

DISTRICT COURT, COUNTY OF DENVER STATE OF COLORADO Denver City & County Building 1437 Bannock Street Denver, CO 80202	DATE FILED: September 2, 2017 1:58 PM FILING ID: C6C7544826FD4 CASE NUMBER: 2017CV33274
<b>Plaintiffs:</b> KENDALL HEISE, KIM HEISE, on behalf of themselves and those similarly situated.  <b>Defendant:</b> EUROPTICS, INC. d/b/a EUROPTICS	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Kevin S. Hannon, #16015 Justin D. Blum, #36844 THE HANNON LAW FIRM, LLC 1641 Downing Street Denver, CO 80218 Tel: (303) 861-8800 Fax: (303) 861-8855 Email: <a href="mailto:khannon@hannonlaw.com">khannon@hannonlaw.com</a> <a href="mailto:jblum@hannonlaw.com">jblum@hannonlaw.com</a>	Case Number:  Division:
<b>COMPLAINT AND JURY DEMAND</b>	

**INTRODUCTION**

1. This action is brought as a class action under Rule 23 of the Colorado Rules of Civil Procedure.

2. Plaintiffs, individually, and as representatives of the Class Members, seek compensatory damages arising out of Defendant Europtics, Inc.'s distribution of eclipse glasses that were unsafe and hazardous for viewing a solar eclipse. Class damages include annoyance, discomfort, inconvenience and the cost of a medical monitoring program.

**JURISDICTION**

3. The Defendant resides and is found in Denver County so that jurisdiction and

venue are proper in the District Court of Denver County.

### **PLAINTIFFS/CLASS REPRESENTATIVES**

4. Plaintiffs Kendall Heise and Kim Heise reside at 4423 Whipporwill Place, Castle Rock, Colorado 80109. Plaintiffs received unsafe and hazardous eclipse glasses from the Europtics, Inc. store located at 7301 Santa Fe Drive, Littleton, Colorado 80120 as part of a purchase of eyeglasses at that store.

### **DEFENDANT**

5. Defendant Europtics, Inc. d/b/a Europtics (“Europtics”) at all times relevant hereto was and is a corporation organized under the laws of Colorado. Defendant Europtics’ principal place of business is located at 100 Fillmore Street, Suite LL-2, Denver, Colorado 80206. Europtics is a Colorado corporation that was formed in 1983 that among other activities sells and manufactures prescription eyewear. Europtics also has optometrists and opticians at their stores who provide eye examination and optical services.

### **GENERAL FACTUAL ALLEGATIONS**

6. On August 21, 2017, the entire United States was treated to a once-every-two-generations event: a total eclipse of the sun by the Earth’s moon.<sup>1</sup> Such events are known as Solar Eclipses. During a Solar Eclipse, the moon moves between the sun and the Earth. When the orbital planes of both the sun and the moon are identical, the moon casts a shadow onto the Earth.<sup>2</sup>

7. There are three types of Solar Eclipses. The first is a partial Solar Eclipse, which happens when the orbital planes of the moon and the sun are not in exact alignment. The second

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<sup>1</sup> See, Solar Eclipse 2017, <https://www.nasa.gov/eclipse2017>, last visited August 22, 2017.

<sup>2</sup> See, Solar Eclipse 2017, <https://www.nasa.gov/content/eclipses-and-transits-overview>, last

type of Solar Eclipse is an “annular” Solar Eclipse, which happens when the moon is farther away from the Earth.

8. The third category of Solar Eclipse, and the type relevant to the claims alleged herein, is a “total” Solar Eclipse. A Total Solar Eclipse event (“TSE”) takes place only when the sun, moon and Earth move toward being exactly lined up, and is generally visible only in a narrow path on Earth.

