RadNet, Inc.* Case No. 2:20-cv-09553-RGK-SK (C.D. Cal.); *In re US Fertility, LLC Data Security Litigation*, Case No. 8:21-cv-00299 (D. Md.); *In re: Warner Music Group Data Breach*, Case No. 1:20-cv-07473-PGG (S.D.N.Y.); *In re: NetGain Technology, LLC*, Case No. 0:21-cv-01210-SRN (D. Minn.); *In re EyeMed Vision Care, LLC Data Security Breach Litigation*, Case No. 21-cv-00036-DRC (S.D. Ohio), among others.

I hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 28th day of October 2022 at San Diego, California.



Gayle M. Blatt

gmb@cglaw.com

**CASEY GERRY SCHENK FRANCAVILLA
BLATT & PENFIELD, LLP**

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San Diego, CA 92101

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*Interim Co- Lead Counsel for Plaintiffs and the
Putative Class*

Exhibit 1

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
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SETTLEMENT AGREEMENT

This Settlement Agreement, dated as of October 28, 2022 (the “Settlement Agreement” or “Settlement”), is made and entered into by and among the following Settling Parties: (i) Stephany Alcalá; Benjamin J. Liang; Amber Lowe, on behalf of herself and her minor children C.B., K.B., M.B., and G.M.; David Runkle; and Suzanne Johnson (collectively the “Representative Plaintiffs”), individually and on behalf of the Settlement Class Members (as defined below), by and through Gayle M. Blatt of the law firm Casey Gerry Schenk Francavilla Blatt & Penfield LLP and Bryan Bleichner of the law firm Chestnut Cambronne PA, as co-lead Class Counsel, and Dorothy P. Antullis of the law firm Robbins, Geller, Rudman & Dowd LLP; Jean S. Martin of the law firm Morgan & Morgan, P.A.; Terence R. Coates of Markovits, Stock and DeMarco, LLC; Joseph M. Lyon of the Lyon Firm, Nathan D. Prosser of Hellmuth & Johnson PLLC; and M. Anderson Berry of Clayeo C. Arnold, A Professional Law Corp. (collectively, “Proposed Class Counsel” or “Class Counsel”); and (ii) 20/20 Eye Care Network, Inc. (“ECN”) and iCare

Acquisition, Inc. (“iCare”) (collectively the “Defendants”), for the benefit of all Released Parties (as defined herein), by and through the Defendants’ counsel of record, Mark S. Melodia and Caitlin Saladrigas of Holland & Knight LLP (“Defense Counsel”). This Settlement Agreement is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions hereof.

I. THE LITIGATION

This matter is a consolidated putative class action (the “Litigation”) arising from a Data Incident (as defined below) whereby an unauthorized access to defendant ECN’s data environment occurred in January 2021 and resulted in the removal and deletion of certain protected health information and personal identifying information. This suit was originally brought by multiple plaintiffs in six different actions, five of which were filed in federal court and one of which was filed in state court and later removed. After consolidation, the Representative Plaintiffs filed a First Amended Consolidated Complaint which dropped certain prior named plaintiffs and added others and asserted claims for negligence, unjust enrichment, violation of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), and breach of confidence. [ECF No. 37]. Defendants filed a motion to dismiss asserting the Representative Plaintiffs lacked standing and failed to properly state a single cause of action. [ECF No. 40]. This Court denied the motion in part, finding the Representative Plaintiffs had sufficiently pled standing, but granted Defendants’ motion with respect to the failure to properly plead any cause of action. [ECF No. 51]. Following the Court’s ruling, the Representative Plaintiffs filed a Second Amended Consolidated Complaint this time raising two separate negligence claims, one against ECN and another against iCare, as well as a claim for negligent supervision, and a FDUTPA claim seeking injunctive relief only. [ECF No.

52]. The Defendants again challenged the sufficiency of each cause of action in a motion to dismiss. [ECF No. 60].

In response to Defendants' motion to dismiss the Second Amended Consolidated Complaint, the Representative Plaintiffs sought leave to further amend, which this Court granted. [ECF Nos. 62 & 63]. Simultaneous with the Court's order granting leave, the Parties discussed the possibility of settlement, which in turn led to selection of a mediator, Judge John Thornton (Ret.) of Judicial Arbitration and Mediation Services. The Parties engaged in a full-day of mediation. The mediation, and subsequent efforts by the Settling Parties and Judge Thornton, which occurred over the course of nearly two months, led to this Settlement Agreement.

II. CLAIMS OF THE REPRESENTATIVE PLAINTIFFS

The Representative Plaintiffs believe the Claims asserted in the Litigation have merit.

The Representative Plaintiffs and Proposed Settlement Class Counsel, however, recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation against the Defendants through motion practice, trial, and potential appeals. They also have taken into account the uncertain outcome and the risk of further litigation, as well as, the difficulties and delays inherent in such litigation.

The Representative Plaintiffs and Proposed Settlement Class Counsel believe that the settlement set forth in this Settlement Agreement confers substantial benefits upon the Settlement Class Members. They have determined that the Settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

III. DENIAL OF WRONGDOING AND LIABILITY

The Defendants deny each and every claim and contention alleged against them in the Litigation and all charges of wrongdoing or liability alleged against them. Nonetheless, Defendants

and their counsel have concluded that further continuation of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

IV. TERMS OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Representative Plaintiffs, individually and on behalf of the Settlement Class, by and through Proposed Settlement Class Counsel, and the Defendants agree that, subject to Final Approval by the Court, the Litigation, and the Released Claims shall be finally and fully compromised, settled, and released as to all Released Parties, and the Litigation shall be dismissed with prejudice as to all Settling Parties, with all rights of appeal being waived, provided that the Court approves this Settlement Agreement as written and such waiver of the right to appeal does not apply to the right of Class Counsel to appeal any award of their fees and costs that is less than what they applied for, upon and subject to the following terms and conditions of this Settlement Agreement.

In turn, upon the Effective Date, Defendants and its representatives, officers, agents, directors, affiliates, employees, insurers, and attorneys fully release and discharge the Class Representatives and Class Counsel from the Released Claims.

1. Definitions

As defined in the Settlement Agreement, the following terms have the meanings specified below:

- a) **Approved Claim(s)** means the timely submission of a Claim Form by a Settlement Class Member that has been approved by the Settlement Administrator.
- b) **Lost Time** means time spent addressing or remedying issues related to the Data Incident.

- c) **CAFA Notice** refers to any notifications required to be made pursuant to the Class Action Fairness Act of 2005, 28 U.S.C.A. § 1715.
- d) **Claim Form** or **Claim** means the form(s) Settlement Class Members must submit to be eligible for reimbursement for Out-of-Pocket Losses, Lost Time, Actual Identity Fraud and/or to claim Identity Monitoring Services or an Alternative Cash Payment under the terms of the Settlement, which is attached hereto as Exhibit D.
- e) **Claims Period** means ninety (90) days following the Notice Deadline by which Class Members must file Claims online or if by mail, the date by which the Claim must be postmarked.
- f) The **Data Incident** refers to the unauthorized access to ECN's data environment which occurred in the month of January, 2021.
- g) The **Effective Date** of this Settlement is the day after the day that (i) the Settlement Agreement has been given Final Approval and (ii) either (a) the time to appeal has lapsed with no appeal taken or (b) all appeals have been finally resolved in favor of settlement.
- h) **Final Approval** means the entry of a Judgment in the form set forth in Exhibit A, or substantially in that form to the mutual satisfaction of the Settling Parties in their sole discretion.
- i) The **Net Settlement Fund** will be the Settlement Fund after reduction for attorney's fees and litigation expenses for Proposed Settlement Class Counsel.

