

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION**

JOHN HOLLMAN, on behalf of himself and )  
all others similarly situated, )

Plaintiff, )

vs. )

**TLC LASIK Centers:** )

TLC The Laser Eye Center (Institute), Inc.; )  
TLC The Laser Center (Carolina), Inc.; )  
TLC The Laser Center (Madison), Inc.; )  
TLC The Laser Center (Institute), Inc. )  
d/b/a TLC Denver; TLC The Laser Center )  
(Institute), Inc. d/b/a TLC Atlanta; )  
TLC Laser Eye Centers Oklahoma City; )  
TLC The Laser Center (Tri-Cities), Inc.; )  
TLC The Laser Center (Massachusetts), Inc.; )  
TLC The Laser Center (Brea), Inc.; TLC Laser )  
Eye Centers Cleveland; TLC Laser Eye Centers )  
Columbus; TLC The Laser Center )  
(Boca Raton), Inc.; TLC Laser Eye Centers )  
(Pittsburgh); TLC Laser Eye Centers (Fargo); )  
Valley Laser Eye Center, LLC; TLC The Laser )  
Center (Institute), Inc. d/b/a TLC Manhattan; )  
TLC The Laser Center (Institute), Inc. d/b/a )  
TLC Garden City; TLC The Laser Center )  
(Institute), Inc. d/b/a TLC Torrance; TLC The )  
Laser Center (Northeast), Inc. d/b/a )  
TLC North Jersey; TLC Laser EyeCenters Tulsa; )  
TLC Laser Center (Northeast), Inc. d/b/a )  
TLC Rockville; TLC The Laser Center (Institute) )  
Inc. d/b/a TLC White Plains; TLC Midwest Eye )  
Laser Center, Inc. d/b/a TLC Chicagoland; )  
TLC The Laser Center (Northeast), Inc. d/b/a )  
TLC Big Sky; TLC The Laser Center (Institute), )  
Inc. d/b/a TLC Charleston; TLC The Laser )  
Center (Institute), Inc. d/b/a TLC San Antonio; )  
TLC Laser Eye Centers Edina; TLC The Laser )  
Center (Indiana), LLC; TLC The Laser Center )  
(Institute), d/b/a TLC Ft. Lauderdale; TLC The )  
Laser Center (Institute), d/b/a TLC Tampa; )

Case No.: 6:10-685-RBH

**COMPLAINT**  
**(Jury Trial Demanded)**

**CLASS ACTION**

**TLC Clinical Directors:**

Jo Angeles, O.D.; Kristen Brown, O.D.;  
E. Edward Carmen, O.D.; Phillip Cuva, O.D.;  
Despina Fikaris, O.D.; J. Christopher Freeman,  
O.D.; Jeffrey J. Genos, O.D.; Lee Ann Gertz,  
O.D.; Rhonda Kerzner, O.D.; David Kohler,  
O.D.; William Bruce Laurie, Jr., O.D.; Michael  
Mariano, O.D.; Elizabeth M. McLemore, O.D.;  
Melissa Melott, O.D.; Andrew S. Morgenstern,  
O.D.; Debbie Pian, O.D.; Mary J. Rauch, O.D.;  
Carl J. Roth, O.D.; Susan Shin, O.D.; Stephen  
Siegel, O.D.; Mark A. Slosar, O.D.; Thomas  
Spetalnick, O.D.; Derek Van Veen, O.D.;  
Cynthia Yaeger, O.D.; Individually and in their  
capacity as Clinical Director for TLC The Laser  
Eye Center (Institute), Inc.;

**TLC LASIK Surgeons:**

Jodi Abramson, M.D.; Alberto Aran, M.D.;  
Robert Arffa, M.D.; David K. Aymond, M.D.;  
David Boes, M.D.; Stan Braverman, M.D.;  
Stephen Brint, M.D.; Barry Concool, M.D.;  
Charles Davis, M.D.; Eric Donnenfeld, M.D.;  
Martin Fox, M.D.; David Hunter, M.D.;  
Scott Jaben, M.D.; Jeffrey Machat, M.D.;  
Peter Mogyordy, M.D.; John Oster, M.D.;  
George Pardos, M.D.; Edward Perraut, M.D.;  
Louis Probst, M.D.; Randall Rabon, M.D.;  
Jeff Robin, M.D.; Roy Rubinfeld, M.D.;  
Stephen Slade, M.D.; Mark Speaker, M.D.;  
Robert Spector, M.D.; Nancy Tanchel, M.D.;  
Brad Taylor, M.D.; Gregory Temas, M.D.;  
Stewart Terry, M.D.; Mark E. Whitten, M.D.;  
Larry Womack, M.D.; Wendell Wong, M.D.;  
Jonathan Woolfson, M.D.;

**TLC Management**

Brian Andrew, Esq.; Stacey Anne Lerum;  
Bob May, Esq.; John Potter, M.D.,

**Defendants.**

The Plaintiff, on behalf of himself and all others similarly situated, allege upon information and belief as follows:

**Parties and Jurisdiction**

1. Plaintiff John Hollman is a citizen and resident of the County of Beaufort, State of South Carolina.

2. That the Defendants TLC LASIK Centers as listed above, (hereinafter collectively referred to as TLC LASIK Centers) are corporations organized and existing under the laws of various states within the United States who individually and through their respective agents, servants, employees, and/or in combination with independent contractor surgeons perform 1) ophthalmology, 2) optometry, and 3) LASIK surgery; that further the LASIK Eye Centers are, upon information and belief, direct or indirect wholly owned subsidiaries of TLC Vision Corporation<sup>1</sup> through which TLC Vision Corp operates and conducts the business described above.

