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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

MELVIN GENE SNOW, individually and on behalf of all others similarly situated; SABRINA HUGHES, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

LENSCRAFTERS, INC., an Ohio corporation;
LUXOTTICA GROUP, S.p.A., an Italian corporation; THE UNITES STATES SHOE CORPORATION, an Ohio corporation; EYEMED, INC., a California corporation; EYEMED VISION CARE, LLC, a limited liability corporation; and DOES 1 through 200, inclusive,

Defendants.

Case No. CGC-02-405544

CLASS ACTION

SECOND AMENDED CLASS ACTION COMPLAINT FOR:

1. Deceptive Advertising Practices (Bus. & Prof. Code § 17500 *et seq.*);
2. Unfair Competition (Bus. & Prof. Code § 17200 *et seq.*);
3. Unfair Competition (Bus. & Prof. Code § 17200 *et seq.*);
4. Consumer Legal Remedies Act (Civil Code § 1750 *et seq.*); and
5. Violations of the Confidentiality of Medical Information Act (Civil Code § 56 *et seq.*)

JURY TRIAL DEMANDED

Plaintiffs are informed and believe and on that basis allege the following:

I. JURISDICTION

1. This is a civil action seeking restitution, disgorgement of profits, injunctive relief and other equitable relief under the California Unfair Competition Law (Business and Professions Code §§ 17200 and 17500 *et seq.*); restitution, damages and injunctive relief under the Consumer Legal Remedies Act (Civil Code § 1750 *et seq.*); and damages for violations of the Confidentiality of Medical Information Act (Civil Code § 56 *et seq.*). This Court has subject matter jurisdiction as

1 the aggregate amount of the claims of all class members exceeds \$25,000, and personal
2 jurisdiction over defendants under Code of Civil Procedure § 410.10, in that defendants reside
3 and/or do business in the State of California, or otherwise have the requisite minimum contacts
4 with the State such as to justify this Court exercising jurisdiction over them.

5 **II. VENUE**

6 2. Venue as to each defendant is proper in this judicial district, pursuant to Business
7 and Profession Codes § 17203, Civil Code § 1780, and Code of Civil Procedure §§ 395(a) and
8 395.5.

9 **III. THE PARTIES**

10 **A. Plaintiffs**

11 3. Representative Plaintiff Melvin Gene Snow (“SNOW”) is a resident of the County
12 of San Francisco, State of California. On or about November 5, 2001, an optometrist employed
13 and controlled by defendants examined SNOW, performed tests upon him and issued a
14 prescription for eyeglasses. SNOW purchased prescription eyewear from defendant LensCrafters,
15 Inc. that same day. SNOW was never given a copy of his prescription. The optometric
16 examination of SNOW and his purchase of eyewear occurred inside the LensCrafters store,
17 located at 100 Battery Street in San Francisco, California.

18 4. Representative plaintiff Sabrina Hughes (“HUGHES”) is resident of the County of
19 Santa Clara, State of California. On or about October 25, 2001, an optometrist employed and
20 controlled by defendants examined HUHGES, performed tests upon her and issued a prescription
21 for eyeglasses. HUGHES purchased prescription eyewear from defendant LensCrafters, Inc. that
22 same day. She was not given a copy of her prescription until after she made the purchase. The
23 optometric examination of HUGHES and her purchase of eyewear occurred inside the
24 LensCrafters store in the Valley Fair Mall in Santa Clara County, California.

25 **B. Defendants**

26 5. Luxottica Group, S.p.A. (the “LUXOTTICA GROUP”) is an Italian corporation
27 doing business in California. The principal activities of the LUXOTTICA GROUP and its
28 subsidiaries include the design, manufacture and distribution of prescription frames and sunglasses

1 in the mid- and premium-price categories. The LUXOTTICA GROUP and/or its subsidiaries also
2 own and operate LensCrafters, Inc., an optical retail chain with stores located throughout the
3 United States, including California. The LUXOTTICA GROUP and/or its subsidiaries also own
4 and operate specialized vision health care plans in California, including defendants EyeMed, Inc.
5 and EyeMed Vision Care, LLC. The LUXOTTICA GROUP is not licensed as an optometrist in
6 California.

7 6. The United States Shoe Corporation (“UNITED STATES SHOE”) is an Ohio
8 Corporation doing business in California and is a wholly owned subsidiary of the LUXOTTICA
9 GROUP. UNITED STATES SHOE is the parent corporation of one of more of the other
10 defendant corporations, either directly or through subsidiaries. UNITED STATES SHOE is not
11 licensed as an optometrist in California.

12 7. LensCrafters, Inc. (“LENSCRAFTERS”) is an Ohio Corporation doing business in
13 San Francisco and throughout California. LENS CRAFTERS is a wholly owned subsidiary of the
14 LUXOTTICA GROUP, UNITED STATES SHOE or one of their subsidiaries. LENS CRAFTERS
15 describes itself as a “one-stop shop for eyeglasses” and owns and operates retail outlets throughout
16 the United States, including at least 75 in California. LENS CRAFTERS is registered with the
17 Medical Board of California as a “dispensing optician.” LENS CRAFTERS is not licensed as an
18 optometrist in California.

19 8. EyeMed, Inc. (“EYEXAM”) is a California corporation that during the relevant
20 time period has also done business in California as “EyeMed LLC,” “EyeMed Vision Care,”
21 “Eyexam 2000,” “Eyexam2000,” “Eyexam2000 of California, Inc.,” “Eyexam 2000 of California,
22 Inc.” or a similar name. EYEXAM is licensed as a health care service plan under the provisions of
23 the California Knox-Keene Health Care Service Plan Act of 1975 Health and Safety Code § 1340
24 *et seq.* (the “KNOX-KEENE ACT”). EYEXAM employs or contracts with optometrists to provide
25 vision care benefits to its plan members. EYEXAM is a wholly owned subsidiary of the
26 LUXOTTICA GROUP, UNITED STATES SHOE or one of their subsidiaries. EYEXAM is not
27 licensed as an optometrist in California.

1 9. EyeMed Vision Care, LLC (“EVC”) is a limited liability corporation that does
2 business in California and that is a wholly owned subsidiary of LENSRAFTERS. EVC is not
3 licensed as an optometrist in California.

4 10. The true names and capacities, whether individual, corporate, or otherwise, of
5 DOES 1 through 200, inclusive, are presently unknown to plaintiffs, who therefore sue them by
6 fictitious names. Plaintiffs shall amend the complaint to show the true names of each fictitiously
7 named defendant when ascertained.

8 11. Each defendant, whether named or unnamed, during all relevant times acted as an
9 agent, alter-ego, co-conspirator or representative of every other defendant, whether named or
10 unnamed.