- j) **Notice** means notice of the proposed class action Settlement to be provided to Class members in connection with a motion for preliminary approval and to direct notice to the class.
- k) **Notice Deadline** shall be the date 60 days after entry of the Preliminary Approval Order, or the first business day after 60 days (if 60 days falls on a Saturday, Sunday, or legal holiday) by which the Settlement Administrator shall provide Notice consistent with the form set forth in Exhibit C to the Settlement Class Members and establishment of a settlement website.
- l) **Objection Deadline** means sixty (60) days after the Notice Deadline.
- m) **Opt Out Deadline** means sixty (60) days after the Notice Deadline.
- n) A **Person** is a living natural person who is resident in the United States.
- o) **Preliminary Approval** means the entry of an Order of Preliminary Approval in the form set forth in Exhibit B, or substantially in that form to the satisfaction of the Settling Parties in each of their sole discretion.
- p) **Released Claims** means any claims, costs, damages, expenses, exposure, liability, and/or loss, direct or indirect, under any theory or cause of action, at law or in equity, asserted or not asserted, known or unknown, arising from or in any way related to the Data Incident.
- q) **Released Parties** are defined as the Defendants and its divisions, affiliates, subsidiaries, direct and indirect parents, officers, directors, trustees, employees, agents, partners, members, former and present customers, (including their affiliates, subsidiaries, direct and indirect parents, officers, directors, trustees, members, employees, and agents), and insurance carriers

as well as the health plans Defendants service. The term Released Parties also expressly includes 20/20 Hearing Care Network, Inc. (“HCN”), which is a registered fictitious name owned by ECN and which also provided breach notification letters after the Data Incident, and 20/20 Hearing Care Network, LLC (“HCN LLC”), which is an entity to which HCN intended to transfer its operations but never completed same. Neither HCN nor HCN LLC are parties to this litigation.

- r) The **Settlement Administrator** is Epiq Class Action & Claims Solutions, Inc.
- s) The **Class** will be defined as “All Persons who were sent a notification from either ECN or HCN as a result of the Data Incident.” Excluded from the Class are (a) officers, directors, trustees, and employees of the Defendants; (b) all judges and their staffs assigned to this case and any members of their immediate families; (c) the mediator; (d) experts retained in this Litigation by the Parties; and (e) the Parties’ counsel in this Litigation. To provide notice and make available the benefits of this Settlement to the intended beneficiaries, Defendants shall send to the Settlement Administrator a Class List of individuals who were sent one or more notices related to the Data Incident, including each Settlement Class Member’s most current mailing address, to the extent that information is available; the Defendants, Class Counsel and the Settlement Administrator will work together in good faith to update, de-duplicate and otherwise check available records to arrive at a final Class List that is as accurate as reasonably possible.

- t) **Class Members** shall be Persons in the Class. It is estimated that there are 4.2 million Class Members.
- u) The **Settlement Fund** will be \$3,000,000.00 dollars, plus accrued interest, to be paid by Defendants. The Settlement Fund will be deposited by Defendants into an escrow account established and maintained by the Settlement Administrator solely for this settlement. The timing of that deposit is further detailed in this settlement below.
- v) **Taxes and Tax-Related Expenses** relating to the Settlement Fund shall be considered Notice and Administrative Expenses and shall be timely paid by the Settlement Administrator without requiring additional approval from the Court.

2. Terms

The Parties agree to resolve the pending Litigation as follows:

- a) Defendants shall pay \$3,000,000 into an interest-bearing escrow account to be fully disbursed to all Class Members, pro-rated if necessary, and not subject to reversion to the Defendants. The \$3,000,000, plus accrued interest, is the Settlement Fund which shall provide the following relief to the Class Members any one of whom is eligible to collect for one or more of the following settlement benefits, but none of whom may collect more than once, even if they originally received more than one notice of the Data Incident, except that a legal guardian for a Class Member who is under the age of eighteen (18) at the time of the claim submission may submit a

Claim Form seeking any applicable benefits under the settlement for each Class Member for whom they are a legal guardian.

1. Class Members will be able to submit a claim for reimbursement for out-of-pocket losses (“Out-of-Pocket Expenses”) reasonably traceable to the Data Incident of up to \$2,500 per individual Class Member. To claim this benefit, Class Members will be required to provide documentation, and affirm under penalty of perjury their belief that the claimed losses are due to the Data Incident. Approved Claims for out-of-pocket losses shall be deducted by the Settlement Administrator from the Settlement Fund;
2. Class Members will also have the option to elect thirty-six (36) months of identity monitoring protection (“Identity Monitoring”) or, in the alternative, a cash payment of \$50.00 per person (“Cash Payment”). Approved Claims for the costs of identity monitoring or alternative cash payments shall be deducted by the Settlement Administrator from the Settlement Fund; and
3. Class Members will have the right to make a claim for reimbursement for time spent (“Lost Time”) of up to ten (10) hours at \$25 per hour upon attestation. Class Members will affirm they have lost time resulting from the Data Incident and provide a brief description of the time spent. Approved Claims for lost time shall be deducted by the Settlement Administrator from the Settlement Fund.

4. The Settlement Fund will also cover Class Counsel's Attorneys' Fees and Litigation Expenses (as awarded by the Court).
 5. To the extent the total amount of the Approved Claims at the end of the Claims Period exceeds the amount in the Settlement Fund, the Approved Claims for Identity Monitoring shall be paid first. Any remaining Approved Claims for Out of Pocket Expenses, Lost Time, or Cash Payment, after payment of the Approved Identity Monitoring Claims, shall be paid pro rata to Class Members with Approved Claims.
 6. Similarly, if the total amount of Approved Claims at the end of the Claims Period is less than the amount of the Settlement Fund, the Approved Claims for Out of Pocket Expenses, Lost Time, or Cash Payment shall all be increased in amount pro rata.
- b) In addition to the relief provided for in the Settlement Fund, and wholly separate from the Settlement Fund, Defendants agree to compensate Class Members for actual identity fraud losses reasonably traceable to the Data Incident up to \$5,000 per individual Class Member on a claims-made basis. The maximum aggregate amount payable by Defendants to Class Members for all such Accepted Claims related to identity fraud shall be \$600,000.00.
- c) Defendants agree to pay all costs and expenses of Notice and Administration outside of the Settlement Fund.

- d) Defendants also agree to reasonably cooperate with Proposed Class Counsel on behalf of Representative Plaintiffs' efforts to expeditiously seek preliminary and final approval.
- e) The Class agrees to release the Released Parties from any and all claims, as further defined herein as the "Released Claims."

3. The Settlement Timeline Prior to Final Approval

- a) By October 28, 2022, or a later date if permitted by the Court, the Proposed Class Counsel shall jointly file this Settlement Agreement to the Court along with a Motion for Preliminary Approval, along with Exhibits including the Settlement Agreement, Long and Short Form Notices, Claim Form, and Proposed Orders Granting Preliminary and Final Approval.
- b) By forty-five (45) days following the Notice Deadline, Class Counsel shall submit a Motion for Attorney's Fees and Litigation Expenses.
- c) Within sixty (60) days after Preliminary Approval, the Settlement Administrator shall provide Notice consistent with Exhibit C to the Class Members and establish a settlement website. The Settlement Administrator shall also provide CAFA Notice as directed by that statute, at Defendants' expense.
- d) Class Members shall have until ninety (90) days after the Notice Deadline to submit claim forms via the settlement website or may submit hard copies by USPS mail postmarked on or before the Claim Deadline, and consistent with the Claim Form attached in Exhibit D.

- e) Class Members shall have until sixty (60) days after the Notice Deadline to file any objections to the settlement, consistent with the requirements set forth in Section 4, below.
- f) Class Members shall have until sixty (60) days after the Notice Deadline to opt out of the settlement. Any Class Member who files an opt out shall be excluded from the Class, and not obtain any benefit hereunder and will not be bound by the release herein. Each Class Member must opt out individually. No joint or *en masse* opt outs will be effective. Completed opt outs must be mailed to the Settlement Administrator.
- g) Within thirty (30) days after the Claim Deadline, Proposed Settlement Class Counsel shall submit a Motion for Final Approval to the Court for approval. As an attachment to this Motion, Proposed Settlement Class Counsel shall submit an affidavit from the Settlement Administrator as to the provision of notice and the administration of the benefits offered by the Settlement.

4. The Settlement Timeline Subsequent to Final Approval

- a) Within ten (10) days after the Effective Date, Defendants shall fully fund the Settlement Fund.
- b) Upon the Effective Date, each Class Member, including Representative Plaintiffs, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims.
- c) Within fourteen (14) days of the Effective Date, any Court-approved Attorney's Fees will be paid from the Settlement Fund.