3. That the Defendants TLC Clinical Directors as listed above (hereinafter collectively referred to as Clinical Directors) are doing business in the TLC LASIK Centers using and operating equipment owned, upon information and belief, by the TLC LASIK Centers and, upon information and belief, engaging in doctor patient relationships with patients of TLC LASIK Centers; that further, TLC Clinical Directors are optometrists licensed and residing in the various states of the United States, including South Carolina.

4. That all TLC LASIK Surgeons as listed above (hereinafter collectively referred to as

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<sup>1</sup> TLC Vision Corp has not been sued as named defendant in this case due, in whole or in part, to the automatic stay of 11 U.S.C. §362 arising out of their Chapter 11 cases pending in the United State Bankruptcy Court for the District of Delaware. Plaintiffs presently intend to move the Bankruptcy Court for relief from that stay in order to amend the Complaint in this case to include the parent corporations as named defendants and proceed against them at that time. Currently, though, the automatic stay is in effect and nothing in this Complaint or any other document filed by Plaintiffs is intended or shall be deemed to be an action against the corporate parent debtors, their bankruptcy estates, or their property or property of their estates.

TLC LASIK Surgeons) are doing business in the TLC LASIK Centers by using equipment owned, upon information and belief, by the TLC LASIK Centers and engaging in the practice of medicine including ophthalmology and LASIK surgery; that further, TLC Lasik Surgeons are citizens and residents of various states of the United States, including South Carolina.

5. That Dr. John Potter, Stacey Anne Lerum, Bob May, and Brian Andrew (collectively referred to as TLC Management) were involved in various aspects of post surgery patient eye care and risk management for TLC LASIK Centers, TLC Clinical Directors and/or TLC LASIK Surgeons. That further during relevant times, these members of TLC Management held the following positions:

- a) Dr. John Potter - Vice President Clinical Services and Vice President for Patient Services;
- b) Stacey Anne Lerum - Director of Clinical Services and Quality Assurance;
- c) Bob May and Brian Andrew - Corporate General Counsel

6. The Plaintiff brings this action individually and on behalf of the class individuals whose commonality is more specifically described later herein, but includes:

- a) All patients of TLC Vision Corp or any of its direct or indirect subsidiaries;
- b) who had LASIK surgery;
- c) approved by TLC Clinical Director and;
- d) Performed by a TLC LASIK Surgeon;
- e) when the surgery was a breach of applicable standard of care;
- f) that resulted in serious eye injury; and,
- g) who were then subjected to an institutional fraudulent scheme designed to protect the assets of the at-fault parties at the expense of the patients who are members of the class.

7. This Federal District Court has subject matter jurisdiction over this action because the amount in controversy exceeds the sum or value of \$75,000 in the aggregate, exclusive of interest and costs, and at least one member of the class of plaintiffs is a citizen of a state different from any defendant.

8. This Court maintains personal jurisdiction over Defendants in this action because Defendants regularly transact business in South Carolina, including the practice of medicine, through performance of eye surgery and eye care and the entering into contracts with individuals within this state.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(c) and 15 U.S.C. § 22 because Defendants reside, are licensed to do business, and/or transact business in this District. Defendants are subject to personal jurisdiction in this District.

10. Plaintiffs demand a jury trial.

#### **Factual Background**

11. Scientific discoveries concerning the use of lasers to facilitate and improve eye surgery revolutionized surgical techniques that allowed for the correction of visual acuity problems.

12. As a result, ophthalmologist surgeons were able to offer elective surgeries to improve a patient's vision and exclude the need for prescription glasses or contact lenses, but because this surgery via laser was done on the outside of the cornea, it was painful and had immediate potential side effects that limited its use to those patients with more serious eye disorders/problems.

13. As technology improved, a laser technique known as LASIK for eyesight correction became available first in other parts of the world and then subsequently in the United States.

14. LASIK surgery combined the use of a laser to re-shape the cornea with a process for peeling back a layer of the cornea so that the laser could do correction within the middle of the cornea

rather than on the outside. The result was a laser eye correction surgery (LASIK) that was relatively pain free and had minimal immediate side effects.

15. This opened up the potential for elective eyesight corrective surgery to a large class of people which also greatly increased the financial benefits to those people and entities offering such service.

16. TLC Vision Corp, through its predecessor corporation founded in Canada, moved into the United States when LASIK surgery was approved by the FDA and ultimately TLC Vision Corp, a United States corporation organized and existing under the laws of one of the states other than South Carolina, was founded to provide LASIK surgery and attendant eye care to citizens of the United States.

17. In order to facilitate the delivery of LASIK surgery and eye care services, TLC Vision Corp set up TLC LASIK Surgery Centers (referred to as TLC LASIK Centers) in various locations within the United States.

18. Initially, each TLC LASIK Center was separately incorporated within the state in which it conducted LASIK surgery; thereafter, TLC Vision Corp created TLC Laser Eye Centers (Institute), Inc., a Delaware corporation and merged a substantial number of the individual TLC LASIK Surgery Centers into that single corporate entity.

19. To conduct the business of providing LASIK surgery and attendant eye care TLC Vision Corp and/or TLC LASIK Centers hired licensed optometrists and ophthalmologist surgeons.

20. The licensed optometrists were hired in the capacity known as Clinical Directors (referred to as TLC Clinical Directors) and maintained control over the business operation of the Center and provided medical services to patients seeking LASIK surgery.

