



based on the condition of his corneas, Nathaniel Chapman was not a suitable candidate for LASIK surgery. As a result, the LASIK surgery made his vision worse, rather than better.

3. On April 14, 2006, Nathaniel Chapman returned to the defendants for corrective LASIK surgery, euphemistically referred to as an “enhancement”. Again, at that time, based on the condition of his corneas, Nathaniel Chapman was not a candidate for further LASIK surgery. Predictably, the enhancement made his vision worse.

4. Subsequently, Dr. Horsley’s partner, Dr. Nilesh M. Sheth, examined Nathaniel Chapman in June 2007. After that examination, Dr. Sheth told Nathaniel Chapman’s mother, in substance, that Dr. Horsley had committed malpractice because Mr. Chapman should not have had any LASIK surgery.

#### **THE PARTIES**

7. The plaintiffs, Nathaniel Chapman and Shelli Chapman, are husband and wife, and are residents of New Braunfels, Texas.

8. The defendant, Dr. Horsley, is a physician licensed to practice as such in the Commonwealth of Massachusetts and is believed to be a citizen and resident of Andover, Essex County, Massachusetts, and is a citizen of the Commonwealth of Massachusetts. At the time of the matters complained herein, the defendant, Dr. Horsley, provided medical care, services, and/or treatment to the plaintiff Nathaniel Chapman in Stoneham, Middlesex County, Massachusetts.

9. The defendant Horsley Eye Center, P.C. (“Horsley Eye Center”) is a Massachusetts professional corporation, with a usual place of business in Stoneham, Middlesex County, Massachusetts.

10. The defendant Clear Vision is a Massachusetts domestic profit corporation, with

a usual place of business in Stoneham, Middlesex County, Massachusetts.

**JURISDICTION AND VENUE**

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332, based upon diversity of citizenship of the parties. The plaintiffs are citizens of a different state from the defendants. The amount in controversy, exclusive of interest and costs, exceeds SEVENTY-FIVE THOUSAND AND NO/100 (\$75,000.00) DOLLARS.

12. This action arises from the serious personal injuries sustained by the plaintiff, Nathaniel Chapman, and loss of consortium and services of plaintiff Nathaniel Chapman sustained by plaintiff, Shelli Chapman, caused by the negligence of the defendants beginning in or about March 2002, in Stoneham, Middlesex County, Massachusetts.

**FACTUAL BACKGROUND**

13. On or about March 21, 2002, plaintiff Nathaniel Chapman presented at the Horsley Eye Center, where he received medical care from defendants Dr. Horsley and Horsley Eye Center.

14. While plaintiff Nathaniel Chapman was a patient at, and under the care and treatment of defendants Dr. Horsley and Horsley Eye Center on or about March 22, 2002, he came under the care and treatment of defendant Dr. Horsley for the purpose of undergoing refractive surgery on his eyes, known as LASIK surgery.

15. While plaintiff Nathaniel Chapman was still a patient at, and under the care and treatment of defendants Dr. Horsley and Horsley Eye Center on or about April 14, 2006, he came under the care and treatment of defendant Dr. Horsley for the purpose of undergoing a second LASIK procedure, euphemistically referred to as an “enhancement”.

16. Plaintiff Nathaniel Chapman was under the continuous and uninterrupted care of

the defendants from March 2002, through and including, October 2006.

17. Plaintiff Nathaniel Chapman did not discover, nor have reason to discover, the occasion, manner, and means by which the breach of duty took place until January 2008.

18. As a result of the defendants' negligence, Mrs. Chapman has suffered the loss of her husband's consortium, companionship, care and assistance.

### **COUNT I**

#### **PROFESSIONAL NEGLIGENCE**

18. Plaintiffs incorporate by reference their allegations from Paragraphs 1-17, above.

#### **WRONGS COMPLAINED OF THE DEFENDANT DR. HORSLEY**

19. Dr. Horsley had a duty to care for plaintiff Nathaniel Chapman using the standard of care normally exercised by physicians generally under like conditions and similar surroundings. Dr. Horsley was negligent by, among other things, failing to render appropriate medical care and treatment to plaintiff Nathaniel Chapman.

20. Dr. Horsley was negligent in the services rendered for and on behalf of plaintiff in failing to use reasonable care; in failing to heed plaintiff's condition; in departing from accepted standards in the procedures and treatment performed; in failing to follow appropriate practice; in failing to properly examine plaintiff; in failing to properly treat plaintiff's eyes; in failing to determine that plaintiff was not a suitable candidate for either LASIK eye surgery; in performing LASIK eye surgery on plaintiff when each LASIK eye surgery was contraindicated; and, was otherwise negligent in his treatment of plaintiff.

21. As a direct and proximate result of the negligence of Dr. Horsley, plaintiff Nathaniel Chapman suffered injuries and disabilities which were caused wholly and solely by reason of the carelessness, negligence and malpractice of the defendants, each of them, their

agents, servants and/or employees as set forth above, with no fault or lack of care on the part of the plaintiff herein contributing thereto.

