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11 Attorneys for the Arizona State Board of Dispensing Opticians

12 **BEFORE THE**
13 **ARIZONA STATE BOARD OF DISPENSING OPTICIANS**

14 In the Matter of

15 Case No. 18-002 _____

16 **TARGET OPTICAL #1889,**

17 **CONSENT AGREEMENT/
18 ORDER**

19 **Optical Establishment**
20 **License No. 827e,**

21 **Respondent.**

22 **RECITALS**

23 In the interest of a prompt and judicious settlement of this case, consistent
24 with the public interest, statutory requirements, and responsibilities of the Arizona
25 State Board of Dispensing Opticians ("Board"), and under A.R.S. §§ 32-1671, et
26 seq., and 41-1092.07(F)(5), Respondent Target Optical #1889, holder of Optical
Establishment License number 827e, issued by the Board ("Respondent"), and the
Board enter into the following Recitals, Findings of Fact, Conclusions of Law and
Order ("Consent Agreement") as the final disposition of this matter.

- 1 1. Respondent has read and understands this Consent Agreement; has been
2 provided the opportunity to discuss this Consent Agreement with an attorney; and
3 knowingly, intelligently, and voluntarily enters into this Consent Agreement.
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- 5 2. Respondent understands that it has a right to a public administrative hearing
6 concerning this matter, at which it could present evidence and cross-examine
7 witnesses. By entering into this Consent Agreement, Respondent knowingly and
8 voluntarily relinquishes all rights to such an administrative hearing, as well as all
9 rights of rehearing, review, reconsideration, appeal, judicial review or any other
10 administrative and/or judicial action, concerning the matters set forth herein.
11 Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.
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- 13 3. Respondent understands that this Consent Agreement or any part of the
14 Agreement may be considered in any future disciplinary action by the Board
15 against Respondent.
- 16 4. Respondent understands that this Consent Agreement deals with Board Case
17 No. 18-002. The investigation into this case against Respondent shall be
18 concluded upon the Board's adoption of this Consent Agreement.
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- 20 5. All admissions made by Respondent in this Consent Agreement are made
21 solely for the final disposition of this matter, and any related administrative
22 proceedings or civil litigation involving the Board and Respondent. Any
23 admissions made by Respondent in this Consent Agreement are not intended for
24 any other use, such as in the context of another regulatory agency's proceedings, or
25 civil or criminal proceedings, whether in the State of Arizona or in any other state
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1 or federal court.

2 6. Respondent acknowledges and agrees that, upon signing this Consent
3 Agreement and returning this document to the Board's Executive Director,
4 Respondent may not revoke her acceptance of the Consent Agreement or make any
5 modifications to the document, regardless of whether the Consent Agreement has
6 been issued by the Board's Chairman. Any modification to this original document
7 is ineffective and void unless mutually approved by the parties in writing.
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9 7. Respondent understands that the foregoing Consent Agreement shall not
10 become effective unless and until adopted by the Board and signed by its
11 Chairman.
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13 8. Respondent understands and agrees that if the Board does not adopt this
14 Consent Agreement, it will not assert as a defense that the Board's consideration of
15 this Consent Agreement constitutes bias, prejudice, prejudgment or other similar
16 defenses.
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18 9. Respondent understands that this Consent Agreement is a public record that
19 may be publicly disseminated by the Board.
20

21 **FINDINGS OF FACT**

22 10. The Board has jurisdiction over the practice of Dispensing Opticians
23 pursuant to A.R.S. §§32-1671, *et seq.*

24 11. At all times relevant to the allegations underlying this Consent Agreement,
25 Respondent held Optical Establishment License number 827e, granted by the
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1 Arizona State Board of Dispensing Opticians.

