

## **SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement (“Agreement”) is entered into by the State of California, by and through Ricardo Lara, Commissioner of the California Department of Insurance (the “Commissioner”), in his official capacity; Relator Christie Rudolph (“Relator”); and Essilor Laboratories of America, Inc., Essilor of America, Inc., and Empire Optical of California, Inc. (collectively, “Essilor”). The Commissioner, Relator, and Essilor are hereinafter collectively referred to as “the Parties.”

### **I. RECITALS**

A. Essilor of America, Inc. is a Delaware corporation headquartered in Texas. At all relevant times, Essilor of America, Inc. did and continues to manufacture and market ophthalmic lenses and lens enhancements used in prescription eyeglasses that are sold in the United States, including California.

B. Essilor Laboratories of America, Inc. is an indirect North Carolina subsidiary of Essilor of America that also is headquartered in Texas. At all relevant times, Essilor Laboratories of America, Inc. did and continues to own and operate, directly and indirectly, various ophthalmic laboratories that use ophthalmic lenses and lens enhancements purchased, directly and indirectly, from lens and lens enhancement manufacturers to fulfill the orders of eyecare professionals, including optometrists, ophthalmologists and opticians and their respective eyecare practices (collectively, “ECPs”), for prescription eyeglasses. Essilor Laboratories of America, Inc. did and continues to market and provide its ophthalmic laboratory services to ECPs and others throughout the United States, including California.

C. Empire Optical of California, Inc. was a wholly owned subsidiary of Essilor Laboratories of America that was later merged into Essilor Laboratories of America and currently operates in California as an ophthalmic laboratory under the tradename Empire Optical of California. At all relevant times, Empire Optical of California did and continues to own and operate an ophthalmic laboratory that uses ophthalmic lenses and lens enhancements purchased from lens and lens enhancement manufacturers to fulfill orders for prescription eyeglasses throughout California. Empire Optical of California did and continues to market and provide ophthalmic laboratory services to ECPs and others throughout California.

D. On May 11, 2016, Relator filed a *qui tam* action in San Francisco County Superior Court captioned *State of California ex rel. Christie Rudolph v. Essilor Laboratories of America, Inc., et al.*, Case No. CGC-16-551940, alleging that Essilor violated the Insurance Frauds Prevention Act, California Insurance Code section 1871.7 (“IFPA”) (the “Action”). The State of California, by and through the Commissioner, filed a notice of intervention in the Action on April 28, 2021. The Commissioner and Relator filed a Superseding Complaint in the Action on May 19, 2021.

E. The Commissioner and Relator contend that Essilor submitted or caused to be submitted claims for payment to private insurance companies and their insureds, including, but not limited to, health care service plans (“HCSPs”), vision benefit organizations (“VBOs”) and their members, in the State of California in violation of the IFPA.

F. Relator claims entitlement under California Insurance Code section 1871.7(g)(1)(A)(i) to a share of the proceeds of this Agreement.

G. The Commissioner and Relator contend that they have certain monetary and equitable claims against Essilor under the IFPA for engaging in the following conduct during the

period of January 1, 2007 through the Effective Date of the Agreement (as defined in this Agreement) (collectively, the “Covered Conduct”):

i. The Commissioner and Relator contend that Essilor knowingly and willfully offered and provided unlawful remuneration to California ECPs in violation of the IFPA through various promotions and promotional programs including, without limitation, Strategic Alliances, Practice Builder, Practice Builder Elite, Practice Builder Custom Incentives, Practice Builder Loyalty, Market Builder, Essilor Edge, and Think About Your Practice (collectively, the “Essilor Promotional Programs”).

ii. The Commissioner and Relator further contend that Essilor knowingly caused California ECPs and others, including ophthalmic laboratories, to submit false claims to California private payors, including, without limitation, insurance companies, HCSPs, VBOs and their respective members, enrollees, insureds, and other covered persons, for Essilor ophthalmic products (e.g., lens and lens enhancements) and services (e.g., ophthalmic laboratory services) that were tainted by illegal remuneration (i.e., kickbacks) that Essilor offered or paid to ECPs who were enrolled or otherwise participated in Essilor Promotional Programs between January 1, 2007 through the Effective Date of the Agreement (as defined in this Agreement).

