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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
BROOKLYN DIVISION**

THOMAS ALLEGRA, YESENIA ARIZA,  
MARIANA ELISE EMMERT, STUART  
ROGOFF, GRACELYNN TENAGLIA, and  
MELISSA VERRASTRO, individually and  
on behalf of others similarly situated,

Plaintiffs,

v.

LUXOTTICA RETAIL NORTH AMERICA  
d/b/a LensCrafters,

Defendant.

**MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' MOTION  
FOR PRELIMINARY APPROVAL OF CLASS  
SETTLEMENT, FOR CERTIFICATION OF  
THE CLASS FOR SETTLEMENT PURPOSES,  
FOR APPOINTMENT OF CLASS COUNSEL,  
AND TO ISSUE APPROPRIATE NOTICE TO  
THE CLASS**

CASE NO. 1:17-cv-05216-PKC-LB

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## I. INTRODUCTION

After nearly six years of hard-fought litigation, Interim Class Counsel (“Class Counsel”), on behalf of Plaintiffs Yesenia Ariza, Thomas Allegra, Mariana Emmert, Stuart Rogoff, Gracelynn Tenaglia, and Melissa Verrastro (together “Plaintiffs”), on the one hand, and Defendant Luxottica of America Inc. d/b/a LensCrafters f/k/a Luxottica Retail North America Inc. d/b/a/ LensCrafters (“LensCrafters”), on the other (together with Plaintiffs, “the Parties”), have entered into a proposed Settlement Agreement (the “Settlement” or “Agreement”), dated June 27, 2023.<sup>1</sup>

The Settlement, if finally approved, would resolve all claims brought by Plaintiffs and a proposed class (the “Settlement Class” or “Class”) The Settlement Class is all U.S. residents who, from September 5, 2013 to the date of the Preliminary Approval Order, purchased prescription eyeglasses in the United States from LensCrafters after being fitted with AccuFit.<sup>2</sup>

Under the Settlement, LensCrafters agrees to pay \$39 million into a *non-reversionary, common fund* (the “Settlement Amount”) in exchange for dismissal of the litigation with prejudice and release of certain claims by Plaintiffs and the Class.<sup>3</sup> LensCrafters denies and continues to deny all of Plaintiffs’ claims and allegations of wrongdoing and has agreed to the Settlement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation.

For the reasons stated below, the proposed Class should be certified for settlement purposes and the proposed Settlement should be preliminarily approved by the Court. Plaintiffs seek the Court’s entry of an order providing for preliminary approval, which will set in motion a process for the Court to assess final approval of the Settlement, after provision of (i) notice to the

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<sup>1</sup> The Agreement is attached as Exhibit A to the Declaration of Geoffrey Graber in Support of Plaintiffs’ Motion for Preliminary Approval of Class Settlement, for Certification of a Class for Settlement Purposes, for Appointment of Class Counsel, and to Issue Appropriate Notice to the Class (“Graber Decl.”).

<sup>2</sup> Excluded from the Settlement Class are: LensCrafters; LensCrafters’ employees, officers, and directors, as well as members of their immediate families; LensCrafters’ legal representatives, heirs, and successors; and any judge, justice or judicial officer who have presided over this matter and the members of their immediate families and judicial staff.

<sup>3</sup> The release is summarized in the Agreement and in the proposed long-form Notice described below. *See* Graber Decl., Ex. A (Settlement Agreement) at Sec. ¶¶ 9-10; Ex. E to Settlement Agreement.

Settlement Class, (ii) an opportunity for each Settlement Class member to exclude itself from, object to, or otherwise be heard regarding the Settlement, and (iii) a subsequent hearing on final approval (the “Fairness Hearing”). Plaintiffs also seek the Court’s approval of the manner and form of the proposed Long Form and Short Form Notices (collectively, the “Notices”) and appointment of Kroll Settlement Administration, LLC as Settlement Administrator who will also establish the Escrow Fund. Finally, Plaintiffs seek the establishment of a briefing schedule for (1) final settlement approval and a proposed plan of distribution, and (2) Class Counsel’s application for attorneys’ fees, expenses, and Class Representative service awards. LensCrafters does not oppose the motion or the proposed preliminary approval order, but does not consent to any of the factual or legal representations made in the motion or in the supporting papers.<sup>4</sup>

#### **I. PROCEDURAL HISTORY**

The Parties have reached an agreement to resolve this long-running and contentious litigation that provides 39 million dollars in immediate monetary relief to all LensCrafters’ customers, living in the United States, who Plaintiffs allege were injured as a result of LensCrafters’ allegedly deceptive marketing campaign of its AccuFit Digital Measuring System.

Plaintiffs Yesenia Ariza and David Soukup,<sup>5</sup> New York residents, filed the first class action complaint against LensCrafters for alleged misrepresentations regarding AccuFit on September 5, 2017 in this Court. *See* ECF No. 1. The same day, similar class actions were filed in the Northern District of California and the Southern District of Florida. These actions were transferred and related to the New York action, and on December 8, 2017, all three actions were consolidated. On December 12, 2017 and January 5, 2018, Plaintiffs filed the Consolidated Complaint and First Amended Consolidated Complaint, respectively, against LensCrafters. Plaintiffs filed the operative Second Amended Consolidated Complaint (“SACC”) on September 21, 2018, seeking damages and injunctive relief, and asserting claims on behalf of themselves and a California Class,

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<sup>4</sup> LensCrafters denies and continues to deny that certification of any proposed class for non-settlement litigation purposes is or ever was appropriate pursuant to Rule 23.

<sup>5</sup> Soukup, along with another named plaintiff Amy Harloff, was voluntarily dismissed on October 17, 2018.

Florida Class, and New York Class. ECF No. 50. Plaintiffs alleged, inter alia, claims under New York, California and Florida consumer protection laws, as well claims under New York, California and Florida common law. LensCrafters filed an answer. ECF No. 66.

The discovery process was extensive. Both parties filed numerous motions to compel and LensCrafters produced close to seventy thousand pages of documents. Graber Decl. ¶ 4 Plaintiffs conducted fifteen fact depositions (including three 30(b)(6) representatives of LensCrafters), and LensCrafters deposed all six named Plaintiffs in this case, Plaintiffs' two "confidential witnesses", and two named plaintiffs' family members. Fact discovery spanned nearly two years.

The parties also conducted extensive expert discovery. Plaintiffs submitted voluminous, multi-thousand page expert reports from their seven expert witnesses, as did LensCrafters with its eight experts. Decl. ¶ 4. Each expert was deposed, leading to a total of fifteen expert depositions. *Id.*

On October 29, 2020, the parties filed briefing involving Plaintiffs' Motion for Class Certification and the parties' *Daubert* challenges. ECF Nos. 237-250. LensCrafters also filed a sur-reply in further opposition to Plaintiffs' Motion for Class Certification. ECF No. 253. On December 13, 2021, the Court issued a 155-page decision granting in part and denying in part Plaintiffs' Motion for Class Certification, and resolving the parties' initial *Daubert* challenges for class certification purposes. The Court granted Plaintiffs' request for class certification under Rule 23(b)(3) with respect to claims under the NY General Business Law §§ 349, 350 ("NY GBL Claims"); the Florida Deceptive and Unfair Practices Act ("FDUTPA claim"); California's Unfair Competition Law ("UCL Claim"), False Advertising Law ("FAL Claim"), and Consumer Legal Remedies Act ("CLRA Claim"); and for unjust enrichment under California, Florida, and New York law. ECF 272. On December 27, 2021, LensCrafters filed a petition to the Second Circuit under Fed. R. Civ. P. 23(f) seeking leave to appeal the Court's class certification order; on March 24, 2022, the Second Circuit denied LensCrafters' petition for an appeal.

On April 1, 2022, Plaintiffs withdrew their unjust enrichment claim under New York law. On May 13, 2022, the parties filed their respective papers regarding LensCrafters' Motion for



Partial Summary Judgment. ECF Nos. 288-290. The Court denied the Motion for Partial Summary Judgment with respect to the Florida unjust enrichment claim and granted the motion with respect to the UCL Claim, FAL Claim, CLRA Claim seeking equitable relief, and unjust enrichment claim under California law. As a result, only the NY GBL Claims, FDUTPA Claim, CLRA Claim seeking legal relief, and unjust enrichment claim under Florida law remained for trial.

Following the parties' service of motion papers over the course of several months, on March 3, 2023, LensCrafters filed its Motion for Summary Judgment seeking summary judgment on all the remaining claims along with their renewed *Daubert* motions and oppositions to Plaintiffs' renewed *Daubert* motions, and Plaintiffs filed their Opposition to LensCrafters' Motion for Summary Judgment and their renewed *Daubert* motions and oppositions to LensCrafters' renewed *Daubert* motions. ECF Nos. 319-327.

On April 12, 2022 and September 28, 2022, the Parties attended mediation before Judge Daniel Weinstein (ret.) and Ambassador David Carden, of JAMS. Graber Decl. ¶6. No agreement was reached at mediation, but the Parties continued their settlement discussions in the following months. *Id.* ¶¶7-8.

The case was scheduled for a four-week jury trial set to begin on July 10, 2023. In anticipation of trial, the parties exchanged proposed jury instructions, verdict forms, witness lists and exhibit lists. The parties also filed respective motions in limine. LensCrafters' Motion for Summary Judgment and both Parties' renewed *Daubert* motions remained pending before the Court.

The parties have since prepared the formal settlement agreement now before the Court, which built on the mediation and subsequent discussions. The Parties also retained the services of an experienced settlement administrator, Kroll Settlement Administration, LLC. Plaintiffs developed a notice and funds-distribution plan, which is incorporated into the settlement agreement and detailed below.

**II. THERE IS MORE THAN “PROBABLE CAUSE” TO BELIEVE THAT FINAL APPROVAL OF THE SETTLEMENT WILL ULTIMATELY BE GRANTED**

Preliminary approval is the first of a two-step process leading to final approval of a class action settlement. *Parker v. City of N.Y.*, No. 15-CV-6733 (CLP), 2017 WL 6375736, at \*4 (E.D.N.Y. Dec. 11, 2017). The second step is a fairness hearing to confirm whether the proposed settlement is fair, reasonable and adequate pursuant to Rule 23(e). *See id.*; *Berkson v. Gogo LLC*, 147 F. Supp. 3d 123, 130–31 (E.D.N.Y. 2015). In making that determination, Rule 23(e)(2) directs courts to consider whether:

- a. the class representatives and class counsel have adequately represented the class;
- b. the proposal was negotiated at arm’s length;
- c. the relief provided for the class is adequate, taking into account:
  - i. the costs, risks, and delay of trial and appeal;
  - ii. the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
  - iii. the terms of any proposed award of attorney’s fees, including timing of payment; and
  - iv. any agreement required to be identified under Rule 23(e)(3); and
- d. the proposal treats class members equitably relative to each other.

“[T]o grant preliminary approval, the court need only determine that there is what might be termed ‘probable cause’ to submit the [proposed settlement] to class members and hold a full-scale hearing as to its fairness.” *Dover v. British Airways, PLC (UK)*, 323 F. Supp. 3d 338, 349 (E.D.N.Y. 2018) (citation and quotations omitted); *Parker*, 2017 WL 6375736 at \*4. Preliminary approval should be granted where “the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval.” *Dover*, 323 F. Supp. 3d at 349 (citation omitted). This step is a “preliminary”

review of the fairness of the settlement. *See Berkson*, 147 F. Supp. 3d at 130. This threshold is easily met here.

**A. The Settlement is Presumptively Fair because it Resulted from Arm’s Length Negotiations by Experienced and Informed Counsel**

The Settlement was arm’s length and hard-fought by experienced counsel after completion of fact and expert discovery over the course of nearly six years of litigation, and thus is presumed fair. When considering approval of a class action settlement, the Court must “determine if the settlement was achieved through arms-length negotiations by counsel with the experience and ability to effectively represent the class’s interests.” *Parker*, 2017 WL 6375736, at \*5 (citation and quotation marks omitted). A proposed settlement resulting from arm’s length negotiations between experienced, capable counsel is entitled to a presumption of fairness. *See In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 122 (S.D.N.Y. 2009) (“Where a settlement is the product of arm’s length negotiations conducted by experienced counsel knowledgeable in complex class litigation, the negotiation enjoys a presumption of fairness.”) (citation omitted). Moreover, “‘great weight’ is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation.” *In re PaineWebber Ltd. P’ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997) (citing *Chatelain v. Prudential-Bache Secs., Inc.*, 805 F. Supp. 209, 212 (S.D.N.Y. 1992)).

Both of these aspects are present here. First, Class Counsel is one of the most highly experienced firms in the country in litigating complex consumer class actions. Cohen Milstein is widely recognized as among the top plaintiffs’ class action firms in the country, having led multiple complex cases to successful conclusions. The opinions of experienced and informed counsel supporting settlement are entitled to considerable weight. *See, e.g., Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 662 (S.D.N.Y. 2015) (finding settlement procedurally fair

where due to experienced counsel and extensive discovery, “counsel on both sides were well-situated to thoughtfully assess the potential outcomes of the case and the likelihoods of each occurring”). The Parties’ engagement of an experienced, independent mediator further ensures that negotiations were non-collusive and conducted at arm’s length. *See Sanders v. CJS Sols. Grp., LLC*, No. 17-CIV-3809 (ER), 2018 WL 1116017, at \*2 (S.D.N.Y. Feb. 28, 2018) (“[T]he settlement was negotiated for at arm’s length with the assistance of an independent mediator, which reinforces the non-collusive nature of the settlement”).

Second, the Settlement demonstrates all the hallmarks of an arm’s length agreement. Both Parties’ counsel had extensive knowledge of the case record, resulting from years of hard-fought litigation. Graber Decl. ¶ 7. The Parties’ settlement negotiations themselves were contentious and took place over the course of more than a year. *Id.* ¶¶ 6-8. Even after the Parties preliminarily agreed on the dollar amount of the Settlement, they continued to negotiate the specifics of the Settlement for an additional four weeks. *Id.* ¶ 8.

In short, the Settlement was the product of extensive and hard-fought litigation occurring alongside equally hard-fought negotiations. Accordingly, this factor weighs in favor of Court approval of the proposed Settlement.

### **B. The *Grinnell* Factors Weigh in Favor of Granting Preliminary Approval**

While it is unnecessary to undertake “a full fairness analysis” at the preliminary approval stage, *Authors Guild v. Google, Inc.*, No. 05-CV-8136 (DC), 2009 WL 4434586 (S.D.N.Y. Dec. 1, 2009), at \*1, “the factors that will be relevant to final approval can be instructive in considering a motion for preliminary approval.” *Dover*, 323 F. Supp. 3d at 350; *Parker*, 2017 WL 6375736, at \*5. These factors, commonly referred to as the “*Grinnell* factors,” are:

- (1) the complexity, expense and likely duration of the litigation;
- (2) the reaction of the class to the settlement;
- (3) the stage of the proceedings and the amount of discovery completed;
- (4) the risks of establishing liability;
- (5) the risks of

establishing damages; (6) the risks of maintaining the class action through the trial; the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

*Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000) (citations omitted). “[N]ot every factor must weigh in favor of settlement, rather the court should consider the totality of these factors in light of the particular circumstances.” *Dial Corp. v. News Corp.*, 317 F.R.D. 426, 431 (S.D.N.Y. 2016). These factors are analyzed in the following sections, with the exception of the second factor—examining the reaction of the class—which cannot be considered on preliminary approval because notice has not yet been disseminated to the Settlement Class. These factors significantly overlap with the factors in Rule 23(e)(2).

For the reasons set forth below, each of the applicable *Grinnell* factors supports preliminary approval. A preliminary review of those factors demonstrates not only that the Settlement falls within the range of reasonableness, but also that the Court is likely to grant final approval. The Court should therefore grant preliminary approval of the Settlement and authorize notice to the proposed Settlement Class.

### **1. The Complexity, Expense, and Likely Duration of the Litigation.**

The likelihood that further litigation of this case would be protracted and risky supports preliminary approval of the settlement. *See In re Vitamin C Antitrust Litig.*, No. 06-MD-1738-BMC-JO, 2012 WL 5289514, at \*4 (E.D.N.Y. Oct. 23, 2012).

This case has been fiercely litigated for nearly six years. As described above, discovery spanned nearly two years, including the productions of close to seventy thousand pages, numerous data sets from studies conducted by LensCrafters’ and Plaintiffs’ experts, 40 depositions, and

thousands of pages of reports from fifteen expert witnesses. Graber Decl. ¶ 4. Fact and expert discovery were extensive given the volume of documents and data that Plaintiffs and their experts reviewed and analyzed. Multiple discovery motions, a motion for class certification, and multiple rounds of *Daubert* and summary judgment motions have been briefed and, in some instances, argued. And while LensCrafters' pending *Daubert* and summary judgment motions are currently moot due to the proposed settlement, they will be reraised if the settlement is not approved.

Given the complexity of the factual and legal issues here, the conflicting expert testimony, the voluminous record, and the stakes at issue, the trial, which had been scheduled to begin on July 10, 2023, would have lasted many weeks. Post-trial motions followed by appeals would have been all but inevitable, delaying resolution by many more years. In short, because this Action is extremely complex, has required substantial time and expenses to litigate thus far, and would require far more time and expenses to litigate through a trial and post-trial appeals, the first *Grinnell* factor weighs heavily in favor of granting preliminary approval.

**2. The Settling Parties are Well-Informed about the Strengths and Weaknesses of their Claims at this Advanced Stage.**

At the time of this settlement, the Parties have completed fact and expert discovery, they have engaged in multiple rounds of mediation exploring the strengths and weakness of each side's case, the Court has granted class certification, and Plaintiffs' GBL Claim, FDUTPA Claim, CLRA claim seeking legal relief, and Florida unjust enrichment claim have survived one round of summary judgment. As such, Plaintiffs' claims are well advanced at the time of this Settlement.

