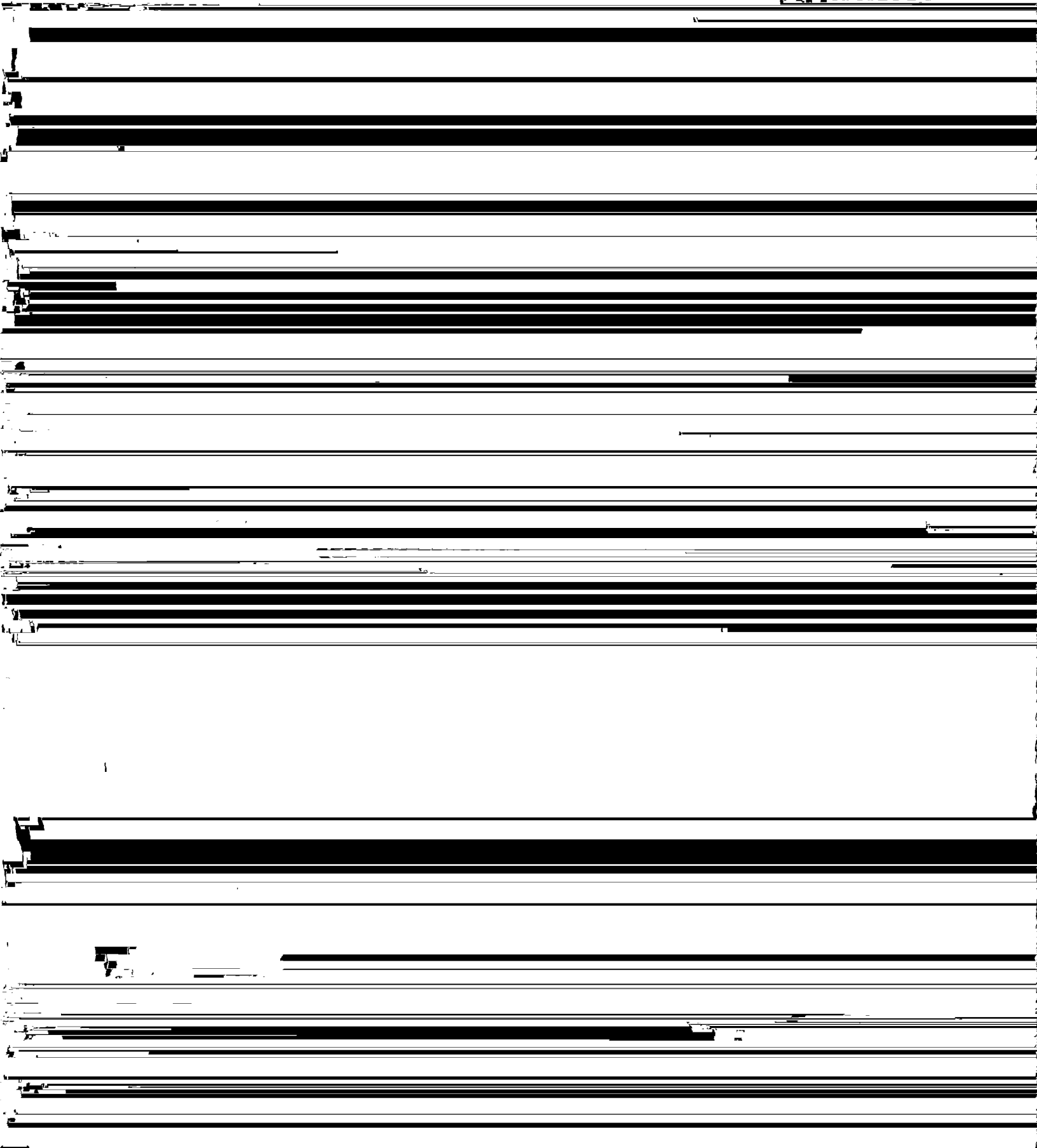


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regarding the Supreme Court's decision in *California Dental*<sup>2</sup> and the Fifth

Circuit's decision in *Viazis*,<sup>3</sup> reads out of existence any viable reading of the Rule of Reason, disregards the facts surrounding NTSP's conduct, denies NTSP a due process right to conduct discovery on and litigate the issue of justification, and conflicts with the Commission's Statements of Antitrust Enforcement Policy in Health Care and staff advisory letters.

The same error also permeates the order issued by the Commission by mandatorily terminating health care contracts without any inquiry into the circumstances of the contracts or any concern for the wishes of patients, physicians, and health plans availing themselves of the contracts. The "all or nothing" principle also led the Commission to fail to recognize the many legitimate reasons NTSP has for refusing to become involved in a payor's offer and for communicating factual information to physicians, employers, patients, and health care plans.

By using the word "direct" Complaint Counsel attempts to mask the significance of the error

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on December 29, 2005, I caused a copy of the foregoing document to be served upon the following persons:

Michael Bloom (via Federal Express and e-mail)  
Director of Litigation  
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