21. The role of the TLC Clinical Director in providing medical services consisted of

overseeing and directing the taking of patient information (patient history), all diagnostic tests, and performing examinations on patients to determine if the patient was a suitable candidate for LASIK surgery.

22. In all patients at each TLC LASIK Surgery Center, the TLC Clinical Director made the medical decision of whether to perform LASIK surgery based on the patient history, diagnostic tests and patient examinations on behalf of TLC Vision Corp and/or the TLC LASIK Centers.

23. The role of the ophthalmologist/surgeons (referred to as TLC LASIK Surgeons), was to perform the LASIK surgeries on its patients and provide limited follow-up care.

24. For all patients cleared for surgery by the TLC Clinical Directors at the TLC LASIK Centers, the TLC LASIK Surgeon made a separate decision concerning whether performing LASIK surgery was appropriate and within the accepted standard of care.

25. In order to locate potential patient/customers, TLC Vision Corp contacted independent optometrists throughout the United States and entered into arrangements called Co-Managing Agreements wherein the optometrist would refer patients to TLC Vision Corp for LASIK surgery and, if approved and performed, the optometrist would receive a portion of the surgery fee for: 1) the referral and, 2) could also agree for additional portion of the fee to provide post surgery eye care.

26. As a further inducement for prospective patients TLC LASIK Centers, TLC Clinical Directors, and TLC LASIK Surgeons offered, for a fee, contractual benefits to surgery patients known as the Lifetime Commitment Contract (hereinafter referred to as LTC).

27. For the additional fee paid by the patient under the LTC, all TLC LASIK Centers, all TLC Clinical Directors, and all TLC Surgeons agreed to provide lifetime vision care for the patients to include any additional LASIK surgery needed and any treatment for vision related problems associated with or caused by the LASIK surgery performed under the LTC.

28. LASIK surgeries performed by all TLC LASIK Centers, all TLC Clinical Directors, all TLC LASIK Surgeons were controlled by accepted and recognized standards of care for optometrists and ophthalmologists.

29. In that regard, there existed a recognized standard of care for determining which patients were appropriate candidates for LASIK surgery.

30. A number of pre-surgery eye conditions were recognized as contraindications of LASIK surgery. These conditions included keratoconus, subclinical keratoconus, forme fruste keratoconus and inferior asymmetrical steepening of the cornea.

31. Keratoconus is a condition at all times relevant in which the cornea of the eye takes on an elliptical shape rather than the normal circular or round shape. Due to the abnormality shape, the cornea has significant deviation in thickness. These changes initially are found in the back of the eye. Therefore, diagnosis of keratoconus requires diagnostic tests, microscopic exams and patient history.

32. Subclinical keratoconus and/or Forme Fruste Keratoconus and/or inferior asymmetric shaping are conditions at all times relevant known to be potential pre-cursors to keratoconus or other eye disorders. The diagnosis of these conditions is made using cornea topography in which color mapping of the outside surface of the cornea show areas of flatness and steepness. Areas of steepness normally, but not exclusively, in the inferior or lower half of the cornea shown on the topography as red/yellow colors demonstrates these conditions.

33. At all times relevant, the existence of any of these conditions were recognized and accepted contraindications to the performance of LASIK surgery.

34. Performing LASIK on patients with these pre-surgery contraindicated conditions put the patient at risk for developing serious post surgery complications including, but not limited to,

ectasia, vision instability, and loss of best corrected visual acuity.

35. Of these complications ectasia, a progressive thinning of the cornea, was the most severe as its progression could lead to the need for corneal transplants.

36. From 1998 through 2003 TLC LASIK Centers, TLC Clinical Directors, and TLC LASIK Surgeons performed surgery on a substantial number of patients who had clinical evidence of the known contraindications for LASIK surgery as previously described.

37. John Hollman had clinical evidence of the surgery contraindication previously described but had LASIK surgery performed by TLC LASIK Centers, TLC LASIK Surgeons, including Jonathan Woolfson, MD.

38. Each LASIK surgery performed on John Hollman and all other class members constituted a breach of the accepted standard of care by all TLC LASIK Centers, all TLC Clinical Directors, and all TLC LASIK Surgeons.

39. As a consequence of the surgeries, John Hollman and all others similarly situated began developing vision problems directly caused by the LASIK surgery.

40. The most prevalent complications experienced by this group of surgical patients occurred remotely from the time of surgery and the resulting visual instability progressively deteriorated over an extended period of time.

41. By 2002 TLC LASIK Centers, TLC Clinical Directors and TLC LASIK Surgeons recognized that a substantial number of patients were affected with surgery induced vision injuries emanating from the breach of standard of care in the performance of LASIK surgery on those with substantially similar LASIK surgical contraindications.

42. TLC Management, TLC LASIK Centers, TLC Clinical Directors, and TLC LASIK Surgeons recognized the significant risk these patients posed to their respective financial assets and

in response developed a plan to avoid responsibility for respective acts of malpractice.