"The relevant inquiry for this factor is whether the plaintiffs have obtained a sufficient understanding of the case to gauge the strengths and weaknesses of their claims and the adequacy of the settlement." *In re AOL Time Warner, Inc. Sec. & "ERISA" Litig.*, No. 02-CV-5575-SWK, 2006 WL 903236, at \*10 (S.D.N.Y. Apr. 6, 2006); *see also In re Air Cargo Shipping Servs.*

*Antitrust Litig.*, No. 06-MD-1775-JG-VVP, 2009 WL 3077396, at \*8 (E.D.N.Y. Sept. 25, 2009) (“The purpose of the third *Grinnell* factor is to ‘assure the Court that the counsel for plaintiffs have weighed their position based on a full consideration of the possibilities facing them.’” (quoting *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 458 (S.D.N.Y. 2004)). The Court must determine whether the Parties “have engaged in sufficient investigation of the facts to enable the Court to ‘intelligently make . . . an appraisal’ of the settlement.” *In re AOL Time Warner, Inc.*, 2006 WL 903236, at \*10.

In cases where discovery is completed prior to the settlement agreement, this factor weighs even more heavily in favor of approving the settlement. *See, e.g., Flores v. Mamma Lombardi's of Holbrook, Inc.*, 104 F. Supp. 3d 290, 303 (E.D.N.Y. 2015) (factor satisfied where litigants conducted significant discovery prior to entering negotiations, conducting in-depth interviews of dozens of class members, reviewing extensive document production, and participating in mediation and extensive settlement negotiations); *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 382 (S.D.N.Y. 2013) (factor satisfied where parties completed extensive discovery that included millions of pages of documents and depositions of key witnesses on both sides).

Several facts in this record demonstrate that this *Grinnell* factor supports preliminary approval. Before filing the complaints at the outset of this litigation, Class Counsel extensively investigated the representations related to the AccuFit Digital Measuring System made by LensCrafters and its effects, including by completing a comprehensive review of the claims of confidential witnesses, speaking with consulting experts, researching the applicable law with respect to the claims asserted in the Action and the potential defenses, and consulting with industry experts. Graber Decl. ¶ 3. As detailed above, a sizeable discovery record has been compiled, and both fact discovery and expert discovery concluded prior to the Parties’ entering into the

Settlement. Also prior to agreement on the Settlement, the Parties fully briefed Plaintiffs' motion for class certification, *Daubert* motions, numerous discovery motions, and two motions for summary judgment. Finally, the settlement negotiations were accompanied by frank discussions of the relative strengths and weaknesses of the Parties' claims and defenses. *Id.* ¶ 7. The information gained through these various endeavors provided Plaintiffs with a comprehensive understanding of the relative strengths and weaknesses of their case enabling Plaintiffs to negotiate a settlement that is an excellent result for the Settlement Class. *Id.* ¶12. Therefore, the third *Grinnell* factor supports preliminary approval of the Settlement.

**3. The Settlement Amount is Fair, Reasonable, and Adequate in Light of the Risks of Further Litigation.**

The Settlement is fair and reasonable in light of the risks. "In assessing the Settlement, the Court should balance the benefits afforded the Class, including the immediacy and certainty of a recovery, against the continuing risks of litigation." *In re Top Tankers, Inc. Sec. Litig.*, No. 06-CV-13761-CM, 2008 WL 2944620, at \*4 (S.D.N.Y. July 31, 2008) (quoting *Grinnell*, 495 F.2d at 463). Final approval of the Settlement ensures a certain recovery of \$39 million in cash for the Settlement Class, whereas continuing to litigate the Action would present numerous significant risks.

LensCrafters' Motion for Summary Judgment and *Daubert* motions were pending before the Court at the time of Settlement. Should Plaintiffs have failed to prevail on any of those motions, the case may have effectively ended, or at minimum, would have been substantially diminished. Further, in the event that the Court denied LensCrafters' Motion for Summary Judgment and *Daubert* motions, Plaintiffs would still face the risk of a jury trial. Even at trial, Defendant could seek to decertify the class. *See Bellifemine v. Sanofi-Aventis U.S. LLC*, No. 07-CV-2207-JGK, 2010 WL 3119374, at \*4 (S.D.N.Y. Aug. 6, 2010) ("There is no



assurance of obtaining class certification through trial, because a court can re-evaluate the appropriateness of certification at anytime during the proceedings.”).

The outcome of a trial involving complex facts and untested legal theories is invariably unpredictable. In any complex case, “[t]here is a substantial risk that the plaintiff might not be able to establish liability at all and, even assuming a favorable jury verdict, if the matter is fully litigated and appealed, any recovery would be years away.” *Cardiology Assocs., P.C. v. Nat’l Intergroup, Inc.*, No. 85-CV-3048-JMW, 1987 WL 7030, at \*3 (S.D.N.Y. Feb. 13, 1987). Under the proposed settlement, each class member who submits a claim is eligible to receive up to \$50.00 for each set of prescription eyeglasses purchased from LensCrafters during the Class Period.<sup>6</sup> Graber Decl., Ex. A at 3.2.1. That is nearly double the estimated actual damages calculated by Plaintiffs’ expert. Graber Decl. ¶ 5. Accordantly, this factor supports granting preliminary approval.

#### **4. The Defendant’s Ability to Withstand a Greater Judgment Does Not Prevent Approval of the Settlement.**

While courts consider the ability of the defendant to withstand a greater judgment than that secured in the settlement in analyzing the fairness of a settlement, it does not generally indicate that a settlement is unreasonable or inadequate when the remaining *Grinnell* factors weigh in favor of settlement. *D’Amato v. Deutsche Bank*, 236 F.3d 78, 86 (2d Cir. 2001). This factor is “typically relevant only when a settlement is less than what it might otherwise be but for the fact that the defendant’s financial circumstances do not permit a greater settlement.” *In re Namenda Direct Purchaser Antitrust Litig.*, 462 F. Supp. 3d 307, 314-15 (S.D.N.Y. 2020). This factor is usually “neutral” unless the defendant is suffering financial difficulties. *Id.* Even if

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<sup>6</sup> This amount is subject to a pro rata reduction should the total claims exceed the Net Settlement Fund.

LensCrafters could withstand a judgment that exceeds the relief provided by the settlement here, courts generally do not find this to be an impediment to settlement. *In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at \*6; *see also Charron v. Pinnacle Grp. N.Y. LLC*, 874 F. Supp. 2d 179, 201 (S.D.N.Y. 2012) (“A defendant’s ability to withstand a greater judgment, standing alone, does not suggest that the settlement is unfair.”) (citation and quotation marks omitted). For LensCrafters, a \$39 million settlement is not an insignificant sum. Accordingly, this factor does not impede the Court’s ability to grant preliminary approval of this settlement, which otherwise readily satisfies the Rule 23(e)(2) final approval standard that it be fair, reasonable, and adequate.

**5. The Settlement is Reasonable Considering the Possible Recovery and the Attendant Risks of Litigation**

The last two *Grinnell* factors “recognize[] the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 119 (2d Cir. 2005) (citation omitted). In applying these factors, “[t]he adequacy of the amount achieved in settlement may not be judged in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs’ case.” *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 191 (S.D.N.Y. 2012) (quotation omitted); *see also In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 478 (S.D.N.Y. 1998) (“Ultimately, the exact amount of damages need not be adjudicated for purposes of settlement approval.”). Consequently, “there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery.” *Grinnell*, 495 F.2d at 455 n.2; *see also In re IMAX Securities Litig.*, 283 F.R.D. at 192 (“[T]he Second Circuit ‘has held that a settlement can be approved even though the benefits amount to a small percentage of the recovery sought.’” (quotation omitted)).

Plaintiffs' expert economist, Richard Eichmann, calculated a classwide price premium of 7.24% or approximately \$23.28 for the average pair of LensCrafters eyeglasses. Graber Decl. ¶ 5. As noted above, LensCrafters' filed *Daubert* motions to exclude both Richard Eichmann's economic analysis and the conjoint survey conducted by Sarah Butler. If the Court excluded either expert, it would significantly impact that damages model and methodologies used to calculate the damages, potentially leaving Plaintiffs with no way to prove damages. Additionally, LensCrafters could still prevail at summary judgment. This highlights the risks of proceeding to trial, where—even if presented—this model could be rejected by a jury.

In contrast, the Settlement, if approved, would provide guaranteed cash compensation to Settlement Class members who do not opt out. The fact that the cash will be paid in the near future weighs in favor of approval. *In re AOL Time Warner, Inc.*, 2006 WL 903236, at \*13 (where settlement fund is in escrow, “the benefit of the Settlement will . . . be realized far earlier than a hypothetical post-trial recovery”). As explained above, the potential risks, an assessment of the strength of the claims and defenses, the possible complications that may arise from future changed circumstances, the potential for appeals, and the vigorous negotiation at arm's length on behalf of the proposed Class are all additional factors that place the amount of the recovery in richer context. When balancing these factors in analogous class cases, courts have approved settlements that represent small fractions of the anticipated total losses or harm. In light of the risks of continuing to litigate this Action detailed above, the final *Grinnell* factors weigh in favor of approval.

### **III. CERTIFICATION OF THE SETTLEMENT CLASS IS WARRANTED**

Pursuant to Rules 23(a) and (b)(3), Plaintiffs respectfully request certification of the proposed Class for settlement purposes. A court asked to certify a class for settlement purposes “need not inquire whether the case, if tried, would present intractable management problems.”

*Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). The court’s focus instead is “on whether a proposed class has sufficient unity so that absent members can fairly be bound by decisions of class representatives.” *Id.* at 621. The court must engage in a rigorous analysis to ensure the Rule 23 requirements are met, *In re Am. Int’l Grp., Inc. Sec. Litig.*, 689 F.3d 229, 237-38 (2d Cir. 2012), but in doing so it “must take a liberal rather than restrictive approach in determining whether the plaintiff satisfies these requirements and may exercise broad discretion in weighing the propriety of a putative class.” *Cohen v. J.P. Morgan Chase & Co.*, 262 F.R.D. 153, 158 (E.D.N.Y. 2009) (citations omitted).

Where, as here, a class has already been certified, the Court ordinarily need only consider whether the proposed settlement “calls for any change in the class certified, or of the claims, defenses, or issues regarding which certification was granted.” *See* Committee Notes, Subdivision 23(e)(1). The Settlement Class is similar to the three state sub-classes certified previously by this Court, except for the following: *First*, the time period for the Settlement Class is expanded to begin at September 5, 2013 for the entire class, rather than September 5, 2014 for the California and New York class members, and runs to the date of preliminary approval; *Second*, the scope of the class is expanded to cover a nationwide class under New York law, rather than separate sub-classes under separate state laws.<sup>7</sup> Expansion of the geographic scope of the Settlement Class for settlement purposes is appropriate. *See Dupler v. Costco Wholesale Corp.*, 705 F. Supp. 2d 231, 236 (E.D.N.Y. 2010) (approving settlement of nationwide class after the court had certified a New

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<sup>7</sup> Alternatively, the Court could certify a nationwide class under Ohio law, as the home state of LensCrafters, but as the Court has already found that a class is certifiable under New York law, the parties have agreed to the application of New York law to the Settlement Class. Nationwide settlements under a single state law are appropriate where the interests of the class are not materially dissimilar—as is the case here. *Kurtz v. Kimberly-Clark Corp.*, 14-cv-1142, ECF No. 471 at 10-13 (E.D.N.Y. June 12, 2023).

York-only class for purposes of class certification and a nationwide class in connection with preliminary settlement approval). Additionally, as demonstrated below, the proposed Settlement Class readily satisfies the certification requirements of Rules 23(a) and (b)(3), as it is made up of a discrete and identifiable group of persons who purchased prescription eyeglasses in the United States from LensCrafters after being fitted with AccuFit, during a limited and defined time period.

**A. The Settlement Class Meets the Requirements of Rule 23(a)**

In *Amchem*, the Supreme Court set forth the parameters of the Rule 23(a) inquiry:

Rule 23(a) states four threshold requirements applicable to all class actions: (1) numerosity (a “class [so large] that joinder of all members is impracticable”); (2) commonality (“questions of law or fact common to the class”); (3) typicality (named parties’ claims or defenses “are typical . . . of the class”); and (4) adequacy of representation (representatives “will fairly and adequately protect the interests of the class”).

*Amchem Prods., Inc.*, 521 U.S. at 613. The proposed Settlement Class here satisfies each of the four requirements of Rule 23(a).

**1. The Number of Class Members is So Numerous that Joinder is Impracticable.**

Numerosity is satisfied where, as here, the proposed “class is so numerous that joinder of all members would be ‘impracticable.’” *See In re Vitamin C Antitrust Litig.*, 279 F.R.D. 90, 99 (E.D.N.Y. 2012). Numerosity is presumed in the Second Circuit where a class consists of forty or more members. *See generally Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995). The Settlement Class is all U.S. residents who, from September 5, 2013 to the date of the Preliminary Approval Order, purchased prescription eyeglasses in the United States from LensCrafters after being fitted with AccuFit.<sup>8</sup> Based on LensCrafters’ records, there are approximately 16.7 million members of the Settlement Class. The members of the Settlement Class

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<sup>8</sup> Excluded from the Class are LensCrafters; LensCrafters’ employees, officers, and directors, as well as members of their immediate families; LensCrafters’ legal representatives, heirs, and successors; and any judge, justice or judicial officer who have presided over this matter and the members of their immediate families and judicial staff.

are ascertainable and identifiable from the existing records obtained from the Defendants and the claim process set forth in the Settlement Agreement. As the Court noted in its previous Order on Class Certification, the New York, California, and Florida classes alone satisfied the numerosity requirement, and LensCrafters did not contest numerosity. ECF No. 274 at 23. Accordingly, the Settlement Class easily meets the numerosity requirement.

**2. There Are Questions of Law and Fact Common to All Class Members.**

Courts consistently recognize that the commonality requirement “does not present plaintiffs with a particularly exacting standard.” *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MD-1775 (JG) (VVP), 2014 WL 7882100, at \*30 (E.D.N.Y. Oct. 15, 2014). “A single common question of law or fact may suffice to satisfy this requirement if the question is capable of giving rise to a common answer through a class action.” *Vitamin C*, 279 F.R.D. at 99 (citing *Wal-Mart Stores, Inc. v. Duke*, 131 S.Ct. 2541, 2556 (2011)). “Where the same conduct or practice by the same defendant gives rise to the same kind of claims from all class members, there is a common question.” *Johnson v. Nextel Commc’ns Inc.*, 780 F.3d 128, 137-38 (2d Cir. 2015) (quotation omitted). “[C]ommon questions . . . are often present where there are legal or factual disputes pertaining to the defendants’ ‘unitary course of conduct,’ since such questions tend to give rise to answers that are broadly applicable to the entire class.” *Air Cargo*, 2014 WL 7882100, at \*30 (citations omitted).

As the Court noted in its previous Order on Class Certification, common questions of fact and law arise here (regardless of the applicable state law) as Plaintiffs claim that “all class members overpaid for LensCrafters eyeglasses because LensCrafters’ representations and omissions about AccuFit—that it is ‘five times more precise’ than traditional methods, measuring ‘down to a tenth of a millimeter,’ and that customers would have ‘clearer, crisper vision’ and ‘see the world more clearly’—allowed LensCrafters to command ‘a higher market price for its products than it

otherwise could have.” ECF No. 274 at 24. To decide liability, the trier of fact would need to determine whether LensCrafters’ representations, with respect to AccuFit, were false or misleading, and whether those statements caused class members to pay a price premium for their LensCrafters eyeglasses. *Id.* These are common questions, “the answers to which are apt to drive the resolution of the litigation.” *Id.* (quotations omitted). The expansion of the Settlement Class to a national class covering a longer time period does not change this analysis.

### **3. Plaintiffs’ Claims are Typical of Those of the Settlement Class.**

The proposed Settlement Class also satisfies the test for typicality, which “focuses on whether the named plaintiff’s interests align with the interests of the rest of the class.” *Vitamin C*, 279 F.R.D. at 105. “The typicality criterion does not require complete symmetry between the class representative’s claims and those of the absent class members.” *Id.* (citing *Shakhnes ex rel. Shakhnes v. Eggleston*, 740 F. Supp. 2d 602, 625 (S.D.N.Y. 2010)). “Rather, the named plaintiff must simply raise claims that ‘arise from the same course of events’ as the class claims and make ‘similar legal arguments to prove the defendant’s liability.’” *Id.* (quoting *Robidoux v. Celani*, 987 F.2d 931, 936 (2d Cir. 1993)); *see also Reid v. SuperShuttle Int’l, Inc.*, No. 08-CV-4854 (JG) (VVP), 2012 WL 3288816, at \*4 (E.D.N.Y. Aug. 10, 2012) (typicality requirement is met where “the named Plaintiffs’ claims are for the same type of injury under the same legal theory as the rest of the class” (citing *Shahriar v. Smith & Wollensky Rest. Grp., Inc.*, 659 F.3d 234, 252 (2d Cir. 2011)). “[F]actual differences in the amount of damages, date, size or manner of purchase, the type of purchaser . . . and other such concerns [that] will not defeat class certification when plaintiffs allege that the same unlawful course of conduct affected all members of the proposed class.” *Air Cargo*, 2014 WL 7882100, at \*31 (quoting *Sumitomo Copper Litig.*, 182 F.R.D. at 92).

As the Court noted in its previous Order on Class Certification, Plaintiffs “‘allege a

common pattern of wrongdoing’ related to LensCrafters’ representations and omissions about Accufit, and ‘will present the same evidence’ based on the same legal theories to support the claims of Plaintiffs and all class members, ‘[t]his is sufficient to establish typicality.’” ECF No. 274 at 26 (quoting *Hughes v. The Ester C Co.*, 317 F.R.D. 333, 346 (E.D.N.Y. 2016)). So too here, the expansion of the Settlement Class to a national class covering a longer time period does not change this analysis.

#### **4. The Settlement Class Is Adequately and Fairly Represented.**

“Determination of adequacy typically entails inquiry as to whether: 1) plaintiff’s interests are antagonistic to the interest of other members of the class and 2) plaintiff’s attorneys are qualified, experienced and able to conduct the litigation.” *Air Cargo*, 2014 WL 7882100, at \*33 (quoting *Cordes & Co. Fin. Servs., Inc. V. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 99 (2d Cir. 2007)). A conflict between proposed class representatives and the Class “will not destroy adequacy under Rule 23 unless the conflict is ‘fundamental’ and concrete; conflicts which are merely ‘speculative . . . should be disregarded at the class certification stage.’” *Vitamin C*, 279 F.R.D. at 102 (quoting *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 145 (2d Cir. 2001)).

