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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION**

GRACELYNN TENAGILA, individually
and on behalf of others similarly situated,

Plaintiff,

v.

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

Defendant.

CLASS ACTION

CASE NO.

**CLASS ACTION COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiff Gracelynn Tenagila, individually, and on behalf of all others similarly situated, hereby files suit against the Defendant listed above and alleges the following:

INTRODUCTION

1. Plaintiff and class members purchased prescription eyeglasses from LensCrafters after being measured using the Accufit® Digital Measurement System (“Accufit”) offered at LensCrafters. LensCrafters touts its Accufit system as providing uniquely accurate measurements of the pupillary distance (“PD”)¹ between the customer’s eyes to locate the optical centers of the eyeglass lenses. LensCrafters advertises that its Accufit system “measures your eyes five times more precisely than traditional methods, down to a tenth of a millimeter” – roughly the width of a human hair.² LensCrafters claims that this allows the company to manufacture prescription eyeglasses “which provides a lens fit with five times greater precision than traditional methods.”³ Thus, LensCrafters promises better prescription eyeglasses that allow customers “to see your world more clearly,” as “[y]our lenses are crafted based on exactly how glasses sit on your face, where your eyes line up in the frame, and the distance between your eyes—putting the prescription exactly where you need it to see your best.”⁴

2. However, LensCrafters cannot and does not deliver what it promises. Even assuming its Accufit system can provide PD measurements down to a tenth of a millimeter, when it manufactures prescription eyeglasses, LensCrafters uses decades-old technology that still involves

¹ Pupillary distance (“PD”) or interpupillary distance (“IPD”) is the distance between the centers of the pupils in each eye. The industry standard is to measure in millimeters. This measurement is used when manufacturing prescription eyeglasses.

² <https://www.lenscrafters.com/lc-us/accufit> (accessed August 28, 2017).

³ <http://www.luxottica.com/en/retail-brands/lenscrafters> (accessed August 28, 2017).

⁴ <https://www.lenscrafters.com/lc-us/accufit> (accessed August 28, 2017).

manual measurements that must be rounded up to a full millimeter. Indeed, Lenscrafters' Accufit system provides no more accuracy in manufacturing prescription eyeglasses than when measuring PD with a standard ruler.

3. This fact is known among LensCrafters' employees. When customers arrive at a LensCrafters store, employees are trained to push the Accufit system as a selling point, telling customers that Accufit ensures more accurate prescription eyeglasses and emphasizing to customers that they can only use Accufit measurements at LensCrafters. When customers ask about the Accufit system and whether it will really make their prescription eyeglasses more accurate, LensCrafters trains its employees to avoid answering the question, and to reiterate that Accufit provides PD measurements that are "five times more accurate."

4. Because LensCrafters' manufacturing process uses the *same* decades-old traditional methods, the end-product sold to customers cannot and does not have PD measurements that are "five times" more accurate than traditional methods.

5. Customers are therefore induced to purchase prescription eyeglasses from LensCrafters when they otherwise would not have and/or overpay for prescription eyeglasses from LensCrafters based on false and misleading statements, and suffer damages.

JURISDICTION AND VENUE

1. Plaintiff Gracelynn Tenagila is a citizen and resident of Florida, over the age of eighteen years. Plaintiff purchased prescription lenses, among other products and/or services, from LensCrafters after being measured by Accufit in or about March 2015 for approximately \$1100.

2. Defendant Luxottica Retail North America d/b/a LensCrafters ("LensCrafters") is a citizen and resident of Ohio which regularly does business in Florida and all over the United States. LensCrafters is headquartered at 4000 Luxottica Place, Mason, OH 45040.

3. This Court has jurisdiction for this case pursuant to 28 U.S.C. § 1332(d), as it is a

class action for damages that exceed \$5,000,000, exclusive of interest and costs. Because named Plaintiff is a resident of Florida, many members of the classes are from states different from Defendant, who is incorporated and/or headquartered in Ohio.