11 **IV. THE CLASS ALLEGATIONS**

12 12. The named plaintiffs bring the Second, Fourth and Fifth Causes of Action set forth
13 herein both individually and on behalf of others similarly situated pursuant to Code of Civil
14 Procedure § 382 and Civil Code § 1781. The class that plaintiffs seek to represent is composed of
15 and defined as follows (“the Class”):

16 All persons who, during the period from March 15, 1998 through the
17 present, purchased eyeglasses and/or other vision-related products
18 from a LENSRAFTERS store in California after undergoing an
19 examination by an optometrist who was both (1) employed by,
under contract to, or associated with EYEXAM or an affiliate, and
(2) located inside or adjacent to that LENSRAFTERS store.

20 13. This action has been brought and may properly be maintained as a class action
21 pursuant to Code of Civil Procedure § 382 and Civil Code § 1781, in that there is an ascertainable
22 class, a well-defined community of interest, the Class is so numerous as to make it impracticable
23 to bring all of its members before the Court, the adjudication of this action as a class action is a
24 superior method of resolving this controversy, and substantial benefits will accrue to members of
25 the Class, the public and the Court.

26 14. The number, identity and location of Class members can be readily ascertained
27 from defendants’ records and members of the Class can be provided with notice of the action
28 based on those records.

1 15. There is a community of interest in that (a) common questions of law and fact in
2 this action predominate over individual questions, (b) the claims of the Class representative are
3 typical of the claims of other members of the Class, and (c) the Class representative will
4 adequately represent the interests of the Class.

5 16. **Commonality:** Common questions of law and fact exist as to all members of the
6 Class and predominate over any questions which affect individual members of the Class in that
7 defendants have engaged in a common course of conduct in dealings with the Class and acted in a
8 manner generally applicable to the entire Class. These common questions of law and fact include
9 without limitation:

- 10 a. Whether the conduct complained of constitutes unlawful, unfair or
11 fraudulent business practices, in violation of the UCL, Business and
12 Professions Code § 17200 *et seq.*;
- 13 b. Whether defendants passed off services as those of another, in violation of
14 the Consumer Legal Remedies Act (“CLRA”), Civil Code § 1770(a)(1);
- 15 c. Whether defendants misrepresented their affiliation, connection, or
16 association with another, in violation of the CLRA, Civil Code §
17 1770(a)(3);
- 18 d. Whether defendants used representations that their services had
19 sponsorship, approval, characteristics, or benefits which they did not have,
20 or that a person has a status which he or she does not have, in violation of
21 the CLRA, Civil Code § 1770(a)(5);
- 22 e. Whether defendants represented that their services are of a particular
23 standard, quality or grade, when they are of another, in violation of the
24 CLRA, Civil Code § 1770(a)(7);
- 25 f. Whether defendants intentionally or negligently caused the disclosure of
26 confidential medical information pertaining to plaintiffs and members of the
27 Class, in violation of the Confidentiality of Medical Information Act, Civil
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1 Code § 56 *et seq.*, entitling plaintiffs and members of the Class to the
2 damages specified there under;

- 3 g. Whether plaintiffs and members of the Class have sustained damages, and if
4 so, the proper measure of damages;
- 5 h. Whether plaintiffs and members of the Class should be awarded punitive
6 damages; and
- 7 i. Whether plaintiffs and members of the Class are entitled to equitable relief,
8 and, if so, the nature of that relief.

9 17. **Typicality:** Plaintiffs' claims are typical of the claims of the Class. Plaintiffs and
10 members of the Class sustained injuries and damages arising out of defendants' common course of
11 conduct in violation of the law as alleged herein. The injuries and damages of each member of the
12 Class were caused directly by defendants' wrongful conduct as alleged herein.

13 18. **Adequacy:** Plaintiffs will fairly and adequately represent the interests of the Class.
14 They reside in California where the vast majority of the rest of the members of the Class are
15 located. They were subjected to defendants' unlawful and wrongful conduct in California. They
16 have no interests that are adverse to the interest of other members of the Class. Plaintiffs have
17 retained counsel who has substantial experience in the prosecution of complex class action
18 litigation.

19 19. **Numerosity:** The members of the Class are so numerous that joinder of all
20 members is impracticable. While the exact number of Class members can only be ascertained
21 through discovery, plaintiffs believe that over 100,000 Californians belong to the EYEXAM
22 health care service plan owned and/or controlled by defendants, that defendants encourages these
23 health care service plan enrollees to visit optometrists inside LENSRAFTERS stores, that most
24 or many of these plan members purchase eyewear at the associated LENSRAFTERS store
25 following their eye examination, and that, as a result, there are at least tens of thousands of Class
26 members.

27 20. **Superiority:** A class action is superior to other available means for the fair and
28 efficient adjudication of this controversy and will result in a substantial benefit to the Class, the

1 public and the Court. The likelihood of individual Class members prosecuting separate claims is
2 remote, and individual members of the Class do not have a significant interest in individually
3 controlling the prosecution of separate actions. Because the damages suffered by individual Class
4 members is relatively small, the expenses and burden of individual litigation would make it
5 difficult, if not impossible, for individual members of the Class to redress the wrongs done to
6 them. The cost to the judicial system of the adjudication of many individualized claims would
7 substantial whereas the litigation of these claims simultaneously as a class action will result in
8 substantial savings of judicial resources. Furthermore, the prosecution of separate actions by
9 individual Class members would create a risk of inconsistent and varying adjudications
10 concerning the subject of this action, which adjudications could establish incompatible standards
11 of conduct for defendants under the law alleged herein. Class treatment will permit a large number
12 of similarly situated persons to prosecute common claims in a single forum simultaneously,
13 efficiently and without unnecessary duplication of effort and expense that individual actions would
14 engender. Class treatment will enable the Class members to redress the wrongs done to them and
15 to serve the public interest by ensuring that defendants' conduct be punished and enjoined from
16 future repetition. Class treatment will thus result in the most fair and efficient adjudication of this
17 controversy, as well as conferring substantial benefits on the litigants, the public and the Court.

18 21. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
19 management of this action that would preclude its maintenance as a class action.

20 **V. THE GENERAL ALLEGATIONS**

21 **A. California's Prohibition Against Opticians Practicing Optometry or**
22 **Controlling an Optometrist's Practice**

23 22. The State of California regards optometry as a healing art and learned profession.
24 The State Board of Optometry licenses optometrists in California. To become licensed as an
25 optometrist, an individual must have at least three years of undergraduate education in a scientific
26 field and four years of optometry school culminating in a doctor of optometry degree. The
27 individual must then pass a test administered by the Board of Optometry. Upon admission to
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1 practice optometrists are allowed to correct refractive errors and detect eye disease. Most
2 optometrists also dispense ophthalmic products consisting of eyeglasses and contact lenses.