No fundamental conflict exists between Plaintiffs and members of the Settlement Class here because Plaintiffs hold the same damages claims as the members of the Classes that they seek to represent: all claim to have paid a price premium for their LensCrafters eyeglasses due to the alleged misrepresentations LensCrafters made with respect to AccuFit. As the Court rightly held in its previous Order on Class Certification, the named Plaintiffs interests are not “antagonistic” to the interests of the other class members, they have fulfilled their duties as class representatives, and have proven that they are adequate representatives of the class. ECF No. 274 at 31. The fact that the Settlement Class is nationwide does not render the Plaintiffs



inadequate. *Kurtz v. Kimberly-Clark Corp.*, 14-CV-1142, ECF No. 471 at 10-12 (E.D.N.Y. June 12, 2023).

Additionally, Plaintiffs have effectively represented the interests of the proposed Settlement Class by selecting qualified Class Counsel, regularly communicating with Class Counsel regarding developments in the litigation, preparing for and attending depositions, communicating with Class Counsel regarding the terms of the Settlement, and approving those terms. Neither Plaintiffs nor Class Counsel have any interests antagonistic to those of the proposed Settlement Class. And, as this Court previously held, Class Counsel has demonstrated its experience in success in complex consumer protection class actions. ECF No. 274 at 31-35. Therefore, the adequacy of representation requirement is satisfied.

**B. The Settlement Class Meets the Requirements of Rule 23(b)(3)**

In addition to satisfying all of the criteria of Rule 23(a), a party seeking class certification must also satisfy one of the requirements of Rule 23(b). *See Larsen v. JBC Legal Grp., P.C.*, 235 F.R.D. 191, 196 (E.D.N.Y. 2006). Certification of a class under Rule 23(b)(3) requires that: (i) common issues predominate over individual issues; and (ii) the class action mechanism be superior to other methods of adjudicating the controversy. Fed. R. Civ. P. 23(b)(3). For the reasons described below, both requirements are met here.

Unlike with motions for class certification in the litigation context, a court “[c]onfronted with a request for settlement-only class certification . . . need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial.” *Amchem Prods., Inc.*, 521 U.S. at 620 (internal citation omitted); *see also In re Am. Int’l Grp., Inc. Sec. Litig.*, 689 F.3d at 242 (“[T]he existence of a settlement that eliminates manageability problems can alter the outcome of the predominance analysis.”). The court’s focus instead is “on whether a proposed class has sufficient unity so that absent members can fairly be bound

by decisions of class representatives.” *Amchem Prods., Inc.*, 521 U.S. at 621. The court is still required to ensure the Rule 23 requirements are met for a settlement class, but in doing so the court “must take a liberal rather than restrictive approach in determining whether the plaintiff satisfies these requirements and may exercise broad discretion in weighing the propriety of a putative class.” *Cohen*, 262 F.R.D. at 158 (citations omitted).

**1. Common Questions of Law and Fact Predominate.**

“The predominance inquiry ‘asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.’” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (quotation omitted).

“When ‘one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.’”

*Id.* (quotation omitted).

“In short, the question for certifying a Rule 23(b)(3) class is whether ‘resolution of some of the legal or factual questions that qualify each class member’s case as a genuine controversy can be achieved through generalized proof’ and whether ‘these particular issues are more substantial than the issues subject only to individualized proof.’”

*Johnson*, 780 F.3d at 139 (quoting *In re U.S. Foodservice Inc. Pricing Litig.*, 729 F.3d 108, 118 (2d Cir. 2013)).

The analysis differs depending on whether the certification is sought for litigation or settlement purposes. In the former, the court must determine whether litigating the class claims will pose “intractable management problems,” but in the latter these management concerns “drop out” because with settlement the “proposal is that there be no trial.” *In re Am. Int’l Grp., Inc. Sec. Litig.*, 689 F.3d 229, 239-240 (2d Cir. 2012). In the settlement context, the predominance “inquiry trains on the legal or factual questions that qualify each class member’s case as a genuine

controversy, questions that preexist any settlement.” *Amchem Prods., Inc.*, 521 U.S. at 623. As the Supreme Court has noted, in a settlement context “the predominance requirement of Rule 23(b)(3) is similar to the requirement of Rule 23(a)(3) that ‘claims or defenses’ of the named representatives must be ‘typical of the claims or defenses of the class.’” *Id.* at n. 18 (quotation omitted). As described above in Section III. A.3, that is the case here.

This Court already conducted a detailed analysis of New York law in its previous Order on Class Certification and found that common questions of law and fact predominate for Plaintiffs’ claims under New York’s consumer protection statutes, N.Y. Gen. Bus. Law §§ 349 and 350. ECF No. 274 at 39-147. As the Court held, common questions of fact and law related to whether the alleged misrepresentations made by LensCrafters regarding AccuFit were false or misleading, whether those statements were material to a reasonable consumer, whether the class was injured in the form of “an overcharge” through a price premium, and the calculation of class-wide damages all predominated over any potential individualized issues in the case. *Id.* For the same reasons, the common questions of law and fact predominate for the Settlement Class applying New York law.

**2. Class Action is the Superior Method to Adjudicate this Case.**

Rule 23(b)(3) also requires that a “class action [be] superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23. The Court must consider the following factors:

- (A) the class members’ interests in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;
- and (D) the likely difficulties in managing a class action.

*Id.*

As this Court has already found, “Here, all four factors counsel in favor of class certification.” ECF No. 274 at 154. First, the Court noted that “given the low amount at stake for

an individual relying on Plaintiff's price premium theory and for eyeglasses generally, as well as 'the relative simplicity of consumer protection actions . . . the possibility of individual interests controlling the prosecution of this action is remote.'" *Id.* (quoting *In re Kind LLC*, 337 F.R.D. at 608). Indeed, individual litigants are unlikely to have the resources to engage in protracted litigation against LensCrafters, particularly given the price premium damage which has been estimated at approximately \$23.28. Graber Decl. ¶ 5. Superiority is met where, as here, "it would be prohibitively expensive for class members with small claims to proceed individually." *Vitamin C*, 279 F.R.D. at 109. Second, "this case represents the consolidation of three cases," now expanded to cover a nationwide class, and there has not been other litigation to date involving the same controversy at issue here. ECF No. 274 at 154. Third, "the low amount at stake for individual plaintiffs and the fact that Plaintiffs have already been pursuing this case for approximately [six] years make the concentration of the litigation of these claims in this forum highly desirable." *Id.* And fourth, concerns about manageability are addressed by the points outlined in the predominance section above, namely, that class inquiries will predominate. *Id.* Importantly, manageability concerns are given little consideration when analyzing superiority for settlement purposes. *Amchem Prods., Inc.*, 521 U.S. at 620 (internal citation omitted); *see also In re Am. Int'l Grp., Inc. Sec. Litig.*, 689 F.3d at 242 ("[T]he existence of a settlement that eliminates manageability problems can alter the outcome of the predominance analysis.") Accordingly, because certifying the proposed Settlement Class represents "an efficient means of resolving the claims at issue," *Bourlas v. Davis Law Assocs.*, 237 F.R.D. 345, 354 (E.D.N.Y. 2006), the superiority requirement is satisfied.

### **C. Class Counsel Should be Appointed As Settlement Class Counsel**

A court that certifies a settlement class must appoint class counsel. Fed. R. Civ. P. 23(g). In appointing class counsel, the Court

“(A) must consider: (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class [and] (B) may consider any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class.”

Fed. R. Civ. P. 23(g)(1).

The Court must also determine that class counsel will “fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(4).

Here, the Court has already considered the 23(g) factors in appointing Cohen Milstein as Interim Class Counsel, ECF No. 35, and then in appointing Cohen Milstein as Class Counsel at the class certification stage. ECF No. 274 at 31-35. Cohen Milstein has devoted substantial time and resources to this case, and will continue to do so to ensure the Settlement is effectuated and claims are paid fairly and efficiently. Accordingly, the Court should appoint Class Counsel as Settlement Class Counsel.

## **V. THE NOTICE PLAN AND PLAN OF ALLOCATION ARE REASONABLE**

### **A. The Notice Plan**

Plaintiffs’ Counsel, together with the proposed Settlement Administrator, Kroll Settlement Administration (the “Settlement Administrator”),<sup>9</sup> have devised a notice program and prepared mail and publication notices that fully satisfy the Rule 23(c)(2)(B) notice standards, which govern classes certified pursuant to Rule 23(b)(3). *In re IMAX Sec. Litig.*, 283 F.R.D. at 185 (notice requirements for Rule 23(b)(3) classes stricter than for Rule 23(b)(2) classes) (citing *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. at 448). Rule 23(c)(2)(B) requires the court to

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<sup>9</sup> Plaintiffs submit that Kroll Settlement Administration is a highly respected claims administration group with many years of experience administering class action settlements. *See* Graber Decl. ¶ 11.

“direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” *Id.*; *see also Thompson v. Metro. Life Ins. Co.*, 216 F.R.D. 55, 67 (S.D.N.Y. 2003) (“Although no rigid standards govern the contents of notice to class members, the notice must fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the] proceedings.” (quoting *Weinberger v. Kendrick*, 698 F.2d 61, 70 (2d Cir. 1982) (internal quotation marks omitted))).

As required by Rule 23(c)(2)(B), the long form and short form notices, attached respectively as Exhibits E and D to the Settlement Agreement (Graber Decl., Ex. A), state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class that is being certified; (iii) the class claims, issues, or defenses; (iv) the basic terms of the Agreement; (v) that a class member may enter an appearance through an attorney if the member so desires; (vi) that the Court will exclude from the class any member who requests exclusion; (vii) the time and manner for requesting exclusion; (viii) the binding effect of a class judgment on members and the terms of the releases; (ix) the claim filing process and a description of the Distribution of the Net Settlement Fund; and (x) the requests for an award of attorneys’ fees, reimbursement of costs and Service Awards to the Class Representatives. The Notice further directs Settlement Class members to the case website and provides contact information for the Settlement Administrator.

Notice regarding a proposed settlement is adequate under both Rule 23 and due process standards if it “fairly apprise[s] the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings,” *Hall v. ProSource Techs., LLC*, No. 14-CV-2502-SIL, 2016 WL 1555128, at \*4 (E.D.N.Y. Apr. 11, 2016) (citation omitted), and it can “be understood by the average class member,” *Wal-Mart Stores, Inc.*,

396 F.3d at 114 (citation omitted).

In this case, the Notice Plan was prepared with the aid of an experienced Settlement Administrator and provides for widespread email and direct mail notice and a comprehensive settlement website. *See* Graber Decl. ¶ 9; Graber Decl., Ex. A ¶ 7.8. LensCrafters will compile a Settlement Class List based on good faith review of its records and provide it to the Settlement Administrator, which will enable the Settlement Administrator to email or mail short-form notice to all Class members efficiently and accurately. *See* Graber Decl., Ex. A. ¶¶7.27.5. For purposes of efficiency and to limit expenses associated with administering the Notice Plan, Plaintiffs propose to email a short-form notice form to all Class members in those databases, and to physically mail the short-form notice absent a deliverable email address. *Id.* ¶¶7.5-7.6 The short-form notice will reference the long-form notice, direct recipients to the settlement website, and include a toll-free phone number for Class members to call with any questions. *See id.* Ex. D. to the Settlement Agreement (Graber Decl., Ex. A.). Long-form notices will be mailed upon request, and Class members can request mailed materials through the settlement website as well as the toll-free number. *See id.* Courts have routinely approved similar notice plans involving both direct email/mail and a settlement website.<sup>10</sup> Accordingly, Plaintiffs respectfully request that the Court approve the proposed form and plan of dissemination of notice.

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<sup>10</sup> *See, e.g., In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at \*2 (approving notice plan that included direct mail and a settlement website); *Air Cargo*, 2009 WL 3077396, at \*3 (approving notice plan that included direct mail); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. at 448 (approving notice plan that included direct mail and a settlement website); *see also In re Prudential Sec. Inc. Ltd. P'ship Litig.*, 164 F.R.D. 362, 368 (S.D.N.Y.1996) (approving individual notice to class members “whose address could reasonably be located”); *In re Agent Orange Prod. Liab. Litig.*, 818 F.2d 145, 167–69 (2d Cir. 1987) (approving letter notice to reasonably identifiable class members).

### **B. Distribution of the Net Settlement Fund**

The proposed Distribution of the Net Settlement Fund treats all class members equitably, pursuant to the final fairness factors of Rule 23(e)(2)(D). All class members who submit a claim will receive a pro-rata share of the Net Settlement Fund. Each member who submits a claim is eligible to receive up to \$50 for each set of eyeglasses purchased from LensCrafters,<sup>11</sup> subject to a pro rata reduction if the total claims exceed the Net Settlement Fund. In the event that at least \$1 in funds per claimant remains after this first distribution, a second pro rata distribution will occur to each approved claimant. Any remaining amounts will go to *cy pres*. This method ensures every class member is treated equitably. *Nothing in the Settlement Fund will revert to LensCrafters.*

### **VI. PROPOSED SCHEDULE FOR SERVICE OF NOTICE, MOTIONS FOR FEES AND SERVICE AWARDS, CLASS EXCLUSIONS, OBJECTIONS, AND FAIRNESS HEARING**

As set out in the Proposed Order, Plaintiffs propose the following schedule:

Last day to disseminate class notice:	As soon as reasonably practical after entry of the Preliminary Approval Order
Last day to file Motion for Final Approval:	45 days prior to Final Approval (Final Fairness) Hearing
Last day to file Fee and Cost Application:	21 days prior to the deadline to object to the Settlement
Last day for objections to Settlement or opposition to Motion for Final Approval of Fee and Cost Application	30 days prior to Final Approval (Final Fairness) Hearing
Last day for Class members to opt-out of the Settlement:	21 days prior to Final Approval (Final Fairness) Hearing
Last day for the Parties to file replies to any Class member objections to the Motion for Final Approval or Fee and Cost Application:	Seven days prior to Final Approval (Final Fairness) Hearing

<sup>11</sup> This cap is related to Plaintiffs' expert's damages model, which estimates a price premium of approximately \$23 per pair of eyeglasses. Graber Decl. ¶ 5



Fairness Approval (Final Fairness) Hearing:	At least 100 days after entry of the Preliminary Approval Order
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This schedule is fair to Class Members. It gives Class Members as much time as reasonably practicable to review the preliminary approval papers and Settlement before deciding whether to object or opt out. And it gives three weeks for Class Members to consider the attorneys' application for fees, expenses, and Class Representative service awards before deciding whether to object to any or all of them. Accordingly, Plaintiffs respectfully request that the Court issue the Proposed Order establishing the schedule set forth therein.

## VII. CONCLUSION

For all of the reasons stated above, Class Counsel respectfully submits that both preliminary approval of the Settlement and certification of the proposed Settlement Class are appropriate, and that the Court should appoint interim Co-Lead Class Counsel as Settlement Class Counsel.

July 31, 2023

Respectfully submitted,

/s/ Geoffrey A. Graber

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*Class Counsel*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
BROOKLYN DIVISION

**THOMAS ALLEGRA, YESENIA  
ARIZA, MARIANA ELISE EMMERT,  
STUART ROGOFF, GRACELYNN  
TENAGLIA, and MELISSA  
VERRASTRO** individually and on behalf  
of others similarly situated,

Plaintiffs,

v.

**LUXOTTICA RETAIL NORTH  
AMERICA**, an Ohio corporation d/b/a  
LensCrafters,

Defendant.

**CLASS ACTION**

**DECLARATION OF GEOFFREY GRABER IN  
SUPPORT OF MOTION FOR PRELIMINARY  
APPROVAL OF CLASS SETTLEMENT**

CASE NO. 1:17-cv-05216-PKC-RLM

**DECLARATION OF GEOFFREY GRABER IN SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

I, Geoffrey Graber, declare:

1. I am a Partner at the law firm of Cohen Milstein Sellers & Toll PLLC. I am admitted *pro hac vice* in the above-captioned lawsuit against Luxottica of America d/b/a LensCrafters (“LensCrafters” or “Defendant”). I make this declaration in support of Plaintiffs’ Motion for Preliminary Approval of the Class Settlement, for Certification of the Class for Settlement Purposes, for Appointment of Class Counsel, and to Issue Appropriate Notice to the Class.

2. A true and correct copy of the Settlement Agreement between Plaintiffs Thomas Allegra, et al., individually and on behalf of all other situated (“Plaintiffs”), and Defendant Luxottica Retail North American, d/b/a LensCrafters is attached hereto as Exhibit A.

**Litigation Background**

3. In drafting the complaints at the outset of this litigation, Plaintiffs’ counsel extensively investigated the representations at issue regarding the AccuFit Digital Measuring

System. Specifically, Plaintiffs' counsel reviewed claims by and spoke with confidential witnesses, spoke with consulting and industry experts, and researched the applicable law and defenses.

4. The discovery process in this case included the production of nearly seventy thousand pages of documents. Forty depositions were taken collectively by the parties. Defendant deposed all of the named Plaintiffs in this case, in addition to confidential witnesses and some of plaintiffs' family members. Expert discovery was also extensive. Fifteen expert witnesses produced thousands of pages of reports, and all were deposed.

5. Plaintiffs engaged two damages experts in this case, Richard Eichmann and Sarah Butler. Using Ms. Butler's market analysis, Mr. Eichmann estimated the damages per pair of eyeglasses at \$23.28, or 7.24 percent of the retail price.

#### **Settlement Discussions**

6. The Parties attended mediation before Judge Daniel Weinstein (ret.) and Ambassador David Carden, of JAMS on April 12, 2022 and September 28, 2022.

7. The Parties continued their settlement discussions for many months following both mediations. The Settlement discussions reflected both parties' extensive knowledge of the case record, which had been built up for nearly 5 years when the discussions began.

8. After the parties agreed on the dollar amount of the settlement, they continued to negotiate the specifics of the agreement for several more weeks.

#### **The Notice Plan**

9. The Notice Plan provides for widespread e-mail notice and direct mail notice and a comprehensive settlement website.

10. The notices will be sent out to members of the Settlement Class through the Settlement Administrator, Kroll Settlement Administration, who will use a Settlement Class List put together by LensCrafters using its internal business records.

11. The Parties selected Kroll Settlement Administration because of its extensive experience and excellent reputation for administering class action settlements.

12. I, as Interim Class Counsel, support the Settlement and see it as an excellent result for the class.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 31, 2023

A handwritten signature in blue ink, appearing to read "G. Graber".

