UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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

Plaintiffs,

- against -

LUXOTTICA RETAIL NORTH AMERICA d/b/a LensCrafters,

Defendant.

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MEMORANDUM & ORDER
17-CV-5216 (PKC) (LB)

PAMELA K. CHEN, United States District Judge:

Plaintiffs Thomas Allegra, Yesenia Ariza, Mariana Elise Emmert, Stuart Rogoff, Gracelynn Tenaglia, and Melissa Verrastro ("Named Plaintiffs" or "Class Representatives"), individually and on behalf of others similarly situated (collectively, "Plaintiffs"), bring this lawsuit against Defendant Luxottica Retail North America d/b/a LensCrafters ("Defendant" or "LensCrafters"), alleging false and misleading statements by LensCrafters about its AccuFit system, which induced customers to purchase and/or caused them to overpay for LensCrafters' prescription eyeglasses in violation of California, Florida, and New York law. Before the Court is Plaintiffs' combined motion for final approval of class settlement, service awards to class representatives, and class counsel's application for an award of attorneys' fees, costs, and expenses. For the reasons that follow, Plaintiffs' motions are granted in full. The Court separately issues its final approval order simultaneously with the issuance of this Memorandum and Order.

BACKGROUND

I. Factual Background

The Court assumes the parties' familiarity with the facts alleged in this matter, summarized in the Court's January 5, 2022, Memorandum and Order, which granted Plaintiffs' motion to certify the class at issue in this settlement. *See Allegra v. Luxottica Retail N. Am.*, 341 F.R.D. 373, 388–90 (E.D.N.Y. 2022).

II. Procedural Background

On September 5, 2017, Plaintiffs filed this putative class action in the Eastern District of New York, along with similar actions in the Northern District of California and the Southern District of Florida. (Dkt. 1 at 21; Dkt 26 at 3.) The Court consolidated the cases on December 8, 2017. (12/8/2017 Docket Order.) On February 2, 2018, Plaintiffs' attorneys were appointed as interim class counsel ("Class Counsel"). (2/2/2018 Docket Order.) On September 21, 2018, Plaintiffs filed their Second Amended Consolidated Complaint ("SACC"), the operative complaint in this case. (SACC, Dkt. 50.) Defendant answered on October 30, 2018. (Dkt. 66 at 22.)

The parties engaged in extensive discovery. In nearly two years of fact discovery, Plaintiffs conducted 15 fact witness depositions, including three Federal Rule of Civil Procedure ("Rule") 30(b)(6) depositions of Defendant's representatives, and Defendant deposed all six Named Plaintiffs in this case, two of Plaintiffs' witnesses, and two family members of Named Plaintiffs. (Dkt. 356 at 6.) During expert discovery, Plaintiffs proffered seven expert witnesses, and Defendant proffered eight, all of whom were deposed and each of whom submitted an expert report. (*Id.* at 6–7.) The parties also submitted extensive and voluminous class certification, *Daubert*, and summary judgment briefing. (Dkts. 237–42, 245–53.)

On December 13, 2021, the Court issued a 155-page opinion granting in part and denying in part Plaintiffs' motion for class certification and resolving the *Daubert* motions for the purposes

of class certification.[1] (Dkt. 272 (the "Class Certification Order").) After the Class Certification Order was published, the Court held a conference to discuss the possibility of mediation, the class notice plan, and motions for summary judgment, and to set a pretrial plan. (*See* 2/8/2022 Docket Order.) At that conference, on February 16, 2022, the Court "advised Defendant that its proposed summary judgment motion would likely be summarily denied, given the Court having already resolved substantially the same issues when the Court granted Plaintiff's class certification motion," but the Court permitted the parties to brief the "discrete, legal issues of (1) relevant statutes of limitations and (2) whether unjust enrichment claims are duplicative of certain statutory claims." (2/16/2022 Minute Entry.)

On April 14, 2022, on stipulation of the parties, the Court granted summary judgment on Plaintiffs' New York unjust enrichment claim and changed the commencement of the New York and California classes from September 5, 2013, to exactly one year later. (Dkt. 281 at 1–2; 4/4/2022 Docket Order.) On June 14, 2022, the Court held a hearing regarding Defendant's partial summary judgment motion and denied summary judgment with respect to Plaintiffs' Florida unjust enrichment claim, but granted summary judgment with respect to all of Plaintiffs' California equitable claims. (6/14/2022 Minute Entry.) The Court also set a briefing schedule for any "further summary judgment or *Daubert* motions," and set July 10, 2023, as the beginning of jury selection for a trial that was to last four weeks. (*Id.*) Defendant filed another partial motion for

[1] That decision denied Plaintiffs' request for class certification under Rule 23(b)(2), but granted Plaintiffs' motion "under Rule 23(b)(3) with respect to claims under New York General Business Law §§ 349, 350; the Florida Deceptive and Unfair Trade Practices Act; California's Unfair Competition Law, False Advertising Law, and Consumer Legal Remedies Act; and for Unjust Enrichment," although it "denie[d] Plaintiffs' request for class certification under Rule 23(b)(3) with respect to the fraudulent omissions claim." (Dkt. 272 at 155.)

summary judgment, which Plaintiffs opposed, and both parties filed renewed *Daubert* motions. (Dkts. 319–27.)

While the parties continued to engage in settlement negotiations, they filed proposed jury instructions, exhibit lists, witness lists, and motions *in limine* in advance of the anticipated trial. (*See* Dkts. 329–341; Dkt. 343 at 1.) Then, on June 15, 2023, the parties notified the Court that they had finalized a settlement—ultimately creating a $39 million settlement fund (the "Settlement Fund") for class members' benefit—and the Court vacated all trial deadlines. (Dkt. 344; 6/16/2023 Docket Order; Dkt. 349-2.) Plaintiffs moved for preliminary approval of the class settlement and appointment of Class Counsel, and after a hearing, on September 20, 2023, the Court granted Plaintiffs' motions. (Dkt. 352.)

After notice of the settlement was distributed to the class, on January 12, 2024, Plaintiffs moved for final approval of the settlement, service awards to the Named Plaintiffs, and attorneys' fees, costs, and expenses. (Dkt. 355 at 1.) The Court held a final approval hearing (the "Final Approval Hearing") on February 26, 2024. (2/26/2024 Minute Entry.)

DISCUSSION

I. Final Approval of Class Settlement

A. Legal Standards

Rule 23(e) requires judicial approval of any class action settlement. *See* Fed. R. Civ. P. 23(e). A class action settlement should be approved "only after a hearing and only on finding that it is fair, reasonable, and adequate," after considering four mandatory factors:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

Rule 23(e)'s four mandatory factors were introduced when Rule 23 was amended in 2018. *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 27–28 (E.D.N.Y. 2019). Prior to the amendments, courts in the Second Circuit had assessed a class action settlement's fairness using the *Grinnell* factors:

> (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through trial; (7) the ability of the defendants to withstand greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 462 (2d Cir. 1974) (citations omitted).

Since the amendments to Rule 23, courts have understood Rule 23 as "add[ing] to, rather than displac[ing], the *Grinnell* factors." *In re Payment Card*, 330 F.R.D. at 29; *see Moses v. N.Y. Times Co.*, 79 F.4th 235, 243 (2d Cir. 2023). Although courts must now "*expressly* consider" the two factors under Rule 23(e)(2)(C)–(D)—the adequacy of relief provided to a class and the equitable treatment of class members—courts may consider the *Grinnell* factors as well. *Moses*, 79 F.4th at 243–44 (emphasis added) (noting that the two factors under Rule 23(e)(2)(A)–(B) are considered to be procedural in contrast to the substantive factors under Rule 23(e)(2)(C)–(D));

Kurtz v. Kimberly-Clark Corp., No. 14-CV-1142 (PKC), 2024 WL 184375, at *3 (E.D.N.Y. Jan. 17, 2024), *appeal filed*, No. 24-454 (2d Cir. 2024).

B. Application

1. Procedural Fairness Under Rule 23(e)(2)(A)–(B)

a. The Class Representatives and Class Counsel Have Adequately Represented the Class

To satisfy Rule 23(e)'s adequacy requirement, "[p]laintiffs must meet two standards—that 'class counsel . . . be qualified, experienced[,] and generally able to conduct the litigation,' and that 'the class members . . . not have interests that are antagonistic to one another.'" *Balestra v. ATBCOIN LLC*, No. 17-CV-10001 (VSB), 2022 WL 950953, at *4 (S.D.N.Y. Mar. 29, 2022) (quoting *In re Drexel Burnham Lambert Grp.*, 960 F.2d 285, 291 (2d Cir. 1992)). As a result, "district courts must make sure that the members of the class possess the same interests, and that no fundamental conflicts exist among the members." *See Charron v. Wiener*, 731 F.3d 241, 249 (2d Cir. 2013).

