

1 **BEFORE THE**
2 **ARIZONA STATE BOARD OF DISPENSING OPTICIANS**

3 In the Matter of

Case No. 21-001

4 **ALVERNON OPTICAL – CAMPBELL**
5 **2820 N. CAMPBELL**
6 **TUCSON, AZ 85719;**

7 **ALVERNON OPTICAL CO. – MAIN**
8 **440 N. ALVERNON WAY**
9 **SUITE #101**
10 **TUCSON, AZ 85711;**

**CONSENT AGREEMENT/
ORDER**

11 **ALVERNON OPTICAL CO. IV – SUNRISE**
12 **4747 E SUNRISE DR.**
13 **SUITE B**
14 **TUCSON, AZ 85718;**

15 **ALVERNON OPTICAL OF TUCSON –**
16 **TANQUE VERDE**
17 **7125 E. TANQUE VERDE RD.**
18 **TUCSON, AZ 85715;**

19 **ALVERNON OPTICAL INC. – GREEN**
20 **VALLEY**
21 **230 W. CONTINENTAL RD.**
22 **SUITE. 408**
23 **GREEN VALLEY, AZ 85622;**

24 **CASA ADOBES OPTICAL**
25 **6987 N. ORACLE RD.**
26 **TUCSON, AZ 85704;**

SILVERBELL EYE CARE
2500 N. SILVERBELL ROAD
SUITE 180,
TUCSON, AZ 85745;

FAMILY VISION CENTER
7475 E. TANQUE VERDE ROAD
TUCSON, AZ 85715;

Respondents.

RECITALS

In the interest of a prompt and judicious settlement of this case, consistent with the public interest, statutory requirements, and responsibilities of the Arizona State Board of Dispensing Opticians (“Board”), and under A.R.S. §§ 32-1671, et seq., and 41-1092.07(F)(5), Respondents Alvernon Optical – Main, 440 N. Alvernon Way, Tucson, AZ, 85711, holder of Dispensing Optician Establishment License (“License”) 1478; Alvernon Optical – Sunrise, 4747 E. Sunrise Dr, Tucson, AZ, 85718, holder of License 1479; Alvernon Optical – Green Valley, 230 W. Continental Rd., Green Valley, AZ, 85622, holder of License 1480; Alvernon Optical – Campbell, 2820 N. Campbell Ave., Tucson, AZ, 85719, holder of License 1481; Alvernon Optical – Tanque Verde, 7123 E. Tanque Verde Rd., Tucson, Az, 85715, holder of License 1482; Casas Adobes Optical, 6987 N. Oracle Rd., Tucson, AZ, 85704, holder of License 1483; Silverbell Eye Care, 2500 N. Silverbell Rd., Tucson, AZ, 85745, holder of License 1484; and Family Vision Center, 7454 E. Tanque Verde Rd., Tucson, AZ, 85715, holder of License 1485; 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. Respondents have read and understand this Consent Agreement; has been provided the opportunity to discuss this Consent Agreement with an attorney; and knowingly, intelligently, and voluntarily enter into this Consent Agreement.

2. Respondents understand they have the right to a public administrative hearing concerning this matter, at which they could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondents knowingly and voluntarily relinquish all rights to such an administrative hearing, as well as all rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative

1 and/or judicial action, concerning the matters set forth herein. Respondents affirmatively
2 agree that this Consent Agreement shall be irrevocable.

3 3. Respondents understand that this Consent Agreement or any part of the Agreement
4 may be considered in any future disciplinary action by the Board against Respondents.

5 4. Respondent acknowledges and agrees that the acceptance of this Consent
6 Agreement is to settle Board case number 21-001. This settlement will solely settle this
7 case, and does not preclude the Board from instituting any other proceedings as may be
8 appropriate now or in the future. Furthermore, and notwithstanding any language in this
9 Consent Agreement, this Consent Agreement does not preclude in any way any other
10 state agency or officer or political subdivision of this state from instituting proceedings,
11 investigating claims, or taking legal action as may be appropriate now or in the future
12 relating to this matter or other matters concerning Respondent, including but not limited
13 to violations of Arizona's Consumer Fraud Act or any other civil or criminal proceedings.
14 Respondent acknowledges that, other than with respect to the Board, this Consent
15 Agreement makes no representations, implied or otherwise, about the views or intended
16 actions of any other state agency or officer or political subdivision of the state relating to
17 this matter or other matters concerning Respondent.

18 5. All admissions made by Respondents in this Consent Agreement are made solely
19 for the final disposition of this matter, and any related administrative proceedings or civil
20 litigation involving the Board and Respondents. Any admissions made by Respondents
21 in this Consent Agreement are not intended for any other use, such as in the context of
22 another regulatory agency's proceedings, or civil or criminal proceedings, whether in the
23 State of Arizona or in any other state or federal court.