43. This plan of institutional fraud and deception included the following:
- a) Creation of a system to identify these patients subjected to substandard LASIK surgeries without informing the patient of his/her condition or cause;
  - b) Use of that system to monitor the patients' condition without the knowledge and/or consent of the patient.
  - c) Maintenance of a separate file per patient outside of the medical records of the patients for purposes of identification, monitoring and/or control of these patients and risk posed to the Defendants assets;
  - d) Delay both in treatment of and discovery by the patient of his/her medical conditions;
  - e) Communication of false representations to the patients concerning the use of new LASIK equipment and surgeries to enhance or correct vision in the patients when the Defendants knew the patients were not candidates for LASIK surgery;
  - f) The periodic scheduling, canceling and rescheduling of the LASIK surgery described above in order to create delay and buy time until the expiration of patients' rights;
  - g) Misrepresentation of the patient true medical condition and cause;
  - h) Withholding of the information and diagnosis of known surgery induced eye condition from the patient;
  - i) Use of the Lifetime Commitment Contract to cover costs of treatments, examinations, glasses, contact lenses and medicines as a method to keep patients at TLC facilities and physicians, along with representations that such conduct would continue for the life of the patient.
  - j) Predetermined decision by Defendants that the LTC contract benefits described above would be withdrawn or discontinued when patients' risk to the Defendants expired.
  - k) Creating and perpetuating a separate file on the patients which included medical diagnosis, treatment options and risk information not contained in the patients' medical records;
  - l) Ongoing efforts by the Defendants to keep patients at TLC facilities and

physicians by discouraging outside consultations or physician intervention;

- m) Obtaining releases for nominal consideration from patients after the expiration of the patients' rights said expiration caused by the actions of the Defendants.
- n) Intentional misrepresentation of the patients' true medical conditions through misleading diagnosis and dissemination of medical information and advice and/or the omission of necessary medical information, advice and/or diagnosis.

44. That, specifically as to John Hollman and members, the Defendants:

- a) Created a separate file of medical information and used this file to communicate information about him without his knowledge or consent and for purposes contrary to his best medical treatment and patient rights;
- b) Failed to disclose his medical diagnosis and cause until after expiration of his right to bring a claim;
- c) Failed to treat his known surgery induced condition in order to delay discovery until the expiration of his right to bring a claim;
- d) Advised to John Hollman that he was a LASIK surgery candidate when they knew such representation was false;
- e) Repeated scheduling, canceling and rescheduling of John Hollman for LASIK surgery upon representing that new technology existed and without disclosing their real reasons for such tactics and, in particular, without disclosing to him that he was not a candidate for LASIK surgery;
- f) Failed to disclose John Hollman's correct medical condition to him and placing erroneous or misleading medical information in his medical records;
- g) Paid for cost of medical treatment, glasses and contact lenses and agreeing to pay for travel and associated expenses under the Lifetime Commitment Contract program while repeatedly representing that these types of benefits would continue for life;
- h) Following the expiration of Hollman's right to pursue a claim, advising him of his true medical condition and cause (LASIK surgery);
- i) Offering him a nominal payment in return for a release based on the expiration of his claim rights.

45. In order to further this plan of institutional fraud and deceit, the Defendants utilized

an existing system created and used by all TLC LASIK Centers, all TLC Clinical Directors, and all TLC Management, called the Complex Case System.

46. The original purpose of Complex Case System was to provide additional diagnostic and treatment options for the TLC patients with post surgery complications. The Complex Case System required patient consent and all actions were part of the patient's medical care and records.

47. As used in the Defendants plan of institutional fraud and deceit, all TLC LASIK Centers, all TLC Clinical Directors, and all TLC LASIK Surgeons would use Complex Case forms to gather medical data and continue updating patient conditions without patient consent and/or knowledge thereby creating a separate file and database in which patient medical information was surreptitiously placed so the Defendants could freely monitor, control and delay without patient's knowledge.

48. In addition, in order to manage certain patient risks that required more aggressive measures or for which the Defendants believed a threat of litigation might exist, the Defendants created an Advocacy Program where active intervention with the patient could occur without disclosing to the patient the true purpose. This permitted integration of patient medical information for improper purposes and internal discussion and collaboration about patients for purposes designed to harm rather than help the patient.

49. For patients still under active treatment, monitoring and/or control, the Defendants would, after the expiration of claim rights, nullify or void the Lifetime Commitment Contract, advise the patient of his/her condition, advise the patient that no claim could be brought, offer nominal settlements and/or close the separate files and discontinue monitoring of the patient.

50. All actions by the Defendants were designed to hide the patients true condition and to manage the patients' expectations until that patient no longer posed a risk to the Defendants' assets

because of the expiration of the statute of limitation governing the patient's claim. The Defendants' fraudulently and/or negligently misrepresented facts to induce the class members to use their laser facility. First, the Defendants;

- a. Represented to the class members that they had established a standard setting policy to ensure continued ocular health care throughout the lifetime of the patient; that
- b. Those representations were false and never intended to be upheld;
- c. The aforementioned representations were material to the class members' decision to obtain LASIK surgery and establish a physician patient relationship with the Defendants;
- d. Defendants knew that they would never honor the commitment for lifetime care, or in the alternative were reckless in promising to do so;
- e. Defendants knew that the class members were relying on those representations in making their decision to obtain LASIK surgery from the Defendants and were unaware of the falsity of those representations;
- f. As a result, the class members did in fact rightfully rely on the Defendants' representations the decision to choose their respective surgery care centers and physicians; and finally,
- g. That the Plaintiffs proximately suffered great physical and economic damage as a result of the Defendants fraudulent misrepresentations.