Here, Class Counsel are qualified and capable of litigating this matter. The two firms representing Plaintiffs—Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein") and Gordon & Partners—have successfully litigated dozens of consumer class actions in recent decades. (Decl. of Geoffrey Graber ("Graber Decl.") Ex. 9, Dkt. 356-1 at 3–4 (listing consumer protection class actions with favorable outcomes achieved by Cohen Milstein); Graber Decl. Ex. 10, Dkt. 356-1 at 1–7 (listing class action cases litigated by Gordon & Partners).) Lead counsel in this matter, attorney Geoffrey Graber of Cohen Milstein, was admitted to the bar in 2000 and specializes in consumer class action litigation. (Graber Decl., Dkt. 356-1 ¶ 17; Graber Decl. Ex. 9, Dkt. 356-1 at 11.) The lead attorney from Gordon & Partners, Steven Calamusa, has been a partner since

2004 and frequently handles consumer class actions and multidistrict litigations. (Graber Decl. Ex. 10, Dkt. 356-1 at 1–2.)

Further, in this matter specifically, Class Counsel, as referenced above, have:

- filed several complex pleadings;
- conducted intensive discovery, including review of close to 70,000 pages of production over nearly two years;
- defended 17 depositions;
- deposed 25 individuals;
- briefed numerous discovery motions, including at least 16 motions to compel;
- worked with seven experts to develop expert reports; and
- engaged in extensive motion practice, including class certification, two rounds of *Daubert* briefing, and opposing Defendant's motion for summary judgment, among numerous other motions.

(Mem. of Law Supp. Pls.' Mot. for Final Approval of Class Settlement, Dkt. 356 ("Mem."), Dkt. 356 at 31.) Beyond these tasks, Class Counsel engaged in intensive trial preparation over several months, which included running a mock jury with focus groups, submitting proposed jury instructions, verdict forms, and motions *in limine*, preparing witnesses for trial, filing witness lists and exhibit lists, designating deposition transcripts, and preparing trial logistics. (*Id.*)

Based on Class Counsel's credentials, experience, and activity in this matter, summarized above, the Court finds that Class Counsel is qualified, experienced, and generally able to conduct this litigation. *See In re N. Dynasty Mins. Ltd. Sec. Litig.*, No. 20-CV-5917 (TAM), 2023 WL 5511513, at *6 (E.D.N.Y. Aug. 24, 2023) (finding counsel qualified and experienced where counsel had prior class action experience and undertook extensive efforts to investigate and substantiate plaintiffs' allegations).

And further, the class members do not have interests that are antagonistic to one another. The Class Representatives, who purchased eyeglasses from LensCrafters after being fitted with AccuFit—just like ordinary class members—are seeking to recover for LensCrafters' alleged misconduct. Their interests, therefore, are aligned with the class and no fundamental conflicts exist; they share the common objective of maximizing their recovery. This factor, consequently, points in favor of approving the settlement.

b. The Proposal Was Negotiated at Arm's Length[2]

A court may find that a settlement reached by counsel after negotiations assisted by an experienced mediator was negotiated at arm's length. *See, e.g.*, *D'Angelo v. Hunter Bus. Sch., Inc.*, No. 21-CV-3334 (JMW), 2023 WL 4838156, at *7 (E.D.N.Y. July 28, 2023) (finding settlement was at arm's length when it was reached by counsel on their own after a full day of mediation with an experienced neutral mediator); *Rosi v. Aclaris Therapeutics, Inc.*, Nos. 19-CV-7118 (LJL), 19-CV-8284 (LJL), 2021 WL 5847420, at *4 (S.D.N.Y. Dec. 9, 2021) (same). Here, starting in 2022, the parties engaged in settlement negotiations over the course of more than a year, supervised by JAMS mediators Judge Daniel Weinstein (ret.) and Ambassador David Carden, including two full-day mediation sessions held months apart. (Mem. 9.) Although no agreement was reached at the mediation, the parties continued to negotiate in the following months, and finally agreed on the settlement. (*Id.*) Given the duration of negotiations, the parties' assistance by two experienced, neutral mediators, the two full-day mediation sessions, and the continued negotiations for months after the mediation sessions, the Court finds that the settlement was

[2] The Court does not presume that the settlement is fair, reasonable, and adequate solely because it was reached through arm's-length negotiation. *See Moses*, 79 F.4th at 243 (holding that district court erred when it did so).

negotiated at arm's length. *See D'Angelo*, 2023 WL 4838156, at *7; *Rosi*, 2021 WL 5847420, at *4. Therefore, this factor points in favor of approving the settlement.

2. Substantial Fairness Under Rule 23(e)(2)(C)–(D)

a. The Relief Provided for the Class is Adequate

To assess this factor, the Court considers: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims, if required; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3). Fed. R. Civ. P. 23(e)(2)(C). "'[T]he district court is required to review both the terms of the settlement and any fee award encompassed in a settlement agreement' in tandem." *Moses*, 79 F.4th at 244 (quoting *Fresno Cnty. Emps.' Ret. Ass'n v. Isaacson/Weaver Fam. Tr.*, 925 F.3d 63, 72 (2d Cir. 2019)). Taking into account these factors, the Court finds that the relief provided for the class is adequate, for the reasons explained below.

(1) Costs, Risks, and Delay of Trial and Appeal

This case, which has lasted for approximately seven years, was far along at the time a settlement was reached. A motion for summary judgment and *Daubert* motions were pending, and the parties were weeks away from trial. (Mem. 3, 8.) Although the advanced stage of the case diminishes the parties' remaining costs, trial (and any appeal) is not without risks. In fact, "that the parties evaluated and briefed [summary judgment] . . . enabled counsel for the [p]arties to have adequately evaluated and considered the strengths and weaknesses of their respective positions." *Delcid v. TCP Hot Acquisition LLC*, No. 21-CV-9569 (DLC), 2023 WL 3159598, at *2 (S.D.N.Y. Apr. 28, 2023). Here, the parties entered into their settlement fully informed of the risks they would otherwise face, achieving "relief without the delay, risk, and uncertainty of trial and

continued litigation." *In re Namenda Direct Purchaser Antitrust Litig.*, 462 F. Supp. 3d 307, 312 (S.D.N.Y. 2020). Thus, this factor points in favor of approving the settlement.

(2) Effectiveness of Proposed Method of Distributing Relief to the Class

This factor requires a court to look at "the method of processing class-member claims." Fed. R. Civ. P. 23(e)(2)(C)(ii). "A claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding." *In re Payment Card*, 330 F.R.D. at 40 (quoting Fed. R. Civ. P. 23 advisory committee's note to 2018 amendment). "To warrant approval, the plan of allocation must also meet the standards by which the settlement was scrutinized—namely, it must be fair and adequate . . . . An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *Id.* (alteration in original) (quoting *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005)). While the plan of distribution must be fair, it "need not be perfect." *See id.* (quoting *In re EVCI Career Colls. Holding Corp. Sec. Litig.*, No. 05-CV-10240, 2007 WL 2230177, at *11 (S.D.N.Y. July 27, 2007)).

Here, the method for processing settlement class members' claims and distributing the Settlement Fund (the "Plan of Allocation") appears to be fair and adequate. The Plan of Allocation was developed with the assistance of an experienced claims administrator (the "Claims Administrator" or "Kroll"). (Mem. 9; Graber Decl., Dkt. 356-1 ¶ 52.) Pursuant to the settlement, the Claims Administrator will process the claims and, if approved, electronically transfer or mail authorized claimants their *pro rata* share of the Settlement Fund. (*See* Decl. of Scott M. Fenwick, Dkt. 359-1 ("Second Supp. Kroll Decl.") ¶ 5; Mem. 2.) Courts have found *pro rata* allocations to be reasonable. *See In re Namenda*, 462 F. Supp. 3d at 316; *In re Merrill Lynch Tyco Rsch. Sec. Litig.*, 249 F.R.D. 124, 135 (S.D.N.Y. 2008). Further, the Plan of Allocation in this case was

described in detail in the notice that was sent to each potential class member, (*see* Dkt. 349-2 at ECF 47, 51–54),[3] and no class member has objected to that plan.[4] Based on these considerations, the settlement appears to be an effective form of distributing relief, and this factor weighs in favor of granting final approval.

