

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

3 In the Matter of

Board Case No. 22-001

4 **LensCrafters #A681**
5 **21001 N. Tatum Blvd, Space E-9,**
6 **Phoenix, AZ 85050**

CONSENT AGREEMENT
AND ORDER FOR
CIVIL PENALTY

7 and

8 **LensCrafters #676**
9 **12605 N. Tatum Blvd, Suite A111,**
10 **Phoenix, AZ 85032**

11 Respondents.

12 In the interest of a prompt and judicious settlement of this case, consistent with the
13 public interest, statutory requirements and the responsibilities of the Arizona State Board
14 of Dispensing Opticians (“Board”), and under A.R.S. § 32-1671, *et. seq.*, LensCrafters
15 #A681 and LensCrafters #676 (collectively “Respondents”) and the Board enter into the
16 following Recitals, Findings of Fact, Conclusions of Law and Order (“Consent
17 Agreement”) as a final disposition of this matter.

18 **RECITALS**

19 1. Respondents have read and understand this Consent Agreement and have
20 had the opportunity to discuss this Consent Agreement with an attorney, or have waived
21 the opportunity to discuss this Consent Agreement with an attorney.

22 2. Respondents understand that they have a right to a public administrative
23 hearing concerning this matter at which hearing they could present evidence and cross
24 examine witnesses. By entering into this Consent Agreement, Respondents knowingly
25 and voluntarily relinquishes all rights to such an administrative hearing, as well as rights
26 of rehearing, review, reconsideration, appeal, judicial review or any other administrative
and/or judicial action, concerning the matters set forth herein.

1 3. Respondents affirmatively agree that this Consent Agreement shall be
2 irrevocable. Respondents acknowledge and agree that, upon signing this Consent
3 Agreement and returning this document to the Board's Executive Director, they may not
4 revoke acceptance of the Consent Agreement or make any modifications to the document
5 regardless of whether the Consent Agreement has been signed by all parties. Any
6 modification to this original document is ineffective and void unless mutually agreed by
7 the parties in writing.

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

10 5. Respondents understand this Consent Agreement deals with a Board
11 Complaint involving allegations of unprofessional conduct against Respondents. The
12 investigation into these allegations against Respondents shall be concluded upon the
13 Board's adoption of this Consent Agreement.

14 6. Respondents acknowledge and agree that the acceptance of this Consent
15 Agreement is solely to settle this Board matter and does not preclude the Board from
16 instituting other proceedings as may be appropriate now or in the future.

17 7. Respondents understand that this Consent Agreement does not constitute a
18 dismissal or resolution of any other matters currently pending before the Board, if any,
19 and does not constitute any waiver, express or implied, of the Board's statutory authority
20 or jurisdiction regarding any other pending or future investigation, action or proceeding.

21 8. Furthermore, and notwithstanding any language in this Consent Agreement,
22 this Consent Agreement does not preclude in any way any other state agency or officer or
23 political subdivision of this state from instituting proceedings, investigating claims, or
24 taking legal action as may be appropriate now or in the future relating to this matter other
25 matters concerning Respondents, including violations of Arizona's Consumer Fraud Act.
26 Respondents acknowledge that, other than with respect to the Board, this Consent

1 Agreement makes no representations, implied or otherwise, about the views or intended
2 actions of any other state agency or officer or political subdivision of the state relating to
3 this matter or other matters concerning Respondents.

4 9. This Consent Agreement is subject to the approval of the Board and is
5 effective only when accepted by the Board and signed by its Chairperson. In the event
6 that the Board does not approve this Consent Agreement, it is withdrawn and shall be of
7 no evidentiary value and shall not be relied upon nor introduced in any action by any
8 party, except that the parties agree that should the Board reject this Consent Agreement
9 and this case proceeds to hearing, Respondents shall assert no claim that the Board was
10 prejudiced by its review and discussion of this document or any records relating thereto.

11 10. If a court of competent jurisdiction rules that any part of this Consent
12 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement
13 shall remain in full force and effect.

