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11 individually and as representative of the
class

12 UNITED STATES DISTRICT COURT
13 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

14
15 **Jason DeCarlo**, individually and
on behalf of all others similarly
16 situated,

17 Plaintiff,

18 v.
19

20 **Costco Wholesale Corporation**, a
Washington corporation; and
21 **MBNR, Inc.**, a New Mexico
corporation.

22 Defendants.
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Case No.: 14cv0202 JAH (BLM)

**Second Amended Class-Action
Complaint**

Jury Trial Demanded

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1 Plaintiff JASON DECARLO (“Plaintiff”), who brings this action on his
2 own behalf and on behalf of all others similarly situated, alleges on
3 information and belief as follows:

4 **NATURE OF THE ACTION**

5 1. This is a class-action lawsuit brought by Plaintiff on his own
6 behalf and on behalf of all other persons similarly situated, against
7 Defendants COSTCO WHOLESALE CORPORATION (“Costco”), and MBNR, INC.
8 (“MBNR”) for:

9 1.1. “Unlawful” business practices in violation of Business &
10 Professions Code section 17200 consisting of violations of, or aiding and
11 abetting in the violation of, Business & Professions Code sections 655, 2556,
12 3040, and 3041, and California Code of Regulations, Title 16, sections
13 1399.251 and 1514;

14 1.2. “Fraudulent” business practices in violation of Business
15 & Professions Code section 17200;

16 1.3. “Unfair” business practices in violation of Business &
17 Professions Code section 17200;

18 1.4. The dissemination of false and misleading
19 advertisements throughout the State of California which violate Business &
20 Professions Code section 17500; and

21 1.5. “Unfair” business practices in violation of Civil Code
22 1750, et seq.

23 2. The purpose of this action is to seek redress from Defendants for
24 any past and present misconduct in violation of California law as described
25 herein and to deter Defendants from engaging in future misconduct in
26 violation of California law as described in the preceding paragraphs.

27 3. As a result of the violations of California law described above,
28 Plaintiff seeks the following remedies for himself and for all others similarly

1 situated:

2 3.1. Restitution to the Class of any and all monies or property
3 the Class parted with as a result of Defendants’ misconduct complained of
4 herein;

5 3.2. Disgorgement from Defendants of any and all monies
6 obtained by Defendants from Plaintiff and the class as a result of the
7 unlawful, unfair, and/or fraudulent business acts and practices pled herein;

8 3.3. Actual damages for any violations of the Consumer
9 Legal Remedies Act;

10 3.4. Punitive damages for any violations of the Consumer
11 Legal Remedies Act; and

12 3.5. Statutory penalties, where applicable.

13 **PARTIES**

14 4. Plaintiff is, and at all relevant times was, a resident of the
15 County of San Diego, State of California. Plaintiff brings this action
16 individually and on behalf of the Class of other similarly situated
17 individuals.

18 5. Defendant Costco is a Washington corporation with its
19 corporate headquarters in Issaquah, Washington. Costco is—and at all
20 times relevant to this complaint, has been—registered as a “dispensing
21 optician” in the State of California under the “Costco” and/or “Costco
22 Wholesale” name. Neither “Costco” nor “Costco Wholesale” is licensed as
23 an optometrist in the State of California.

24 6. Defendant MBNR is a New Mexico corporation with its
25 principal place of business in Mancos, Colorado. MBNR is registered with
26 the California Secretary of State and maintains an agent for service of
27 process at 818 West 7th Street, 2nd Floor, in Los Angeles, California. MBNR
28 is not licensed as an optometrist in the State of California.

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JURISDICTION & VENUE

7. Costco maintains numerous wholesale retail locations throughout the State of California and therefore conducts professional and commercial activities in the State of California on a substantial, continuous, and systemic basis sufficient to subject Costco to the general personal jurisdiction of the courts of the State of California.

8. MBNR engages in continuous and regular commercial activity in the State of California consisting of forming and maintaining lease arrangements between itself and California optometrists interested in practicing in Costco stores.

9. While Defendants are subject to the general personal jurisdiction of the courts of the State of California as set forth in the preceding paragraphs, the claims asserted in this complaint arise out of the Defendants' professional and commercial activities within the State of California, and therefore Defendants are also subject to the specific personal jurisdiction of the courts of the State of California for purposes of this lawsuit.

10. The claims asserted in this Complaint arise out of acts, transactions, and conduct that occurred with the County of San Diego, and therefore this action is properly venued in the County of San Diego.

11. Defendant Costco removed this case from the Superior Court for the County of San Diego to this Court on January 29, 2014, under the "Class Action Fairness Act," 28 U.S.C. § 1332(d), based on the assertions that there was minimum diversity, that there were more than 100 putative class members, and that the aggregate amount in controversy in the putative class exceeded \$5,000,000. To the extent those assertions were true before they remain true now.

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CLASS ALLEGATIONS

12. Plaintiff brings this class action pursuant Rule 23 of the Federal Rules of Civil Procedure on his own behalf and as a representative of the class of similarly situated individuals.

13. The class is defined as follows:

All persons who, from four years preceding the filing of Plaintiff's original complaint in this action (i.e., November 13, 2013) through resolution of this action, inclusive, paid for an eye examination from an optometrist at a Costco location in California.

14. The joinder of all class members in a single conventional action is impracticable due to the sheer number and geographical diversity of potential claimants. The disposition of these persons' claims in a class action will provide substantial benefits to both the parties and the Court. The class is ascertainable and maintains a sufficient community of interest. The rights of each member of the class were violated in a similar fashion based upon Defendants' misconduct.

15. The class representative's claims are typical of the claims of the members of the class because Defendants' wrongful conduct arises out of Defendants' established custom and practice, and thus the class representative and members of the class were damaged by the same wrongful acts in a similar way.

16. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff is unaware of any current or potential conflicts of interest with the prospective class. Plaintiff's interests are coincident with, and not antagonistic to, the interests of the other class members.

17. Plaintiff has retained counsel that are competent and experienced in class-action litigation in general, and consumer class actions of this sort in particular, and are currently counsel in seven pending

1 putative or certified class actions, not including this action.

2 18. Questions of law and fact common to the members of the class
3 predominate over questions that may affect only individual members.
4 Among the questions of law and fact common to the entire class are the
5 following:

6 18.1. Whether Defendants have violated, or aided and abetted
7 the violation of, Business & Professions Code section 655 through the nature
8 of their operations;

9 18.2. Whether Defendants have violated, or aided and abetted
10 the violation of, Business & Professions Code section 2556 through the
11 nature of their operations;

12 18.3. Whether Defendants have violated, or aided and abetted
13 the violation of, Business & Professions Code sections 3040 and 3041
14 through the nature of their operations;

15 18.4. Whether Defendants have violated, or aided and abetted
16 the violation of, California Code of Regulations, Title 16, section 1399.251
17 through the nature of their operations;

18 18.5. Whether Defendants have violated, or aided and abetted
19 the violation of, California Code of Regulations, Title 16, section 1514
20 through the nature of their operations;

21 18.6. Whether Defendants have engaged in, or aided and
22 abetted the commission of, "unlawful" business practices in violation of
23 Business & Professions Code § 17200 through the nature of their operations;

24 18.7. Whether Defendants have engaged in, or aided and
25 abetted the commission of, "fraudulent" business practices in violation of
26 Business & Professions Code § 17200 through the nature of their operations;

27 18.8. Whether Defendants have engaged in, or aided and
28 abetted the commission of, "unfair" business practices in violation of

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1 Business & Professions Code § 17200 through the nature of their operations;

2 18.9. Whether Defendants have violated, or aided and abetted
3 the commission of, Business & Professions Code § 17500 through the nature
4 of their operations; and

5 18.10. Whether Defendants have violated, or aided and abetted
6 the violation of, Civil Code § 1750, et seq., through the nature of their
7 operations;

8 18.11. Whether Plaintiff and the members of the class have
9 sustained damages as a result of any or all of the above-described
10 misconduct, and if so, the proper measure of those damages;

11 18.12. Whether Defendants have received unjust enrichment
12 and/or ill-gotten gains through the commission of the misconduct
13 complained of herein, and if so, the amount of that unjust enrichment
14 and/or ill-gotten gains that should be disgorged and/or restored;

15 18.13. Whether Plaintiff and the members of the class should be
16 awarded punitive damages as a result of any or all of the above-described
17 misconduct, and if so, the proper measure of those damages; and

18 18.14. Whether Plaintiff and the members of the class are
19 entitled to any equitable relief as a result of any or all of the above-
20 described misconduct, and if so, the nature of that relief.

21 19. A class action is superior to other methods for the fair and
22 efficient adjudication of this controversy. The class members are so
23 numerous that joinder of all members into a conventional lawsuit is
24 impracticable. A class action will permit a large number of similarly
25 situated persons to simultaneously prosecute their common claims in a
26 single forum efficiently and without the duplication of effort and expense
27 that numerous individual actions would entail. There are no difficulties
28 likely to be encountered in the management of this class action that would

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1 preclude it from proceeding as a class action.

2 **GENERAL FACTUAL ALLEGATIONS**

3 **A. California law regards optometry as a learned profession and**
4 **maintains a long-standing prohibition on arrangements that enable**
5 **corporations to exert direct or indirect influence over optometrists.**

6 20. The early historical development of “optometry” was rooted in
7 a conflict between business interests that regarded optometrists as mere
8 agents in the sale of eyewear to customers, and those who believed the
9 profession was designed to provide professional medical services to
10 patients.

11 21. In the early 1900s, optometrists were commonly working for or
12 within retail establishments such as department stores, jewelry stores and
13 drug stores. These full scale optometry departments were then touted in
14 massive newspaper and radio advertising campaigns about doctors at the
15 ready to perform exams and the ease and convenience of on-site eyewear
16 purchases.

17 22. But many optometrists were concerned that such practices
18 compromised their profession’s integrity as it required optometrists to be
19 sellers of glasses first, and providers of clinical care to their patients second.

20 23. In 1903, California took the first step toward alleviating this
21 concern by recognizing and regulating optometry as a profession by
22 enacting the Optometric Practices Act legislation, becoming just the second
23 state in the United States to statutorily regulate the profession of optometry.

24 24. In doing so, the State of California formally regarded optometry
25 as a healing art and a learned profession. As such, optometrists who
26 practice in California must be licensed by the State Board of Optometry. To
27 do so, an individual must have a Doctor of Optometry degree from a
28 recognized school of optometry and must pass a standardized test
administered by the Board of Optometry. Once licensed, optometrists are

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1 permitted to conduct eye examinations to detect refractive errors and eye
2 diseases, and to prescribe corrective lenses.

3 25. The decision to recognize the practice of optometry as a learned,
4 healthcare profession was significant because the State of California has
5 historically maintained, and continues to maintain, a strong public policy
6 against corporate control of learned professions such as medicine.

7 26. The State maintains this policy out of well-founded fears that
8 arrangements which tied an optometrist's economic livelihood to the
9 success of a for-profit corporation would present optometrists with a
10 conflicts of interest between a desire for profit and the best interests of their
11 patients. The California Supreme Court succinctly summarized this policy
12 and the rationale behind it in *People v. Cole*, 38 Cal.4th 964 (2006):

13 California law also restricts the relationships that optometrists
14 may have with corporations. In general, under California's
15 long-standing "policy . . . against [the] corporate practice of the
16 learned professions," for-profit corporations "may not engage
17 in the practice of . . . medicine." (*People v. Pacific Health Corp.*
18 (1938) 12 Cal.2d 156, 158-159 (*Pacific Health*.) The ban on the
19 corporate practice of medicine generally precludes for-profit
20 corporations—other than licensed medical corporations—from
21 providing medical care through either salaried employees or
22 independent contractors. (*Ibid.*; *Conrad v. Medical Bd. of*
23 *California* (1996) 48 Cal.App.4th 1038, 1047-1048 [discussing
24 exceptions].) It has been held applicable with respect to
25 optometrists. (*California Assn. of Dispensing Opticians v. Pearle*
26 *Vision Center, Inc.* (1983) 143 Cal.App.3d 419, 427 (CADO).)
27 Courts have said that the ban on the corporate practice of
28 medicine "is intended to ameliorate 'the evils of divided loyalty
and impaired confidence' which are thought to be created
when a corporation solicits medical business from the general
public and turns it over to a special group of doctors, who are
thus under control." (*Conrad v. Medical Bd. of California, supra*, 48
Cal.App.4th at pp. 1042-1043.)