(3) Terms of Proposed Award of Attorneys' Fees, Including Timing of Payment

Courts must "tak[e] into account . . . the terms of any proposed award of attorney's fees" prior to approving a settlement. *Moses*, 79 F.4th at 256 (citing Fed. R. Civ. P. 23(e)(2)(C)(iii)). For the reasons stated below, *infra* Section III.B.1, the Court grants in full Plaintiffs' motion for attorneys' fees. Here, however, the Court addresses the relationship between the terms of that award and the settlement as a whole.[5]

In this case, the settlement agreement provides that Class Counsel may apply for "attorneys' fees of up to 33 and 1/3% of the Settlement Fund, for reimbursement of reasonable expenses, for Class Representative Service Awards not to exceed $10,000 per Class Representative, and for costs of Notice and settlement administration, to be paid from the Settlement Fund." (Graber Decl. Ex. 1, Dkt. 356-1 ¶ 4.1.) To that end, Class Counsel seek

[3] Citations to "ECF" refer to the pagination generated by the Court's CM/ECF docketing system and not the document's internal pagination.

[4] One class member filed a letter "objecting" to Plaintiffs' claims, but not objecting to the terms of the settlement. (*See* Dkt. 357 at 1–2.) That class member did not seek to appear—and did not appear—at the Final Approval Hearing. (*Id.* at 2.)

[5] As in *Moses*, because all of the fees, expenses, and recovery to the class members come from the same settlement fund, the requested attorneys' fees are intimately intertwined with the settlement fund. "Indeed, there is effectively an inverse correlation between the amount of attorneys' fees . . . and the cash available for *pro rata* distribution to class members . . . ." *Moses*, 79 F.4th at 246. "The district court [is] obligated to take these intertwined fees into account prior to approving the settlement, and [would] err[] . . . [by] treat[ing] the appropriateness of the awards as a separate matter, divorced from the overall evaluation of the fairness of the settlement." *Id.*

attorneys' fees of $11,500,000—approximately 29% of the $39 million Settlement Fund—plus litigation expenses of $2,686,778.13 and class notice costs of $959,493.91.[6] (Mem. 1, 22.) Even bearing in mind that an award will diminish the Settlement Fund, *see Moses*, 79 F.4th at 246, the Court finds Plaintiffs' request for attorneys' fees, comprising approximately 29% of the Settlement Fund, to be reasonable. *See In re BioScrip, Inc. Sec. Litig.*, 273 F. Supp. 3d 474, 496–97 (S.D.N.Y. 2017) (collecting cases where courts granted fee awards of approximately 30–33.3% of the total value of the settlement); *Fleisher v. Phoenix Life Ins. Co.*, Nos. 11-CV-8405 (CM), 14-CV-8714 (CM), 2015 WL 10847814, at *16 & n.11 (S.D.N.Y. Sept. 9, 2015) (same).

Here, however, the settlement provides for the attorneys' fees, costs, and expenses, as well as the service awards, to be paid before the *pro rata* distribution to the class members. At least one district court in this circuit has held that "[t]here are sound reasons for courts to ensure that the class has been compensated *prior* to attorneys in class-action settlements," including that, "[c]ynically, money is the best way to keep lawyers engaged." *Hart v. BHH, LLC*, 334 F.R.D. 74, 77 (S.D.N.Y. 2020) (emphasis added). Given Class Counsel's vigorous prosecution of this matter, the Court has no concern about Class Counsel's continued engagement in this matter. At the same time, bearing in mind that there are "sound reasons" for the Court "to ensure that the class has been compensated prior to attorneys," *id.*, the Court finds that this factor points only slightly in favor of approval of the settlement.

(4) Any Agreement Required to Be Identified

Finally, Rule 23(e)(2)(C)(iv) mandates the Court to consider "any agreement required to be identified under Rule 23(e)(3)"; that is, "any agreement made in connection with the proposal."

[6] The Court addresses Class Counsel's request for costs and expenses separately. *See infra* Section III.B.2.

Fed. R. Civ. P. 23(e)(2)(C)(iv); *Johnson v. Rausch, Sturm, Israel, Enerson & Hornik, LLP*, 333 F.R.D. 314, 322 (S.D.N.Y. 2019). Here, there do not appear to be any separate agreements relevant to the settlement. However, the settlement agreement itself includes mutual releases by the parties. (Graber Decl. Ex. 1, Dkt. 356-1 § 12.) "Plaintiffs in a class action may release claims that were or could have been pled in exchange for settlement relief." *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F. 3d 96, 106–07 (2d Cir. 2005). In this case, the releases cover claims that were "alleged or asserted in [this] Action, or that arise out of or relate directly or indirectly in any manner whatsoever to facts alleged or asserted or that could have been alleged or asserted in [this] Action." (Graber Decl. Ex. 1, Dkt. 356-1 ¶ 12.1; *see also id.* ¶ 12.3.) The Court finds that this language is relatively tailored to "release [only] claims that were or could have been pled in exchange for settlement relief." *See Wal-Mart Stores, Inc.*, 396 F. 3d at 106–07. Given the scope of the releases, the Court finds that they support approval of the settlement.

b. The Proposal Treats Class Members Equitably Relative to Each Other

In evaluating this factor, courts weigh "whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of [any] release may affect class members in different ways that bear on the apportionment of relief." *Moses*, 79 F.4th at 245 (quoting advisory committee's note to 2018 amendment). "*Pro rata* distribution schemes are sufficiently equitable and satisfy the requirements of Rule 23(e)(2)(D)." *Cymbalista v. JPMorgan Chase Bank, N.A.*, No. 20-CV-456 (RPK) (LB), 2021 WL 7906584, at *9 (E.D.N.Y. May 25, 2021). However, "the existence and extent of incentive payments is relevant to whether 'class members [are treated] equitably relative to each other.'" *Moses*, 79 F.4th at 245 (quoting Fed. R. Civ. P. 23(e)(2)(D)). Here, the settlement distributes funds on a *pro rata* basis to each class member who timely submits a valid claim. (Mem. 2.) The Court finds this

apportionment scheme to be sufficiently equitable in satisfaction of Rule 23(e)(2)(D). *See Cymbalista*, 2021 WL 7906584, at *9.

As for Plaintiffs' request for six awards of $8,000 each for the Class Representatives, (Mem. 1), the Court must consider whether these awards treat the Class Representatives equitably to ordinary class members.[7] *Moses*, 79 F.4th at 245 ("Rule 23(e)(2)(D) requires that class members be treated *equitably*, not identically."). Here, the proposed awards are equitable, as they are in line with, or even below, other awards that have been approved in comparable class actions. *See, e.g.*, *Belfiore v. Procter & Gamble Co.*, No. 14-CV-4090 (PKC), Dkt. 361 at 9 (E.D.N.Y. July 27, 2020) (awarding $10,000 to representative in approximately six-year consumer class action); *Yuzary v. HSBC Bank USA, N.A.*, No. 12-CV-3693 (PGG), 2013 WL 5492998 at *12 (awarding $10,000 to class representative in approximately one-year litigation); *Capsolas v. Pasta Res. Inc.*, No. 10-CV-5595 (RLE), 2012 WL 4760910, at *9 (S.D.N.Y. Oct. 5, 2012) (awarding $20,000 to one representative and $10,000 to other representatives in approximately two-year litigation). This factor, therefore, weighs in favor of approving the settlement.

3. Application of Remaining *Grinnell* Factors

Similar to the Rule 23(e) factors, the *Grinnell* factors largely weigh in favor of approving the parties' settlement.

a. Complexity, Expense, and Likely Duration of the Litigation

This factor largely overlaps with the first statutory factor under Rule 23(e)(2)(C)(i) ("Costs, Risks, and Delay of Trial and Appeal"), which points in favor of approving the settlement. *See supra* Section I.B.2.a.1.