3 23. In contrast to an optometrist, a dispensing optician, such as LENSRAFTERS,
4 does not hold a professional license and does not have to possess a college degree. Rather, the
5 dispensing optician registers with the Medical Board of California and receives a certificate of
6 registration to do business in California. Opticians may fill prescriptions for glasses or contact
7 lenses issued by either an optometrist or an ophthalmologist.

8 24. A prescription for eyeglasses is not available in California without an eye
9 examination conducted by an optometrist or ophthalmologist. While an optometrist under the
10 umbrella of his or her right to practice optometry may engage in the retail sales of eyeglasses, the
11 reverse is not equally true; a dispensing optician, such as LENSRAFTERS, is not allowed to
12 engage in the practice of optometry. California law requires economic independence and
13 separation between those licensed to perform eye examinations (optometrists), and others only
14 authorized to sell and dispense lenses and frames (opticians and optical retailers). The rule
15 precluding opticians from practicing optometry flows from California's long-standing public
16 policy prohibiting unlicensed person from practicing any medical arts or exercising any type of
17 control over decisions made by licensed healing art practitioners. Any reservation of authority by
18 an either an optician or an eyewear company over an optometrist is against public policy and
19 illegal. California has never authorized dispensing opticians or optical retailers to operate "one-
20 stop" eye care shops.

21 25. The State of California has enacted laws and regulations to protect the public by
22 ensuring that optometrists remain independent from the influence of the commercial optical
23 industry, including the following:

- 24 a. Section 650 of the Business and Professions Code, which prohibits the
25 offer, delivery, receipt, or acceptance by a doctor of any rebate, refund,
26 commission, preference, patronage dividend, discount, or other
27 consideration, whether in the form of money or otherwise, as compensation
28 or inducement for referring patients.

- 1 b. Section 655 of the Business and Professions Code, which prohibits
2 optometrists from having “any membership, proprietary interest,
3 coownership, landlord-tenant relationship, or any profit-sharing
4 arrangement in any form, directly or indirectly, with any” optician or
5 eyewear company. Section 655 similarly prohibits any optician from having
6 “any membership, proprietary interest, coownership, landlord-tenant
7 relationship, or any profit-sharing arrangement in any form, directly or
8 indirectly, with any” optometrist. Section 655 makes it a misdemeanor for
9 anyone to participate in its violation.
- 10 c. Section 2544 of the Business and Professions, which provides that if an
11 assistant in the office of an optometrist performs certain tasks and
12 procedures, such as preparing patients for examination, collecting
13 preliminary patient data, and taking a patient history, then that assistant
14 must be “under direct responsibility and supervision” of the optometrist.
- 15 d. Section 2556 of the Business and Professions Code, which makes it
16 unlawful for a dispensing optician “to advertise the furnishing of, or to
17 furnish, the services of an optometrist,” or to “directly or indirectly employ
18 or maintain [an optometrist] on or near the premises used for optical
19 dispensing.”
- 20 e. Section 3040 of the Business and Professions Code, which makes it
21 unlawful for anyone not licensed as an optometrist to practice optometry,
22 advertise the practice of an optometrist, or hold him or herself out to be an
23 optometrist.
- 24 f. Section 3128 of the Business and Professions Code, which makes it a
25 misdemeanor for anyone not licensed as an optometrist to advertise by
26 displaying a sign or otherwise or hold him or herself out to be an
27 optometrist.
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- g. Section 3130 of the Business and Professions Code, which makes it unlawful to include in any advertisement relating to the sale of sunglasses, any words or figures that have a tendency to advertise the practice of optometry.
- h. Sections 3103 and 3160 of the Business and Professions Code, which prohibit an optometrist from accepting employment to practice optometry from a corporation unless that corporation is either a health care service plan licensed under the KNOX-KEENE ACT or a professional corporation registered under the Moscone-Knox Professional Corporation Act.
- i. Section 3166 of the Business and Professions Code, which provides: “An optometric corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute, rule or regulation now or hereafter in effect. In conducting its practice it shall observe and be bound by such statutes, rules and regulations to the same extent as” an optometrist.
- j. Subdivision (f) of section 1395 of the Health of Safety Code, part of the KNOX-KEENE ACT, which states that except as specifically provided in the act, nothing in the act shall be construed to limit the effect of the laws governing professional corporations, as they appear in applicable provisions of the Business and Professions Code, upon health care service plans. Nothing in the KNOX-KEENE ACT limits the effect of sections 650, 655, 2544, 2556, 3040, 3128 and 3130 of the Business and Professions Code upon health care service plans.
- k. Section 1399.251 of Title 16 of the California Code of Regulations, which provides that it is unprofessional conduct for a registered dispensing optician to “advertise the furnishing of the services of an optometrist.”

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- 1. Section 1514 of Title 16 of the California Code of Regulations, which provides that when an optometrist rents or leases space commercial premises all of the following conditions must be met:
 - i. The practice must be owned by the optometrist and in every phase be under his/her exclusive control. The patient records shall be the sole property of the optometrist and free from any involvement with a person unlicensed to practice optometry.
 - ii. The rented space shall be definite and apart from space occupied by other occupants of the premises.
 - iii. All signs, advertising, and display shall be separate and distinct from that of the other occupants and have the optometrist’s name and the word “optometrist” prominently displayed in connection therewith.
 - iv. There shall be no legends as “Optical Department,” “Optometrical Department,” “Optical Shoppe,” or others of similar import, displayed on any part of the premises or in any advertising.
 - v. There shall be no linking of the optometrist’s name, or practice, in advertising or in any other manner with that of the commercial concern from whom he/she is leasing space.
- m. Section 1566 of Title 16 of the California Code of Regulations, which requires optometrists to place a conspicuous notice in their office clearly stating that federal law requires that a written copy of the spectacle prescription be given to the patient.

26. The laws and regulations described in paragraph 25 above insulate the optometrist from non-health care commercial entities. The purpose of this insulation is to prohibit the formation of business relationships between optometrists and such entities. The policy supporting such prohibitions is that preservation of an unbroken relationship between the professional and the patient is best achieved by shielding the professional from the risk of control by an unlicensed person or entity. Among other things, these laws and regulations are intended to:

- 1 a. Ensure that the practice of an optometrist licensed in California will not be
- 2 controlled by a non-licensed entity;
- 3 b. Ensure the continuity of the optometrist-patient relationship;
- 4 c. Maintain the integrity of the optometric profession;
- 5 d. Ensure that an unregulated or lightly-regulated entity will not interfere in
- 6 the optometrist-patient relationship; and
- 7 e. Eliminate confusion in the public as to the source of optometry services.

