within 15 days of the filing of the proposed Final Judgment, a copy of the attached letter, which has been approved by the Antitrust Division, to every VSP panel doctor participating at any time since January 1, 1993.

B. Prohibitions and Obligations

Under Section IV(A) of the proposed Final Judgment, VSP is enjoined and restrained for a period of five years from maintaining, adopting, or enforcing an MFN clause in any VSP Panel Doctor's Agreement, or in its corporate by-laws, policies, rules, regulations, or by any other means or methods.

Subject to activities permitted in Section V of the proposed Final Judgment, other provisions of the Final Judgment seek to ensure that the MFN clause's anticompetitive effects cannot be achieved in other ways. Specifically, Section IV(B) enjoins VSP from maintaining, adopting, or enforcing any policy or practice linking payments made by VSP to any VSP panel doctor to fees charged by the doctor to any non-VSP patient or any non-VSP plan; Section IV(C) enjoins VSP from differentiating VSP's payments to, or other treatment of, any VSP panel doctor because the doctor charges any fee lower than that charged by the doctor to VSP, to any non-VSP patient or to any non-VSP plan; Section IV(D) enjoins VSP from taking any action to discourage any VSP panel doctor from participating in any non-VSP plan or from offering or charging any fee lower than that paid to the doctor by VSP to any non-VSP patient or any non-VSP plan; Section IV(E) enjoins VSP from monitoring or auditing the fees any VSP panel doctor charges to any non-VSP patient or any non-VSP plan; and Section IV(F) enjoins VSP from communicating in any fashion with any VSP panel doctor regarding the doctor's participation in any non-VSP plan or regarding the doctor's fees charged to any non-VSP patient or to any non-VSP

Section V of the Proposed Final Judgment describes several activities that VSP may elect to undertake in calculating the payments it makes in the future to its panel doctors that, if carried out consistently with the restrictions of Section V and applicable injunctive provisions contained in Section IV, will not constitute a violation of the Judgment. Essentially, the restrictions of Section V seek to ensure that VSP does not discriminate against VSP panel doctors who choose to discount fees to non-VSP insurance plans or to uninsured patients, with the effect of discouraging such discounting. Section V(A) allows VSP to request annually

sufficient information to enable VSP to calculate either a doctor's modal fee (the doctor's most frequently charged fee) or median fee (the fee above and below which the doctor charges other fees an equal number of times) for each service provided by all VSP panel doctors in a meaningful geographic area specified by zip codes; Section V(C) allows VSP to verify, through reasonable audit procedures, the information provided to it by its panel doctors pursuant to Section V(A) and to check into any reasonable suspicions VSP might have of excessive billings by panel doctors; and under Section V(F), VSP may impose penalties in a nondiscriminatory manner on panel doctors for billing misrepresentations.

Section V(D) permits VSP, if it chooses, to devise and use a new fee system for doctors who become VSP panel doctors after the entry of the Judgment, based on the average fees that VSP pays its existing panel doctors within a meaningful area specified by zip codes. Under Section V(E), VSP also may elect to maintain its current fee levels for its current panel doctors and base any future fee increases on the Consumer Price Index, VSP's own financial growth or any other meaningful economic indicator.

Section VI of the Final Judgment declares that VSP's MFN clause, or any future clause, policy or practice having the same purpose or effect, null and void.

Section VII of the Final Judgment sets forth several compliance measures that VSP must fulfill. Section VII(A) requires that, within 60 days of entry of the Final Judgment, VSP provide a copy of the Final Judgment to all VSP officers and directors, VSP employees having responsibility for VSP Panel Doctor Agreements, and all present VSP panel doctors or former panel doctors whom VSP reasonably believes resigned from the VSP plan because of the MFN. Sections VII(B), (C) and (D) require VSP to provide a copy of the Final Judgment to future officers, directors and employees having responsibility for VSP Panel Doctor Agreements and to obtain and maintain records of such persons' written certifications that they have read, understand and will abide by the terms of the Final Judgment. Section VII(E) requires VSP to notify all former VSP panel doctors whom VSP reasonably believes resigned from a VSP plan because of the MFN and to reinstate them as panel doctors if they so desire; Section VII(F) obligates VSP to report to Plaintiff any violation of the Final Judgment.

The Final Judgment also contains provisions, in Section VIII, obligating

VSP to certify its compliance with specified obligations of Sections IV, V, VI and VII of the Final Judgment. In addition, Section IX of the Final Judgment sets forth a series of measures by which the Plaintiff may have access to information needed to determine or secure VSP's compliance with the Final Judgment.

C. Effect of the Proposed Final Judgment on Competition

By eliminating the MFN clause, the relief ordered by the proposed Final Judgment will enjoin and eliminate a substantial restraint on price competition between VSP and other vision care insurance plans and among optometrists, in all or parts of many states. It will do so by eliminating the disincentives created by the MFN clause that inhibit optometrists' willingness to discount their fees and to join non-VSP plans offering payments below VSP levels. The Judgment also prevents VSP from taking any other action to dissuade or discourage optometrists from discounting or participating in competing vision care insurance plans. Consequently, non-VSP plans' efforts to attract and maintain viable panels of optometrists to serve their members will no longer be hampered.

On the other hand, VSP will be able to compete on the same terms with other vision care insurance plans because it will not be restricted from seeking and obtaining lower fees through activities permitted in Section V of the Judgment or by other means, such as a fee schedule—an approach used by other vision care insurance plans—that are unlikely to have anticompetitive effects. Though Section V does not allow VSP routinely to base its payments on the lowest fee charged by its panel doctors to any non-VSP plan or patient—as VSP has done through its MFN clause—Section V does permit VSP to base its payments to panel doctors on their median or modal fees charged to non-VSP plans and patients, two measures of usual and customary fees that are not linked directly to the lowest fee charged.

In view of the substantial percentage of vision care patients who are not covered by a vision care insurance plan, a VSP panel doctor's median or modal fee is not likely to be the lowest fee charged by the doctor to any non-VSP plan or patient. Thus, VSP's possible use of median or modal fees, to set payments to panel doctors, is unlikely to create disincentives to discount. The activities that Section V permits VSP to engage in are unlikely, therefore, to replicate the effects of VSP's MFN clause or consequently to perpetuate the