2 12. On or about January 3rd, 2018, the Board received a complaint that an
3 employee of Respondent dispensed trial contact lenses to a customer without there
4 being a contact lens prescription for the customer on file in the store.
5

6 13. The Board initiated an investigation and, on or about January 31, 2018, the
7 investigator submitted a report to the Board concluding that there were grounds to
8 support the allegation that Respondent's employee dispensed the contact lenses
9 without a contact lens prescription being on file in the store, failing to keep a
10 record of contact lenses dispensed, and not documenting a patient's unexpired
11 eyeglass prescription that had been verified.
12

13 14. Additionally, in the course of an interview with the Board investigator, the
14 customer stated that she was contacted by an employee of Respondent the day after
15 the incident while she was returning to Respondent to see the independent doctor
16 of optometry to verify and fit lenses. The customer stated she was advised by
17 Respondent's employee that the doctor most likely would not be able to provide
18 any other lenses that would work better and she would need to pay the doctor for
19 the examination. After this, the customer decided not to return to the store for the
20 exam.
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22 15. On or about February 7, 2018, the Board provided Respondent with a copy
23 of the investigator's report and requested a written response to the issues raised.

24 16. On or about March 30, 2018, Respondent provided a written response to the
25 Board in which it notified the Board that the employee who dispensed the lenses is
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1 no longer an employee of Respondent.

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3 **CONCLUSIONS OF LAW**

4 17. After notice and opportunity for hearing, the Board may suspend, revoke, or
5 take other disciplinary action against a licensee for causes enumerated in A.R.S.
6 §32-1696 and as further defined in A.A.C. R4-20-118.

8 18. The conduct and circumstances above constitute cause for disciplinary
9 action pursuant to A.R.S. §32-1696(A)(8) (“... engage in any conduct that would
10 tend to do harm to the visual health of the public.”)

11 19. The conduct and circumstances above constitute cause for disciplinary
12 action pursuant to A.R.S. §32-1696(B) for violation of Board statute or rule
13 through A.R.S. §32-1671(3) (“...provided that contact lenses shall never be
14 dispensed without a written contact lens prescription being on file...”)

16 20. The conduct and circumstances above constitute cause for disciplinary
17 action pursuant to A.A.C. R4-20-118(2) (“Failing to maintain a copy or record of
18 the customer’s prescription and failing to prepare and maintain a record of optical
19 devices dispensed for at least three years.”)

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22 **ORDER**

23 Based on the above Findings of Fact and Conclusions of Law, **IT IS**
24 **ORDERED** that:

25 1. **PENALTY:** Respondent shall pay a civil penalty in the amount of three
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1 hundred dollars (\$300.00). This entire amount shall be paid within thirty (30) days
2 of the effective date of this consent agreement, and shall be paid in the form of a
3 cashier's check or money order made payable to the Board; and

4 2. **PROBATION:** Optical Establishment License number 827e shall be placed
5 on probation for a period of 12 months starting on the effective date of this Order.

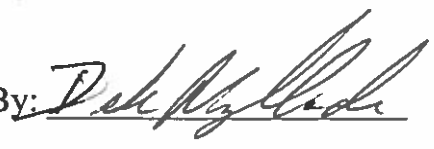
6 Terms of this probation shall include the following:

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8 a. Within 45 days of the effective date of this consent agreement, each
9 employee of Target Optical #1889 shall complete a training session
10 provided by Respondent. This training session shall be at a minimum
11 30 minutes, and shall instruct the employee in Board statutes
12 regulating the practice of dispensing opticians.
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14
15 3. **EARLY TERMINATION OF PROBATION:** Respondent may petition
16 the Board in writing for early termination of probation following payment of all
17 monies due under this consent agreement and completion of all terms of probation.
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19
20 DATED AND EFFECTIVE this ___ day of ____, 2018.

21 ARIZONA BOARD OF DISPENSING OPTICIANS

22
23 By: 

24 Dale Nyblade
25 Chairman
26 Licensed Optician

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By:  4/30/18

Target Optical #1889
Authorized Representative

Original of the foregoing filed
This 2 day of May 2018, with:

AZ State Dispensing Opticians Board
1740 West Adams Street, Lower Level
Phoenix, Arizona 85007

Copy of the foregoing mailed by
U.S. Certified Mail this 2 day
of May 2018, to:

Copy of the foregoing mailed
This 2 day of May, 2018 to:

Scott Donald
Assistant Attorney General
License and Enforcement Section
2005 N. Central Ave.
Phoenix, Arizona 85004

By: 