

ENDORSED
FILED
San Francisco County Superior Court

FEB 04 2008

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

16

COUNTY OF SAN FRANCISCO — UNLIMITED JURISDICTION

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

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Plaintiffs,

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v.

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LENSCRAFTERS, INC., et al.,

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Defendants.

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No. CGC-02-405544

~~PROPOSED~~ ORDER (1)
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT, (2)
CONDITIONALLY CERTIFYING A
SETTLEMENT CLASS, (3)
APPROVING FORM AND
METHODS OF CLASS NOTICE,
AND (4) SCHEDULING FINAL
APPROVAL OF SETTLEMENT

Dept.: 304
Judge: Hon. Richard A. Kramer
Complaint Filed: March 12, 2002

1 WHEREAS, this Court has reviewed the Settlement Agreement and Release
2 (“Agreement”) made by and among Defendant LensCrafters, Inc., an Ohio corporation,
3 (“LensCrafters”), Defendant EYEXAM of California, Inc., a California corporation
4 (“EYEXAM”) (collectively “Defendants”) and Plaintiffs Melvin Gene Snow and Sabrina Hughes
5 Lochner, in their individual capacities and as representatives (collectively “Class
6 Representatives”) of the “Settlement Class,” as defined below, in the action *Snow et al. v.*
7 *LensCrafters et al.*, San Francisco Superior Court No. CGC-02-405544 (the “Action”), together
8 with all exhibits thereto, the record in the Action, and the arguments of counsel;

9
10 IT IS HEREBY ORDERED AS FOLLOWS:

11 1. All terms and definitions used herein have the same meanings as set forth in the
12 Agreement.

13 2. The proposed settlement set forth in the Agreement is hereby preliminarily
14 approved as being within the range of reasonableness such that notice thereof should be
15 given to members of the Settlement Class (as defined in the following paragraph).

16 3. Pursuant to California Code of Civil Procedure section 382, the following
17 Settlement Class is provisionally certified for purposes of settlement only:

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19 All persons who had their eyes examined at an EYEXAM office
20 located in California and purchased eyewear on the same day from
21 LensCrafters during the period from March 12, 1998 to the date of
22 the Court’s preliminary approval of the Settlement.

23 Inherent in the Court’s provisional certification of the Settlement Class are findings that
24 the Settlement Class is ascertainable; that its members are too numerous to practicably be joined;
25 that the Action raises common legal and factual questions; that the Class Representatives’ claims
26 are typical of the claims of the Settlement Class as a whole; that the Class Representatives and
27 Settlement Class Members share a community of interest in the Action; that neither the Class
28 Representatives nor Class Counsel have interests adverse to the Settlement Class, and that Class
Counsel are competent and experienced; that common questions predominate over questions

1 affecting only individual Settlement Class Members; and that this Action and this settlement are
2 appropriate means for resolving the Settlement Class Members' claims expeditiously and
3 economically.

4 4. Class Counsel and Class Representatives are hereby appointed to represent the
5 Settlement Class. The following attorney is hereby appointed as Class Counsel: Matthew D.
6 Davis of Walkup, Melodia, Kelly & Schoenberger. The following persons are hereby
7 appointed as Class Representatives: Melvin Gene Snow and Sabrina Hughes Lochner.

8 5. This Court's certification of the Settlement Class and findings incident thereto
9 shall be solely for settlement purposes. Certification of the Settlement Class shall be vacated
10 and shall have no effect in the event that the Agreement is not finally approved by this Court
11 or otherwise does not take effect. In the event the Court's approval of the Agreement or
12 certification of the Settlement Class is disapproved, reversed, vacated or terminated, neither
13 the Settlement Agreement nor the findings in this Order shall affect the rights of the parties to
14 take action in support of or in opposition to class certification or to prosecute or defend this
15 action, or this Court's ability to grant or deny certification for litigation purposes. If this
16 provisional class certification order is vacated, the parties shall all be restored to the *status*
17 *quo ante* as of the date preceding the date of this Order.

18 6. The Category 1 Notice and Claim Form, Category 2 Notice and Claim Form
19 (collectively the "Notice and Claim Form"), and the Full Notice of Pendency and Proposed
20 Settlement of Class Action ("Full Notice"), which are attached to the Agreement as Exhibits
21 A, B and C respectively, are hereby approved as to form.

22 7. The Notice and Claim Forms shall be mailed to Class Members, at their last
23 known addresses, no later than 60 days after the date of the Court's preliminary approval of
24 the Settlement. The Settlement Administrator will re-mail any Notice and Claim Form
25 returned undeliverable with a forwarding address indicated. For any Notice and Claim Form
26 returned undeliverable without a forwarding address, the Settlement Administrator will make
27 one attempt to follow-up and re-mail the Notice and Claim Form, by performing an address
28 search using credit bureau and other public source data. The Full Notice shall be posted on a
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1 settlement website at www.XXXXXX.com (the "Settlement Website") until the date of the
2 Final Hearing, as set forth and defined in paragraph 10 below, and made available for
3 mailing upon telephone request.