9. During a TSE, the moon actually casts two shadows on the Earth. The first shadow is known as the “umbra” and is the dark center of the moon’s shadow, which gets smaller as it reaches Earth. The second shadow is known as the “penumbra” which gets larger as it reaches Earth. People standing in the penumbra will see a partial eclipse, while those standing in the umbra will see a total eclipse, also known as a “Totality.” Serious eye injury can occur when people view either partial or total solar eclipses without adequate protective eyewear. Indeed, the National Aeronautics and Space Administration website warns of this danger on its eclipse website.<sup>3</sup>

10. Watching a solar eclipse (staring at the moon’s blocking of the sun) without proper eye protection creates a significant increased risk of eye injury, and can cause permanent, irreparable eye damage.<sup>4</sup> The American Academy of Ophthalmology (“AAO”) states unequivocally that looking directly at the sun can seriously damage your eyes. The AAO admonishes that “[s]taring at the sun for even a short time without wearing the right eye

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visited August 22, 2017.

<sup>3</sup> *Id.*

<sup>4</sup> See, <https://www.aao.org/eye-health/tips-prevention/solar-eclipse-eye-safety>, last accessed August 22, 2017.

protection can damage your retina permanently.”<sup>5</sup> Even short exposures can cause vision impairment, including solar retinopathy.<sup>6</sup> Exposure of the retina to intense visible light causes physical damage to the retina itself, triggering chemical reactions within the retina. This potential for harm from viewing a TSE is well-known to ophthalmologists and optometrists.

11. According to a paper published by the Royal College of Ophthalmologists in the United Kingdom, symptoms of solar retinopathy can include the following symptoms:

- blurry vision
- a central blind spot in one or both eyes
- increased sensitivity to light
- distorted vision
- changes in perception of color.<sup>7</sup>

Short-term issues arising from unprotected or improperly protected Solar Eclipse watching can include “solar keratitis” which is similar to sunburn of the cornea (the front part of the eye) and can cause eye pain and light sensitivity, with symptoms often occurring within 24 hours after exposure.<sup>8</sup>

12. The AAO warns on its website that the only safe way to look directly at the sun is through special purpose solar filters.<sup>9</sup> This is especially true for looking at the sun directly

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See, <https://www.cbsnews.com/news/did-the-solar-eclipse-damage-your-eyes-heres-how-to-tell/>, last viewed August 22, 2017.

<sup>8</sup> See, [https://www.washingtonpost.com/news/to-your-health/wp/2017/08/22/do-your-eyes-hurt-after-the-solar-eclipse-heres-what-you-need-to-know/?utm\\_term=.311047321af1](https://www.washingtonpost.com/news/to-your-health/wp/2017/08/22/do-your-eyes-hurt-after-the-solar-eclipse-heres-what-you-need-to-know/?utm_term=.311047321af1), last viewed August 22, 2017.

<sup>9</sup> See, <https://www.aao.org/eye-health/tips-prevention/solar-eclipse-eye-safety>, last accessed August 22, 2017.

during a TSE (such as the one in August 2017), and irrespective of whether one watches the total solar eclipse from its umbra or penumbra.<sup>10</sup> These special purpose filters are used in what are commonly referred to as “eclipse glasses,” and must meet a stringent worldwide standard known as ISO 12312-2. Commercially available sunglasses, even with the darkest and polarized lenses, do not meet ISO 12312-2 requirements and are not safe for viewing Solar Eclipses.<sup>11</sup> Only those glasses with lenses that meet the very stringent requirements of ISO 12312-2 are suitable for safe direct Solar Eclipse viewing.

13. On August 10, 2017, Defendant Europtics posted a blog on its website entitled “The Once In A Century Solar Eclipse.”<sup>12</sup> The post states that “the only way to look directly at the uneclipsed or partially eclipsed sun is through special-purpose solar filters, such as ‘eclipse glasses’ . . . or hand-held solar viewers. Homemade filters or ordinary sunglasses, even very dark ones, are not safe for looking at the sun.”<sup>13</sup>

14. Europtics at all times relevant hereto was aware of the ISO standard 12312-2 that made compliant eclipse glasses safe to use to view the August 21, 2017 eclipse. Europtics was aware that providing eclipse glasses that did not meet that standard could and likely would result in eye injury.

15. Upon information and belief, Europtics distributed eclipse glasses to customers at their stores prior to the August 21, 2017 eclipse. These glasses did not meet the ISO 12312-2 standards for eye protection and so were unsafe and hazardous for viewing a solar eclipse.