In furtherance of their efforts to hide the underlying malpractice claims, the Defendants:

- a. Represented to the class members that they had good ocular health, that new equipment and procedures were being approved in the immediate future which would resolve their condition and further concealed that the various visual disorders were surgically created;
- b. That those representations were false and made with the specific intent to placate and deceive the class members so to prevent them from seeking legal redress;
- c. The aforementioned representations were material to the class

members' decision not to seek intervening medical treatment or seek legal remedies;

- d. Defendants knew that they were harming the patients by misrepresenting or concealing their medical condition, or in the alternative were reckless in doing so;
- e. Defendants knew that the class members were relying on those representations in making their decision to remain in the Defendants medical care and not seek legal remedies and that those class members were unaware of falsity of the representations;
- f. As a result, the class members did in fact rightfully rely on those representation and chose not to seek intervening medical treatment or seek legal remedies; and finally,
- g. That the class members proximately suffered great physical and economic damage as a result of the Defendants fraudulent misrepresentations.

#### **Class Action Allegations**

51. Plaintiff brings this action on behalf of himself and all others similarly situated, as members of the proposed Plaintiffs' classes. The proposed classes are initially defined as follows:

- a) Hollman's claims are typical of the Proposed Class A, which consists of all persons who were patients of some or all of the named Defendants, whom during the course of their medical treatment, entered in a contract with the Defendants commonly referred to as the TLC Lifetime Commitment Contract ("LTC"). Further that a reasonable interpretation of the contract, based both on the plain language of the document and its implementation and representation by the Defendants, would require the named Defendants to offer or be financially responsible for the class members' lifetime ocular health care related to any and all conditions which were either created and/or exacerbated by the surgical treatment administered by the named Defendants. Determination of all potential class members requires production of TLC contracts but a combined list of patients who have suffered ocular problems post LASIK surgery has been produced in other litigation and will be provided to this court under seal in a separate filing subsequent to the filing of this Complaint.
- b) Plaintiff Hollman's claims are also typical of the Proposed Class B, which consists of all persons suffering from surgically created ocular conditions, including but not limited to ectasia, keratoconus, thinning corneas, inferior

steepening, decentration, loss of best correct vision or other corneal disorders. These proposed class members all developed these diseases/conditions as a result of the negligent, reckless and willful action/inactions of the Defendants. These proposed class members were all subsequently placed in a database as described in paragraphs 43(a & b) and 45, 46, 47 and 48, that was designed to limit the Defendants' malpractice liability exposure all while masking and further exacerbating the known medical disorders of the patient class members. These class member patients and/or a substantial number of them are identified in the data referenced in paragraph 51(a) which is being provided to this court under seal subsequent to the filing of this Complaint.

c) Some patients will be members of both of the two proposed classes.

52. Excluded from any of the proposed classes are any of the named Defendants, any entity in which any of these entities has a controlling interest, any employees, officers, directors, legal representative, heirs, successors, and assigns of TLC Vision Corp or any of its subsidiaries .

53. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and as otherwise alleged herein, the Defendants have acted or refused to act on grounds generally applicable to all members of each proposed class, thereby making final injunctive relief or declaratory relief concerning each proposed class as a whole appropriate.

54. This action is properly brought as a class action under Rule 23 of the Federal Rules of Civil Procedure for the following reasons:

a) [Rule 23(a)(1)] The members of each proposed class are so numerous that separate joinder of each member is impracticable. Although a more precise number of class members will be better established as part of class notification, upon information and belief, the number of potential members of Class A is likely tens of thousands as it represents nearly all the Defendants' patients for the past 12 years. Class B consists of potentially 1600 patients who were entered into a known database, of which the Plaintiff has confirmed a least 181, and likely many times that number, have the same or similar condition which precipitated their inclusion in the fraudulent database. (see paragraph 51 which refers to providing this database to the court) Class members may be notified of the pendency of this action by regular mail and also by published notice if the Court determines that published notice is a necessary supplement.

- b) [Rule 23(a)(1)] There are questions of law and facts common to each proposed class which predominate over any questions affecting individual members.

These common factual and legal questions include:

- i. Determination of the interpretation of the scope and meaning of the Lifetime Commitment Contract as it relates to the requirement for the named Defendants to provide or be financially responsible for lifetime ocular health needs of those patients afflicted with surgically created conditions caused by the Defendants' acts or omissions.
  - ii. Determination of the facts and implications concerning the Defendants' ability to assert affirmative defenses, in particular the respective statutes of limitations and statutes of repose, against those class members of which it actually engaged in fraud and deception in an effort to conceal the malpractice.
  - iii. Determination of insurance coverages available to the injured class members.
  - iv. Determination of whether and the extent to which injunctive relief should be entered.
  - v. Determination of the named Defendants' liability.
- a) [Rule 23(a)(3)] The claims asserted by Plaintiffs are typical of the claims of the members of each proposed class in that their claims involve the same facts as otherwise alleged herein, arise from the same practices or course of conduct that gives rise to the claims of all other class members, and are based on the same legal theories.
- b) [Rule 23(a)(4)] Plaintiffs are adequate representatives of their proposed classes because their interests do not conflict with the interests of the members of the proposed classes that they seek to represent, they adequately and truly represent the interests of the other proposed members, they have common claims with each proposed class member based on the same essential facts which are the predicate for malpractice and fraud, they have retained counsel competent and experienced in class action and complex mass tort litigation, and they intend to prosecute this action vigorously. The interests of the class will be fairly and adequately protected by Plaintiffs and their counsel.
- c) [Rule 23(a)(4)] Each proposed class, as defined, involves only class members for whom the amount in controversy exceeds one hundred dollars (\$100.00).