H. This Agreement is neither an admission of wrongdoing or liability by Essilor nor a concession by the Commissioner or the Relator that their claims are not well-founded. Essilor expressly denies any and all allegations asserted by the Commissioner and Relator in the Action and denies any liability arising from or relating to the Covered Conduct. Essilor maintains that it has defenses to the Commissioner’s and Relator’s claims, and denies that it has engaged in any wrongful or unlawful conduct with respect to the Covered Conduct or otherwise. Neither this

Agreement, nor its execution, including payment, nor the fact of settlement, is intended to be, or shall be understood as, an admission by Essilor of liability or wrongdoing or other expression reflecting upon the merits of the dispute.

I. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the Commissioner's and Relator's claims in the Action, the Parties have reached a full, fair, and final resolution and settlement as set forth below.

## **II. TERMS AND CONDITIONS**

1. Essilor shall pay to the Commissioner the sum of \$23,800,000.00 (the "Settlement Amount") in full and final settlement and discharge of all claims brought and which could have been brought in the Action. Such payment shall be made within ten (10) business days of the Effective Date of the Agreement (as defined in this Agreement), pursuant to written instructions to be provided by the Commissioner. The Parties agree that the Settlement Amount is inclusive of any and all attorneys' fees and/or costs that might otherwise have been recoverable by the Commissioner and/or the Relator in the Action pursuant to Section 1871.7 or otherwise.

2. Essilor shall have no responsibility for the allocation, if any, of the Settlement Amount between the Commissioner and any other individual or entity, including the Relator, or their respective attorneys, and, after paying the Settlement Amount in full, Essilor shall have no further (a) liability for payment of any further sum or amount of any kind or nature whatsoever, including, without limitation, attorneys' fees, including the Commissioner's and Relator's attorneys' fees, experts' fees, expenses, and costs pursuant to claims brought and which could have been brought under Section 1871.7 or in the Action, or (b) duty or obligation arising from or relating to the Action.

3. Conditioned upon Essilor’s full payment of the Settlement Amount, Ricardo Lara in his capacity as Insurance Commissioner for the State of California, on behalf of the State of California and the California Department of Insurance and its employees, servants, and agents, in their capacity as such (the “California Entities”), hereby fully and finally releases, acquits, covenants not to sue, and forever discharges Essilor, together with any current and former parent corporations; board members, officers, employees, representatives, agents, attorneys, shareholders, and partners; direct and indirect subsidiaries; direct and indirect affiliates; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them (collectively, “the Essilor Released Entities”), other than Shamir USA, Inc., Shamir Optical Industry, Ltd., Shamir Optica Holdings, A.C.S. Ltd., or Shamir Insight, Inc., from any and all suits, arbitrations, claims, demands, actions, rights, and causes of actions, of any kind, character, or nature whatsoever that the California Entities have standing to bring or may now or in the future have or claim to have against the Essilor Released Entities, arising in any way out of or connected in any way with the facts, claims and circumstances alleged in, arising under, or arising from the allegations in the Action, or the Covered Conduct, including, without limitation, any monetary or equitable claim or remedy under the IFPA, for the Covered Conduct, whether known or unknown, fixed or contingent, in law or in equity, or in contract or tort, including but not limited to any and all penalties, fines, assessments, trebling, disgorgements, overcharges, costs, fees, expenses, or general or specific damages or equitable relief of any kind or nature (collectively, the “State’s Released Claims”).

4. Conditioned upon Essilor’s payment in full of the Settlement Amount set forth in paragraph 1, Relator, for herself and for her respective heirs, successors, attorneys, agents, and assigns, hereby fully and finally releases, acquits, covenants not to sue, and forever discharges

