

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

ANTHONY LAWSON, individually and on  
behalf of all others similarly situated,

*Plaintiff,*

Case No. 6:23-cv-01566-WWB-EJK

vs.

CLASS ACTION

VISIONWORKS OF AMERICA, INC.,

*Defendant.*

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**SETTLEMENT AGREEMENT AND RELEASE**

Plaintiff, Anthony Lawson, individually and on behalf of the "Settlement Classes" as defined below, and Defendant, Visionworks of America, Inc. ("Defendant"), enter into this Settlement Agreement and Release (the "Agreement") to resolve all claims in this Action, subject to the approval of the Court.

#### **I. RECITALS**

WHEREAS, Plaintiff, individually and on behalf of putative classes, and Defendant are parties to a civil action entitled *Anthony Lawson v. Visionworks of America, Inc.*, Case No. 6:23-cv-01566-WWB-EJK, pending in the United States District Court for the Middle District of Florida (hereinafter the "Action" or the "Litigation"); and

WHEREAS, on August 16, 2023, Plaintiff filed the operative Class Action Complaint (the "Complaint") in the Litigation, which asserts claims under the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the "TCPA"); and

WHEREAS, Plaintiff's Complaint alleges that Plaintiff and members of the putative classes (1) received marketing messages from Defendant without prior express consent or express written consent and while their numbers were listed on the National Do Not Call Registry in alleged violation of the TCPA, and/or (2) received marketing messages from Defendant after they made a request to Defendant not to receive future text messages in alleged violation of the TCPA, which harmed him and the class (the "Allegations"); and

WHEREAS, Plaintiff alleges that he and other similarly situated individuals are entitled to declaratory and injunctive relief, statutory damages, attorneys' fees and costs as a result; and

WHEREAS, Defendant denies any and all liability or wrongdoing to Plaintiff and to the Settlement Classes; and

WHEREAS, the Parties engaged in arms' length negotiations for a comprehensive resolution of this Litigation. Specifically, after prior settlement communications between counsel, on November 13, 2024 and with the assistance of Mediator Christopher Nolland of the National Academy of Distinguished Neutrals, counsel for the Parties met in Dallas, Texas, and engaged in intensive negotiations in a mediation lasting approximately seven hours with a view toward resolving the claims alleged in the Litigation, providing substantial benefits for the Settlement Classes, while avoiding the cost, delay, and uncertainty of further litigation, trial, and appellate practice; and

WHEREAS, although the day-long formal mediation did not result in a final resolution of the Litigation, the Parties subsequently reached a resolution believed by the Parties to be fair and reasonable through subsequent efforts of Mr. Nolland; and

WHEREAS, Defendant continues to deny any and all liability or wrongdoing to the Plaintiff and to the Settlement Classes and does not admit or concede any fault or liability in connection with any facts, allegations or claims that have been or could have been alleged against it in the Litigation. Defendant has entered into this Agreement because it concludes that it is desirable that this Litigation be fully, finally, and forever settled as set forth in this Agreement in order to avoid the further expense and inconvenience of further litigation, buy peace, and resolve and settle all claims which have been or could have been made in the Litigation; and

WHEREAS, for settlement purposes only, Plaintiff asks that this Court certify the

Settlement Classes and appoint him as Class Representative and his attorneys Shamis & Gentile, P.A. and Jacobson Phillips PLLC, as Class Counsel in this case;

WHEREAS, based on their investigation and extensive discovery in the Litigation and the experience of Class Counsel, Plaintiff and Class Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Classes and in the best interest of the Settlement Classes;

WHEREAS, Plaintiff, on behalf of himself and as the representative of the Settlement Classes, and Defendant desire to resolve the dispute between them; and

WHEREAS, Plaintiff, on behalf of himself and as the representative of the Settlement Classes, and Defendant will execute this Agreement to compromise and settle protracted, complicated, and expensive litigation; and

WHEREAS, the Parties understand and acknowledge that the execution of this Agreement constitutes a settlement of disputed claims. This Agreement is inadmissible as evidence against any Party except to enforce the terms of this Agreement. This Agreement does not constitute an admission of wrongdoing on the part of any Party.

**NOW, THEREFORE**, in light of the foregoing, for good and valuable consideration, the receipt of which is hereby mutually acknowledged, the Parties propose to settle the Litigation on the terms set forth in this Agreement, subject to approval by the Court, as follows.

## **II. Definitions**

In addition to the terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement:

1. "Action" or "Litigation" means *LAWSON v. VISIONWORKS OF AMERICA*,

*INC.*, Case No. 6:23-cv-01566 (M.D. Fla.)