24 6. Respondent acknowledge and agree that, upon signing this Consent Agreement
25 and returning this document to the Board's Executive Director, Respondents may not
26

1 revoke acceptance of the Consent Agreement or make any modifications to the document,
2 regardless of whether the Consent Agreement has been issued by the Board's Chairman.
3 Any modification to this original document is ineffective and void unless mutually
4 approved by the parties in writing.

5 7. Respondents understand that the foregoing Consent Agreement shall not become
6 effective unless and until adopted by the Board and signed by its Chairman.

7 8. Respondents understand and agree that if the Board does not adopt this Consent
8 Agreement, they will not assert as a defense that the Board's consideration of this
9 Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

10 9. Respondents understand that this Consent Agreement is a public record that may
11 be publicly disseminated by the Board.
12

13 **FACTUAL ALLEGATIONS**

14 10. The Board has jurisdiction over the practice of Dispensing Opticians and
15 Dispensing Optician Establishments pursuant to A.R.S. §§ 32-1671, *et seq.*

16 11. Respondent Alvernon Optical – Main, 440 N. Alvernon Way, Tucson, AZ, 85711
17 (“Respondent A”), is the holder of License 1478 issued by the Board.

18 12. Respondent Alvernon Optical – Sunrise, 4747 E. Sunrise Dr, Tucson, AZ 85718,
19 (“Respondent B”) is the holder of License 1479 issued by the Board.

20 13. Respondent Alvernon Optical – Green Valley, 230 W. Continental Rd., Green
21 Valley, AZ, 85622, (“Respondent C”) is the holder of License 1480 issued by the Board.

22 14. Respondent Alvernon Optical – Campbell, 2820 N. Campbell Ave., Tucson, AZ,
23 85719, (“Respondent D”) is the holder of License 1481 issued by the Board.

24 15. Respondent Alvernon Optical – Tanque Verde, 7123 E. Tanque Verde Rd., Tucson,
25 Az, 85715, (“Respondent E”) is the holder of License 1482 issued by the Board.
26

1 16. Respondent Casas Adobes Optical, 6987 N. Oracle Rd., Tucson, AZ, 85704,
2 (“Respondent F”) is the holder of License 1483 issued by the Board.

3 17. Respondent Silverbell Eye Care, 2500 N. Silverbell Rd., Tucson, AZ, 85745,
4 (“Respondent G”) is the holder of License 1484 issued by the Board.

5 18. Respondent Family Vision Center, 7454 E. Tanque Verde Rd., Tucson, AZ, 85715,
6 (“Respondent H”) is the holder of License 1485 issued by the Board.

7 19. On or about December 6, 2019, AEG Arizona, LLC (“AEG”) entered into a
8 Transition Services Agreement (“Agreement 1”) to purchase the optical establishments
9 of Respondents A, B, C, D, E, and F. Agreement 1 did not specify a date certain for
10 transfer of ownership of the optical establishments.
11

12 20. On or about June 7, 2020, AEG entered into a Transition Services Agreement
13 (“Agreement 2”) to purchase the optical establishment of Respondent H. Agreement 2
14 did not specify a date certain for transfer of ownership of the optical establishment.

15 21. On or about July 29, 2020, AEG entered into a Transition Services Agreement
16 (“Agreement 3”) to purchase the optical establishment of Respondent G. Agreement 3
17 did not specify a date certain for transfer of ownership of the optical establishment.

18 22. During the entire period of transition and transfer of ownership, Respondents A-H
19 continued in operation as optical establishments.

20 23. At varying points, Respondents A-H fell out of compliance with Board
21 requirements for the licensing of optical establishments due to the transfer of ownership.
22

23 **ALLEGATIONS OF VIOLATION**

24 24. Pursuant to A.A.C. R4-20-113(B), “[o]ptical establishment... licenses are not
25 transferable.”

26 25. Pursuant to A.R.S. § 32-1699, “The board may impose a civil penalty of not more

1 than one thousand dollars against any person or entity acting without a license issued by
2 the board in violation of this chapter.”

3 26. The conduct and circumstances above constitute cause for a civil penalty against
4 each Respondent.

5 **ORDER**

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

8 1. Each Respondent shall pay a civil penalty in the amount of two-hundred and fifty
9 dollars (\$250.00) for a total civil penalty amount of two-thousand dollars (\$2,000.00).
10 This entire amount shall be paid within thirty (30) days of the effective date of this
11 Consent Agreement, and shall be paid in the form of a cashier’s check or money order
12 made payable to the Board.
13

14 2. This Consent Agreement is effective upon its acceptance by the Board and by
15 Respondents as evidenced by the respective signatures thereto. The effective date of this
16 Consent Agreement is the date the Agreement is signed by the Board and by
17 Respondents. If the Agreement is signed on different dates, the later date shall be the
18 effective date. The parties may execute this Consent Agreement in counterparts, and the
19 parties understand and agree that copies of this Agreement, including facsimile or e-mail
20 signatures thereto, shall have the same force and effect as originals.

21 3. The failure of any Respondent to complete or comply with any of the requirements
22 or provisions of this Consent Agreement may be a violation of this Consent Agreement
23 and A.R.S. § 32-1693(A)(3) (“[v]iolation of any Board order or rule”).

