

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

MACKEYSER HOLDINGS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 14-11550 (CSS)
Jointly Administered

Proposed Objection Deadline:
Dec. 11, 2014 at 11:00 a.m. (ET)
Proposed Hearing Date:
Dec. 15, 2014 at 2:00 p.m. (ET)

MOTION OF THE DEBTORS AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. § 105(a) AND FED. R. BANKR. P. 9019(a) APPROVING THE COMPROMISE AND SETTLEMENT BY AND AMONG THE DEBTORS, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND CERTAIN OF THE DEBTORS' SECURED LENDERS AND ESSILOR OF AMERICA, INC. AND CERTAIN AFFILIATED ENTITIES

Mackeyser Holdings, LLC and its affiliated debtors and debtors-in-possession (collectively, the "Debtors") and the Official Committee of Unsecured Creditors of the Debtors (the "Committee," and together with the Debtors, the "Movants"), by and through their undersigned counsel, hereby submit this motion (the "Motion"), pursuant to section 105(a) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for entry of an order (the "Proposed Order"), substantially in the form appended hereto as **Exhibit A**, approving the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each entity's federal tax identification number, are: MacKeyser Holdings, LLC (5620); American Optical Services, Inc. (5707); Exela Hearing Services, LLC (2110); Optical Management Systems, Inc. (8300); Riverfront Hearing, Inc. (9220); AOS-OMS, LLC (4445); American Optical Services, LLC (4879); EHS-Riverfront, LLC (4530); 926 N. Wilcrest, LLC (2497); Epic Management Group, LLC (3385); Eyeglasses Etc., Inc. (7753); Eyes On You Eyecare, Inc. (2091); Genesis Billing Systems, LLC (1548); Genesis Eye Center, PLLC (8427); J. Richard Susi, D.O., P.A. (1936); Joseph D. Udvari, Jr., O.D., P.C. (0856); Joseph Kurstin, M.D., P.A. (7339); Lakewood Eye Clinic, P.C. (2251); Larry R. Moorman, M.D., P.C. (5458); Philip H. Clark, O.D., P.A. (6411); Steven T. Olkowski, M.D., P.C. (1813); Thomas Retinal Eye Specialists, P.C. (0492); and Thomas G. Abell, M.D., P.S.C. (1810). The mailing address for each entity listed above is 10624 Eastern Avenue #965, Henderson, Nevada 89052.

settlement agreement (the "Settlement Agreement")² entered into by the Debtors, the Committee, the Debtors' pre- and postpetition lenders Health Evolution Partners Fund I, L.P. ("HEP Fund I") and Series F of Health Evolution Partners Co-Invest, LLC (together with HEP Fund I, "HEP", and together with HEP Fund I, the Debtors and the Committee, the "Estate Parties"), Essilor of America, Inc. ("Essilor of America") and its affiliated entities,³ and Essilor Laboratories of America, Inc. ("Essilor Labs", and together with Essilor of America and the Essilor Affiliates, "Essilor"), a copy of which is annexed to the Proposed Order as **Exhibit 1**, and authorizing the Debtors to enter into the Settlement Agreement and take all actions contemplated thereby. In further support hereof, the Movants respectfully represents as follows:

BACKGROUND

1. On June 20, 2014 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors continue to manage their assets and properties as debtors-in-possession. No trustee or examiner has been appointed in these cases.

2. On July 8, 2014, the Office of the United States Trustee for the District of Delaware appointed the Committee, consisting of the following three members: (i) Steven T. Olkowski, M.D.; (ii) Exela, LLC; and (iii) Oakley Sales Corp. Subsequently, Luxottica USA joined the Committee as an unofficial, non-voting member.

² Capitalized terms not expressly defined herein shall be given the meanings ascribed to them in the Settlement Agreement.

³ The affiliated entities include Beitler McKee, Central One Optical, Interstate Optical, Sun Star, Vision Craft, OOGP and Costa (collectively, the "Essilor Affiliates").

A. The Debtors' Corporate Structure

3. MacKeyser Holdings, LLC ("Mackeyser") is a holding company and the ultimate parent of the other Debtors in these cases.

4. HEP and certain affiliated funds are the majority equity owner of MacKeyser, holding 75.58% of the outstanding capital units. The other capital units are held by: (i) PKO, LLC, an entity owned and controlled by Pierre Keyser, the Debtors' former Chief Executive Officer (19.34%); (ii) Essilor (3.83%); and (iii) Erica Perreira, the Debtors' former Chief Operating Officer (1.24%).