the Essilor Released Entities for all time and to the fullest extent allowed by law, from any and all suits, arbitrations, claims, demands, actions, rights, obligations, limitations, claims for relief, charges, and causes of actions, of any kind, character, or nature whatsoever that Relator has standing to bring or may now or in the future have or claim to have against the Essilor Released Entities, arising in any way out of or connected in any way with the facts, claims and circumstances alleged in, arising under, or arising from the allegations in the Action or the Covered Conduct, including any claim Relator has on behalf of the State of California under the IFPA, whether known or unknown, fixed or contingent, in law or in equity, or in contract or tort, including but not limited to any and all penalties, fines, assessments, trebling, disgorgements, overcharges, costs, fees, expenses, or general or special damages or equitable relief of any kind or nature (collectively, the “Relator’s Released Claims”). Nothing in this Agreement shall be construed to preclude any claims (1) for attorney’s fees, expenses, and costs pursuant to the federal False Claims Act, 31 U.S.C. § 3730(d) or a recovery of a Relator’s share of any recovery under the federal False Claims Act in the matter before the United States District Court for the Central District of California entitled *United States, et al., ex rel. Richard Mark v. Shamir USA, Inc., Shamir Optical Industry, Ltd., Shamir Optica Holdings, A.C.S. Ltd., and Shamir Insight, Inc.* (No. 2:18-cv-09246-SSS-PLA), under the federal False Claims Act, 31 U.S.C. §§ 3729-3733, or (2) in any matter currently pending with the California Department of Insurance involving individuals other than Relator who have asserted claims against Shamir USA, Inc., Shamir Optical Industry, Ltd., Shamir Optica Holdings, A.C.S. Ltd, and Shamir Insight, Inc., under the IFPA (collectively, the “Relator’s Unreleased Claims”).

5. Notwithstanding the releases given in paragraphs 3 and 4, of this Agreement, or any other term of this Agreement, the following claims of the State of California are specifically reserved and not released:

(a) any criminal, civil, or administrative liability arising under the State of California's Revenue and Taxation Code;

(b) any criminal liability not specifically released by this Agreement;

(c) any liability to the State of California for any conduct other than the Alleged Covered Conduct;

(d) any liability based upon obligations created by this Agreement;

(e) any liability for express or implied warranty claims or other claims for defective or deficient products and services, including quality of goods and services;

(f) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

(g) any liability for failure to deliver goods or services due; or

(h) any liability of any person or entity other than the Essilor Released Entities.

6. Essilor fully and finally releases, waives and discharges the California Entities for all time and to the fullest extent allowed by law, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Essilor has asserted, could have asserted, or may assert in the future against the California Entities related to the Covered Conduct and the California Entities' investigation and prosecution thereof. This release does not apply to claims arising from conduct after the date of this Agreement, including, but not limited to, claims arising out of breach or performance of this Agreement.

7. Essilor fully and finally releases Relator, and her respective heirs, successors, assigns and agents, for all time and to the fullest extent allowed by law, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Essilor has asserted, could have asserted, or may assert in the future against Relator related to the Covered Conduct. This release does not apply to Relator's Unreleased Claims. Nor does this release apply to claims arising from conduct after the date of this Agreement, including, but not limited to, claims arising out of breach or performance of this Agreement.

8. Each of the Parties has conducted its/her own due diligence regarding the respective Released Claims and all matters relating to the respective Released Claims. This Agreement is expressly intended to release known and unknown claims arising out of or relating to the California Entities' Released Claims and Relator's Released Claims, respectively, and to the extent it applies, the Parties expressly waive application of Section 1542 of the Civil Code of the State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

9. The agencies and officials of the State of California, including, but not limited to, the California Department of Insurance, shall have no liability for a breach, implied or actual, of this Agreement by either Essilor or the Relator, and/or their counsel, with respect to duties they may owe each other under this Agreement. In the event of a breach of this Agreement by either Essilor or Relator or their counsel of duties owed to each other under this Agreement, such breach will not affect the duties owed to the California Entities by Essilor and/or Relator under this Agreement.



10. Essilor shall have no liability for a breach, implied or actual, of this Agreement by the State of California or by Relator, and/or their counsel, with respect to duties they may owe each other under this Agreement. In the event of a breach of this Agreement by either the State of California or Relator or their counsel of duties owed to each other under this Agreement, such breach will not affect the duties owed to Essilor by the State of California and/or Relator under this Agreement.

11. Upon receipt of Essilor's payment of the Settlement Amount provided in Paragraph 1 of this Agreement, the Commissioner and Relator shall file dismissals as to Essilor in the Action. Such dismissals shall be with prejudice.

12. This Agreement constitutes the entire understanding and agreement among all of the Parties. This Agreement may not be amended except by written consent of the Parties.