4. This Court has personal jurisdiction over Defendant because of its continuous and systematic business contacts with the State of Florida, including the fact that LensCrafters has over 80 stores in Florida and derives substantial revenue from sales of its products in Florida, with knowledge that its products are being marketed and sold for use in this State.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to these claims occurred in this district.

FACTUAL ALLEGATIONS

A. The Eyeglass Industry and Manufacturing Process for Prescription Lenses

6. LensCrafters is a national eye care provider and prescription eyeglass manufacturer maintaining over 950 locations in the United States.⁵ The company was founded in 1983 and began to operate as a subsidiary of Luxottica Retail North America, Inc. in approximately 1995.

LensCrafters is one of the largest companies in the \$28 billion worldwide ophthalmic industry.⁶ In 2013, LensCrafters was estimated to serve more than four million customers each year and described itself as the “single most powerful player in the optical category . . .”⁷ Its sales exceeded \$1.8 billion in 2013.⁸

7. The process for fabricating prescription eyeglasses typically begins with lens

⁵ See <http://local.lenscrafters.com/> (accessed August 28, 2017).

⁶ <https://www.forbes.com/sites/anaswanson/2014/09/10/meet-the-four-eyed-eight-tentacled-monopoly-that-is-making-your-glasses-so-expensive/#1ebf22bb6b66> (accessed August 28, 2017).

⁷ http://www.luxottica.com/sites/luxottica.com/files/2013_10_08_-_luxottica_investor_day_-_transcript.pdf (accessed August 28, 2017).

⁸ *Id.*

“blanks,” which are thick, clear blocks made of either glass or polymers. After receiving a prescription order, a laboratory technician will select lens blanks that correspond to the prescription for each lens.

8. A protective layer of adhesive tape is then applied to each lens blank to protect it from damage during the manufacturing process.

9. The laboratory technician then attaches what is known as a “block” to the front of each lens blank. Each lens, still attached to the block, is then placed in a machine called a blocker, which can be manual or digital.

10. The blockers contain a heated metal alloy that melds each blocker to the front of each lens blank. This process ensures that lenses are securely mounted and correctly positioned for the machining process, which includes surfacing, polishing and engraving. The blocking process is critical because it is “not only the start, but also the cornerstone of the entire lens production process.” Improper blocking results in inaccurate lenses “as the accuracy of the lens block directly influences the machining accuracy . . .”⁹

11. After securing the lens blanks to the blocks, the laboratory technician locates and marks the optical center of each lens blank. The optical center is the point at which vision is best in the lens, and is centered over the customer’s pupil.

12. Laboratory technicians use the customer’s pupillary distance measurement(s) to locate the optical center of each lens.

13. After blocking, the lens blanks (still attached to the blocks) are attached to a lens generator and aligned. The lenses are ground until attaining the desired thickness and curves based

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http://www.satisloh.com/fileadmin/contents/brochures/Ophthalmic/Blocking_and_deblocking/Blocking_Overview_2016_EN.pdf; <https://www.google.ch/patents/US7946325?hl=de> (accessed August 28, 2017).

on the individual's prescription.

14. The lenses are then placed in a surfacing machine to remove any marks left by the generator through a process called "fining" or "edging." When fining is complete, lenses are polished by another machine.

15. The technician then removes the lens block before conducting any final inspections or lens enhancements such as an anti-reflective enhancement or scratch resistance.

16. Finally, the lenses are placed in the frame and delivered to the customer.

B. LensCrafters and Its "Accufit" System

17. LensCrafters initially marketed itself as unique among prescription eyeglass manufacturers for its ability to manufacture glasses within one hour.¹⁰ However, LensCrafters has not been able to fulfill its one-hour promise and has shifted its advertising away from that campaign.¹¹

18. In or about 2011, LensCrafters introduced its Accufit Digital Measurement System.¹²

19. According to LensCrafters, Accufit is "5 times more precise" than manual PD measurements and "measures the exact location of your pupils, the spacing of your eyes, and the shape of your glasses so [LensCrafters] can place your prescription in your lenses exactly where you

¹⁰ <https://www.lenscrafters.com/lc-us/about-lenscrafters?sid=OurVisionDD-LeftLink-AboutLC-US-112413> (accessed August 28, 2017).