- d) Within sixty (60) days of the Effective Date, the Settlement Administrator shall calculate the Net Settlement Fund and disburse the Net Settlement Fund to Settlement Class Members who made a claim on a pro rata basis, according to the proration plan set forth herein.
- e) Class Members must accept the deposit of all such payments within one hundred twenty (120) days of the Effective Date. The Settlement Administrator will contact any Class Member who has not cashed their settlement check or monies by that date, and to the extent necessary to effectuate the settlement payment, shall reissue the payment which shall be valid for sixty (60) days. After that time, any checks uncashed or monies not deposited after that time will be deemed null and void, as though never issued. However, such Class Members who make a claim but never actually access their award will still be deemed to have released the Released Parties.
- f) If, after Approved Claims are paid pursuant to Paragraphs 2(a)(1)-(3) and the process described in Paragraph 4(e) has been completed, funds still remain in the Net Settlement Fund two hundred and ten (210) days after the Effective Date, the parties will present to the Court a proposed plan of disbursement for any such excess funds.
- g) The Court will retain jurisdiction over the settlement for one hundred twenty (120) days after either (a) the Net Settlement Fund has been exhausted or (b) the proposed and approved plan of distribution of excess remaining Net Settlement Fund has been implemented.

5. Objection Procedures

5.1 Each Class Member desiring to object to the settlement shall submit a timely written notice of his or her objection.

5.2 Any objection must be in writing and must:

- a) Clearly identify the case name and number *Wenston Desue, et al. v. 20/20 Eye Care Network, Inc., et al.*, United States District Court, Southern District of Florida, No. 0:21-cv-61275-RAR;
- b) Include the full name, address, telephone number, and email address of the person objecting;
- c) Include the full name, address, telephone number, and email address of the objector's counsel (if the objector is represented by counsel);
- d) State whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class, and also state with specificity the grounds for the objection;
- e) Confirm whether the objector or counsel on the objector's behalf will personally appear and/or testify at the Final Approval Hearing; and
- f) Provide the objector's signature and the signature of the objector's duly authorized counsel or other duly authorized representative.

Class Members who fail to submit timely written objections in the manner specified will waive their right to object to any aspect of the settlement and will be bound by it.

5.3 Completed objections must be submitted via postal mail to the Settlement Administrator at the following address:

Epiq Class Action & Claims Solutions, Inc.
PO Box 2960

Portland, OR 97208-2960

The Settlement Administrator shall have the responsibility to provide all objections to the Court and counsel referenced above in paragraph 4.3 no later than fifteen (15) days following the Objection Deadline.

6. Duties of the Settlement Administrator

The Settlement Administrator shall perform the functions and duties necessary to effectuate the Settlement and as specified in this Agreement, including, but not limited to, the following:

- a. Creating, administering, and overseeing the Settlement Fund and claims for Identity Fraud;
- b. Obtaining the Class Member list for the purpose of disseminating Notice to Class Members;
- c. Providing Notice to Class Members via U.S. mail;
- d. Establishing and maintaining the Settlement website;
- e. Establishing and maintaining a toll-free telephone line for Class Members to call with Settlement-related inquiries, and answering the questions of Class Members who call with or otherwise communicate such inquiries timely;
- f. Responding to any mailed or emailed Class Member inquiries timely;
- g. Reviewing, determining the validity of, and processing all claims submitted by Class Members;
- h. Receiving requests to opt out and objections from Class Members and providing Class Counsel and Defendant's Counsel a copy thereof no later than three (3) days following the deadline for submission of the same. If the Settlement Administrator receives any requests to opt out, objections, or other requests from Settlement Class Members after

the Opt-Out and Objection Deadlines, the Settlement Administrator shall promptly provide copies thereof to Class and Defendants' Counsel;

- i. Working with the provider of Identity Monitoring Services to receive and send activation codes within sixty (60) days of the Effective Date;
- j. After the Effective Date, processing and transmitting Settlement Payments to Class Members and the approved fees and costs to Class Counsel;
- k. Providing weekly or other periodic reports to Class Counsel and Defendant's Counsel that include information regarding the number of Claims and later, settlement payments sent and delivered, payments accepted and cashed, undeliverable information, and any other requested information relating to Settlement Claims and Payments. The Settlement Administrator shall also, as requested by Class Counsel or Defendants' Counsel and from time to time, provide the amounts remaining in the Net Settlement Fund;
- l. In advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that: (i) attests to implementation of Notice in accordance with the Preliminary Approval Order; and (ii) identifies each Class Member who timely and properly submitted an Opt Out request; and
- m. Performing any function related to Settlement administration at the agreed-upon instruction of Class Counsel or Defendant's Counsel, including, but not limited to, verifying that Settlement Payments have been distributed.

7. Miscellaneous Provisions

7.1 No Person shall have any claim against any of the Released Parties or their counsel based on distributions of benefits made substantially in accordance with the Settlement Agreement and/or further order(s) of the Court.

7.2 Defendants have represented that there are approximately 4.2 million members of the Settlement Class. Plaintiffs have the right to revoke this settlement agreement in the event that the class size is more than 4.4 million members.

7.3 The Settling Parties: (i) acknowledge that it is their intent to consummate this Settlement Agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

7.4 The Settling Parties intend this Settlement to be a final and complete resolution of all disputes, claims, and causes of action by and between them with respect to the Litigation in any way whatsoever. The Settlement compromises claims that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith and at arms' length by the Settling Parties, and it reflects an agreement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such Party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis.

7.5 Neither the Settlement Agreement, nor the Settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement: (i) is, or may be deemed to be, or may be used as, an admission or evidence of the

validity, or lack thereof, of any Released Claim, wrongdoing, or liability of the Released Parties; or (ii) is, or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission, in any civil, criminal, and/or administrative proceeding in any court, administrative agency, and/or other tribunal or proceeding. Any of the Released Parties may file the Settlement Agreement and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

7.6 The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest. Modification of the Settlement Agreement following Preliminary Approval will require approval of the Court.

7.7 The Settling Parties may mutually agree, in their respective sole discretion, on revisions to the Notice to better effectuate the purposes of the settlement, even after Preliminary Approval, provided that the substance of the Notice is consistent with the Settlement Agreement and the Court's order directing notice to the Class.

7.8 The Settling Parties may mutually agree, in their respective sole discretion, on any reasonable interpretation and implementation of the Settlement Agreement to better effectuate the purposes of the settlement.

7.9 This Settlement Agreement, together with the Exhibits attached hereto, constitutes the entire Settlement Agreement by, between, and among the Settling Parties hereto and no representations, warranties, or inducements have been made to any party concerning the Settlement Agreement other than the representations, warranties, and covenants contained and

memorialized in such document. Except as otherwise provided herein, each Party shall bear its own attorney's fees and expenses.

8. Proposed Class Counsel, on behalf of the Class, are expressly authorized by Representative Plaintiffs to take all appropriate actions required or permitted to be taken by the Class pursuant to the Settlement Agreement to effectuate its terms. Proposed Class Counsel, on behalf of the Class, also are expressly authorized by Representative Plaintiffs to enter into any modifications or amendments to the Settlement Agreement on behalf of the Class that Proposed Class Counsel deem appropriate.

8.1 Each counsel or other person executing the Settlement Agreement on behalf of any Party hereto hereby warrants that such counsel or other person has the full authority to do so.

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

8.3 This Settlement Agreement shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of Florida, and the rights and obligations of the Settling Parties to the Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Florida.

**[THIS SECTION INTENTIONALLY LEFT BLANK.
SIGNATURES ON FOLLOWING PAGE.]**

Signatures by Counsel:

Attorneys for Plaintiffs Stephany Alcala; Benjamin J. Liang; Amber Lowe, on behalf of herself and her minor children C.B., K.B., M.B., and G.M.; David Runkle; and Suzanne Johnson and Proposed Class



Gayle M. Blatt
CASEY GERRY SCHENK FRANCAVILLA
BLATT & PENFIELD, LLP

*Attorneys for Defendants
20/20 Eye Care Network, Inc. and iCare
Acquisition, Inc.*



Mark S. Melodia
HOLLAND & KNIGHT LLP

Exhibit A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
CASE NO. 0:21-cv-61275-RAR**

WENSTON DESUE, *individually and as
legal guardian of N.D. and M.D. and all
others similarly situated,*

Plaintiff,

v.

20/20 EYE CARE NETWORK, INC., *et al*

Defendants.