[7] The Court considers whether these awards are reasonable as part of its consideration of Plaintiffs' motion for service awards. *Infra* Section II.

b. Reaction of the Class to the Settlement

"It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy." *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002) (citing *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 425 (S.D.N.Y. 2001)). "Courts have found this factor to weigh in favor of approval where the majority of class members have not objected to or opted out of a settlement." *Flores v. Mamma Lombardi's of Holbrook, Inc.*, 104 F. Supp. 3d 290, 300 (E.D.N.Y. 2015) (quoting *In re Sinus Buster Prods. Consumer Litig.*, No. 12-CV-2429 (ADS) (AKT), 2014 WL 5819921, at *9 (E.D.N.Y. Nov. 10, 2024)). A few dissenters do not necessarily indicate a poorly received settlement. *See id.* at 300–01 (finding that three objections from a class of 4,000 members signaled a positive class response); *Dupler v. Costco Wholesale Corp.*, 705 F. Supp. 2d 231, 239 (E.D.N.Y. 2010) ("Of the 11,800,514 class members, only 127 opted out and 24 objected. Such a small number of class members seeking exclusion or objecting indicates an overwhelmingly positive reaction of the class."); *Stinson v. City of New York*, 256 F. Supp. 3d 283, 288, 293 (S.D.N.Y. 2017) (concluding that for a settlement where more than 900,000 notices were sent, five objections and 30 exclusion requests represented an "overall low number" suggesting "general approval").

Here, after the Court preliminarily approved the settlement on September 20, 2023, settlement materials were mailed or emailed to 18,651,344 potential settlement class members. (*See* Decl. of Scott M. Fenwick, Dkt. 356-2 ¶¶ 5, 10–12.) As of January 29, 2024—the deadline to object—only one person had filed an "objection," (Dkt. 357 at 1–2), and as of May 13, 2024, 160 timely requests for exclusion had been received, (Decl. of Scott M. Fenwick, Dkt. 371-1 ("Fifth Supp. Kroll Decl.") ¶¶ 4–5). As for claims made, as of February 16, 2024, 8,771 claim forms were submitted by mail and 255,766 claims were filed electronically through the settlement

website, collectively representing claims for 476,612 pairs of glasses, (Second Supp. Kroll Decl. ¶ 5), and by May 13, 2024, a total of 15,393 claim forms had been received by mail, and a total of 273,051 claim forms had been received electronically, collectively representing claims for 554,586 pairs of glasses, (Fifth Supp. Kroll Decl. ¶ 3). The settlement provides for additional claim forms to be submitted within 30 days after entry of the Final Approval Order. (Graber Decl. Ex. 1 ¶ 11.1.)

Based on the above, the reaction to the settlement has been predominantly positive. Of approximately 18.7 million class members, only one individual filed a purported "objection"—which did not itself object to the terms of the settlement or request exclusion, but instead disagreed with Plaintiffs' claims—and only 160 opt-outs, as compared to almost 300,000 claim forms, were received. Thus, this factor supports approval of the settlement.

c. Stage of Proceedings and Amount of Discovery

When considering the third *Grinnell* factor, courts "focus[] on whether the plaintiffs obtained sufficient information through discovery to properly evaluate their case and to assess the adequacy of any settlement proposal." *Fleisher*, 2015 WL 10847814, at *7 (alteration in original) (quoting *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 177 (S.D.N.Y. 2014)). Here, as discussed, this case started approximately seven years ago and was at a very advanced stage by the time it settled. The parties were weeks away from trial with successive summary judgment and expert motions pending. (Mem. 3.) Prior to then, there was significant motion practice, and discovery had lasted two years. (*Id.* at 31.) The parties' extensive litigation—including the completion of discovery—enabled counsel to fully consider the strengths and weaknesses of their cases, and to enter into a settlement agreement with those strengths and weaknesses in mind. *See Fleisher*, 2015 WL 10847814, at *8 (approving settlement where "Class

Counsel had the benefit of extensive discovery and expert analysis with which to make an intelligent, informed appraisal of [claims and defenses] . . . , and the likelihood of obtaining a larger recovery for the Class if this litigation continued"); *Delcid*, 2023 WL 3159598, at *3 (similar). Thus, this factor points decidedly in favor of approving the settlement.

d. Risk of Establishing Liability and Damages and Maintaining the Class Action Through Trial

"In assessing the Settlement, the Court should balance the benefits afforded the Class, including the immediacy and certainty of a recovery, against the continuing risks of litigation." *In re Top Tankers, Inc. Sec. Litig.*, No. 06-CV-13761 (CM), 2008 WL 2944620, at *4 (S.D.N.Y. July 31, 2008) (citing *Grinnell*, 495 F.2d at 463).

Here, final approval of the settlement ensures a recovery of $39 million in cash for a Settlement Fund, whereas continuing to litigate would present significant risks and delay recovery—if any—to the settlement class, particularly given that Defendant's motion for summary judgment and the parties' *Daubert* motions were pending at the time of settlement. An adverse decision on any of those motions could have substantially weakened or effectively ended Plaintiffs' claims. (*See* Mem. 19.) For example, it would have been difficult, if not impossible, for Plaintiffs to establish damages and liability without expert testimony. (*Id.*) Moreover, even if the case were to proceed, Plaintiffs would still face the risks inherent to a jury trial, in addition to the risk that Defendant could seek to decertify the class at trial. *See Bellifemine v. Sanofi-Aventis U.S. LLC*, No. 07-CV-2207 (JGK), 2010 WL 3119374, at *4 (S.D.N.Y. Aug. 6, 2010) ("There is no assurance of obtaining class certification through trial, because a court can re-evaluate the appropriateness of certification at anytime during the proceedings.").

Given that further litigation would be protracted,[8] risky, and costly, this factor supports approval of the settlement. *In re Metlife Demutualization Litig.*, 689 F. Supp. 2d 297, 334 (E.D.N.Y. 2010) ("The risks of establishing liability and risks of establishing damages favor the proposed Settlement. The risk that plaintiffs would fail to establish liability or damages was high."); *id.* at 339 ("Likely delay, and uncertain prospects of recovery even if plaintiffs should prevail at trial, weigh in favor of settlement rather than maintaining the action through trial."); *see also In re Vitamin C Antitrust Litig.*, No. 06-MD-1738 (BMC), 2012 WL 5289514, at *5 (E.D.N.Y. Oct. 23, 2012) (noting that risks at trial and post-trial suggested that settlement was fair).

e. Ability of Defendant to Withstand a Greater Judgment

This factor is "typically relevant only when a settlement is less than what it might otherwise be but for the fact that the defendant's financial circumstances do not permit a greater settlement." *In re Namenda*, 462 F. Supp. 3d at 314. Where plaintiffs do not contend that defendants could not withstand a greater judgment, this factor drops out. *Id.* at 315. Regardless, the mere fact that a defendant "is able to pay more than it offers in settlement does not, standing alone, indicate the settlement is unreasonable or inadequate." *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 460 (S.D.N.Y. 2004) (quoting *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 129 (S.D.N.Y. 1997)). Here, Plaintiffs do not argue that Defendant could not withstand a greater judgment. (*See generally* Mem.) This factor therefore drops out, or, is neutral.

f. Range of Reasonableness of the Settlement in Light of the Best Possible Recovery and All the Attendant Risks of Litigation

"[T]here is a range of reasonableness with respect to a settlement—a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and

[8] The trial was expected to last four weeks. (*See* 6/14/2022 Minute Entry.)

costs necessarily inherent in taking any litigation to completion." *Wal-Mart Stores, Inc.*, 396 F.3d at 119 (alteration in original) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)). The mere "fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *Grinnell*, 495 F.2d at 455.

Here, the proposed settlement allows the class to recoup $39 million for their alleged harm, minus attorneys' fees, litigation costs, and any other expenses. Factoring in those deductions, the current expected recovery per claim is approximately $34.85—exceeding the $23.28 estimate that Plaintiffs' own damages expert had provided.[9] (Dkt. 359 at 2; Mem. 20.) Although it is likely that the expected recovery per claim will decrease by some amount—since claims can be submitted up to 30 days after the Final Approval Order—the Court is reassured by numerous periodic updates provided by the Claims Administrator that the number of additional claims likely to be made after final approval of the settlement will not appreciably diminish each claim's *pro rata* value. *See Bryant v. Potbelly Sandwich Works, LLC*, No. 17-CV-7638 (CM) (HBP), 2020 WL 563804, at *5 (S.D.N.Y. Feb. 4, 2020) (approving class action settlement where claimants were to receive between 45%–170% or between 13%–47% of the likely damages amounts, depending on certain calculations of the projected recovery). Given the remaining risks and uncertainties in this litigation, and the overall favorable recovery to members of the class, this factor strongly favors settlement approval.

