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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ARTHUR L. CARTIER OPTICS, on behalf of)
itself and all others similarly situated,)
)
Plaintiff,)
)
v.)
)
TRANSITIONS OPTICAL, INC., ESSILOR)
OF AMERICA, INC., and ESSILOR)
LABORATORIES OF AMERICA, INC.,)
)
Defendants.)

Case No. 2:10-cv-694

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Arthur L. Cartier Optics (“Plaintiff”), individually and on behalf of a Class of all others similarly situated (defined below), brings this action for treble damages under the antitrust laws of the United States against Defendants, and demands a trial by jury.

NATURE OF ACTION

1. Plaintiff alleges that Defendant Transitions Optical, Inc. (“Transitions”) monopolized—and conspired with Defendants Essilor of America, Inc. and Essilor Laboratories of America, Inc. and numerous John Doe Co-Conspirators (defined below) to monopolize—the market for the development, manufacture and sale of photochromic treatments for corrective

1 ophthalmic lenses in the United States beginning no later than 1999 and continuing until at least
2 March 2010.

3 2. Corrective ophthalmic lenses are used in eyeglasses to correct vision defects.
4 Consumers can buy those lenses with a photochromic treatment to protect their eyes from
5 harmful ultraviolet (“UV”) light. Lenses with photochromic treatments (“photochromic lenses”)
6 change from clear to dark in the presence of UV light, and revert to clear when removed from
7 that light.

8
9 3. Starting no later than 1999 and continuing through March 2010, and potentially
10 later, Defendants and their co-conspirators engaged in exclusionary conduct, including entering
11 into exclusive dealing arrangements and other restrictive practices at nearly every level of the
12 photochromic lens distribution chain. This conduct substantially foreclosed existing and
13 potential competitors from accessing distribution channels necessary to efficiently and
14 effectively manufacture and market competing photochromic lenses.

15
16 4. Beginning in 1999, Transitions announced a general policy of refusing to deal
17 with corrective ophthalmic lens manufacturers, called “lens casters,” that sold competing
18 photochromic lens, and entered into written agreements memorializing that policy with many
19 lens casters. Significantly, Transitions announced this “all or nothing” ultimatum soon after one
20 of its main competitors, Corning Inc., introduced a plastic photochromic lens named SunSensors
21 earlier in 1999, and Transitions responded by terminating its supply relationship with the first
22 lens caster to sell SunSensors, Signet Armorlite, Inc. Transitions was faced with another
23 potential competitive threat in 2005. It again terminated its supply relationship with the
24 respective lens caster, Vision-Ease Lens, after it developed a competing photochromic treatment
25 called LifeRx for use in its own lenses.
26

1 5. Transitions also engaged in exclusionary tactics with optical retailers and
2 wholesale optical labs—the two downstream distribution channels for photochromic lenses—that
3 severely restricted their ability to sell competing photochromic lenses. Beginning in 2005,
4 Transitions entered into long-term, exclusive agreements with more than 50 optical retailers,
5 including most of the large optical retail chains. Transitions also entered into agreements with
6 wholesale optical labs that forced the labs to promote Transitions’ lenses as their “preferred”
7 photochromic lens and to withhold normal sales efforts for competing photochromic lenses.
8 Finally, Transitions generally required optical retailers and wholesale optical labs to purchase all
9 or nearly all of their photochromic lenses from Transitions as part of a bundle in order to receive
10 significant discounts. Transitions’ competitors and potential competitors were hamstrung from
11 effectively competing for these customers because no one else offered as broad a range of
12 products as Transitions.
13

14 6. The exclusionary acts and practices of Defendants and their co-conspirators
15 individually and collectively had the effect of improperly maintaining Transitions’ monopoly
16 power and unreasonably restraining trade in that market. Indeed, this conduct has excluded
17 Transitions’ rivals from approximately 85% of the lens caster segment, and has partially or
18 completely excluded Transitions’ rivals from up to 40% or more of the wholesale optical lab and
19 optical retailer distribution channels.
20

21 7. Through this exclusionary conduct, Transition has been able to limit and exclude
22 competitors, maintain its high market share of domestic photochromic lens sales (80% during the
23 preceding five years, and exceeding 85% in 2008), limit innovation, limit consumer choice,
24 reduce output, and raise prices.
25
26

1 8. The Federal Trade Commission (“FTC”) has taken note of Defendants’ conduct.
2 On or around March 3, 2010, the FTC commissioners unanimously approved the filing of a
3 complaint against Transitions for the anticompetitive conduct alleged against the company
4 herein. On or around that date, the FTC simultaneously approved a proposed consent order
5 settling its claims against Transitions for numerous forms of prospective structural relief,
6 including those that will eliminate Transition’s exclusive dealing practices that threaten
7 competition. According to the FTC, the settlement terms will end this anticompetitive conduct
8 and facilitate competitor entry.
9

10 9. As the Director of the FTC’s Bureau of Competition stated in a news release
11 accompanying the filing of the complaint and proposed consent order, “Transitions crossed the
12 line between aggressive competition and illegal exclusionary conduct.” The Director added that
13 Transitions’ “actions prevented others from competing on the merits, and consumers were forced
14 to pay more for these lenses as a result. Such conduct runs afoul of the antitrust laws and is
15 unacceptable.”
16

17 10. As a result of the anticompetitive conduct alleged herein, prices for Transitions
18 photochromic lenses were higher than they otherwise would have been. Plaintiff and the other
19 Class members paid supra-competitive prices for these products, and have suffered injury to their
20 business and property of the type that the antitrust laws are designed to prevent. Accordingly,
21 Plaintiff seeks to recover the anticompetitive overcharges that it and its fellow Class members
22 have paid for Transitions photochromic lenses during the four years preceding the date of this
23 complaint.
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JURISDICTION AND VENUE

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2 11. Plaintiff brings this action under Section 2 of the Sherman Act, 15 U.S.C. § 2,
3 and Section 4 of the Clayton Act, 15 U.S.C. § 15(a), to recover treble damages and costs of suit,
4 including reasonable attorneys' fees, against Defendants for the injuries that Plaintiff and the
5 other Class members have suffered from Defendants' violations of the Sherman Act.