13. The Parties to this Agreement agree that no particular Party shall be deemed to be the author of this Agreement or any particular term, provision or condition of this Agreement. The Parties further agree that any ambiguities in this Agreement shall be construed and interpreted without regard to which Party may have suggested, drafted, revised, or otherwise authorized this Agreement or any of its particular terms, provisions, or conditions. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not be construed against any Party for that reason in any subsequent dispute.

14. Each Party to this Agreement represents and warrants that such Party has the full right and authority to execute this Agreement. The signatories for the Parties hereto represent and warrant that they have been granted specific authority by their respective principals to execute the Agreement on behalf of the Party. Where applicable, all corporate, partnership, or

other organizational action necessary to authorize such execution has been taken and completed. The signatory of each Party to this Agreement has the full right and authority to commit and bind each respective Party to the fullest extent of the law. The undersigned State of California signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State of California through their respective agencies and departments.

15. The Parties acknowledge that they have obtained the advice of legal counsel before signing this Agreement. The Parties acknowledge that they made the decision to execute this Agreement freely and without any duress or coercion by a person, party or individual. The Parties acknowledge that, in entering into this Agreement, each of them has been fully advised by its/her own counsel of the meaning and effect of this Agreement, and expressly warrant that it/she has not relied on any statements, promises, interpretations, facts, or opinions, provided by any other Party or its/her counsel.

16. This Agreement is a settlement of disputed claims. By executing this Agreement, no Party admits any liability or fault in relation to the matters identified in or subject to this Agreement, and neither the execution of this Agreement nor the consideration therefor shall be construed as an admission as to the merits of any claim released herein.

17. In the event any portion of this Agreement is declared void by a court, such portion shall be severed from this Agreement, and the remaining provisions shall remain in effect, unless the effect of such severance would be to substantially alter the Agreement or obligations of the Parties, in which case the Agreement may be immediately terminated.

18. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement, and each Party shall provide a copy of the signature page with the signature of its authorized representative to the other Parties.

19. This Agreement is binding on Essilor's successors, transferees, heirs, and assigns.

20. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

21. This Agreement is effective on the date of the signature and transmittal to the other Parties of the last signatory to the Agreement (the "Effective Date of the Agreement").


22. This Agreement is governed by the laws of California. The Parties further agree that the Court in this Action shall retain jurisdiction over the Parties to enforce this Agreement.

23. Facsimiles and scanned pdfs of physical (as opposed to typed) signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as noted below.

THE CALIFORNIA DEPARTMENT OF INSURANCE

DATED: 12/02/2022

BY:   
LUCY F. WANG  
Deputy General Counsel for Ricardo Lara in his  
Capacity As Insurance Commissioner  
for the California Department of Insurance

ESSILOR

DATED: 11/16/2022

BY:



\_\_\_\_\_  
Sara Francescutto  
Essilor Laboratories of America, Inc.

DATED: 11/16/2022

BY:



\_\_\_\_\_  
Sara Francescutto  
Essilor of America, Inc.

DATED: 11/16/2022

BY:



\_\_\_\_\_  
Sara Francescutto  
Essilor Laboratories of America, Inc. d/b/a Empire Optical  
of California

DATED: \_\_\_\_\_

BY:

\_\_\_\_\_  
Sean Cenawood  
Counsel for Essilor Laboratories of America, Inc.,  
Essilor of America, Inc., and Essilor Laboratories of  
America, Inc. d/b/a Empire Optical of California

ESSILOR

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Sara Francescutto  
Essilor Laboratories of America, Inc.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Sara Francescutto  
Essilor of America, Inc.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Sara Francescutto  
Essilor Laboratories of America, Inc. d/b/a Empire Optical  
of California

DATED: 11/18/22

BY: Sean Cenawood

Sean Cenawood  
Counsel for Essilor Laboratories of America, Inc.,  
Essilor of America, Inc., and Essilor Laboratories of  
America, Inc. d/b/a Empire Optical of California

RELATOR

DATED: Nov-18-2022

DocuSigned by:  
*Christie Rudolph*  
BY: 9A15F8DA73634EE...  
Christie Rudolph

DATED: Nov-18-2022

DocuSigned by:  
*W. Scott Simmer*  
BY: 71B9FAC7ACE6493...  
W. Scott Simmer  
Counsel for Christie Rudolph