2. "Visionworks" means Visionworks of America, Inc.
3. "Visionworks Messages" means all text messages that were sent to Plaintiff and the Settlement Class Members by or on behalf of Visionworks from August 16, 2019, through the date of Preliminary Approval.
4. "Class Counsel" means: Andrew J. Shamis, Esq., Garrett O. Berg., Esq, Christopher E. Berman, Esq. of Shamis & Gentile, P.A. 14 NE 15<sup>th</sup> Avenue, Suite 705 Miami, Florida 33132 and Joshua R. Jacobson, Esq. and Jacob L. Phillips of Jacobson Phillips PLLC 478 E. Altamonte Drive Suite 108-570 Altamonte Springs, Florida 32701.
5. "Class Notice" means the method for dissemination of notice of this Settlement to members of the Settlement Classes in accordance with a notice program that shall be submitted to the Court for approval in connection with the motion for Preliminary Approval as set forth further below.
6. "Class Period" means the period from August 16, 2019, through the date of Preliminary Approval.
7. "Class Representative" means Anthony Lawson.
8. "Court" means the United States District Court for the Middle District of Florida.
9. "Effective Date" means the fifth business day after which all of the following events have occurred:
  - a. The Court has entered without material change the Final Approval Order;  
and
  - b. The time for seeking rehearing or appellate or other review has expired,

and no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired and relief from a failure to file same is not available.

10. "Email Notice" means the email messages to be sent from the Settlement Administrator to members of the Settlement Classes, in a form to be agreed upon by the Parties, which shall include the following information: a description of the material terms of the Settlement; a date by which members of the Settlement Classes may exclude themselves from or "opt-out" of the Settlement; a date by which members of the Settlement Classes may object to the Settlement; the date on which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website where members of the Settlement Classes may access this Agreement and other related documents and information.

11. "Escrow Account" means the escrow account established by the Settlement Administrator under terms acceptable to all Parties at a depository institution insured by the Federal Deposit Insurance Corporation to receive and maintain funds contributed on behalf of Defendant for the benefit of the Settlement Classes. The costs of establishing and maintaining the Escrow Account shall be paid from the Settlement Fund. The Escrow Account shall be maintained by the Settlement Administrator.

12. "Final Approval" means the date that the Court enters an order and

judgment granting final approval to the Settlement and determines the amount of fees, costs, and expenses awarded to Class Counsel, if any. In the event the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.

13. "Final Approval Order" means the order of dismissal and final judgment that the Court enters upon Final Approval. In the event the Court issues separate orders addressing the matters constituting Final Approval, then Final Approval Order includes all such orders.

14. "Mailed Notice" means the short-form, postcard notice to be sent from the Settlement Administrator to members of the Settlement Classes via U.S. Mail, in a form to be agreed upon by the Parties, which shall include the following information: a description of the material terms of the Settlement; a date by which members of the Settlement Classes may exclude themselves from or "opt-out" of the Settlement; a date by which members of the Settlement Classes may object to the Settlement; the date on which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website where members of the Settlement Classes may access this Agreement and other related documents and information.

15. "Net Settlement Fund" means the Settlement Fund minus Settlement Costs.

16. "Opt-Out Period" means the period that begins the day after the earliest date on which Class Notice is first emailed, mailed, or appears online, and that ends no later than 20 days before the Final Approval Hearing. The deadline for the Opt-Out Period will be specified in the Class Notice.

17. "Parties" means Plaintiff and Visionworks.
18. "Plaintiff" means Anthony Lawson.
19. "Preliminary Approval" means the date that the Court enters, without material change, an order preliminarily approving the Settlement.
20. "Released Claims" means all claims to be released as specified in this Agreement. The "Releases" mean all of the releases contained in this Agreement.
21. "Released Parties" means Visionworks of America, Inc., its present parent company (VSP Global, LLC), its present and former subsidiaries, affiliates, predecessors, successors and assigns, the present and former directors, officers, employees, agents, insurers, shareholders attorneys, representatives, partners, members, joint venturers, optometrists, ophthalmologist, and opticians of any of the foregoing, and its text messaging service providers.
22. "Releasing Parties" means Plaintiff, all Settlement Class Members, and each of their respective executors, representatives, heirs, predecessors, assigns, beneficiaries, successors, agents,, attorneys, and all those who claim through them or on their behalf.
23. "Settlement" means the settlement which the Parties have entered to resolve the Action as set forth in this Agreement.
24. "Settlement Administrator" means the person or entity selected by mutual agreement of the Parties to implement and carry out the Class Notice program, manage opt-out requests, and oversee distribution of Settlement Fund Payments.
25. "Settlement Classes" is defined in paragraph 31 hereof. For avoidance of any doubt, Visionworks currently estimates based on records available to it that there

are approximately 83,000 individuals associated with approximately 56,000 unique telephone numbers which comprise the Settlement Classes. Visionworks estimates that there are approximately 42,000 individuals who comprise the Do Not Call Registry Class. Visionworks estimates that there are approximately 41,000 individuals who comprise the Internal Do Not Call Class.

26. "Settlement Class Member" means any person included in the Settlement Classes who does not timely and properly opt out of the Settlement.