AND ALL CONSOLIDATED ACTIONS

Consolidated with:

0:21-cv-61292

0:21-cv-61302

0:21-cv-61357

0:21-cv-61406

0:21-cv-61755

[PROPOSED] JUDGMENT AND FINAL APPROVAL

WHEREAS, a Settlement Agreement, dated as of _____ (the “Settlement Agreement”), was made and entered into by and among the following Settling Parties: (i) Stephany Alcala; Benjamin J. Liang; Amber Lowe, on behalf of herself and her minor children C.B., K.B., M.B., and G.M.; David Runkle; and Suzanne Johnson (collectively the “Representative Plaintiffs”), individually and on behalf of the Settlement Class Members, by and through Gayle Blatt of the law firm Casey Gerry Schenk Francavilla Blatt & Penfield LLP; Bryan Bleichner of the law firm Chestnut Cambronne PA; Dorothy P. Antullis of the law firm Robbins, Geller, Rudman & Dowd LLP; Jean S. Martin of the law firm Morgan & Morgan, P.A.; Terence R. Coates of Markovits, Stock and DeMarco, LLC; Joseph M. Lyon of the Lyon Firm; Nathan D. Prosser of Hellmuth & Johnson PLLC; and M. Anderson Berry of Clayco C. Arnold, A Professional Law Corp. (collectively, “Class Counsel”); and (ii) 20/20 Eye Care Network, Inc. (“ECN”) and iCare Acquisition, Inc. (“iCare”) (collectively the “Defendants”), for the benefit of all Released Parties, by and through the Defendants’ counsel of record, Mark S. Melodia and Caitlin Saladrigas of Holland & Knight LLP (“Defense Counsel”); and

WHEREAS, on _____ 2022, the Court entered an Order of Preliminary Approval Order (“Preliminary Approval Order”) that, among other things, (a) preliminarily certified, pursuant to Federal Rule of Civil Procedure 23, a class for the purposes of settlement only; (b) approved the form of notice to Class Members, and the method of dissemination thereof; (c) directed that the notice of the settlement be disseminated to the Class; and (d) set a hearing date for final approval of the settlement; and

WHEREAS, the notice to the Settlement Class ordered by the Court has been disseminated as ordered, according to the declaration of the Settlement Administrator filed with the Court on _____; and

WHEREAS, the CAFA Notice ordered by the Court has been provided, according to the declaration of the Settlement Administrator filed with the Court on _____; and

WHEREAS, on _____, a final approval hearing was held on whether the settlement set forth in the Settlement Agreement was fair, reasonable, adequate, and in the best interests of the Class, such hearing date being a due and appropriate number of days after such notice to the Settlement Class and the requisite number of days after CAFA notice was issued; and

NOW THEREFORE, having reviewed and considered the submissions presented with respect to the settlement set forth in the Settlement Agreement and the record in these proceedings, having heard and considered the evidence presented by the parties and any non-party objectors, as well as the arguments of counsel, and having determined that the settlement set forth in the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Class;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. The Court incorporates by reference the definitions set forth in the Settlement Agreement and the Preliminary Approval Order.
2. The Court finds it has personal and subject-matter jurisdiction over this matter, the Settling Parties, and all Class Members.
3. The form, content, and method of dissemination of the notice given to the Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all Persons entitled to such notice, and said notice fully satisfied the requirements of Federal Rule of Civil Procedure 23 and due process.
4. The CAFA Notice provided by the Settlement Administrator met all requirements of the Act.
5. The Representative Plaintiffs and Class Counsel fairly and adequately represented the interests of Class Members in connection with the settlement set forth in the Settlement Agreement.
6. [All objections to the settlement set forth in the Settlement Agreement having been considered and having been found either to be mooted by the settlement or not supported by credible evidence, the settlement set forth in the Settlement Agreement is in all respects, fair, adequate, reasonable, proper, and in the best interests of the Class, and is hereby approved.]

7. Every Class Member who exercised their right to opt out of the Settlement is hereby excluded from the Class.

8. Representative Plaintiffs, Defendants, the Settlement Administrator, and Class Members shall consummate the settlement according to the terms of the Settlement Agreement.

9. The Settlement Agreement, and each and every term and provision thereof, shall be deemed incorporated herein as if explicitly set forth herein and shall have the full force and effect of an order of this Court.

10. Each Released Claim of each Class Member is hereby extinguished as against the Released Persons.

11. The Court having considered Plaintiffs' Motion for Attorney's Fees and Expenses hereby grants the Motion and awards Plaintiffs' counsel (as well as any agents, vendors or experts with which they may have worked on this matter) \$_____ for their fees and expenses in the case, hereby extinguishing any claims for any such fees, costs or expenses as against the Released Persons.

12. Without affecting the finality of this Judgment in any way, this Court retains continuing jurisdiction over the Settling Parties and the Class for the administration, consummation, and enforcement of the terms of the Settlement Agreement as set forth in the Settlement Agreement.

13. In the event the Effective Date does not occur, this Judgment Order shall be rendered null and void and shall be vacated and, in such event, as provided in the Settlement Agreement, this Judgment and all orders entered in connection herewith shall be vacated and null and void.

SO ORDERED.

RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

Exhibit B

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
CASE NO. 0:21-cv-61275-RAR**

WENSTON DESUE, *individually and as
legal guardian of N.D. and M.D. and all
others similarly situated,*

Plaintiff,

v.

20/20 EYE CARE NETWORK, INC., *et al*

Defendants.

AND ALL CONSOLIDATED ACTIONS

Consolidated with:

0:21-cv-61292

0:21-cv-61302

0:21-cv-61357

0:21-cv-61406

0:21-cv-61755

ORDER OF PRELIMINARY APPROVAL

WHEREAS, a Settlement Agreement, dated as of _____ (the “Settlement Agreement”), was made and entered into by and among the following Settling Parties: (i) Stephany Alcalá; Benjamin J. Liang; Amber Lowe, on behalf of herself and her minor children C.B., K.B., M.B., and G.M.; David Runkle; and Suzanne Johnson (collectively the “Representative Plaintiffs”), individually and on behalf of the Class Members, by and through Gayle Blatt of the law firm Casey Gerry Schenk Francavilla Blatt & Penfield LLP; Bryan Bleichner of the law firm Chestnut Cambronne PA; Dorothy P. Antullis of the law firm Robbins, Geller, Rudman & Dowd LLP; Jean S. Martin of the law firm Morgan & Morgan, P.A.; Terence R. Coates of Markovits, Stock and DeMarco, LLC; Joseph M. Lyon of the Lyon Firm, Nathan D. Prosser of Hellmuth & Johnson PLLC; and M. Anderson Berry of Clayco C. Arnold, A Professional Law Corp. (collectively, “Proposed Class Counsel” or “Class Counsel”); and (ii) 20/20 Eye Care Network, Inc. (“ECN”) and iCare Acquisition, Inc. (“iCare”) (collectively the “Defendants”), for the benefit of all Released Parties, by and through the Defendants’ counsel of record, Mark S. Melodia and Caitlin Saladrigas of Holland & Knight LLP (“Defense Counsel”); and

NOW THEREFORE, having reviewed and considered the submissions presented with respect to the settlement set forth in the Settlement Agreement and the record in these proceedings, having heard and considered the evidence presented by the parties and the arguments of counsel, having determined preliminarily that the settlement set forth in the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Class;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. The Court incorporates by reference the definitions set forth in the Settlement Agreement.
2. The Court finds it has personal and subject-matter jurisdiction over this matter, the Settling Parties, and all Settlement Class Members.
3. The Court certifies, for settlement purposes only, the Class.
4. The Court appoints Gayle Blatt of the law firm Casey Gerry Schenk Francavilla Blatt & Penfield LLP and Bryan Bleichner of the law firm Chestnut Cambronne PA as Co- Lead Class Counsel for the Class, and Dorothy P. Antullis of the law firm Robbins, Geller, Rudman & Dowd LLP; Jean S. Martin of the law firm Morgan & Morgan, P.A.; Terence R. Coates of Markovits, Stock and DeMarco, LLC; Joseph M. Lyon of the Lyon Firm, Nathan D. Prosser of Hellmuth & Johnson PLLC; and M. Anderson Berry of Clayco C. Arnold, A Professional Law Corp. as Class Counsel for the Class.
5. The Court appoints Representative Plaintiffs as class representatives.
6. The Court appoints Epiq as the Settlement Administrator and orders it to provide notice to the Class Members, CAFA Notice and perform services as set forth in the Settlement Agreement.
7. The Court orders Defendants to pay the funds due to the Settlement Fund as set forth in the Settlement Agreement.
8. The Court orders any Class Members to make claims, opt out, and/or object in the manner and in the time frame set forth by the Settlement Agreement.
9. For clarity, the following are the suggested dates related to settlement approval:

<u>Event</u>	<u>Deadline</u>
Motion for Attorney’s Fees	TBD (45 days after Notice Deadline)
Notice Deadline	TBD (60 days from Preliminary Approval)
Objection and Opt Out Deadline	TBD (60 days from Notice Deadline)
Claim Deadline	TBD (90 days from Notice Deadline)
Motion for Final Approval	TBD (30 days from Claim Deadline)
Final Approval Hearing	TBD (at least 120 days after Notice Deadline)

SO ORDERED.