24 4. This Consent Agreement is subject to the Board’s approval and will be effective
25 only when the Board accepts it. In the event the Board in its discretion does not approve
26

1 this Consent Agreement, it shall be deemed withdrawn and shall be of no evidentiary
2 value, nor shall it be relied upon or introduced into evidence in any disciplinary action or
3 legal matter by any party hereto, except that Respondents agree that should the Board
4 reject this Consent Agreement and this case proceeds to hearing, Respondents shall assert
5 no claim that the Board was prejudiced by its review and discussion of this document or
6 of any records relating thereto.

7 5. The Board has determined that this Consent Agreement protects the public safety
8 and welfare and is more likely to rehabilitate Respondent than formal disciplinary
9 proceedings.
10

11
12 DATED AND EFFECTIVE this 1st day of SEPTEMBER 2021.

13 ARIZONA BOARD OF DISPENSING OPTICIANS

14
15 By: 

16 Dale Nyblade
17 Chairman
18 Licensed Optician

19 **CONSENT TO BOARD DECISION AND ORDER OF** Respondents Alvernon
20 Optical – Main, 440 N. Alvernon Way, Tucson, AZ, 85711, holder of Dispensing Optician
21 Establishment License (“License”) 1478; Alvernon Optical – Sunrise, 4747 E. Sunrise
22 Dr, Tucson, AZ 85718, holder of License 1479; Alvernon Optical – Green Valley, 230 W.
23 Continental Rd., Green Valley, AZ, 85622, holder of License 1480; Alvernon Optical –
24 Campbell, 2820 N. Campbell Ave., Tucson, AZ, 85719, holder of License 1481; Alvernon
25 Optical – Tanque Verde, 7123 E. Tanque Verde Rd., Tucson, Az, 85715, holder of License
26 1482; Casas Adobes Optical, 6987 N. Oracle Rd., Tucson, AZ, 85704, holder of License

1 1483; Silverbell Eye Care, 2500 N. Silverbell Rd., Tucson, AZ, 85745, holder of License
2 1484; and Family Vision Center, 7454 E. Tanque Verde Rd., Tucson, AZ, 85715, holder
3 of License 1485

4 I, Patricia A. McCormick, am an authorized signer signing on behalf
5 of Respondents in the above-entitled matter pending before the Arizona State Board of
6 Dispensing Opticians (“Board”).

7 I have read and understand everything contained in the foregoing Findings of Fact,
8 Conclusions of Law and Order. If this Consent Agreement is approved by the Board,
9 Respondents agree to its immediate issuance and to be bound by its terms.

10 I am aware of the right to consult legal counsel prior to entering into the Consent
11 Agreement, and such consultation has either been obtained or is waived. I am aware of
12 the right to an administrative hearing in this matter and, except as otherwise provided by
13 the Consent Agreement, waive the same. No promises of any kind or nature whatsoever
14 were made by the Board to induce consent to this Consent Agreement. I waive all rights
15 on behalf of Respondents to challenge the foregoing Consent Agreement on appeal, or
16 otherwise to the Board or any other court or tribunal.

17 I understand that a failure of Respondents to comply with any of the provisions of
18 this Consent Agreement will be considered non-compliance and may constitute grounds
19 for further disciplinary action; that the Consent Agreement may be considered in any
20 future disciplinary action against Respondents; and that acceptance of this Consent
21 Agreement does not preclude any other agency, subdivision or officer of this State or
22 another city, county, state or federal agency from instituting other civil or criminal
23 proceedings with respect to the conduct in issue as may be appropriate now or in the
24 future.

25 I understand that the related investigation is a matter of public record.

26 By my signature, I verify that I have read and understand everything contained in

1 the foregoing Consent Agreement.

2 Dated this 26th day of August, 2021.

3 

4 _____
Authorized Signer

5
6
7 **Original** of the foregoing filed
this ____ day of _____, 2021, with:

8 The Arizona State Board of Dispensing Opticians
9 1740 W. Adams Street
Suite 3001
10 Phoenix, AZ 85007

11 **Copy** of the foregoing mailed
12 this same day to:

13 Alvernon Optical – Main
14 440 N. Alvernon Way
Tucson, AZ, 85711

15 Alvernon Optical – Sunrise
16 4747 E. Sunrise Dr
17 Tucson, AZ, 85718

18 Alvernon Optical – Green Valley
230 W. Continental Rd.
19 Green Valley, AZ, 85622

20 Alvernon Optical – Campbell
21 2820 N. Campbell Ave.
Tucson, AZ, 85719

22 Alvernon Optical – Tanque Verde
23 7123 E. Tanque Verde Rd.
24 Tucson, Az, 85715

25 Casas Adobes Optical
6987 N. Oracle Rd.
26 Tucson, AZ, 85704

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Silverbell Eye Care
2500 N. Silverbell Rd.
Tucson, AZ, 85745

Family Vision Center
7454 E. Tanque Verde Rd.
Tucson, AZ, 85715

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

By:  _____