

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.

**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 27, 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.¹

¹ The Court notes that it did not, in considering the fairness of the preliminary settlement agreement, presume that the "proposed settlement was fair, reasonable, and adequate because it was reached in an arm's-length negotiation," *Moses v. New York Times Co.*, --- F.4th---, 2023 WL 5181138 (2d Cir. Aug. 17, 2023), and did consider proposed fees, including attorneys' fees, in

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.

assessing the fairness of the settlement..

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 into 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, their, 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, theirselves, 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 4F North, at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, NY 11201, on February 26, 2024, at 10:00 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:

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| 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 |

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| 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; scheduled for February 26, 2024 at 10:00 a.m. |

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.

SO ORDERED.

/s/Pamela K. Chen
Pamela K. Chen
United States District Judge

Dated: September 20, 2023
Brooklyn, New York