B. The Debtors' Prepetition Secured Indebtedness

5. As of the Petition Date, the Debtors had aggregate outstanding secured debt totaling approximately \$23 million, including indebtedness owed under that certain Secured Promissory Note dated as of May 29, 2014 (the "HEP Prepetition Note"). Under the HEP Prepetition Note, HEP advanced \$3,461,681.96 as of the Petition Date, which was secured by liens on substantially all of the Debtors' assets.

6. In addition, under that certain Loan Agreement dated December 17, 2012 and that certain Senior Secured Promissory Note dated January 29, 2013 (the "Essilor Secured Note"), Essilor advanced \$4,000,000, repayment for which was secured by, among other things, liens on substantially all of the assets of the Debtors owned or used in connection with the optometric practice and optical eye care retailing business commonly known as the "The Eye Gallery" (the "TEG Business").

C. The Laboratory Services Agreement

7. On January 1, 2013, certain of the Debtors, Essilor Labs, and Pierre Keyser (the "Shareholder") entered into that certain Omnibus Amended and Restated Laboratory Services

Agreement (the "Laboratory Services Agreement") pursuant to which, *inter alia*, Essilor Labs agreed to provide laboratory services to the Debtors, and the Shareholder agreed to personally guarantee and be jointly and severally liable for all payment obligations arising under the Laboratory Services Agreement (the "Shareholder Guarantee"). As of the Petition Date, Essilor was owed \$3,161,656.14 under the Laboratory Services Agreement and for services otherwise provided by the Essilor Affiliates, including \$170,703.23 on account of goods delivered to the Debtors within 20 days of the Petition Date (the "503(b)(9) Claim").

D. The Sale of the TEG Business

8. On September 18, 2014, the Court entered an order authorizing and approving the sale of the TEG Business to Emerging Vision, Inc. for \$4,925,000 in cash and the assumption of certain liabilities [D.I. 508]. In accordance with the Court's order authorizing the Debtor to enter into a postpetition financing facility provided by HEP, the Debtors segregated \$4,050,000 from the proceeds from the sale of the TEG Business to satisfy any secured claim of Essilor allowed by the Court.

E. Essilor's Motion for Repayment

9. On September 9, 2014, Essilor filed a motion (the "Repayment Motion") in the Bankruptcy Cases for an order allowing Essilor's claim under the Essilor Secured Note in the amount of \$4,049,913.88, inclusive of accrued interest and attorneys' fees, and providing for the immediate payment thereof.

10. The Estate Parties provided Essilor with a draft objection to the Repayment Motion, pursuant to which the Estate Parties objected to the relief requested in the Repayment Motion and the allowance of the Essilor Secured Claim on the grounds that, *inter alia*, the

Debtors may have viable claims and setoff rights against Essilor (the “Estate Claims”), including potential preference claims arising under section 547 of the Bankruptcy Code.

F. The Global Settlement and Plan of Liquidation

11. On October 17, 2014, the Court entered an order in the Bankruptcy Cases approving the compromise and global settlement (the “Global Settlement”) by and among the Estate Parties.

12. On November 10, 2014, the Debtors and the Committee filed a joint plan of liquidation (the “Plan”) (D.I. 621) that reflects the Global Settlement.

G. Settlement Negotiations

13. Subsequent to the delivery of the draft objection to the Repayment Motion, the Parties held discussions regarding a global resolution of all of the disputes and claims asserted by the Parties in connection with the Bankruptcy Cases, which culminated in the settlement memorialized in the Settlement Agreement and summarized below.

JURISDICTION AND VENUE

14. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019(a).

DESCRIPTION OF COMPROMISE AND SETTLEMENT

15. In an effort to avoid further costs and time associated with the expensive and protracted litigation, the Parties engaged in extensive, arm’s-length and good faith negotiations

that concluded in the Settlement Agreement presently before the Court, pursuant to which, *inter alia*:⁴