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Geoffrey Graber

**Exhibit A**  
**to the Graber Decl.**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

<p>ARIZA, et. al,</p> <p>Plaintiffs,</p> <p>v.</p> <p>LUXOTTICA RETAIL NORTH AMERICA,</p> <p>Defendant.</p>	<p>Case No. 17-cv-5216 (E.D.N.Y.).</p> <p>CLASS ACTION</p>
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**CLASS ACTION SETTLEMENT AGREEMENT**

## CLASS ACTION SETTLEMENT AGREEMENT

Plaintiffs and Class Representatives, Thomas Allegra, Yesenia Ariza, Mariana Elise Emmert, Stuart Rogoff, Gracelyn Tenaglia, and Melissa Verrastro (collectively, “Plaintiffs”), and Defendant Luxottica of America Inc. d/b/a LensCrafters f/k/a Luxottica Retail North America Inc. d/b/a LensCrafters (“LensCrafters”) (collectively, the “Parties”), hereby enter into this Class Action Settlement Agreement (“Settlement” or “Settlement Agreement” or “Agreement”) which provides for the settlement and final resolution of the Action defined below, subject to the approval of the Court. Plaintiffs and LensCrafters are, at times, individually referred to herein as a “Party” and collectively as the “Parties.”

### RECITALS

A. On September 5, 2017, Plaintiffs filed a putative class action complaint against LensCrafters in the United States District Court for the Eastern District of New York captioned *Ariza et al v. Luxottica Retail North America*, No. 1:17-cv-05216-PKC-LB (E.D.N.Y.), the United States District Court for the Northern District of California, captioned *Infante v. Luxottica Retail North America*, No. 3:17-cv-05145-WHA (N.D. Cal.), and in the United States District Court for the Southern District of Florida, captioned *Tenagila v. Luxottica Retail North America*, No. 2:17-cv-14311-DMM (S.D. Fla.).

B. All three cases were consolidated by the Court on December 8, 2017.

C. On September 21, 2018, Plaintiffs filed their Second Amended Consolidated Complaint (the “Second Amended Complaint”).

D. The Second Amended Complaint alleges among other things that LensCrafters’ AccuFit marketing touted the superiority of AccuFit’s 0.1mm measurements over traditional measurements. According to Plaintiffs, this was false or misleading because LensCrafters allegedly lacks the manufacturing capability to fully take advantage of such precise measurements. LensCrafters denies that it committed any wrongdoing.

E. The Second Amended Complaint alleges violations of state consumer protection laws, including; California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*; California’s False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.*; California’s Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*; Florida’s Deceptive and Unfair Trade Practices Act, § 501.201, *et seq.*; New York General Business Law § 349 *et seq.*; New York General Business Law § 350 *et seq.*, and for unjust enrichment and fraud under each state’s common law.

F. LensCrafters filed an answer to the Second Amended Complaint on October 30, 2018.

G. On October 29, 2020, Plaintiffs filed a Motion for Class Certification; and, on December 13, 2021, the Court granted class certification.

H. The parties briefed two motions for summary judgment filed by LensCrafters, the initial of which led the Court to dismiss Plaintiffs’ California equitable claims and permitted Plaintiffs’ remaining claims to proceed, the second is still pending before the Court.

I. This Action has involved over five years of litigation activity, during which time the Parties engaged in substantial pretrial activity in addition to the summary judgment briefing



described above, including extensive written discovery, the production of over 67,000 pages of documents, 40 depositions, the filing of numerous letter motions concerning discovery disputes, expert reports from 13 experts, *Daubert* motions, and preparation for trial, which is set to begin in less than one month on July 10, 2023, absent this Settlement.

J. The Parties have conducted multiple mediations with the assistance of former Judge of the U.S. District Court, District of New Jersey, John C. Lifland, and former California Superior Court Judge, Daniel Weinstein.

NOW, THEREFORE, the Parties, in consideration of the promises, covenants and agreements herein described, and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows:

## 1. DEFINITIONS

In addition to the terms defined above, the following terms shall have the meanings set forth below:

1.1 Recitals. The recitals set forth above are incorporated by reference and are explicitly made part of this Agreement.

1.2 Definitions. As used in this Agreement, capitalized terms shall have the meanings provided below, unless defined elsewhere in the Agreement:

(a) “Action” means the consolidated civil action captioned *Ariza et al v. Luxottica Retail North America*, No. 1:17-cv-05216-PKC-LB, United States District Court for the Eastern District of New York.

(b) “Approved Claim” means a Claim submitted by a Claimant that the Settlement Administrator, in its discretion and subject to review by Plaintiffs’ Counsel, determines to be timely, accurate, complete, and in proper form.

(c) “Approved Claimants” means those Claimants who submitted Approved Claims.

(d) “Claim” means a request for relief pursuant to Section 11.1 of this Settlement Agreement submitted by a Class member on a Claim Form to the Settlement Administrator in accordance with the terms of the Settlement Agreement.

(e) “Claim Form” means the online web form interface and written Claim form to be provided by the Settlement Administrator to Class members. The online Claim Form interface shall be developed by the Settlement Administrator and is subject to review and approval by the Parties. The written Claim Form shall be substantially in the form attached hereto as Exhibit A.

(f) “Claim Deadline” means the date by which all Claim Forms must be postmarked or received by the Settlement Administrator to be considered timely. The Claim Deadline shall be 30 days after the Final Approval (Final Fairness) Hearing.

(g) “Claimant” means a Class member who has submitted a Claim by the Claim Deadline.

(h) “Class” or “Nationwide Settlement Class” means all U.S. residents who, from September 5, 2013 to the date of the Preliminary Approval Order (as defined below), purchased prescription eyeglasses in the United States from LensCrafters after being fitted with AccuFit. Excluded from the Class are LensCrafters; LensCrafters’ employees, officers, and directors, as well as members of their immediate families; LensCrafters’ legal representatives, heirs, and successors; and any judge, justice, or judicial officer who have presided over this matter and the members of their immediate families and judicial staff.

(i) “Class Counsel” shall mean the law firm of Cohen Milstein Sellers & Toll PLLC.

(j) “Class Representatives” means Thomas Allegra, Yesenia Ariza, Mariana Elise Emmert, Stuart Rogoff, Gracelynn Tenaglia, and Melissa Verrastro.

(k) “Effective Date” means the first date by which all of the following events shall have occurred:

i. The Court has entered the Preliminary Approval Order (as defined herein), substantially in the form of Exhibit B attached hereto;

ii. The Court has entered the Final Approval Order and Judgment (as defined herein), substantially in the form of Exhibit C attached hereto, and the Final Approval Order and Judgment has been entered approving the Settlement Agreement in all respects, dismissing the Action with prejudice, and such Final Approval Order and Judgment being immediately appealable; and

iii. The time for appeal from the Final Approval Order and Judgment shall have expired, or if any appeal of the Final Approval Order and Judgment as to the Settlement Agreement is taken, that appeal shall have been finally determined by the highest court, including motions for reconsideration and/or petitions for writ of certiorari, and which Final Approval Order and Judgment is not subject to further adjudication or appeal, and has been confirmed in whole pursuant to the terms of the Settlement Agreement and Final Approval Order and Judgment as entered and effective.

(l) “Email Notice” means the email notice, substantially in the form of Exhibit D attached hereto. The Email Notice will be sent electronically to the last known email address of all Class members to the extent available.

(m) “Escrow Fund” shall be an account established by the Settlement Administrator at a financial institution approved by Class Counsel and LensCrafters, and shall be maintained as a qualified settlement fund pursuant to Treasury Regulation § 1.468B-1, et seq.

(n) “Final Approval (Final Fairness) Hearing” or “Final Approval Hearing” means the hearing at which the Court shall: (i) determine whether to grant final approval to this Settlement Agreement; (ii) consider any timely objections to this Settlement and all responses thereto; and (iii) consider Plaintiffs’ Counsel’s requests for an award of attorneys’ fees, costs and expenses, and Service Awards.

(o) “Final Approval Order and Judgment” shall mean the order finally approving this Settlement Agreement, which shall be substantially in the form of Exhibit C attached hereto.

(p) “Long Form Notice” means the Notice of Proposed Settlement of Class Action to be published on the Settlement Administrator’s website, substantially in the form attached as Exhibit E.

(q) “Net Settlement Fund” shall mean the Settlement Fund less (subject to Court approval) (1) attorneys’ fees plus Class Counsel’s reasonable expenses incurred in this litigation; (2) Service Awards to the Class Representatives; and (3) Notice and Administration Expenses.

(r) “Notice” shall mean, collectively, the communications by which Class members are notified of this Settlement Agreement and the Court’s Preliminary Approval of this Settlement Agreement. This includes the Email Notice, Postcard Notice, and a dedicated website which shall include the Long Form Notice.

(s) “Notice Date” shall be 30 days after entry of the Preliminary Approval Order.

(t) “Party” and “Parties” shall have the meaning set forth in the introductory paragraph of this Settlement Agreement.

(u) “Person(s)” shall mean any natural person, individual, corporation, association, partnership, trust, or any other type of legal entity.

(v) “Plaintiffs” shall have the meaning set forth in the introductory paragraph of this Settlement Agreement.

(w) “Plaintiffs’ Counsel” shall mean the law firms of Cohen Milstein, Sellers & Toll PLLC and Gordon & Partners P.A., Law Office of Christopher Rush, and the Law Office of Charles Reichmann.

(x) “Preliminary Approval” or “Preliminary Approval Order” shall mean the Court’s entry of an order of preliminary approval of this Settlement Agreement, which shall be substantially in the form of Exhibit B attached hereto and submitted to the Court in connection with Preliminary Approval.

(y) “Postcard Notice” or “Short Form Postcard Notice” means the postcard notice to be sent to the last known address of all Class members in accordance with Paragraphs 7.5 and 7.6, substantially in the form as attached hereto as Exhibit D.

(z) “Released Claims” shall have the meaning set forth in Paragraphs 12.1 and 12.2 of this Settlement Agreement, and with regard to Released Claims:

(i) “Plaintiff Releasing Parties” shall have the meaning set forth in Paragraph 12.1 of this Settlement Agreement.

(ii) “LensCrafters Released Parties” shall mean Luxottica of America Inc., including but not limited to its owners, shareholders, parents, subsidiaries, affiliated entities, predecessors, successors, assigns, divisions, officers, directors, principals, managers, employees, agents, independent contractors, joint ventures, general or limited partners or partnerships, contractors, limited liability companies, and legal representatives, as well as the past and present, insurers, law firms, heirs, personal representatives, executors, administrators, predecessors, successors, and assigns of each of the foregoing.

(iii) “LensCrafters Releasing Parties” shall mean Luxottica of America Inc. d/b/a LensCrafters f/k/a Luxottica Retail North America Inc. d/b/a LensCrafters.

(iv) “Releasing Parties” shall mean “Plaintiff Releasing Parties” and “LensCrafters Releasing Parties.”

(aa) “Request for Exclusion” shall mean a request to be excluded from the Class, submitted in accordance with the terms and conditions of this Settlement Agreement and the instructions provided in the Notice.

(bb) “Service Awards” shall mean cash awards paid to the Class Representatives.

(cc) “Settlement Administrator” shall mean Kroll Settlement Administration, LLC.

(dd) “Settlement Fund” shall mean a total of \$39 million paid by LensCrafters into the Escrow Fund, as set out below in Paragraph 3.1.1.

(ee) “Settlement Class List” shall mean a list of all LensCrafters customers that meet the proposed “Class” defined in Section 1.2(i), which LensCrafters will compile based on a good faith review of its records and provide to the Settlement Administrator.

1.3 Singular and Plural. Definitions used herein shall apply to the singular and plural forms of each term defined.

1.4 Gender. Definitions used herein shall apply to the masculine, feminine, and neutral genders of each term defined.

1.5 References to a Person. References to a Person are also to the Person’s permitted successors and assigns.

1.6 Terms of Inclusion. Whenever the words “include,” “includes” or “including” are used in this Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words “without limitation.”

## **2. COOPERATION BY THE PARTIES**

2.1 The Parties and their counsel agree to cooperate fully with each other to promptly execute all documents and take all steps necessary to effectuate the terms and conditions of this Settlement Agreement. The Parties and their counsel further agree to support the final approval of the Settlement Agreement including against any appeal of the Final Approval Order and Judgment including any collateral attack on the Settlement Agreement or the Final Approval Order and Judgment.

## **3. CONSIDERATION TO PLAINTIFFS**

3.1 In exchange for the terms and conditions set forth in this Settlement Agreement, including without limitation the Released Claims set forth in Paragraph 12 below, LensCrafters will provide the following consideration:

3.1.1 Settlement Fund. LensCrafters will pay \$39,000,000 (thirty-nine million dollars) to establish a common fund for the benefit of the Class. The Settlement Fund shall be paid in the following manner:



i. LensCrafters shall pay \$5,500,000 (five million five-hundred thousand dollars) of the Settlement Fund into the Escrow Fund within ten (10) calendar days of Preliminary Approval of the Settlement.

ii. LensCrafters shall pay \$33,500,000 (thirty-three million five hundred thousand dollars) of the Settlement Fund into the Escrow Fund no later than ten (10) calendar days after the Court enters the Final Approval Order and Judgment.

3.2 Distribution of the Net Settlement Fund. This is a claims-based settlement. There will be no reversion of the Settlement Fund to LensCrafters unless the Court does not approve the Settlement or the Settlement is reversed on appeal. All Class members who submit an Approved Claim, as defined above, will receive a pro rata share of the Net Settlement Fund according to the following guidelines:

3.2.1 Those Class members who submit an Approved Claim shall each be eligible to receive up to \$50 for each set of prescription eyeglasses purchased from LensCrafters during the Class Period subject to *pro rata* reduction if the total claims exceed the Net Settlement Fund.

3.2.2 In the event that after distribution of Settlement benefits to the Class described above, there would be sufficient funds (after payment of administrative costs associated with a second distribution) to pay at least \$1 to each Approved Claimant, then such funds will be distributed in a second distribution to the Approved Claimants on a pro rata basis.

3.2.3. In the event that after distribution of Settlement benefits in 3.2.1 and 3.2.2 above there is anything remaining in the Net Settlement Fund then the remaining funds shall be subject to a *cy pres* distribution to be mutually agreed to by the Parties and approved by the Court.

#### **4. CLASS COUNSEL'S FEES AND COSTS**

4.1 Application for Attorneys' Fees and Expenses and Service Awards. As provided herein, and pursuant to the common fund doctrine and/or any applicable statutory fee provision, Class Counsel will apply to the Court by motion for an award to Class Counsel for attorneys' fees of up to 33 and 1/3% of the Settlement Fund, for reimbursement of reasonable expenses, for Class Representative Service Awards not to exceed \$10,000 per Class Representative, and for costs of Notice and settlement administration, to be paid from the Settlement Fund. Any such request shall be filed at least twenty-one (21) days prior to the deadline to object to the Settlement. Attorneys' fees and expenses awarded by the Court shall be allocated among Plaintiffs' Counsel by Class Counsel in a manner that, in Class Counsel's sole opinion, fairly compensates Plaintiffs' Counsel for their respective contributions to the progress of and results obtained in the litigation.

4.2 Disbursement of Attorneys' Fees and Expenses. Plaintiffs' attorneys' fees and expenses awarded by the Court shall be paid from the Settlement Fund to Class Counsel to whom such fees and expenses are awarded by the Court within five (5) business days of the date the Court enters its order awarding such fees and expenses or five (5) business days after entry of the Final Approval Order and Judgment, whichever occurs later, notwithstanding the existence of any timely-filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof. In the event the Court's Final Approval Order and Judgment is reversed, vacated or modified on motion for reconsideration or on appeal such that the amount of attorneys' fees and expenses are reduced or the Settlement is not approved as set forth in this Agreement: 1) in the case of a reduction of the fees and expenses, Class Counsel shall be jointly and severally liable and agrees to repay any excess amount of attorneys' fees and expenses plus

interest at the rate earned by the Settlement Fund to the Escrow Fund within five (5) calendar days of the event that results in reduction of the award; or 2) in the case of the Settlement not being approved or being reversed on appeal, Class Counsel shall be jointly and severally liable and agrees to repay in full all attorneys' fees and expenses plus interest at the rate earned by the Settlement Fund to LensCrafters within five (5) calendar days of the event that results in the Settlement not being approved or being reversed on appeal. Class Counsel hereby agrees to be subject to the jurisdiction of this Court for the purposes of enforcing this provision.

**5. PRELIMINARY APPROVAL OF SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS**

5.1 Preliminary Approval. The Parties acknowledge that prompt approval, consummation, and implementation of this Settlement are essential. The Parties shall cooperate with each other in good faith to carry out the purposes of and effectuate this Settlement, shall promptly perform their respective obligations hereunder, and shall promptly take any and all actions and execute and deliver any and all additional documents and all other materials and information reasonably necessary or appropriate to carry out the terms of this Settlement and the transactions contemplated hereby.

5.1.1 Plaintiffs will file a motion within thirty (30) days of execution of this Agreement, requesting the Court enter a Preliminary Approval Order, which will accomplish the following, among other matters:

a. Find that the requirements of the Federal Rule of Civil Procedure 23(e)(1) have been satisfied such that the Court will likely be able to approve the Settlement under Rule 23(e)(2) and certify the Settlement Class for purposes of judgment on the proposal;

b. Find that the procedures set forth in Section VII of this Agreement, including the dissemination of Class Notice, satisfy the requirements of due process and applicable law and procedure, and approve that manner of providing notice to the Settlement Class;

c. Set a deadline for requesting exclusion from or objecting to the Settlement;  
and

d. Set a date and time for the Final Approval Hearing at which the Court will finally determine the fairness, reasonableness, and adequacy of the proposed Settlement.

5.2 Certification of Settlement Class. Promptly following the execution of this Agreement, and as part of the settlement approval process contemplated in Federal Rule of Civil Procedure 23(e), the parties shall cooperate to seek certification of a Nationwide Settlement Class under Federal Rule of Civil Procedure 23(a) and (b)(3), including the appointment of Class Counsel under Federal Rule of Civil Procedure 23(g).

5.2.1 In entering into this Agreement, LensCrafters does not concede that certification of the National Settlement Class for litigation purposes would have been appropriate in this Action. LensCrafters' agreement to provisional certification does not constitute an admission of wrongdoing, fault, liability, or damage of any kind to Class Representatives or any of the provisional Settlement Class members. LensCrafters is entering into this Agreement to eliminate the burdens, distractions, expense, and uncertainty of further litigation.