29 27. No doubt perceiving these and other perils that would
30 inevitably arise any time a corporation in the business of selling eyewear
31 has control or influence over an optometrist, the State of California long ago
32 implemented a number of laws in an effort to insulate optometrists from

1 control by non-healthcare commercial entities.

2 28. To that end, as far back as the 1923, California prohibited the
3 employment of an optometrist by a non-licensee corporate entity.

4 29. In 1939, the California Legislature enacted Business and
5 Professions Code section 2556 to incorporate the 1923 prohibition against
6 the employment of an optometrist by a non-licensee business. It further
7 expanded the prohibition to include both contractual/leasing agreements as
8 well as direct employment arrangements.

9 30. The 1939 legislation was necessary as California realized large
10 numbers of optometrists were operating in commercial retail settings which
11 resulted in optometrists being beholden to business entities. Such situations
12 were determined to be contrary to public policy as optometrists were
13 perceived as commercial sellers of eyewear as opposed to professional
14 providers of medical services. California Business and Professions Code
15 § 2556 diminished the ethical concerns of the profit-driven pressure to sell
16 eyewear as opposed to tending to the specific medical needs of patients.

17 31. Between 1939 and the 1960s, California's prohibitions on
18 associations between corporations and optometrists continued to evolve as
19 major eyewear retailers continued to devise innovative and creative
20 schemes to circumvent California law.

21 32. At all times relevant to this complaint California law in this area
22 consisted of, among other provisions, the following regulations:

23 32.1. Business & Professions Code section 655, which
24 prohibited optometrists from, among other things, having "any
25 membership, proprietary interest, coownership, landlord-tenant
26 relationship, or any profit-sharing arrangement in any form, directly or
27 indirectly," with any dispensing optician.

28

1 32.2. Business & Professions Code section 2556, which made it
2 unlawful for a dispensing optician to “advertise the furnishing of . . . the
3 services of an optometrist,” or to “directly or indirectly employ or maintain
4 [an optometrist] on or near the premises used for optical dispensing.”

5 32.3. Business & Professions Code sections 3040 and 3041,
6 which prohibit lay corporations from “engag[ing] in the [unlicensed]
7 practice of optometry.”

8 32.4. California Code of Regulations, title 16, section 1399.251,
9 which provides that it is unprofessional conduct for a registered dispensing
10 optician to “advertise the furnishing of services of an optometrist.”

11 32.5. California Code of Regulations, title 16, section 1514,
12 provides, among other things, that when “an optometrist rents or leases
13 space from and practices optometry on the premises of” a commercial
14 entity, the “practice shall be owned by the optometrist *and in every phase be*
15 *under his/her exclusive control.*” (Emphasis added.)

16 32.6. Notably, the California Legislature, no doubt anticipating
17 that eyewear retailers might use intermediaries to facilitate otherwise
18 prohibited relationships with optometrists, presciently prohibited eyewear
19 retailers from “*directly or indirectly*” engaging in any of the prohibited
20 practices. Moreover, California law not only makes it a crime for eyewear
21 retailers and optometrists to violate the aforementioned laws and
22 regulations, but also extends criminal liability “to any and all persons,
23 whether or not so licensed under this division, who participate with such
24 licensed person in a violation of any provision of this section.” *E.g.*, Cal.
25 Bus. & Prof. Code § 655.

26 33. And yet, despite the unequivocal laws banning the practice,
27 many eyewear retailers, including Costco, could not resist the tremendous
28 business opportunity associated with co-locating optometrists in their

1 stores. Not only would the prospect of an on-site exam draw customers to
2 the retailer's store, but the customers would be more apt to fill the resulting
3 prescription at the store than take it elsewhere. The result would be
4 significantly more eyewear sales than without an on-site optometrist.

5 34. But as one might expect, eyewear retailers' practice of forming
6 prohibited associations with optometrists was not without controversy. In
7 1983, the California Court of Appeal ruled that franchisor-franchisee
8 relationships between eyewear retailers and optometrists were illegal under
9 California law. *See Cal. Ass'n of Dispensing Opticians v. Pearle Vision Center,*
10 *Inc.*, Cal. App. 3d 419 (1983). And in 2009, the California Supreme Court
11 held that a model in which an eyewear retailer indirectly employs
12 optometrists through an intermediary healthcare plan was also a violation
13 of California law. *See People v. Cole*, 38 Cal. 45h 964 (2006).

14 35. Frustrated at the court decisions expressly prohibiting
15 seemingly every conceivable form of association between an eyewear
16 retailer and an optometrist, yet unwilling to give up the massive profits
17 associated with one-stop optical shopping, the eyewear retailers, led by
18 their trade group, the "National Association of Optometrists and
19 Opticians," filed declaratory relief actions in federal court, seeking to strike
20 down Business and Professions Code sections 655 and 2556 among other
21 provisions.

22 36. In successive decisions, the Ninth Circuit upheld the California
23 laws banning associations between eyewear retailers and optometrists. *See*
24 *Nat'l Ass'n of Optometrists & Opticians v. Harris*, 682 F.3d 1144 (9th Cir. 2012);
25 *Nat'l Ass'n of Optometrists & Opticians v. Brown*, 567 F.3d 521 (9th Cir. 2009).
26 When their desperation petition for certiorari was denied by the U.S.
27 Supreme Court, *see Nat'l Ass'n of Optometrists & Opticians v. Harris*, 133 S. Ct.
28 1241 (U.S. 2013), the eyewear retailers' protracted legal efforts to maintain

1 their illegal business models came to a close.

2 37. But the eyewear retailers' were not yet ready to abandon their
3 business model. Instead of the courts, the retailers turned their attention to
4 Sacramento.

5 38. In 2015, 76 years after California Business and Professions Code
6 section 2556 was first enacted, the eyewear retailers—including Luxottica,
7 Costco, and Wal-Mart—attempted to fast-track a bill through the
8 Legislature and the Governor's office that, if adopted, would have been
9 tantamount to a repeal of Business and Professions Code sections 655 and
10 2556. A true and correct copy of the initial draft of the bill that was being
11 sponsored by Luxottica, AB 684 is attached hereto as Exhibit "A."

12 39. The original versions of the bill sponsored by the eyewear
13 retailers were designed to immunize them in this litigation by legalizing the
14 very conduct alleged by the putative class.

15 40. As AB 684 worked its way through Sacramento, the revised
16 version that was being discussed in 2015 was designed to give the eyewear
17 retailers in this and the related putative class actions a moratorium on
18 enforcement of the statute. This included, but was not limited to, the
19 moratorium on *new* civil lawsuits and administrative and criminal
20 prosecution for employing optometrists and/or entering into a
21 landlord/tenant relationship with the same optometrists. These are the very
22 issues at interest in this litigation.

23 41. The intended effort of AB 684 was to substantially change and
24 modify California Business and Professions Code sections 655 and 2556 by
25 introducing Assembly Bill 684 in the California State Assembly. Luxottica
26 was and is trying to legislatively get a "hall pass" on its illegal conduct by
27 having the Legislature stay enforcement of sections 655 and 2556.

28

1 42. But the retailers' lobbying efforts fared no better than their
 2 litigation strategy. The version of AB 684 that the eyewear retailers
 3 introduced was extensively altered and scaled back extensively during the
 4 Legislative process before being put to a final vote. In final form, rather than
 5 repeal sections 655 and 2556, AB 684 actually *underscored* the very concerns
 6 that motivated this and the other putative class actions pending before this
 7 Court by putting express and meaningful separation between optical
 8 retailers and the optometrists practicing out of retail locations.

9 43. The heavily altered version of AB 684 subsequently passed both
 10 the state senate and assembly and was approved by the Governor on
 11 October 1, 2015. Attached hereto as Exhibit "B" is a true and correct copy of
 12 the version of AB 684 that was passed by the California Legislature and
 13 executed by the Governor.

14 **B. Costco openly violated—and continues to violate—California law**
 15 **by offering in-store eye examinations at their retail locations from**
 16 **on-site optometrists who are subject to their indirect control and**
 17 **influence through their de facto agent, MBNR.**

18 44. The exact details of Defendants' scheme are held in secret, are
 19 not disclosed to the public, and are therefore known only to them at this
 20 juncture. Although Plaintiff has not yet had the benefit of formal discovery
 21 in this case, Plaintiff's own informal investigation has revealed the
 22 following details of Defendants' business model:

23 45. In 1996, Costco and MBNR executed an agreement under which
 24 Costco leases office spaces immediately adjacent to the optical department
 25 in Costco retail locations throughout California. The purpose of this lease
 26 agreement was to enable MBNR, as Costco's de facto agent, to sublease the
 27 space to California-licensed optometrists for the purpose of conducting eye
 28 exams out of those office locations.

1 46. The agreement between Costco and MBNR specifies that
2 MBNR must charge the tenant-optometrists “rent” equal to 15% of the
3 optometrists’ gross revenues, which—for Costco optometrists—consists of
4 fees collected for exams. In turn, MBNR pays a portion of the profits it
5 receives from the tenants to Costco.

6 47. This arrangement is the perfect mechanism for Costco to assert
7 indirect control over its tenant-optometrists. Because MBNR’s own profits
8 are dependent on a high volume of eye examinations, MBNR has a built-in
9 incentive to ensure that the tenant-optometrists in Costco locations are
10 performing a high volume of eye exams. And for Costco, the resulting high
11 volume of on-site eye examinations ensures a steady stream of customers in
12 need of prescription eyewear.

13 48. Thus, by giving MBNR a vested interest in the tenant-
14 optometrists’ revenues, this scheme allows Costco to get MBNR to do its
15 “dirty work”—coercing optometrists to perform a high volume of eye
16 exams—while Costco reaps the benefits of a high-volume exam practice
17 generating prescriptions in its store. Thus, as a former Costco tenant-
18 optometrist testified in a recent lawsuit against Costco and MBNR, Costco
19 optometrists were “constantly under pressure by MBNR to do more exams
20 because, as it was explained to me by MBNR, Costco made money when I
21 wrote more prescriptions.”

22 49. In accomplishment of this scheme, MBNR signs individual lease
23 agreements with the tenant-optometrists. Costco and MBNR are too clever
24 to state, in blackletter, that the individual optometrists are subject to the
25 control and influence of either Costco or MBNR, and thus anyone seeking
26 to find such a clause in the *written* lease agreements between MBNR and the
27 individual tenant-optometrist would be deservedly disappointed.
28

1 50. Rather, the aspects of Costco and MBNR’s control and influence
2 over their tenant–optometrists arise in a variety of subtle, insidious ways
3 that might be lost on a casual observer, but which become manifest when
4 one considers the scheme as a whole:

5 **51. One-year leases are terminable at MBNR’s will:**

6 51.1. The leases between MBNR and the optometrists are
7 limited to a single year. After the year expires, the lease term can be
8 renewed for another year at MBNR’s discretion.

9 51.2. Under section 4.3 of the lease agreement between MBNR
10 and the tenant–optometrist, the lease gives MBNR the right to terminate the
11 lease at **any time** for seemingly **any reason** with just 30 days written notice
12 to the optometrist.

13 51.3. To the uninformed observer, the specter that a tenant–
14 optometrist may suddenly lose his or her lease for office space in a Costco
15 store may seem like an insignificant consequence. But the reality is that
16 optometry is a highly competitive, highly saturated profession, and for
17 many optometrists, establishing a gainful, independent practice is a
18 daunting task. Indeed, many optometrists graduate from optometry school
19 with significant student debt. And opening a gainful optometry practice
20 will require the optometrist to buy or lease expensive diagnostic equipment,
21 further compounding their debt. This, of course, is not to mention salaries
22 for staff members. And even then, there is, of course, no guarantee that
23 patients will come to such a practice *even if* the optometrist spends still
24 more money on advertising.