16. Europtics offered eclipse glasses with the sale of a new pair or the pick up of a

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See, <https://europtics.net/fun-facts/century-solar-eclipse/>, last accessed August 25, 2017.

previously purchased pair of eyeglasses or sunglasses.

17. On August 20, 2017, Plaintiffs visited the Europtics store at 7301 Santa Fe Drive, Littleton, Colorado 80120 to purchase a pair of eye glasses. As part of completing the sale of two pairs of eyeglasses, a Europtics employee handed them a pair of eclipse glasses.

18. The eclipse glasses Europtics provided to its customers did not meet the ISO 12312-2 standards for eye protection and so were unsafe and hazardous for viewing a solar eclipse.

19. On August 21, 2017, Plaintiffs Kendall and Kim Heise used the eclipse glasses given to them as part of a purchase of glasses from Europtics to view the TSE from Castle Rock, Colorado. After using the Europtics eclipse glasses, Ms. Heise began to experience injuries including, but not limited to, discomfort, blurred vision, increased sensitivity to light, and distorted vision, and certain of these harms and impairments continue.

### **CLASS MEMBERS**

20. Plaintiffs bring this class action on behalf of themselves and those similarly situated (“Class Members”). The Class is defined as:

All persons who used eclipse glasses received or purchased from a Europtics, Inc. store to observe the total solar eclipse event on August 21, 2017.

Excluded from the Class are any officers, directors, agents, current employees, or representatives of Defendant.

### **QUESTIONS OF LAW AND FACT COMMON TO CLASS MEMBERS**

21. For each Plaintiff and each other member of the Class, the following questions of law and fact, among others, are common:

- a. Whether the Defendant owed duties to Plaintiffs and members of

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<sup>13</sup> *Id.*

- the Class to distribute safe eclipse glasses at its stores;
- b. Whether Defendant breached its duties to Plaintiffs and members of the Class;
  - c. Whether the eclipse glasses Defendant distributed to Plaintiffs and members of the Class were not compliant with ISO standard 12312-2;
  - d. Whether the eclipse glasses Defendant distributed to Plaintiffs and members of the Class were falsely labeled as certified to be compliant with ISO standard 12312-2 and therefore unsafe to use to view the August 2017 solar eclipse;
  - e. Whether the eclipse glasses Defendant distributed to Plaintiffs and members of the Class were unsafe;
  - f. Whether Defendant knew or should have known that the eclipse glasses Defendant distributed to Plaintiffs and members of the Class were unsafe;
  - g. Whether the Defendant owed a duty to inspect the eclipse glasses it distributed to Plaintiffs and the members of the Class;
  - h. Whether the Defendant properly inspected the eclipse glasses before it distributed them to Plaintiffs and members of the Class; and
  - i. Whether Plaintiffs and the members of the Class suffered damages as a direct and proximate result of Defendant's breaches.

22. The Class is so numerous that joinder of all members is impracticable. While the exact number is unknown at this time, class members are identifiable by appropriate discovery, including discovery of Defendant's records. It is reasonable to conclude that the members of the Class are so numerous that joinder of all members is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court.

23. Plaintiffs' claims are typical of the claims of the members of the Class since all members of the Class are similarly affected by Defendant's conduct, resulting in damage to all members of the Class.

24. Plaintiffs will fairly and adequately protect the interests of members of the Class and have retained counsel competent and experienced in class action litigation.

25. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Class and have the resources to do so.

26. Neither Plaintiffs nor their counsel have interests adverse to any of the Class.

27. The common questions of law and fact set forth above and others predominate over any questions affecting only individual members of the Class.

28. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all members is impracticable.

29. Defendant has acted on grounds generally applicable to the Class, thereby making appropriate final legal and/or equitable relief with respect to the Class as a whole.

30. Furthermore, the expense and burden of individual litigation outweighs the



individual damages suffered by individual Class Members, making it impossible for members of the Class to individually redress the wrongs done to them.

31. Class treatment of common questions of law and fact will conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication.

32. There will be no difficulty in the management of this action as a class action.

### **DAMAGES TO PLAINTIFFS AND CLASS MEMBERS**

33. As a result of the Defendant's negligence, Plaintiffs and Class Members have suffered and continue to suffer damages and losses including, but not limited to, those identified below.