[9] The Court reached this number by subtracting $11,500,000 for requested attorneys' fees, $48,000 for Class Representative service awards, $2,686,778.13 for costs and expenses, $959,493.91 for class certification notice costs, and $4,477,859.01 for settlement administration costs from the $39 million Settlement Fund and dividing that number by the most recently reported number of claims, 554,586. (*See* Fifth Supp. Kroll Decl. ¶ 3 (stating number of claims made); Dkt. 368 at ¶ 3 (stating settlement administration costs); Dkt. 356-1 at ECF 29–30 (stating amounts to be deducted from Settlement Fund prior to class payments).)

* * *

For the reasons explained above, the vast majority of the Rule 23 and *Grinnell* factors indicate that the parties' settlement is fair, reasonable, and adequate. Based on these considerations, the Court grants Plaintiffs' motion for final approval of the settlement.

II. Class Representative Service Awards

Plaintiffs additionally seek awards of $8,000 for each of six Class Representatives, for a total of $48,000. (Mem. 1.) The Court holds that in the context of this case, the requested awards are fair and appropriate, and the Court grants Plaintiffs' request.

A. Legal Standards

To compensate class representatives who have incurred significant personal risk in representing a class, a district court may, in its discretion, "approve fair and appropriate incentive awards to class representatives." *See Moses*, 79 F.4th at 253 (citing *Melito v. Experian Mktg. Sols., Inc.*, 923 F.3d 85, 96 (2d Cir. 2019)); *see also Dial Corp. v. News Corp.*, 317 F.R.D. 426, 439 (S.D.N.Y. 2016). When evaluating whether to approve service awards to class representatives, a court considers "the existence of special circumstances including the personal risk (if any) incurred by the plaintiff-applicant in becoming and continuing as a litigant, the time and effort expended by that plaintiff in assisting in the prosecution of the litigation or in bringing to bear added value (e.g., factual expertise), any other burdens sustained by that plaintiff in lending himself or herself to the prosecution of the claim, and, of course, the ultimate recovery." *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 200 (S.D.N.Y. 1997); *Kurtz*, 2024 WL 184375, at *4 (same) (quoting *Roberts*, 979 F. Supp. at 200). Although courts should "reject incentive awards that are excessive compared to the service provided by the class representative or that are unfair to the absent class members," *Moses*, 79 F.4th at 245, courts have approved individual awards ranging "from $2,500 to $85,000," *Dial Corp.*, 317 F.R.D. at 439.

B. Application

Here, the proposed awards of $8,000 are fair, reasonable, and appropriate based on the following considerations:

Personal risk. Although the Class Representatives did not face any particularly heightened individual risk, all Class Representatives sacrificed their time and privacy, and endured the stress of litigation, all to represent the best interests of the class and vindicate their rights. (Mem. 43.)

Time and effort. Each Class Representative has contributed at least 100 hours, and in some cases as much as 200 hours, to litigating this matter over the last seven years. All six Class Representatives met repeatedly with Plaintiffs' counsel; reviewed all versions of the complaint; assisted with responding to requests for production and interrogatories; preserved their documents and searched them as needed; prepared for and sat for all-day depositions; provided input on settlement offers; and prepared for trial testimony. (Graber Decl., Dkt. 356-1 ¶ 58.)

Any other burdens. In some cases, Class Representatives endured particularly intrusive discovery, including producing family members for depositions. One Class Representative's non-English speaking, elderly grandmother was deposed, which required a translator for both preparation and the deposition. Another Class Representative's partner was deposed. (*Id.*)

The ultimate recovery. Lastly, the service awards represent approximately 0.1% of the total Settlement Fund. (Mem. 43); *In Re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 131 (S.D.N.Y. 2009) (noting that incentive awards of approximately 0.1% of the total fund are the norm) (citing *Roberts*, 979 F. Supp. at 189). These service awards are therefore in line with, or even below, other awards that have been approved. *Belfiore*, No. 14-CV-4090 (PKC), Dkt. 361 at 9 (awarding $10,000 to representative in approximately six-year litigation); *Yuzary*,

2013 WL 5492998 at *12 (awarding $10,000 to each representative in approximately one-year litigation); *Capsolas*, 2012 WL 4760910, at *9 (awarding $20,000 award to one representative and $10,000 awards to other representatives in approximately two-year litigation).

The considerations above support approval of Plaintiffs' service award request. The Court, therefore, grants Plaintiffs' motion to award six $8,000 service awards, one to each of the six Named Plaintiffs.

III. Attorneys' Fees, Costs, and Expenses

Finally, Plaintiffs move for an award of $11.5 million in attorneys' fees, $2,686,778.13 in litigation costs and expenses, and class certification notice costs of $959,493.91. (Mem. 28–41.) For the reasons set forth below, Plaintiffs' motion is granted in full.

A. Legal Standards

A court may "award reasonable attorney's fees . . . that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The court, however, must "ensure that the interests of the class members are not subordinated to the interests of . . . class counsel," *Maywalt v. Parker & Parsley Petrol. Co.*, 67 F.3d 1072, 1078 (2d Cir. 1995), in order to "serve as a guardian of the rights of absent class members," *McDaniel v. County of Schenectady*, 595 F.3d 411, 419 (2d Cir. 2010) (quoting *City of Detroit v. Grinnell Corp.*, 560 F.2d 1093, 1099 (2d Cir. 1977)).

To that end, attorneys must submit contemporaneous time records to support their fee applications. *See, e.g.*, *Bay Park Ctr. for Nursing & Rehab. LLC v. Philipson*, 659 F. Supp. 3d 312, 319 (E.D.N.Y. 2023) (citing *N.Y. State Ass'n for Retarded Child., Inc. v. Carey*, 711 F.2d 1136, 1148 (2d Cir. 1983)). Those records "should specify, for each attorney, the date, the hours expended, and the nature of the work done." *Id.* (quoting same). "Descriptions of work recollected in tranquility days or weeks later will not do." *Id.* (quoting *Handschu v. Special Servs. Div.*, 727 F. Supp. 2d 239, 249 (S.D.N.Y. 2010)). "The contemporaneous time records requirement is

strictly enforced[.]" *Id.* (alteration in original) (quoting *Valentine v. Aetna Life Ins. Co.*, No. 14-CV-1752 (JFB), 2016 WL 4544036, at *7 (E.D.N.Y. Aug. 31, 2016)).

When determining whether counsel's fee request is reasonable, "[t]he Court retains discretion to use 'either the lodestar [method] or [the] percentage of the recovery method[.]'" *In re Tenaris S.A. Sec. Litig.*, No. 18-CV-7059 (KAM) (SJB), 2024 WL 1719632, at *5 (E.D.N.Y. Apr. 22, 2024) (quoting *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 45 (2d Cir. 2000)). "The trend in the Second Circuit is toward the percentage method . . . which spares the court and the parties the cumbersome, enervating, and often surrealistic process of lodestar computation." *Id.* (alteration in original) (quoting *In re Visa/Mastermony Antitrust Litig.*, 297 F. Supp. 3d 503, 520–21 (E.D.N.Y. 2003)). "However, '[t]he Second Circuit encourages the practice of performing a lodestar 'cross-check' on the reasonableness of a fee award based on the percentage approach.'" *Id.* (alteration in original) (quoting *In re EVCI Career Colls. Holding Corp. Sec. Litig.*, 2007 WL 2230177, at *17). Finally, the Court gives controlling consideration to the *Goldberger* factors: "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of the representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." *Goldberger*, 209 F.3d at 40 (alteration in original) (quoting *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 163 (S.D.N.Y. 1989)). The Court also considers "the relief actually delivered to the class" as a "significant factor." *See Moses*, 79 F.4th at 244 (quoting Fed. R. Civ. P. 23(e)(3) advisory committee's note to 2018 amendment).

As for costs and expenses, "[c]ourts may reimburse counsel for expenses reasonably and necessarily incurred in litigating a class action." *Kurtz*, 2024 WL 184375, at *13 (alteration in original) (quoting *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.*, No. 15-CV-1113 (VAB),

2016 WL 6542707, at *18 (D. Conn. Nov. 3, 2016)). Courts within this circuit commonly grant expense requests "[w]hen the 'lion's share' . . . reflects the typical costs of complex litigation such as 'experts and consultants, trial consultants, litigation and trial support services, document imaging and copying, deposition costs, online legal research, and travel expenses[.]'" *Pa. Pub. Sch. Emps.' Ret. Sys. v. Bank of Am. Corp.*, 318 F.R.D. 19, 27 (S.D.N.Y. 2016) (quoting *In re Visa*, 297 F. Supp. 3d at 525).