- Allowance and Payment of Essilor Secured Claim. Upon entry of an order of the Court approving the Settlement Agreement (the “Settlement Order”), the Essilor Secured Claim shall be allowed in the Bankruptcy Cases in the amount of \$3,750,000 (the “Allowed Secured Claim”) in full and final satisfaction for any and all claims held by Essilor under the Loan Agreement and Promissory Note.
- Allowance of General Unsecured Claim. Upon entry of the Settlement Order, Essilor shall be entitled to an allowed, general unsecured claim in the Bankruptcy Cases of \$3,161,565.14.
- Assignment and Treatment of the Shareholder Guarantee. Upon entry of the Settlement Order, Essilor shall assign its right, title, and interest in the Shareholder Guarantee to the Debtors or to the Debtors' designee; provided, however, Essilor shall make the assignment with no guaranty of collection. The Shareholder Guarantee shall thereafter be treated as a Litigation Trust Asset (as defined in the Plan); provided, however, that the proceeds generated by the Shareholder Guarantee, if any, shall not be subject to the waterfall outlined in the Plan (the “Waterfall”), but shall instead be distributed (i) first, to pay the fees and expenses incurred by the Parties investigating, enforcing, litigating, and otherwise monetizing the Shareholder Guarantee, and (ii) second, 17.5% to Essilor and 82.5% to the Debtors or the Litigation Trust, as applicable. The funds distributed to the Debtors or the Litigation Trust (as defined in the Plan) shall be distributed in accordance with the Waterfall.
- Waiver of the 503(b)(9) Treatment. Upon entry of the Settlement Order, Essilor Labs shall waive any claim of priority treatment under the Bankruptcy Code.
- Potential Preferences. Upon entry of the Settlement Order, the Estate Parties agree that they shall not commence, continue, prosecute or pursue the Potential Preferences against Essilor.
- Cooperation. Essilor shall reasonably cooperate with all reasonable requests of any of the Estate Parties made in connection with their investigation of, or litigation against, the Shareholder, Erica Perreira, Erik Larsen, Sean Lyman, and/or any individuals or entities affiliated therewith. The Estate Parties shall be responsible for the reasonable expenses incurred by Essilor complying with such requests.

⁴ The following is a summary of the material terms of the Settlement Agreement. For a full recitation of all settlement terms, see the Settlement Agreement annexed to the Proposed Order as Exhibit 1. In the event of any conflict between this summary and the terms of the Settlement Agreement, the Settlement Agreement shall control.

- Mutual Release. The Parties shall exchange mutual releases as more fully set forth in the Settlement Agreement.
- Plan Support. Essilor shall support any plan of liquidation filed in the Bankruptcy Cases that is consistent with the Settlement Agreement and the Settlement Order.

RELIEF REQUESTED

16. By this Motion, the Movants request, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019(a), entry of an order, substantially in the form annexed hereto as **Exhibit A**, approving the Settlement Agreement and authorizing the Debtors to take any and all actions necessary or appropriate to consummate the settlement and perform all obligations contemplated therein.

BASIS FOR RELIEF

A. The Bankruptcy Court Should Approve the Settlement Because It Is Fair and Equitable and in the Best Interests of the Debtors' Estates

17. Settlements in bankruptcy are favored as a means of minimizing litigation, expediting the administration of the bankruptcy estate, and providing for the efficient resolution of bankruptcy cases. Myers v. Martin (In re Martin), 91 F.3d 389, 393 (3rd Cir. 1996); Tindall v. Mavrode (In re Mavrode), 205 B.R. 716, 719 (Bankr. D.N.J. 1997). To achieve these results, Bankruptcy Rule 9019(a) empowers a bankruptcy court to approve a compromise or settlement by a debtor after notice and a hearing. Fed. R. Bankr. P. 9019(a).

18. In applying this rule, a bankruptcy court should approve a settlement if it is fair and equitable, and in the best interest of the estate. Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop., Inc. (In re Cajun Elec. Power Coop., Inc.), 119 F.3d 349, 355 (5th Cir. 1997). To properly make this determination, a bankruptcy judge "must assess and balance the

value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal.” Id. at 356; see also Martin, 91 F.3d at 393.

19. The United States Court of Appeals for the Third Circuit has provided four criteria that a bankruptcy court must consider to approve a settlement. Specifically, the bankruptcy court must examine: (1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors. Martin, 91 F.3d at 393.

20. In addition to these criteria, courts assessing proposed settlements have also scrutinized additional factors. These additional factors include: (1) the competency and experience of counsel who support the settlement; (2) the relative benefits to be received by individuals or groups within the class; (3) the nature and breadth of releases to be obtained by the parties to the settlement; and (4) the extent to which the settlement is the product of arm’s length bargaining. Fischer v. Pereira (In re 47-49 Charles St., Inc.), 209 B.R. 618, 620 (S.D.N.Y. 1997); In re Spielfogel, 211 B.R. 133, 144 (Bankr. S.D.N.Y. 1997); In re Dow Corning Corp., 198 B.R. 214, 223 (Bankr. E.D. Mich. 1996).

21. When applying the above criteria to the facts of a particular case, a bankruptcy court does not have to conduct a mini-trial to determine the probable outcome of any claims waived in the settlement. In re Cajun Elec., 119 F.3d at 356. Nor does a bankruptcy court have to conduct an evidentiary hearing as a prerequisite to approving a settlement. Depoister v. Mary M. Halloway Found., 36 F.3d 582, 586 (7th Cir. 1994).