25 51.4. Corporate retailers like Costco present a tempting port in
26 this storm by advertising fully equipped office spaces, a guaranteed stream
27 of customers/patients, and by expressly stating a preference for recent
28 graduates. It is thus no surprise that retail optometry positions have become

1 highly coveted positions within the optometry profession, particularly
 2 among recent optometry graduates. Indeed, in a sworn declaration, Robin
 3 Strother, a principal of MBNR, testified that, at any given time, “MBNR
 4 maintains a waiting list of more than three hundred optometrists who have
 5 expressed interest in renting an optometric office inside a Costco warehouse
 6 in California.”

7 51.5. The ones who obtain such a lease are understandably
 8 reluctant to lose it, and are therefore vulnerable and susceptible to trading
 9 their professional independence where necessary to ensure their good
 10 standing with Costco and MBNR. Former Costco optometrists testified that
 11 Strother and Brad McGee, another MBNR principal, would frequently
 12 remind tenant-optometrists deemed to be “insubordinate” of the long
 13 waiting list for their office as a subtle way of coercing the tenant-
 14 optometrist to toe the line.

15 **52. Optometrists must work at least 48-hours-per-week, but have**
 16 **no after-hours access to their offices:**

17 52.1. Despite purporting to give the tenant-optometrists
 18 control over all aspects of the practice, section 3.4 of the lease agreement
 19 requires the optometrist to see patients “for at least *forty-eight (48) hours per*
 20 *calendar week*, with a minimum of seven (7) hours on Saturday.” (Emphasis
 21 added.) This requirement is routinely reinforced in regular news bulletins
 22 which remind the optometrists that “Your Rental Agreement specifies
 23 minimum hours of optometric coverage per week.”

24 52.2. A former Costco optometrist alleged in a lawsuit filed in
 25 federal court, that he was reprimanded for limiting his time to three days a
 26 week at his Costco practice, while undertaking other work at the University
 27 of California–Berkeley.

28

1 52.3. Although the lease purported to give tenant-
2 optometrists access to their offices outside store hours, former Costco
3 optometrists would testify that they did not have access to their offices after
4 Costco hours.

5 52.4. The lack of access to their offices after hours, combined
6 with the requirement that they work 48 hours per week, was a subtle way
7 of ensuring that the tenant-optometrists had no choice but to be onsite
8 while the Costco optical department was open selling glasses.

9 **53. Optometrists have no control over fees they charge:**

10 53.1. Although the lease agreements state on their face that the
11 optometrists can dictate aspects of their practice, several former Costco
12 optometrists testified that MBNR told them that they must charge \$49 for
13 an eye exam and that “Costco and MBNR would terminate the lease
14 pursuant to the [l]ease’s 30-day termination provision.”

15 53.2. A former Costco optometrist who filed a federal lawsuit
16 against Costco and MBNR indicated that, when he unilaterally increased
17 his exam fee from \$49 to \$59, MBNR refused to provide him with a sign
18 advertising the new price and informed the optometrist that the lease
19 would be terminated in 30 days if he did not change his exam fee back to
20 \$49. When the optometrist complained to Costco, the store manager told
21 him that it would only support his continued leasehold if he dropped his
22 price back to \$49. Afraid of losing his leasehold, the optometrist reluctantly
23 complied. Eventually, his lease was terminated expressly for, at least in
24 part, “charging too much” for exams.

25 53.3. Several former Costco optometrists further testified that
26 they were told by MBNR that the purpose for limiting exam fees to \$49 was
27 “because low fees bring in more patients for exams.”
28

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1 53.4. But another (if not the *predominant*) reason for limiting
2 optometrists' exam fees to \$49 was because, at that rate, a tenant-
3 optometrist could not generate significant income without doing a high
4 volume of exams, with a resulting trickle-down effect on Costco's eyewear
5 sales.

6 **54. Optometrists have no control over advertisements in their**
7 **office space:**

8 54.1. Contrary to the representation that the optometrist will
9 have control over his or her practice, section 12.2 of the lease precludes the
10 optometrist from placing any signs or advertisements in his or her leased
11 office space without the express consent of MBNR.

12 54.2. Thus, a former Costco optometrist testified that he was
13 ordered to remove a poster he had hung in his office space touting the
14 benefits of Lasik surgery. MBNR advised the optometrist not to promote
15 Lasik procedures "because patients having LASIK often don't need glasses,
16 and the entire purpose of having an optometrist in Costco was to help
17 Costco sell more glasses in the Costco optical."

18 **55. Optometrists have limited control over therapies they can**
19 **recommend or provide:**

20 55.1. In court filings, a former Costco optometrist related an
21 email exchange with principals from MBNR in which he asked for
22 permission to offer dilated eye exams to patients who, in his professional
23 opinion, needed dilation. Because dilation was not included in the \$49
24 exam, he proposing charging such patients an additional amount for a
25 dilated exam. Brad McGee, the president of MBNR, responded in an email,
26 chiding the optometrist for "losing sight of the bigger picture" and
27 reminding him that "[l]ow prices drive patients to your office." Instead, he
28 directed the optometrist to "eat" the cost of "an occasional field or dilation

1 [exam]" or "bring them back for an office visit if you really need that small
2 fee."

3 55.2. That same optometrist related his desire to fit patients
4 with therapeutic "CRT" lenses, the purpose of which was to eventually
5 wean patients off of their corrective lenses. The optometrist contacted
6 Costco's lens supplier to confirm that they made the requisite lens and
7 placed an order. This information apparently got back to Costco and
8 MBNR, because a principal for MBNR advised the optometrist that the
9 order had been cancelled and instructed him not to offer CRT lenses to
10 patients because, as with Lasik, CRT lenses would cause customers to lose
11 their dependency on corrective lenses, and would thus cut into Costco's
12 eyewear sales.

13 55.3. The optometrists are also required to use the optometric
14 examination equipment that MBNR provides and are prohibited from
15 swapping out any of that equipment with their own.

16 **56. Optometrists are audited to ensure conformity with quotas**
17 **and satisfactory performance relative to other Costco optometrists:**

18 56.1. As noted above, under section 5.2, the tenant-
19 optometrist promises to give MBNR "a percentage of the Gross Revenue,
20 hereinafter defined, from the operation of the Clinic," which is defined
21 under section 5.4 to include the revenues generated from exam fees and
22 other professional services the optometrist renders in the leased office
23 space.

24 56.2. Aside from giving MBNR—a lay corporation and
25 Costco's de facto agent—a vested financial interest in ensuring the
26 optometrist sees as many patients as possible, this aspect of the lease also
27 gave MBNR a built-in method to assess the performance of each individual
28 optometrists.

1 56.3. Indeed, under sections 6.1 and 6.3, the lease requires the
2 tenant-optometrist to maintain “books and records” of all revenues that the
3 tenant-optometrist conducts at the business, and gives MBNR “the right to
4 have internal or outside auditors make a special audit of all books and
5 records.”

6 56.4. As part of their reporting requirements, the optometrists
7 are required to fill out and maintain MBNR-supplied forms entitled
8 “MBNR DAILY CLINIC REPORT.” The reports have fields for the
9 optometrists to record (1) the hours they work per day, (2) the number of
10 eye exams they conduct per day, and (3) the number of contact-lens exams
11 they conduct per day, with a field to record the total number of exams per
12 day and per four-week period.

13 56.5. In addition, the optometrists are required to fill out and
14 maintain MBNR-supplied forms entitled, “MBNR, INC. PERIOD RENT
15 REPORT.” In addition to recording the number of “contact lens exams and
16 fittings,” “eye exam[s],” and “other procedures” conducted per four-week
17 period, the forms require the optometrist to record the total number of
18 hours worked and the total dollar amount collected for each time of exam
19 for that period.

20 56.6. The forms are submitted to MBNR where the data is
21 complied with data from optometrists in the region as well as state-wide,
22 into spreadsheets and graphs, allowing MBNR and Costco to assess an
23 optometrist’s performance relative to others’ and to identify under-
24 performing optometrists.

25 56.7. The review process entails an analysis of a document
26 known as a “DETAIL SALES ANALYSIS” showing the optometrist’s total
27 revenue for eye exams, contact lens exams, and total net revenue.
28

1 56.8. Optometrists who are deemed to be below the acceptable
2 threshold are notified of that deficiency, given instructions on how to
3 improve revenues through increased exam volume, and are warned that
4 continued failure to achieve the requisite standards will result in the
5 termination of their lease, and are given training on how to increase their
6 numbers. Optometrists who continue to fall short of expectations have their
7 leases terminated and are promptly replaced by an optometrist who will
8 then have his or her shot to toe Costco’s corporate line.

9 **57. High-ranking Costco employees are consulted before MBNR**
10 **renews any lease with an optometrist:**

11 57.1. The determination whether to terminate or renew an
12 optometrist’s lease is based in large part on a form entitled “OD REVIEW
13 (LEASE RENEWAL).”

14 57.2. Tellingly, the form has a field for data regarding the
15 optometrist’s average hours per week (“Ave. Hours/Week”), “Growth
16 Rate,” and “Refund Rate.” The form also has areas for recording the
17 comments from Costco supervisors, including the manager of the optical
18 department at that particular optometrist’s store, as well as the Regional
19 Manager.

20 57.3. This and other information confirms that Costco officials
21 have a significant role in dictating whether a particular optometrist is
22 terminated or retained, thus bolstering the already built-in incentive for
23 MBNR to ensure that the location is staffed with a highly productive
24 optometrist who sees a high volume of patients.

25 58. In short, the aforementioned testimony and documentation
26 regarding Defendants’ activities during the class period reveals that the
27 lease agreements between MBNR and Costco’s tenant-optometrists are not
28 the typical arms-length, garden-variety lease agreements between a

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1 landlord and a tenant.

2 59. Rather, the intent and effect of the lease is such that MBNR—
3 and, thus, its de facto principal, Costco—plays an active role in managing
4 material aspects of the tenant–optometrists’ day-to-day practices, including,
5 at a minimum, their hours of operation, the fees they charge, services they
6 advertise, therapies they offer, the length of their exams, the scope of the
7 exams, and the equipment they use to conduct the exams.

8 60. Moreover, if the tenant–optometrist gives the slightest push
9 back or manifests any reluctance to do as told, MBNR uses its ability to
10 terminate the lease at will and its 300-optometrist-long waiting list as a
11 cudgel to coerce the tenant–optometrists back inline. Thus, as a former
12 Costco optometrist summarized in a recent court filing, the tenant–
13 optometrists do their best to act as “good soldiers” by “spit[ting] out all the
14 examinations they can, because it is the only way they can ensure MBNR,
15 acting as Costco’s strong-arm, won’t pull the plug on their livelihood.”

16
17 **C. Costco engages in fraudulent and unlawful conduct by baiting**
18 **customers into its retail locations by advertising the availability of**
eye examinations by “Independent Doctors of Optometry.”

19 61. In light of the cause-and-effect relationship between on-site eye
20 exams and increased eyewear sales, Costco lures customers into Costco
21 locations by advertising on the Costco website, in Costco’s print media, and
22 on prominent signs and displays in the Costco store, the availability of eye
23 examinations from “Independent Doctors of Optometry.”

24 62. The consistent and repeated emphasis on “Independent Doctors
25 of Optometry” is not accidental or immaterial. To the contrary, Costco
26 knows that the average consumer—including Plaintiff and members of the
27 putative class—have a strong and justifiable preference for healthcare
28 providers whose examinations and treatment recommendations will be

1 determined solely by what is in the patient’s best interest without outside
2 influence.

3 63. Understandably, the average consumer would not entrust an
4 examination of their eyes to, or trust the treatment recommendations of, an
5 optometrist who is under the control and influence of a for-profit
6 corporation whose goal is to sell eyewear. Accordingly, the average
7 consumer would not pay for an examination of their eyes by an optometrist
8 whom they knew and understood to be under the control and influence of a
9 for-profit corporation whose goal is to sell eyewear.

10 64. Costco knows that to the average consumer—including Plaintiff
11 and members of the putative class—the phrase “Independent Doctor of
12 Optometry” fosters the impression that the optometrists treating them are
13 not operating under any duress or influence that would present a conflict of
14 interest in performing examinations and/or making treatment
15 recommendations.

16 65. Costco also knows that the average consumer—including
17 Plaintiff and members of the putative class—would not purchase or
18 undergo an eye examination that is not being provided in conformity with
19 California law.