14 11. Respondents understand that this Consent Agreement is a public record that
15 may be publicly disseminated as a formal action of the Board and may be reported as
16 required by law to the National Practitioner Data Bank and the Healthcare Integrity and
17 Protection Data Bank.

18 12. The parties understand and agree that Portable Document Format and
19 facsimile copies of this Consent Agreement including Portable Document Format (PDF)
20 and facsimile signatures thereto, shall have the same force and effect as the originals.

21 13. Respondents agree that the Board will adopt the following Findings of Fact,
22 Conclusions of Law and Order.

23 **FINDINGS OF FACT**

24 1. The Board is the duly constituted authority for licensing and regulating the
25 practice of Dispensing Opticians and Dispensing Optician Establishments in the State of
26 Arizona.

1 2. Pursuant to A.R.S. § 32-1684.01 and A.A.C. R4-20-110(A), any person,
2 corporation, company, partnership, firm, association or society wanting to operate an
3 optical establishment, except those exempt under A.R.S. § 32-1691, are required to
4 obtain an optical establishment license from the Board.

5 3. Pursuant to A.R.S. §§ 32-1697 and 32-1699, the operation of an optical
6 establishment without a valid and subsisting license is a class 2 misdemeanor, and subject
7 to injunctive relief and/or an administrative penalty.

8 4. None of the Respondents were licensed by the Board at any time relevant to
9 the allegations of this Consent Agreement, and none of the Respondents are presently
10 licensed by the Board.

11 5. In or about June 2022, Board staff became aware that Respondent
12 LensCrafters #A681, 21001 N. Tatum Blvd, Space E-9, Phoenix, AZ 85050, may have
13 been operating without a valid license in violation of Arizona statutes.

14 6. Board staff investigated, and determined the location was operating an
15 establishment without being licensed as required under Arizona statutes. This was a new
16 store that opened on February 17, 2022, without first applying for and obtaining an
17 optical establishment license, and continued to operate until June 22, 2022, when the
18 issue was discovered.

19 7. In or about June 2022, Board staff became aware that Respondent
20 LensCrafters #676, 12605 N. Tatum Blvd, Suite A111, Phoenix, AZ 85032, may have
21 been operating without a valid license in violation of Arizona statutes.

22 8. Board staff investigated, and determined the location was operating an
23 establishment without being licensed as required under Arizona statutes. LensCrafters
24 #676 had previously been licensed by the Board from September 6, 1995 until June 30,
25 2021, when it was located at Paradise Valley Mall on East Cactus Road until its closure
26 on March 31, 2021. The store reopened at its new location on January 14, 2022, without

1 first applying for and obtaining an optical establishment license, and continued to operate
2 until June 23, 2022, when the issue was discovered.

3 **CONCLUSIONS OF LAW**

4 1. The Board possesses jurisdiction over the subject matter and over
5 Respondents pursuant to A.R.S. § 32-1671 *et seq.*

6 2. Pursuant to A.A.C. R4-20-118(5), the failure of any person, corporation,
7 company, partnership, firm, association or society to maintain an active optical
8 establishment license as required by R4-20-110, is an act of unprofessional conduct.

9 3. Respondents' operation of an optical establishment without a valid and
10 subsisting license, as described above, constitutes a violation of A.R.S. § 32-1684.01 and
11 A.A.C. R4-20-110(A).

12 4. Pursuant to A.R.S. § 32-1699(B), the board may impose a civil penalty of
13 not more than one thousand dollars against any person or entity acting without a license
14 issued by the board in violation of this chapter.

15 5. The conduct and circumstances set forth in the Findings of Fact constitute
16 cause for a civil penalty against each Respondent.

17 **ORDER**

18 Based upon the above Findings of Fact and Conclusions of Law, IT IS HEREBY
19 ORDERED THAT:

20 1. Respondent, LensCrafters #A681, shall pay to the Board as a civil penalty
21 the sum of **One Thousand Dollars (\$1,000.00)**. The entire civil penalty shall be paid in
22 full to the Board no later than the close of business on July 22, 2022, and shall be paid in
23 the form of a cashier's check, money order, or company warrant made payable to the
24 Board.