55. This class action may be maintained under Rule 23 of the Federal Rules of Civil Procedure as common questions of fact and law relating to liability predominate over any questions affecting only individual class members. The questions concerning the interpretation of the Lifetime Commitment Contract require universal and consistent application amongst the class member. Furthermore, the Defendants common course of alleged conduct, including the repetitive nature of the malpractice which created the community of injured patients and the individual and institutional fraud implemented to conceal and curtail liability for malpractice, common issues of the Defendants' alleged liability therefor, the availability of insurance coverage for those actions, and common questions of contractual interpretation of the Defendants duties pursuant to the LTC, all predominate over any individualized issues. In addition, the predominance of common issues is further supported by the value of class trial of common questions of injunctive and declarative relief. Moreover, class action treatment is a superior method for the fair and efficient adjudication of the controversy. The members of the class have little or no interest in individually controlling the prosecution of separate claims. It is highly desirable from the standpoint of manageability and resources to concentrate the litigation pertaining to the class claims in a single forum within South Carolina District Court. To the extent that class members have to try individual damages cases, this can be done in small group trial settings, far more efficiently and economically if class-wide issues, such as liability, are first resolved on a large group basis, i.e., through class trial. Whatever difficulties may exist in the management of the class action will be greatly outweighed by the class action procedure, including, but not limited to:

- a) Given the size of individual Class members claims, few, if any, Class members could afford to seek legal redress individually for the wrongs the Defendants have committed against them and the other proposed class members have no substantial interest in individually controlling the prosecution of individual actions;

- b) Other available means of adjudicating the claims of Plaintiffs and other members of each proposed class, such as thousands of individual actions brought separately and pursued independently in state or federal courts, are impracticable and inefficient;
- c) This action will cause an orderly and expeditious administration of the class claims, economics of time, effort and expense will be fostered and uniformity of decisions will be insured;
- d) Without a class action, the proposed class members will continue to suffer damages and Defendants' tortious and wrongful conduct, and possible continuing harm to class members, will proceed without remedy while Defendants continue to retain and reap the proceeds and profits of its wrongful conduct;
- e) Management of this action poses no unusual difficulties that would impede its management by the Court as a class action; and,
- f) The claims brought by Plaintiffs and other members of the proposed classes are not now, nor have they been, the subject of another class action to the best of Plaintiff's knowledge.

**Causes of Action**

**FOR A FIRST CAUSE OF ACTION**

**Breach of Contract**

**Class A Members**

56. Plaintiff incorporates by reference all previous allegations not inconsistent herewith as if realleged and recited verbatim herein.

57. That the class members, in addition to establishing a physician patient relationship with their respective health care providers, were uniformly offered and entered into a binding contractual agreement with the Defendants. The substance of that agreement was to provide lifetime ocular health care to each class member for any needs that were caused, associated with, exacerbated by or otherwise necessitated by any complications, conditions, disorders or other ocular maladies resulting from the LASIK surgery. Further, the parties had a meeting of the minds over the parameters of the contract, consideration was exchanged and at all times herein the Plaintiff and class

members fulfilled their obligations under the agreement.

58. That the Defendants have failed to consistently abide by their contractual obligations and choose to fulfill their duties to provide continuing health care based only upon the immediate liability exposure. The Defendants have breached the following provisions, including, but not limited to:

- a) breaching their “precedent setting vision care policy that gives assurance of continued care to patients throughout their lifetime”;
- b) misrepresenting that “99% of all patients [will] be eligible for The TLC Lifetime Commitment Program;
- c) failing to adhere to their commitment and “intention [sic] to help maintain the best possible vision throughout [each patients’] life”.

59. The Defendants designed, marketed and continuously represented to prospective patients their guarantee of lifetime, continuous care so as to induce the class members to choose their vision care facility.

60. That the members of Class A have incurred substantial medical expenses in treating and mitigating the surgically created ocular disorders. Further, that the class members have continuing future medical needs, including but not limited to corneal transplant surgery, specialized contact lenses, riboflavin treatments and continuing eye care.

61. That the Defendants are in breach of said contract and are liable to the class for actual damages, including, but not limited to, past, present and future medical expenses and the costs and expenses of this lawsuit.

**FOR A SECOND CAUSE OF ACTION**  
**Breach of Contract with Fraudulent Intent**  
**Class A Members**

62. Plaintiff incorporates by reference all previous allegations not inconsistent herewith as if realleged and recited verbatim herein.

63. That Defendants, with fraudulent intent, breached the Lifetime Commitment contractual agreements with the class members.

64. That the fraudulent intent was material and instrumental in breaching said contract and not merely in its making; and that Defendants' misrepresentations constitute a fraudulent act accompanying their breach of contract.

65. That Class A members suffered injury as a direct and proximate result of Defendants' fraud and are entitled to an award of actual and punitive damages.

**FOR A THIRD CAUSE OF ACTION**  
**Violation of the Federal Racketeer Influenced and Corrupt Organizations Act ("RICO")**  
**18 U.S.C. §1962(c)**  
**Class A and B Members**

66. Plaintiff incorporates by reference all previous allegations not inconsistent herewith as if realleged and recited verbatim herein.

67. The "enterprise" described below and as set forth in detail in the preceding paragraphs operated separately and distinct from each individual Defendant. The enterprise consisted of a scheme of institutional and individual fraud designed to conceal class members' actual medical conditions and underlying malpractice claims so as to limit liability. This enterprise which manifested itself in both the implementation of and contribution to an illegal, subverted database for a period of at least eight years, with both the enterprise and database being implemented through the use of mail and wire fraud, involving hundreds and potentially thousands of victims. The above

scheme amounted to a pattern of racketeering activity and continues to pose a threat of continued criminal activity. A second prong of the scheme used to facilitate the concealment of the patient's surgically created condition, was the marketing and implementation of the Lifetime Commitment Contract. The enterprise purported to offer lifetime guarantees to the class members, however the enterprise merely offered benefits to the extent it would prolong or prevent the patients from discovering the surgically created conditions.