5.2.2 In the event that the Court does not enter a Final Approval Order (or if a Final Approval Order is reversed on appeal), all of LensCrafters' defenses to class certification

will be preserved, and Plaintiffs and Class Counsel will be precluded from using the provisions of this Section or the Court's certification of the Settlement Class to suggest that a litigation class should be certified.

## **6. SETTLEMENT ADMINISTRATOR**

6.1 The Settlement Administrator will work without limitation to: (i) provide Notice to potential Class members; (ii) maintain a Settlement website; (iii) process Settlement Claim Forms; (iv) confirm the issuance of payments to the Claimants; and (v) provide any necessary certifications to the Court concerning the administration and processing of Claims. The Settlement Administrator will be available to respond to inquiries from Class Counsel, counsel for LensCrafters, and Class members.

6.2 Each Party shall be entitled to full and equal access to information regarding costs expended by the Settlement Administrator in providing Notice and processing Claims in connection with the Settlement and all aspects of Notice, administration, and processing of Claims.

6.3 The Settlement Administrator, subject to such supervision and direction of the Court and/or Class Counsel as may be necessary or as circumstances may require, shall administer and/or oversee distribution of the Settlement Fund to Class members pursuant to this Agreement.

6.4 The Settlement Administrator and Class Counsel are responsible for communicating with Class members regarding the distribution of payments under the Settlement.

## **7. NOTICE OF SETTLEMENT AND ADMINISTRATION OF CLAIMS**

7.1 The Settlement Class List shall be used to ensure Notice is appropriately disseminated to the Settlement Class.

7.2 LensCrafters shall, to the extent it possesses and can identify through reasonable means, provide the Settlement Administrator with the Settlement Class List and for all such persons LensCrafters shall, to the extent it possesses and can identify through reasonable means, provide the individual's (i) name, (ii) email address, (iii) mailing address, and (iv) the number of prescription eyeglasses purchased from LensCrafters during the Class time period.

7.3 LensCrafters will compile the Settlement Class List with all of the information listed in the preceding paragraph and provide it to the Settlement Administrator within seven (7) days after the Court enters a Preliminary Approval Order.

7.4 The contents of the Settlement Class List shall not be used for any purpose other than for providing Notice to the Class and disbursement of the Net Settlement Fund as described in this Agreement, and the contents of the Settlement Class List shall be treated as private and confidential information and not disseminated, in any manner, to anyone other than the Settlement Administrator. The Parties agree to seek entry of an order by the Court mandating that the Settlement Class List be treated as private, confidential, and proprietary.

7.5 As soon as reasonably practical after the issuance of a Preliminary Approval Order, the Settlement Administrator shall send Notice to the Class via their email addresses and, to the extent there are no valid email addresses or emails are returned undeliverable, their physical mailing addresses, to the extent listed in the Settlement Class List.

7.6 For all Class members for whom the emailed and mailed Class Notice is returned without forwarding address information, the Settlement Administrator shall use reasonable skip

tracing techniques to locate an updated email or physical mailing address to provide notice to the best-known address resulting from that search.

7.7 The Settlement Administrator shall diligently report to the Parties the number of notices originally emailed to the Class, the number of notices mailed to the Class, the number of notices initially returned as undeliverable, the number of additional notices mailed after an advanced address search, and the number of those additional notices returned as undeliverable. The Settlement Administrator shall also be responsible for maintaining a current Settlement Class List with updated email and mailing addresses.

7.8 The Settlement Administrator shall set up and maintain a website where the Settlement Administrator will post the Long Form Settlement Notice and Claim Form; a copy of this Agreement; the motion and all supporting papers requesting entry of a Preliminary Approval Order; the Preliminary Approval Order; the motion and all supporting papers requesting entry of a Final Approval Order; any motion and all supporting papers requesting payment of attorneys' fees, litigation cost reimbursements, and class representative Service Awards; and any other documents or information jointly requested by the Parties. The website will also list the date of the Final Approval Hearing.

7.9 The Class Notice will list the URL for the settlement website described in the preceding paragraph as well as a toll-free number for Settlement Class members to call to request a paper copy of the Long Form Settlement Notice and Claim Form, or other pertinent information.

7.10 No later than fourteen (14) days before the Final Approval Hearing, the Settlement Administrator will submit a declaration attesting to the dissemination of Notice consistent with this Agreement.

7.11 The Parties agree that the notice plan set forth in this section constitutes the best notice practicable under the circumstances for the Settlement Class.

7.12 Due to the number of potential Class members, it is expected that the Settlement Administrator will need to send such electronic mail notifications over a period of at least thirty (30) days. The Settlement Administrator shall use commercially reasonable efforts to complete electronic mailing of these notices to Class members by the Notice Date.

7.13 LensCrafters will cause the Settlement Administrator to serve the notice of settlement required by 28 U.S.C. § 1715 within ten (10) days of the filing of the motion seeking a Preliminary Approval Order. No later than seven (7) days before the Final Approval Hearing, LensCrafters shall cause the Settlement Administrator to file a declaration attesting to its compliance with this provision.

7.14 LensCrafters and its counsel shall not have any responsibility for or liability whatsoever with respect to (i) any act, omission or determination of Class Counsel, the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any taxes, expenses and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns. LensCrafters also shall have no obligation to communicate with Class members and others regarding amounts paid under the



Settlement.

7.15 Plaintiffs and Class Counsel shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

## **8. REQUESTS FOR EXCLUSION**

8.1 Class members who have not previously opted out of the Class and wish to exclude themselves from the Class must submit a written Request for Exclusion. To be effective, such a request must include the Class member's name, mailing address, e-mail address, the signature of the Class member, and substantially the following statement, "I want to opt out of the Class certified in the *Ariza v. Luxottica* litigation." Requests for Exclusion may be submitted via First Class U.S. Mail paid by the Class member and sent to the Settlement Administrator at the address provided in the Long Form Notice.

8.2 The Settlement Administrator shall promptly log each Request for Exclusion that is received and shall provide copies of the log and all such Requests for Exclusion to Plaintiffs' Counsel and counsel for LensCrafters within ten (10) business days after the deadline fixed for Class members to request exclusion. In addition, at any time prior to the deadline to request exclusion from the Class, either Party may request a copy of the then-current version of the log of Requests for Exclusion, which shall be provided by the Settlement Administrator within three (3) business days after the request is received.

8.3 Within ten (10) business days after the deadline fixed for Class members to request exclusion from the Class, Plaintiffs' Counsel shall forward to the Settlement Administrator and counsel for LensCrafters copies of any Requests for Exclusion received by Plaintiffs' Counsel.

## **9. OBJECTIONS**

9.1 Class members who do not request exclusion from the Class may object to the Settlement. Class members who choose to object to the Settlement must file written notices of intent to object with the Court and serve copies of any such objection on counsel for the Parties, as set forth in more detail in Paragraph 9.2. Any Class member may appear at the Final Approval (Final Fairness) Hearing, in person or by counsel, and be heard to the extent permitted under applicable law and allowed by the Court, in opposition to the fairness, reasonableness and adequacy of the settlement, and on Plaintiffs' Counsel's application for an award of attorneys' fees and costs. The right to object to the Settlement must be exercised individually by an individual Class member and, except in the case of a deceased, minor, or incapacitated Person or where represented by counsel, not by the act of another Person acting or purporting to act in a representative capacity.

9.2 To be effective, a notice of intent to object to the Settlement that is filed with the Court must:

(a) Contain a caption that includes the name of the Action and the case number as follows: *Ariza et al v. Luxottica Retail North America*, No. 1:17-cv-05216-PKC-LB.

(b) Provide the name, address, telephone number and signature of the Class member filing the intent to object;

(c) Provide the approximate date of his/her purchase(s) of prescription eyeglasses from LensCrafters;

(d) Be filed with the United States District Court for the Eastern District of New York Clerk of the Court not later than thirty (30) days prior to the Final Approval (Final Fairness) Hearing;

(e) Be served on Plaintiffs' Counsel and counsel for LensCrafters so as to be received no later than thirty (30) days prior to the Final Approval (Final Fairness) Hearing;

(f) Contain the name, address, bar number and telephone number of the objecting Class member's counsel, if represented by an attorney;

(g) Contain the number of class action settlements objected to by the Class member in the last three years; and

(h) State whether the objecting Class member intends to appear at the Final Approval (Final Fairness) Hearing, either in person or through counsel.

9.3. In addition to the foregoing, if the Class member is represented by counsel and such counsel intends to speak at the Final Approval (Final Fairness) Hearing, a notice of intent to object must contain the following information:

(a) A detailed statement of the specific legal and factual basis for each and every objection; and

(b) A detailed description of any and all evidence the objecting Class member may offer at the Final Approval (Final Fairness) Hearing, including copies of any and all exhibits that the objecting Class member may introduce at the Final Approval (Final Fairness) Hearing.

9.4. Any Class member who does not file a timely and adequate notice of intent to object in accordance with this Section 9 waives the right to object or to be heard at the Final Approval (Final Fairness) Hearing and shall be forever barred from making any objection to the Settlement. To the extent any Class member objects to the Settlement, and such objection is overruled in whole or in part, such Class member will be forever bound by the Final Approval Order and Judgment of the Court.

9.5. No later than fifteen (15) calendar days before the Final Approval (Final Fairness) Hearing, the Settlement Administrator shall provide to Plaintiffs' Counsel and counsel for LensCrafters the following information:

(a) The number of e-mail notices sent to Class members;

(b) The number of Postcard Notices mailed to Class members;

(c) The approximate number of visits to the Settlement website from the date of entry of a Preliminary Approval Order;

(d) The number of Class members who have to date submitted Approved Claim forms;

(e) The number of Class members who have requested exclusion from the Settlement; and

(f) Such other similar tracking information reasonably requested by Plaintiffs' Counsel or counsel for LensCrafters.

#### **10. FINAL APPROVAL**

10.1 The Notice to the Class shall contain a date, time and location for the Final Approval (Final Fairness) Hearing to be conducted by the Court. The Final Approval (Final Fairness) Hearing shall be set by the Court after entry of the Preliminary Approval Order on a date at least one hundred (100) days after entry of the Preliminary Approval Order, so as to comply with the Class Action Fairness Act.

10.2 Upon final approval of this Settlement Agreement, the Final Approval Order and Judgment shall be entered by the Court, which shall, *inter alia*:

(a) Grant final approval to the Settlement and Settlement Agreement as fair, reasonable, adequate, in good faith and in the best interests of the Class, and order the Parties to carry out the provisions of this Settlement Agreement;

(b) Dismiss with prejudice the Action against LensCrafters and/or the LensCrafters Released Parties;

(c) Adjudge that the Plaintiff Releasing Parties are conclusively deemed to have released the LensCrafters Released Parties and that LensCrafters is conclusively deemed to have released the Plaintiff Releasing Parties.

(d) Bar and permanently enjoin each Class member from prosecuting against the LensCrafters Released Parties any and all of the Released Claims; and

(e) Reserve continuing jurisdiction by the Court to preside over any ongoing proceedings relating to the Claims or this Settlement Agreement.

#### **11. CLAIM PROCESSING AND CASH PAYMENTS**

11.1 Class members must electronically complete and sign the appropriate Claim Form and submit it to the Settlement Administrator via an electronic Claim Form submission process to be established by the Settlement Administrator, submitted not later than thirty (30) calendar days after entry of the Final Approval Order. For those Class members who have requested hard copy Claim Forms, they may submit such Claim Forms via U.S. mail. A Claim Form shall be considered defective if the Claimant fails to timely submit the Claim Form, provide the required information on the Claim Form, or to electronically (or in the case of a hard copy Claim Form, manually) sign certifying that the Claimant is entitled to the benefit sought. The deadline for submitting a Claim Form set forth herein shall be the "Claim Form Submission Date."

11.2 Class members will be entitled to file a Claim for each pair of prescription eyeglasses they purchased from LensCrafters during the Class Period.

11.3 Cash payments made pursuant to Paragraph 3.2 above will be made to Claimants via electronic means based on the information provided on the Claim Form, or in the event the Claimant so requests, a physical check will be mailed to the address provided on the Claim Form.

11.4 Ninety (90) calendar days or as soon as practical after the entry of the Final Approval Order and Judgment and the exhaustion of any appeals (e.g., deadline for filing notice of appeal), the Settlement Administrator will distribute payments, as set forth in Paragraph 11.3 above, to the Class members who have submitted an Approved Claim, as well as Service Awards to the Class Representatives as set forth in Paragraph 4.1. However, in no event will payments be made to Class members or Class Representatives until the Settlement Fund is fully funded by LensCrafters, pursuant to Paragraph 3.1.1(i)-(ii) above.

11.5 Within sixty (60) calendar days or as soon as practical after the entry of the Final Approval Order, the Settlement Administrator will notify Class Counsel of any Class member who has submitted a deficient Claim Form, and those Class members will be given ten (10) calendar days to cure the deficiency.

11.6 The Class members acknowledge that the Claims process may take longer than described above due to the number of potential Class members. The Settlement Administrator will employ all due commercially reasonable speed to distribute claimed cash payments as set forth herein.

11.7 Other than the Service Awards set forth in Paragraph 3.1.2, the cash payments set forth above shall be the only payments to which any Class member will be entitled pursuant to this Settlement Agreement, and each Class member will only be entitled to such cash payment if they submit an Approved Claim.

## **12. RELEASE BY ALL SETTLEMENT CLASS MEMBERS**

12.1 For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each member of the Class who has not filed a valid Request for Exclusion ("Plaintiff Releasing Parties"), on behalf of themselves, their current, former, and future heirs, executors, administrators, successors, attorneys, insurers, agents, representatives, and assigns, and any Person they represent, fully and forever release, acquit, and discharge the LensCrafters Released Parties collectively, separately, individually and severally, from, and covenant not to sue for, any and all claims, suits, demands, rights, liabilities, grievances, damages, remedies, liquidated damages, punitive damages, attorneys' fees, penalties, losses, actions, and causes of action of every nature and description whatsoever, whether known or unknown, suspected or unsuspected, asserted or unasserted, whether in tort, contract, statute, rule, ordinance, order, regulation, common law, public policy, equity, or otherwise, whether class, representative, individual or otherwise in nature, that were alleged or asserted in the Action or that arise out of or relate directly or indirectly in any manner whatsoever to facts alleged or asserted or that could have been alleged or asserted in the Action ("Plaintiff Released Claims"). It is expressly intended and understood by the Parties that Plaintiff Released Claims shall in all respects be construed as broadly as possible, consistent with all applicable law, as a complete settlement, accord, and satisfaction of the Plaintiff Released Claims; provided, however that the Plaintiff Released Claims shall not include any claims to enforce the Settlement Agreement or Plaintiffs' Counsel's request for fees and expenses in the Action pursuant to Paragraph 4. With respect to the Plaintiff Released Claims, the Plaintiff Releasing Parties shall expressly waive any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

**A general release does not extend to claims which  
the creditor does not know or suspect to exist in his**



**or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

In agreeing to the foregoing waiver, the Plaintiff Releasing Parties expressly acknowledge and understand that they may hereafter discover facts in addition to or different from those which they now believe to be true with respect to the subject matter of the matters released herein, but expressly agree that they have taken these possibilities into account in electing to participate in this release, and that the release given herein shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different facts, as to which the Releasing Parties expressly assume the risk.

12.2 The Plaintiff Releasing Parties, on behalf of themselves, their current, former, and future heirs, executors, administrators, successors, attorneys, insurers, agents, representatives, and assigns, and any Person they represent, agree not to sue or otherwise make a claim against any of the LensCrafters Released Parties that is in any way related to the LensCrafters Released Claims.

12.3 For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LensCrafters fully and forever releases, acquits, and discharges Plaintiff Releasing Parties, collectively, separately, individually and severally, from, and covenant not to sue for, any and all claims, suits, demands, rights, liabilities, grievances, damages, remedies, liquidated damages, losses, actions, and causes of action of every nature and description whatsoever, whether known or unknown, suspected or unsuspected, asserted or unasserted, whether in tort, contract, statute, rule, ordinance, order, regulation, common law, public policy, equity, or otherwise, whether class, representative, individual or otherwise in nature, that were alleged or asserted in the Action, or that arise out of or relate directly or indirectly in any manner whatsoever to facts alleged or that could have been alleged or asserted in the Action ("LensCrafters Released Claims"); provided, however that the LensCrafters Released Claims shall not include any claims to enforce the Settlement Agreement or Plaintiffs' Counsel's request for fees and expenses in the Action pursuant to Paragraph 4. With respect to the LensCrafters Released Claims, LensCrafters shall expressly waive any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

In agreeing to the foregoing waiver, LensCrafters expressly acknowledges and understands that it may hereafter discover facts in addition to or different from those which it now believes to be true with respect to the subject matter of the matters released herein, but expressly agrees that it has taken these possibilities into account in electing to participate in this release, and that the release given herein shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different facts, as to which the LensCrafters expressly assume the risk.

12.4 As of the Effective Date, by operation of the entry of the Final Approval Order and Judgment, each Class member who does not file a valid Request for Exclusion, automatically,

upon entry of the Final Approval Order and Judgment, shall be held to have fully released, waived, relinquished and discharged the LensCrafters Released Parties from the Plaintiff Released Claims, to the fullest extent permitted by law, and shall be enjoined from continuing, instituting or prosecuting any legal proceeding against the LensCrafters Released Parties relating in any way whatsoever to the Plaintiff Released Claims.

12.5 The Plaintiff Releasing Parties and LensCrafters stipulate and agree that upon the Court's entry of the Final Approval Order and Judgment, this Action shall be dismissed with prejudice.

### **13. PUBLIC STATEMENTS**

13.1 All public disclosures required by law, such as settlement notice, shall be neutral and mutually acceptable to both parties. The Parties shall not make any public statements disparaging any other of the Parties. Any public comments from the Parties about the settlement or litigation, other than disclosures required by law, shall not substantially deviate from words to the effect that the Parties reached a mutually acceptable resolution by way of a mediated settlement. The Parties hereby agree that they will not issue any press releases related to this Settlement Agreement or the Action. Notwithstanding the foregoing, Class Counsel shall be permitted to post on its website that it secured final approval of a \$39 million settlement from LensCrafters for a nationwide class. In addition, a Party may publicly respond to an article or other public statement if the article or other public statement contains negative or disparaging comments about that Party, provided that the Party shall provide notice of such public response before publication.