¹¹ LensCrafters' website now states that "[i]n select locations, we may be able to make your glasses same-day or in about an hour. The ability to do so depends upon your particular prescription, the frame you choose, the lenses and options you select, and whether the store you visit has an onsite lab. If you are looking for same-day service, please let our store associates know so they can direct you toward options that they may be able to complete in-house. To accommodate the many product enhancements that are now available, special processing is sometimes required. These orders are typically processed within 7-14 business days." <http://www.lenscrafters.com/lc-us/customer-service/faq> (accessed August 28, 2017).

¹² Confidential Witness 1, Former LensCrafters Licensed Laboratory Manager ("CW 1"); Confidential Witness 2, Former LensCrafters Licensed Laboratory Manager and Former General Manager ("CW 2."); <https://www.lenscrafters.ca/lc-ca/about-lenscrafters> (accessed August 28, 2017).

need it to see your best.”¹³

20. The Accufit system is a process that involves attaching a “fit sensor” to the frames selected by customers and using cameras and lasers to take measurements, including PD (the distance between the pupils).

21. LensCrafters claims that the Accufit system measures down to the tenth of a millimeter – which is roughly the width of a human hair – and that these measurements allow LensCrafters to manufacture prescription eyeglass that are far more accurate than prescription eyeglasses manufactured based on traditional PD measurements. According to LensCrafters, its Accufit technology “is fully integrated with [its] lens manufacturing system, so that [LensCrafters] can collect all the data and [it] can provide manufacturing of perfect customized lenses.”¹⁴

22. Accufit became a central component of LensCrafters’ marketing strategy. Indeed, through television commercials, online advertising,¹⁵ in-store marketing, and in-store employee sales pitches, Accufit is touted as the differentiating feature for LensCrafters and the reason why customers should purchase their prescription eyeglasses from LensCrafters.

23. For example, on its website, LensCrafters tells customers and potential customers that the difference between traditional measurements and its Accufit system is “massive:”



¹³ <http://www.lenscrafters.com/lc-us/customer-service/faq> (accessed August 28, 2017).

¹⁴ http://www.luxottica.com/sites/luxottica.com/files/2013_10_08_-_luxottica_investor_day_-_transcript.pdf (accessed August 28, 2017).

¹⁵ See, e.g., <https://www.youtube.com/watch?v=4irrLTuPfxQ>.

[Text reads: “WHY A TENTH OF A MILLIMETER IS MASSIVE” and “Accufit® is our exclusive digital scanning system that measures your eyes five times more precisely than traditional methods, down to a tenth of a millimeter. This means we can craft lenses more accurately and help you see the world more clearly.”]¹⁶

24. LensCrafters’ website goes on to state that:

**The old way will never
measure up.**

Goodbye rulers, hello super hi-tech future machines. The
LensCrafters AccuFit system replaces old-fashioned hand-held
measuring tools with a state-of-the-art digital system that is 5 times
more precise.

. . .

Accufit digitally measures the exact location of your pupils, the
spacing of your eyes, and the shape of your glasses so we can place
your prescription in your lenses exactly where you need it to see
your best.

It’s time to see what you’re missing.¹⁷

25. LensCrafters’ parent company’s corporate website states that the Accufit system results in more accurate lenses: “LensCrafters has made significant investments in technology including AccuFit Digital Measurement™, which provides a lens fit with five times greater precision than traditional methods.”¹⁸

26. LensCrafters makes similar representations in its filings with the Securities and Exchange Commission: The “Accufit Digital Measurement™ . . . provides a lens fit with five times greater precision than traditional methods . . .”¹⁹

¹⁶ <http://www.businesswire.com/news/home/20140130005961/en/LensCrafters-Takes-Stand-Quality-Vision-Care-Global> (accessed August 28, 2017).