20 66. Costco obviously also knows that a consumer could not buy an
21 eye exam at its stores if did not make them available, and thus knows that it
22 can only entice customers to come to its stores for eye exams by making
23 those exams available from on-site optometrists, in violation of California
24 law.

25 67. Thus, to avoid this impediment to their business model, Costco
26 fails to disclose or conspicuously state that the optometrists working out of
27 Costco retail locations are, in fact, subject to Defendants’ control and
28 influence. Nor do they disclose that its business model is illegal and thus

1 that the exams are being offered in violation of California law. To the
2 contrary, Defendants repeatedly, emphatically, and conspicuously
3 represent that the optometrists in Costco stores are “Independent Doctors
4 of Optometry.”

5 68. But, as discussed in the preceding paragraphs, the threshold
6 acts of locating optometrists in its stores, forming indirect landlord-tenant
7 relationships with them by and through its de facto agent MBNR, exerting
8 control and influence over material aspects of the optometrists’ practices,
9 and advertising the availability of on-site exams are all violations of
10 California law without which Defendants would not, and could not, sell eye
11 exams to the public.

12 69. Moreover, contrary to its deception by omission, the exams are
13 not being provided in conformity with California law.

14 70. Moreover, contrary to its representation that the exams are
15 being provided by “Independent Doctors of Optometry,” as discussed in
16 considerable detail in the preceding paragraphs, Defendants’ tenant-
17 optometrists are, by nature of the Defendants’ scheme, not independent and
18 are instead subject to Defendants’ control and influence in material ways.

19 **SPECIFIC FACTUAL ALLEGATIONS**

20 71. On June 23, 2012, Plaintiff visited the optical department at the
21 Costco store at 12155 Tech Center Drive in Poway, California.

22 72. Having seen Defendants’ advertising both online and on prior
23 trips to the store regarding the availability of onsite eye exams from an
24 “Independent Doctor of Optometry,” Plaintiff came to the store with the
25 intent of purchasing an eye exam from an “Independent Doctor of
26 Optometry” and, in fact, purchased an eye exam from the tenant-
27 optometrist, Nancy K. Rhodes (“Rhodes”), for \$49.

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1 73. Based on the unqualified representation that the exam would be
2 performed by an “Independent Doctor of Optometry,” Plaintiff operated
3 under the reasonable belief that the doctor on site was, in fact, a fully
4 “Independent Doctor of Optometry.”

5 74. In fact, Rhodes—as with every other tenant–optometrist in
6 Costco’s stores throughout California—was a tenant of MBNR/Costco
7 under the same exact lease with MBNR described earlier in this complaint
8 and was thus operating under the same exact control and influence as the
9 former Costco optometrists’ whose experiences were related earlier in this
10 complaint. As such, and in contradiction of the unqualified representation
11 that Rhodes was an “Independent Doctor of Optometry,” Rhodes was
12 subject to Defendants’ control and influence regarding material aspects of
13 her day-to-day practice, including, at a minimum, her hours of operation,
14 fees she charged, services she advertised, therapies she offered, the length
15 of her exams, the scope of her exams, and the equipment she use to conduct
16 the exams.

17 75. Moreover, Rhodes’ unfettered presence at or near the optical
18 department was itself an implied representation by Costco that Rhodes’
19 presence on-site was legal and that the exam was being provided in
20 conformity with California law.

21 76. Plaintiff values his eye health and therefore would not have
22 sacrificed the integrity of his eye exam by paying for, or undergoing, an
23 exam from an optometrist who was not, in fact, an “Independent Doctor of
24 Optometry.” For these same reasons, Plaintiff would not have paid for or
25 undergone an eye examination that was not legal for Defendants to provide
26 and thus not rendered in conformity with California law.

27 77. Moreover, Rhodes’ presence in the Costco location and status as
28 an indirect tenant of Costco (by and through its de facto agent, MBNR)

1 were themselves violations of California law, without which Rhodes would
2 not have been able to furnish an exam for Plaintiff to buy. Had Defendants
3 not made eye exams available to Plaintiff at its Costco location, Plaintiff
4 would not—indeed, *could not*—have purchased an eye exam from the
5 tenant–optometrist at that location.

6 78. Plaintiff thus would not have purchased an eye exam from a
7 Costco optometrist but for:

8 78.1. Defendants’ unlawful act of making the examinations
9 available onsite and advertising their availability;

10 78.2. Defendants’ nondisclosure of the fact that the
11 optometrists performing the exam were subject to Defendants’ oversight
12 and control, and were thus not “Independent”;

13 78.3. Defendants’ nondisclosure of the arrangement between
14 themselves, the aim and effect of which was to ensure that the optometrists
15 in Costco stores, including Rhodes, will see a high volume of patients and
16 meet the various quotas set not by the optometrists themselves in the
17 exercise of their professional judgment, but rather by Costco and MBNR.

18 78.4. Defendants’ nondisclosure and/or implied
19 misrepresentation of the fact that the practice of offering onsite exams was
20 illegal;

21 79. As a direct and proximate cause of Defendants’ collective
22 unlawful, fraudulent, and unfair business activity, Plaintiff “lost money” in
23 the amount of at least \$49 by paying for an exam from Costco’s tenant–
24 optometrist that he *could not* have purchased but for Defendants’ unlawful
25 business practices, and *would not* have purchased but for Defendants’
26 misrepresentations and/or omissions detailed above.

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FIRST CAUSE OF ACTION
Violation of California’s Unfair Competition Law (Bus. & Prof. Code, § 17200) for “Unlawful” Business Practices for Violations of Business & Professions Code sections 655 and 2556, and Title 15, section 1514 of the California Code of Regulations
(Against All Defendants)

80. Plaintiff incorporates herein each and every allegation set forth in the preceding paragraphs as though fully set forth herein.

81. Defendants, by and through their conduct as described above, engaged in, and/or aided and abetted, “unlawful” conduct in violation of Business and Professions Code § 17200 in the following ways:

81.1. Defendants violated, and/or aided and abetted the violation of, Business and Professions Code § 655 by, directly or indirectly, forming a landlord–tenant relationship between Costco, a registered dispensing optician, and optometrists (including Rhodes) under which optometrists directly or indirectly lease office space within Costco locations, by and through MBNR, for the purpose of providing onsite eye exams.

81.2. Defendants violated, and/or aided and abetted the violation of, Business and Professions Code § 655 by, directly or indirectly, forming a profit-sharing relationship between Costco, a registered dispensing optician and optometrists (including Rhodes), under which optometrists shared a significant portion of their profits with MBNR, which in turn shared a portion of those profits with Costco;

81.3. Defendants violated, and/or aided and abetted the violation of, Business and Professions Code § 2556 by, directly or indirectly “maintaining” optometrists (including Rhodes) at Costco locations in California for purposes of providing on-site examinations to Costco customers;

81.4. Defendants violated, and/or aided and abetted the violation of, Business and Professions Code §§ 3040 and 3041, by directly or

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1 indirectly, asserting control over material aspects of their tenant-
2 optometrists’ practices, thus constituting the unlicensed practice of
3 optometry;

4 81.5. Defendants violated, and/or aided and abetted the
5 violation of, title 16, section 1399.251, of the California Code of Regulations
6 by advertising on the Defendants’ websites, in print and other media, and
7 on signs in Costco locations, the on-site availability eye exams by an
8 optometrist; and

9 81.6. Defendants violated, and/or aided and abetted the
10 violation of, title 16, section 1514, of the California Code of Regulations by
11 causing its tenant-optometrists (including Rhodes) to cede material aspects
12 of their practice to Defendants’ control and influence.

13 82. As a combined and overlapping consequence of Defendants’
14 aforementioned violations of California law, Defendants fostered an illegal
15 environment at Costco locations throughout California in which:

16 82.1. Optometrists were illegally placed in or near Costco
17 locations, thereby making eye exams available onsite;

18 82.2. The optometrists, as tenants of Defendants, were subject
19 to the direct or indirect control and influence of Costco, a registered
20 dispensing optician, by and through its de facto agent, MBNR, regarding
21 material aspects of the tenant-optometrists’ day-to-day practices, including,
22 at a minimum, their hours of operation, the fees they charge, services they
23 advertise, therapies they offer, the length of their exams, the scope of the
24 exams, and the equipment they use to conduct the exams;

25 82.3. Customers were lured into Costco locations to undergo
26 eye exams through the use of illegal and misleading advertisements
27 regarding the availability of on-site examinations from “Independent
28 Doctors of Optometry.”

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1 83. Plaintiff and members of the putative class would not have
2 purchased an eye exam from a Costco optometrist but for:

3 83.1. Defendants’ unlawful act of making the examinations
4 available onsite and advertising their availability;

5 83.2. Defendants’ nondisclosure of the fact that the
6 optometrists performing the exams were subject to Defendants oversight
7 and control regarding material aspects of the tenant–optometrists’ day-to-
8 day practices, including, at a minimum, their hours of operation, the fees
9 they charge, services they advertise, therapies they offer, the length of their
10 exams, the scope of the exams, and the equipment they use to conduct the
11 exams, and were thus not “Independent”;

12 83.3. Defendants’ misrepresentation of the fact that the
13 optometrist performing the exams were “Independent” when, in fact, the
14 optometrist performing the exams were subject to Defendants’ direct or
15 indirect control and influence regarding material aspects of the tenant–
16 optometrists’ day-to-day practices, including, at a minimum, their hours of
17 operation, the fees they charge, services they advertise, therapies they offer,
18 the length of their exams, the scope of the exams, and the equipment they
19 use to conduct the exams;

20 83.4. Defendants’ nondisclosure of the fact that the onsite
21 exams it offered were illegal and/or implied misrepresentation that the
22 exams were legal.

23 84. Plaintiff and members of the putative class have lost money as a
24 direct and proximate result of Defendants’ aforementioned violations of
25 California law in the form of fees for examinations which Defendants were
26 not legally allowed to sell and which Plaintiff and the putative class
27 members would not have purchased had they known about the truth about
28 the exams.

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1 85. To the extent they did not themselves engage in unlawful
 2 conduct directly, Defendants—and each of them—aided and abetted,
 3 encouraged and rendered substantial assistance in accomplishing the
 4 wrongful conduct and their wrongful goals and other wrongdoing
 5 complained of herein. In taking actions to aid and abet and substantially
 6 assist the commission of these wrongful acts and other wrongdoings
 7 complained of, Defendants acted with an awareness of the primary
 8 wrongdoing and realized the conduct would substantially assist the
 9 accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.

10
 11 **SECOND CAUSE OF ACTION**
 12 **Violation of California's Unfair Competition Law (Bus. & Prof. Code,**
 13 **§ 17200) for "Fraudulent" Business Practices**
 14 **(Against All Defendants)**

15 86. Plaintiff incorporates herein each and every allegation set forth
 16 in the preceding paragraphs as though fully set forth herein.

17 87. Defendants engaged in, or aided and abetted in the commission
 18 of, "fraudulent" business practices by deceiving members of the public,
 19 including Plaintiff and members of the putative class by:

20 87.1. Misrepresenting that the doctors of optometry practicing
 21 out of Costco locations were "Independent Doctors of Optometry," when in
 22 fact they were subject to Defendants' control and influence regarding
 23 material aspects of the tenant-optometrists' day-to-day practices, including,
 24 at a minimum, their hours of operation, the fees they charge, services they
 25 advertise, therapies they offer, the length of their exams, the scope of the
 26 exams, and the equipment they use to conduct the exams;

27 87.2. Failing to disclose that the doctors performing the exams
 28 were subject to Defendants' control and influence regarding material
 aspects of the tenant-optometrists' day-to-day practices, including, at a

1 minimum, their hours of operation, the fees they charge, services they
2 advertise, therapies they offer, the length of their exams, the scope of the
3 exams, and the equipment they use to conduct the exams.

4 87.3. Failing to disclose the material fact that the exams
5 available at Costco locations were not being offered in conformity with the
6 laws of the State of California;

7 88. Each of these representations was false or misleading and made
8 with knowledge that it was false or misleading. Indeed, as matter of policy,
9 Costco and MBNR exerted their influence and control over their tenant-
10 optometrists and, as alleged above, coerced their tenant-optometrists to
11 undertake efforts that are in Defendants' business interests, and are
12 inconsistent with the aforementioned representations.