22. All of the above-enumerated factors strongly support this Court’s approval of the Settlement Agreement as being in the best interests of the Debtors’ estates and creditors. The

Settlement Agreement is the result of extensive, arm's-length negotiations among the Parties, each of whom has been represented by competent and highly-experienced counsel. The Settlement Agreement also favorably resolves all contested claims of the Parties related to these Bankruptcy Cases. As such, the Settlement Agreement is in the best interests of the Debtors' estates.

23. The Settlement Agreement also vitiates the considerable risks and costs associated with continued litigation between the Estate Parties and Essilor that could have greatly increased the amount of the Essilor Secured Claim and imperiled the Debtors' and the Committee's ability to seek confirmation of the Plan. The Estate Parties believe that a basis exists to assert claims against Essilor arising from prepetition transactions between the Debtors and Essilor and from the role that former and current Essilor employees played in the Debtors' day-to-day operations. However, the prosecution of such claims would be fact-intensive, time consuming and expensive, and the outcome of any such litigation would turn on the results of discovery and the development of additional facts that would be disputed by Essilor. Moreover, should Essilor succeed in defending against such claims, its legal fees and expenses could constitute secured claims against the estates under section 506(b) of the Bankruptcy Code. In light of the considerable benefits conferred upon these estates through the claims reductions, claims waivers and assignments agreed to by Essilor in the Settlement Agreement, it is respectfully submitted that the Settlement is fair and equitable to all parties. See In re Purofied Down Prods. Corp., 150 B.R. 519, 522 (Bankr. S.D.N.Y. 1993) ("The reviewing court need not conduct its own investigation concerning the reasonableness of the settlement and may credit and consider the opinion of the Trustee and counsel that the settlement is fair and equitable.").

NOTICE

24. Notice of this Motion will be will be given to the following parties, or, in lieu thereof, their counsel: (i) the Debtors' pre- and postpetition lenders; (ii) Emerging Vision; (iii) the Office of the United States Trustee for the District of Delaware; (iv) Essilor; and (v) those parties who have requested service pursuant to Bankruptcy Rule 2002, in accordance with Local Rule 2002-1(b). In light of the nature of the relief requested herein, the Movants submit that no other or further notice need be provided.

CONCLUSION

WHEREFORE, for the reasons set forth in this Motion, the Movants respectfully request that this Court enter an order approving the Settlement Agreement and granting such other and further relief as the Court deems just and proper.

Dated: Wilmington, Delaware
December 1, 2014

COLE, SCHOTZ, MEISEL, FORMAN
& LEONARD, P.A.

KLEHR HARRISON HARVEY
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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

MACKEYSER HOLDINGS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 14-11550 (CSS)

Jointly Administered

ORDER GRANTING MOTION OF THE DEBTORS AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. § 105(a) AND FED. R. BANKR. P. 9019(a) APPROVING THE COMPROMISE AND SETTLEMENT BY AND AMONG THE DEBTORS, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND CERTAIN OF THE DEBTORS' SECURED LENDERS AND ESSILOR OF AMERICA, INC. AND CERTAIN AFFILIATED ENTITIES

Upon the *Motion of the Debtors and the Official Committee of Unsecured Creditors for Entry of an Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 9019(a) Approving the Compromise and Settlement By and Among the Debtors, the Official Committee of Unsecured Creditors and Certain of the Debtors' Secured Lenders and Essilor of America, Inc. and Certain Affiliated Entities* (the "Motion"),² dated December 1, 2014, authorizing and approving the Settlement Agreement attached to this Order as Exhibit 1, and the Court having reviewed the Motion and any objections thereto, and having considered the evidence adduced or proffered in support of the Motion; and the Court having determined that good and sufficient notice of the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each entity's federal tax identification number, are: MacKeyser Holdings, LLC (5620); American Optical Services, Inc. (5707); Exela Hearing Services, LLC (2110); Optical Management Systems, Inc. (8300); Riverfront Hearing, Inc. (9220); AOS-OMS, LLC (4445); American Optical Services, LLC (4879); EHS-Riverfront, LLC (4530); 926 N. Wilcrest, LLC (2497); Epic Management Group, LLC (3385); Eyeglasses Etc., Inc. (7753); Eyes On You Eyecare, Inc. (2091); Genesis Billing Systems, LLC (1548); Genesis Eye Center, PLLC (8427); J. Richard Susi, D.O., P.A. (1936); Joseph D. Udvari, Jr., O.D., P.C. (0856); Joseph Kurstin, M.D., P.A. (7339); Lakewood Eye Clinic, P.C. (2251); Larry R. Moorman, M.D., P.C. (5458); Philip H. Clark, O.D., P.A. (6411); Steven T. Olkowski, M.D., P.C. (1813); Thomas Retinal Eye Specialists, P.C. (0492); and Thomas G. Abell, M.D., P.S.C. (1810). The mailing address for each entity listed above is 10624 Eastern Avenue #965, Henderson, Nevada 89052.