 RODOLFO A. RUIZ II
 UNITED STATES DISTRICT JUDGE

Exhibit C

EyeCare Data Breach Settlement
PO Box XXXX
Portland, OR 972XX-XXXX

Unique ID: <<UniqueID>>

Notice of 20/20 Eye Care and Hearing Care Data Breach Class Action Settlement

*Si desea recibir esta notificación
en español, llámenos 1-XXX-XXX-
XXXX o visite nuestra página web
www.2020EyeCareDataBreach.com.*

<<MAIL ID>>

<<NAME 1>>

<<NAME 2>>

<<ADDRESS LINE 1>>

<<ADDRESS LINE 2>>

<<ADDRESS LINE 3>>

<<ADDRESS LINE 4>>

<<ADDRESS LINE 5>>

<<CITY, STATE ZIP>>

<<COUNTRY>>

A settlement has been reached in a class action lawsuit against 20/20 Eye Care Network, Inc. (“ECN”) and its parent company iCare Acquisition (“Defendants”), arising out of the security incident which occurred in January 2021 affecting ECN’s data environment containing certain patient information (the “Data Incident”). After an investigation, Defendants found that a still-unknown individual accessed ECN’s data environment without authorization and removed and deleted certain patient information stored there. In addition, because ECN shared that data environment with 20/20 Hearing Care Network, Inc. (“HCN”), certain Hearing Care patient information was also removed and then deleted.

You are receiving this notice because you may be a Settlement Class Member. The Settlement Class is defined as: all persons who were sent a notification from either ECN or HCN as a result of the Data Incident.

What does the Settlement Provide? The Defendants will pay \$3,000,000 into a Settlement Fund, out of which benefits will be distributed to Class Members who submit valid claims, and attorneys’ fees for Class Counsel are paid. The Settlement Fund will provide Class Members with an optional \$50.00 cash payment, or in the alternative thirty-six (36) months of identity monitoring protection at the Class Members’ election. Class Members must make a claim to collect their cash payment or to register for the identity monitoring protection.

In addition, Settlement Class Members can receive up to \$2,500 in reimbursement for out-of-pocket losses and up to \$25.00 per hour for up to ten (10) hours of Lost Time. And, if you experienced an incident(s) of actual identity fraud as a result of the Data Incident, you may also submit a claim for reimbursement. Eligible claimants may be entitled to recover for losses of up to \$5,000.00 per individual upon documentation of actual identity fraud related to the Data Incident, up to an aggregate maximum of \$600,000.

Your Options. The easiest way to submit a claim is online at www.2020EyeCareDataBreach.com using your Unique ID found on the front of this postcard. To be eligible, you must complete and submit a valid Claim Form, postmarked or submitted online on or before **MONTH DAY, 20XX**. You can also exclude yourself from or object to the Settlement on or before **MONTH DAY, 20XX**. If you do not exclude yourself from the Settlement, you will remain in the Class and will give up the right to sue ECN and iCare for the claims resolved by the Settlement. **A summary of your rights under the Settlement and instructions regarding how to submit a claim, exclude yourself, or object are available at www.2020EyeCareDataBreach.com.**

The Court will hold a Fairness Hearing on **MONTH DAY, 20XX, at X:XX X.m.** At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also listen to people who have asked to speak at the hearing. You may attend the Hearing at your own expense, or you may also pay your own lawyer to attend, but it is not necessary.

This notice is a summary. The Settlement Agreement and more information about the lawsuit and Settlement are available at www.2020EyeCareDataBreach.com or by calling toll-free **1-XXX-XXX-XXXX**.



PLACE
STAMP
HERE

DRAFT

EYECARE DATA BREACH SETTLEMENT
PO BOX XXXX
PORTLAND, OR 972XX-XXXX



Wenston Desue, et al. v. 20/20 Eye Care Network, Inc., et al.,
United District Court for the Southern District of Florida, No. 21-CIV-61725-RAR

Notice of 20/20 Eye and Hearing Care
Data Breach Class Action Settlement

A federal court has authorized this Notice. This is not a solicitation from a lawyer.
Please read this Notice carefully and completely.

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.

- A Settlement has been proposed in a class action lawsuit against 20/20 Eye Care Network, Inc. (“ECN”) and its parent company iCare Acquisition (“Defendants”), arising out of the security incident which occurred in January 2021 affecting ECN’s data environment containing certain patient information (the “Data Incident”). After an investigation, Defendants found that a still-unknown individual accessed ECN’s data environment without authorization and removed and deleted certain patient information stored there.
- ECN is a third-party benefits administrator for **vision** services. ECN also contracted with 20/20 Hearing Care Network, Inc. (“HCN”), a third-party benefits administrator for **hearing** services, to store patient information collected by HCN in ECN’s data environment. Both ECN and HCN contract with certain health plans to assist with claims administration and as a result ECN and HCN receive certain personal identifying information and protected health information.
- You are receiving this notice because your information may have been affected by the Data Incident.
- You are eligible to receive a cash payment of \$50.00 from the proposed class action settlement. As an alternative to this cash payment, you may elect to receive thirty-six (36) months of identity monitoring. IDX identity protections services include Cyberscan dark web monitoring, a \$1,000,000 insurance reimbursement policy, and fully managed identity theft recovery services. You cannot receive both of these benefits—you must choose only one.
- You may *also* be eligible to receive reimbursement for out-of-pocket expenses or lost time reasonably traceable to the Data Incident. Eligible claimants can receive up to \$2,500.00 in reimbursement for documented out-of-pocket losses and up to \$25.00 per hour for up to ten (10) hours of time spent addressing or remedying issues related to the Data Incident (referred to herein as “Lost Time”).
- To make a claim for out-of-pocket expenses, you must have paid money for which you have not been reimbursed, for items related to the Data Incident, for example:

(1) to purchase a credit monitoring product, credit or identity theft protection product, or other product or service designed to identify or remediate the Data Incident;

(2) to access, freeze or unfreeze a credit report with a credit reporting agency; or

(3) gas mileage, telephone expenses, obtaining replacement debit or credit card costs, bank fees or other expenses reasonably traceable to the Data Incident.

- To make a claim for Lost Time, you must provide information as to how much time you spent dealing with the Data Incident and/or the Notice of Data Incident you received from Defendants and provide a summary of what you did.
- In addition, if you experienced actual identity fraud as a result of the Data Incident, you may also submit a claim for reimbursement. Eligible claimants may be entitled to recover for losses of up to \$5,000.00 per individual.
- Visit www.2020EyeCareDataBreach.com to make a claim. You can also opt out of or object to the Settlement.
- Please read this notice carefully. Your legal rights will be affected, and you have a choice to make now.

Summary of Your Legal Rights and Options		Deadline
SUBMIT A CLAIM FORM	The only way to get a payment. You must make an election of the benefits you want to receive.	Online or Postmarked by [REDACTED].
EXCLUDE YOURSELF BY OPTING OUT	Get no payment. This is the only option that allows you to keep your right to bring any other lawsuit against the Defendants if you are a class member.	Postmarked by [REDACTED].
OBJECT TO THE SETTLEMENT AND/OR ATTEND A HEARING	You can write the Court about why you like or do not like the Settlement. The Court cannot change or order a different settlement. You can also ask to speak to the Court at the hearing on [REDACTED] about the fairness of the Settlement, with or without your own attorney.	Postmarked by the Settlement Administrator by [REDACTED].
DO NOTHING	Get no payment. Give up rights if you are a class member.	See deadlines above.