### **14. AMENDMENT**

14.1 This Agreement may be modified, amended or supplemented only by written agreement signed by or on behalf of all Parties and, if such modification, amendment or supplement is to be executed and become effective subsequent to the entry of the Preliminary Approval Order, only with the approval of the Court.

### **15. AUTOMATIC TERMINATION OF SETTLEMENT AGREEMENT AND TERMINATION RIGHTS**

15.1 In the event that this Settlement Agreement does not become final for any reason,

(a) Except as expressly stated herein, this Settlement Agreement shall automatically become null and void and have no further force or effect, and all proceedings that have taken place with regard to this Settlement Agreement and the Settlement shall be without prejudice to the rights and contentions of the Parties hereto;

(b) Each Party shall be restored to their respective positions as of the date this Settlement Agreement is executed;

(c) The amount deposited by LensCrafters into the Escrow Account, plus accrued interest, shall be refunded to LensCrafters, less any costs incurred by the settlement administrator in providing notice and processing claims. Further, if the Final Approval Order is reversed on appeal, then the Parties hereby agree that at LensCrafters' request and in LensCrafters' sole discretion, the full balance of the Settlement Amount then-remaining in the Escrow Account, including accrued interest, shall be refunded to LensCrafters within five (5) calendar days of said request. Class Counsel must also repay to LensCrafters all funds withdrawn from the Escrow

Account for Attorneys' Fees and Costs awarded by the Court to Class Counsel within five (5) calendar days of said request.

(d) This Settlement Agreement, all of its provisions (including, without limitation, any provisions concerning Class certification), and all negotiations, statements and proceedings relating to this Settlement Agreement shall be without prejudice to the rights of any of the Parties, each of whom shall be restored to their respective position as of the date of signing this agreement;

(e) This Settlement Agreement, any provision of this Settlement Agreement, and the fact of this Settlement Agreement having been made, shall not be admissible or entered into evidence for any purpose whatsoever; nor will any information produced solely in connection with any of the Parties' mediations be admissible. (f) Any judgment or order entered in connection with this Settlement Agreement will be vacated and will be without any force or effect; and

(g) This Section shall survive any termination of this Settlement Agreement.

15.2 LensCrafters shall have the right to terminate this Settlement Agreement by serving on Class Counsel and filing with the Court a notice of termination within fourteen (14) days after its receipt of the information provided under Paragraphs 8.2 and 8.3, if the number of Class members who file valid Requests for Exclusion equals or exceeds 5% of the Class.

## **16. SEVERABILITY**

16.1 With the exception of the provisions contained in Section 12 herein, in the event any covenant, term or other provision contained in this Settlement Agreement is held to be invalid, void or illegal, the same shall be deemed severed from the remainder of this Settlement Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision herein. If any covenant, condition or other provision herein is held to be invalid due to its scope or breadth, such covenant, condition or other provision shall be deemed valid to the extent of the scope or breadth permitted by law.

## **17. INCORPORATION OF EXHIBITS**

17.1 All exhibits attached hereto are hereby incorporated by reference as though set forth fully herein and are a material part of this Settlement Agreement. Any notice or other exhibit attached hereto that requires approval of the Court must be approved without material alteration from its current form in order for this Settlement Agreement to become effective.

## **18. GOVERNING LAW AND COMPLIANCE WITH TERMS OF SETTLEMENT AGREEMENT**

18.1 All questions with respect to the construction of this Settlement Agreement and the rights and liabilities of the parties hereto shall be governed by the laws of the State of New York, without giving effect to its law of conflict of laws.

18.2 The Court shall have continuing jurisdiction to resolve any dispute that may arise with regard to the terms and conditions of this Settlement Agreement as well as enforce the injunctions set forth in this Agreement, and the Parties hereby consent to such jurisdiction.

## **19. NO ADMISSION OF WRONGDOING**

19.1 This Settlement Agreement is made to terminate any and all controversies, real or potential, asserted or unasserted, and claims for injuries or damages or any nature whatsoever, real



or potential, asserted or unasserted, between LensCrafters and the Plaintiffs. Neither the execution and delivery of this Settlement Agreement nor compliance with its terms shall constitute an admission of any fault or liability on the part of LensCrafters, or any of its respective agents, attorneys, representatives, or employees. LensCrafters in no way admits fault or liability of any sort and, in fact, LensCrafters expressly denies fault and liability.

**20. PREPARATION OF SETTLEMENT AGREEMENT, SEPARATE COUNSEL AND AUTHORITY TO ENTER SETTLEMENT AGREEMENT**

20.1 The Parties and their counsel have each participated and cooperated in the drafting and preparation of this Settlement Agreement. Hence, in any construction to be made of this Settlement Agreement, the same shall not be construed against any Party as drafter of the Settlement Agreement.

20.2 The Parties each acknowledge that he, she or it has been represented by counsel of his, her or its own choice throughout all of the negotiations that led to the execution of this Settlement Agreement and in connection with the preparation and execution of this Settlement Agreement.

20.3 The Parties each represent and warrant that each of the Persons executing this Settlement Agreement is duly empowered and authorized to do so.

**21. HEADINGS**

21.1 The headings contained in this Settlement Agreement are for reference only and are not to be construed in any way as a part of the Settlement Agreement.

**22. COUNTERPARTS**

22.1 This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**23. BINDING EFFECT**

23.1 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and to their respective heirs, assigns, and successors-in-interest.

**24. ENTIRE AGREEMENT**

24.1 This Settlement Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior contemporaneous oral and written agreements and discussions. Each of the Parties covenants that he, she or it has not entered into this Settlement Agreement as a result of any representation, agreement, inducement, or coercion, except to the extent specifically provided herein. Each Party further covenants that the consideration recited herein is the only consideration for entering into this Settlement Agreement and that no promises or representations of another or further consideration have been made by any Person.

**25. NOTICE**

25.1 All notices, requests, demands and other communications required or permitted to be given pursuant to this Settlement Agreement shall be in writing and shall be delivered



personally or mailed postage pre-paid by First Class U.S. Mail to the following persons at their addresses set forth as follows:

**Class Counsel**

COHEN MILSTEIN SELLERS & TOLL PLLC  
Geoffrey Graber  
1100 New York Avenue, N.W.  
Suite 500 East  
Washington, DC 20005-3964

**LensCrafters' Counsel**

BLANK ROME LLP  
Frank A. Dante  
One Logan Square  
130 N. 18th Street  
Philadelphia, PA 19103

WHEREFORE, the undersigned, being duly authorized, have caused this Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on the last date of execution by all undersigned representatives of the Parties.

DATED June 27, 2023

**PLAINTIFF:**



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Geoffrey Graber  
COHEN MILSTEIN SELLERS & TOLL PLLC  
1100 New York Avenue, N.W., Suite 500 East  
Washington, DC 20005-3964  
Telephone: (202) 408-4600  
**Plaintiffs' Class Counsel**

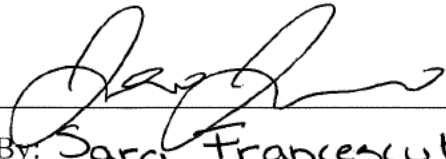
**LENSCRAFTERS:**



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Frank A. Dante  
BLANK ROME LLP  
One Logan Square  
130 N. 18th Street  
Philadelphia, PA 19103  
Telephone: (215) 569-5645

**Attorneys for Luxottica of America Inc. d/b/a LensCrafters f/k/a Luxottica Retail North America Inc. d/b/a LensCrafters**



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By: Sara Francescutto

Its: CFO North America

Date: 6/21/23

**Luxottica of America Inc. d/b/a LensCrafters f/k/a Luxottica Retail North America Inc. d/b/a LensCrafters**

# EXHIBIT A

## AccuFit Class Action Settlement

### CLAIM FORM

### INSTRUCTIONS

Plaintiffs claim that LensCrafters made certain statements regarding its AccuFit Digital System that were allegedly false or misleading. LensCrafters strongly denies Plaintiffs' allegations and asserts that it never made any false or misleading statements about AccuFit.

You are a Class Member if you are a United States resident who, from September 5, 2013 to [date of Preliminary Approval Order] purchased prescription eyeglasses in the United States from LensCrafters after being fitted with AccuFit. To be eligible for payment you must submit a valid Claim no later than [REDACTED], 2023.

#### **How Do I Fill Out and Submit This Claim Form?**

If you believe you are eligible and you would like to submit a claim, you have two options: (1) complete and submit the online Claim Form at [www.AccuFitClassAction.com](http://www.AccuFitClassAction.com), or (2) complete a paper Claim Form and send it by first-class mail to:

AccuFit Class Action Settlement  
c/o Kroll Settlement Administration, LLC  
P.O. Box 5324  
New York, NY 10150-5324

Your claim must be submitted online, or post-marked, by [REDACTED], 2023. Please read and follow these instructions carefully. Please do not omit any information asked for. Failure to provide complete and accurate information may result in a delay in the processing of your Claim Form.

**Settlement payments may be digitally sent to you via email.** Please ensure you provide a current, valid email address and mobile phone number with your Claim submission. During the Claims submission process, you will be provided with a number of digital payment options to receive your Settlement payment. If the information you include with your submission becomes invalid or outdated for any reason, it is your responsibility to provide accurate contact information to the Settlement Administrator to receive a payment. If you do not provide a valid email address, a physical check will be mailed to you at the street address you provide below.

The information provided on this Claim Form will be used solely by the Court-approved Settlement Administrator for the purposes of administering the Settlement and will not be provided to any third party or sold for marketing purposes.

**ACCUFIT CLASS ACTION CLAIM FORM**

**NAME\***

*FIRST NAME, LAST NAME*

**STREET ADDRESS\***

**APT**

**CITY\***

**STATE\***

**ZIP\***

<input type="text"/>	<input type="text"/>	<input type="text"/>
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**MOBILE PHONE NUMBER\***

<input type="text"/>	<input type="text"/>	-	<input type="text"/>
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**EMAIL ADDRESS\***

**VERIFY EMAIL ADDRESS\***

Please ensure you provide a current, valid email address and mobile phone number with your Claim submission. If the email address or mobile phone number you include with your submission becomes invalid for any reason, it is your responsibility to provide the Settlement Administrator with a current, valid email address and mobile phone number for payment.

Please complete the below chart with the information requested:

<b>PURCHASE DATE</b>	<b>LENSCRAFTERS LOCATION OF PURCHASE (CITY AND STATE)</b>	<b>STATE OF RESIDENCE WHEN PURCHASE WAS MADE</b>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

**DOCUMENTATION**

For a Claim to be considered valid, you must provide proof of purchase by submitting one (1) of the following:

1. A copy of the receipt(s) of the purchase (must identify the prescription glasses model, date of purchase,

- and LensCrafters location); or
2. A statement under penalty of perjury that the Class Member purchased the claimed prescription glasses after being fitted with AccuFit.

Your failure to complete and submit the Claim Form filed online or postmarked by [REDACTED], 2023, may prevent you from receiving any payment from the Settlement. Claim Forms must be substantially complete at the time of submission to be considered timely filed. Submission of this Claim Form does not ensure that you will share in the payment. The Settlement Administrator reserves the right to dispute the material facts concerning your claim and may require additional information and/or documentation to validate your claim.

## **CERTIFICATION**

By signing this Claim submission, I certify, under penalty of perjury, that the information included with this Claim submission is accurate and complete to the best of my knowledge, information, and belief. If I am submitting this Claim submission on behalf of a Claimant, I certify that I am authorized to submit this Claim submission on the individual's behalf. I am, or the individual on whose behalf I am submitting this Claim submission is, a member of the Class, and have not submitted a request to exclude myself, or "opt out of," the Settlement. I agree and consent to be communicated with electronically via email and/or mobile phone text (message & data rates may apply). I agree to furnish additional information regarding this Claim submission if so requested to do so by the Settlement Administrator.

**SIGNATURE\***

**DATE\***

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# **EXHIBIT B**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
BROOKLYN DIVISION**

THOMAS ALLEGRA, YESENIA ARIZA,  
MARIANA ELISE EMMERT, STUART  
ROGOFF, GRACELYNN TENAGLIA, and  
MELISSA VERRASTRO, individually and  
on behalf of others similarly situated,

Plaintiffs,

v.

LUXOTTICA RETAIL NORTH AMERICA  
d/b/a LensCrafters,

Defendant.

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT AND AUTHORIZING  
DISSEMINATION OF NOTICE**

CASE NO. 1:17-cv-05216-PKC-RLM

Upon consideration of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (the "Motion"), it is hereby **ORDERED** as follows:

1. The Motion is **GRANTED**.
2. The Court finds that the settlement set forth in the Settlement Agreement dated June \_\_\_, 2023 (the "Settlement" or "Settlement Agreement"), between Defendant Luxottica of America Inc. d/b/a LensCrafters f/k/a Luxottica Retail North America Inc. d/b/a LensCrafters ("Defendant") and Plaintiffs Thomas Allegra, Yesenia Ariza, Mariana Elise Emmert, Stuart Rogoff, Gracelynn Tenaglia, and Melissa Verrastro (collectively, "Plaintiffs") individually and as representatives of the Class, subject to final determination following proper notice and a fairness hearing, is sufficiently fair, reasonable, and adequate to authorize dissemination of class notice. This Order incorporates herein, and makes a part thereof, the Settlement Agreement, including all Exhibits thereto. Unless otherwise provided herein, the terms defined in the Settlement Agreement shall have the same meanings herein.



3. This Court, by Order of December 13, 2021, previously certified three Classes: all residents of New York who purchased prescription eyeglasses from LensCrafters after being fitted with AccuFit from September 5, 2014 to December 13, 2021; all residents of Florida who purchased prescription eyeglasses from LensCrafters after being fitted with AccuFit from September 5, 2013 to December 13, 2021; all residents of California who purchased prescription eyeglasses from LensCrafters after being fitted with AccuFit from September 5, 2014 to December 13, 2021. The Settlement Class means all U.S. residents who, from September 5, 2013 to the date of the Preliminary Approval Order (as defined below), purchased prescription eyeglasses in the United States from LensCrafters after being fitted with AccuFit.

4. Class members who have not previously opted out of the Class and who now wish to be excluded from the Class shall mail a written Request for Exclusion to the Settlement Administrator, so that it is postmarked no later than twenty one (21) days before the hearing on final settlement approval (the “Final Approval (Final Fairness) Hearing”), and shall clearly state the following: the name, address, email address, telephone number, the signature of the individual or entity who wishes to be excluded from the Class; substantially the following statement, “I want to opt out of the Class certified in the Ariza v. Luxottica litigation;” and shall provide all such information as may be required by the Settlement Agreement or requested by the Settlement Administrator.

5. A person who submits a valid Request for Exclusion shall not be bound by the Settlement Agreement, or the Final Approval Order and Judgment. Not later than ten (10) days before the Final Approval (Final Fairness) Hearing, the Settlement Administrator shall prepare and deliver to Class Counsel, who shall file it with the Court, and counsel for Defendant, a report stating the total number of Persons who have submitted timely and valid Requests for Exclusion

from the Class and the names of such Persons. Such Persons will not be entitled to receive any relief under the Settlement Agreement.

6. Any Class member who does not properly and timely mail a Request for Exclusion as set forth in paragraph 4 above shall be automatically included in the Class and shall be bound by all the terms and provisions of the Settlement Agreement, the Settlement, this Order Granting Preliminary Approval of Settlement, and the Final Approval Order and Judgment, whether or not such Class member received actual notice or shall have objected to the Settlement and whether or not such Class member makes a Claim upon or participates in the Settlement.

7. To effectuate the Settlement Agreement and Settlement, the Settlement Administrator shall be responsible for the receipt and processing of all Requests for Exclusion and Claim Forms. The Settlement Administrator shall preserve (on paper or transferred in to electronic format) all Requests for Exclusion, Claim Forms, and any and all other written communications from Class members in response to the Notices for a period of three (3) years, or pursuant to further order of the Court. All written communications received by the Settlement Administrator from Class members relating to the Settlement Agreement shall be available at all reasonable times for inspection and copying by Plaintiffs' Counsel and counsel for Defendant, including prior to payments being mailed to each Class member.

8. Class members who have not requested exclusion from the Class may object to the Settlement. Class members who choose to object to the Settlement must file written notices of intent to object with the Court and serve copies of any such objection on counsel for the Parties. Any Class member may appear at the Final Approval (Final Fairness) Hearing, in person or by counsel, and be heard to the extent permitted under applicable law and allowed by the Court, in opposition to the fairness, reasonableness and adequacy of the Settlement, and on Plaintiffs'

Counsel's application for any award of attorneys' fees and costs. The right to object to the Settlement must be exercised individually by an individual Class member and, except in the case of a deceased, minor, or incapacitated Person or where represented by counsel, not be the act of another Person acting or purporting to act in a representative capacity.

9. To be effective, a notice of intent to object to the Settlement that is filed with the Court must:

(a) Contain a caption that includes the name of the case as follows: *Ariza et al v. Luxottica Retail North America*, No. 1:17-cv-05216-PKC-LB.

(b) Provide the name, address, telephone number and signature of the Class member filing the intent to object;

(c) Provide the approximate date of his/her purchase(s) of prescription eyeglasses in the United States from LensCrafters after being fit with AccuFit;

(d) Be filed with the United States District Court for the Eastern District of New York Clerk of the Court not later than thirty (30) days prior to the Final Approval (Final Fairness) Hearing;

(e) Be served on Plaintiffs' Lead Counsel and counsel for Defendant so as to be received no later than thirty (30) days prior to the Final Approval (Final Fairness) Hearing;

(f) Contain the name, address, bar number, and telephone number of the objecting Class member's counsel, if represented by an attorney;

(g) Contain the number of class action settlements objected to by the Class member in the last three years; and

(h) State whether the objecting Class member intends to appear at the Final Approval (Final Fairness) Hearing, either in person or through counsel.

10. In addition to the foregoing, if the Class member is represented by counsel and such counsel intends to speak at the Final Approval (Final Fairness) Hearing, a notice of intent to object must contain the following information:

(a) A detailed statement of the specific legal and factual basis for each and every objection; and

(b) A detailed description of any and all evidence the objecting Class member may offer at the Final Approval (Final Fairness) Hearing, including copies of any and all exhibits that the objecting Class member may introduce at the Final Approval (Final Fairness) Hearing.