13 89. Cognizant that the average consumer would be dissuaded by
14 indications that the exams would be performed by optometrists beholden to
15 Defendants, Defendants intended for Plaintiff and members of the class to
16 rely on these representations in an effort to lure them to Costco stores for
17 eye examinations, and therefore used language in Costco's signs, website,
18 and advertisements—namely, the unqualified representation that the exams
19 would be performed by an "Independent Doctor of Optometry"—to appeal
20 to consumers' preference for unbiased, independent healthcare providers
21 whose professional services will be rendered without conflicts of interest.

22 90. Defendants' conduct was likely to, and did deceive, the people
23 of the State of California and the general public regarding, among other
24 things, the independence of the optometrists performing eye exams at
25 Costco locations as well as the legality of the exam they purchased.

26 91. The misrepresentations and omissions concerned material
27 information, namely the independence of the healthcare provider providing
28 their medical examination and the exam's conformity with the laws and

1 regulations governing the practice of optometry in California. The
2 materiality of these facts is apparent both from Defendants' emphasis on
3 those facts in advertising to members of the public, as well as the fact that
4 Plaintiff and members of the class known the truth about these facts, they
5 would not have purchased the exams.

6 92. The nondisclosed facts—that the doctors performing the exams
7 were *not* independence and the fact that the exams were not being offered
8 in conformity with California law—are actionable insofar as the facts were
9 exclusively known to Defendants and/or needed to be related to Plaintiff
10 and members of the class to cure the misleading nature of the information
11 Defendants' *did* convey. Moreover, insofar as Defendants attempted to
12 engage in the unlicensed practice of optometry by controlling material
13 aspects of their tenant-optometrists' practices, they are saddled with, and
14 are estopped from denying the existence of, a fiduciary obligation to
15 volunteer material information to prospective patients including Plaintiffs
16 and members of the class.

17 93. Plaintiff and members of the class reasonably relied on these
18 representations in choosing to come to Costco locations to have their eyes
19 examined and prescriptions written by optometrists in those stores.

20 94. Plaintiff and members of the putative class have lost money as a
21 direct and proximate result of Defendants' aforementioned violations of
22 California law in the form of fees for examinations which Defendants were
23 not legally allowed to sell and which Plaintiff and the putative class
24 members would not have purchased had they known about the truth about
25 the exams.

26 95. To the extent they did not themselves engage in unlawful
27 conduct directly, Defendants—and each of them—aided and abetted,
28 encouraged and rendered substantial assistance in accomplishing the

1 wrongful conduct and their wrongful goals and other wrongdoing
2 complained of herein. In taking actions to aid and abet and substantially
3 assist the commission of these wrongful acts and other wrongdoings
4 complained of, Defendants acted with an awareness of the primary
5 wrongdoing and realized the conduct would substantially assist the
6 accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.

7
8 **THIRD CAUSE OF ACTION**
9 **Violation of California’s Unfair Competition Law (Bus. & Prof. Code,**
10 **§ 17200) for “Unfair” Business Practices**
11 **(Against All Defendants)**

12 96. Plaintiff incorporates herein each and every allegation set forth
13 in the preceding paragraphs as though fully set forth herein.

14 97. As alleged above, California law maintains a strong public
15 policy against the corporate practice of medicine, and has enacted
16 numerous laws and regulations in an effort to ban the myriad and ever-
17 evolving ways eyewear retailers will attempt to assert influence and control
18 over healthcare providers in an effort to enhance their marketing efforts.

19 98. As alleged herein, Defendants formed and executed a plan to
20 violate California law by locating optometrists in Costco stores for the
21 purpose of offering onsite examinations, devising insidious ways to erode
22 the tenant–optometrists’ independence by asserting control and influence
23 over material aspects of their practice, by misrepresenting that the exams
24 would be performed by “Independent Doctors of Optometry” when in fact
25 the optometrists providers were tenants subject to Defendants’ control and
26 influence, by misrepresenting the legality of the practice to the general
27 public, and/or by aiding and abetting in the commission of the above.

28 99. As noted above, MBNR, for sake of Costco’s eyewear sales,
would frequently deter tenant–optometrists from offering therapeutic
services to their patients where those service might have the ultimate effect

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1 of diminishing the patients’ reliance on corrective lenses.

2 100. That Defendants would conspire to violate California’s long-
3 standing policy against the corporate practice of medicine and knowingly
4 deceive unsuspecting consumers into undergoing medical examinations by
5 doctors with a manifest conflict of interest who are subject to Defendants’
6 interests in maximizing profits, is outrageous, highly offensive to
7 established public policy as expressed in legislative enactments, and would
8 be condemned as despicable and immoral by the public at large.

9 101. Defendants’ conduct cannot be justified by any conceivable
10 legitimate purpose other than a reckless and greedy thirst for profit.
11 Defendants might try to justify their business practices as beneficial to the
12 consumer due to the convenience of one-stop optical shopping. And,
13 indeed, this perception of convenience—and the public’s lack of awareness
14 regarding the influence over the “Independent Doctors of Optometry”
15 prescribing their eyewear by the company selling it—is undoubtedly the
16 reason why this practice remains highly profitable.

17 102. This is not to mention that California’s laws and regulations
18 banning the corporate oversight of medicine in general and optometry in
19 particular reflect the Legislature’s recognition that convenience is not a
20 sufficient trade-off for the physical welfare of California citizens. It also
21 reflects the Legislature’s recognition that, because consumers are all too
22 easily tempted by convenience and unaware of the hazards inherent in one-
23 stop shopping, the free market is not a sufficient mechanism to curb the
24 corporate practice of medicine.

25 103. Accordingly, Defendants have engaged in “unfair” business
26 practices in violation of Business and Professions Code § 17200.

27 104. Plaintiff and members of the putative class have lost money as a
28 direct and proximate result of Defendants’ aforementioned violations of

1 California law in the form of fees for examinations which Defendants were
 2 not legally allowed to sell and which Plaintiff and the putative class
 3 members would not have purchased had they known about the truth about
 4 the exams.

5 105. To the extent they did not themselves engage in unlawful
 6 conduct directly, Defendants—and each of them—aided and abetted,
 7 encouraged and rendered substantial assistance in accomplishing the
 8 wrongful conduct and their wrongful goals and other wrongdoing
 9 complained of herein. In taking actions to aid and abet and substantially
 10 assist the commission of these wrongful acts and other wrongdoings
 11 complained of, Defendants acted with an awareness of the primary
 12 wrongdoing and realized the conduct would substantially assist the
 13 accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.

14
 15 **FOURTH CAUSE OF ACTION**
 16 **Violation of California's False Advertising Law**
 17 **(Bus. & Prof. Code, § 17500)**
 18 **(Against All Defendants)**

19 106. Defendants disseminated, or aided and abetted in the
 20 dissemination of, “fraudulent” advertising by making material false,
 21 deceptive, or misleading statements to members of the public, including
 22 Plaintiff and members of the putative class, including:

23 106.1. Misrepresenting that the doctors of optometry practicing
 24 out of Costco locations were “Independent Doctors of Optometry,” when in
 25 fact they were subject to Defendants’ control and influence regarding
 26 material aspects of the tenant–optometrists’ day-to-day practices, including,
 27 at a minimum, their hours of operation, the fees they charge, services they
 28 advertise, therapies they offer, the length of their exams, the scope of the
 exams, and the equipment they use to conduct the exams;

1 106.2. Issuing misleading advertising insofar as it failed to
2 disclose that the doctors performing the exams were subject to Defendants’
3 control and influence regarding material aspects of the tenant–optometrists’
4 day-to-day practices, including, at a minimum, their hours of operation, the
5 fees they charge, services they advertise, therapies they offer, the length of
6 their exams, the scope of the exams, and the equipment they use to conduct
7 the exams.

8 106.3. Issuing misleading advertising insofar as it failed to
9 disclose the material fact that the exams available at Costco locations were
10 not being offered in conformity with the laws of the State of California;

11 107. Each of these representations was false or misleading and made
12 with knowledge that it was false or misleading. Indeed, as matter of policy,
13 Costco and MBNR exerted their influence and control over their tenant–
14 optometrists and, as alleged above, coerced their tenant–optometrists to
15 undertake efforts that are in Defendants’ business interests, and are
16 inconsistent with the aforementioned representations.

17 108. Cognizant that the average consumer would be dissuaded by
18 indications that the exams would be performed by optometrists beholden to
19 Defendants, Defendants intended for Plaintiff and members of the class to
20 rely on these representations in an effort to lure them to Costco stores for
21 eye examinations, and therefore used language in Costco’s signs, website,
22 and advertisements—namely, the unqualified representation that the exams
23 would be performed by an “Independent Doctor of Optometry”—to appeal
24 to consumers’ preference for unbiased, independent healthcare providers
25 whose professional services will be rendered without conflicts of interest.

26 109. Defendants’ conduct was likely to, and did deceive, the people
27 of the State of California and the general public regarding, among other
28 things, the independence of the optometrists performing eye exams at

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1 Costco locations as well as the legality of the exam they purchased.

2 110. The misrepresentations and omissions concerned material
3 information, namely the independence of the healthcare provider providing
4 their medical examination and the exam’s conformity with the laws and
5 regulations governing the practice of optometry in California. The
6 materiality of these facts is apparent both from Defendants’ emphasis on
7 those facts in advertising to members of the public, as well as the fact that
8 Plaintiff and members of the class known the truth about these facts, they
9 would not have purchased the exams.

10 111. The nondisclosed facts—that the doctors performing the exams
11 were *not* independence and the fact that the exams were not being offered
12 in conformity with California law—are actionable insofar as the facts were
13 exclusively known to Defendants and/or needed to be related to Plaintiff
14 and members of the class to cure the misleading nature of the information
15 Defendants’ *did* convey. Moreover, insofar as Defendants attempted to
16 engage in the unlicensed practice of optometry by controlling material
17 aspects of their tenant–optometrists’ practices, they are saddled with, and
18 are estopped from denying the existence of, a fiduciary obligation to
19 volunteer material information to prospective patients including Plaintiffs
20 and members of the class.

21 112. Plaintiff and members of the class reasonably relied on these
22 representations in choosing to come to Costco locations to have their eyes
23 examined and prescriptions written by optometrists in those stores.

24 113. Plaintiff and members of the putative class have lost money as a
25 direct and proximate result of Defendants’ aforementioned violations of
26 California law in the form of fees for examinations which Defendants were
27 not legally allowed to sell and which Plaintiff and the putative class
28 members would not have purchased had they known about the truth about

1 the exams.

2 114. To the extent they did not themselves engage in unlawful
 3 conduct directly, Defendants—and each of them—aided and abetted,
 4 encouraged and rendered substantial assistance in accomplishing the
 5 wrongful conduct and their wrongful goals and other wrongdoing
 6 complained of herein. In taking actions to aid and abet and substantially
 7 assist the commission of these wrongful acts and other wrongdoings
 8 complained of, Defendants acted with an awareness of the primary
 9 wrongdoing and realized the conduct would substantially assist the
 10 accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.

11
 12 **FIFTH CAUSE OF ACTION**
Violation of California's Consumer Legal Remedies Act
(Civ. Code, § 1750, et. seq.)
 13 **(Against All Defendants)**

14 115. Plaintiff incorporates herein each and every allegation set forth
 15 in the preceding paragraphs as though fully set forth herein.

16 116. Consumer Legal Remedies Act (“CLRA”), codified at California
 17 Civil Code § 1750, et seq., was designed to protect consumers from unfair
 18 and deceptive business practices. To that end, the CLRA sets forth a list of
 19 unfair and deceptive business acts and practices that are specifically
 20 prohibited in any transaction intended to result in the sale or lease of goods
 21 or services to a consumer.

22 117. Defendants are “persons” within the meaning of Civil Code
 23 § 1770 and § 1761(c). Furthermore, Defendants sell “goods” and “services
 24 within the meaning of Civil Code § 1770 and § 1761(a)–(b).