B. Application

1. Attorneys' Fees

Whether an attorneys' fee award is reasonable is within the discretion of the court. *Black v. Nunwood, Inc.*, No. 13-CV-7207 (GHW), 2015 WL 1958917 at *4 (S.D.N.Y. Apr. 30, 2015) (collecting cases). In its discretion, a court "may award attorneys' fees" calculated under either the "percentage of the fund" or "lodestar" methods. *McDaniel*, 595 F.3d at 417 (quoting *Wal-Mart Stores, Inc.*, 396 F.3d at 121) (collecting cases). However, regardless of which method is chosen, the court should continue to be guided by the factors laid out in the Second Circuit's decision in *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000).

a. Percentage-of-Fund Method

"Under the percentage approach, there is no general rule as to what percentage of a common fund may reasonably be awarded as attorneys['] fees." *In re Med. X-Ray Film Antitrust Litig.*, No. 93-CV-5904 (CPS), 1998 WL 661515, at *7 (E.D.N.Y. Aug. 7, 1998). However, "[d]istrict courts within the Second Circuit routinely approve attorneys' fees awards of one third or 33 1/3% as reasonable." *In re Tenaris S.A. Sec. Litig.*, 2024 WL 1719632, at *10 (collecting cases awarding approximately 33 1/3% in fees); *see In re Priceline.com, Inc., Sec. Litig.*, No. 00-CV-1884 (AVC), 2007 WL 2115592, at *5 (D. Conn. July 20, 2007) (collecting cases approving attorneys' fees of between 25 to 33 1/3% of settlement fund); *de la Cruz v. Manhattan Parking*

Grp. LLC, No. 20-CV-977 (BCM), 2022 WL 3155399, at *4 (S.D.N.Y. Aug. 8, 2022) (noting that settlements within the Second Circuit generally award fees in "a range from 15% to 33%" (quoting *Espinal v. Victor's Café 52nd Street, Inc.*, No. 16-CV-8057 (VEC), 2019 WL 5425475, at *2 (S.D.N.Y. Oct. 23, 2019)).

Here, Plaintiffs request reimbursement for attorneys' fees amounting to $11.5 million, which is approximately 29.5% of the $39 million settlement fund.[10] Ample authority within this circuit holds that fees of up to 33 1/3% of a settlement fund are reasonable. *See, e.g.*, *In re Tenaris*, 2024 WL 1719632, at *10; *In re Priceline.com*, 2007 WL 2115592, at *5; *see also Willix v. Healthfirst, Inc.*, No. 07-CV-1143 (ENV), 2011 WL 754862, at *6 (E.D.N.Y. Feb. 18, 2011) (holding that attorneys' fees of 33 1/3% of settlement fund were fair and reasonable); *In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.*, No. 18-MD-2819 (NG), 2020 WL 6193857, at *5–6 (E.D.N.Y. Oct. 7, 2020) (approving attorneys' fee award of one-third of settlement fund). "The fact that the fees requested here are comparable to fees that courts have found reasonable even when taken out of a common fund weighs in favor of the reasonableness of the fees." *Cohan v. Columbia Sussex Mgmt., LLC*, No. 12-CV-3203 (AKT), 2018 WL 4861391, at *2 (E.D.N.Y. Sept. 28, 2018) (approving fee request of approximately 30% of settlement fund). In light of this authority, the Court finds that Plaintiffs' request, as a percentage of the settlement fund, is fair and reasonable.

b. Lodestar Method

Under the lodestar method, which the Court may use as a "cross-check" on the reasonableness of the requested percentage, "the district court scrutinizes the fee petition to

[10] Although Plaintiffs' brief refers to the percentage as "twenty-nine percent," (Mem. 30), the $11.5 million sum is actually 29.49% of the $39 million settlement fund.

ascertain the number of hours reasonably billed to the class and then multiplies that figure by an appropriate hourly rate." *Goldberger*, 209 F.3d at 47, 50 (citing *Savoie v. Merchs. Bank*, 166 F.3d 456, 460 (2d Cir. 1999)). "Typically, a multiplier is applied to the lodestar figure to account for the risks associated with a contingency-based class action." *Tenaris*, 2024 WL 1719632, at *5. The multiplier "is calculated by dividing the fee award by the lodestar." *Mateer v. Peloton Interactive, Inc.*, No. 22-CV-740 (LGS), 2024 WL 1055009, at *2 (S.D.N.Y. Feb. 9, 2024) (citing *James v. China Grill Mgmt., Inc.*, No. 18-CV-455 (LGS), 2019 WL 1915298, at *3 (S.D.N.Y. Apr. 30, 2019)).

"To support the calculation of the lodestar, 'counsel must submit evidence providing a factual basis for the award in the form of contemporaneous billing records documenting, for each attorney, the date, the hours expended, and the nature of the work done.'" *Mateer*, 2024 WL 1055009, at *2 (quoting *Uribe v. Prestige Car Care of NY Inc.*, No. 23-CV-1853 (LGS), 2023 WL 5917550, at *1 (S.D.N.Y. Aug. 9, 2023)).

Here, Class Counsel request an award of attorneys' fees of $11.5 million, (Mem. 29), for hours worked amounting to $10,314,663.50 billed at counsel's current rates, (Graber Decl., Dkt. 356-1 ¶ 17), increased by a multiplier of approximately 1.1, (Mem. at 22). This multiplier is "well within the norm, if not on the [low end]," of multipliers approved regularly within this circuit. (*Id.*); *see Bienenfeld v. Bosco, Bisignano & Mascolo*, 531 F. App'x 158, 160 (2d Cir. 2013) (summary order) (affirming district court's use of 1.25 multiplier); *In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 134 (2d Cir. 2008) ("We have little doubt that . . . a 2.04 lodestar multiplier, is toward the lower end of reasonable fee awards."); *see also Fikes Wholesale, Inc. v. HSBC Bank USA, N.A.*, 62 F.4th 704, 726 (2d Cir. 2023) (noting that courts may use "lodestar comparators . . . to avoid picking numbers arbitrarily").

However, after receiving Class Counsel's initial attorneys' fees application, the Court raised a concern about Class Counsel's use of current hourly rates because of the possibility that it could overstate the lodestar calculation given the long duration of the case and the likelihood that Class Counsel's rates had increased over the years. *See Kurtz*, 2024 WL 184375, at *13 (raising same concern in context of class action settlement). Accordingly, after Plaintiffs filed their motion, the Court requested that Class Counsel submit "the historic billing rates for each individual contained in the billing records [initially] submitted." (5/8/2024 Docket Order.)

Adjusted to account for each attorney's rate at the time that attorney billed time on this matter, Class Counsel's fee request amounts to $7,850,587. Although this rate is significantly lower than Class Counsel's initial calculation of $10,314,663.50 based on current rates, the Court finds that the lodestar multiplier required to reach Class Counsel's fee request of $11.5 million—approximately 1.46—is still within the realm of a reasonable lodestar multiplier that courts in this circuit routinely approve. *See In re Canon U.S.A. Data Breach Litig.*, Nos. 20-CV-6239 (AMD) (SJB), 20-CV-6380 (AMD) (SJB), 21-CV-414 (AMD) (SJB), 2024 WL 3650611, at *8 (E.D.N.Y. Aug. 5, 2024) (noting that "a multiplier of 2 or lower would be 'at the lower end of the range of multipliers awarded by courts within the Second Circuit'" (quoting *In re Lloyd's Am. Tr. Fund Litig.*, No. 96-CV-1262 (RWS), 2002 WL 31663577, at *27 (S.D.N.Y. Nov. 26, 2002))). Furthermore, "contingency risk . . . must be considered in setting a reasonable fee." *Goldberger*, 209 F.3d at 53. "[A]n unenhanced lodestar fee does not account for the contingent risk that a lawyer may assume in taking on a case.'" *Fresno Cnty. Emps.' Ret. Ass'n*, 925 F.3d at 68; *accord In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No. 05-MD-1720 (MKB) (JO), 2019 WL 6888488, at *13 (E.D.N.Y. Dec. 16, 2019), *aff'd sub nom. Fikes Wholesale, Inc. v. HSBC Bank USA, N.A.*, 62 F.4th 704 (2d Cir. 2023). The Court, therefore, finds that Class

Counsel's request for $11.5 million in attorneys' fees is reasonable based on a lodestar cross-check, even taking into account Class Counsel's historic blended billing rates.

c. Reasonableness Under the *Goldberger* Factors

"Irrespective of which method is used, the '*Goldberger* factors' ultimately determine the reasonableness" of an attorney's fee award in a class action settlement. *Wal-Mart Stores, Inc.*, 396 F.3d at 121. These factors are: (1) counsel's time and labor; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations. *Goldberger*, 209 F.3d at 50. Here, the *Goldberger* factors also support Class Counsel's request for attorneys' fees.