27. "Settlement Costs" mean all costs incurred by Plaintiff, the Settlement Classes and Class Counsel in connection with the Action, including but not limited to, notice and settlement administration costs—including any amounts owed to the Settlement Administrator and any costs associated with providing notice required by the Class Action Fairness Act codified at 28 U.S.C. § 1715—expenses advanced by Class Counsel, and any Court-ordered award to Plaintiff or Class Counsel, including Class Counsel's attorneys' fees, costs, and expenses.

28. "Settlement Fund" means the \$2,625,000.00 cash fund to be established pursuant to this Agreement.

29. "Settlement Fund Payment" means the cash dollar amount of the Settlement Fund that each Settlement Class Member will receive.

30. "Settlement Website" means the website that the Settlement Administrator will establish as soon as practicable following Preliminary Approval, but prior to the commencement of the Class Notice program, as a means for the Settlement Classes to obtain information about the Settlement, and shall include hyperlinked access to this Agreement, the Mailed Notice and Long-Form Notice, the order

preliminarily approving this Settlement, and such other documents as Class Counsel and Visionworks agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website at least until Final Approval. The URL of the Settlement Website shall be [www.VWTCPAsettlement.com](http://www.VWTCPAsettlement.com), or such other URL as Class Counsel and Visionworks agree upon in writing. Ownership of the Settlement Website URL shall be transferred to Visionworks within 10 days of the date on which operation of the Settlement Website ceases.

### **III. Certification of the Settlement Classes**

31. For settlement purposes only, Plaintiff and Visionworks agree to ask the Court to certify the following “Settlement Classes,” collectively, under Rules 23(b)(3) and (e) of the Federal Rules of Civil Procedure:

**Do Not Call Registry Class:** All persons in the United States who from August 16, 2019, through the date of Preliminary Approval (1) were sent a text message by or on behalf of Visionworks; (2) more than one time within any 12-month period; (3) after the person’s telephone number had been listed on the National Do Not Call Registry for at least thirty days; and (4) who did not have an established business relationship with Visionworks (as defined by the TCPA).

**Internal Do Not Call Class:** All persons within the United States who, August 16, 2019, through the date of Preliminary Approval, were sent two or more text messages by or on behalf of Visionworks, to said person’s cellular telephone number after making a request to Visionworks to not receive future text messages.

The following are excluded from the Settlement Classes: (1) the United States District Judge and United States Magistrate Judges who preside, or have presided over this case; (2) the United States District Judges and United States Magistrate Judges who have presided over *Lawson v. Visionworks of Am., Inc.*, No. 6:20-cv-01368-DAE, (W.D. Tex. 2020) and *Lawson v. Visionworks of Am., Inc.*, No. 6:22-cv-01375-RBD-

EJK, (M.D. Fla.), (3) Visionworks, as well as any parent, subsidiary, affiliate or control person of Visionworks, and the officers, directors, agents, servants or employees of Visionworks; (4) any of the Released Parties; (5) the immediate family of any such person(s); (6) any member of the Settlement Classes who has timely opted out of this proceeding; and (7) Plaintiff's Counsel and their employees.

#### **IV. Settlement Consideration**

32. The total consideration to be provided by Visionworks pursuant to the Settlement shall be the \$2,625,000.00 Settlement Fund. Other than this Settlement Fund, no other monetary consideration will be required from Visionworks for any reason.

33. Settlement Costs shall be payable from the Settlement Fund. Counsel for the Parties shall jointly be responsible for supervising the Settlement Administrator.

#### **V. Settlement Approval**

34. Upon execution of this Agreement by all Parties, Class Counsel shall promptly move the Court for an Order granting Preliminary Approval of this Settlement. The motion for Preliminary Approval shall request that the Court: (1) approve the terms of the Settlement as within the range of fair, adequate, and reasonable; (2) provisionally certify the Settlement Classes pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e) for settlement purposes only; (3) approve the Class Notice program set forth herein and approve the form and content of the Class Notices of the Settlement; (4) approve the procedures for members of the Settlement Classes to exclude themselves from the Settlement Classes or to object to the Settlement; (5) stay the Action pending Final Approval of the Settlement; and (6) schedule a Final

Approval hearing for a time and date mutually convenient for the Court, Class Counsel and counsel for Visionworks, at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith, and determine whether to approve the Settlement and Class Counsel's application for attorneys' fees, costs and expenses ("Final Approval Hearing").

**VI. Settlement Administrator.**

35. The Settlement Administrator shall sign a Business Associate Agreement ("BAA") with Visionworks governing the use and disclosure of Protected Health Information ("PHI") under the Health Insurance Portability and Accountability Act ("HIPAA").

36. The Settlement Administrator shall administer various aspects of the Settlement as described herein and perform such other functions as are specified elsewhere in this Agreement, including, but not limited to:

- a. obtaining from Visionworks on a confidential basis and subject to the BAA information regarding members of the Settlement Classes, which would include, to the extent available, the name, mailing address, email address, and phone number the individual provided when the individual submitted his or her contact information to Visionworks (to the extent the individual provided this information);
- b. providing Mailed Notice;
- c. Prior to effectuating Mailed Notice, the Settlement Administrator shall run the physical mailing addresses through the National Change of Address Database ("NCOA") to attempt to obtain a more current name and/or

physical mailing address for each Settlement Class Member.