¹⁷ <https://www.lenscrafters.com/AccuFit> (accessed August 28, 2017).

¹⁸ <http://www.luxottica.com/en/retail-brands/lenscrafters> (accessed August 28, 2017).

¹⁹ <http://sec.edgar-online.com/luxottica-group-spa/20-f-annual-and-transition-report-foreign-private-issuer/2014/04/29/section6.aspx>;

27. LensCrafters also touts its Accufit system in its stores, prominently displaying advertisements for Accufit, including its purported “5X” greater accuracy in measuring pupillary distance and its supposed benefits in making a customers’ prescription eyeglasses more accurate:



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28. This type of visual advertising is particularly important to LensCrafters’ business model, as “[m]ost LensCrafters stores are located in high-traffic commercial malls and shopping centers.”²¹

29. In addition, LensCrafters’ store employees were instructed to push the Accufit system by telling customers that its measurements were five times more accurate and that they should buy

<https://www.sec.gov/Archives/edgar/data/857471/000104746917003023/a2231810z20-f.htm> (accessed August 28, 2017).

²⁰ <http://www.tuttleeye.com/files/2014/01/photo.jpg> (accessed August 28, 2017).

²¹ <http://www.luxottica.com/en/retail-brands/lenscrafters> (accessed August 28, 2017).

their prescription eyeglasses from LensCrafters because Accufit would make their prescription eyeglasses more accurate.

30. Store employees understood the emphasis on Accufit to be the result of LensCrafters' inability to manufacture prescription eyeglasses in one hour, its previous key sales pitch.²²

31. Contrary to LensCrafters' representations, however, the Accufit system does not lead to more accurate prescription eyeglasses.

32. Even assuming the Accufit technology is, as advertised, five times more accurate than manual measurements,²³ **LensCrafters cannot and does not translate the measurements taken from the Accufit system into its manufacturing process.** Without the ability to translate supposedly more accurate measurements into the manufacturing process, LensCrafters' Accufit system is no more effective in making prescription eyeglasses accurate than using the standard ruler to measure PD.

33. Indeed, it was common knowledge among LensCrafters' employees that the Accufit system provided no benefit in making prescription eyeglasses more accurate because LensCrafters' manufacturing equipment cannot measure beyond one millimeter, which is the same measuring capability as a standard ruler.²⁴

34. For example, Confidential Witness 1, a former LensCrafters Licensed Laboratory Manager, who worked at the company for approximately 16 years states that: "Despite hyping the Accufit measuring system and its more accurately crafted glasses, the LensCrafters stores never changed their equipment for manufacturing the glasses." In 2011, this former Laboratory Manager

²² CW 1; CW 2.

²³ This claim is dubious given the fact that skilled opticians use "their professional experience to evaluate your fitting needs based on many parameters that a machine cannot discern, such as your posture." <https://www.specsoptical.com/lab/> (accessed August 28, 2017).

²⁴ CW 1; CW 2.

asked the LensCrafters store's General Manager "when LensCrafters would update its laboratory equipment so that our glasses could be manufactured to one-tenth of a millimeter." The Laboratory Manager responded that "LensCrafters had no such plans."

35. Rather than updating its laboratory equipment to more expensive, state-of-the-art machines that can use digital measurements, LensCrafters continued to use decades-old equipment that is only capable of making use of manual measurements.

36. According to confidential witnesses, in particular, many of LensCrafters' laboratories, including its large, regional laboratories, use Coburn CS7 blockers, which were first sold in the 1970s and are no longer manufactured. The Coburn CS7 blockers require the laboratory technician to lay out manually the lenses on a one-millimeter grid for the finished layout process. This is the step used for the pupillary distance measurement. Therefore, even if Accufit provided a measurement of one-tenth of a millimeter, LensCrafters employees could not position the lenses to one-tenth of a millimeter.

37. Even though Accufit provides no benefit in the manufacturing of prescription eyeglasses, according to confidential witnesses, LensCrafters employees were instructed to use Accufit as a selling point by touting its supposed accuracy in measuring pupillary distance, that it would make customers' prescription glasses more accurate, and that customers could only use the Accufit measurements at LensCrafters.