34. As a direct and proximate result of Defendant's conduct in distributing eclipse glasses that were not ISO standard 12312-2 compliant and so were unsafe and hazardous for viewing the solar eclipse, Plaintiffs and the Plaintiff Class have suffered a significant increased risk of injury or disease, requiring an award of the cost of diagnostic testing for the early detection of such eye injury, disease process or disease resulting from exposure to the sun during the total solar eclipse event on August 21, 2017 caused by Defendant's unsafe and hazardous eclipse glasses. Reasonable procedures exist for the early detection of eye injury, disease process and disease caused by unsafe exposure to the sun resulting from exposure to the sun from Defendant's unsafe eclipse glasses. Early detection of injury, disease or disease process resulting from exposure to the sun caused by Defendant's unsafe eclipse glasses will benefit Plaintiffs and Class Members.

35. As a result of Defendant's conduct, Plaintiffs and Plaintiff Class have suffered annoyance, discomfort, and inconvenience.

36. After using the Europtics eclipse glasses, Ms. Heise began to experience annoyances, including but not limited to, blurred vision, increased sensitivity to light, and distorted vision, and certain of these annoyances continue.

### **FIRST CLAIM FOR RELIEF - NEGLIGENCE**

37. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint as if they were fully set forth herein.

38. Europtics owed Plaintiffs and Class Members a duty of care with regard to the distribution of eclipse glasses. The duty of care included the duty to distribute safe, effective, and standards-compliant eclipse glasses for viewing a TSE, and the duty to inspect to ensure the glasses that it provided to Plaintiffs and Class Members were in fact safe and standards-compliant.

39. Europtics knew that viewing the August 21, 2017 eclipse through eclipse glasses that were not ISO standard 12312-2 compliant would create a significant risk of eye injury to those to whom they provided their eclipse glasses.

40. Europtics breached its duty owed to Plaintiffs and Class Members by failing to examine and ensure the eclipse glasses it distributed were safe, effective, and standards-compliant for use by its customers in viewing a solar eclipse, and by distributing eclipse glasses to Plaintiffs and the members of the Class that would not protect their eyes from harm when viewing the 2017 TSE.

41. As a direct and proximate result of the negligence of Europtics, Plaintiffs

and Class Members have suffered and will continue to suffer damages including, but not limited to, those identified in paragraphs 34 and 35 above. Individually, Plaintiff Kendall Heise suffered and will continue to suffer damages including, but not limited, to those identified in paragraph 36 above. These damages were preventable had Europtics met its duty of care to Plaintiffs and the Class. Accordingly, Europtics is liable to Plaintiffs and Class Members for compensatory damages.

### **SECOND CLAIM FOR RELIEF - NEGLIGENT MISREPRESENTATION**

42. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint as if they were fully set forth herein.

43. By distributing the eclipse glasses to its customers, Europtics represented to its customers that the eclipse glasses were ISO standard 12312-2 compliant and safe to view the 2017 TSE, particularly given that Europtics is in the business of eyewear and eye health. Europtics negligently misrepresented that the eclipse glasses it provided to its customers were safe and effective for their intended use of viewing the TSE.

44. Plaintiffs and Class Members relied upon Europtics' implied representation that the eclipse glasses it distributed as part of the sale of eyeglasses were safe for use in viewing the TSE on August 21, 2017.

45. It was reasonable for Plaintiffs and Class Members to rely on the representation of Europtics as to the safety of the eclipse glasses for viewing of a solar eclipse as Europtics is a leading optical store in Colorado with certified opticians at each store and optometrists at several stores, and Plaintiffs relied on such representations.

46. As a result of the reasonable reliance by Plaintiffs and the Class, Plaintiffs

and the Class observed the eclipse believing it was safe to use the eclipse glasses provided by Defendant, resulting in unsafe exposure to the sun during the TSE and a significant increased risk of eye injury, disease or disease process.

47. As a direct and proximate result of their reliance on Europtics' negligent misrepresentation, Plaintiffs and Class Members have suffered and will continue to suffer damages including, but not limited to, those identified in paragraphs 34 and 35 above. Individually, Plaintiff Kendall Heise suffered and will continue to suffer damages including, but not limited to, those identified in paragraph 36 above. Accordingly, Europtics is liable to Plaintiffs and Class Members for compensatory damages.