- d. If any Mailed Notice is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will promptly log each Notice that is returned as undeliverable, provided however that the Settlement Administrator will not disclose to Class Counsel personal identifying information of members of the Settlement Classes and will protect the confidentiality of such person by redacting all information other than first names and the last four digits of the phone numbers in any logs or other information provided to Class Counsel. If the mailing is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator shall forward the mailing to that address. For the remaining returned mailings, the Settlement Administrator will use reasonable efforts, including potentially an Experian search or skip tracing, to attempt to obtain a new address and those mailings shall be forwarded to any new address obtained through such a search. If any Notice is returned as undeliverable a second time, no further mailing shall be required.
- e. providing Email Notice;
- f. providing Long Form Notice, which shall be posted to the Settlement Website;
- g. establishing and maintaining the Settlement Website;
- h. establishing and maintaining a post office box for requests for exclusion from the Settlement Classes;
- i. receiving, evaluating, and processing opt-out requests;

- j. providing weekly reports concerning the Class Notice program and number and identity of opt-outs (if any) to Class Counsel and Visionworks's counsel;
- k. establishing and maintaining an automated toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries;
- l. responding to any Settlement Class Member inquiries;
- m. processing all requests for exclusion from the Settlement Classes;
- n. at Class Counsel's request in advance of the Final Approval Hearing, preparing an affidavit to submit to the Court regarding each member of the Settlement Classes who timely and properly requested exclusion from the Settlement Classes, while protecting the confidentiality of such persons and without disclosing personally identifiable information of such persons;
- o. performing the duties of Settlement Administrator as described in this Agreement, and any other Settlement-administration-related function at the instruction of Class Counsel and Visionworks, including, but not limited to, verifying that Settlement Funds have been distributed as required;
- p. distributing Settlement Fund Payments;
- q. performing any other Settlement-administration and tax-related function at the instruction of Class Counsel and Visionworks.

**VII. Notice to the Settlement Classes**

37. Within thirty (30) days of Preliminary Approval of the Settlement, Defendant shall use best efforts to provide the Settlement Administrator, on a confidential basis, with the last known names, addresses, and email addresses of all known members of the Settlement Classes as it is maintained in Visionworks' records. The Settlement Administrator shall use information regarding members of the Settlement Classes provided to it by Visionworks only for purposes of the administration of this Settlement, and shall not disclose personal identifying information of members of the Settlement Classes to Plaintiff or Class Counsel, except to the extent necessary to address questions, objections, or opt-outs (if any) from members of the Settlement Classes, in which case Plaintiff and Class Counsel shall treat such information as "Confidential" under the existing Confidentiality Agreement in the Litigation. Any information regarding members of the Settlement Classes provided to Plaintiff or Class Counsel shall be redacted so that only first names and the last four digits of phone numbers are disclosed. The Settlement Administrator shall destroy information regarding members of the Settlement Classes provided to it by Visionworks within 30 days after the distribution of the Net Settlement Fund to Settlement Class Members.

38. Upon Preliminary Approval of the Settlement, the Settlement Administrator shall implement the Class Notice ordered by the Court, using the forms of notice approved by the Court in its Preliminary Approval Order. The Class Notice shall include, among other information: a description of the material terms of the Settlement; a date by which Members of the Settlement Classes may exclude themselves from or "opt-out" of the Settlement; a date by which members of the Settlement Classes may

object to the Settlement; the date on which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website where members of the Settlement Classes may access this Agreement and other related documents and information. Mailed Notices shall not bear or include the Visionworks logo or trademarks or the return address of Visionworks, or otherwise be styled to appear to originate from Visionworks. Ownership of the Settlement Website URL shall be transferred to Visionworks within 10 days of the date on which operation of the Settlement Website ceases, which shall be one year following distribution of the Net Settlement Fund to Settlement Class Members, or such other date as Class Counsel and Visionworks may agree upon in writing.

39. Class Notice shall be provided to members of the Settlement Classes as follows:

- a. Mailed Notice;
- b. Email Notice, in a form substantially similar to the Mailed Notice, but delivered via email;
- c. Establishment of a toll-free IVR (Interactive Voice Response) number that will answer Settlement Class members' settlement-related inquiries; and
- d. The Long-Form Notice shall be posted to the Settlement Website, and shall be made available upon request to Settlement Class members.

40. The Settlement Administrator shall perform reverse telephone number look ups, shall run addresses through the National Change of Address Database, and shall, to the extent reasonably possible, mail to all members of the Settlement Classes short-form Mailed Notice.