38. Further, according to confidential witnesses, LensCrafters also instructed employees to avoid discussing the manufacturing process when customers asked questions about Accufit. Instead, LensCrafters trained employees to keep emphasizing that Accufit was "five times more accurate" in determining PD measurements.

39. Notwithstanding these directives, LensCrafters knows that Accufit provides no benefits and cannot be translated into the actual manufacturing process. For example, according to

confidential witnesses, frequently after showing a customer his or her Accufit measurement, the LensCrafter associate doing the Accufit measurement will simply round the result to a whole millimeter before sending the results to the laboratory. And, even if the full tenth-of-a-millimeter measurements are sent to the laboratory, a technician in the laboratory will round the number before placing the lenses on a blocker, because LensCrafters equipment can only measure to a whole millimeter, not to a tenth of a millimeter.

40. LensCrafters employees know that laboratory equipment does not have the capability to craft eyeglasses with pupillary distance measurements that are accurate down to one-tenth of a millimeter, and that the use of the Accufit measurement system is not beneficial. And, many of them are frustrated by the company's false and misleading statements regarding the Accufit system. For example, during a training session conducted by Confidential Witness 1, a new laboratory technician observed that LensCrafters does not have laboratory equipment to craft lenses with pupillary distance measurements that are accurate down to one-tenth of a millimeter. The trainee reacted by saying, "so it's all a big lie."

41. On information and belief, all customers who purchased prescription eyeglasses from LensCrafters during the proposed Class Period (defined below) were measured using Accufit.

C. Plaintiff's Experience

42. Plaintiff Graceylnn Tenagila purchased prescription glasses after being measured with Accufit in Jensen Beach, Florida in or about March 2017.

43. Prior to her purchase, Ms. Tenagila saw an advertisement about Accufit that was a factor in her deciding to shop at LensCrafters.

44. Upon entering the store, Ms. Tenagila spoke with a LensCrafters employee who told her that Accufit was "five times better" than traditional methods.

45. Ms. Tenagila would not have purchased her prescription glasses from LensCrafters

and/or would not have paid as much as she did had she known that its claims that Accufit is “five times more accurate” was not translated into the manufacture of her lenses.

CLASS ALLEGATIONS

46. Plaintiff re-alleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 45.

47. Pursuant to the Fed. R. Civ. P. 23(b)(2) and (b)(3), Plaintiff seeks a statewide class consisting of all residents of Florida who purchased prescription eyeglasses from LensCrafters from September 5, 2011 to present (the “Class” and the “Class Period,” respectively).

48. Excluded from the Class are the Defendant, any entity in which Defendant has a controlling interest, and Defendant’s officers, directors, legal representatives, successors, subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

49. This action has been brought and may properly be maintained as a class action as it satisfies the numerosity, commonality, typicality, adequacy, and superiority requirements. Plaintiff seeks to represent an ascertainable Class, as determining inclusion in the class can be done through the Defendant’s own records.

50. Plaintiff reserves the right to amend the Class definition if discovery and further investigation reveal that the Class should be expanded, divided into subclasses, or modified in any other way.

51. Although the precise number of Class members is unknown and can only be determined through appropriate discovery, Plaintiff believes, and on that basis alleges, that the proposed Class is so numerous that joinder of all members would be impracticable as Defendant has sold thousands of prescription eyeglasses measured using Accufit in Florida during the proposed Class Period.

52. Questions of law and fact common to the Plaintiff Class exist that predominate over questions affecting only individual members, including *inter alia*:

a. Whether Defendant misrepresented material facts about its manufacturing process, including the fact that Accufit measurements could not be converted into the manufactured lenses;

b. Whether Defendant omitted material facts about its manufacturing process, including the fact that Accufit measurements could not be converted into the manufactured lenses;

c. Whether Defendant engaged in deceptive acts or practices, including misrepresenting and/or omitting the fact that Accufit measurements could not be converted into the manufactured lenses; and

d. Whether Defendant falsely advertised its manufacturing process at the time of sale, including the fact that Accufit measurements could not be converted into the manufactured lenses.