68. The enterprise was engaged in interstate commerce in that, *inter alia*, the individual patients which were the subject of the scheme were residents of numerous states as were the individual and corporate Defendants who engaged in the fraudulent activity which included the illegal dissemination of medical records across state lines and by mail and wire in violation of 18 U.S.C. § 1341 and 18 U.S.C. § 1343. Further, fees and revenues generated and maintained by the scheme were distributed amongst enterprise members across state lines.

69. The enterprise had an organizational structure or chain of command, established standard operating procedures for gathering and covertly disseminating the medical records, required the actors to repeatedly violate HIPPA and a patient's privacy rights, included specific instructions and protocols for hiding the actual medical condition of the Plaintiff and even included procedures to destroy portions of the medical records so as to avoid documentation of one of the main principal's interaction with individual patients. The Defendants repeatedly implemented and used identical or similar methods for ensuring the success of the enterprise.

70. The Plaintiff and proposed members of Class B is a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1964(c).

71. The named Defendants are "persons" within the meaning of 18 U.S.C. §§ 1961(3) and 1964(c).

72. The association in fact as described in the preceding paragraphs was an “enterprise” within the meaning of 18 U.S.C. §§ 1961(4) and 1962(a), with said enterprise engaged in activities affecting interstate commerce.

73. The Defendants were each associated with the enterprise and participated in its management and operation by directing its affairs and by conducting business with each other as assisting in the scheme.

74. The activities of the “association in fact” form a pattern, continuous in nature, which consists of numerous unlawful and fraudulent individual acts directed to the Plaintiff and members of the Class. The named individual Defendants not only contributed to and monitored their patients through the illegal databases, but also allowed it to dictate inappropriate medical care and false diagnoses to the class members. Each of the named Defendants’ participation in both the operation and management of the scheme was essential to its success. In addition to creating a system that directed detrimental medical care to patients in an effort to limit liability, the enterprise made repeated fraudulent misrepresentations in furtherance of its unlawful purpose. Specifically, the Defendants:

- a) represented to the Class B members that they had good ocular health, that new equipment and procedures were being approved in the immediate future which would resolve their condition and further concealed that the various visual disorders which were surgically created;
- b) those representations were false and made with the specific intent to placate and deceive the class members so to prevent them from seeking legal redress;
- c) the aforementioned representations were material to the class members’ decision not to seek intervening medical treatment or seek legal remedies;
- d) Defendants knew that they were harming the patients by misrepresenting or concealing their medical condition, or in the alternative were reckless in doing so;
- e) Defendants knew that the class members were relying on those representations in making their decision to remain in the Defendants’ medical care and not

seek legal remedies and that those class members were unaware of the falsity of the representations;

- f) As a result, the class members did in fact rightfully rely on those representation and chose not to seek intervening medical treatment or seek legal remedies; and finally,
- g) that the class members proximately suffered great physical and economic damage as a result of the Defendants fraudulent misrepresentations.

75. These activities of the Defendants entailed multiple instances of mail fraud including but not limited to the authorized distribution of patient medical records for purpose of establishing and monitoring the scheme in clear violation of HIPPA, disseminating communications to the individual Defendants on how to hide and conceal the enterprise activity from the class members, instructions on what information would be distributed to the class members, instructions on how to obtain false medical opinions to further mislead and induce the class members to avoid their seeking legal redress, all in violation of 18 U.S.C. §§ 1341, 1343.

76. The Defendants each participated, directly and indirectly, in the conduct of the enterprises' affairs through a pattern of unlawful activity under 18 U.S.C. §§ 1961(i)(b), 1961(5) and 1962(c), to wit:

- a) Multiple acts of mail fraud, in violation of 18 U.S.C. § 1341;
- b) Multiple instances of wire fraud, in violation of 18 U.S.C. § 1343;
- c) Multiple instances of the collection of unlawful debts in violation of RICO.

77. The Plaintiff and each member of the Class suffered injury to their property, within the meaning of 18 U.S.C. 1964(c). Specifically, should the Court determine that the Defendants are not equitably estopped from asserting varying statute of repose and statute of limitation defenses to the underlying malpractice claims, the enterprise will have unlawfully deprived the Plaintiffs of the economic recovery through tort litigation.

**FOR A FOURTH CAUSE OF ACTION**  
**Civil Conspiracy**  
**Class A and B Members**

78. Plaintiffs herein incorporate by reference the allegations of the preceding paragraphs consistent herewith.

79. Defendants, as described herein, acting in concert combined for the purpose of defrauding Plaintiff and class members out of their ability to seek legal remedies.

80. As a direct result of Defendants' unlawful conspiracy, Plaintiffs have suffered special damages including personal injuries suffered as a result of Defendants malpractice and medical expenses past and future.

**FOR A FIFTH CAUSE OF ACTION**  
**Declaratory Relief**  
**Class A Members**

81. Plaintiff incorporates by reference all previous allegations not inconsistent herewith as if realleged and recited verbatim herein.

82. Plaintiff and the members of proposed Class A respectfully request an Order of and the Court setting forth the rights and obligations of the parties to the Lifetime Commitment Contract, to wit:

- a) The obligations of the Defendants to provide lifetime ocular health care or to be otherwise responsible for all costs and expenses necessarily incurred and required as a result of any surgically created condition;
- b) An establishment of a fund or method of securing payment for past medical expenses and future probable medical expenses for the members of the class.