25 118. Plaintiff and members of the class were, at all relevant times,
 26 “consumers” within the meaning of Civil Code § 1761(d).

27 119. The purchase of eye examinations from Defendants constitutes a
 28 transaction within the meaning of Civil Code § 1770 and § 1761(e).

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1 120. Defendants violated the CLRA in the following ways:

2 120.1. By “[p]assing off the goods or services as those of
3 another,” in violation of Civil Code § 1770(a)(1), when they represented to
4 consumers that the eye exams available in Costco locations would be
5 provided exclusively by “Independent Doctors of Optometry” when in fact
6 they were provided by optometrists who were subject to Defendants’
7 control and influence regarding material aspects of the tenant–optometrists’
8 day-to-day practices, including, at a minimum, their hours of operation, the
9 fees they charge, services they advertise, therapies they offer, the length of
10 their exams, the scope of the exams, and the equipment they use to conduct
11 the exams.

12 120.2. By “[r]epresenting that . . . services are of a particular
13 standard . . . if they are of another,” in violation of Civil Code § 1770(a)(7),
14 by representing to consumers that the eye exams would be provided
15 exclusively by “Independent Doctors of Optometry” when in fact they were
16 provided by optometrists who were subject to Defendants’ control and
17 influence regarding material aspects of the tenant–optometrists’ day-to-day
18 practices, including, at a minimum, their hours of operation, the fees they
19 charge, services they advertise, therapies they offer, the length of their
20 exams, the scope of the exams, and the equipment they use to conduct the
21 exams.

22 120.3. By “[a]dvertising . . . services with an intent not to sell
23 them as advertised,” in violation of Civil Code § 1770(a)(9), by representing
24 to consumers that the eye exams would be provided exclusively by
25 “Independent Doctors of Optometry” when in fact they were provided by
26 optometrists who were subject to Defendants’ control and influence
27 regarding material aspects of the tenant–optometrists’ day-to-day practices,
28 including, at a minimum, their hours of operation, the fees they charge,

1 services they advertise, therapies they offer, the length of their exams, the
2 scope of the exams, and the equipment they use to conduct the exams.

3 121. Plaintiff and members of the class were and are direct victims of
4 Defendants’ “false” advertising in violation of Civil Code § 1770 as
5 described above, by virtue of having paid for what they believed would be
6 a legal exam from an “Independent Doctor of Optometry,” when neither
7 was true.

8 122. Plaintiff and members of the putative class have lost money as a
9 direct and proximate result of Defendants’ aforementioned violations of
10 California law in the form of fees for examinations which Defendants were
11 not legally allowed to sell and which Plaintiff and the putative class
12 members would not have purchased had they known the truth about the
13 persons conducting the exams.

14 123. To the extent they did not themselves engage in unlawful
15 conduct directly, Defendants—and each of them—aided and abetted,
16 encouraged and rendered substantial assistance in accomplishing the
17 wrongful conduct and their wrongful goals and other wrongdoing
18 complained of herein. In taking actions to aid and abet and substantially
19 assist the commission of these wrongful acts and other wrongdoings
20 complained of, Defendants acted with an awareness of the primary
21 wrongdoing and realized the conduct would substantially assist the
22 accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.

23 124. On September 26, 2013, and in the manner set forth in Civil
24 Code § 1782(a)(2), Plaintiff notified Defendants of the aforementioned
25 violations of the CLRA and demanded they take appropriate corrective
26 measures to ameliorate the violations. As of the filing of this complaint,
27 Defendants have failed to take any corrective measures. Accordingly,
28 pursuant to Civil Code § 1780(1), Plaintiff and the class seek the following

1 remedies:

2 124.1. An order of this Court enjoining Defendants from
3 engaging in the methods, acts, and/or practices alleged herein, as provided
4 under Civil Code section 1780(a)(2);

5 124.2. Actual damages, as provided under Civil Code
6 § 1780(a)(1);

7 124.3. Restitution of property, as provided under Civil Code
8 § 1780(a)(3);

9 124.4. Statutory damages under Civil Code § 1780, where
10 applicable; and

11 124.5. Punitive damages, as provided under Civil Code
12 § 1780(a)(4).

13
14 **PRAYER FOR RELIEF**

15 Wherefore, Plaintiff prays that this action be certified as a class, that
16 Plaintiff be designated as the class representative, that his counsel be
17 designated as class counsel, and that judgment be entered against
18 Defendants, and each of them, jointly and severally, as follows:

19 1. For compensatory damages, including actual damages,
20 according to proof, where applicable;

21 2. For restitution in an amount to be determined and proven at
22 time of trial;

23 3. For disgorgement of any and all monies Defendants received as
24 a result of the misconduct complained of herein in an amount to be
25 determined and proven at time of trial;

26 4. For statutory penalties, where applicable;

27 5. For punitive damages, where applicable;

28 6. For attorneys' fees incurred in the investigation and prosecution

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1 of this suit, where applicable;

2 7. For the costs of litigation and investigation associated with this
3 suit;

4 8. For pre-judgment interest at the maximum legal rate on all sums
5 awarded;

6 9. For appointment of a receiver; and

7 10. For such other relief as the Court deems just and proper.

8 **REQUEST FOR JURY TRIAL**

9 Plaintiff requests a jury trial on all causes of actions for which the
10 right to a jury exists under applicable state or federal law.

11
12 Dated: October 30, 2015

THORSNES BARTOLOTTA MCGUIRE LLP

13
14 Bv: s/ Benjamin I. Siminou

15 Benjamin I. Siminou
siminou@tbmlawyers.com

16 Attorneys for Plaintiff JASON DECARLO
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Index of Exhibits

Exhibit	Document	Page Number
A	Assembly Bill No. 684. Introduced by Assembly Member Bonilla, February 25, 2015	Exh A044-A047
B	Assembly Bill No. 684, Chapter 405	Exh B048-B062

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CERTIFICATE OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of eighteen (18) and am not a party to the within action; my business address is 2550 Fifth Avenue, 11th Floor, San Diego, California 92103.

On October 30, 2015, I served the following document(s):

Second Amended Class-Action Complaint

on all interested parties in this action by placing the original a true copy thereof enclosed in a sealed envelope addressed to:

Rebekah Kaufman, Esq. Tel: 415/268-7000
Lauren Wroblewski, Esq. Fax: 415/268-7522
Morrison & Foerster LLP Email: rkaufman@mofo.com
425 Market Street Email: lwroblewski@mofo.com
San Francisco. CA 94105

Martin D. Bern Tel: 415/512-4000
Munger, Tolles & Olson LLP Fax: 415/512-4077
560 Mission Street Email: martin.bern@mto.com
Twenty-Seventh Floor
San Francisco. CA 94105-2907

Maximillian Louis Feldman Tel: 213/683-9100
Keith Rhoderic Hamilton, II Fax: 213/687-3702
Munger, Tolles & Olson LLP Email:
355 South Grand Avenue, 35th Floor Maximillian.feldman@mto.com
Los Angeles, CA 90071-1560 Email: keith.hamilton@mto.com

BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U. S. Postal Service on the same day with postage thereon fully prepaid at San Diego, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit..


BY PERSONAL SERVICE: I served the documents on the persons [below or listed on an attachment hereto], as follows:.

BY FAX: By use of facsimile machine telephone number (619) 233-6039, I served a copy of the above-listed document(s) to the offices of the addressee on January 24, 2014 by transmitting by facsimile machine. The facsimile machine I used complied with California Rules of Court Rule 2.302, and no error was reported by the machine. Pursuant to California Rules of Court Rule 2.304(d), I caused the machine to print a transmission record of the transmission.

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- 1 **BY OVERNIGHT COURIER:** By depositing copies of the above
2 document(s) in a box or other facility regularly maintained by Fed-Ex
3 in an envelope or package designed by Fed-Ex with delivery fees paid
4 or provided for and sent to the person(s) named on the attached
5 service list [C.C.P. § 1013, 2015.5].
- 6 **BY ELECTRONIC:** I caused a true and correct copy thereof to be
7 electronically filed using the Court's Electronic Court Filing ("ECF")
8 system and service was completed by electronic means by transmittal
9 of a Notice of Electronic Filing on the registered participants of the ECF
10 System.
- 11 **BY CM/ECF SERVICE:** Pursuant to controlling General Order(s) and
12 Local Court Rule(s) the foregoing document will be served by the court
13 via NEF and hyperlink to the document. On October 30, 2015, I
14 checked the CM/ECF docket for this case or adversary proceeding and
15 determined that the following person(s) are on the Electronic Mail
16 Notice List to receive NEF transmission at the email addresses
17 indicated below.
- 18 [Federal] I declare that I am employed in the office of a member of
19 the bar of this court at whose direction the service was made.

20 Executed on October 30, 2015, at San Diego, California.

21 
22 Diane DeCarlo

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EXHIBIT A

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 684

Introduced by Assembly Member Bonilla

February 25, 2015

An act to amend Section 4200.3 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 684, as introduced, Bonilla. Pharmacy.

Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists by the California State Board of Pharmacy within the Department of Consumer Affairs. Existing law authorizes the board to license as a pharmacist an applicant who meets specified requirements, including passage of the North American Pharmacist Licensure Examination. Existing law requires the examination process to meet specified standards and federal guidelines and requires the board to terminate use of that examination if the department determines that the examination fails to meet those standards. Existing law requires the board to report to the now obsolete Joint Committee on Boards, Commissions, and Consumer Protection and the department specified examination pass rate information.

This bill would instead require the board to report that pass rate information to the appropriate policy committees of the Legislature and the department. The bill would also make nonsubstantive changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

AB 684

— 2 —

The people of the State of California do enact as follows:

1 SECTION 1. Section 4200.3 of the Business and Professions
2 Code is amended to read:

3 4200.3. (a) The examination process shall be regularly
4 reviewed pursuant to Section 139.

5 (b) The examination process shall meet the standards and
6 guidelines set forth in the Standards for Educational and
7 Psychological Testing and the ~~Federal~~ *federal* Uniform Guidelines
8 ~~for on~~ Employee Selection Procedures. The board shall work with
9 the Office of Professional Examination Services of the department
10 or with an equivalent organization who shall certify at minimum
11 once every five years that the examination process meets these
12 national testing standards. If the department determines that the
13 examination process fails to meet these standards, the board shall
14 terminate its use of the North American ~~Pharmacy~~ *Pharmacist*
15 Licensure Examination and shall use only the written and practical
16 examination developed by the board.

17 (c) The examination shall meet the mandates of subdivision (a)
18 of Section 12944 of the Government Code.

19 (d) The board shall work with the Office of Professional
20 Examination Services or with an equivalent organization to develop
21 the state jurisprudence examination to ensure that applicants for
22 licensure are evaluated on their knowledge of applicable state laws
23 and regulations.

24 (e) The board shall annually publish the pass and fail rates for
25 the pharmacist's licensure examination administered pursuant to
26 Section 4200, including a comparison of historical pass and fail
27 rates before utilization of the North American Pharmacist Licensure
28 Examination.

29 (f) ~~(1)~~ The board shall report to the ~~Joint Committee on Boards,~~
30 ~~Commissions, and Consumer Protection~~ *appropriate policy*
31 *committees of the Legislature* and the department as part of its
32 next scheduled review, the pass rates of applicants who sat for the
33 national examination compared with the pass rates of applicants
34 who sat for the prior state examination. This report shall be a
35 component of the evaluation of the examination process that is
36 based on psychometrically sound principles for establishing
37 minimum qualifications and levels of competency.

- 1 (2) *This subdivision shall become inoperative on January 1,*
- 2 *2020, pursuant to Section 10231.5 of the Government Code.*

O

EXHIBIT B



Assembly Bill No. 684

CHAPTER 405

An act to amend Sections 2546.2, 2546.9, 2550.1, 2554, 2556, 2567, 3010.5, 3011, 3013 of, to add Sections 2556.1, 2556.2, 3020, 3021, 3023.1 to, and to repeal and add Section 655 of, the Business and Professions Code, relating to healing arts.

[Approved by Governor October 1, 2015. Filed with
Secretary of State October 1, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 684, Alejo. State Board of Optometry: optometrists: nonresident contact lens sellers: registered dispensing opticians.