22. As a further direct and proximate result of the negligence of Dr. Horsley, plaintiff Nathaniel Chapman experienced excruciating pain and suffering, suffered loss of vision, was otherwise grievously injured and damaged because of the complications of LASIK surgery.

23. As a result of defendant Dr. Horsley's negligence, plaintiffs sustained damages.

**WRONGS COMPLAINED OF**  
**DEFENDANT HORSLEY EYE CENTER, P.C.**

24. Plaintiffs incorporate by reference their allegations from Paragraphs 1-23, above.

25. At the time of the matters complained of herein, the defendant Dr. Horsley was an employee, agent, or partner of the defendant Horsley Eye Center. Whenever defendant Dr. Horsley provided any medical care or services whatsoever to or on behalf of plaintiff Nathaniel Chapman, he was doing so within the course and scope of his employment and/or agency for and on behalf of the defendant Horsley Eye Center.

26. The defendant Horsley Eye Center, its agents, servants and/or employees were negligent and careless by failing, neglecting and omitting to take, use and employ reasonable and proper steps and procedures and practices for the health, safety and welfare of the plaintiff thereby causing and contributing to the condition suffered by plaintiff; failing to supervise the activities of agents, servants, and/or employees; failing to employ agents, servants and/or employees who possess the requisite knowledge and experience to treat and care for conditions demonstrated by plaintiff; in violating the applicable laws, rules, regulations, guidelines, policies and protocol; in deviating and departing from the usual and accepted standards of medical, surgical care and treatment; in failing to comply with proper procedures and/or written protocols

and/or guideline in effect at Horsley Eye Center; in failing and neglecting to adhere to and comply with the accepted and approved standards of practices, procedures and techniques prevailing in the locality and community; in failing to timely and properly monitor, supervise and/or oversee the activities of its agents, servants, medical staff, employees and/or independent contractors with respect to the care and treatment rendered to the plaintiff herein during his presentations to Horsley Eye Center; in failing to disclose to the plaintiff all of the facts that a reasonable facility, under similar circumstances, would explain or disclose to a patient including a failure to disclose the risks and benefits of the treatment and procedures performed, the alternatives thereto and the risks and benefits relating to the alternatives; in failing, neglecting and omitting to timely, properly and/or adequately counsel their physicians and other employees with respect to the proper and appropriate standard of care and treatment to be rendered to patients presenting with complaints similar to those that plaintiff presented with; in failing to have efficient and/or sufficient personnel; in failing to fulfill its duty to properly investigate the skill, qualifications, character and/or background of the physicians applying for privileges as well as other staff members, personnel and/or employees, practicing at the defendant facilities; in improperly granting the defendant privileges at Horsley Eye Center; in failing to conduct continuous assessments of the competence of the defendant physician, personnel and/or independent contractor; in failing to employ qualified, trained and supervised physicians, non-physicians staff, including, nurses, and laboratory technicians; in failing to properly train and/or supervise their personnel and/or independent contractors, including interns, residents, registered nurses, licensed practical nurses, nurses' aides and physicians; in failing to have adequate institutional policies; in failing to maintain adequate facilities; in deviating and departing from

the accepted standards of medical care and treatment; and in negligently hiring, training, retaining and supervising defendant Dr. Horsley.

27. The defendant Horsley Eye Center is vicariously liable under the laws of agency and *respondeat superior* for the acts and omissions of its agents, members and/or employees who negligently treated and/or negligently cared for plaintiff Nathaniel Chapman while he was a patient of these defendants. Any negligence of these agents, members, and/or employees is imputed, by law, to defendant Horsley Eye Center, under the principles of actual or apparent agency and/or *respondeat superior*.

28. Defendant Horsley Eye center was negligent in its failure to train, supervise, and manage Dr. Horsley.

29. As a result of defendant Horsley Eye Center's negligence, plaintiffs sustained damages.

**WRONGS COMPLAINED OF**  
**DEFENDANT CLEAR VISION EYE CENTER, INC.**

30. Plaintiffs incorporate by reference their allegations from Paragraphs 1-29, above.

31. At the time of the matters complained of herein, the defendant Dr. Horsley was an employee, agent, or partner of the defendant Clear Vision. Whenever defendant Dr. Horsley provided any medical care or services whatsoever to or on behalf of plaintiff Nathaniel Chapman, he was doing so within the course and scope of his employment and/or agency for and on behalf of the defendant Clear Vision.