6 12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337
7 and Sections 4 and 12 of the Clayton Act, 15 U.S.C. §§ 15(a) and 22.

8
9 13. This Court has personal jurisdiction over each Defendant because each
10 Defendant: transacted business throughout the United States, including in this District; sold
11 Transitions photochromic lenses throughout the United States, including in this District; had
12 substantial contacts with the United States, including in this District; or engaged in an illegal
13 conspiracy to monopolize that was directed at and had the intended effect of causing injury to
14 persons residing in, locating in, or doing business throughout the United States, including in this
15 District.

16
17 14. Venue is proper in this District pursuant to Sections 4 and 12 of the Clayton Act,
18 15 U.S.C. §§ 15(a) and 22, and 28 U.S.C. § 1391(b), (c) and (d) because during the Class Period,
19 Defendants resided, transacted business, were found, or had agents in this District, and a
20 substantial portion of the affected interstate trade and commerce discussed below has been
21 carried out in this District.

22 **PARTIES**

23 **PLAINTIFF**

24
25 15. Plaintiff Arthur L. Cartier Optics is a sole proprietorship organized under the laws
26 of the state of Connecticut, with its principal place of business in Stratford, Connecticut. During

1 the Class Period, Plaintiff purchased Transitions photochromic lenses directly from John Doe
2 Co-Conspirator Crown Optical, a wholesale optical lab that is owned and controlled by
3 Defendant Essilor Laboratories of America, Inc.

4 **DEFENDANTS**

5 16. Defendant Transitions Optical, Inc. (“Transitions”) is a Delaware corporation
6 with its principal place of business in Pinellas Park, Florida. Transitions is a joint venture
7 between PPG Industries Inc. (“PPG”), which owns 51% of Transitions, and Essilor International
8 SA (“Essilor International”), a French corporation based in Paris that is the world’s largest
9 ophthalmic lens manufacturer and the parent of Defendant Essilor of America, Inc., which owns
10 the remaining 49% of Transitions. Transitions was founded in 1990, and has manufacturing and
11 sales offices across the globe, with locations in the United States, South America, Europe, Asia,
12 and Australia. Transitions is the country’s largest manufacturer and seller of photochromic
13 lenses. Transitions currently has supply relationships with approximately a dozen lens casters.

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16 17. Defendant Essilor of America, Inc. (“Essilor of America”) is a Delaware
17 corporation with its principal place of business in Dallas, Texas. Essilor of America is a wholly-
18 owned subsidiary of Essilor International and its largest business unit. Essilor of America sells
19 more lenses than any other manufacturer in the United States. In addition to dealing with eye
20 care practitioners through its own network of wholesale optical labs, Essilor of America deals
21 with independent wholesale labs through its Independent Distribution Division and with optical
22 retailers through its Essilor Retail Group.

23
24 18. Defendant Essilor Laboratories of America, Inc. (“Essilor Labs”), is a North
25 Carolina corporation with its principal place of business in Dallas, Texas. Established in 1996,
26 Essilor Labs is the largest wholesale optical laboratory network in the United States, and has

1 locations in cities throughout the country. With the establishment of Essilor Labs, Essilor
 2 became the first fully integrated optical company in the United States. Essilor of America and/or
 3 Essilor Labs own majority shares and voting interests in more than 116 laboratories that sell
 4 photochromic lenses at the wholesale level throughout the United States. During the period
 5 relevant to this Complaint, Essilor Labs has owned numerous wholesale optical labs across the
 6 country, and acquired complete or majority ownership in at least 30 such labs between 2006 and
 7 2008. Essilor of America and Essilor Labs are collectively referenced as the Essilor Defendants
 8 herein.
 9

CO-CONSPIRATORS

11 19. Co-conspirators John Does 1-150 (“John Doe Co-Conspirators”) are laboratories
 12 in the United States that sell Transitions photochromic lenses at the wholesale level and are
 13 owned or controlled by the Essilor Defendants (as discussed above), including but not limited to
 14 Crown Optical, as well as the following laboratories taken from Essilor International’s 2009
 15 Registration Document:
 16

Company	Essilor Defendants’ voting rights %	Essilor Defendants’ ownership interest %
21st Century Optics Inc.	80	80
Abba Optical Inc.	Business Acquisition	Business Acquisition
Accu Rx Inc.	80	80
Advance Optical	90	90
AG Optical Inc.	100	100
Apex Optical Company Inc.	100	100
Barnett & Ramel Optical Co.	80	80