Existing law prohibits a licensed optometrist and a registered dispensing optician from having any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, with each other. Existing law prohibits a licensed optometrist from having any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, either by stock ownership, interlocking directors, trusteeship, mortgage, trust deed, or otherwise with any person who is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products. Existing law makes a violation of these provisions by a licensed optometrist and any other persons, whether or not a healing arts licensee, who participates with a licensed optometrist, subject to a crime.

Under existing law, the Medical Board of California is responsible for the registration and regulation of nonresident contact lens sellers and dispensing opticians. Existing law requires fees collected from nonresident contact lens sellers to be deposited in the Dispensing Opticians Fund, and to be available, upon appropriation, to the Medical Board of California. Existing law requires fees collected from registered dispensing optician to be paid into the Contingent Fund of the Medical Board of California. Existing law makes a violation of the registered dispensing optician provisions a crime. Existing law, the Optometry Practice Act, makes the State Board of Optometry responsible for the licensure and regulation of optometrists. A violation of the Optometry Practice Act is a crime. Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime.

This bill would repeal those prohibitions. The bill would prohibit a licensed optometrist from having any membership, proprietary interest,

coownership, or any profit-sharing arrangement, either by stock ownership, interlocking directors, trusteeship, mortgage, or trust deed, with any registered dispensing optician or any optical company, as defined, except as otherwise authorized. The bill would authorize a registered dispensing optician or optical company to operate, own, or have an ownership interest in a health plan, defined as a licensed health care service plan, if the health plan does not directly employ optometrists to provide optometric services directly to enrollees of the health plan, and would also provide for the direct or indirect provision of products and services to the health plan or its contracted providers or enrollees or to other optometrists, as specified. The bill would authorize an optometrist, a registered dispensing optician, an optical company, or a health plan to execute a lease or other written agreement giving rise to a direct or indirect landlord-tenant relationship with an optometrist if specified conditions are contained in a written agreement, as provided. The bill would authorize the State Board of Optometry, to inspect, upon request, an individual lease agreement, and the bill would require the landlord or tenant to comply. Because the failure to comply with that request would be a crime under specified acts, the bill would impose a state-mandated local program. The bill would prohibit a registered dispensing optician from having any membership, proprietary interest, coownership, or profit sharing arrangement either by stock ownership, interlocking directors, trusteeship, mortgage, or trust deed, with an optometrist, except as authorized. The bill would make a violation of these provisions a crime. By creating a new crime, the bill would impose a state-mandated local program.

This bill would instead make the State Board of Optometry responsible for the registration and regulation of nonresident contact lens sellers and dispensing opticians. The bill would direct fees collected from registered dispensing opticians and persons seeking registration as a dispensing optician to be paid into the Dispensing Opticians Fund, and to be available, upon appropriation, to the State Board of Optometry. The bill would make various conforming changes in that regard.

Existing law requires each registered dispensing optician to conspicuously and prominently display at each registered location the name of the registrant's employee who is currently designated to handle customer inquiries and complaints and the telephone number where he or she may be reached during business hours.

This bill would instead require specified consumer information to be displayed. Because a violation of the registered dispensing provisions would be a crime, the bill would impose a state-mandated local program.

Existing law makes it unlawful to, among other things, advertise the furnishing of, or to furnish, the services of a refractionist, an optometrist, or a physician and surgeon, or to directly or indirectly employ or maintain on or near the premises used for optical dispensing, a refractionist, an optometrist, a physician and surgeon, or a practitioner of any other profession for the purpose of any examination or treatment of the eyes.

This bill, except as specified, would make it unlawful for a registered dispensing optician to, among other things, advertise the furnishing of, or to furnish, the services of an optometrist or a physician and surgeon or to directly employ an optometrist or physician and surgeon for the purpose of any examination or treatment of the eyes. The bill would authorize the State Board of Optometry, by regulation, to impose and issue administrative fines and citations for a violation of these provisions, as specified. The bill would require all licensed optometrists in a setting with a registered dispensing optician to report the business relationship to the State Board of Optometry. The bill would authorize the State Board of Optometry to inspect any premises at which the business of a registered dispensing optician is co-located with the practice of an optometrist for the purposes of determining compliance with the aforementioned written lease agreement provisions. The bill would also authorize the State Board of Optometry to take disciplinary action against a party who fails to comply with the inspection and would require the State Board of Optometry to provide specified copies of the inspection results. Because would be a crime a violation of the registered dispensing provisions would be a crime, the bill would impose a state-mandated local program

This bill, until January 1, 2019, would prohibit an individual, corporation, or firm operating as a registered dispensing optician before the effective date of the bill, or an employee of such an entity, from being subject to any action for engaging in that aforementioned unlawful conduct. Because a violation of the registered dispensing provisions would be a crime, the bill would impose a state-mandated local program. The bill would require any health plan subject to these provisions to report to the State Board of Optometry in writing that certain percentages of its locations no longer employ an optometrist by specified dates. The bill would require the State Board of Optometry to provide those reports to the Director of Consumer Affairs and the Legislature.

Under existing law, the State Board of Optometry consists of 11 members, 6 licensee members and 5 public members.

This bill would require one of the nonpublic members to be a registered dispensing optician and would require the Governor to make that appointment. The bill would establish a dispensing optician committee to advise and make recommendations to the board regarding the regulation of dispensing opticians, as provided. The bill would require the advisory committee to consist of 5 members, including 2 registered dispensing opticians, 2 public members, and a member of the State Board of Optometry.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 655 of the Business and Professions Code is repealed.

SEC. 2. Section 655 is added to the Business and Professions Code, to read:

655. (a) For the purposes of this section, the following terms have the following meanings:

(1) "Health plan" means a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(2) "Optical company" means a person or entity that is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, health plans, or dispensing opticians of lenses, frames, optical supplies, or optometric appliances or devices or kindred products.

(3) "Optometrist" means a person licensed pursuant to Chapter 7 (commencing with Section 3000) or an optometric corporation, as described in Section 3160.

(4) "Registered dispensing optician" means a person licensed pursuant to Chapter 5.5 (commencing with Section 2550).

(5) "Therapeutic ophthalmic product" means lenses or other products that provide direct treatment of eye disease or visual rehabilitation for diseased eyes.

(b) No optometrist may have any membership, proprietary interest, coownership, or any profit-sharing arrangement, either by stock ownership, interlocking directors, trusteeship, mortgage, or trust deed, with any registered dispensing optician or any optical company, except as otherwise permitted under this section.

(c) (1) A registered dispensing optician or an optical company may operate, own, or have an ownership interest in a health plan so long as the health plan does not directly employ optometrists to provide optometric services directly to enrollees of the health plan, and may directly or indirectly provide products and services to the health plan or its contracted providers or enrollees or to other optometrists. For purposes of this section, an optometrist may be employed by a health plan as a clinical director for the health plan pursuant to Section 1367.01 of the Health and Safety Code or to perform services related to utilization management or quality assurance or other similar related services that do not require the optometrist to directly provide health care services to enrollees. In addition, an optometrist serving as a clinical director may not employ optometrists to provide health care services to enrollees of the health plan for which the optometrist is serving as clinical director. For the purposes of this section, the health plan's

utilization management and quality assurance programs that are consistent with the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) do not constitute providing health care services to enrollees.

(2) The registered dispensing optician or optical company shall not interfere with the professional judgment of the optometrist.

(3) The Department of Managed Health Care shall forward to the State Board of Optometry any complaints received from consumers that allege that an optometrist violated the Optometry Practice Act (Chapter 7 (commencing with Section 3000)). The Department of Managed Health Care and the State Board of Optometry shall enter into an Inter-Agency Agreement regarding the sharing of information related to the services provided by an optometrist that may be in violation of the Optometry Practice Act that the Department of Managed Health Care encounters in the course of the administration of the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with section 1340) of Division 2 of the Health and Safety Code.

(d) An optometrist, a registered dispensing optician, an optical company, or a health plan may execute a lease or other written agreement giving rise to a direct or indirect landlord-tenant relationship with an optometrist, if all of the following conditions are contained in a written agreement establishing the landlord-tenant relationship:

(1) (A) The practice shall be owned by the optometrist and in every phase be under the optometrist's exclusive control, including the selection and supervision of optometric staff, the scheduling of patients, the amount of time the optometrist spends with patients, fees charged for optometric products and services, the examination procedures and treatment provided to patients and the optometrist's contracting with managed care organizations.

(B) Subparagraph A shall not preclude a lease from including commercially reasonable terms that: (i) require the provision of optometric services at the leased space during certain days and hours, (ii) restrict the leased space from being used for the sale or offer for sale of spectacles, frames, lenses, contact lenses, or other ophthalmic products, except that the optometrist shall be permitted to sell therapeutic ophthalmic products if the registered dispensing optician, health plan, or optical company located on or adjacent to the optometrist's leased space does not offer any substantially similar therapeutic ophthalmic products for sale, (iii) require the optometrist to contract with a health plan network, health plan, or health insurer, or (iv) permit the landlord to directly or indirectly provide furnishings and equipment in the leased space.

(2) The optometrist's records shall be the sole property of the optometrist. Only the optometrist and those persons with written authorization from the optometrist shall have access to the patient records and the examination room, except as otherwise provided by law.

(3) The optometrist's leased space shall be definite and distinct from space occupied by other occupants of the premises, have a sign designating

that the leased space is occupied by an independent optometrist or optometrists and be accessible to the optometrist after hours or in the case of an emergency, subject to the facility's general accessibility. This paragraph shall not require a separate entrance to the optometrist's leased space.

(4) All signs and displays shall be separate and distinct from that of the other occupants and shall have the optometrist's name and the word "optometrist" prominently displayed in connection therewith. This paragraph shall not prohibit the optometrist from advertising the optometrist's practice location with reference to other occupants or prohibit the optometrist or registered dispensing optician from advertising their participation in any health plan's network or the health plan's products in which the optometrist or registered dispensing optician participates.

(5) There shall be no signs displayed on any part of the premises or in any advertising indicating that the optometrist is employed or controlled by the registered dispensing optician, health plan or optical company.

(6) Except for a statement that an independent doctor of optometry is located in the leased space, in-store pricing signs and as otherwise permitted by this subdivision, the registered dispensing optician or optical company shall not link its advertising with the optometrist's name, practice, or fees.

(7) Notwithstanding paragraphs (4) and (6), this subdivision shall not preclude a health plan from advertising its health plan products and associated premium costs and any copayments, coinsurance, deductibles, or other forms of cost-sharing, or the names and locations of the health plan's providers, including any optometrists or registered dispensing opticians that provide professional services, in compliance with the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(8) A health plan that advertises its products and services in accordance with paragraph (7) shall not advertise the optometrist's fees for products and services that are not included in the health plan's contract with the optometrist.

(9) The optometrist shall not be precluded from collecting fees for services that are not included in a health plan's products and services, subject to any patient disclosure requirements contained in the health plan's provider agreement with the optometrist or that are not otherwise prohibited by the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(10) The term of the lease shall be no less than one year and shall not require the optometrist to contract exclusively with a health plan. The optometrist may terminate the lease according to the terms of the lease. The landlord may terminate the lease for the following reasons:

(A) The optometrist's failure to maintain a license to practice optometry or the imposition of restrictions, suspension or revocation of the optometrist's

license or if the optometrist or the optometrist's employee is or becomes ineligible to participate in state or federal government-funded programs.

(B) Termination of any underlying lease where the optometrist has subleased space, or the optometrist's failure to comply with the underlying lease provisions that are made applicable to the optometrist.

(C) If the health plan is the landlord, the termination of the provider agreement between the health plan and the optometrist, in accordance with the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(D) Other reasons pursuant to the terms of the lease or permitted under the Civil Code.

(11) The landlord shall act in good faith in terminating the lease and in no case shall the landlord terminate the lease for reasons that constitute interference with the practice of optometry.

(12) Lease or rent terms and payments shall not be based on number of eye exams performed, prescriptions written, patient referrals or the sale or promotion of the products of a registered dispensing optician or an optical company.

(13) The landlord shall not terminate the lease solely because of a report, complaint, or allegation filed by the optometrist against the landlord, a registered dispensing optician or a health plan, to the State Board of Optometry or the Department of Managed Health Care or any law enforcement or regulatory agency.