8 27. California optometrists are also subject to section 456.2 of Title 16 of the Code of
9 Federal Regulations, which states that it is “an unfair act or practice” for an optometrist to fail to
10 provide to the patient one copy of the patient’s prescription immediately after the eye examination
11 is completed.

12 **B. High profits are made on designer eyewear and specialty optics.**

13 28. Consumers pay a premium for high-end “designer” eyewear brand names. The sale
14 of designer eyewear generates substantial profits.

15 29. Since prescription designer eyewear can be sold only to a patient with a
16 prescription issued by either an optometrist or an ophthalmologist, there are tremendous financial
17 incentives for eyewear companies and dispensing opticians to promote the sale of their products
18 by entering into arrangements with optometrists that are prohibited by law, including some of the
19 laws described in paragraph 25 above.

20 30. The LUXOTTICA GROUP and/or its subsidiaries have during the relevant time
21 period manufactured and/or owned the following lines of designer eyewear: Ray-Ban, Vogue,
22 Persol, Arnette, Killer Loop, Revo, Sferoflex, Luxottica and T3. In addition, the LUXOTTICA
23 GROUP and its subsidiaries during the relevant time period have licensed the following makes of
24 eyewear: Anne Klein, Brooks Brothers, Byblos, Bvlgari, Chanel, Emporio Armani, Ferragamo,
25 Genny, Giorgio Armani, Moschino, Sergio Tacchini, Ungaro and Web. The LUXOTTICA
26 GROUP and its subsidiaries have sold its products to “millions of consumers in 115 countries in
27 all five continents.” The LUXOTTICA GROUP measures its annual sales in the billions of dollars
28 and its annual profits in the hundreds of millions.

1 **C. The LUXOTTICA GROUP acquired LENSRAFTERS in 1995 so as to have**
2 **a “distribution network” for its products in the United States.**

3 31. In or about 1995, the LUXOTTICA GROUP acquired LENSRAFTERS as part of
4 its plan of “vertical integration.” The acquisition of LENSRAFTERS allowed the LUXOTTICA
5 GROUP to expand its “distribution network” of high-end and expensive eyewear to the largest
6 market in the world, the United States. LENSRAFTERS operates the largest optical retail chain
7 in North America, with at least 864 stores and 11 percent of the optical retail market as of the year
8 2000. LENSRAFTERS currently owns and operates at least 75 stores in California.

9 32. In addition to selling frames made and licensed by the LUXOTTICA GROUP and
10 its subsidiaries, LENSRAFTERS offers a number of options that can be added – for an
11 additional cost to the consumer – to the eyeglass prescription. LENSRAFTERS sells some lenses
12 and materials that are proprietary and available only through LENSRAFTERS, such as
13 “Invisibles” and “Featherwate PLUS.” Comparable lenses and materials are available from
14 opticians other than LensCrafters, but are known to those opticians by their generic names.

15 33. Defendants also sell prescription and non-prescription sunglasses at the
16 LENSRAFTERS stores.

17 **D. Defendants place optometrists under their control inside the**
18 **LENSRAFTERS stores.**

19 34. Defendants have situated optometrists under their control inside LENSRAFTERS
20 stores in California. Over the past four or more years defendants have exerted increasing control
21 over the optometrists’ practice of their healing art and have intruded on their medical judgment.
22 Defendants’ strategy operates as follows:

- 23 a. Encourage all consumers to have an eye examination performed by the
24 optometrists inside the LENSRAFTERS store.
- 25 b. Create a LENSRAFTERS store layout that places the optometrists inside
26 the store, with little or no physical separation between the optometric area
27 and the LENSRAFTERS sales floor. Defendants intend that from the
28 patients’ perspective there be a “seamless experience” between their

1 optometric examination and their subsequent purchase of
2 LENSCRAFTERS products.

- 3 c. Instruct the optometrists to promote and prescribe as many of the
4 defendants' products as is possible.
- 5 d. Instruct the optometrists and other employees working with optometric
6 patients to gather marketing and sales information from the patients under
7 the guise of taking medical information and performing eye examinations.
- 8 e. Place the employees performing the duties of an optometric assistant under
9 the direct supervision and control of LENS CRAFTERS, rather than the
10 optometrists.
- 11 f. Instruct the optometrists to perform a minimum quota of fee-generating
12 procedures on the patients.
- 13 g. Instruct employees to control physical possession of the prescriptions so
14 that they either do not reach the patients' hands until after they have
15 purchased LENS CRAFTERS products, or are never given to them.
- 16 h. Instruct employees to take the patients' prescription directly to the
17 LENS CRAFTERS lab immediately after the eye examinations.
- 18 i. Instruct the optometrists to write the prescriptions to expire in one year,
19 even though the law allows the prescriptions to remain valid for a longer
20 period, so that the patients cannot fill the prescriptions elsewhere, and so
21 that the patients are likely to return to LENS CRAFTERS to refill the
22 prescription and purchase more eyewear in a year's time.
- 23 j. Instruct employees to escort the patients (who in many cases has just had
24 their eyes dilated and may be disoriented) immediately following the
25 examination the few steps from the exam area to the LENS CRAFTERS
26 sales floor.
- 27 k. Use the marketing and sales information that the patients provided during
28 the medical history interview and the optometric examination to convince

1 the patient to purchase multiple pairs of high-end eyeglasses and expensive
2 lens options.

- 3 1. Use information that the patients provided during the medical history
4 interview and eye examination as part of a direct marketing campaign to
5 elicit future LENSRAFTERS purchases from those patients.

6 **E. LENSRAFTERS and the LUXOTTICA GROUP exercise *de facto* control
7 over EYEXAM.**

8 35. The LUXOTTICA GROUP, LENSRAFTERS and/or other defendants have
9 created and structured EYEXAM so as to allow them to place optometrists under their control
10 inside LENSRAFTERS stores. The optometrists placed inside the LENSRAFTERS stores and
11 their assistants are employed by EYEXAM in name only. They are not independent. Instead, they
12 practice and work under the control, direction and influence of LENSRAFTERS, the
13 LUXOTTICA GROUP and/or other defendants. As a result, the optometrists' medical
14 independence has been compromised and their patients – the members of the public and of the
15 Class – have been injured as a result.

16 36. EYEXAM has had a six-member board of directors during the class period. During
17 the class period, one of those directors has also always been a vice-president of LENSRAFTERS
18 and another director has also always been LENSRAFTERS' in-house counsel based in Ohio.
19 During the class period two or three other directors were based in Italy and they include the chief
20 operating officer and the chief financial officer of the LUXOTTICA GROUP. The Italian directors
21 have rarely or never attended the EYEXAM board meetings. During the class period one or two of
22 the remaining directors have been based in New York and they rarely or never attended the board
23 meetings. As a result, during the class period the EYEXAM board meetings were usually
24 governed by a quorum of just two directors, they being the vice-president of LENSRAFTERS
25 and LENSRAFTERS in-house counsel.

26 37. LENSRAFTERS and EYEXAM have both registered the same corporate mailing
27 address with the California Secretary of State. That location, in Ohio, is LENSRAFTERS'
28 corporate headquarters.

1 38. During the class period the president of EYEXAM has also always been a vice
2 president of LENSRAFTERS.

3 39. LENSRAFTERS provides all management, administrative, consulting, financial
4 and personnel services to EYEXAM. Pursuant to a written agreement in effect at the start of the
5 class period, LENSRAFTERS provided services and “consultations” to EYEXAM. After
6 plaintiffs filed the original complaint in this action, LENSRAFTERS and EYEXAM executed a
7 new written agreement. The person who signed that agreement on behalf of EYEXAM was also a
8 vice president of LENSRAFTERS at the time she signed the agreement. That agreement states
9 that LENSRAFTERS provides all “management, administrative, accounting, financial, legal,
10 data processing, planning, consulting and similar services” to EYEXAM, including:

- 11 a. Locating, procuring, furnishing and equipping optometric offices for lease
12 to EYEXAM.
- 13 b. General ledger, accounting and financial consulting.
- 14 c. Human resources and personnel, including the use of “shared” employees.
- 15 d. In-house legal counsel, including advice relating to regulatory compliance,
16 business transactions and government relations.
- 17 e. Merchandising and marketing.
- 18 f. Loss prevention.
- 19 g. Payroll, including check processing, tax deposits, tax filings and
20 management reporting.
- 21 h. Internal information systems.
- 22 i. Risk and insurance management.

23 40. LENSRAFTERS recruits optometrists and employees for EYEXAM.

24 41. Defendants instruct their employees, including EYEXAM’s optometrists and
25 employees, to participate in the “One Voice” program. That program commingles the employees,
26 the retail and office space, and the management of LENSRAFTERS and EYEXAM.

1 **F. There is no or little physical separation or distinction between the**
2 **LENSCRAFTERS store and the EYEXAM office inside that store.**

3 42. LENSCRAFTERS purports to lease or sublease space within its stores to
4 EYEXAM.

5 43. The address of the LENS CRAFTERS store and the corresponding EYEXAM
6 office are usually identical.

7 44. The telephone numbers of the LENS CRAFTERS store and the associated
8 EYEXAM office are usually similar.

9 45. The LENS CRAFTERS stores that have corresponding EYEXAM offices follow a
10 uniform look. The EYEXAM optometrists work and practice their healing art inside the
11 LENS CRAFTERS store. There is almost no physical separation or distinction between the
12 optometrists' work area and the LENS CRAFTERS sales floor. This is deliberate and intentional,
13 as defendants strive to create a "seamless experience" for the patient and thereby make it easier to
14 steer that patient from the optometric area and to the LENS CRAFTERS sales floor following the
15 eye examination.

16 46. The optometrist area is typically within 10 feet of the LENS CRAFTERS sales
17 floor. Staff wearing white lab coats move freely between the LENS CRAFTERS sales floor, the
18 LENS CRAFTERS lab, and the optometrist area. LENS CRAFTERS employees have access to the
19 patients' optometric records.

20 **G. Defendants encourage all consumers to have an exam performed by the**
21 **optometrists inside the LENS CRAFTERS store because these examinations**
22 **"drive" LENS CRAFTERS eyewear sales.**

23 47. Defendants instruct the general managers of the LENS CRAFTERS stores that "the
24 number one mechanism" they have to "drive" the sale of eyewear in the store is "eye health care."
25 Defendants instruct the LENS CRAFTERS general managers that their employees should believe
26 that the "number one most important thing [the employees] can do that day" is to make sure that
27 they "schedule everybody an eye health exam." Defendants instruct the LENS CRAFTERS store
28 general managers that their employees must "really believe that an eye health examination is the
right thing for every patient and customer." Defendants instruct their employees to tell

1 LENSRAFTERS customers that an eye examination at the LENSRAFTERS location is “better
2 than anywhere else.” Defendants encourage LENSRAFTERS employees to believe that
3 LENSRAFTERS has “the best doctors.” Defendants instruct their employees to be “fanatical”
4 about the need for the customer to undergo an eye examination from the optometrists inside the
5 LENSRAFTERS store. Defendants instruct their employees to “never” refer a customer to an
6 optometrist other than an optometrist inside LENSRAFTERS. Defendants’ goal is to convert
7 “everyone” to an optometric patient at LENSRAFTERS.

8 **H. Defendants prescribe and promote multiple LENSRAFTERS products to**
9 **patients.**

10 48. Defendants instruct the optometrists working inside the LENSRAFTERS store to
11 use their status as health care professionals to influence their patients to purchase eyewear from
12 LENSRAFTERS.

13 49. Defendants instruct the optometrists working inside the LENSRAFTERS store to
14 write more than one eyewear prescription for each patient.

15 50. Defendants instruct the optometrists working inside the LENSRAFTERS store to
16 use their status as health care professionals to influence their patients to purchase multiple pairs of
17 prescription eyewear from LENSRAFTERS.

18 51. Defendants instruct the optometrists working inside the LENSRAFTERS store to
19 use their status as health care professionals to influence their patients to purchase prescription and
20 non-prescription sunglasses from LENSRAFTERS.

21 52. Defendants instruct the optometrists working inside the LENSRAFTERS store to
22 use their status as health care professionals to influence their patients to purchase eyewear from
23 LENSRAFTERS that that is made with LENSRAFTERS proprietary lenses and materials.

24 53. Defendants instruct the optometrists working inside the LENSRAFTERS store to
25 use a four-part prescription form. Defendants designed the four-part form to encourage the
26 optometric patients to purchase: (a) LENSRAFTERS products; (b) multiple pairs of
27 LENSRAFTERS eyewear; (c) eyewear made with LENSRAFTERS’ proprietary lenses and
28 materials; (d) LENSRAFTERS sunglasses; and (e) LENSRAFTERS contact lenses.

1 Defendants instruct the optometrists to fill out at least two of the four possible prescriptions on
2 this form. Defendants intend for the form to overcome consumer resistance to making purchases
3 from LENSRAFTERS.

4 54. The four-part form lists LENSRAFTERS proprietary lenses and materials.
5 Defendants instruct the optometrists to prescribe these LENSRAFTERS proprietary lenses and
6 materials by checking a box next to that product's name. Similar and comparable lenses and
7 materials are available from opticians other than LENSRAFTERS and are known to those
8 opticians by their generic names. Defendants utilize the LENSRAFTERS proprietary product
9 names on their four-part prescription form, rather than the generic names, so as to discourage and
10 prevent the optometric patients from patronizing opticians other than LENSRAFTERS.
11 Defendants know that if the patients take the four-part form to opticians other than
12 LENSRAFTERS, then those opticians may be unable to interpret that form because of the
13 proprietary names.

14 55. Defendants instruct the optometrists inside the LENSRAFTERS store to steer
15 their patients to the LENSRAFTERS sales floor following the eye examination. Defendants refer
16 to this practice as "transitioning." Defendants instruct the optometrists to maintain a minimum
17 "conversion rate," the rate at which their patients purchase products from LENSRAFTERS.

18 56. Defendants instruct the optometrists inside the LENSRAFTERS stores that they
19 shall be held accountable for the sales at the associated LENSRAFTERS stores.

20 57. Defendants have migrated employees and systems away from EYEXAM and to
21 LENSRAFTERS. Defendants "cross-train" LENSRAFTERS employees to perform the
22 functions of EYEXAM optometric assistants, technicians and other employees. Employees who
23 perform the duties and functions of assistants to the optometrists work for LENSRAFTERS.

24 58. The optometrists working inside the LENSRAFTERS store must request supplies
25 and materials from LENSRAFTERS employees.

26 59. The optometrists working inside the LENSRAFTERS stores depend on
27 LENSRAFTERS to provide optometric equipment and to service that equipment.

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1 60. Defendants created the position of an “optical specialist” during the class period.
2 LENSRAFTERS supervises the employees performing the function of, or holding the title or
3 position of optical specialist, regardless of whether they are employed in name by EYEXAM. The
4 optical specialists are not under the direct supervision and control of the optometrists.

5 61. The optical specialists are laypersons. Defendants instruct the optical specialists to
6 wear a white lab coat so that from the patients’ perspective they appear to be part of the
7 optometrists’ medical staff.

8 62. Defendants instruct the optical specialists to greet and interview the patients before
9 the eye examination. Defendants instruct the optical specialists to tell the patients that they are
10 assisting the optometrists. Defendants instruct the optical specialists to solicit and record the
11 patients’ medical history. Defendants instruct the optical specialists to obtain “lifestyle”
12 information from the patients during the medical history for later use in selling and marketing
13 defendants’ products to the patients. Defendants instruct the optical specialists how to obtain this
14 information. Defendants instruct the optical specialists to perform pre-testing on the patients and
15 to perform certain optometric procedures on the patients.

16 63. Defendants instruct the optical specialists to escort the patients to the optometrists’
17 examination rooms. Defendants instruct the optical specialists to remain present during the
18 optometric examinations and to “transcribe” for the optometrists during the examinations.
19 Defendants instruct the optical specialists to fill out the four-part prescription forms for the
20 optometrists. To the patients, it appears that the optical specialists are assisting the optometrists
21 and taking down medical information.

22 64. Defendants instruct the optical specialists to recommend that the optometrists
23 prescribe LENSRAFTERS products to the patients during the examination. Defendants instruct
24 the optical specialists to hand the patients’ prescriptions not to the patients, but to the
25 LENSRAFTERS laboratory, immediately following the examination.

26 65. Defendants instruct the optical specialists to escort the patients to the
27 LENSRAFTERS sales floor following the eye examinations. Defendants instruct the optical
28 specialists to sell LENSRAFTERS products to the patients using the “lifestyle information” that

1 the optical specialists learned or overheard when taking the patients' medical history and sitting in
2 on the examinations.

3 66. Defendants transfer to a database the information they elicit from the patients
4 during the medical history interviews and optometric examinations. Defendants use this
5 information and database to conduct a direct mail program to those patients for the purpose of
6 encouraging those patients to purchase additional products from LENSRAFTERS.

7 **I. Defendants charge the optometric patient additional fees.**

8 67. Defendants offer optometric patients a "thorough eye exam" for a set price. In most
9 cases, an optometrist must dilate the patient's eyes to perform a thorough examination of that
10 patient's eyes. Defendants charge that patient an additional fee for the dilation. Accordingly, for
11 most patients a "thorough" eye examination costs more than the defendants' set price.

12 68. Defendants charge the patients an additional fee for retinal photographs.

13 69. Defendants set quotas for the optometrists working inside the LENSRAFTERS
14 stores and instruct them to perform dilations and take retinal photographs for a minimum
15 percentage of their patients.

16 **J. Defendants operate the EYEXAM health care service plan for the purpose of
17 promoting and selling their products.**

18 70. For purposes of obtaining and maintaining EYEXAM's license as a health care
19 service plan under the KNOX-KEENE ACT, defendants report to State regulators that
20 EYEXAM's patients are limited to members who join the EYEXAM health care service plan by
21 paying an annual membership fee, which entitles the patient/members to one eye examination and
22 follow up care within that year. In practice, however, defendants do not adequately inform or
23 notify the patients that they are enrolling in or joining the EYEXAM health care service plan.
24 Defendants do not adequately inform or notify the patients that the fee they pay is a membership
25 fee. Defendants instead cause the patients to reasonably believe that the fee they are paying is for
26 an eye examination, as opposed to a health care service plan membership.

27 71. Defendants intentionally downplay the fact that they are classifying the patient's
28 payment as a health care service plan membership fee (as opposed to an eye examination fee)

1 because that fact is inconsistent with defendants’ goal of creating for that patient a “seamless
2 experience” between the optometric examination and the purchase of products from
3 LENSRAFTERS. Defendants know that this information would undermine their goal of steering
4 the patient toward the purchase of LENSRAFTERS products.

5 **VI. THE CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**

7 **UNTRUE OR MISLEADING ADVERTISING – BUSINESS AND**
8 **PROFESSIONS CODE § 17500.**

9 **(AGAINST ALL DEFENDANTS)**

10 72. Plaintiffs hereby incorporate by reference paragraphs 1 through 11 and 22 through
11 71 herein, as though alleged fully in this Cause of Action.

12 73. This cause of action is brought pursuant to the Unfair Competition Law at Business
13 & Professions Code § 17500 *et seq.*

14 74. Plaintiffs bring this Cause of Action solely in their capacities as private attorneys
15 general pursuant to Business & Professions Code § 17535.

16 75. Defendants intended to sell personal property and/or to perform services.

17 76. Defendants disseminated advertising before the public in California that: (a)
18 contained statements that were illegal, untrue or misleading; (b) defendants knew, or in the
19 exercise of reasonable care should have known, was illegal, untrue or misleading; (c) concerned
20 the personal property or services or their disposition or performance; and (d) was likely to mislead
21 or deceive a reasonable consumer. The illegal, untrue and/or misleading statements and
22 representations made by these defendants include but are not limited to:

- 23 a. Words and images that state or imply that LENSRAFTERS provides
24 optometric services, when in fact LENSRAFTERS does not provide such
25 services, is not licensed to provide such services, and is prohibited by law
26 from either providing such services or maintaining an optometrist on
27 premises.

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- b. Words or images that state or imply that the EYEXAM optometrists are “independent,” when in fact the optometrists are under the influence and control of LENSRAFTERS and other defendants.
- c. Words or images that state or imply that the EYEXAM optometrists are “next to” or “next door” to the LENSRAFTERS store, when in fact defendants place the optometrists inside the LENSRAFTERS store.
- d. Words or images that state or imply that a patient may receive a “thorough” eye examination for a set price, when in fact a thorough eye examination often requires the dilation of the eyes and defendants charge the patient an additional fee for that dilation.
- e. Words or images that state or imply that the patient is paying a fee for an eye examination when, in fact, defendants report to State regulators that the fee the patient pays is for that patient’s membership in the EYEXAM health care service plan.
- f. Advertisements for the sale of sunglasses at LENSRAFTERS that include “words or figures which have a tendency to advertise the practice of optometry” in violation of Business & Professions Code § 3130.

77. Defendants advertise extensively in the LENSRAFTERS store windows and inside the LENSRAFTERS stores. These advertisements contain some or all of the illegal, false and/or misleading statements and representations as alleged herein.

78. Defendants advertise extensively in California-based newspapers and magazines. These advertisements contain some or all of the illegal, false and/or misleading statements and representations as alleged herein.

79. Defendants advertise extensively on local television stations in California. These advertisements contain some or all of the illegal, false and/or misleading statements and representations as alleged herein.

1 88. Pursuant to Business & Professions Code § 17203, plaintiffs and the members of
2 the Class seek from defendants, and each of them, restitution and the disgorgement of all earnings,
3 profits, compensation, benefits and other ill-gotten gains obtained by defendants as a result of
4 defendants' conduct in violation of Business & Professions Code § 17200 *et seq.*

5 89. Pursuant to Business & Professions Code § 17204, plaintiffs and the members of
6 the Class seek an order of this Court enjoining defendants, and each of them, from continuing to
7 engage in the acts as set forth in this complaint, which acts constitute violations of Business &
8 Professions Code § 17200 *et seq.* Plaintiffs, the Class and the public will be irreparably harmed if
9 such an order is not granted.

10 **THIRD CAUSE OF ACTION**

11 **UNLAWFUL BUSINESS PRACTICES – BUSINESS &
12 PROFESSIONS CODE § 17200.**

13 **(AGAINST ALL DEFENDANTS)**

14 90. Plaintiffs hereby incorporate by reference paragraphs 1 through 11 and 22 through
15 30 herein, as though alleged fully in this Cause of Action.

16 91. This Cause of Action is brought pursuant to Unfair Competition Law at Business &
17 Professions Code § 17200 *et seq.* Defendants' conduct constitutes unfair, unlawful and/or
18 fraudulent business practices within the meaning of Business & Professions Code § 17200.

19 92. Plaintiffs bring this Cause of Action on behalf of the general public solely in their
20 capacities as private attorneys general pursuant to Business & Professions Code § 17204.

21 93. Defendants own and/or operate health care service plans. These health care service
22 plans have hundreds of thousands, if not millions, of members in California. These health care
23 service plans allow plan members to visit optometrists who are listed on the plans' panels of
24 approved provider optometrists. Defendants' health care service plans enter into agreements with
25 otherwise independent optometrists in California whereby the optometrists become members of
26 the plans' provider panels.

1 94. Defendants own and operate health care service plans for the purpose of steering
2 the plans' members toward LENSRAFTERS and/or toward purchasing products made, licensed
3 or distributed by the LUXOTTICA GROUP and/or its subsidiaries.

4 95. In some instances, defendants offer a California optometrist membership on a plan
5 provider panel on the condition that the optometrist agree: (1) to purchase "up front" a large
6 number of frames made or licensed by the LUXOTTICA GROUP or its subsidiaries; and (2) to
7 purchase annually a set quota of frames and products made or licensed by the LUXOTTICA
8 GROUP or its subsidiaries. The optometrist who becomes a member of the provider panel in
9 exchange for agreeing to defendants' conditions is likely to discontinue carrying frames made
10 and/or licensed by defendants' competitors due to the lack of shelf space and financial
11 considerations. This arrangement is likely to cause the optometrist to encourage his/her patient to
12 purchase defendants' frames and products, even if the optometrist does not feel they are the best
13 frames and products for that patient.

14 96. Subdivision (c) of section 655 of the Business & Professions Code prohibits an
15 optometrist from having any direct or indirect membership with a person who is engaged in the
16 manufacture, sale or distribution to optometrists of "lenses, frames, optical supplies, optometric
17 appliances or devices or kindred products." Any person who participates in a violation of Business
18 & Professions Code § 655 is guilty of a misdemeanor. The LUXOTTICA GROUP and its
19 subsidiaries are persons engaged in the manufacture, sale and distribution to optometrists of
20 frames and optical products.

21 97. Defendants participate in violating Business & Professions Code § 655 by making
22 and encouraging arrangements whereby optometrists have an indirect membership with the
23 LUXOTTICA GROUP and its subsidiaries as described in paragraphs 93 through 95 above.

24 98. Pursuant to Business & Professions Code § 17204, plaintiffs seek an order of this
25 Court enjoining defendants, and each of them, from continuing to own, operate, control or
26 influence health care service plans that operate as described above, which acts constitute violations
27 of section 17200 *et seq.* The general public will be irreparably harmed if such an order is not
28 granted.

1 **FOURTH CAUSE OF ACTION**

2 **VIOLATION OF CONSUMER LEGAL REMEDIES ACT – CIVIL**
3 **CODE § 1750**

4 **(AGAINST ALL DEFENDANTS)**

5 99. Plaintiffs hereby incorporate by reference paragraphs 1 through 71 herein, as
6 though alleged fully in this Cause of Action.

7 100. This Cause of Action is brought pursuant to the Consumer Legal Remedies Act,
8 Civil Code § 1750 *et seq.* (“CLRA”).

9 101. At all times herein mentioned, plaintiffs and Class members were consumers within
10 the meaning of Civil Code § 1761(d).

11 102. Defendants’ policies, acts and practices were intended to result in the passing off
12 services as those of another in that they caused plaintiffs and members of the Class to reasonably
13 believe that LENSRAFTERS employed the optometrists working inside the LENSRAFTERS
14 store who provided optometric services. By their wrongful conduct as alleged herein, defendants,
15 and each of them, have created, engaged in, and/or participated in unfair practices in violation of
16 section 1770(a)(1) of the Civil Code.