1	Beitler Mc Kee Company	90	90
2	BSA Industries	100	100
3	Collard Rose	80	80
4	Dependable	80	80
5	Deschutes	80	80
6	Dibok Aspen Optical	80	80
7	Dunlaw Optical Laboratories Inc.	80	80
8	ELOA California Acquisition Corp.	100	100
9	Empire	85	85
10	Essilor Latin America &	100	100
11	Caribbean Inc.		
12	Essilor Laboratories of America	100	100
13	Corporation		
14	Essilor Laboratories of America	100	100
15	Holding Co Inc.		
16	Essilor Laboratories of America, Inc.	100	100
17	(incl. Laboratoires US)		
18	Essilor Laboratories of America, LP	100	100
19	(incl. Avisia, Omega, Duffens)		
20	Essilor of America Holding Co. Inc.	100	100
21	Essilor of America Inc.	100	100
22	Eye Care Express Lab Inc.	80	80
23	Focus Optical Labs, Inc.	80	80
24	Frames For America	70	70
25	Future Optics FL Inc.	80	80
26			

1	Future Optics TE Inc.	80	80
2	Gentex Optics Inc.	100	100
3	Homer Optical	100	100
4	Interstate Optical	80	80
5	Jorgenson Optical Supply Cy.	80	80
6	Mc Leodd Optical Company Inc.	80	52
7	MGM	80	80
8	MOC Acquisition Corporation	80	80
9	Nassau Lens Co. Inc.	100	100
10	Next Generation	100	100
11	NOA	100	100
12	Omega Optical General Inc.	100	100
13	Omega Optical Holdings Inc.	100	100
14	OOGP	80	80
15	Opal Lite Inc.	100	100
16	Optical One	80	80
17	Optical Suppliers Inc. (Hawaii)	85	85
18	Optifacts Inc.	100	100
19	Optimatrix	80	80
20	Optisource International Inc.	80	80
21	Orion Progressive Lens Lab Inc.	Business Acquisition	Business Acquisition
22	Ozarks Optical Laboratories	80	80
23	Pech Optical	80	80
24	Perferx Optical Co. Inc.	80	80
25	Personnal Eyes	80	80
26			

1	Peninsula Optical Lab.	80	80
2	Precision Optical Lab. (Tennessee)	80	80
3	Precision Optical Co. (Connecticut)	80	80
4	Satisloh North America	100	100
5	Skaggs & Gruber, Ltd.	80	80
6	Southwest Lens	65	65
7	Speciality Lens Corp.	100	100
8	Stereo Optical Co. Inc.	100	100
9	SunStar Inc.	80	80
10	Sutherlin Optical Company	85	85
11	Tri Supreme Optical LLC	100	100
12	Vision-Craft Inc.	80	80
13	Vision Pointe Optical Inc.	80	80
14	Rainbow Optical	100	100

15
16 Plaintiff cannot determine the identities of all of the John Doe Co-Conspirators from publicly
17 available records, but will be able to do so during discovery in this litigation.

18 **INTERSTATE TRADE AND COMMERCE**

19 20. Throughout the Class Period, Defendants and the John Doe Co-Conspirators
20 manufactured, produced, sold, or shipped substantial quantities of Transitions lenses in a
21 continuous and uninterrupted flow of transactions in interstate commerce throughout the United
22 States, including within this District. Defendants' unlawful activities that are the subject of this
23 Complaint were within the flow of, and have had a direct and substantial effect on, interstate
24 trade and commerce.
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26

FACTUAL ALLEGATIONS

PHOTOCHROMIC LENS INDUSTRY

1
2
3 21. Consumers of corrective ophthalmic lenses (lenses used for vision correction and
4 worn in eyeglasses) can purchase these lenses with a photochromic treatment. Photochromic
5 lenses protect eyes from harmful UV rays. Photochromic lenses darken when exposed to UV
6 light present in sunlight, and fade back to clear when removed from UV light.

7
8 22. American consumers annually purchase approximately 76 million pairs of
9 corrective ophthalmic lenses. In 2008, about 18 to 20% of all corrective ophthalmic lenses
10 purchased in the United States were photochromic. That same year, photochromic lens sales at
11 the wholesale lab level amounted to about \$630 million.

12 23. There are three levels of the supply chain for ophthalmic lenses, including
13 photochromic lenses.

14 24. At the first level, lens casters (manufacturers of corrective ophthalmic lenses)
15 convert raw materials supplied by chemical and glassmaking companies into various types of
16 lenses, such as single vision lenses, bifocals, trifocals and progressive lenses. PPG, one of the
17 parent companies of Transitions, is a major supplier of these raw materials to lens casters,
18 particularly Essilor of America, the dominant lens caster in the United States.

19 25. Transitions treats ophthalmic lenses with photochromic treatments. Lens casters
20 provide Transitions with untreated lenses, to which Transitions applies photochromic materials.
21 Transitions sells photochromic lenses back to the lens casters from whom it received the
22 untreated lenses.

23
24
25 26. Transitions deals directly only with lens casters. Attempts to bypass lens casters
26 by manufacturing photochromic lenses at lower levels of the distribution chain, *i.e.*, wholesale

1 prescription labs or optical retailers, largely have been abandoned as uneconomical and
2 inefficient. Consequently, nearly 100% of all photochromic lenses are first sold or produced by
3 lens casters.

4 27. At the second level, lens casters, including Essilor of America, sell lenses,
5 including photochromic lenses, through two distribution channels: (1) wholesale optical labs;
6 and (2) optical retailers. Each channel constitutes approximately one half of lens caster sales.

7 28. Wholesale optical labs fit into one of two categories: (1) those owned or
8 controlled, or otherwise integrated with lens casters (including those owned or controlled by the
9 Essilor Defendants); and (2) those that operate independently of any lens caster.