First, Class Counsel have expended significant time and labor in litigating this case, and second, this is a large-scale, complex litigation. As discussed at length above, Class Counsel have litigated this case for approximately seven years, and engaged in tremendous amounts of discovery, motion practice, and trial preparation during that time. *Supra* Section I.B.1.a. These factors support a reasonable award of attorneys' fees to Class Counsel.

Third, Class Counsel took on significant risk in choosing to litigate this matter on behalf of Plaintiffs. On top of the evidentiary risks inherent to Plaintiffs' claims, Class Counsel have also assumed the risks of continued litigation, which, as discussed above, were significant. *See supra* Section I.B.3.d. Having taken on the risk that Plaintiffs' case could have been dismissed or significantly hobbled at any stage, the risks presented by this litigation support the requested award of attorneys' fees to Class Counsel.

Fourth, "the favorable result reached on behalf of the Class" renders it "obvious that the members of the Class benefited from [C]ounsel proficient in consumer protection litigation," while avoiding the risk and uncertainty of trial and continued litigation. *Hallmark v. Cohen & Slamowitz, LLP*, 378 F. Supp. 3d 222, 234 (W.D.N.Y. 2019). Indeed, "[t]hat Class Counsel was able to

negotiate this [s]ettlement against a sophisticated company represented by highly capable counsel, while avoiding adverse rulings that could have reduced Plaintiffs' negotiating leverage, is a testament to the skill displayed by Class Counsel." *Hesse v. Godiva Chocolatier*, No. 19-CV-972 (LAP), 2022 U.S. Dist. LEXIS 72641, at *39 (S.D.N.Y. Apr. 20, 2022). Accordingly, the fourth *Goldberger* factor supports an award of the requested attorneys' fees. *See Kurtz*, 2024 WL 184375, at *17.

Fifth, the Court evaluates the reasonableness of the requested fee in relation to the settlement. As noted above, the requested award is well within the range of fees that courts within this circuit have found reasonable in relation to the settlement. *See supra* Section III.B.1.a–b. This factor therefore supports Class Counsel's request for attorneys' fees.

Sixth and finally, public policy considerations point in support of Class Counsel's request. By granting Class Counsel's request for reasonable attorneys' fees, the Court incentivizes other attorneys to take on matters that may be risky, but ultimately beneficial for a large class of plaintiffs. As a consequence, this factor supports Class Counsel's request.

2. Costs and Expenses

Class Counsel further request reimbursement for litigation costs and expenses in the amount of $2,686,778.13. (Mem. 39–41.) Counsel also seek class certification notice costs of $959,493.91. (*See* Dkt. 367-1 at 6.) In support, Class Counsel have submitted documentation of their incurred expenses, in the form of declarations, receipts, invoices, and other bills. (*See, e.g.*, Graber Decl., Dkt. 356-1; Dkts. 362-1–362-26.)

Although Class Counsel's costs and expenses are not insignificant, the Court finds that these costs and expenses were reasonable and necessary for Class Counsel to successfully prosecute this multi-state class action lawsuit—particularly in light of the expert-intensive theory

of the litigation—and thus should be reimbursed to Class Counsel. *See, e.g.*, *Yang v. Focus Media Holding Ltd.*, No. 11-CV-9051 (CM), 2014 WL 4401280, at *19 (S.D.N.Y. Sept. 4, 2014) (granting reimbursement of fees for mediator, expert witnesses, electronic research, photocopying, postage, meals, and court filing fees, given that such expenses are typical of those that law firms bill to their clients); *Tenaris*, 2024 WL 1719632, at *12 (granting reimbursement of expenses for expert witnesses, foreign attorney and investigator, mediator, legal research fees, filing fees, and costs associated with document review, where such expenses were summarized in a table reflecting each category of expenses and the amount paid). Counsel have adequately documented these expenses. *See Fisher v. SD Prot. Inc.*, 948 F.3d 593, 600 (2d Cir. 2020) ("The fee applicant must submit adequate documentation supporting the [request]."). Accordingly, Class Counsel's request for reimbursement of litigation costs and expenses of $2,686,778.13 and class certification notice costs of $959,493.91 is granted.

CONCLUSION

For the reasons set forth above, the Court grants Plaintiffs' motion for settlement approval, service awards, and attorneys' fees, costs, and expenses.

SO ORDERED.

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

Dated: September 27, 2024
Brooklyn, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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

Plaintiffs,

- against -

LUXOTTICA RETAIL NORTH AMERICA d/b/a LensCrafters,

Defendant.

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FINAL JUDGMENT AND ORDER APPROVING SETTLEMENT AND DISMISSING CLAIMS OF CLASS MEMBERS WITH PREJUDICE

17-CV-5216 (PKC) (RLM)

PAMELA K. CHEN, United States District Judge:

This matter came before the Court for hearing on February 26, 2024. The Court, having considered the Motions for Preliminary Approval and Final Approval and the declarations in support thereof, the Settlement Agreement (the "Agreement"), and any objections or comments received regarding the proposed Settlement, the record in the above-captioned action (the "Action"), the evidence presented, and the arguments and authorities presented by counsel, and for good cause appearing,

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

1. The Court, for purposes of this Final Judgment and Order Approving Settlement and Dismissing Claims of Class Members with Prejudice ("Final Approval Order and Judgment"), adopts the capitalized terms and their definitions set forth in the Agreement.

2. The Court has jurisdiction over the subject matter of the Action, the Class Representatives, the Class members, and Defendant.

3. The Court finds that the Notice to the Class of the Proposed Settlement and Settlement Fairness Hearing constituted the best notice practicable under the circumstances to all

Persons within the definition of the Class, and fully complied with the requirements of due process and all applicable statutes and laws.

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

SETTLEMENT CONSIDERATION

5. Defendant and Plaintiffs are hereby ordered to comply with the terms and conditions contained in the Agreement, which is incorporated by reference herein and attached hereto as Exhibit 1.

6. Plaintiffs, the Class, and/or Defendant may seek to enforce the provisions of the Agreement by motion to the Court pursuant to the Court's continuing jurisdiction over the Agreement as set forth in Paragraph 22 below.

APPLICABILITY

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

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

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

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

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

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

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

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

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

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

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

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

16. Exhibit 2 to this Final Approval Order and Judgment contains a list setting forth the Record Identification Number of each Person who timely submitted a Request for Exclusion from the Class in compliance with the procedures set forth in the Preliminary Approval Order. The Persons so identified shall not be entitled to benefits from the Settlement nor bound by this Final Approval Order and Judgment.

ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES AND SERVICE AWARDS

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

18. The Court hereby grants Class Counsels' request for an award of reasonable attorneys' fees in the amount of 29% of the Settlement Fund, or $11,500,000. The Court further grants Class Counsels' application for reimbursement of costs and expenses in the amount of $2,686,778.13. These amounts will be paid from the Settlement Fund. The Court further grants Class Counsels' application for reimbursement of reasonable class certification notice costs totaling $959,493.91. These amounts will be paid from the Settlement Fund. The Court also awards Service Awards to the six Class Representatives of $8,000 each. The Service Awards will be paid from the Settlement Fund. The reasonable costs of Notice and Administration of the Settlement will continue to be paid from the Settlement Fund.

SETTLEMENT ADMINISTRATOR

19. To effectuate payment to the Settlement Administrator from the Settlement Fund for the reasonable costs of Notice and Administration of the Settlement, Plaintiffs will submit a notice to the Court accompanied by a declaration from Kroll Settlement Administration LLC

("Kroll Cost Notice") which will outline Kroll's final costs for such notice and administration. Kroll shall be paid out of the Settlement Fund within one week of approval by the Court of the Kroll Cost Notice.

GENERAL PROVISIONS

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

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

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

SO ORDERED.

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

Dated: September 27, 2024
Brooklyn, New York

Exhibit 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ARIZA, et. al, Plaintiffs, v. LUXOTTICA RETAIL NORTH AMERICA, Defendant.	Case No. 17-cv-5216 (E.D.N.Y.). CLASS ACTION

CLASS ACTION SETTLEMENT AGREEMENT

CLASS ACTION SETTLEMENT AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

1. DEFINITIONS

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

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

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

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

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

(c) "Approved Claimants" means those Claimants who submitted Approved Claims.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) "Releasing Parties" shall mean "Plaintiff Releasing Parties" and "LensCrafters Releasing Parties."