53. Plaintiff is a member of the putative Class. The claims asserted by the Plaintiff in this action are typical of the claims of the members of the putative Class, as the claims arise from the same course of conduct by the Defendant and the relief sought is common.

54. Plaintiff will fairly and adequately represent and protect the interests of the members of the putative Class, as her interests coincide with, and are not antagonistic to, the other Class members. Plaintiff has retained counsel competent and experienced in both consumer protection and class action litigation.

55. Certification of the Class is appropriate pursuant to Fed. R. C. P. 23(b)(2) and (b)(3) because questions of law or fact common to the respective members of the Class predominate over questions of law or fact affecting only individual members. This predominance makes class litigation superior to any other method available for the fair and efficient adjudication of these claims including consistency of adjudications. Absent a class action it would be highly unlikely that the members of the Class would be able to protect their own interests because the cost of litigation

through individual lawsuits might exceed the expected recovery.

56. A class action is a superior method for the adjudication of the controversy in that it will permit a large number of claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense, and the burden of the courts that individual actions would create.

57. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regard to the management of the class action.

CAUSES OF ACTION

COUNT I

VIOLATION OF FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT § 501.201, *et seq.*

58. Plaintiff re-alleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 57.

59. Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) § 501.202(2) prohibits “unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.”

60. Throughout the Class Period, by advertising, marketing, distributing, and/or selling prescription eyeglasses with claims that they were “five times more accurate” to Plaintiff and other Class members, Defendant violated the FDUTPA by engaging in, and continuing to engage in, false advertising concerning the accuracy of its prescription eyeglasses because its prescription eyeglasses are not in fact “five times more accurate.”

61. Additionally, throughout the Class Period, by failing to disclose that its prescription eyeglasses were not “five times more accurate” to Plaintiff and other Class members, Defendant

engaged in, and continues to engage in, deceptive acts and practices.

62. Plaintiff and other Class members seek to enjoin such unlawful acts and practices as described above. Each of the Class members will be irreparably harmed unless the unlawful actions of Defendant are enjoined in that they will continue to be unable to rely on the Defendant's representations that its prescription eyeglasses are "five times more accurate" and its failure to disclose that its prescription eyeglasses are not in fact "five times more accurate."

63. Plaintiff was injured in fact and lost money as a result of Defendant's conduct of improperly describing its prescription eyeglasses as "five times more accurate." Plaintiff paid for "five times more accurate" prescription eyeglasses, but did not receive prescription eyeglasses that were "five times more accurate." The product Plaintiff received was worth less than the product for which she paid.

64. Plaintiff would not have purchased prescription eyeglasses from LensCrafters and/or would not have paid as much for them had she known the prescription eyeglasses were not "five times more accurate."

65. Plaintiff and Class members seek to enjoin Defendant from continuing to disseminate its false and misleading statements and continuing omissions, actual damages plus attorney's fees and court costs, and other relief allowable under the FDUTPA.

COUNT II

UNJUST ENRICHMENT

66. Plaintiff re-alleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 57.

67. Plaintiff purchased prescription lenses from Defendant as a direct result of Defendant's misrepresentations and omissions about its ability to convert Accufit measurement system results into eyeglasses that are "five times more accurate."

68. Defendant generated profits from its misconduct.

69. Defendant has knowingly and unjustly enriched itself at the expense and to the detriment of the Plaintiff and each member of the Class by collecting money to which it is not entitled.

70. It would be inequitable to permit the Defendant to enrich itself at the expense of the Plaintiff and the Class. Defendant should be required to disgorge this unjust enrichment.

COUNT III

FRAUDULENT MISREPRESENTATION

71. Plaintiff re-alleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 57.

72. The accuracy of Defendant's prescription eyeglasses was a material fact.

73. Defendant misrepresented this material fact by representing that its prescription eyeglasses were "five times more accurate" because they were measured with the Accufit® Digital Measurement System when, in fact, they were not.