² Terms not otherwise defined herein shall be given the same meaning ascribed to them in the Motion.

Motion having been given under the circumstances, and the Court having determined that good cause has been demonstrated for granting the relief sought in the Motion; and after due deliberation and consideration, and good and sufficient cause appearing therefore,

IT IS HEREBY FOUND, DETERMINED AND ORDERED THAT:³

1. The Motion is GRANTED.
2. The compromises set forth in the Settlement Agreement are fair and equitable, and in the best interests of the Debtors' estates and their creditors. The Settlement Agreement enables the Debtors to avoid incurring additional expense of potentially protracted, time consuming litigation, the outcome of which is uncertain, and potentially jeopardizes the Estate Parties ability to confirm a plan of reorganization.
3. The Settlement Agreement is the result of extensive, arms'-length negotiations among the Parties.
4. The Debtors' and the Committee's entry into the Settlement Agreement is approved.
5. The Parties are hereby authorized to take any actions reasonably necessary to effectuate the terms of the Settlement Agreement.
6. This Order shall be enforceable and effective immediately upon its entry notwithstanding the application or possible application of Bankruptcy Rule 6004 or otherwise.
7. This Court shall retain jurisdiction with respect to the interpretation or implementation of this Order.

Dated: December __, 2014
Wilmington, Delaware

THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

³ The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

EXHIBIT 1

EXECUTION COPY

SETTLEMENT AGREEMENT

THIS AGREEMENT (the "Settlement Agreement") is made as of the 1st day of December, 2014 by and among Mackeyser Holdings, LLC and its affiliated debtors and debtors in possession (the "Debtors"),¹ the Official Committee of Unsecured Creditors of the Debtors ("Committee"), Health Evolution Partners Fund I, L.P. ("HEP I"), Series F of Health Evolution Partners Co-Invest, LLC (together with HEP I, "HEP," and together with HEP I, the Debtors, and the Committee, the "Estate Parties"), Essilor of America, Inc. and its affiliated entities² (collectively, "Essilor of America"), and Essilor Laboratories of America, Inc. ("Essilor Labs," and together with Essilor of America and Essilor Affiliates, "Essilor"). The Debtors, Committee, HEP, and Essilor are sometimes each referred to as a "Party" or collectively referred to as the "Parties" in this Settlement Agreement.

RECITALS

WHEREAS, on December 17, 2012, Debtor Mackeyser Holdings, LLC ("Mackeyser") entered into that certain Loan Agreement ("Loan Agreement") with Essilor of America, pursuant to which Mackeyser executed that certain Senior Secured Promissory Note in favor of Essilor of America in the face amount of \$4,000,000 (the "Secured Promissory Note");

WHEREAS, Mackeyser's obligations under the Loan Agreement and Secured Promissory Note were guaranteed by certain of the Debtors and secured by liens on certain of the Debtors' assets, primarily the assets referred to as "The Eye Gallery" and "The Artful Eye" stores (the "Collateral");

WHEREAS, on January 1, 2013, certain of the Debtors, Essilor Labs, and Pierre Keyser (the "Shareholder") entered into that certain Omnibus Amended and Restated Laboratory Services Agreement (the "Laboratory Services Agreement") pursuant to which, *inter alia*, Essilor Labs agreed to provide laboratory services to the Debtors and the Shareholder agreed to personally guarantee and be jointly and severally liable for all payment obligations arising under the Laboratory Services Agreement (the "Shareholder Guarantee");

WHEREAS, on June 20, 2014 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Court"), jointly administered under case number 14-11550 (CSS) (the "Bankruptcy Cases");

¹ The Debtors are: MacKeyser Holdings, LLC; American Optical Services, Inc.; Exela Hearing Services, LLC; Optical Management Systems, Inc.; Riverfront Hearing, Inc.; AOS-OMS, LLC; American Optical Services, LLC; EHS-Riverfront, LLC; 926 N. Wilcrest, LLC; Epic Management Group, LLC; Eyeglasses Etc., Inc.; Eyes On You Eyecare, Inc.; Genesis Billing Systems, LLC; Genesis Eye Center, PLLC; J. Richard Susi, D.O., P.A.; Joseph D. Udvari, Jr., O.D., P.C.; Joseph Kurstin, M.D., P.A.; Lakewood Eye Clinic, P.C.; Larry R. Moorman, M.D., P.C.; Philip H. Clark, O.D., P.A.; Steven T. Oikowski, M.D., P.C.; Thomas Retinal Eye Specialists, P.C.; and Thomas G. Abell, M.D., P.S.C.

