of their professional income. In California, for example, VSP plans cover over 5.7 million members accounting for total annual revenue of approximately \$200 million.

Against this background, Defendant VSP's Panel Doctor's Agreement contains a so-called fee nondiscrimination clause, which is similar, in substance, to clauses commonly characterized in the health care industry as most favored nation (MFN) clauses. VSP's MFN clause requires that each panel doctor charge VSP no more than the lowest price that the doctor charges any non-VSP patient or any other vision care group or insurance plan. Accordingly, if a VSP panel doctor wishes to reduce the fees that the doctor charges to any non-VSP plan or patient below the amounts that VSP pays the doctor, the MFN requires the doctor to reduce to that same level the fees the doctor charges to VSP. For the reasons described below, however, VSP's MFN clause has actually caused many doctors not to reduce their fees to VSP, but instead to charge other vision care insurance plans and non-VSP patients fees that are at least as high as those paid to the doctor by VSP.

The Complaint alleges that, beginning at a time unknown to Plaintiff and continuing through at least November, 1994, in all or parts of many states in which VSP does business, VSP entered into agreements with its panel doctors that had the effect of unreasonably restraining optometrists' discounting of fees for vision care services to vision care insurance plans competing with VSP or to other purchasers of vision care services, in violation of section 1 of the Sherman Act. The Complaint alleges that, for the purpose of forming and effectuating these agreements, (1) VSP required its panel doctors to agree to the MFN clause in VSP's Panel Doctor's Agreement, which had the effect of restricting the willingness of its panel doctors to discount fees for vision care services and substantially reducing discounted fees for vision care services; (2) VSP enforced the MFN clause; and (3) VSP coerced many panel doctors into dropping out of, or charging higher fees to, vision care insurance plans that compete with VSP.

The Complaint further alleges that, in all or parts of many states, the challenged agreements have had the effect of (1) unreasonably restraining price competition among vision care insurance plans because many competing vision care insurance plans have been unable to obtain or retain a sufficient number of optometrists to provide services to their members at competitive prices because panel doctors have withdrawn from, refused to participate in, or insisted on higher fees from vision care insurance plans that seek to pay them less than the Defendant; and (2) raising prices for the provision of vision care services to non-VSP patients and plans in competition with VSP because, as a result of the MFN, many VSP panel doctors have opted not to discount their fees to competing vision care insurance plans or to uninsured patients.

VSP's adoption and enforcement of the MFN in its Panel Doctor's Agreement has reduced the willingness of many optometrists to discount their fees for the following reasons. Since many VSP panel doctors in all or parts of many states receive a significant portion of their professional income from treating VSP patients, they have found that discounting their fees below VSP payments to non-VSP patients or competing vision care programs, and consequently reducing their income from VSP by virtue of the MFN clause, is unprofitable. For the same reason, VSP panel doctors are unwilling to drop their participation in VSP to avoid the MFN and be able to discount their fees to competing discount vision care plans.

In a number of reported situations, optometrists had reduced their fees in a range of 20-40% below their usual fees to participate in vision care insurance plans competing with VSP Subsequently, fearing VSP's enforcement of the MFN clause, however, many VSP panel doctors resigned from such competing plans or insisted that the plans pay them fees that are at least as high as VSP's to avoid having to lower their fees charged to VSP. Consequently, VSP's MFN clause has substantially restrained both discounting arrangements that were already in place and potential discounting that otherwise would have occurred but for the MFN. Thus, VSP's MFN clause has severely hampered competing vision care insurance plans' efforts to attract or retain, at competitive prices, a sufficient, geographically dispersed panel of qualified optometrists to make their plans commercially marketable.

In all or parts of many states, VSP's MFN clause has effectively deprived vision care consumers of the benefits of free and open competition. VSP's MFN clause has deprived uninsured patients of price competition among optometrists who—because of the MFN clause—are unwilling to discount their fees below VSP levels. VSP's MFN clause has also reduced purchasers' opportunities to choose among competing vision care insurance plans offering different combinations of optometrists and

prices. This reduction in the scope of vision care coverage alternatives, such as managed care and other discount plans, has substantially reduced the cost savings to consumers that such competing plans could provide if they were able to contract for optometrists' services at fees below VSP levels. Indeed, claims data suggest generally that average claims, based on panel doctor's usual charges, filed with VSP for services rendered in all or parts of many states where VSP contracts with a substantial percentage of optometrists in private practice and does a substantial amount of business range between \$95-110, compared to \$70–80 in some other areas where VSP has less of a market presence.

## III

## Explanation of the Proposed Final Judgment

The Plaintiff and VSP have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission of any party concerning any issue of fact or law.

Under the provisions of section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Section X(C) of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that VSP eliminates its MFN clause and stops all similar practices that unreasonably restrain competition among optometrists and vision care insurance plans.

## A. Scope of the Proposed Final Judgment

Section III (A) of the proposed Final Judgment provides that the Final Judgment shall apply to VSP and to its successors and assigns, and to all other persons (including VSP panel doctors) in active concert or participation with any of them, who shall have received actual notice of the Final Judgment by personal service or otherwise. Section III(B) of the proposed Final Judgment limits application of the Judgment to VSP's MFN clause, as defined in Section II(C) of the Judgment, but to no other clause in the VSP Panel Doctor's Agreement, VSP policy, or VSP practice.

In the Stipulation to the proposed Final Judgment, VSP has agreed to be bound by the provisions of the proposed Final Judgment, pending its approval by the Court. VSP has also agreed to send,