4 8. The Court finds that the Notice and Claim Form mailed to Settlement Class
5 Members, and the Full Notice, available on the Settlement Website constitute reasonable
6 notice under the circumstances and constitute valid, due, and sufficient notice to all members
7 of the Settlement Class of their rights and obligations, complying fully with the requirements
8 of California Code of Civil Procedure section 382, the California and United States
9 Constitutions, and any other applicable law. The Court further finds that the method of class
10 notice proposed in the Agreement constitutes reasonable notice under the circumstances and
11 constitutes valid, due, and sufficient notice to all members of the Settlement Class of their
12 rights and obligations, complying fully with the requirements of California Code of Civil
13 Procedure section 382, the California and United States Constitutions, and any other
14 applicable law.

15 9. Any member of the Settlement Class who does not file a valid and timely request
16 for exclusion will be bound by the Judgment and Order of Dismissal dismissing the Action
17 on the merits and with prejudice.

18 10. A hearing (the "Final Hearing") shall be held by the Court on July 11, 2008 at
19 9:30 (a.m.)/p.m., to consider and determine whether the requirements for certification of the
20 Settlement Class have been met and whether the proposed settlement of the Action on the
21 terms set forth in the Agreement should be approved as fair, reasonable, adequate and in the
22 best interests of the Settlement Class Members; whether Class Counsel's fee and expense
23 application should be approved; and whether the Final Judgment approving the settlement
24 and dismissing the Action on the merits and with prejudice against the Class Representatives
25 and all Settlement Class Members should be entered.

26 11. The Final Hearing may, from time to time and without further notice to the
27 Settlement Class (except those who have filed timely and valid objections), be continued or
28 adjourned by Order of the Court.

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1 12. Any Settlement Class Member who seeks to be excluded from the Settlement
2 Class must send a request by letter or postcard by U.S. mail, postmarked no later than 30-
3 ~~days prior to the Final Hearing, on or before~~ June 2, 2008:

4 Matthew D. Davis
5 Walkup, Melodia, Kelly & Schoenberger
6 650 California Street, 26th Floor
7 San Francisco, CA 94108
8 Telephone: (415) 981-7210
9 Attorney for Settlement Class

Lori A. Schechter
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
Telephone: (415) 268-7000
Attorney for Defendants LensCrafters, Inc. and
EYEXAM of California, Inc.

8 13. Objections by any Settlement Class Member to: (a) the certification of the
9 Settlement Class and the proposed settlement contained in the Agreement and described in
10 the Summary Notice; (b) the payment of fees and expenses to Class Counsel; and/or (c) entry
11 of the Final Judgment, shall be heard and any papers submitted in support of said objections
12 shall be considered by the Court at the Final Hearing only if, no later than ~~30 days prior to~~
13 ~~the final hearing, on or before~~ June 2, 2008, such objector files with the Court a notice of
14 such objections, states the basis for such objections, indicates that the objector is a member
15 of the Settlement Class, and serves copies of the foregoing and all other papers in support of
16 such objections on counsel identified in paragraph 12 above on or before June 2, 2008

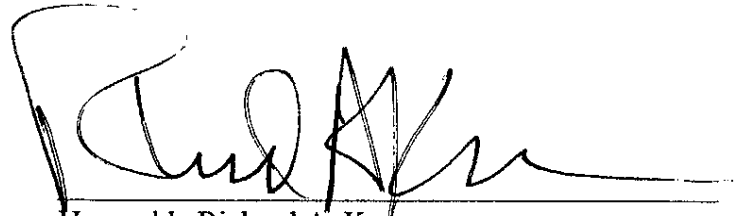
17 14. No later than ~~June 2,~~ ^{June 27,} ~~2008~~, the parties shall file all papers in support of
18 the application for final approval of the settlement, the application for payment of attorneys'
19 fees and expenses, and/or any papers in response to any valid and timely objections with the
20 Court, and shall serve copies of such papers upon each other and upon any objectors who
21 have complied with the provisions of paragraph 13 of this Order.

22 15. Counsel for the parties are hereby authorized to utilize all reasonable
23 procedures in connection with the administration of the settlement which are not materially
24 inconsistent with either this Order or the terms of the Agreement.

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IT IS SO ORDERED.

Dated: 2-4, 2008



Honorable Richard A. Kramer
Judge of the Superior Court of California,
County of San Francisco