² The affiliated entities include Beitler McKee, Central One Optical, Interstate Optical, Sun Star, Vision Craft, OOGP and Costa (collectively, the "Essilor Affiliates").

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WHEREAS, Essilor of America filed a proof of claim in the Bankruptcy Cases asserting that it was owed \$3,725,168.64 plus interest and attorneys' fees under the Secured Promissory Note and the Loan Agreement as of the Petition Date (the "Essilor Secured Claim");

WHEREAS, Essilor Labs, along with the Essilor Affiliates, filed a proof of claim in the Bankruptcy Cases asserting that, as of the Petition Date, they were owed \$3,161,565.14 on an unsecured basis under the Laboratory Services Agreement and for services otherwise provided by the Essilor Affiliates (the "General Unsecured Claim");

WHEREAS, upon the sale of the Collateral, and in accordance with the final order of the Court authorizing the Debtors to obtain postpetition financing, the Debtors segregated \$4,050,000 from the proceeds of the Collateral (the "Segregated Funds") to pay amounts owing on the Essilor Secured Claim, to the extent allowed by the Court or on the agreement of the Parties;

WHEREAS, on September 9, 2014, Essilor filed *Essilor of America, Inc.'s Application for Allowance and Payment of Interest, Fees, Costs, and Other Charges Pursuant to 11 U.S.C. § 506(b)* (the "Repayment Motion") in the Bankruptcy Cases seeking an order allowing the Essilor Secured Claim and providing for the immediate payment thereof;

WHEREAS, in the Repayment Motion, Essilor also asserted that additional interest, fees and costs have accrued and continue to accrue on the Essilor Secured Claim and should be authorized to be paid pursuant to 11 U.S.C. § 506(b);

WHEREAS, Essilor asserts that interest and fees have accrued and continue to accrue on the amounts owing under the Laboratory Services Agreement;

WHEREAS, Essilor has asserted an administrative claim against the Debtors under section 503(b)(9) of the Bankruptcy Code in the amount of \$170,703.23 on account of goods allegedly delivered to the Debtors within 20 days of the Petition Date (the "503(b)(9) Claim");

WHEREAS, on October 17, 2014, the Court entered an order (the "Global Settlement Order")³ in the Bankruptcy Cases approving the compromise and global settlement (the "Global Settlement") by and among the Estate Parties;

WHEREAS, Essilor was being identified as an "Investigation Party" in Debtors' proposed plan of reorganization and the Estate Parties provided Essilor with a draft objection to the Repayment Motion, pursuant to which the Estate Parties objected to the relief requested in the Repayment Motion and the allowance of the Essilor Secured Claim on the grounds that, *inter alia*, the Debtors may have viable claims and setoff rights against Essilor (the "Estate Claims");

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Global Settlement Order.

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WHEREAS, the Estate Parties assert that the Debtors made prepetition payments to Essilor Labs, doing business as Precision Optics Inc. and Meridian Optical, that may be avoidable under Section 547 of the Bankruptcy Code (the "Potential Preferences"), which assertions are disputed by Essilor Labs; and

WHEREAS the Parties held discussions regarding, among other things, the Estate Claims, the Essilor Secured Claim, the Laboratory Services Agreement, the 503(b)(9) Claim, the Repayment Motion, the Shareholder Guarantee and the Potential Preferences, and the Parties are desirous of achieving a resolution of the various pending issues.