41. The Settlement Administrator shall also perform reasonable address traces for any individual to whom Mailed Notice is sent and returned as undeliverable. By way of example, a “reasonable” tracing procedure would be to run addresses through the LexisNexis database that can be utilized for such purpose. The Settlement Administrator shall complete the re-mailing of Mailed Notice to those members of the Settlement Classes whose new addresses were identified as of that time through address traces (“Notice Re-mailing Process”). The Settlement Administrator’s continued efforts in providing Mailed Notice to individuals for whom Mailed Notice is returned as undeliverable shall not affect or extend any Settlement Classes member’s deadlines for objecting or opting out.

42. The Mailed Notice and Email Notice shall be completed no later than 30 days after the Settlement Administrator receives the last known names, addresses, and email addresses of all known members of the Settlement Classes from the Defendant under paragraph 37. The Settlement Administrator shall provide Class Counsel and Visionworks an affidavit that confirms that Mailed Notice and Emailed Notice were accomplished in a timely manner, and shall provide information concerning notices returned as undeliverable, and the results of any subsequent Notice Re-mailing Process.

43. Within the parameters set forth in this Agreement, further specific details of the Class Notice program shall be subject to the agreement of Class Counsel and Visionworks.

### **VIII. Opt-Outs and Objections**

44. A member of the Settlement Classes may opt-out of the Settlement at any

time during the Opt-Out Period. An Opt-Out request must affirmatively state that the individual wishes to opt out of the Settlement, state the case name and number, contain the name, address, telephone number, and email address of the Settlement Class Member requesting exclusion, and be personally signed by that Settlement Class Member. The opt-out request must be sent by U.S. Mail to the Settlement Administrator (at the address provided in the Notice of Settlement), and must be postmarked on or before the Deadline to Opt Out or Object. The Settlement Administrator shall provide the Parties' counsel with copies of all opt-out requests received to date within five (5) business days after the Deadline to Opt Out or Object, and provide any additional opt-out requests within ten (10) business days after the Deadline to Opt Out or Object. Any member of the Settlement Classes who does not timely and validly request to opt-out shall be bound by the terms of this Agreement. No Opt Out request may be made on behalf of a group of Settlement Class Members. Each Opt Out request must be individually signed by the Settlement Class Member who is opting out of the Settlement.

45. Objections to the Settlement, to the application for fees, costs, and/or expenses must be either (1) mailed to the Clerk of the Court addressed to the Clerk's Office for the Middle District of Florida, located at 401 West Central Boulevard, Orlando, Florida 32801, (2) filed with the Court using the Court's electronic filing system, or (3) filed in person at the location specified in section (1) of this paragraph. For an objection to be considered by the Court, the objection must be submitted no later than the last day of the Opt-Out Period, as specified in the Class Notice. If submitted by USPS mail, an objection shall be deemed to have been submitted when postmarked. If submitted by private courier (e.g., FedEx), an objection shall be deemed to have been submitted

on the shipping date reflected on the shipping label of the envelope enclosing the objection. The objection must state the case name and number; state with specificity the grounds for the objection; state whether it applies to only the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; provide the name, address, telephone number, and email address of the Settlement Class Member making the objection; and indicate whether the Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel. In addition, the objection must be personally signed by the Settlement Class Member and, if represented by counsel, then also by counsel. Any Settlement Class Member who fails to timely object to the Settlement in the manner specified above shall be deemed to have waived any objections to the Settlement and shall be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement.

46. Plaintiff will include in the Motion for Preliminary Approval the following recommendations to the Court for the requirements for any objections to be valid and considered by the Court:

- a. the name of the Action;
- b. the objector's full name, address and telephone number;
- c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- d. all grounds for the objection, accompanied by any legal support for the objection known to the objector or his counsel;
- e. the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the

- objection, the caption of each case in which the objector has made such an objection, and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case;
- f. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
  - g. a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections made by individuals or organizations represented by that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years the objector's counsel;
  - h. any and all agreements that relate to the objection or the process of objecting, whether written or oral, between objector or objector's counsel and any other person or entity;
  - i. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
  - j. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing;
  - k. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; and
  - l. the objector's signature (an attorney's signature is not sufficient).

**IX. Final Approval Order and Judgment**

47. Plaintiff's Motion for Preliminary Approval will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiff shall file his Motion for Final Approval of the Settlement no later than 20 days prior to the Final Approval Hearing, and shall file his application for attorneys' fees, costs, and expenses, no later than 60 days prior to the Final Approval Hearing. Class Counsel shall be responsible for drafting the first drafts of the Final Approval Motion and will coordinate finalizing the motion with input from Defendant. The Parties agree to collaborate in good faith in the preparation and finalization of the Final Approval Motion.

48. At the Final Approval Hearing, the Court will hear argument on Plaintiff's Motion for Final Approval of the Settlement, and on Class Counsel's application for attorneys' fees, costs, and expenses. At the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to the fee, cost, or expense, provided the objectors submitted timely objections that meet all of the requirements listed in the preliminary approval order and notice.