74. Defendant made these representations in its advertising (online, in-store, and on television) and on its website.

75. Defendant knew these representations were false and made these representations with the intention to induce reliance by its customers.

76. Plaintiff and the Class justifiably relied on Defendant's representations.

77. Plaintiff was induced to purchase Defendant's prescription eyeglasses as a result of Defendant's fraudulent misrepresentations when she otherwise would not have or would not have paid as much for them, and thereby suffered injury.

COUNT IV

FRAUDULENT OMISSION

78. Plaintiff re-alleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 57.

79. The accuracy of Defendant's prescription eyeglasses was a material fact.

80. Defendant omitted this material fact by failing to inform Plaintiff and the Class that its prescription eyeglasses were not, in fact, "five times more accurate."

81. Defendant omitted this material fact with knowledge of its falsity and with the intent to defraud Plaintiff and the Class.

82. Plaintiff and the Class justifiably relied on Defendant's omissions.

83. Plaintiff was induced to purchase Defendant's prescription eyeglasses as a result of Defendant's fraudulent omissions when she otherwise would not have or would not have paid as much for them, and thereby suffered injury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against the Defendant for herself and the members of the class as follows:

- A. Certification of the requested Classes pursuant to Fed. R. Civ. P. 23(b)(2);
- B. Restitution of all charges paid by Plaintiff and the Class;
- C. Disgorgement to Plaintiff and the Class of all monies wrongfully obtained and retained by Defendant;
- D. Compensatory and actual damages in an amount according to proof at trial;
- E. Statutory damages, penalties, treble damages, as provided by law;
- F. Prejudgment interest commencing on the date of payment of the charges and continuing through the date of entry of judgment in this action;

G. Costs and fees incurred in connection with this action, including attorney's fees, expert witness fees, and other costs as provided by law;

H. Punitive damages;

I. Equitable relief; and

J. Granting such other relief as the Court deems proper.

JURY TRIAL DEMAND

Plaintiff hereby requests a jury trial for all issues so triable of right.

DATED this 5th day of September, 2017.

Respectfully submitted,

s/ Theodore J. Leopold

Theodore J. Leopold (SBN 705608)
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Attorneys for Plaintiff

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS GRACELYNN TENAGILA, individually and on behalf of others similarly situated (b) County of Residence of First Listed Plaintiff <u>St. Lucie</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) Theodore J. Leopold COHEN MILSTEIN SELLERS & TOLL PLLC 2925 PGA Boulevard, Suite 200 Palm Beach Gardens, FL 33410	DEFENDANTS LUXOTTICA RETAIL NORTH AMERICA, an Ohio Corporation d/b/a LensCrafters County of Residence of First Listed Defendant <u>Warren County, OH</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED. Attorneys (If Known)
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(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>Incorporated <i>or</i> Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>Incorporated <i>and</i> Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/>	<input type="checkbox"/>	Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/>	<input type="checkbox"/>																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)		
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt.Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition
BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		
OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Re-filed- (see VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S). (See instructions second page):

a) Re-filed Case YES NO b) Related Cases YES NO

JUDGE _____ DOCKET NUMBER _____

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C 1332(d)
 Consumer fraud in connection with the sales of prescription eyeglasses
 LENGTH OF TRIAL via _____ days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE SIGNATURE OF ATTORNEY OF RECORD _____ DATE September 5, 2017

FOR OFFICE USE ONLY

AMOUNT _____ RECEIPT # _____ IFP _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

(d) Choose one County where Action Arose.

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States District Courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida



GRACELYNN TENAGILA, individually and on behalf of others similarly situated,

Plaintiff(s)

v.

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

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) LUXOTTICA RETAIL NORTH AMERICA 4000 Luxottica Place Mason, OH 45040

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Theodore J. Leopold COHEN MILSTEIN SELLERS & TOLL PLLC 2925 PGA Boulevard, Suite 200 Palm Beach Gardens, FL 33410

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: