

1 **CARLSON LYNCH SWEET
KILPELA & CARPENTER, LLP**

2 Todd D. Carpenter (CA 234464)
3 402 West Broadway, 29th Floor
4 San Diego, California 92101
5 Telephone: (619) 756-6994
6 Facsimile: (619) 756-6991
7 tcarpenter@carlsonlynch.com

8 *Attorneys for Plaintiff*

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 SANDRA SEEGERT, on behalf of herself
12 and all others similarly situated,

13 Plaintiff,

14 v.

15 LENSRAFTERS, INC., an Ohio
16 corporation, LUXOTTICA RETAIL
17 NORTH AMERICA, INC., an Ohio
18 corporation, LUXOTTICA GROUP
19 S.P.A., an Italian corporation, and DOES
20 1 through 50, inclusive,

21 Defendants.

Case No.: '17CV1372 JM BLM

CLASS ACTION COMPLAINT

1. **Violation of California's Unfair Competition Laws ("UCL"); California Business & Professions Code Sections 17200, et seq.;**
2. **Violation of California's False Advertising Laws ("FAL"); California Business & Professions Code Sections 17500, et seq.;**
3. **Violations of California Consumer Legal Remedies Act ("CLRA"); California Civil Code Sections 1750, et seq.**

[DEMAND FOR JURY TRIAL]

1 Plaintiff SANDRA SEEGERT (“Plaintiff”) brings this action on behalf of herself
2 and all others similarly situated against Defendants LENS CRAFTERS, INC.,
3 LUXOTTICA RETAIL NORTH AMERICA, INC., and LUXOTTICA GROUP S.P.A.
4 (“Lens Crafters”), and states:

5 **I. NATURE OF ACTION**

6 1. “If everyone is getting a deal, is anyone really getting a deal?”¹ This class
7 action targets Lens Crafters’ unlawful, unfair, and fraudulent business practice of
8 advertising fictitious prices and corresponding phantom discounts on the prescription
9 lenses sold at their Lens Crafters’ retail stores. This practice of false reference pricing
10 occurs where a retailer fabricates a fake regular, original, and/or former reference price,
11 and then offers an item for sale at a deep “discounted” price. Retailers also carry out this
12 misleading discount practice with other methods such as, “buy one, get one free,” or “buy
13 one, get second for __% off.” Whatever the form of the discount, the result is the same: a
14 sham price disparity that misleads consumers into believing they are receiving a good deal
15 and induces them into making a purchase. Retailers drastically benefit from employing a
16 false reference-pricing scheme and experience increased sales.

17 2. The California legislature prohibits this misleading practice. The law
18 recognizes the reality that consumers often purchase merchandise marketed as being “on
19 sale” purely because the proffered discount seemed too good to pass up. Accordingly,
20 retailers have an incentive to lie to customers and advertise false sales. The resulting harm
21 is tangible—the bargain hunter’s expectations about the product she purchased is that it
22 has a higher perceived value and she may not have purchased the product but for the false
23 savings.

24
25
26 ¹ David Streitfeld, *It’s Discounted, but is it a Deal? How List Prices Lost Their Meaning*,
27 New York Times, <https://www.nytimes.com/2016/03/06/technology/its-discounted-but-is-it-a-deal-how-list-prices-lost-their-meaning.html>, (March 6, 2016), last accessed April
28 28, 2017.

1 3. Lens Crafters utilizes false and misleading reference prices in the marketing
2 and selling of prescription lenses at its Lens Crafters' retail stores. Lens Crafters
3 continuously offers a substantial discount on its prescription lenses with the purchase of
4 any eyeglass or sunglasses frame at its retail stores. *See e.g.* Exhibit A, example of
5 promotion. For example, Lens Crafters regularly promotes, “___% Off Lenses with Frame
6 Purchase” (the “Promotion”). *See e.g., id.*

7 4. Lens Crafters advertises its lenses for sale by displaying a large sign on the
8 floor of its retail store that sets forth the “Exclusive Lens Options” along with
9 corresponding images reflecting the purported quality of the image for each lens. *See*
10 Exhibit B, advertisement of prescription lenses. The sign also displays the prices for each
11 lens; however, the only prices reflected on the sign are the discounted prices taken after the
12 Promotion. *See id.*, “Pricing includes 40% off lens offer (Frame purchase required). The
13 regular price of the lenses, which is not revealed to customers until after the transaction is
14 complete, (*see* Exhibit C, Plaintiff's receipt showing original price of lenses before
15 discount), is substantially discounted by the Promotion to create the sale price based on the
16 Promotion. Lens Crafters' Promotion explains that the discount is taken off the lenses and
17 thus, the savings applies to the lenses. *See* Exhibits A-C. The sale price represents the
18 savings the customer is purportedly saving off the regular price on the prescription lenses
19 by purchasing the eyewear.

20 5. However, the regular price for the lenses is a total fiction. The prescription
21 lenses sold at the Lens Crafters' retail stores are never offered for sale, nor actually sold,
22 at the regular price. Thus, the regular price is false and is used exclusively to induce
23 consumers into believing that the lenses were once sold at the regular price and from which
24 the false and discount and corresponding sale price is derived. Lens Crafters' deceptive
25 pricing scheme has the effect of tricking consumers into believing they are receiving a
26 significant deal by purchasing merchandise at a steep discount, when in reality, consumers
27 are paying for merchandise at its regular or original retail price.

28

1 6. The advertised discounts are fictitious because the regular reference price for
2 the lenses does not represent a *bona fide* price at which Lens Crafters previously sold a
3 substantial quantity of the prescription lenses for a reasonable period of time as required
4 by the Federal Trade Commission (“FTC”). In addition, the regular price of the lenses was
5 not the prevailing market retail price within the three months immediately preceding the
6 publication of the advertised former regular price, as required by California law.

7 7. Through its false and misleading marketing, advertising, and pricing scheme,
8 Lens Crafters violated and continues to violate, California and federal law prohibiting
9 advertising goods for sale as discounted from former prices that are false, and prohibiting
10 misleading statements about the existence and amount of price reductions. Specifically,
11 Lens Crafters violated and continues to violate: California’s Unfair Competition Law,
12 Business and Professions Code §§ 17200, *et seq.* (the “UCL”); California’s False
13 Advertising Law, Business and Professions Code §§ 17500, *et seq.* (the “FAL”); the
14 California Consumer Legal Remedies Act, Civil Code §§ 1750, *et seq.* (the “CLRA”); and
15 the Federal Trade Commission Act (“FTCA”), which prohibits “unfair or deceptive acts or
16 practices in or affecting commerce” (15 U.S.C. § 45(a)(1)) and false advertisements (15
17 U.S.C. § 52(a)).

18 8. Plaintiff brings this action on behalf of herself and other similarly situated
19 consumers who have purchased one or more Lens Crafters’ prescription lenses in
20 conjunction with the Promotion of “__% Off Lenses with Frame Purchase” at Defendant’s
21 Lens Crafters’ retail stores. Plaintiff seeks to halt the dissemination of this false,
22 misleading, and deceptive pricing scheme, to correct the false and misleading perception it
23 has created in consumer’s minds, and to obtain redress for those who have purchased
24 merchandise tainted by this deceptive pricing scheme. Plaintiff also seeks to enjoin Lens
25 Crafters from using false and misleading misrepresentations regarding retail price
26 comparisons in their labeling and advertising permanently. Further, Plaintiff seeks to
27 obtain damages, restitution, and other appropriate relief in the amount by which Lens
28

1 Crafters was unjustly enriched as a result of its sales of merchandise offered at a false
2 discount.

3 9. Finally, Plaintiff seeks reasonable attorneys' fees pursuant to California Code
4 of Civil Procedure § 1021.5, as this lawsuit seeks the enforcement of an important right
5 affecting the public interest and satisfies the statutory requirements for an award of
6 attorneys' fees.

7 **II. JURISDICTION AND VENUE**

8 10. This Court has original jurisdiction of this Action pursuant to the Class Action
9 Fairness Act, 28 U.S.C. § 1332(d)(2). The matter in controversy, exclusive of interests and
10 costs, exceeds the sum or value of \$5,000,000 and at least some members of the proposed
11 Class have a different citizenship from Lens Crafters.

12 11. The Southern District of California has personal jurisdiction over the
13 Defendants named in this action. Defendants Lens Crafters, Inc., Luxottica Retail North
14 America, Inc., and Luxottica Group S.p.A. are corporations or other business entities that
15 are authorized to conduct and/or do conduct business in the State of California. Lens
16 Crafters intentionally avails itself of the California market through the ownership and
17 operation of approximately 134 retail stores in California.

18 12. Venue is proper under 28 U.S.C. § 1391(b)(2) because Lens Crafters transacts
19 substantial business in this District. A substantial part of the events giving rise to Plaintiff's
20 claims arose here.

21 **III. PARTIES**

22 **Plaintiff**

23 13. Plaintiff Sandra Seegert resides in San Diego, California. Mrs. Seegert, in
24 reliance on Lens Crafters' false and deceptive advertising, marketing, and "discount"
25 Promotion, purchased a pair of Gunmetal Grey Armani Exchange Eyeglasses, Style No.
26 AX1020 and single vision Featherwates Classic Lenses, Standard Anti-Reflective
27 prescription lenses on or about April 15, 2017 at a Lens Crafters retail store located in
28

1 Westfield Plaza Bonita Mall at 3030 Plaza Bonita Road, National City, California 91950.

2 Mrs. Seegert went to Lens Crafters to look for a new pair of prescription glasses for herself.

3 14. Upon walking into the store, Mrs. Seegert saw a sign advertising the
4 Promotion "40% Off Lenses with Frame Purchase." The sign Mrs. Seegert viewed looked
5 similar to the sign pictured in Exhibit A. Mrs. Seegert continued to see the same Promotion
6 offered on a couple signs within the Lens Crafter store.

7 15. Mrs. Seegert had an eye exam at Eye Exam of California, which was
8 conducted at the Lens Crafters retail store, and received her prescription. Later that day,
9 Mrs. Seegert returned to the store to pick out frames and lenses. After trying on a few
10 different styles, she ultimately selected a pair of Gunmetal Grey Armani Exchange
11 Eyeglasses, Style No. AX1020. Upon examining the frames, Mrs. Seegert observed the
12 price tag attached to the frames, which advertised the regular price of the frames as
13 \$120.00. Mrs. Seegert then spoke with a sales associate about the type of lenses she should
14 purchase. Mrs. Seegert selected the Featherwates Classic Lenses, Standard Anti-Reflective
15 prescription lenses for \$179.00, originally priced at \$298.34, as displayed on her receipt.
16 Mrs. Seegert reasonably believed that she would be getting a good deal if she purchased a
17 pair of frames and received 40% off a pair of lenses that had a value significantly higher
18 than the discounted price.

19 16. However, the prescription lenses were never offered for sale or sold at the
20 \$298.34 price, nor were they offered for sale or sold at that price within the 90-day period
21 immediately preceding Mrs. Seegert's purchase. Therefore, Mrs. Seegert was damaged by
22 her purchase of the prescription lenses.

23 **Defendant**

24 17. Plaintiff is informed and believes, and upon such information and belief
25 alleges, Defendant Luxottica Group, S.p.A. is an Italian corporation doing business in
26 California. Further, Plaintiff is informed and believes, and upon such information and
27 belief alleges that Defendant Luxottica Group S.p.A. is the largest eyewear company in the
28 world, operating optical retail brands such as Lens Crafters, Pearle Vision, and Sunglass

1 Hut and eyewear brands such as Ray-Ban, Oakley, and Oliver Peoples. Defendant
2 Luxottica Group, S.p.A. made over 10 billion dollars in net sales in 2015.

3 18. Plaintiff is informed and believes, and upon such information and belief
4 alleges, Defendant Lens Crafters, Inc. is an Ohio corporation with its headquarters located
5 at 4000 Luxottica Place, Mason, Ohio 45040.

6 19. Plaintiff is informed and believes, and upon such information and belief
7 alleges, Defendant Luxottica Retail North America, Inc. is an Ohio corporation with its
8 headquarters located at 4000 Luxottica Place, Mason, Ohio 45040.

9 20. Plaintiff is informed and believes, and upon such information and belief
10 alleges, Defendant Lens Crafters, Inc. is a wholly owned subsidiary of Defendant Luxottica
11 Retail North America, Inc. and/or Defendant Luxottica Group S.p.A.

12 21. Plaintiff does not know the true names or capacities of the persons or entities
13 sued herein as DOES 1-50 inclusive, and therefore sues such Defendants by such fictitious
14 names. Plaintiff is informed and believes, and upon such information and belief alleges,
15 that each of the DOE Defendants is in some manner legally responsible for the damages
16 suffered by Plaintiff and the Class members, as alleged herein. Plaintiff will amend this
17 Complaint to set forth the true names and capacities of these Defendants when they have
18 been ascertained, along with appropriate charging allegations, as may be necessary.

19 **IV. FACTUAL BACKGROUND**

20 **The Fraudulent Sale Discounting Scheme**

21 22. Lens Crafters is the nation's largest optical retailer, with over 130 stores in
22 California and over 880 stores nationwide. Defendants sell prescription lenses and
23 eyewear, and provide vision care services such as scheduled eye exams and customized
24 fittings at its Lens Crafters locations. Defendants offer for sale a variety of designer brand
25 eyeglass and sunglass frames and specialized lenses tailored to the customer's various
26 needs such as single vision, bifocals and trifocals, progressives, indoor/outdoor, night
27 driving, among others. Defendants directly market their merchandise to consumers via in-
28 store advertisements and its e-commerce website (lenscrafters.com).

1 23. Lens Crafters engages in a scheme to defraud its customers by perpetually
2 discounting its merchandise, namely, its prescription lenses, in its retail stores. Lens
3 Crafters consistently advertises a large discounted sale price on its prescription lenses with
4 the purchase of a pair of frames. Specifically, Lens Crafters regularly offers a Promotion
5 of “___% Off Lenses with Frame Purchase” and advertises this offer on a placard located
6 at the front of the store. *See e.g.* Exhibit A. The sale price associated with the Promotion
7 conveys to the customer a deeply discounted price at which the lenses are presently being
8 offered for sale. *See e.g.* Exhibit B.

9 24. However, at no time are the Lens Crafters’ prescription lenses ever offered for
10 sale anywhere at the regular price. The regular price is merely a false reference price,
11 which Lens Crafters utilizes to deceptively manufacture a deeply discounted sale price on
12 the prescription lenses sold at the Lens Crafters retail stores during the class period.

13 25. This practice is not accidental. Rather, this practice is a fraudulent scheme
14 intended to deceive consumers into: 1) making purchases they otherwise would not have
15 made; and/or 2) paying substantially more for merchandise consumers believed was
16 heavily discounted and thus, worth more than its actual value.

17 26. Retailers, including Lens Crafters, understand that consumers are susceptible
18 to a good bargain, and therefore, Lens Crafters has a substantial interest in lying in order
19 to generate sales. A product’s “regular,” “original,” or “market” price matters to
20 consumers because it serves as a baseline upon which consumers perceive a product’s
21 value. In this case, Lens Crafters’ regular price of their prescription lenses conveys to
22 consumers, including Mrs. Seegert, “the product’s worth and the prestige that ownership
23 of the product conveys.” *See Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1106 (9th Cir. 2013)
24 (citing Dhruv Grewal & Larry D. Compeau, Comparative Price Advertising: Informative
25 or Deceptive?, 11 J. Pub. Pol’y & Mktg. 52, 55 (Spring 1992) (“By creating an impression
26 of savings, the presence of a higher reference price enhances subjects’ perceived value and
27 willingness to buy the product.”); *id.* at 56 (“[E]mpirical studies indicate that as discount
28