49. At or after the Final Approval Hearing, the Court will determine whether to enter a Final Approval Order granting the Motion for Final Approval of the Settlement and entering final judgment thereon, and whether to approve Class Counsel's request for attorneys' fees, costs, and expenses.

**X. Escrow Account**

50. The Escrow Account will be established and shall be administered by Settlement Administrator under the Court's continuing supervision and control. Prior to

Final Approval, no disbursements of funds from the Escrow Account will occur without order of the Court. Visionworks shall have no role in, responsibility for, or liability associated with the Escrow Account.

**XI. Settlement Fund**

51. In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases and the dismissal of the Action upon Final Approval, within 30 calendar days of Preliminary Approval, Visionworks shall deposit the \$2,625,000.00 Settlement Fund into the Escrow Account. In no event shall Visionworks be responsible for any Settlement Costs or other claims, costs, fees, and expenses, exceeding the amount of the \$2,625,000.00 Settlement Fund. The Settlement Fund amount of \$2,625,000.00 shall be the maximum payment obligation of Visionworks in settlement of the Litigation, inclusive of all settlement administration costs.

52. Upon establishment of the Escrow Account, the Settlement Administrator may, but shall not be required to, cause the funds in the Escrow Account to be invested, in whole or in part, in interest-bearing short-term instruments or accounts that are backed by the full faith and credit of the United States Government or that are fully insured by the United States Government or an agency thereof (the "Instruments"). The Settlement Administrator may thereafter re-invest the interest proceeds and the principal as they mature in similar Instruments, bearing in mind the liquidity requirements of the Escrow Account to ensure it contains sufficient cash available to pay all invoices, taxes, fees, costs and expenses, and other required disbursements, in a timely manner. Notwithstanding the foregoing, that portion of the Settlement Fund

that the Settlement Administrator reasonably estimates needs to be available on a liquid basis to pay on-going costs of settlement administration, as provided in this Agreement, may be placed in one or more insured accounts that may be non-interest-bearing. Except as otherwise specified herein, the Instruments at all times will remain in the Escrow Account and under the control of the Settlement Administrator. All costs or fees incurred in connection with investment of the Settlement Fund in the Instruments shall be payable out of the Settlement Fund.

53. The Settlement Fund shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund or otherwise, including any taxes or tax detriments that may be imposed upon Visionworks or its counsel, or Plaintiff or Class Counsel, with respect to income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a "qualified settlement fund" for the purpose of federal or state income taxes or otherwise (collectively "Taxes"), shall be paid out of the Settlement Fund. Plaintiff and Class Counsel, and Visionworks and its counsel, shall have no liability or responsibility for any of those Taxes. The Settlement Fund shall indemnify and hold Plaintiff and Class Counsel, and Visionworks and its counsel, harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

54. The Settlement Fund shall be used for the following purposes:
- a. Distribution of Settlement Fund Payments to Settlement Class Members;
  - b. Payment of any Court-ordered award of Class Counsel's attorneys' fees,

costs, and expenses;

- c. Payment of any secondary and/or residual distribution, together with any administrative costs associated therewith;
- d. Payment of all costs and expenses associated with providing Notice to the Settlement Class and administering the Settlement;
- e. Payment of all Taxes, including, without limitation, taxes owed as a result of accrued interest on the Escrow Account, in a timely manner consistent with the recommendation of the Settlement Administrator, subject to approval by Class Counsel and Visionworks; and
- f. Payment of additional fees, costs and expenses not specifically enumerated in subparagraphs (a) through (e) of this paragraph, subject to approval of Class Counsel and Visionworks.

**XII. Calculation of Distributions from Settlement Fund**

55. Each Settlement Class Member shall receive a cash distribution payable by check from the Settlement Administrator. The amount of each cash distribution shall be determined by the following formula: Net Settlement Fund divided by total number of Settlement Class Members = Settlement Fund Payment.

**XIII. Distribution of Settlement Fund. Disposition of Residual Funds**

56. The Settlement Administrator shall distribute the Net Settlement Fund in the following order and within the time period set forth with respect to each such payment:

- a. First, no later than 45 days following the Effective Date, the Settlement Class Members shall be sent their Settlement Fund Payments and Class

Counsel shall be sent their reasonable attorneys' fees and costs, as ordered by the Court;

- b. Next, 180 days after the date the Settlement Administrator sends the first round of Settlement Fund Payments together with Class Counsel's reasonable attorneys' fees and costs, any residual funds in the Net Settlement Fund, including any Settlement Fund Payments that remain uncashed after 180 days from issuance, shall be distributed as follows:
- i. on a *pro rata* basis to participating Settlement Class Members who received and cashed Settlement Fund Payments, to the extent feasible and practical in light of the costs of administering such subsequent payments, unless other specific reasons exist that would make such further distributions impossible or unfair; and
  - ii. All costs associated with the disposition of residual funds - whether through additional distributions to Members of the Settlement Classes and/or through an alternative plan approved by the Court - shall be borne solely by the Settlement Fund.
- d. No portion of the Settlement Funds will revert to Defendant.