83. Granting the requested declaratory relief will serve a useful purpose in clarifying the legal relations in issue and will further terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.

**FOR A SIXTH CAUSE OF ACTION**  
**Declaratory Relief**  
**Class B Members**

84. Plaintiff incorporates by reference all previous allegations not inconsistent herewith as if realleged and recited verbatim herein.

85. Plaintiff and the members of proposed Class B respectfully request an Order of and the Court setting forth the following based upon the facts alleged herein, to wit:

- a) That any and all statute of limitation or statute of repose defenses to any and all medical negligence claims are hereby waived, or in the alternative, equitably tolled as based upon the following findings:
  - i. The Plaintiff and class members exercised due diligence to discover the medical negligence cause of action prior to the running of any applicable statute of limitations or repose, and
  - ii. The Defendants affirmative acts of fraudulent concealment frustrated discovery of the medical negligence cause of action notwithstanding the Plaintiff and class members' diligence.
- b) That the Plaintiff and class members are entitled to a full and complete disclosure of all medical records, including but not limited to all the medical opinions and findings regarding their individual medical condition generated and hidden by the Defendants through the use of the illegal databases.
- c) An Order enjoining and restraining the Defendants from any further use of the fraudulent database.
- d) An Order restraining and enjoining the Defendants from any further and continuous violations of HIPPA, specifically the unauthorized dissemination of their medical records amongst the Defendants without the members' consent.

86. Granting the requested declaratory relief will serve a useful purpose in clarifying the legal relations in issue and will further terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.

**FOR A SEVENTH CAUSE OF ACTION**  
**Declaratory Relief as to Existence and Applicability of Insurance Coverages of the**  
**Defendants**  
**Class A & B Members**

87. Some or all of the Defendants may have liability insurance coverages applicable to some or all of the causes of action seeking monetary relief.

88. Some or all of the Defendants may have no fault or medical payments insurance coverage applicable to payment of claims for Class A members as those claims relate to medical expenses incurred past and future.

89. In the event this court grants declaratory relief for the tolling of statutes of limitation or repose defenses, some or all of the Defendants may have medical malpractice insurance coverage which may be applicable to the underlying malpractice claims of Class B members.

90. The existence of insurance coverage and the applicability of those coverage creates a justiciable controversy between the Plaintiff Class A and B members and the Defendants.

**Jury Demand and**  
**Ad Damnum**

WHEREFORE, Plaintiff, individually and on behalf of the proposed class members, hereby demands trial by struck jury on all of the issues that have been or may hereafter be raised in any of the pleadings, whether filed by or on behalf of Plaintiffs or the named Defendants. Plaintiffs further demand judgment for the following relief:

- I. Certification of the two proposed classes;
- II. Injunctive and Declaratory relief as follows:
  - A. An Order of the Court setting forth the rights and obligations of the parties to the Lifetime Commitment Contract, to wit:
    - i. That the Defendants are required to provide lifetime ocular health care or to be otherwise responsible for all costs and expenses necessarily incurred and required as a result of any surgically created conditions;

- ii. That the Defendants must establish of a fund or method of securing payment for past medical expenses and future probable medical expenses for the members of the class.
- B. An Order of and the Court declaring, to wit:
- i. That any and all statute of limitations or statute of repose defenses to any and all medical negligence claims are hereby waived, or in the alternative, equitably tolled.
  - ii. That the Plaintiff and class members are entitled to a full and complete disclosure of all medical records, including but not limited to, all the medical opinions and findings regarding their individual medical condition generated and hidden by the Defendants through the use of the Complex Case and Advocacy Log databases.
  - iii. That the Defendants are enjoined and restrained from any further use of the fraudulent databases.
  - iv. That the Defendants are restrained and enjoined from any further and continuous violations of HIPPA, specifically the unauthorized dissemination of the Class Members medical records amongst the Defendants without the members' consent.
- C. An Order of the Court declaring, to wit;
- i. Requiring disclosure by the Defendants of the existence of all insurance coverage owned by or inuring to the benefit or each Defendant;
  - ii. The applicability of all insurance coverage owned by or inuring the benefit of the Defendants to each cause of action filed by the Plaintiff Class A and B members;
  - iii. The applicability of the malpractice coverage of the Defendants to the underlying claims of class action Plaintiff Class B members based on the tolling of applicable statute of limitations or repose or the imposition of equitable estoppel barring the Defendants from raising defenses of statute of limitation or repose as to the claims of malpractice of Class B members, and;
  - iv. For such other and further relief as necessary to provide the declarations of the existence of insurance coverages by the Defendants and the applicability of those coverages to all relief requested by the Plaintiffs Class A and B members.

- III. Compensatory damages in an amount to be assessed by the jury as just and proper, but including, without limitation:
  - A. All expenses and economic losses;
  - B. All actual damages, including but not limited to; past, present and future medical bills; pain and suffering; loss of use or quality of life,
  - C. Loss of income;
  - D. Damages for temporary and permanent impairment; and,
  - E. All other reasonable and just actual and consequential damages proximately caused by the underlying malpractice and concealment actions which further exacerbated and harmed the Plaintiffs.
- IV. Punitive damages in an amount to be assessed by the jury as just and proper and in an amount sufficient to punish the Defendants and to deter future misconduct; and
- V. Appropriate attorney fees, statutorily trebled damages and costs and expenses incurred in connection with the litigation of this matter;
- VI. Such other and further relief as this honorable Court deems just and proper.

Respectfully submitted,

**s/ Douglas F. Patrick**

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