AGREEMENT

NOW, THEREFORE, in consideration of the respective covenants, undertakings, representations and conditions hereinafter set forth, the Parties agree as follows:

1. Allowance and Payment of Essilor Secured Claim. Upon entry of an order of the Court approving this Settlement Agreement (the "Settlement Order"), the Essilor Secured Claim shall be allowed in the Bankruptcy Cases in the amount of \$3,750,000 (the "Allowed Secured Claim"). The Debtors shall pay the Allowed Secured Claim from the Segregated Funds within 5 days after entry of the Settlement Order. The Allowed Secured Claim shall be paid to Essilor by wire transfer as follows:

<u>Bank Name:</u>	Citibank N.A.
<u>Bank Address:</u>	111 Wall St. New York, NY 1 0043
<u>ABA / Transit Number:</u>	021-000-089
<u>Name on Account:</u>	Essilor Lenses-Concentration 13515 N. Stemmons Freeway Dallas, TX 75234
<u>Account Number:</u>	4072-9867
<u>Bank Contact:</u>	Denine Dunn
<u>Bank Phone:</u>	(302) 324-6378
<u>Swift Code (for Int'l use):</u>	CITIUS33

The payment of the Allowed Secured Claim shall be in full and final satisfaction of any and all claims held by Essilor of America under the Loan Agreement and Secured Promissory Note.

EXECUTION COPY

2. Allowance of the General Unsecured Claim. Upon entry of the Settlement Order, the General Unsecured Claim shall be an allowed, general unsecured claim in the Bankruptcy Cases in the amount of of \$3,161,565.14.

3. Assignment and Treatment of the Shareholder Guarantee. Upon entry of the Settlement Order, Essilor shall assign its right, title, and interest in the Shareholder Guarantee to the Debtors or to the Debtors' designee; provided, however, Essilor shall make the assignment with no guaranty of collection. The Shareholder Guarantee shall thereafter be treated as a Litigation Trust Asset; provided, however, that the proceeds generated by the Shareholder Guarantee, if any, shall not be subject to the Waterfall (as defined in the Global Settlement), but shall instead be distributed (i) first, to pay the fees and expenses incurred by the Parties investigating, enforcing, litigating, and otherwise monetizing the Shareholder Guarantee, and (ii) second, 17.5% to Essilor and 82.5% to the Debtors or the Litigation Trust, as applicable. The funds distributed to the Debtors or the Litigation Trust under this section shall be distributed in accordance with the Waterfall.

4. Waiver of the 503(b)(9) Treatment. Upon entry of the Settlement Order, Essilor Labs shall waive any claim of priority treatment under the Bankruptcy Code.

5. Potential Preferences. Upon entry of the Settlement Order, the Estate Parties agree that they shall not commence, continue, prosecute or pursue the Potential Preferences, which shall be released in accordance with Section 7 of this Settlement Agreement.

6. Cooperation. Essilor agrees to reasonably cooperate with all reasonable requests of any of the Estate Parties made in connection with their investigation of, or litigation against, the Shareholder, Erica Perreira, Erik Larsen, Sean Lyman, and/or any individuals or entities affiliated therewith (collectively, the "Shareholder Individuals"). The Estate Parties shall be responsible for the reasonable expenses incurred by Essilor complying with such requests.

7. Mutual Release. In consideration of the terms and provisions of this Settlement Agreement, Essilor, on the one hand, and the Estate Parties, on the other hand (each settling group, a "Releasing Party"), acknowledge and agree that, other than the obligations related to the Essilor Secured Claim, the General Unsecured Claim, and the obligations of the Parties hereunder, each Releasing Party hereby releases all claims, debts, liabilities, obligations, promises, controversies, actions, causes of action, damages, expenses, and demands, in law or in equity, which it had, has, or may have regarding the Debtors' and Essilor's prepetition and postpetition relationship, whether known or unknown, against the other Releasing Party or any of its former, present, and future administrators, successors, affiliates, predecessors, assigns, officers, directors, employees, contractors, subcontractors, shareholders, partners, agents, representatives, parents, divisions, subsidiaries, insurers, guarantors, and attorneys ("Released Parties"); provided, however, that the Shareholder Individuals are not receiving a release hereunder and shall not be Released Parties; and further provided that nothing herein shall release claims between the Estate Parties. The Mutual Release is not intended and shall not be

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construed to be a release of any right or interest the Parties may have against the Shareholder under the Laboratory Services Agreement, Shareholder Guarantee, or any other agreement.

8. Plan Support. Essilor hereby agrees to support any plan of liquidation filed in the Bankruptcy Cases that is consistent with this Settlement Agreement and the Order approving this Settlement Agreement.

9. Further Assurances. Essilor agrees to execute and deliver such other instruments of sale, transfer, conveyance, assignment, assurance, power of attorney and other such instruments as may be reasonably required by the Estate Parties to effectuate the assignment of the Shareholder Guarantee in accordance with Section 3 of this Settlement Agreement.

10. Effectiveness. The effectiveness of this Settlement Agreement is conditioned upon entry of the Settlement Order, and in the event the Settlement Order is not entered, (1) this Settlement Agreement shall be null and void ab initio, and (2) neither this Settlement Agreement nor any negotiations, proceedings or statements had or made in connection with this Settlement Agreement shall be used or referred to by any of the Parties hereto in any manner or for any purpose.