11. Any Class member who does not file a timely and adequate notice of intent to object in accordance with these provisions waives the right to object or to be heard at the Final Approval (Final Fairness) Hearing and shall be forever barred from making any objection to the Settlement. To the extent any Class member objects to the Settlement, and such objection is overruled in whole or in part, such Class member will be forever bound by the Final Approval Order and Judgment of the Court.

12. The filing of an objection allows Plaintiffs' Counsel or counsel for Defendant to notice such objecting Class member for and take his, her, or its deposition consistent with the Federal Rules of Civil Procedure at an agreed-upon location, and to seek any documentary evidence or other tangible things that are relevant to the objection. Failure by an objecting Class member to make himself, herself, or itself available for a deposition or to comply with expedited discovery requests may result in the Court striking the Class member's objection and otherwise denying that Class member the opportunity to make an objection or be further heard. The Court reserves the right to tax the costs of any such discovery to the objecting Class member or the objecting Class member's separate counsel should the Court determine that the objection is

frivolous or is made for an improper purpose.

13. In order to be entitled to participate in the Net Settlement Fund (as defined in the Notice), a member of the Class who has not requested exclusion therefrom must submit a valid Claim. Class members must electronically complete and sign the appropriate Claim Form and submit it to the Settlement Administrator via an electronic Claim Form submission process to be established by the Settlement Administrator, submitted not later than thirty (30) calendar days after entry of the Final Approval Order. For those Class members who have requested hard copy Claim Forms, they may submit such Claim Forms via U.S. mail. Any member of the Class who does not submit a timely, valid Claim shall not be entitled to share in the Settlement Fund, but nonetheless shall be barred and enjoined from asserting any of the Released Claims.

14. The Final Approval (Final Fairness) Hearing will be held before this Court, in Courtroom \_\_\_, at the United States District Court for the Eastern District of New York, 225 Cadman Plaza E, Brooklyn, NY 11201, on \_\_\_\_\_, 20\_\_ at \_\_: \_\_ a.m., or another date set by the Court, to consider, *inter alia*, the following: (a) the fairness, reasonableness and adequacy of the Settlement; (b) the dismissal with prejudice of the Action as to Defendant; (c) whether Class Counsel's application for attorneys' fees, expenses, and compensation for the Class Representatives ("the Fee and Cost Application") should be granted; (d) whether to finally approve the Settlement Agreement; and (e) whether the Court should enter an order expressly determining that there is no just reason for delay and expressly directing that any judgment by the Court approving the Agreement and the Class should be deemed as a final judgment under Fed. R. Civ. P. 54(b) with respect to all Claims by Class members against Defendant and all Released Parties.

15. No later than fifteen (15) calendar days before the Final Approval (Final Fairness) Hearing, the Settlement Administrator shall provide to Plaintiffs' Counsel and counsel for

Defendant the following information: (i) the number of E-Mail Notices and Postcard Notices sent to Class members; (ii) the approximate number of visits to the Settlement website from the date of entry of a Preliminary Approval Order; (iii) The number of Class members who have to date submitted Approved Claim forms; (iv) The number of Class members who have requested exclusion from the Settlement; and (v) such other similar tracking information reasonably requested by Plaintiffs' Counsel and Defendant's counsel.

16. Plaintiffs' Counsel shall file memoranda, declarations, or other statements and materials in support of final approval of the Settlement Agreement and the Fee and Cost Application, no later than forty-five (45) days prior to the Final Approval (Final Fairness) Hearing.

17. Plaintiffs' Counsel shall file any reply papers in support of final approval of the Settlement Agreement and the Fee and Cost Application and the Parties shall file any response to any objections from Class members by seven (7) days prior to the Final Approval (Final Fairness) Hearing.

18. The Settlement on the terms and conditions of the Settlement Agreement filed concurrently with the Motion for Preliminary Approval is hereby preliminarily approved, but is not to be deemed an admission of liability or fault by Defendant or by any other party or person, or a finding of the validity of any claims asserted in the litigation or of any wrongdoing or of any violation of law by Defendant. The Settlement is not a concession and shall not be used as an admission of any fault or omission by Defendant or any other party or person.

19. Upon Final Approval, each and every term and provision of the Settlement Agreement (except as may be modified by the Final Approval Order) shall be deemed incorporated into the Final Approval Order and Judgment as if expressly set forth and shall have the full force and effect of an order of the Court.

20. In the event that the Settlement is terminated in accordance with the provisions of the Settlement Agreement, the Settlement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided in the Settlement Agreement, and without prejudice to the status quo ante rights of Plaintiffs and Defendant.

21. Neither this Order nor the Settlement Agreement, nor any documents or statements related thereto, shall constitute any evidence or admission of liability by Defendant and/or any Released Party, nor shall any such document or statement be offered in evidence in this or any other proceeding except to consummate or enforce the Settlement Agreement or the terms of this Order.

22. Summary of Dates and Deadlines:

Last day to disseminate class notice:	As soon as reasonably practical after entry of the Preliminary Approval Order
Last day to file Motion for Final Approval:	45 days prior to Final Approval (Final Fairness) Hearing
Last day to file Fee and Cost Application:	21 days prior to the deadline to object to the Settlement
Last day for objections to Settlement or opposition to Motion for Final Approval of Fee and Cost Application	30 days prior to Final Approval (Final Fairness) Hearing
Last day for Class members to opt-out of the Settlement:	21 days prior to Final Approval (Final Fairness) Hearing

Last day for the Parties to file replies to any Class member objections to the Motion for Final Approval or Fee and Cost Application:	Seven days prior to Final Approval (Final Fairness) Hearing
Fairness Approval (Final Fairness) Hearing:	At least 100 days after entry of the Preliminary Approval Order

23. The Court approves the retention of Kroll Settlement Administration, LLC (“Kroll”) to serve as Settlement Administrator for this Settlement. Kroll will work under the direction of Plaintiffs’ Counsel and in accordance with Court orders to provide Class Notice, respond to inquiries from Class members, receive Requests for Exclusion and, at a later time, receive and process Class member Claims and distribute Settlement proceeds to Class members.

24. Notice shall be provided to the members of the Class. The Court approves the form of the E-Mail Notice, Long Form Notice and Claim Form and Postcard Notice (the “Notices”) attached hereto as Exhibits 1, 2, 3, and 4, respectively. The Court finds that the dissemination of the Notices in the manner set forth in paragraph 25 below constitutes the best notice practicable under the circumstances as well as valid, due, and sufficient notice to all persons entitled thereto and complies fully with Federal Rule of Civil Procedure 23 and the Due Process Clause of the United States Constitution.

25. The Settlement Administrator shall cause the Email Notice to be disseminated, in substantially the form attached as Exhibit D to the Settlement Agreement, by sending it out via e-mail to members of the Class as soon as reasonably practical following entry of this Order, or to the extent there are no valid email addresses, their physical mailing addresses, to the extent listed



in the Settlement Class List. The Email Notice shall direct Class members to a website – maintained by the Settlement Administrator – which will contain, *inter alia*, the Long Form Notice and Claim Form (Exhibits E and A of the Settlement Agreement, respectively); a copy of the Settlement Agreement; the motion and all supporting papers requesting entry of a Preliminary Approval Order; this Preliminary Approval Order; the motion and all supporting papers requesting entry of a Final Approval Order; any motion and all supporting papers requesting payment of attorneys’ fees, litigation cost reimbursements, and class representative Service Awards; and any other documents or information jointly requested by the Parties. The website will also list the date of the Final Approval Hearing.

26. The Settlement Administrator is directed to file with the Court and serve upon Class Counsel, no later than fourteen (14) days before the Final Approval Hearing, a declaration confirming that dissemination of the Notice to the Class has taken place in accordance with this Order.

27. Class Counsel, upon reasonable notice to LensCrafters’ counsel, are authorized to pay from the Settlement Fund the costs, as they are incurred, of providing Notice in accordance with this Order and maintaining the Settlement Fund, including taxes and tax expenses.

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_, 2023

\_\_\_\_\_  
Pamela K. Chen  
United States District Judge

# EXHIBIT C

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
BROOKLYN DIVISION**

THOMAS ALLEGRA, YESENIA ARIZA,  
MARIANA ELISE EMMERT, STUART  
ROGOFF, GRACELYNN TENAGLIA, and  
MELISSA VERRASTRO, individually and  
on behalf of others similarly situated,

Plaintiffs,

v.

LUXOTTICA RETAIL NORTH AMERICA  
d/b/a LensCrafters,

Defendant.

**[PROPOSED] FINAL JUDGMENT AND  
ORDER APPROVING SETTLEMENT AND  
DISMISSING CLAIMS OF CLASS MEMBERS  
WITH PREJUDICE**

CASE NO. 1:17-cv-05216-PKC-RLM

This matter came before the Court for hearing on \_\_\_\_\_. The Court, having considered the Motions for Preliminary Approval and Final Approval and the declarations in support thereof, the Settlement Agreement (the “Agreement”), and any objections or comments received regarding the proposed Settlement, the record in the above-captioned action (the “Action”), the evidence presented, and the arguments and authorities presented by counsel, and for good cause appearing,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

1. The Court, for purposes of this Final Judgment and Order Approving Settlement and Dismissing Claims of Class Members with Prejudice (“Final Approval Order and Judgment”), adopts the capitalized terms and their definitions set forth in the Agreement.
2. The Court has jurisdiction over the subject matter of the Action, the Class Representatives, the Class members, and Defendant.
3. The Court finds that the Notice to the Class of the Proposed Settlement and

Settlement Fairness Hearing constituted the best notice practicable under the circumstances to all Persons within the definition of the Class, and fully complied with the requirements of due process and all applicable statutes and laws.

4. The Court hereby adopts and approves the Agreement and the Settlement terms contained therein and finds that it is in all respects fair, reasonable, adequate, just, and in compliance with all applicable requirements of the United States Constitution (including the Due Process Clause) and all other applicable laws, and in the best interest of the Parties and the Class. Any objections have been considered and are hereby overruled. Accordingly, the Court directs the Parties and their counsel to implement and consummate the Settlement in accordance with the terms and conditions of all portions of the Agreement.

#### **SETTLEMENT CONSIDERATION**

5. Defendant and Plaintiffs are hereby ordered to comply with the terms and conditions contained in the Agreement, which is incorporated by reference herein and attached hereto as Attachment A.

6. Plaintiffs, the Class, and/or Defendant may seek to enforce the provisions of the Agreement by motion to the Court pursuant to the Court's continuing jurisdiction over the Agreement as set forth in Paragraph 21 below.

#### **APPLICABILITY**

7. The provisions of this Final Approval Order and Judgment are applicable to and binding upon and inure to the benefit of each Party to the action (including each Class member and each of Defendant's successors and assigns).

8. All Persons who are included within the definition of the Class and who did not properly file Requests for Exclusion are therefore bound by this Final Approval Order and

Judgment and by the Agreement.

9. As of the Effective Date, each member of the Class who has not filed a valid Request for Exclusion (“Plaintiff Releasing Parties”), on behalf of themselves, their current, former, and future heirs, executors, administrators, successors, attorneys, insurers, agents, representatives, and assigns, and any Person they represent, fully and forever release, acquit, and discharge the LensCrafters Released Parties (as defined in the Settlement Agreement) collectively, separately, individually and severally, from, and covenant not to sue for, any and all claims, suits, demands, rights, liabilities, grievances, damages, remedies, liquidated damages, punitive damages, attorneys’ fees, penalties, losses, actions, and causes of action of every nature and description whatsoever, whether known or unknown, suspected or unsuspected, asserted or unasserted, whether in tort, contract, statute, rule, ordinance, order, regulation, common law, public policy, equity, or otherwise, whether class, representative, individual or otherwise in nature, that were alleged or asserted in the Action or that arise out of or relate directly or indirectly in any manner whatsoever to facts alleged or asserted or that could have been alleged or asserted in the Action (“Plaintiff Released Claims”). It is expressly intended and understood by the Parties that Plaintiff Released Claims shall in all respects be construed as broadly as possible, consistent with all applicable law, as a complete settlement, accord, and satisfaction of the Plaintiff Released Claims; provided, however that the Plaintiff Released Claims shall not include any claims to enforce the Settlement Agreement or Plaintiffs’ Counsel’s request for fees and expenses in the Action pursuant to Paragraph 4 of the Settlement Agreement. With respect to the Plaintiff Released Claims, the Plaintiff Releasing Parties shall expressly waive any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

10. In agreeing to the foregoing waiver, the Plaintiff Releasing Parties expressly acknowledge and understand that they may hereafter discover facts in addition to or different from those which they now believe to be true with respect to the subject matter of the matters released herein, but expressly agree that they have taken these possibilities into account in electing to participate in this release, and that the release given herein shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different facts, as to which the Releasing Parties expressly assume the risk.

11. As of the Effective Date, LensCrafters fully and forever releases, acquits, and discharges Plaintiff Releasing Parties, collectively, separately, individually and severally, from, and covenants not to sue for, any and all claims, suits, demands, rights, liabilities, grievances, damages, remedies, liquidated damages, losses, actions, and causes of action of every nature and description whatsoever, whether known or unknown, suspected or unsuspected, asserted or unasserted, whether in tort, contract, statute, rule, ordinance, order, regulation, common law, public policy, equity, or otherwise, whether class, representative, individual or otherwise in nature, that were alleged or asserted in the Action, or that arise out of or relate directly or indirectly in any manner whatsoever to facts alleged or that could have been alleged or asserted in the Action (“LensCrafters Released Claims”); provided, however that the LensCrafters Released Claims shall not include any claims to enforce the Settlement Agreement or Plaintiffs’ Counsel’s request for fees and expenses in the Action pursuant to Paragraph 4 of the Settlement Agreement. With respect to the LensCrafters Released Claims, LensCrafters shall expressly waive any and all

provisions, rights, and benefits conferred by any law of any state or territory of the United States which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

12. In agreeing to the foregoing waiver, LensCrafters expressly acknowledges and understands that it may hereafter discover facts in addition to or different from those which it now believes to be true with respect to the subject matter of the matters released herein, but expressly agrees that it has taken these possibilities into account in electing to participate in this release, and that the release given herein shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different facts, as to which LensCrafters expressly assumes the risk.

13. As of the Effective Date, by operation of the entry of the Final Approval Order and Judgment, each Class member who has not timely filed a valid Request for Exclusion, thereby becoming a Class member, automatically, upon entry of the Final Approval Order and Judgment, shall be held to have fully released, waived, relinquished and discharged the LensCrafters Released Parties (as defined in the Settlement Agreement) from the Plaintiff Released Claims, to the fullest extent permitted by law, and shall be enjoined from continuing, instituting or prosecuting any legal proceeding against the LensCrafters Released Parties relating in any way whatsoever to the Plaintiff Released Claims.

14. The Plaintiff Releasing Parties, on behalf of themselves and their respective assigns, agree not to sue or otherwise make a claim against any of the LensCrafters Released Parties (as defined in the Settlement Agreement) that is in any way related to the Plaintiff Released

Claims. LensCrafters, on behalf of itself and its respective assigns, agrees not to sue or otherwise make a claim against any of the Plaintiff Releasing Parties that is in any way related to the LensCrafters Released Claims.

15. All claims against the Defendants in this Action are hereby dismissed on the merits with prejudice, without fees or costs to any Party, except as provided below.

16. Attachment B to this Final Approval Order and Judgment contains a list setting forth the name of each Person who timely submitted a Request for Exclusion from the Class in compliance with the procedures set forth in the Preliminary Approval Order. The Persons so identified shall not be entitled to benefits from the Settlement nor bound by this Final Approval Order and Judgment.

**ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES  
AND SERVICE AWARDS**

17. The Court further supports the establishment of the Settlement Fund as set forth in the Agreement.

18. The Court hereby grants Class Counsels' request for an award of reasonable attorneys' fees in the amount of \_\_\_% of the Settlement Fund, or \$\_\_\_\_\_. The Court further grants Class Counsels' application for reimbursement of costs and expenses in the amount of \$\_\_\_\_\_. These amounts will be paid from the Settlement Fund. The Court also awards Service Awards to the six Class Representatives of \$\_\_\_ each. The Service Awards will be paid from the Settlement Fund. The reasonable costs of Notice and Administration of the Settlement will continue to be paid from the Settlement Fund.



**GENERAL PROVISIONS**

19. The provisions of this Final Approval Order and Judgment are entered as a result of a voluntary agreement of the Parties. The Agreement and this Final Approval Order and Judgment are not intended to, and shall not be construed as any admission, express or implied, of any fault, liability or wrongdoing by Defendant, or of the accuracy of any of the allegations in the Second Amended Consolidated Complaint (ECF 50).

20. All terms, provisions, obligations and rights as contained in the Agreement are hereby incorporated into this Final Approval Order and Judgment and the Parties are ordered to perform their obligations thereunder, including, but not limited to, the full release of the Plaintiff Released Claims and LensCrafters Released Claims.

21. Jurisdiction is retained by this Court for the purpose of enabling any Party to this Final Approval Order and Judgment to apply to the Court at any time for such further orders and directions as may be necessary and appropriate for the construction or carrying out of this Final Approval Order and Judgment and the Agreement, for the modification of any of the provisions hereof, for enforcement of compliance herewith, and for the punishment of violations hereof.

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_, 2023

\_\_\_\_\_  
Pamela K. Chen  
United States District Judge

APPROVED AS TO FORM:

DATED: \_\_\_\_\_, 2023

# EXHIBIT D

## **ELECTRONIC SERVICE REQUESTED**

**If you are a U.S. resident and purchased prescription eyeglasses from LensCrafters in the United States after being fitted with AccuFit between September 5, 2013 and [Date of Preliminary Approval Order], you may be entitled to a payment of up to \$50 from a class action settlement for each pair of prescription eyeglasses purchased from LensCrafters.**

*La información proporcionada en este aviso está disponible en español en [www.accufitclassaction.com](http://www.accufitclassaction.com)*

A \$39 million proposed settlement has been reached in a class action lawsuit titled *Ariza et al v. Luxottica Retail North America*, No. 17-cv-5216-PKC-LB pending in the United States District Court for the Eastern District of New York against Luxottica of America Inc. d/b/a LensCrafters f/k/a Luxottica Retail North America Inc. d/b/a LensCrafters (“LensCrafters”). If approved by the Court, the settlement will resolve Plaintiffs’ claims that LensCrafters made certain statements regarding its AccuFit Digital System that were allegedly misleading. LensCrafters strongly denies Plaintiffs’ allegations and stands behind the quality of its prescription eyewear. The Court has not made any determination as to who is right. If approved, the Settlement will avoid litigation costs and risks to Plaintiffs and LensCrafters, and will release LensCrafters from liability to members of the Class.