- These rights and options—and the deadlines to exercise them—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement after any appeals are resolved.

BASIC INFORMATION

1. Why did I get this notice?

A court authorized this notice because people described in Question 5 of this notice have the right to know about a legal settlement. As a Class Member, you could be eligible to receive a payment for: 1) reimbursement of out-of-pocket expenses and time spent; 2) either 36 months of Identity Monitoring Services or an alternative cash payment of \$50.00; and 3) payment for losses due to identity theft.

To know if you qualify, see the answer to Question 5 below.

2. What is this lawsuit about?

In January 2021, 20/20 Eye Care Network, Inc. (“ECN”) experienced an unauthorized access to its data environment whereby someone removed and then deleted certain patient information stored there. In addition, because ECN shared that data environment with 20/20 Hearing Care Network, Inc. (“HCN”), certain hearing care patient information was also removed and then deleted. Following notice of the Data Incident, multiple class action lawsuits were filed against ECN and its parent company iCare. All of those class actions were consolidated resulting in a single, consolidated class action with the following named plaintiffs: Stephany Alcala, Benjamin J. Liang, Amber Lowe, on behalf of herself and her minor children C.B., K.B., M.B., and G.M., and David Runkle (the “Representative Plaintiffs”). The Representative Plaintiffs filed a First Amended Complaint alleging negligence, unjust enrichment, breach of confidence and violations of Florida’s Deceptive and Unfair Trade Practices Act (“FDUTPA”) related to injuries they alleged to have sustained arising from the Data Incident. The Court found that Plaintiffs had standing to sue, and Plaintiffs’ claims were dismissed by the Court with the right to replead. The Representative Plaintiffs then filed a Second Amended Class Action Complaint, this time alleging multiple negligence claims and one claim for violation of FDUTPA. Defendants again sought to dismiss the Second Amended Complaint. While Defendants’ dismissal motion was pending, the parties explored the possibility of a resolution without further litigation, through settlement. After a full-day of mediation and more than two months of post-mediation negotiations, the parties arrived at the settlement terms detailed herein.

3. What is a class action?

In a class action the plaintiffs act as “Class Representatives” and sue on behalf of themselves and other people who have similar claims. This group of people is called the “class,” and the people in the class are called “Class Members” or the “Settlement Class.” One court resolves the issues for all Class Members, except for people who exclude themselves from the class. Judge Rodolfo Ruiz II of the United States District Court for the Southern District of Florida is in charge of this case. The case is *Wenston Desue, et al. v. 20/20 Eye Care Network, Inc., et al.*, No. 21-CIV-61725-RAR (S.D. Fla.). The people who sued are called the Plaintiffs. The entities they sued—ECN and iCare—are called the Defendants.

4. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a Settlement. That way, they avoid the costs and risks of a trial, and Class Members can get benefits or compensation. The Class Representatives and Class Counsel think the Settlement is in the best interest of the Class.

WHO IS IN THE SETTLEMENT?

5. Who is in the Settlement?

The Settlement Class is defined as: “All Persons who were sent a notification from either ECN or HCN as a result of the Data Incident.”

A Person is a living natural person who is not an employee of any of the Defendants and who is resident in the United States.

6. What should I do if I am not sure whether I am included?

If you are not sure whether you are included in the Settlement Class, you can ask for free help by calling the Claims Administrator, which is a company called Epiq Class Actions & Claims Solutions, Inc. (“Epiq”), at (Insert phone number) for more information.

THE SETTLEMENT BENEFITS

7. What does the Settlement Provide?

The Defendants will pay \$3,000,000 into a Settlement Fund, which will be distributed to Class Members who submit valid claims, after attorneys’ fees and litigation expenses of Class Counsel are paid. No matter how many or how few claims are submitted, the amount of the Settlement Fund will not change and none of the money will come back to the Defendants. The Settlement Fund will provide Class Members with an optional \$50.00 cash payment, or in the alternative

thirty-six (36) months of identity monitoring protection. Class Members must make a claim to collect their cash payment or to register for the identity theft monitoring protection.

In addition, the Settlement Fund will cover Class Members' valid claims for documented out-of-pocket expenses and lost time spent:

- (1) to purchase a credit monitoring product, credit or identity theft protection product, or other product or service designed to identify or remediate the Data Incident;
- (2) to access, freeze or unfreeze a credit report with a credit reporting agency;
- (3) as a result of an identity theft incident or to mitigate an identity theft incident; or
- (4) any other time reasonably spent addressing issues related to the Data Incident.

Eligible claimants can receive up to \$2,500.00 in reimbursement for out-of-pocket losses and up to \$25.00 per hour for up to ten (10) hours of Lost Time.

Defendants also agree to reimburse Class Members who experience identity theft as a result of the Data Incident and make a claim for reimbursement. Eligible claimants may be entitled to losses of up to \$5,000.00 per individual upon documentation of actual identity fraud. Defendants' agreement to reimburse Class Members for actual identity theft is limited to a gross maximum of \$600,000.00. These claims will be paid separately from the Settlement Fund.

Defendants will pay for the costs of notice and administration outside the Settlement Fund as well.

8. How will I receive payment?

The payments above for Class Members who submit a valid Claim will be made by either an electronic payment or check at the Class Member's election.

9. What am I giving up if I stay in the Class?

If you are a Class Member (see Question 5 above), unless you exclude yourself with an opt-out request (see Question 16 below), you cannot sue, continue to sue, or be part of any other lawsuit against Defendants about the issues in this case. The "Releases" section in the Settlement Agreement describes the legal claims that you give up if you remain in the settlement Class. The entire text of the Settlement Agreement can be viewed at www.2020EyeCareDataBreach.com.

HOW TO GET A PAYMENT – MAKING A CLAIM

10. How can I get a payment?

If you were subject to the Data Incident and experienced an out-of-pocket loss that you believe is attributable to the Data Incident in any of the three categories listed in Questions 5 and 7 above,

you can make a claim by filling out and submitting the claim form available at www.2020EyeCareDataBreach.com.

If you are claiming out-of-pocket expenses or actual identity fraud under the Settlement, you must describe the expenses, their amount, and when and why you incurred them. If your claim is for expenses related to a credit freeze, credit monitoring, identity theft protection, similar services or other expenditure, you must also attest that you incurred those losses in response to the Data Incident in this case.

Your claim must be reasonably documented—you must enclose or upload documentation sufficient to show (a) the amount of unreimbursed loss that you suffered, and (b) why you believe that the loss is reasonably attributable to the Data Incident in the case. For expenditures of money, this documentation may include credit card or bank statements, emails, invoices, receipts, or telephone records, including photographs of the same. For compensable lost time, this documentation may include pay stubs, invoices, other billing records, or emails or other communications or records reflecting time taken off work. Personal statements or declarations are not reasonable documentation under the Settlement, but they may be used to provide clarification, context, or support for other documentation submitted in support of a claim. The maximum amount any one claimant can recover for out-of-pocket expenses is \$2,500.00 and the maximum for identity theft is \$5,000.00.

If you are claiming Lost Time, you must simply describe the relevant actions you took, when you took them and the amount of time each action took. A \$25.00 hourly rate will apply to compensable lost time with a maximum of 10 hours recoverable. You must attest that to the best of your knowledge, the time spent was related to this Data Incident, including as a result of receiving the notice of Data Incident.

You can contact the Claims Administrator to request a paper claim form by telephone (**insert**), email (**info@2020EyeCareDataBreach.com**) or U.S. mail (Epiq Class Action & Claims Solutions, Inc., PO Box 2960, Portland, OR 97208-2960).

Submit the claim form by filing it through the “Submit a Claim” page of the Settlement Website or by sending it to the U.S. mail address listed above.

11. What is the deadline for submitting a claim form?

To be eligible for payment, claim forms must be filed online or postmarked no later than .