### **THIRD CLAIM FOR RELIEF - NEGLIGENT FAILURE TO WARN**

48. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint as if they were fully set forth herein.

49. Defendant Europtics knew or should have known that the eclipse glasses it gave to Plaintiffs and Class Members were not compliant with ISO standard 12312-2 for the protection of their eyes during viewing the TSE.

50. Defendant Europtics failed to warn Plaintiffs and Class Members that the eclipse glasses it provided to its customers were neither standards-compliant nor safe for the protection of their eyes during viewing the TSE.

51. As a direct and proximate result of the reliance by Plaintiffs and Class Members on Europtics' negligent failure to warn, Plaintiffs and Class Members have suffered and will continue to suffer damages including, but not limited to, those identified in paragraphs 34 and 35 above. Individually, Plaintiff Kendall Heise suffered and will

continue to suffer damages including, but not limited to, those identified in paragraph 36 above. Accordingly, Europtics is liable to Plaintiffs and Class Members for compensatory damages.

**FOURTH CLAIM FOR RELIEF – BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**

52. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint as if they were fully set forth herein.

53. Defendant distributed as part of a sale and impliedly warranted the eclipse glasses to be fit for the purpose of safely viewing the August 21, 2017 TSE.

54. Plaintiffs and the Class had a reasonable expectation as to the safety of the eclipse glasses for viewing a solar eclipse as Europtics is a leading optical chain store in Colorado with certified opticians at each store and optometrists at several stores, and they relied on such representations.

55. The eclipse glasses were not suitable for the particular purpose for which they were warranted as they did not meet the ISO standard 12312-2 and were unsafe and hazardous for viewing a solar eclipse.

56. Plaintiffs and Class Members used the eclipse glasses in the ordinary, intended and foreseeable manner in which the product was to be used in reliance on Europtics' said warranty.

57. Prior to filing suit, Plaintiffs notified Europtics of the unsafe nature of its eclipse glasses.

58. As a direct and proximate result of the reliance by Plaintiffs and Class

Members on Europtics' breach of implied warranty of fitness for a particular purpose, Plaintiffs and Class Members have suffered and will continue to suffer damages including, but not limited to, those identified in paragraphs 34 and 35 above. Individually, Plaintiff Kendall Heise suffered and will continue to suffer damages including, but not limited to, those identified in paragraph 36 above. Accordingly, Europtics is liable to Plaintiffs and Class Members for compensatory damages.

**FIFTH CLAIM FOR RELIEF – INJUNCTIVE RELIEF**

59. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint as if they were fully set forth herein.

60. In addition to or in the alternative to the above, Plaintiffs bring this class action under C.R.C.P. 23(b)(2) because Defendant has acted or refused to act on grounds that apply generally to the Class as a whole, such that final injunctive relief is appropriate with respect to the Class as a whole.

61. Such injunctive relief includes, but is not limited to, the implementation and funding of diagnostic testing for the Plaintiffs and the Plaintiff Class for the early detection of eye injury, disease process and disease resulting from exposure to the sun caused by Defendant's unsafe eclipse glasses.

WHEREFORE, Plaintiffs request the following relief:

- a. an order certifying this action as a class action under C.R.C.P. 23;
- b. judgment against Defendant for compensatory damages in a fair and just amount as established at trial;
- c. alternative injunctive relief to fund a medical monitoring program;

- d. statutory interest from the date this cause of action accrued or as otherwise allowed by law;
- e. court costs, expert witness fees, deposition expenses, and other fees; and
- f. such other and further relief as the Court deems just and proper.

PLAINTIFFS DEMAND A TRIAL BY A JURY OF SIX.

Dated: September 2, 2017

Respectfully submitted,

/s/ Kevin S. Hannon

Kevin S. Hannon, #16015

Justin D. Blum, #36844

**DULY AUTHORIZED SIGNATURE OF  
KEVIN S. HANNON AND JUSTIN D. BLUM  
ON FILE AT THE HANNON LAW FIRM, LLC**

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