**Who is Included?**

The “Class” or “Nationwide Class” is defined as “All U.S. residents who, from September 5, 2013 to [date of Preliminary Approval Order], purchased prescription eyeglasses in the United States from LensCrafters after being fitted with AccuFit. Excluded from the Class are LensCrafters; LensCrafters’ employees, officers, and directors, as well as members of their immediate families; LensCrafters’ legal representatives, heirs, and successors; and any judge, justice, or judicial officer who have presided over this matter and the members of their immediate families and judicial staff. A more detailed Notice, including the exact Class definitions and exceptions to Class membership, is available at [www.accufitclassaction.com](http://www.accufitclassaction.com).

**What does the Settlement Provide?**

LensCrafters will pay \$39,000,000 (thirty-nine million dollars) to establish a common fund for the benefit of the Class. There will be no reversion of the Settlement Fund to LensCrafters unless the Court does not approve the Settlement or the Settlement is reversed on appeal.

To be eligible to receive a payment from the Settlement Fund, you must complete and submit a timely Claim Form by [redacted], 2023. Submit your claim form online at [www.AccuFitClassaction.com](http://www.AccuFitClassaction.com) by [redacted], 2023. Or, if you have requested a hard copy Claim Form, fill out the hard copy Claim Form and mail it to the address below, postmarked no later than [redacted], 2023:

AccuFit Class Action Settlement  
c/o Kroll Settlement Administration, LLC.  
P.O. Box 5324  
New York, NY 10150-5324

Class Counsel will apply to the Court by motion for an award to Class Counsel for attorneys’ fees, for reimbursement of reasonable expenses, and for Class Representative service awards. This request will be filed by [redacted], 2023. The request for attorneys’ fees will be based on their services in this litigation, and will not exceed 33 1/3% of the Settlement Funds (up to \$ [redacted]), and may ask to be reimbursed for up to \$ [redacted] in current and ongoing litigation expenses, and up to \$10,000 in service awards for each of the plaintiffs serving as class representatives.

Any payment to the attorneys will be subject to Court approval, and the Court may award less than the requested amount. The attorneys’ fees, costs, and expenses that the Court orders, plus Notice costs and the costs to administer the Settlement, will come out of the Settlement Fund. When Class Counsel’s motion for fees, costs, and litigation expenses is filed, a copy will be available at [www.AccuFitClassaction.com](http://www.AccuFitClassaction.com).

**What are Your Rights and Options?**

The Court will exclude any person who asks to be excluded. If you exclude yourself from the Class (*i.e.*, opt out), you will not be eligible to receive money or benefits from the Settlement. You will not be bound by any orders or judgments of the Court, and you will not give up your right to sue LensCrafters as part of any other lawsuit for the claims made in this case. The deadline to exclude yourself is [redacted], 2023. Specific instructions on how to request exclusion are included in the Long-Form Notice available to download at [www.accufitclassaction.com](http://www.accufitclassaction.com).

If you are a member of the Class and have not excluded yourself from the Settlement, you can object to the Settlement if you do not like part or all of it. The Court will consider your views. Specific instructions on how to submit an objection are included in the Long-Form Notice available to download at [www.accufitclassaction.com](http://www.accufitclassaction.com).

**Want More Information?**

Go to [www.accufitclassaction.com](http://www.accufitclassaction.com), call 877-388-1754, or write to LensCrafters Class Action, c/o Kroll Settlement Administration, LLC P.O. Box 5324, New York, NY 10150-5324

# EXHIBIT E

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF NEW YORK**  
**BROOKLYN DIVISION**

**If you are a U.S. resident and purchased prescription eyeglasses from LensCrafters in the United States after being fitted with AccuFit between September 5, 2013 and [Date of Preliminary Approval Order], you may be entitled to a payment of up to \$50 from a class action settlement for each pair of prescription eyeglasses purchased from LensCrafters.**

*This Notice is being provided by Order of the Court. It is not a solicitation from a lawyer.  
You are not being sued.*

*La información proporcionada en este aviso está disponible en español en  
[www.accufitclassaction.com](http://www.accufitclassaction.com).*

- A \$39,000,000 (thirty-nine million dollars) proposed settlement has been reached in a class action lawsuit pending in the United States District Court for the Eastern District of New York (the “Court”) against Luxottica of America, Inc. d/b/a LensCrafters f/k/a Luxottica Retail North America Inc. d/b/a LensCrafters (“LensCrafters” or “Defendant”).
- If approved by the Court, the settlement will resolve Plaintiffs’ claims that LensCrafters made certain statements regarding its AccuFit Digital System that were allegedly false or misleading. LensCrafters strongly denies Plaintiffs’ allegations and asserts that it never made any false or misleading statements about AccuFit. The Court has not made any determination as to who is right. If approved, the Settlement will avoid litigation costs and risks to Plaintiffs and LensCrafters, and will release LensCrafters from liability to members of the Class.
- The Class generally includes, subject to certain exclusions set forth in Paragraph 4 below, all United States residents who, since September 5, 2013 to [date of Preliminary Approval Order], purchased prescription eyeglasses in the United States from LensCrafters after being fitted with AccuFit.
- **Your legal rights may be affected whether you act, or don’t act. Read this notice carefully.**

<b>Your Legal Rights and Options</b>	
<b>SUBMIT A CLAIM</b>	This is the only way to be eligible to receive a payment from the Settlement. You must submit your claim by [REDACTED], 2023.
<b>ASK TO BE EXCLUDED</b>	You must submit a valid request for exclusion to remove yourself from the Settlement and receive no payment from the Settlement. This is the only option that allows you ever to be part of any other lawsuit against Defendant concerning the Released Claims (as defined in the Settlement Agreement). Requests for Exclusion must be postmarked or received by [REDACTED], 2023.
<b>OBJECT</b>	Write to the Court about why you do not like the Settlement. The deadline for objecting is [REDACTED], 2023.

<b>ATTEND THE FAIRNESS HEARING</b>	You may request to speak in Court about the fairness of the Settlement.
<b>DO NOTHING</b>	If you do nothing, you will receive no money from the Settlement, but you will still give up certain rights to sue Defendant.

## BASIC INFORMATION

### 1. What is the lawsuit about?

The lawsuit is titled *Ariza et al v. Luxottica Retail North America, No. 17-cv-5216* (PKC) (LB) and is pending in the United States District Court for the Eastern District of New York. Plaintiffs claim that LensCrafters violated certain laws by making material misrepresentations about its AccuFit system, claiming that it was “five times more precise” than traditional methods, measuring “down to a tenth of a millimeter,” and that customers would have “clearer, crisper vision” and “see the world more clearly.” Plaintiffs allege that these representations were false because LensCrafters never updated its manufacturing process to manufacture glasses to a 0.1mm specification, and doing so would not have been clinically significant. Plaintiffs allege that consumers paid more than they would have if these representations had never been made. Plaintiffs do not allege that prescription eyeglasses purchased at LensCrafters are defective or harmful in any way. Plaintiffs bring claims under (1) the California Consumers Legal Remedies Act, (2) the Florida Deceptive and Unfair Trade Practices Act, (3) New York General Business Law § 349, (4) New York General Business Law § 350, and (5) unjust enrichment under the laws of Florida.

LensCrafters strongly denies all of Plaintiffs’ allegations and stands behind the quality of its prescription eyewear. LensCrafters would allege numerous defenses to Plaintiffs’ claims if the case against it were to proceed to trial. LensCrafters specifically denies that it made material misrepresentations about AccuFit or its manufacturing process. LensCrafters believes in the superiority of AccuFit measurements and the benefits this service provides to customers. AccuFit was also a complimentary service, meaning LensCrafters did not charge for the service or increase prices in connection with AccuFit. Accordingly, LensCrafters asserts that no customers paid more money for LensCrafters’ eyeglasses as a result of any alleged representations about AccuFit, and therefore Plaintiffs are not entitled to recover money in this lawsuit.

### 2. What is a class action and who is involved?

In a class action lawsuit, a person called a “Class Representative” sues on behalf of other people who have similar claims. The people together are a “Class” or “Class Members.” The Class Representatives who sued—and all the Class Members like them—are called the Plaintiffs. The company they sued (in this case, LensCrafters) is called the Defendant. One court decides the issues for everyone in the Class—except for those people who choose to exclude themselves from the Class.

### 3. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or LensCrafters. Instead, both sides agreed to the Settlement. That way, they avoid the time, cost and risks of further litigation and trial. Plaintiffs and their attorneys think the Settlement is best for all Class members.

## WHO IS IN THE CLASS?

### 4. Am I part of the Class?

The “Class” or “Nationwide Class” is defined as:

“All U.S. residents who, from September 5, 2013 to [date of Preliminary Approval Order], purchased prescription eyeglasses in the United States from LensCrafters after being fitted with AccuFit. Excluded from the Class are LensCrafters; LensCrafters’ employees, officers, and directors, as well as members of their immediate families; LensCrafters’ legal representatives, heirs, and successors; and any judge, justice, or judicial officer who have presided over this matter and the members of their immediate families and judicial staff.

### 5. I’m still not sure if I’m included.

If you are still not sure if you are included, please review the detailed information contained in the Settlement Agreement, available for download at [www.AccuFitClassaction.com](http://www.AccuFitClassaction.com).

## THE SETTLEMENT BENEFITS

### 6. What does the Settlement provide?

LensCrafters will pay \$39,000,000 (thirty-nine million dollars) to establish a common fund for the benefit of the Class. There will be no reversion of the Settlement Fund to LensCrafters unless the Court does not approve the Settlement or the Settlement is reversed on appeal.

### 7. What are the Settlement benefits being used for?

All Class members who submit an Approved Claim, as defined in the Settlement Agreement and described in Question 8 below, will receive a pro rata share of the Net Settlement Fund. More specifically, Class members who submit an Approved Claim shall each be eligible to receive up to \$50.00 for each set of prescription eyeglasses purchased from LensCrafters during the Class Period subject to pro rata reduction if the total claims exceed the Net Settlement Fund.

The Settlement Fund will also be used to pay, subject to Court approval: (1) attorneys’ fees plus Class Counsel’s reasonable expenses incurred in this litigation; (2) Service Awards to the Class Representatives; and (3) Notice and administration Expenses.

## HOW TO GET A PAYMENT

### 8. How can I file a Claim to get a payment from the Settlement?

To be eligible to receive a payment from the Settlement, you must complete and submit a timely Claim Form by [REDACTED], 2023. Submit your claim form online at [www.AccuFitClassaction.com](http://www.AccuFitClassaction.com) by [REDACTED], 2023. Or, if you have requested a hard copy Claim Form, fill out the hard copy Claim Form and mail it to the address below, postmarked no later than [REDACTED], 2023:



AccuFit Class Action Settlement  
c/o Kroll Settlement Administration, LLC  
P.O. Box 5324  
New York, NY 10150-5324

If you do not submit a valid Claim Form by the deadline, you will not receive a payment from the Settlement, but you will be bound by the Court's judgment in these actions.

**9. When will I get payment from the Settlement?**

Payments from the Settlement will not be distributed until the Court grants final approval of the Settlement and any objections or appeals are resolved. It is uncertain whether and when any appeals will be resolved. Settlement updates will be provided on the Settlement website at [www.AccuFitClassaction.com](http://www.AccuFitClassaction.com) or may be obtained by contacting the Settlement Administrator.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

**10. How do I exclude myself from the Settlement?**

Class members who have not previously opted out of the Class and wish to exclude themselves from the Class must submit a written Request for Exclusion. To be effective, such a request must include the Class member's name, mailing address, e-mail address, the signature of the Class member, and the following statement, "I want to opt out of the Class certified in the *Ariza v. Luxottica* litigation." Requests for Exclusion may be submitted via First Class U.S. Mail and sent to the Settlement Administrator to:

AccuFit Class Action Settlement  
ATTN: Exclusions  
c/o Kroll Settlement Administration, LLC  
P.O. Box 5324  
New York, NY 10150-5324

**11. If I do not exclude myself, can I sue Defendant for the same thing later?**

No. If you do not exclude yourself, you give up any right to sue (or continue to sue) LensCrafters for the claims being released by this Settlement.

**12. If I exclude myself, can I get compensation under this Settlement?**

No. If you exclude yourself, you will not get any compensation under the Settlement.

**OBJECTING TO THE SETTLEMENT**

**13. How do I tell the Court that I do not like the Settlement?**

If you are a member of the Class and have not excluded yourself from the Settlement, you can object to the Settlement if you do not like part or all of it. The Court will consider your views.

To submit an objection, you must submit a notice of intent to object to the Settlement that is filed with the Court and:

- Contains a caption that includes the name of the Action and the case number as follows: *Ariza et al v. Luxottica Retail North America*, No. 17-cv-5216 (PKC) (LB);
- Provide the name, address, telephone number and signature of the Class member filing the intent to object;
- Provide the approximate date of his/her purchase(s) of prescription eyeglasses from LensCrafters;
- Be filed with the United States District Court for the Eastern District of New York Clerk of the Court not later than thirty (30) days prior to the Final Approval (Final Fairness) Hearing;
- Be served on Plaintiffs' Counsel (at the address below) and counsel for LensCrafters (at the address below) so it is received no later than thirty (30) days prior to the Final Approval (Final Fairness) Hearing;
- Contain the name, address, bar number and telephone number of the objecting Class member's counsel, if represented by an attorney;
- Contain the number of class action settlements objected to by the Class member in the last three years; and
- State whether the objecting Class member intends to appear at the Final Approval (Final Fairness) Hearing, either in person or through counsel.

If the Class member is represented by counsel who intends to speak at the Final Approval (Final Fairness) Hearing, the notice of intent to object must also contain the following information:

- A detailed statement of the specific legal and factual basis for each and every objection; and
- A detailed description of any and all evidence the objecting Class member may offer at the Final Approval (Final Fairness) Hearing, including copies of any and all exhibits that the objecting Class member may introduce at the Final Approval (Final Fairness) Hearing.

<u>Court</u>	<u>Class Counsel</u>	<u>Defense Counsel</u>
Clerk of The Court US District Court Eastern District of New York 225 Cadman Plaza East Brooklyn, NY 11201	COHEN MILSTEIN SELLERS & TOLL PLLC Geoffrey Graber 1100 New York Avenue, N.W., Suite 500 East Washington, DC 20005-3964	BLANK ROME LLP Frank A. Dante Melissa Fundora Murphy One Logan Square 130 N. 18th Street Philadelphia, PA 19103

#### **14. What is the difference between objections and excluding myself from the Settlement?**

Objecting is telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself from the Settlement means that you do not want to be part of the Class or the Settlement. If you exclude yourself, then you have no basis to object to the Settlement.

A Class Member who objects still remains in the Class and must timely submit a Claim Form in order to obtain a monetary award.

## THE LAWYERS REPRESENTING YOU

### 15. Do I have a lawyer in this case?

Yes. The Court has appointed the law firm of Cohen Milstein Sellers & Toll PLLC to represent the members of the Class. These lawyers are called Class Counsel. If you wish to remain a member of the Class, you do not need to hire your own lawyer because Class Counsel is working on your behalf. If you wish to pursue your own case separate from this one, or if you exclude yourself from the Class, these lawyers will no longer represent you. You will need to hire your own lawyer at your own expense if you wish to pursue your own lawsuit against LensCrafters.

### 16. How will the lawyers be paid?

Class Counsel will apply to the Court by motion for an award to Class Counsel for attorneys' fees, for reimbursement of reasonable expenses, and for Class Representative service awards. This request will be filed by [REDACTED], 2023. The request for attorneys' fees will be based on their services in this litigation, and will not exceed 33 1/3% of the Settlement Funds (up to \$ [REDACTED]), and may ask to be reimbursed for up to \$ [REDACTED] in current and ongoing litigation expenses, and up to \$10,000 in service awards for each of the plaintiffs serving as class representatives.

Any payment to the attorneys will be subject to Court approval, and the Court may award less than the requested amount. The attorneys' fees, costs, and expenses that the Court orders, plus Notice costs and the costs to administer the Settlement, will come out of the Settlement Fund. When Class Counsel's motion for fees, costs, and litigation expenses is filed, a copy will be available at [www.AccuFitClassaction.com](http://www.AccuFitClassaction.com).

## THE COURT'S FAIRNESS HEARING

### 17. When and where will the Court decide whether to approve the Settlement?

The Court will hold a hearing to decide whether to approve the Settlement (the "Fairness Hearing"). You may attend and you may ask to speak, but you don't have to. The Court will hold a Fairness Hearing on [REDACTED], 2023, at [REDACTED], at the United States District Court for the Eastern District of New York, Courtroom [REDACTED], 225 Cadman Plaza East, Brooklyn, NY 11201. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. You may attend and you may ask to speak, if you make a request as instructed in Question 18, but you don't have to. The Court will listen to people who have asked to speak at the hearing. At or after the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. The Court may move the Fairness Hearing to a later date without providing additional notice to the Class. Updates will be posted to the Settlement website regarding any changes to the hearing date or conduct of the Fairness Hearing.

### 18. May I speak at the hearing?

You, or any lawyer you retain, may ask the Court for permission to speak at the Fairness Hearing. To do so, you must include in your objection to the Settlement a statement saying that it is your intent to appear at the Fairness Hearing. Your Objection and notice of intent to appear must be submitted to the Court and postmarked no later than [REDACTED], 2023.

## GETTING MORE INFORMATION

### 19. How do I get more information about the Settlement?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement, which is available at [www.AccufitClassAction.com](http://www.AccufitClassAction.com) along with other important documents and information. You may also contact the Settlement Administrator by mail, email, or phone using the following contact information:

AccuFit Class Action Settlement  
c/o Kroll Settlement Administration, LLC.  
P.O. Box 5324  
New York, NY 10150-5324  
[info@accufitclassaction.com](mailto:info@accufitclassaction.com)  
877-388-1754

**Please do not call the Court or the Court Clerk's Office to inquire about this Settlement.**