(14) The landlord shall provide the optometrist with written notice of the scheduled expiration date of a lease at least 60 days prior to the scheduled expiration date. This notice obligation shall not affect the ability of either party to terminate the lease pursuant to this section. The landlord may not interfere with an outgoing optometrist's efforts to inform the optometrist's patients, in accordance with customary practice and professional obligations, of the relocation of the optometrist's practice.

(15) The State Board of Optometry may inspect, upon request, an individual lease agreement pursuant to its investigational authority, and if such a request is made, the landlord or tenant, as applicable, shall promptly comply with the request. Failure or refusal to comply with the request for lease agreements within 30 days of receiving the request constitutes unprofessional conduct and is grounds for disciplinary action by the appropriate regulatory agency. Only personal information as defined in Section 1798.3 of the Civil Code may be redacted prior to submission of the lease or agreement. This section shall not affect the Department of Managed Health Care's authority to inspect all books and records of a health plan pursuant to Section 1381 of the Health and Safety Code.

Any financial information contained in the lease submitted to a regulatory entity, pursuant to this paragraph, shall be considered confidential trade secret information that is exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(16) This subdivision shall not be applicable to the relationship between any optometrist employee and the employer medical group, or the relationship between a medical group exclusively contracted with a health plan regulated by the Department of Managed Health Care and that health plan.

(e) No registered dispensing optician may have any membership, proprietary interest, coownership, or profit sharing arrangement either by stock ownership, interlocking directors, trusteeship, mortgage, or trust deed, with an optometrist, except as permitted under this section.

(f) Nothing in this section shall prohibit a person licensed under Chapter 5 (commencing with Section 2000) or its professional corporation from contracting with or employing optometrists, ophthalmologists, or optometric assistants and entering into a contract or landlord tenant relationship with a health plan, an optical company, or a registered dispensing optician, in accordance with Sections 650 and 654 of this code.

(g) Any violation of this section constitutes a misdemeanor as to such person licensed under Chapter 7 (commencing with Section 3000) of this division and as to any and all persons, whether or not so licensed under this division, who participate with such licensed person in a violation of any provision of this section.

SEC. 3. Section 2546.2 of the Business and Professions Code is amended to read:

2546.2. All references in this chapter to the division shall mean the State Board of Optometry.

SEC. 4. Section 2546.9 of the Business and Professions Code is amended to read:

2546.9. The amount of fees prescribed in connection with the registration of nonresident contact lens sellers is that established by the following schedule:

(a) The initial registration fee shall be one hundred dollars (\$100).

(b) The renewal fee shall be one hundred dollars (\$100).

(c) The delinquency fee shall be twenty-five dollars (\$25).

(d) The fee for replacement of a lost, stolen, or destroyed registration shall be twenty-five dollars (\$25).

(e) The fees collected pursuant to this chapter shall be deposited in the Dispensing Opticians Fund, and shall be available, upon appropriation, to the State Board of Optometry for the purposes of this chapter.

SEC. 5. Section 2550.1 of the Business and Professions Code is amended to read:

2550.1. All references in this chapter to the board or the Board of Medical Examiners or division shall mean the State Board of Optometry.

SEC. 6. Section 2554 of the Business and Professions Code is amended to read:

2554. Each registrant shall conspicuously and prominently display at each registered location the following consumer information:

“Eye doctors are required to provide patients with a copy of their ophthalmic lens prescriptions as follows:

Spectacle prescriptions: Release upon completion of exam.

Contact lens prescriptions: Release upon completion of exam or upon completion of the fitting process.

Patients may take their prescription to any eye doctor or registered dispensing optician to be filled.

Optometrists and registered dispensing opticians are regulated by the State Board of Optometry. The State Board of Optometry receives and investigates all consumer complaints involving the practice of optometry and registered dispensing opticians. Complaints involving a California-licensed optometrist or a registered dispensing optician should be directed to:

California State Board of Optometry
Department of Consumer Affairs
2450 Del Paso Road, Suite 105
Sacramento, CA 95834
Phone: 1-866-585-2666 or (916) 575-7170
Email: optometry@dca.ca.gov
Website: www.optometry.ca.gov

SEC. 7. Section 2556 of the Business and Professions Code is amended to read:

2556. (a) Except as authorized by Section 655, it is unlawful for a registered dispensing optician to do any of the following: to advertise the furnishing of, or to furnish, the services of an optometrist or a physician and surgeon, to directly employ an optometrist or physician and surgeon for the purpose of any examination or treatment of the eyes, or to duplicate or change lenses without a prescription or order from a person duly licensed to issue the same. For the purposes of this section, "furnish" does not mean to enter into a landlord-tenant relationship of any kind.

(b) Notwithstanding Section 125.9, the board may, by regulation, impose and issue administrative fines and citations for a violation of this section or Section 655, which may be assessed in addition to any other applicable fines, citations, or administrative or criminal actions.

SEC. 8. Section 2556.1 is added to the Business and Professions Code, to read:

2556.1. All licensed optometrists in a setting with a registered dispensing optician shall report the business relationship to the State Board of Optometry, as determined by the board. The State Board of Optometry shall have the authority to inspect any premises at which the business of a registered dispensing optician is co-located with the practice of an optometrist, for the purposes of determining compliance with Section 655. The inspection may include the review of any written lease agreement between the registered dispensing optician and the optometrist or between the optometrist and the health plan. Failure to comply with the inspection or any request for information by the board may subject the party to disciplinary action. The board shall provide a copy of its inspection results, if applicable, to the Department of Managed Health Care.

SEC. 9. Section 2556.2 is added to the Business and Professions Code, to read:

2556.2. (a) Notwithstanding any other law, subsequent to the effective date of this section and until January 1, 2019, any individual, corporation, or firm operating as a registered dispensing optician under this chapter before the effective date of this section, or an employee of such an entity, shall not be subject to any action for engaging in conduct prohibited by Section 2556 or Section 655 as those sections existed prior to the effective date of this bill, except that a registrant shall be subject to discipline for duplicating or changing lenses without a prescription or order from a person duly licensed to issue the same.

(b) Nothing in this section shall be construed to imply or suggest that a person registered under this chapter is in violation of or in compliance with the law.

(c) This section shall not apply to any business relationships prohibited by Section 2556 commencing registration or operations on or after the effective date of this section.

(d) Subsequent to the effective date of this section and until January 1, 2019, nothing in this section shall prohibit an individual, corporation, or firm operating as a registered dispensing optician from engaging in a business relationship with an optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) before the effective date of this section at locations registered with the Medical Board of California before the effective date of this section.

(e) This section does not apply to any administrative action pending, litigation pending, cause for discipline, or cause of action accruing prior to September 1, 2015.

(f) Any health plan, as defined in Section 655, subject to this section shall report to the State Board of Optometry in writing that (1) 15 percent of its locations no longer employ an optometrist by January 1, 2017, (2) 45 percent of its locations no longer employ an optometrist by August 1, 2017, and (3) 100 percent of its locations no longer employ an optometrist by January 1, 2019. The board shall provide those reports as soon as it receives them to the director and the Legislature. The report to the Legislature shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 10. Section 2567 of the Business and Professions Code is amended to read:

2567. (a) The provisions of Article 19 (commencing with Section 2420) and Article 20 (commencing with Section 2435) of Chapter 5 which are not inconsistent or in conflict with this chapter apply to the issuance and govern the expiration and renewal of certificates issued under this chapter. All fees collected from persons registered or seeking registration under this chapter shall be paid into the Dispensing Opticians Fund, and shall be available, upon appropriation, to the State Board of Optometry for the purposes of this chapter. Any moneys within the Contingent Fund of the Medical Board of California collected pursuant to this chapter shall be deposited in the Dispensing Opticians Fund.

successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.

(b) Vacancies occurring shall be filled by appointment for the unexpired term.

(c) The Governor shall appoint three of the public members, five members qualified as provided in Section 3011, and the registered dispensing optician member as provided in Section 3010.5. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

(d) No board member serving between January 1, 2000, and June 1, 2002, inclusive, shall be eligible for reappointment.

(e) For initial appointments made on or after January 1, 2003, one of the public members appointed by the Governor and two of the professional members shall serve terms of one year. One of the public members appointed by the Governor and two of the professional members shall serve terms of three years. The remaining public member appointed by the Governor and the remaining two professional members shall serve terms of four years. The public members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall each serve for a term of four years.

(f) The initial appointment of a registered dispensing optician member shall replace the optometrist member whose term expired on June 1, 2015.

SEC. 14. Section 3020 is added to the Business and Professions Code, to read:

3020. (a) There shall be established under the State Board of Optometry a dispensing optician committee to advise and make recommendations to the board regarding the regulation of a dispensing opticians pursuant to Chapter 5.5 (commencing with Section 2550). The committee shall consist of five members, two of whom shall be registered dispensing opticians, two of whom shall be public members, and one of whom shall be a member of the board. Initial appointments to the committee shall be made by the board. The board shall stagger the terms of the initial members appointed. The filling of vacancies on the committee shall be made by the board upon recommendations by the committee.

(b) The committee shall be responsible for:

(1) Recommending registration standards and criteria for the registration of dispensing opticians.

(2) Reviewing of the disciplinary guidelines relating to registered dispensing opticians.

(3) Recommending to the board changes or additions to regulations adopted pursuant to Chapter 5.5 (commencing with Section 2550).

(4) Carrying out and implementing all responsibilities and duties imposed upon it pursuant to this chapter or as delegated to it by the board.

(c) The committee shall meet at least twice a year and as needed in order to conduct its business.

(d) Recommendations by the committee regarding scope of practice or regulatory changes or additions shall be approved, modified, or rejected by the board within 90 days of submission of the recommendation to the board. If the board rejects or significantly modifies the intent or scope of the

recommendation, the committee may request that the board provide its reasons in writing for rejecting or significantly modifying the recommendation, which shall be provided by the board within 30 days of the request.

(e) After the initial appointments by the board pursuant to subdivision (a), the Governor shall appoint the registered dispensing optician members and the public members. The committee shall submit a recommendation to the board regarding which board member should be appointed to serve on the committee, and the board shall appoint the member to serve. Committee members shall serve a term of four years except for the initial staggered terms. A member may be reappointed, but no person shall serve as a member of the committee for more than two consecutive terms.

SEC. 15. Section 3021 is added to the Business and Professions Code, to read:

3021. The board shall have rulemaking authority with respect to Chapter 5.45 (commencing with Section 2546) and Chapter 5.5 (commencing with Section 2550) in accordance with Section 3025. Regulations adopted pursuant to Chapter 5.45 (commencing with Section 2546) and Chapter 5.5 (commencing with Section 2550) by the Medical Board of California prior to the effective date of this section shall continue to be valid, except that any reference to the board or division contained therein shall be construed to mean the State Board of Optometry, unless the context determines otherwise.

SEC. 16. Section 3023.1 is added to the Business and Professions Code, to read:

3023.1. (a) The nonresident contact lens seller program established under Chapter 5.45 (commencing with Section 2546) and the registered dispensing optician, spectacle lens dispensing, and contact lens dispensing programs established under Chapter 5.5 (commencing with Section 2550) are hereby transferred from the jurisdiction of the Medical Board of California and placed under the jurisdiction of the State Board of Optometry.

(b) All the duties, powers, purposes, responsibilities, and jurisdictions of the Medical Board of California under Chapter 5.45 (commencing with Section 2546) and Chapter 5.5 (commencing with Section 2550) shall be transferred to the State Board of Optometry.

(c) For the performance of the duties and the exercise of the powers vested in the board under Chapter 5.45 (commencing with Section 2546) and Chapter 5.5 (commencing with Section 2550), the State Board of Optometry shall have possession and control of all records, papers, offices, equipment, supplies, or other property, real or personal, held for the benefit or use by the Medical Board of California.

SEC. 17. The Legislature finds and declares that Section 1 of this act imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to

Ch. 405

— 14 —

demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to allow the State Board of Optometry and the Department of Managed Health Care to fully accomplish its goals, it is imperative to protect the interests of those persons submitting information to those departments to ensure that any personal or sensitive business information that this act requires those persons to submit is protected as confidential information.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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