#### **XIV. Claims Process**

57. Settlement Class Members shall be entitled to a *pro rata* distribution from the Settlement Fund, without having to make a claim. Each Settlement Class Member shall be entitled to one *pro rata* distribution from the Settlement Fund per associated unique telephone number that received a Visionworks Message, regardless of the number of Visionworks Messages the Settlement Class Member received. These

limitations apply both to the initial round of distributions and any additional distributions under paragraph 56(c)(i).

58. Settlement Fund Payments shall be sent to Settlement Class Members by the Settlement Administrator via check sent via U.S. mail. If any Settlement Fund Payments are returned as undeliverable, the Settlement Administrator shall attempt to obtain a new mailing address for that Settlement Class Member. If after a second mailing, the Settlement Fund Payment is again returned, no further efforts need be taken by the Settlement Administrator to resend the check. Each Settlement Fund Payment will be negotiable for 90 days after it is issued.

**XV. Releases**

59. As of the Effective Date of the Settlement, upon approval of the Court, the Releasing Parties fully and irrevocably release and forever discharge the Released Parties of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys' fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, or relate to acts, omissions, duties, or matters at any time from the beginning of the Class Period through the Effective Date, that were or could have been claimed, raised, or alleged in this Action, in any way relating to or arising from the claims, allegations, and defenses asserted in the Action, or which in any way relate to or arise from Visionworks Messages ("Released Claims"). The foregoing release and waiver includes any rights and benefits of § 1542 of the California Civil Code, related only to the Released Claims for those Settlement Class Members who are residents of the state of California, which

the Parties agree was separately bargained for and a material element of this Settlement of which the release and waiver in this paragraph is a part.

60. As of the Effective Date, all Releasing Parties covenant not to sue and shall be forever barred and enjoined from prosecuting any action in any forum or tribunal, directly or indirectly, against the Released Parties asserting any Released Claims.

61. In addition to any other defenses Visionworks may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of this Agreement or the Releases contained herein.

**XVI. Payment of Attorneys' Fees and Costs**

62. Visionworks agrees not to oppose Class Counsel's request for attorneys' fees of up to 33.33% of the Settlement Fund (\$875,000.00) and not to oppose Class Counsel's request for reimbursement of costs and expenses. Any award of attorneys' fees, costs, and expenses to Class Counsel shall be payable solely out of the Settlement Fund. The Parties agree that the Court's failure to approve, in whole or in part, any award for attorneys' fees shall not prevent the Settlement from becoming effective, nor shall it be grounds for termination.

63. The Settlement Administrator shall pay from the Settlement Fund to Class Counsel all Court-approved attorneys' fees, costs, and expenses of Class Counsel, including interest accrued thereon. Visionworks shall have no responsibility for any allocation, and no liability whatsoever to any person or entity claiming any share of the

funds to be distributed.

64. The Parties negotiated and reached agreement regarding attorneys' fees and costs only after reaching agreement on all other material terms of this Settlement.

**XVII. Termination of Settlement**

65. This Settlement may be terminated by either Class Counsel or Visionworks by serving on counsel for the opposing Party and filing with the Court a written notice of termination within 30 days (or such longer time as may be agreed in writing between Class Counsel and Visionworks) after any of the following occurrences:

- a. the Court enters an order declining to approve the Settlement;
- b. an appellate court vacates or reverses the Final Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand within 270 days of such reversal;
- c. if the number of opt outs exceed 10% and Visionworks, within 10 days of the Opt-Out deadline, gives written notice of its decision to void the Settlement; or
- d. the Effective Date does not occur.

66. The preceding paragraph notwithstanding, if the Court conditions preliminary or final approval of the Settlement on certain changes to the Settlement, the Parties shall consider in good faith such changes and consent to such changes if they do not substantively alter the obligations of the Parties. Changes that shall be deemed to substantively change the obligation of a Party include, but are not limited to, changes that affect (a) the amount of the Settlement Fund, (b) the scope of the releases to be granted, (c) and any provision expressly noted as material in this Agreement. A

change shall not be deemed to substantively change the obligation of a Party if it merely alters in a minor or clarifying way the wording or appearance of any notice or order or if it reasonably modifies the timing of a contemplated event.

**XVIII. Effect of a Termination**

67. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiff's, Class Counsel's, and Visionworks's obligations under the Settlement shall cease to be of any force and effect; the Settlement Fund shall be returned to Visionworks, including interest accrued thereon; and the Parties shall return to the status *quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims and defenses will be retained and preserved.

68. The Settlement shall become effective on the Effective Date unless earlier terminated.

69. In the event the Settlement is terminated, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made or filed with the Court, and Visionworks expressly reserves its rights to contest class certification.