17 103. Defendants’ policies, acts and practices were intended to result in the
18 misrepresentation of the affiliation, connection, or association with another in that they caused
19 plaintiffs and members of the Class to reasonably believe that LENSRAFTERS employed the
20 optometrists working inside the LENSRAFTERS store. By their wrongful conduct as alleged
21 herein, defendants, and each of them, have created, engaged in, and/or participated in unfair
22 practices in violation of section 1770(a)(3) of the Civil Code.

23 104. Defendants’ policies, acts and practices were intended to result in defendants
24 making representations that the services had sponsorship, approval, characteristics, or benefits
25 which they did not have, or that a person has a status which he or she does not have, in that they:
26 (a) failed to adequately notify plaintiffs and the Class either that they were joining the EYEXAM
27 health care service plan or that the fee they were paying was for membership in the EYEXAM
28 health care service plan; (b) caused plaintiffs and the Class to reasonably believe that the fee they

1 paid was for an eye examination rather than membership in a health care service plan; and (c)
2 caused plaintiffs and the Class to reasonably believe that LENSRAFTERS employed the
3 optometrists who provided optometric services. By their wrongful conduct as alleged herein,
4 defendants, and each of them, have created, engaged in, and/or participated in unfair practices in
5 violation of section 1770(a)(5) of the Civil Code.

6 105. Defendants' policies, acts and practices were intended to result in defendants
7 making representations that the services are of a particular standard, quality or grade, when they
8 are of another in that they: (a) failed to adequately notify plaintiffs and the Class either that they
9 were joining the EYEXAM health care service plan or that the fee they were paying was for
10 membership in the EYEXAM health care service plan; and (b) caused plaintiffs and the Class to
11 reasonably believe that the fee they paid was for an eye examination rather than membership in a
12 health care service plan. By their wrongful conduct as alleged herein, defendants, and each of
13 them, have created, engaged in, and/or participated in unfair practices in violation of section
14 1770(a)(7) of the Civil Code.

15 106. Defendants, and each of them, aided and abetted, encouraged and rendered
16 substantial assistance in accomplishing the wrongful conduct and their wrongful goals and other
17 wrongdoing complained of herein. In taking action, as particularized herein, to aid and abet and
18 substantially assist the commission of these wrongful acts and other wrongdoings complained of,
19 each defendant acted with an awareness of its primary wrongdoing and realized that its conduct
20 would substantially assist the accomplishment of the wrongful conduct, wrongful goals, and
21 wrongdoing.

22 107. Pursuant to Civil Code § 1780(a), plaintiffs and the other members of the Class
23 seek actual damages, an order of this Court enjoining defendants from engaging in the methods,
24 acts or practices alleged herein, restitution of property, and punitive damages.

25 108. More than thirty days prior to the amending this cause of action to seek damages,
26 plaintiffs, in compliance with section 1782 of the Civil Code, notified defendants in writing of
27 their violations of the CLRA and demanded that they correct the violations. Defendants failed to
28 remedy the violations before plaintiffs amended this count to request damages.

1 **FIFTH CAUSE OF ACTION**

2 **VIOLATION OF THE CALIFORNIA CONFIDENTIALITY OF**
3 **MEDICAL INFORMATION ACT – CIVIL CODE § 56 ET SEQ.**

4 **(AGAINST ALL DEFENDANTS)**

5 109. Plaintiffs hereby incorporate by reference paragraphs 1 through 71 herein, as
6 though alleged fully in this Cause of Action.

7 110. This Cause of Action is brought pursuant to the Confidentiality of Medical
8 Information Act, Civil Code § 56 *et seq.*, which states that no provider of health care or health care
9 service plan shall disclose medical information regarding a patient of the provider of the health
10 care or a subscriber of the health care service plan without first obtaining proper authorization.
11 (Civil Code § 56.10)

12 111. Defendants instruct the optometrists inside the LENSRAFTERS store and other
13 personnel to obtain medical information from optometric patients, including members of the
14 Class, during the patient history interview and the eye examination.

15 112. Defendants cause patients and members of the Class to disclose confidential
16 medical information to in the presence of persons who are not under the direct supervision and
17 control of the optometrists.

18 113. Defendants cause the confidential medical information they obtain from the
19 patients and the members of the Class to be disclosed to LENSRAFTERS for marketing and
20 sales purposes.

21 114. Defendants cause and allow the medical records of the Class to accessed and
22 reviewed by their employees who are not under the direct supervision and control of an
23 optometrist.

24 115. Defendants cause and allow the medical records of the members of the Class to be
25 accessed and reviewed for non-medical reasons.

26 116. By causing the disclosure and use of the medical information of plaintiffs and the
27 Class, defendants violated the Confidentiality of Medical Information Act and are therefore liable
28 for compensatory and punitive damages, in addition to attorney’s fees and costs of suit.

1 117. As a result of defendants' negligent release of the medical information of plaintiffs
2 and the Class, plaintiffs and each Class member are entitled to nominal damages of one thousand
3 dollars (\$1,000.00) for each such release of confidential information, in addition to actual
4 damages, although it is not necessary that plaintiffs and Class members show that they suffered or
5 were threatened with actual damages in order to recover nominal damages as aforesaid.

6 **VII. THE PRAYER FOR RELIEF**

7 WHEREFORE, plaintiffs, individually, on behalf of the Class and on behalf of the public,
8 pray for judgment as follows:

9 1. That this action be certified as a class action, pursuant to Code of Civil Procedure §
10 382 and/or the Consumer Legal Remedies Act, Civil Code § 1781;

11 2. That pursuant to Business and Professions Code §§ 17204 and 17535, all
12 defendants, their officers, directors, principals, assignees, successors, agents, representatives,
13 employees, subsidiaries, affiliates, and all persons, corporations and other entities acting by,
14 through, under, or on behalf of said defendants, or acting in concert or participation with them, be
15 permanently enjoined from directly or indirectly making any illegal, untrue or misleading
16 statements in violation of Business and Professions Code §§ 17200 and 17500, including, but not
17 limited to, the untrue or misleading statements alleged in this complaint;

18 3. That pursuant to Business and Professions Code § 17204, all defendants, their
19 officers, directors, principals, assignees, successors, agents, representatives, employees,
20 subsidiaries, affiliates, and all persons, corporations and other entities acting by, through, under, or
21 on behalf of said defendants, or acting in concert or participation with them, be permanently
22 enjoined from directly or indirectly committing any violations of Business and Professions Code §
23 17200 *et seq.*, including, but not limited to, the violations alleged in this complaint;

24 4. Ordering the disgorgement of all sums unjustly obtained from plaintiffs, the
25 members of the Class and the public;

26 5. Ordering defendants to make restitution to plaintiffs, the members of the Class and
27 the public;