12. When will I get my payment?

The Court will hold a hearing on at a.m., to decide whether to approve the Settlement. Payments will be made after the Settlement is approved and becomes final (meaning there is no appeal from the order approving the Settlement). Updates regarding the Settlement will be posted on the Settlement website, www.2020EyeCareDataBreach.com.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court appointed Gayle Blatt of the law firm Casey Gerry Schenk Francavilla Blatt & Penfield LLP and Bryan Bleichner of the law firm Chestnut Cambronne PA, Dorothy P. Antullis of Robbins, Geller, Rudman & Dowd LLP; Jean S. Martin of Morgan & Morgan, P.A.; Terence R. Coates of Markovits, Stock and DeMarco, LLC; Joseph M. Lyon of the Lyon Firm, Nathan D. Prosser of Hellmuth & Johnson PLLC; and M. Anderson Berry of Clayco C. Arnold, A Professional Law Corp. as attorneys to represent the Class. These lawyers are called Class Counsel. You will not be charged for their services.

14. Should I get my own lawyer?

If you want your own lawyer, you may hire one, but you will be responsible for any payment for that lawyer's services. For example, you can ask your own lawyer to appear in court for you if you object to the settlement, or if you otherwise want someone other than Class Counsel to speak for you. You may also appear for yourself without a lawyer.

15. How will the lawyers be paid?

The attorneys representing the Class have not yet received any payment for their legal services or any reimbursement of the costs or out-of-pocket expenses they have incurred. Class Counsel plans to ask the Court to award attorneys' fees from the Settlement Fund not to exceed \$750,000.00 which is twenty-five percent (25%) of the Settlement Fund, and up to \$35,000.00 in reasonable litigation expenses.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you are a class member and you don't want benefits from the Settlement, and you want to keep your right, if any, to sue Defendants on your own about the legal issues in this case, then you must take steps to get out of the Settlement. This is called excluding yourself from—or "opting out" of—the Class.

16. How do I get out of the Settlement?

You may opt out of the Settlement by [insert date]. To opt out, you must send a letter or postcard via U.S. mail to the address below. You must include the following in your letter or postcard:

- Your current address;
- A statement that you want to opt out of the settlement;
- Your signature.

Class Action Opt Out

EyeCare Data Breach Settlement
PO Box 2960
Portland, OR 97208-2960

Opt-out requests must be postmarked no later than [insert date].

17. If I am a class member and don't opt out, can I sue the Defendants for the same thing later?

No. If you are a class member (see Question 5 above), unless you opt out, you give up the right to sue ECN and iCare for the claims resolved by the Settlement. So, if you are a class member and you want to try to pursue your own lawsuit, you must opt out.

18. What happens if I opt out?

If you opt out of the Settlement, you will not have any rights as a member of the Class under the Settlement; you will not receive any payment as part of the Settlement; you will not be bound by any further orders or judgments in this case; and you will keep the right, if any, to sue on the claims alleged in the case at your own expense.

COMMENTING ON OR OBJECTING TO THE SETTLEMENT

19. How do I tell the Court if I don't like the Settlement?

If you are a class member and you do not opt out of the Settlement, you can ask the Court to deny approval of the Settlement by filing an objection. You can't ask the Court to change or order a different settlement; the Court can only approve or deny this Settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

You may object to any part of the proposed Settlement in writing. You may also appear at the Fairness Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney.

To object, you must mail a document to Epiq, the appointed Claims Administrator, saying that you object to the proposed Settlement in *Wenston Desue, et al. v. 20/20 Eye Care Network, Inc., et al.*, No. 21-CIV-61725-RAR (S.D. Fla.). Any objection must be in writing and must:

- Clearly identify the case name and number *Wenston Desue, et al. v. 20/20 Eye Care Network, Inc., et al.*, United States District Court, Southern District of Florida, No. 0:21-cv-61275-RAR;
- Include your full name, address, telephone number, and email address;

- Include the full name, address, telephone number, and email address of your counsel (if you are represented by counsel);
- State whether the objection applies only to you, to a specific subset of the Class, or to the entire Class, and also state with specificity the grounds for the objection;
- Confirm whether you intend to personally appear and/or testify at the Final Approval Hearing and if so, whether you are or will be represented by counsel; and
- Provide your signature and the signature of your duly authorized counsel or other duly authorized representative.

You can mail the objection by First Class U.S. Mail to the following address, and it must be received no later than **[Insert Date]**:

Objection Processing
Eye Care Data Breach Settlement
PO Box 2960
Portland, OR 97208-2960

20. What's the difference between objecting and opting out?

Objecting is telling the Court that you don't like something about the Settlement. You can object to the Settlement only if you are a class member and do not opt out of the Settlement. Opting out of the Settlement is telling the Court that you don't want to be part of the Settlement. If you opt out of the Settlement, you cannot object to it because it does not affect you. You cannot both opt out of and object to the Settlement.

THE COURT'S FAIRNESS HEARING

21. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at **[]** a.m. on **[]**, at the federal courthouse located at 299 East Broward Boulevard, Fort Lauderdale, FL 33301.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may choose to hear from people who have asked to speak at the hearing.

The Court may also decide how much Class Counsel should receive in fees and expense reimbursements. At or after the hearing, the Court will decide whether to approve the Settlement.

The Court may reschedule the Fairness Hearing or change any of the deadlines described in this notice. The date of the Fairness Hearing may change without further notice to the Class Members. Be sure to check the website, www.2020EyeCareDataBreach.com, for news of any such changes.

You can also access the case docket via the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.flsd.uscourts.gov/>.

22. Do I have to come to the Fairness Hearing?

No. Class Counsel will answer any questions the Court may have. You may attend at your own expense if you wish. If you send an objection, you do not have to come to the hearing to talk about it. As long as you mailed or filed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

23. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must include a statement in your written objection (discussed above at Question 19) that you intend to appear at the hearing. Be sure to include your name, address, and signature as well. You cannot speak at the hearing if you opt out or exclude yourself from the Class.

IF I DO NOTHING

24. What happens if I do nothing at all?

If you do nothing and you are a class member, you will get no money from this Settlement, and you will not be able to sue the Defendants for the conduct alleged in this case. If you do nothing and you are not a class member, the Settlement will not affect or release any individual claim you may have. If you received this notice addressed to you then you are a class member.

GETTING MORE INFORMATION

25. Are more details about the Settlement available?

Yes. This notice summarizes the proposed Settlement—more details are in the Settlement Agreement and other case documents. You can get a copy of these documents at www.2020EyeCareDataBreach.com, by accessing the docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.flsd.uscourts.gov/>, or by visiting the office of the Clerk of the Court for the United States District Court for the Southern District of Florida, 299 East Broward Boulevard, Room 108, Fort Lauderdale, FL 33301 between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

26. How do I get more information?

The website www.2020EyeCareDataBreach.com has the claim form, answers to questions about the Settlement and other information to help you determine whether you are eligible for a payment.

You can also call or write to the Claims Administrator at:

Epiq Class Action & Claims Solutions, Inc.
PO Box 2960
Portland, OR 97208-2960
[Insert phone #]

Class Counsel can be reached by calling [redacted] or emailing [redacted].com

Exhibit D

XXXXXXSECURITY INCIDENT LITIGATION
PO BOX [Address] [[Address]

Submit your claim online at
www.2020EyeCareDataBreach.com

NO LATER THAN
XXXXXXXXXX, 2023

«barcode39»
«noticeid»

«fname» «lname»
«addrline1»
«addrcity» «addrstate» «addrzip»
«country»

Your Notice ID: «noticeid»

Your PIN: «pin»

20/20 EyeCare Security Incident Claim Form

SETTLEMENT BENEFITS – WHAT YOU MAY GET

If you received notice from 20/20 Eye Care Network, Inc. or 20/20 Hearing Care Network, Inc. that your personal information may have been compromised in the data incident announced in January 2021, and if you do not opt out of the settlement, you may submit a claim. The easiest way to submit a claim is online at www.2020EyeCareDataBreach.com, or you can complete and mail this claim form to the mailing address above.