**XIX. No Admission of Liability: Non-Disparagement**

70. Visionworks continues to deny the allegations and dispute any liability for the claims alleged in the Action, and maintains that it complied, at all times, with applicable laws and regulations. Visionworks does not by this Agreement or otherwise

admit any liability or wrongdoing of any kind. Visionworks has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could have been asserted in the Action.

71. Class Counsel believes that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims, and conducted extensive discovery.

72. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Classes.

73. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability or wrongdoing of any kind whatsoever.

74. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiff or members of the Settlement Classes, or of any wrongdoing or liability of the

Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency or other tribunal.

**XX. Miscellaneous Provisions**

75. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

76. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

77. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement. This obligation of the Parties to support and complete the Settlement shall remain in full force and effect regardless of events that may occur.

78. Obligation To Meet And Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted.

79. Integration. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

80. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

81. Governing Law. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the State of Texas, without regard to the principles thereof regarding choice of law.

82. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

83. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Class Notice program and Settlement Administrator. As part of their respective agreements to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

84. Notices. All notices to Class Counsel provided for herein, shall be sent

by email with a hard copy sent by overnight mail to:

Christopher Berman and Garrett Berg  
Shamis & Gentile, PA  
14 NE 1<sup>st</sup> Ave, Suite 705  
Miami, FL 33132  
Email: [cberman@shamisgentile.com](mailto:cberman@shamisgentile.com) and [gberg@shamisgentile.com](mailto:gberg@shamisgentile.com)

All notices to Visionworks, provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

Thomas M. Schehr, Esq.  
Dykema Gossett PLLC  
39577 Woodward Avenue, Suite 300  
Bloomfield Hills, MI 48304  
Email: [tschehr@dykema.com](mailto:tschehr@dykema.com)

Lisa Hill  
General Counsel,  
Visionworks of America, Inc.  
19100 Ridgewood Parkway  
Bldg. 1, 7th Floor  
San Antonio, Texas 78259  
Email: [lhil@visionworks.com](mailto:lhil@visionworks.com)

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any Party, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Class Notice program.

85. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and counsel for Visionworks and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

86. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach,

whether prior, subsequent, or contemporaneous, of this Agreement.

87. Authority. Class Counsel (for the Plaintiff and the Settlement Class Members), and counsel for Visionworks, represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation or entity included within the definitions of Plaintiff and Visionworks to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

88. Agreement Mutually Prepared. Neither Visionworks nor Plaintiff, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

89. No Press Release or Publicity. Neither the Parties nor their counsel will issue any press releases or otherwise comment to the press concerning the Settlement.

90. Mediation; Dispute Resolution. If the Parties disagree or as to any matter concerning the administration of this Settlement, the Parties and the relevant Released Parties agree to use their best efforts to amicably resolve the dispute and to participate in another mediation before Chris Nolland if he agrees to do so and is reasonably available. If Mr. Nolland declines, the parties should agree upon a mediator. This mediation must occur prior to either party seeking relief from the Court.

91. Independent Investigation and Decision to Settle. The Parties understand

and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

92. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she or it has fully read this Agreement and the Release, received independent legal advice with respect to the advisability of entering into this Agreement and the Release and the legal effects of this Agreement and the Release, and fully understands the effect of this Agreement and the Release.

93. Class Counsel will return or destroy all copies of discovery materials obtained in this litigation from Defendants or third parties within thirty (30) days after the Effective Date.

(signatures on following page)

Dated: 05 / 22 / 2025 *Anthony T Lawson*  
Anthony Lawson  
Plaintiff

Dated: 05 / 21 / 2025 *Andrew Shamis*  
Andrew J. Shamis  
Class Counsel

Dated: 5/19/2025 | 2:15:51 PM PDT *Greg Hare*  
Signed by:  
68193F33188647C  
Visionworks of America, Inc.  
Defendant

Dated: 5/21/2025 *Thomas M. Schehr*  
Thomas M. Schehr  
Counsel for Defendant



Audit trail

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## Document History



SENT

**05 / 21 / 2025**

19:26:08 UTC

Sent for signature to Anthony Lawson (anthonylawson435@yahoo.com) and Andrew Shamis (ashamis@shamisgentile.com) from dflores@shamisgentile.com  
IP: 70.135.158.223



VIEWED

**05 / 21 / 2025**

20:05:56 UTC

Viewed by Andrew Shamis (ashamis@shamisgentile.com)  
IP: 99.196.128.51



SIGNED

**05 / 21 / 2025**

20:06:25 UTC

Signed by Andrew Shamis (ashamis@shamisgentile.com)  
IP: 99.196.128.51



VIEWED

**05 / 21 / 2025**

23:18:52 UTC

Viewed by Anthony Lawson (anthonylawson435@yahoo.com)  
IP: 166.198.161.78



SIGNED

**05 / 22 / 2025**

17:52:27 UTC

Signed by Anthony Lawson (anthonylawson435@yahoo.com)  
IP: 208.30.113.249



COMPLETED

**05 / 22 / 2025**

17:52:27 UTC

The document has been completed.