32. The defendant Clear Vision, its agents, servants and/or employees were negligent and careless by failing, neglecting and omitting to take, use and employ reasonable and proper steps and procedures and practices for the health, safety and welfare of the plaintiff thereby

causing and contributing to the condition suffered by plaintiff; failing to supervise the activities of agents, servants, and/or employees; failing to employ agents, servants and/or employees who possess the requisite knowledge and experience to treat and care for conditions demonstrated by plaintiff; in violating the applicable laws, rules, regulations, guidelines, policies and protocol; in deviating and departing from the usual and accepted standards of medical, surgical care and treatment; in failing to comply with proper procedures and/or written protocols and/or guideline in effect at Clear Vision; in failing and neglecting to adhere to and comply with the accepted and approved standards of practices, procedures and techniques prevailing in the locality and community; in failing to timely and properly monitor, supervise and/or oversee the activities of its agents, servants, medical staff, employees and/or independent contractors with respect to the care and treatment rendered to the plaintiff herein during his presentations to Clear Vision; in failing to disclose to the plaintiff all of the facts that a reasonable facility, under similar circumstances, would explain or disclose to a patient including a failure to disclose the risks and benefits of the treatment and procedures performed, the alternatives thereto and the risks and benefits relating to the alternatives; in failing, neglecting and omitting to timely, properly and/or adequately counsel their physicians and other employees with respect to the proper and appropriate standard of care and treatment to be rendered to patients presenting with complaints similar to those that plaintiff presented with; in failing to have efficient and/or sufficient personnel; in failing to fulfill its duty to properly investigate the skill, qualifications, character and/or background of the physicians applying for privileges as well as other staff members, personnel and/or employees, practicing at the defendant facilities; in improperly granting the defendant privileges at Clear Vision; in failing to conduct continuous assessments of the

competence of the defendant physician, personnel and/or independent contractor; in failing to employ qualified, trained and supervised physicians, non-physicians staff, including, nurses, and laboratory technicians; in failing to properly train and/or supervise their personnel and/or independent contractors, including interns, residents, registered nurses, licensed practical nurses, nurses' aides and physicians; in failing to have adequate institutional policies; in failing to maintain adequate facilities; in deviating and departing from the accepted standards of medical care and treatment; and in negligently hiring, training, retaining and supervising defendant Dr. Horsley.

33. The defendant Clear Vision is vicariously liable under the laws of agency and *respondeat superior* for the acts and omissions of its agents, members and/or employees who negligently treated and/or negligently cared for plaintiff Nathaniel Chapman while he was a patient of these defendants. Any negligence of these agents, members, and/or employees is imputed, by law, to defendant Clear Vision under the principles of actual or apparent agency and/or *respondeat superior*.

34. Defendant Clear Vision was negligent in its failure to train, supervise, and manage Dr. Horsley.

35. As a result of defendant Clear Vision's negligence, plaintiffs sustained damages.

## **COUNT II**

### **BREACH OF INFORMED CONSENT**

36. Plaintiffs incorporate by reference their allegations from Paragraphs 1-35, above.

37. The defendants, each of them, their agents, servants and/or employees failed to disclose in a reasonable manner all significant medical information that reasonably prudent

medical practitioners, under similar circumstances, would explain or disclose to a patient including a failure to disclose the material risks and benefits of the procedures performed, the alternatives thereto and the material risks and benefits relating to the alternatives and they otherwise failed to properly, adequately, thoroughly and fully inform the plaintiff herein. This information was material to the plaintiff's decision whether to undergo the proposed procedures.

38. A reasonably prudent person in the plaintiff's position would not have undergone the procedures performed if he had been fully informed, and that lack of informed consent is a proximate cause of the injuries suffered herein for which recovery is sought.

39. The treatment rendered by the defendants herein was not emergent treatment, an emergency procedure or emergency surgery.

40. As a result of defendants' breach of duty of informed consent, plaintiffs sustained damages.

### **COUNT III**

#### **LOSS OF CONSORTIUM/SERVICES**

41. Plaintiffs incorporate by reference their allegations from Paragraphs 1-40, above.

42. Since February 3, 2006, plaintiff Shelli Chapman was at all times material to this action the wife of Nathaniel Chapman.

43. As a result of the foregoing occurrence and resulting injuries to her husband as afore stated, Shelli Chapman has been and will be deprived of the services, society, support, companionship and consortium of her husband, Nathaniel Chapman.

#### **DAMAGES**

44. As a direct and proximate result of the negligent acts and negligent omissions of

the defendants, plaintiff Nathaniel Chapman, suffers severe, unnecessary pain and associated damages, which the plaintiff is entitled to recover by law.

45. As a direct and proximate result of the negligence of the defendants, the plaintiff had suffered substantial damages including medical expenses, loss of earnings and/or impairment of earning capacity, loss of enjoyment of life, mental anguish, and pain and suffering and other damages.

46. As a direct and proximate result of the negligence of the defendants, the plaintiff, Shelli Chapman had suffered the loss of the companionship, cooperation, love, affection, consortium, and services of her husband, Nathaniel Chapman.

**PRAYER FOR RELIEF**

47. WHEREFORE, the plaintiffs demand of the defendants a reasonable sum of money as compensatory damages.

49. WHEREFORE, the plaintiffs respectfully demand a jury and reserve the right to amend the Complaint, should the Court permit same, to conform to the evidence as it develops.

Respectfully submitted,

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