10 29. Wholesale optical labs grind lenses according to prescriptions from
11 ophthalmologists, optometrists and opticians (collectively, “eye care practitioners”), polish semi-
12 finished lenses, apply certain surface treatments, and usually fit lenses into eyeglass frames and
13 deliver finished eyeglasses to not affiliated with optical retailers.

14 30. Wholesale optical labs typically employ a sales force to promote specific lenses to
15 eye care practitioners. Photochromic lens suppliers, including Transitions, use these labs and
16 their sales forces to market their lenses because these labs are the most efficient means to
17 communicate with the tens of thousands of independent eye care practitioners who prescribe
18 photochromic lenses to consumers.

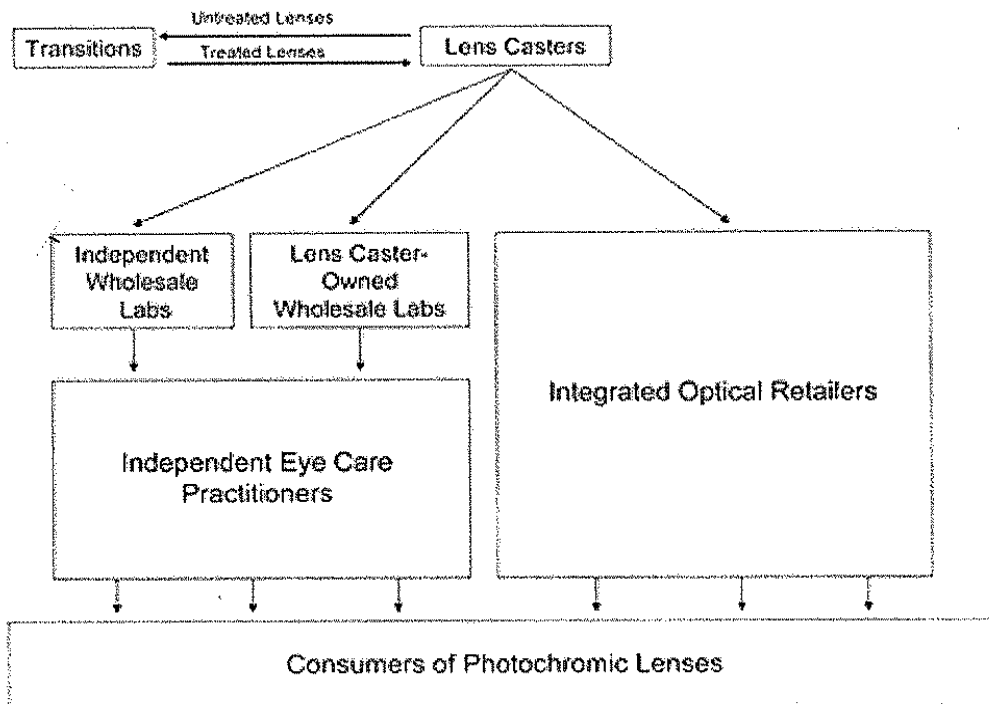
19 31. Optical retailers, as opposed to wholesale optical labs, provide both laboratory
20 and eye care practitioner services in “one stop shop” fashion. Optical retailers employ their own
21 eye care practitioners who deal directly with consumers. Optical retailers also grind and fit
22 lenses into eyeglass frames and deliver the frame with the finished lens to consumers. These
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1 retailers range in size from large national chains, such as Lens Crafters and For Eyes, to smaller,
 2 regional outfits.

3 32. Optical retailers are generally considered to be a more efficient distribution
 4 channel for marketing photochromic lenses to consumers than wholesale optical labs because a
 5 single sales effort to a large retailer can influence the prescribing behaviors of hundreds of eye-
 6 care practitioners. Indeed, a decision by one large, national retail chain to purchase a particular
 7 brand of photochromic lens can have an immediate and substantial effect on the prescribing
 8 habits of all practitioners employed by that retailer.
 9

10 33. At the third level, optical retailers, including eye care practitioners and optical
 11 retail chains, sell finished, ready-to-wear eyeglasses to consumers.

12 34. The industry structure for corrective ophthalmic lenses, including photochromic
 13 lenses, is shown below:
 14



1 **RELEVANT MARKET**

2 **Product Market**

3
4 35. The relevant product market is the development, manufacture, and sale of
5 photochromic treatments for corrective ophthalmic lenses.

6 36. Photochromic lenses have characteristics and uses distinct from those of other
7 kinds of corrective ophthalmic lenses, including clear lenses, polarized lenses (which are
8 designed to remove glare), and fixed-tint lenses (such as prescription sunglasses).

9 37. There are no close substitutes for photochromic lenses, and no other type of lens
10 or other product significantly constrains the price of photochromic lenses.

11 **Geographic Market**

12
13 38. The relevant geographic market is the United States.

14 **TRANSITIONS HAS MONOPOLY POWER IN**
15 **THE PHOTOCROMIC TREATMENT MARKET**

16 39. Transitions possesses monopoly power in the relevant market. Transitions'
17 monopoly power is demonstrated by its consistently high and stable market share, the existence
18 of substantial entry barriers, and Transitions ability to exclude competitors and raise prices.

19 40. Transitions' share of the relevant market has been at least 80% during each of the
20 past five years. In 2008, Transitions' market share exceeded 85%.