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

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

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

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

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

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

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

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

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

2. COOPERATION BY THE PARTIES

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

3. CONSIDERATION TO PLAINTIFFS

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

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

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

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

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

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

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

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

4. CLASS COUNSEL'S FEES AND COSTS

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

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

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

5. PRELIMINARY APPROVAL OF SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS

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

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

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

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

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

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

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

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

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

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

6. SETTLEMENT ADMINISTRATOR

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

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

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

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

7. NOTICE OF SETTLEMENT AND ADMINISTRATION OF CLAIMS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Settlement.

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

8. REQUESTS FOR EXCLUSION

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

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

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

9. OBJECTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. FINAL APPROVAL

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

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

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

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

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

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

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

11. CLAIM PROCESSING AND CASH PAYMENTS

11. 1 Class members must electronically complete and sign the appropriate Claim Form and submit it to the Settlement Administrator via an electronic Claim Form submission process to be established by the Settlement Administrator, submitted not later than thirty (30) calendar days after entry of the Final Approval Order. For those Class members who have requested hard copy Claim Forms, they may submit such Claim Forms via U.S. mail. A Claim Form shall be considered defective if the Claimant fails to timely submit the Claim Form, provide the required information on the Claim Form, or to electronically (or in the case of a hard copy Claim Form, manually) sign certifying that the Claimant is entitled to the benefit sought. The deadline for submitting a Claim Form set forth herein shall be the "Claim Form Submission Date."

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

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

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

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

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

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

12. RELEASE BY ALL SETTLEMENT CLASS MEMBERS

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

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

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

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

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

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

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

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

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

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

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

13. PUBLIC STATEMENTS

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

14. AMENDMENT

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

15. AUTOMATIC TERMINATION OF SETTLEMENT AGREEMENT AND TERMINATION RIGHTS

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

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

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

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

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

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

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

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

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

16. SEVERABILITY

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

17. INCORPORATION OF EXHIBITS

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

18. GOVERNING LAW AND COMPLIANCE WITH TERMS OF SETTLEMENT AGREEMENT

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

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

19. NO ADMISSION OF WRONGDOING

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

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

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

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

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

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

21. HEADINGS

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

22. COUNTERPARTS

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

23. BINDING EFFECT

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

24. ENTIRE AGREEMENT

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

25. NOTICE

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

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

Class Counsel

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

LensCrafters' Counsel

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

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

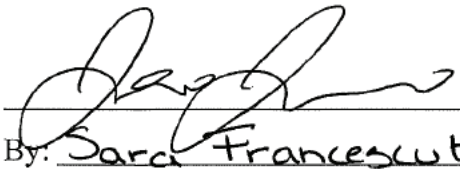
DATED June 27, 2023

PLAINTIFF:

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

LENSCRAFTERS:

Frank A. Dante
BLANK ROME LLP
One Logan Square
130 N. 18th Street
Philadelphia, PA 19103
Telephone: (215) 569-5645
Attorneys for Luxottica of America Inc. d/b/a LensCrafters f/k/a Luxottica Retail North America Inc. d/b/a LensCrafters



By: Sara Francescu Ho

Its: CFO North America

Date: 6/21/23

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

Exhibit 2

Exclusion List

Count	Record Identification Number
1	74676HWXPKDS3
2	74676HWSWY9K6
3	746761W8ZYPKY
4	746763MX7K3JD
5	74676FWFJQDYZ
6	74676CZVPDHKG
7	74676CKRCV82G
8	74676HQ5W16KK
9	74676HJPMF3CY
10	74676HFCT3JHT
11	74676HQWJ8WFW
12	74676CQB27M53
13	74676G5G9691Q
14	74676DQ8D70MS
15	74676HVKWW6SK
16	74676H1BM4HY6
17	74676HJJD19JB
18	74676HZGSXRMX
19	74676P8Z7HXRJ
20	74676GXFNXNNZ
21	74676CRW3T6ST
22	74676HPG91GSX
23	74676HMJ36J39
24	74676HZJ6MYKG
25	74676CVPZ9B52
26	74676HWXCTZXG
27	74676HHVY8S2V
28	74676DX76CX6V
29	74676HC78PK30
30	74676CBQTBSNK
31	74676HQZKMPNQ
32	74676HG1D46Z0
33	74676HTCWGGDF
34	74676HJ72125F
35	74676HZ5CKSHJ
36	74676DV4Y0XQP
37	74676HTT9K39R
38	74676HHZ2MM4J
39	74676HZ7BF3JT
40	74676CRB6BH1M
41	74676CZRSXJWD
42	74676P8Z72PV0
43	7467636M0PT14
44	74676HRY35YX7
45	74676C7QF59B2

Exclusion List

Count	Record Identification Number
46	74676FQHN76V0
47	74676HVQDM3NH
48	74676HJFFJ9XM
49	74676HKRGS5QV
50	74676HN2BB467
51	74676HJVS4JXN
52	746764GDCWND4
53	74676CD58W099
54	74676CKVXG78S
55	74676HT4YMM92
56	74676HTQ8K0WX
57	74676FKZYT5YS
58	74676HZGJ8CYP
59	74676HM4HTQD5
60	74676HV95PX2M
61	74676HZKRWQHT
62	74676HKZPF2S2
63	74676HS1T837W
64	74676HZPK2GVF
65	74676HM3139F1
66	74676HWD8HCTN
67	74676DQXTXJC7
68	74676HY53NJ0S
69	74676HJFZ0TSP
70	74676HYD90BN1
71	74676HHJJSV13
72	746763STKDG2G
73	74676HGFY00RW
74	74676DW65TG17
75	74676H579WY4K
76	74676HXR8B04K
77	74676HQHQ02TN
78	74676HQPKPDJR
79	74676HJWPF9PQ
80	74676HGB0K3F1
81	74676HR18MGQH
82	74676HYJDTV23
83	74676HK80Y0PR
84	74676HJNY6224
85	74676J01HFH35
86	74676HGRVQNYN
87	74676HZCV084J
88	74676HWJ90VQJ
89	74676J01BC0B2
90	74676HM3XBQWD

Exclusion List

Count	Record Identification Number
91	74676HW68WYYG
92	74676HX25D8KX
93	74676HSNJF984
94	74676HGPCMBXT
95	74676HTB1XWCG
96	74676HJ6YWBNP
97	74676F2GDVRR6
98	74676HX2BMCZ3
99	74676HXC6C2F4
100	74676HT2BBYR8
101	74676D8RTT56F
102	74676HSKCJ2YF
103	74676HY3RJS3V
104	746765DBHG7KW
105	74676HK4DJ8SG
106	74676HH48X2HZ
107	74676HZ637GVR
108	74676HJJ6PDS8
109	74676HV2KWQB4
110	74676HNCP3BX5
111	74676GWTQM5KT
112	74676HVHWP10W
113	74676HMTHJHSX
114	74676J09J993T
115	74676HZ696MR1
116	74676HT9BWKRH
117	74676HJ4F4YDY
118	74676H1K66CDC
119	74676HT1JXR35
120	74676HMN26XVM
121	74676HG5XP4N2
122	74676HN9604SH
123	74676HXMG2XHM
124	74676HN9Y7J3N
125	74676HNNSMFYX
126	74676HYW6CK1W
127	74676HT73F4MP
128	74676HZPMRGCM
129	74676F6FDW29F
130	74676DW2MSBZS
131	74676HNTMJ5Y2
132	74676HY9X4T7J
133	74676P8Z72MZC
134	74676HH4XXNKN
135	74676HW9FZ139

Exclusion List

Count	Record Identification Number
136	74676P8Z72NMS
137	74676F953TW74
138	74676DN7WWHX1
139	74676GWD7NWST
140	74676G9992FTB
141	74676HZJF2P9P
142	74676J05NWV5C
143	74676HQD1581N
144	74676HNX4ZHJH
145	74676F7PGBV4Q
146	74676HP6NQF53
147	74676HZ49D39Q
148	74676HZFCV79X
149	74676HZ7CK6VB
150	74676HV56HGJG
151	74676HMS18YWF
152	74676DM77J8RW
153	74676HHDV83YK
154	74676HM85T80F
155	74676HGJY2M0K
156	74676GZ1P759X
157	74676HSPT14TZ
158	74676HJ1P33X8
159	74676HGV3V47V
160	74676HYDC2MFT