11. Costs and Expense of Enforcement. This Settlement Agreement is and may be pleaded as a full and complete defense to, and is and may be used as the basis for an injunction against prosecution of any claim which seeks recovery or relief contrary to the terms of this Settlement Agreement.

12. Authority. The undersigned representatives and/or counsel represent that they have full power and authority to execute this Settlement Agreement on behalf of their respective clients and to bind them to the terms and provisions herein.

13. Successor and Assigns. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties, their representatives, successors and assigns, including, without limitation, trustees, plan trustees, and receivers; provided, however, that no person other than the Parties, the Parties' affiliates or subsidiaries, and the Parties' successors or assigns shall have any rights under this Settlement Agreement as third-party beneficiaries or otherwise.

14. Miscellaneous. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. This Settlement Agreement shall be deemed to have been drafted jointly by the Parties. Accordingly, any rule pertaining to the construction of contracts to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Settlement Agreement or of any modifications of or amendments to this Settlement Agreement. The paragraph headings contained in this Settlement Agreement are for convenience of reference only and shall not affect the interpretation or construction of this Settlement Agreement. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or

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privilege hereunder. All understandings and agreements heretofore had between the Parties hereto relating to the subject matter hereof are merged in this Settlement Agreement, which alone fully and completely expresses their agreement. This Settlement Agreement may not be modified, changed, or amended orally. This Settlement Agreement may be executed in multiple counterparts, each of which, when so executed and delivered, shall be an original but such counterparts shall together constitute one and the same instrument and agreement. Copies of all or part of this Settlement Agreement, including signatures thereto, which are transmitted by facsimile or electronic mail, shall be presumed valid. Facsimile, electronic or PDF transmitted signatures shall be deemed to have the full force and effect of the original ink signatures. The respective obligations of the Parties are mutually reciprocal, interdependent and not subject to severability.

15. Jurisdiction. The Bankruptcy Court shall have jurisdiction to hear and determine all matters arising from or related to the implementation of the Settlement Agreement.

16. Commercially Reasonable Best Efforts. The Parties shall use their commercially reasonable best efforts to promptly seek approval of this Settlement Agreement from the Bankruptcy Court and to effectuate the terms of this Settlement Agreement in good faith, including, but not limited to, the application of any recoveries related to the Shareholder Guarantee.

[Signatures to Follow]

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IN WITNESS WHEREOF, each of the undersigned has hereunto set its, his or her hand as of the date first written above.

COLE, SCHOTZ, MEISEL, FORMAN &
LEONARD, P.A.

Attorneys for the Debtors and Debtors in Possession

By: David R. Hurst
Name: DAVID R. HURST

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
LLP

Attorneys for HEP

By: _____
Name:

COOLEY LLP

Attorneys for the Committee

By: _____
Name:

ASHBY & GEDDES, P.A.

Co-Counsel for Essilor

By: _____
Name:

GARDERE WYNNE SEWELL LLP

Co-Counsel for Essilor

By: _____
Name:

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Attorneys for the Debtors and Debtors in Possession

By: _____
Name:

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
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By: Sarah E. Pierce
Name: Sarah E. Pierce

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By: _____
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ASHBY & GEDDES, P.A.

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Name:

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By: _____
Name:

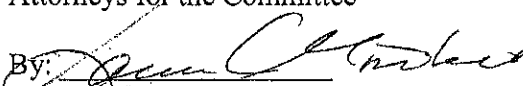
SKADDEN, ARPS, SLATE, MEAGHER & FLOM
LLP

Attorneys for HEP

By: _____
Name:

COOLEY LLP

Attorneys for the Committee

By: 
Name: *Lawrence C Gottlieb*

ASHBY & GEDDES, P.A.

Co-Counsel for Essilor

By: _____
Name:

GARDERE WYNNE SEWELL LLP

Co-Counsel for Essilor

By: _____
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Attorneys for HEP

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Name:

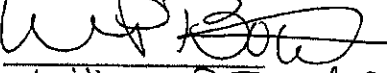
COOLEY LLP

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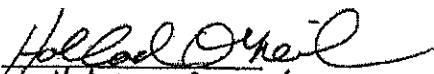
ASHBY & GEDDES, P.A.

Co-Counsel for Essilor

By: 
Name: William P. Bowden

GARDERE WYNNE SEWELL LLP

Co-Counsel for Essilor

By: 
Name: Holland N. O'Neil (by permission)