25 2. Respondent, LensCrafters #676, shall pay to the Board as a civil penalty the
26 sum of One Thousand Dollars (\$1,000.00). The entire civil penalty shall be paid in full

1 to the Board no later than the close of business on July 22, 2022, and shall be paid in the
2 form of a cashier's check, money order, or company warrant made payable to the Board.

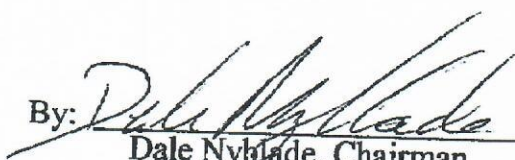
3 3. This Consent Agreement is effective upon its acceptance by the Board and
4 by Respondents as evidenced by the respective signatures thereto. The effective date of
5 this Consent Agreement is the date the Agreement is signed by the Board and by
6 Respondents. If the Agreement is signed on different dates, the later date shall be the
7 effective date. The parties may execute this Consent Agreement in counterparts, and the
8 parties understand and agree that copies of this Order, including facsimile or e-mail
9 signatures thereto, shall have the same force and effect as originals.

10 4. The failure of any Respondent to complete or comply with any of the
11 requirements or provisions of this Consent Agreement may be a violation of this Consent
12 Agreement and grounds for further action pursuant to A.R.S. § 32-1693.

13 5. Respondents understand that this Consent Agreement is a public record that
14 may be publicly disseminated as a formal action.

15
16 DATED this 15th day of July, 2022.

17 ARIZONA STATE BOARD OF DISPENSING
18 OPTICIANS

19
20 By: 
21 Dale Nyblade, Chairman
22 Licensed Optician
23
24
25
26

1 **CONSENT TO BOARD ORDER - LensCrafters #A681, 21001 N. Tatum Blvd,**
2 **Space E-9, Phoenix, AZ 85050; and LensCrafters #676, 12605 N. Tatum Blvd, Suite**
3 **A111, Phoenix, AZ 85032:**

4
5 I, Scott Messner, am an authorized signer signing on behalf
6 of Respondents in the above-entitled matter pending before the Arizona State Board of
7 Dispensing Opticians ("Board").

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

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

18 I understand that a failure of Respondents to comply with any of the provisions of
19 this Consent Agreement will be considered non-compliance and may constitute grounds
20 for further Board action; that the Consent Agreement may be considered in any future
21 disciplinary action against Respondents; and that acceptance of this Consent Agreement
22 does not preclude any other agency, subdivision or officer of this State or another city,
23 county, state or federal agency from instituting other civil or criminal proceedings with
24 respect to the conduct in issue as may be appropriate now or in the 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
3 Dated this July day of 15, 2022.

4
5 
6 _____
Authorized Signer

7 ORIGINAL OF THE FORGOING FILED
8 this _____ day of _____, 2022, with:

9 Arizona State Board of Dispensing Opticians
10 1616 W. Adams Street
Phoenix, Arizona 85007

11 EXECUTED COPY OF THE FOREGOING MAILED
12 and E-MAILED this _____ day of _____, 2022, to:

13 LensCrafters #A681
21001 N. Tatum Blvd, Space E-9
Phoenix, AZ 85050

14 LensCrafters #676
15 12605 N. Tatum Blvd, Suite A111
Phoenix, AZ 85032

16
17 EXECUTED COPY OF THE FOREGOING E-MAILED
18 this _____ day of _____, 2022, to:

19 Seth T. Hargraves
Assistant Attorney General
20 2005 North Central Ave., SGD/LES
Phoenix, Arizona 85004
Attorneys for the Board
21 LicensingEnforcement@azag.gov

22 Michael Mott
Luxottica
23 mmott@luxotticaretail.com

24
25 _____
26 Doc #10499729