21 41. Significant and lasting barriers make entry by competitors into the relevant
22 market difficult. These barriers include but are not limited to: (1) product development costs;
23 (2) capital requirements; (3) intellectual property rights; (4) regulatory requirements (*i.e.*,
24 photochromic lenses are regulated by the United States Food and Drug Administration as
25 medical devices); and (5) Transitions' unfair methods of competition.
26

1 42. Transitions' monopoly power also is evidenced by its ability to exclude
2 competitors and control prices. Transitions' monopoly power is shown by, among other things,
3 its ability to: (1) coerce lens casters into accepting exclusive dealing arrangements; (2) price its
4 products without regard to its competitors' prices; (3) raise prices significantly; and (4) withhold a
5 desired product—a low-priced, private label photochromic lens—from United States consumers
6 although Transitions supplies this product in foreign markets.

7
8 **ANTICOMPETITIVE CONDUCT**

9 43. Beginning in 1999 and continuing through at least March 2010, Transitions, alone
10 and in combination with its co-conspirators, has unlawfully maintained its monopoly position by
11 exclusionary policies at nearly every level of the relevant market. Transitions, alone and with its
12 co-conspirators, foreclosed key distribution channels for existing competitors and impeded
13 market entry by potential competitors.

14 44. Defendants have engaged in acts and practices at multiple levels of the relevant
15 market that, when considered individually as well as collectively, have resulted in the improper
16 maintenance of Transitions' monopoly power in that market.

17
18 **Conduct of Transitions**

19 **Exclusive Dealing with Lens Casters and**

20 **Resulting Termination of Corning and Vision-Ease**

21 45. Beginning no later than 1999 and continuing at least through March 2010,
22 Transitions, through exclusive dealing arrangements with lens casters, including written
23 agreements, foreclosed its competitors and potential competitors from dealing with those lens
24 casters, which collectively accounted for over 80% of photochromic lens sales in the United
25 States.
26

1 46. At the lens caster level, Transitions' anticompetitive policies included, but were
2 not limited to: (1) announcing a general policy that it would not deal with lens casters that sold
3 or promoted any competing photochromic lens; (2) entering into exclusive agreements with
4 certain lens casters, including Essilor of America; (3) threatening to terminate its dealings with
5 lens casters that would not sell Transitions' lenses on an exclusive basis; (4) terminating a lens
6 caster that purchased a competitor's photochromic lens product; and (5) terminating a lens caster
7 that developed a competing photochromic treatment and sought to incorporate it in its own lenses
8 and subsequently sell.

10 47. Transitions' general policy of refusing to deal with lens casters that sold or
11 promoted competitive products began in 1999, and, not coincidentally, shortly after Corning Inc.
12 introduced a competing photochromic lens, SunSensors. Transitions responded to the
13 competitive threat by terminating the first lens caster to sell SunSensors lenses, Signet Armorlite
14 (which it later acquired in January 2009).

16 48. Transitions thereafter refused to deal with any lens caster that sold or promoted a
17 competing photochromic lens. Transitions enforced this exclusionary policy by, among other
18 things, entering into agreements with certain lens casters that expressly required exclusivity, and
19 by publicizing its exclusive dealing policy in the marketplace.

20 49. The next time Transitions was faced with a potential threat to its market
21 dominance, it again retaliated against the relevant lens caster by terminating its supply
22 relationship. In 2005, Transitions refused to deal with lens caster Vision-Ease Lens when it
23 introduced its LifeRx photochromic lenses. Vision-Ease developed LifeRx for use in its own
24 ophthalmic lens, which it in turn desired to sell to distribution channels. Vision-Ease was able to
25 keep LifeRx on the market only by entering into secret negotiations with one of the largest
26

1 optical retailers in the United States, who committed to providing Vision-Ease with enough
2 business to replace its lost Transitions sales.

3 50. Transitions' exclusionary policies at the lens caster level effectively precluded
4 even those lens casters that had not signed exclusivity agreements with Transitions from dealing
5 with its competitors, as those lens casters undoubtedly knew about Transitions' policy.

6 51. Because of Transitions' dominant market position and its exclusivity policy, lens
7 casters were confronted with powerful economic incentives to deal with Transitions on an
8 exclusive basis. By the same token, lens casters were faced with a no-win proposition if they
9 chose to utilize a competitor's photochromic treatments. Doing so not only would cost a lens
10 caster Transitions' business, which accounted for up to 40% of many lens casters' revenues, it
11 also would endanger its sales of clear lenses, as many wholesale optical labs and optical retailers
12 prefer to buy both clear and photochromic versions of the same lenses. Losing the ability to sell
13 Transitions lenses to wholesale optical labs and optical retailers—many of whom have their own
14 exclusivity agreement with Transitions—would deprive any affected lens caster of substantial
15 numbers of potential customers.

16 52. Transitions' conduct and policies at the lens caster level has been exceptionally
17 effective in helping preserve its market dominance. Lens casters that are exclusive to Transitions
18 collectively account for over 85% of photochromic lens sales in the United States.

19 53. Through this conduct and policies, Transitions also has deprived Corning and
20 other actual and potential competitors of the most effective distribution channel—lens casters—
21 thus removing them as a competitive threat to Transitions' monopoly and effectively deterring
22 them from developing competing photochromic treatments.
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1 54. One need look no further than the extent to which Transitions' exclusionary
2 policies have blunted competition from Corning and Vision-Ease, as well as potential
3 competitors.

4 55. No major lens caster has been willing to sell Corning's SunSensors photochromic
5 lenses since Transitions terminated Signet. Without access to effective distribution channels,
6 Corning has been unable to pose a competitive threat to Transitions' monopoly, and has had little
7 incentive to invest in research and development to further innovate and improve its product.
8

9 56. Since Transitions terminated Vision-Ease in 2005, no other lens caster has
10 introduced a new line of photochromic lenses in the United States. This is because lens casters
11 that might have otherwise developed their own photochromic treatments have learned from the
12 Vision-Ease incident that they cannot do so without a commitment from a large optical retailer to
13 carry the product, a tall order indeed.
14

15 **Exclusive and Restrictive Dealing with**
16 **Wholesale Optical Labs and Optical Retailers**

17 57. Transitions also has entered into exclusive and other restrictive agreements with
18 wholesale optical labs and optical retailers to maintain its monopoly position. These agreements
19 foreclose downstream distribution channels for photochromic lenses and also create significant
20 entry barriers for would-be competitors.
21

22 58. Transitions entered into agreements with wholesale optical labs that severely
23 restrict the ability of competitors to promote and sell their photochromic lenses to independent
24 eye care practitioners.
25
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1 59. Transitions has entered into agreements with over 100 wholesale optical labs,
2 including 23 of the top 30 independent wholesale optical labs, that require the lab to sell
3 Transitions' lenses as its "preferred" photochromic lens and not to promote any competing
4 product.

5 60. The anticompetitive effect of Transitions' agreements with the wholesale optical
6 labs is buttressed by Transitions' exclusive dealing arrangements and policies with lens casters.
7 At least 50% of all wholesale optical labs are owned by lens casters that sell Transitions' lenses
8 exclusively. Consequently, Transitions' actual and potential competitors have severely restricted
9 access to this distribution channel.
10

11 61. Transitions entered into exclusive agreements with optical retailers that also
12 substantially impeded competitor entry into the market.

13 62. After terminating its supply relationship with Vision-Ease in 2005, Transitions
14 entered into exclusive dealing agreements with more than 50 retailers, including many of the
15 largest chains in the nation. Most of these agreements were long-term and could not be
16 terminated easily.
17

18 63. Transitions' conduct effectively excluded Vision-Ease and other actual and
19 potential competitors from having sufficient access to an efficient distribution channel, as
20 potential entrants witnessed Transitions' conduct and were deterred from entering the market.
21

22 64. Transitions' conduct, in turn, minimized the effect of Vision-Ease's entry into the
23 market, deterred potential competitors from attempting to enter the market and effectively
24 prevented Vision-Ease or any other competitor from challenging Transitions' anticompetitive
25 monopoly.
26

1 65. Transitions' agreements with wholesale optical labs and optical retailers also
2 typically provided for bundled discounts across a wide array of Transition products against
3 which no competitor effectively could compete.

4 66. Transitions' bundled discount agreements with its customers generally provided
5 for discounts only to customers that purchased all or almost all of their photochromic lens needs
6 from Transitions.

7 67. None of Transitions' competitors offered a treatment that applied to a full line of
8 ophthalmic lenses. Transitions' bundled discount program therefore impaired the ability of its
9 competitors to compete for sales to those customers, as the customers economically could neither
10 discontinue nor limit their sales of Transitions lenses.

11 68. Transitions' bundled discount program also erected a significant entry barrier by
12 limiting the ability of a competitor to enter the marketplace with a new photochromic treatment
13 that applied to less than a full line of ophthalmic lenses.

14 69. Transitions' agreements and conduct with wholesale optical labs and optical
15 retailers deprived its competitors of access to effective distribution channels to market and sell
16 their products. This, in turn, impaired competitors' ability to compete effectively with
17 Transitions and to pose a significant threat to Transitions' market dominance. These agreements
18 also deterred incremental entry by a competitor with a photochromic treatment that applied to
19 less than a full line of ophthalmic lenses, and buttressed and strengthened the entry barriers
20 created by Transitions' exclusive dealing policy with lens casters.

21 70. Transitions' exclusionary practices foreclosed its competitors, in whole or in part,
22 from a substantial share—as much as 40% or more—of the entire downstream market for
23 photochromic lenses.
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Conduct of Essilor Defendants

1
2 71. At all times relevant to the Complaint, Essilor of America purchased and sold
3 only Transitions photochromic lenses. Yet unlike other lens casters that were coerced into
4 entering into exclusive agreements with Transitions, Essilor of America did so in whole or in
5 substantial part to bolster Transitions’ monopoly in the relevant market.

6 72. Essilor of America also entered into exclusive agreements with numerous
7 wholesale optical labs and optical retailers requiring those purchasers to sell or actively promote
8 only Essilor lenses. Those agreements bolstered Transitions’ monopoly power in the relevant
9 market.

10
11 73. At all times relevant to the Complaint, after their purchase by one or more of the
12 Essilor Defendants, the John Doe Co-Conspirators purchased and sold Transitions photochromic
13 lenses on a substantially exclusive basis. Yet unlike other (independent) wholesale optical labs
14 that were essentially coerced into entering into exclusive and restrictive agreements with
15 Transitions, the John Doe Co-Conspirators did so in whole or in substantial part to bolster
16 Transitions’ monopoly in the relevant market.

17
18 **FTC COMPLAINT AND CONSENT ORDER**

19 74. On or about March 3, 2010, the FTC released a complaint against Transitions (the
20 “FTC Complaint”) and the Decision and Order (the “Order”) that resulted from its investigation.
21 The FTC simultaneously accepted for public comment an Agreement Containing Consent Order
22 to Cease and Desist with Transitions.

23
24 75. The FTC Complaint charged that Transitions engaged in illegal and exclusionary
25 conduct to maintain its monopoly in the market for the development, manufacture, and sale of
26 photochromic treatments for corrective ophthalmic lenses in the United States.

1 76. As evidence of Transitions' monopoly power, the FTC cited its high market share,
2 the significant entry barriers that faced any potential competitor trying to gain share, and
3 evidence of Transitions' ability to control prices and exclude competitors.

4 77. The FTC Complaint alleged, among other things, the following: (1) a relevant
5 market for the development, manufacture and sale of photochromic treatments for corrective
6 ophthalmic lenses in the United States; (2) the lack of close substitutes for photochromic lenses;
7 (3) Transitions' monopoly power in the relevant market; and (4) the existence of significant entry
8 barriers for the relevant market.
9

10 78. The FTC Complaint further alleged, among other things, that Transitions used
11 unfair methods of competition to maintain its monopoly power in the relevant market. The FTC
12 Complaint alleged that the anticompetitive effects of Transitions' conduct included: (1) raising
13 prices and reducing output of photochromic lenses; (2) deterring, delaying and impeding the
14 ability of Transitions' actual or potential competitors to enter or to increase their sales in the
15 relevant market; (3) reducing innovation; and (4) reducing consumer choice.
16

17 79. The Order contemplates numerous forms of significant structural relief that are
18 designed to end Transition's exclusive dealing practices and restore competition by facilitating
19 new competitor entry. Most of the provisions in the Order will be in effect for 20 years.

20 80. The Order, among other things: (1) prohibits Transitions from entering into any
21 agreements or adopting any policies that limit its customers' ability to buy or sell competing
22 photochromic treatments, or that require customers to give Transitions' products preferential
23 treatment compared to its competitors' products; (2) prevents Transitions from entering into
24 exclusive agreements regarding photochromic lenses, or a number of related products and
25 services; (3) prohibits Transitions from offering discounts that are based on the degree to
26

1 which its customers sell Transitions' photochromic lenses compared to its competitors; (4)
2 prevents Transitions from offering discounts that are applied retroactively after a customer's
3 sales reach a specific threshold; (5) prohibits Transitions from bundling discounts where
4 customers purchasing more than one line of photochromic lenses obtain additional discounts; (6)
5 prevents Transitions from limiting the information that customers can give to consumers about
6 competitors' photochromic lenses; and (7) prohibits Transitions from retaliating against a
7 customer that buys or sells Transitions' lenses on a non-exclusive basis.
8

9 **CLASS ACTION ALLEGATIONS**

10 81. Plaintiff brings this action on behalf of itself and a class action under Rule 23(a)
11 and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the following class (the
12 "Class"):

13
14 All persons and entities that purchased Transitions photochromic
15 lenses directly from any Defendant or John Doe Co-Conspirator at
16 any time during the four years preceding the date of this
17 Complaint. Excluded from the Class are Defendants and their
18 parents, subsidiaries and affiliates, Defendants' co-conspirators,
19 and federal governmental entities and instrumentalities of the
20 federal government.

21 82. Plaintiff believes that there are thousands of Class members located throughout
22 the United States, the exact number and their identities being known by Defendants, making the
23 Class so numerous and geographically dispersed that joinder of all members is impracticable.

24 83. There are questions of law and fact common to the Class, including:

25 (a) the definition of the relevant market;
26

1 (b) whether Transitions holds monopoly power in the relevant market;

2 (c) whether, through the conduct alleged herein, Transitions willfully
3 acquired, maintained, and enhanced its monopoly power in the relevant market;

4 (d) whether, through the conduct alleged herein, Defendants and John Doe
5 Co-Conspirators conspired to confer, maintain or enhance Transitions' monopoly power in the
6 relevant market;

7 (e) whether Defendants and John Doe Co-Conspirators conspired to engage in
8 illegal exclusionary conduct to impair Transitions' competitors in the relevant market;

9 (f) whether Transitions entered into exclusionary agreements that
10 unreasonably restrained trade and impaired Transitions' competitors in the relevant market;

11 (g) whether Defendants and John Doe Co-Conspirators engaged in a contract,
12 combination or conspiracy to unreasonably restrain trade and impair Transitions' competitors in
13 the relevant market;

14 (h) whether and the extent to which Defendants' and John Doe Co-
15 Conspirators' conduct caused Class members to pay supra-competitive prices and thus suffer
16 antitrust injury; and

17 (i) the appropriate Class-wide measure of damages.

18 84. Plaintiff's claims are typical of the claims of Class members, and Plaintiff will
19 fairly and adequately protect the interests of the Class. Plaintiff and all members of the Class are
20 similarly affected by Defendants' wrongful conduct in violation of the antitrust laws in that they
21 paid artificially inflated prices for products purchased directly from Defendants or their co-
22 conspirators. Plaintiff's claims arise out of the same common course of conduct giving rise to the
23
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1 claims of the other Class members. Plaintiff's interests are coincident with, and not antagonistic to,
2 those of the other Class members.

3 85. Plaintiff is represented by counsel who are competent and experienced in the
4 prosecution of antitrust and class action litigation.

5 86. The prosecution of separate actions by individual members of the Class would
6 create a risk of inconsistent or varying adjudications, establishing incompatible standards of
7 conduct for Defendants.

8 87. The questions of law and fact common to the members of the Class predominate
9 over any questions affecting only individual members.

10 88. A class action is superior to other available methods for the fair and efficient
11 adjudication of this controversy. The Class is readily definable. Prosecution as a class action will
12 eliminate the possibility of repetitious litigation. Treatment as a class action will permit a large
13 number of similarly situated persons to adjudicate their common claims in a single forum
14 simultaneously, efficiently, and without the duplication of effort and expense that numerous
15 individual actions would engender. This action presents no difficulties in management that
16 would preclude maintenance as a class action.
17
18

19 **CAUSES OF ACTION**

20 **COUNT I**

21 **Violation of Section 2 of the Sherman Act, 15 U.S.C. § 2**
22 **Monopolization Against Defendant Transitions**

23 89. Plaintiff incorporates by reference the preceding allegations.

24 90. Transitions acquired, willfully maintained, and unlawfully exercised monopoly
25 power in the relevant market through the anticompetitive acts and practices alleged above.
26

1 91. There is no legitimate business justification for Transitions' acts and practices and
2 the conduct through which it maintained its monopoly power in the relevant market.

3 92. Transitions effectively has excluded competition from the relevant market,
4 maintained its dominant market share in the relevant market, and profited from its
5 anticompetitive conduct by excluding less expensive competitive products of equally or superior
6 quality by maintaining prices at artificially high levels, and by reaping the benefits of its illegally
7 obtained and maintained monopoly power.
8

9 93. The anticompetitive effects of Transitions' conduct substantially outweigh any
10 possible asserted pro-competitive benefits or justifications.

11 94. Plaintiff and the Class members have been injured in their business or property by
12 Transitions' monopolization of the relevant market. Plaintiff and the other members of the Class
13 therefore have been forced to pay higher prices for Transitions' photochromic lenses in the
14 United States than they would have paid absent Transitions' unlawful and anticompetitive
15 conduct.
16

17 **COUNT II**

18 **Violation of Section 2 of the Sherman Act, 15 U.S.C. § 2**
19 **Conspiracy to Monopolize Against All Defendants**

20 95. Plaintiff incorporates by reference the preceding allegations.

21 96. As alleged above, the Essilor Defendants actively facilitated and furthered
22 Transitions' efforts to acquire, willfully maintain, and unlawfully exercise monopoly power in
23 the relevant market through the exclusionary and anticompetitive acts and practices alleged
24 above.
25
26

1 97. Defendants and John Doe Co-Conspirators intended to and did obtain, maintain,
2 and enhance Transitions' monopoly power in the relevant market.

3 98. Each Defendant and John Doe Co-Conspirator committed at least one overt act—
4 such as entering into exclusionary agreements and selling Transitions lenses at supra-competitive
5 prices—to further the conspiracy.

6 99. Each Defendant and John Doe Co-Conspirator intended that the conspiracy to
7 monopolize alleged herein would maintain and enhance Transitions' unlawful monopoly power.
8

9 **ANTICOMPETITIVE EFFECTS**

10 100. Through Defendants' anticompetitive conduct, Transitions has been able to obtain
11 or maintain more than 80% of the relevant market, to substantially impair and foreclose
12 competition from Transitions' competitors in the relevant market, and to significantly raise entry
13 barriers to entry for potential competitors.

14 101. Defendants' conduct adversely affected competition and consumers by (1)
15 increasing prices and reducing output of photochromic lenses; (2) deterring, delaying and
16 impeding the ability of Transitions' actual or potential competitors to enter or to expand their
17 sales in the relevant market; (3) reducing innovation; and (4) reducing consumer choice.
18

19 102. Absent Defendants' conduct and the resulting foreclosure and impairment of
20 effective competition, Transitions would have reduced the price it charged to lens casters for its
21 photochromic treatment of lenses or supplied its low-priced, private label photochromic lens
22 (which it offers outside of the United States where it faces increased competition) in response to
23 added unimpaired competition from Corning, Vision-Ease and other actual and potential
24 competitors.
25
26

1 103. Had actual or potential competitors not been substantially foreclosed or impeded
2 by Defendants' anticompetitive conduct from effectively competing in the market for such
3 products, they would have sold more of their products, gained more market share, and achieved
4 economies of scale and scope that could have further driven down prices in the market.

5 104. During the time relevant to this Complaint, no competitor has been able to
6 constrain the ability of Defendants to charge supracompetitive prices for Transitions
7 photochromic lenses.

8 105. Defendants' conduct has caused Plaintiff and other Class members to pay more
9 for Transitions photochromic lenses than they otherwise would have paid absent Transitions'
10 illegal and anticompetitive conduct.

11 106. Plaintiff and the Class members have been injured in their business or property by
12 Defendants' antitrust violations. They have been injured by paying artificially inflated prices for
13 Transitions lenses. Such injury, in the form of overcharges, is the type of injury the antitrust
14 laws were designed to prevent, and flows directly from Defendants' unlawful conduct.
15
16

17 **DEMAND FOR JURY TRIAL**

18 107. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands
19 a jury trial as to all issues triable by a jury.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays as follows:

22 A. That the Court determine that this action may be maintained as a class action
23 under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure;

24 B. That the conduct committed by Defendants and their co-conspirators be adjudged
25 to have violated Section 2 of the Sherman Act, 15 U.S.C. § 2;
26

1 C. That judgment be entered for Plaintiff and Class members against Defendants for
2 three times the amount of damages sustained by Plaintiff and the Class as allowed by law;

3 D. That Plaintiff and the Class recover pre-judgment and post-judgment interest as
4 permitted by law;

5 E. That Plaintiff and the Class recover their costs of the suit, including reasonable
6 attorneys' fees, as provided by law; and

7 F. That Plaintiff and the Class be granted such such other and further relief as is just
8 and proper under the circumstances.
9

10 DATED this 22nd day of April, 2010.

11 KELLER ROHRBACK L.L.P.

12
13 By /s/Mark A. Griffin

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