You may submit a claim for one or more of these benefits:

- Identity Monitoring Services with Identity Theft Insurance or Alternative Cash Payment.** Use this claim form to request free identity monitoring with identity theft insurance services which includes CyberScan dark web monitoring, among other services, through IDX for up to three (3) years. If you do not wish to receive identity monitoring with identity theft insurance and other services with IDX, you can select an Alternative Cash Payment. The alternative cash payment will be In lieu of identity monitoring with identity theft insurance services and is a payment of \$50.00, though it may be reduced or increased depending on the number of claims.
- Reimbursement for Out-of-Pocket Expenses.** If you spent money trying to avoid identity theft because of the 20/20 Eye Care security incident, you can be reimbursed up to \$2,500. You must submit documents supporting your claim.
- Reimbursement for Time You Spent.** If you spent time trying to avoid or recover from fraud or identity theft because of the 20/20 Eye Care security incident, you may be reimbursed at the rate of \$25 per hour for up to ten (10) total hours. You must attest to the amount of time you spent and describe your actions taken in response to the 20/20 Eye Care security incident.
- Reimbursement for Money Spent as a Result of Identity Fraud.** If you spent money trying to recover from fraud or identity theft because of the 20/20 Eye Care security incident, you can be reimbursed up to \$5,000. You must submit documents supporting your claim.

Identity Restoration Services. No claim is required for Identity Restoration Services. Class Members affected by the 20/20 Eye Care security incident who do not opt out of the settlement will be able to access identity restoration services through IDX for up to three (3) years once the Settlement is final.

Claims must be submitted online at www.2020EyeCareDataBreach.com or mailed and postmarked no later than [DATE] to

20/20 Eye Care Breach
c/o Epiq Class Action & Claims Solutions, Inc.
PO Box 2960
Portland, OR 97208-2960

Please note: the settlement administrator may contact you to request additional documents to support and process your claim. Your cash benefits and the length of the Identity Monitoring and Fraud Restoration Services may decrease depending on the number of claims filed.

For more information and complete instructions visit www.2020EyeCareDataBreach.com.

Settlement benefits will be distributed after the Settlement is approved by the Court and final.

Your Notice ID: «noticeid»

Your Information

We will use this information to contact you and process your claim. It will not be used for any other purpose. If any of the following information changes, you must promptly notify us by emailing info@2020EyeCareDataBreach.com. Include Your Notice ID, found at the top of this notice, with all correspondence. **Please print clearly.**

First Name / Middle Initial:	
Last Name:	
Alternative Name(s):	
Current Mailing Address:	
City / State / Zip Code:	
Daytime Phone:	- -
Email Address:	

Identity Monitoring or Alternative Cash Payment

You can receive up to three (3) years of free identity monitoring with identity theft insurance through IDX. include CyberScan dark web monitoring, a \$1 million identity theft insurance policy, and assistance in the event of identity theft or fraud.

OR in lieu of identity monitoring with identity theft insurance services, you may elect to receive an alternative cash payment. This payment is in the amount of \$50.00, though it may decrease or increase depending on the number of settlement class members who submit valid claims.

Please select one of the options below.

- Option 1: Identity Monitoring with Identity Theft Insurance:** I want to receive free identity monitoring with identity theft insurance and other services for up to three (3) years.
 If you select this option, you will be sent instructions and an activation code to your email address or home address after the settlement is final.
- Option 2: Alternative Cash Payment:** I want an alternative cash payment of \$50.00. By checking this box, I acknowledge that the amount of this benefit is dependent on the number of individuals who submit valid claims and may be reduced or increased.
 If you select this option, you cannot also enroll in the free credit monitoring with identity theft insurance service offered through this Settlement.
- Neither Option 1, nor Option 2:** I do not want identity monitoring with identity theft insurance or a cash payment.

Your Notice ID: «noticeid»

Reimbursement for Time Spent

If you spent time trying to recover from fraud or identity theft caused by the 20/20 Eye Care security incident, or if you spent time addressing the data incident, responding to the notice, trying to avoid fraud or identity theft because of the security incident (for example, placing or removing credit freezes on your credit files, purchasing credit monitoring services, or taking other actions), complete the chart below. You may be compensated at the rate of \$25 per hour for up to ten (10) hours. You must briefly describe the actions you took in response to the 20/20 Eye Care security incident and the time each action took.

How much time did you spend related to the security incident?

(Do not answer this question if you are not claiming lost time.)

_____ : _____
Hours Minutes

By filling out the boxes below, you are certifying that the time you spent does not relate to other security incidents.

Explanation of Time You Spent <small>(Identify what you did and why.)</small>	Approx. Date(s)	Number of Hour & Minutes
_____		_____ : _____ <i>Hours Minutes</i>
_____		_____ : _____ <i>Hours Minutes</i>
_____		_____ : _____ <i>Hours Minutes</i>
_____		_____ : _____ <i>Hours Minutes</i>

Signature for Claims for Time Spent

I affirm under the laws of the United States that the information supplied in this claim form is true and correct to the best of my knowledge.

Signature		Date	-	-	2	0	2	3
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Reimbursement for Out of Pocket Expenses

If you lost or spent money trying to avoid fraud or identity theft caused by the 20/20 Eye Care security incident and have not been reimbursed for that money, you can receive reimbursement for up to \$5,000.00.

To be reimbursed, you must provide documents that show how you lost or spent money trying to avoid fraud or identity theft caused by the 20/20 Eye Care security incident, and how much you lost or spent.

To look up more details about how reimbursement for out-of-pocket expenses works visit www.2020EyeCareDataBreach.com or call toll-free 800-XXX-XXXX. You will find more information about the types of costs and losses that may be eligible for reimbursement, what documents you need to attach, and how the Settlement Administrator decides whether to approve your payment.

Your Notice ID: «noticeid»

Examples of Loss Type and Documents	Amount and Date	Description of Loss or Money Spent and Supporting Documents (Identify what you are attaching, and why it's related to the 20/20 Eye Care security incident.)
Unreimbursed credit monitoring and identity theft protection purchased on or after XXXXXX	\$ _____ _____ <i>Date</i>	_____ _____ _____
Unreimbursed other expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges related to the security incident. <i>Examples: Phone bills, receipts, detailed list of places you traveled (i.e., police station, IRS office), reason why you traveled there (i.e., police report or letter from IRS re: falsified tax return) and number of miles you traveled.</i>	\$ _____ _____ <i>Date</i>	_____ _____ _____ _____ _____

Identity Fraud: Money You Lost or Spent

If you lost or spent money resulting from fraud or identity theft caused by the 20/20 Eye Care security incident and have not been reimbursed for that money, you can receive reimbursement for up to \$5,000.00.

To be reimbursed, you must provide documents that show how you lost or spent money as a result of fraud or identity theft caused by the 20/20 Eye Care security incident, and how much you lost or spent.

To look up more details about reimbursement for identify fraud, visit www.2020EyeCareDataBreach.com or call toll-free 800-XXX-XXXX. You will find more information about the types of costs and losses that may be eligible for reimbursement, what documents you need to attach, and how the Settlement Administrator decides whether to approve your payment.

Examples of Loss Type and Documents	Amount and Date	Description of Loss or Money Spent and Supporting Documents (Identify what you are attaching, and why it's related to the 20/20 Eye Care security incident.)
Unreimbursed costs, expenses, and losses due to identity theft, fraud, or misuse of your personal information on or after XXXXXX <i>Examples: Account statement with unauthorized charges highlighted; police reports; IRS documents; FTC Identity Theft Reports; letters refusing to refund fraudulent charges; credit monitoring services you purchased</i>	\$ _____ _____ <i>Date</i>	_____ _____ _____ _____ _____
Professional fees paid to address identity theft on or after XXXXXX. <i>Examples: Receipts, bills, and invoices from accountants, lawyers, or others.</i>	\$ _____ _____ <i>Date</i>	_____ _____ _____

Signature for Out of Pocket or Identity Fraud Claims

I declare under penalty of perjury under the laws of the United States that the information supplied in this claim form is true and correct to the best of my knowledge and that any documents that I have submitted in support of my claim are true and correct copies of original documentation.

I understand that I may be asked to provide more information by the claims administrator before my claim is complete.

Your Notice ID: «noticeid»

Signature	Date
	- - 2 0 2 3

FOR ALL CASH PAYMENT CLAIMS: How You Would Like to Receive Your Cash Payment?

If you made a claim for any category of cash payment in this claim form, you may elect to receive your payment either by check or electronically by PayPal, Venmo, or Zelle. Checks must be cashed within XXXX (XX0) days.

Which do you prefer? Please select one option.

- Paper Check**
- PayPal** – PayPal email address: _____
- Venmo** – Venmo username: _____
- Zelle** – Zelle email or mobile number: _____