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CLOSED

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	Civ. No. <u>06-3591 (JAG)</u>
)	
WALSH OPTICAL, INC., a corporation,)	
and)	
KEVIN WALSH, individually and as an officer)	
of the corporation,)	
Defendants.)	
)	

CONSENT DECREE AND ORDER FOR CIVIL PENALTIES



INJUNCTION, AND OTHER RELIEF

WHEREAS plaintiff, the United States of America, has commenced this action by filing the Complaint herein; defendants have waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without defendants admitting liability for any of the

THEREFORE, on the joint motion of plaintiff and defendants, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter and of the parties.
2. The Complaint states a claim upon which relief may be granted against the

defendant

("FCLCA"), 15 U.S.C. §§ 7608(a) and (b), and Sections 5(a)(1), 5(m)(1)(A), 13(b), 16(a) and 19(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), 56(a), and 57b(a)(1). Among other things, the Complaint alleges that defendants violated the Contact Lens Rule, 16 C.F.R. Part 315, by selling contact lenses without either obtaining the

and employees, and all persons in active concert or participation with any one of them who

~~are in active concert or participation with any one of them who~~

[REDACTED]

[REDACTED]

[REDACTED]

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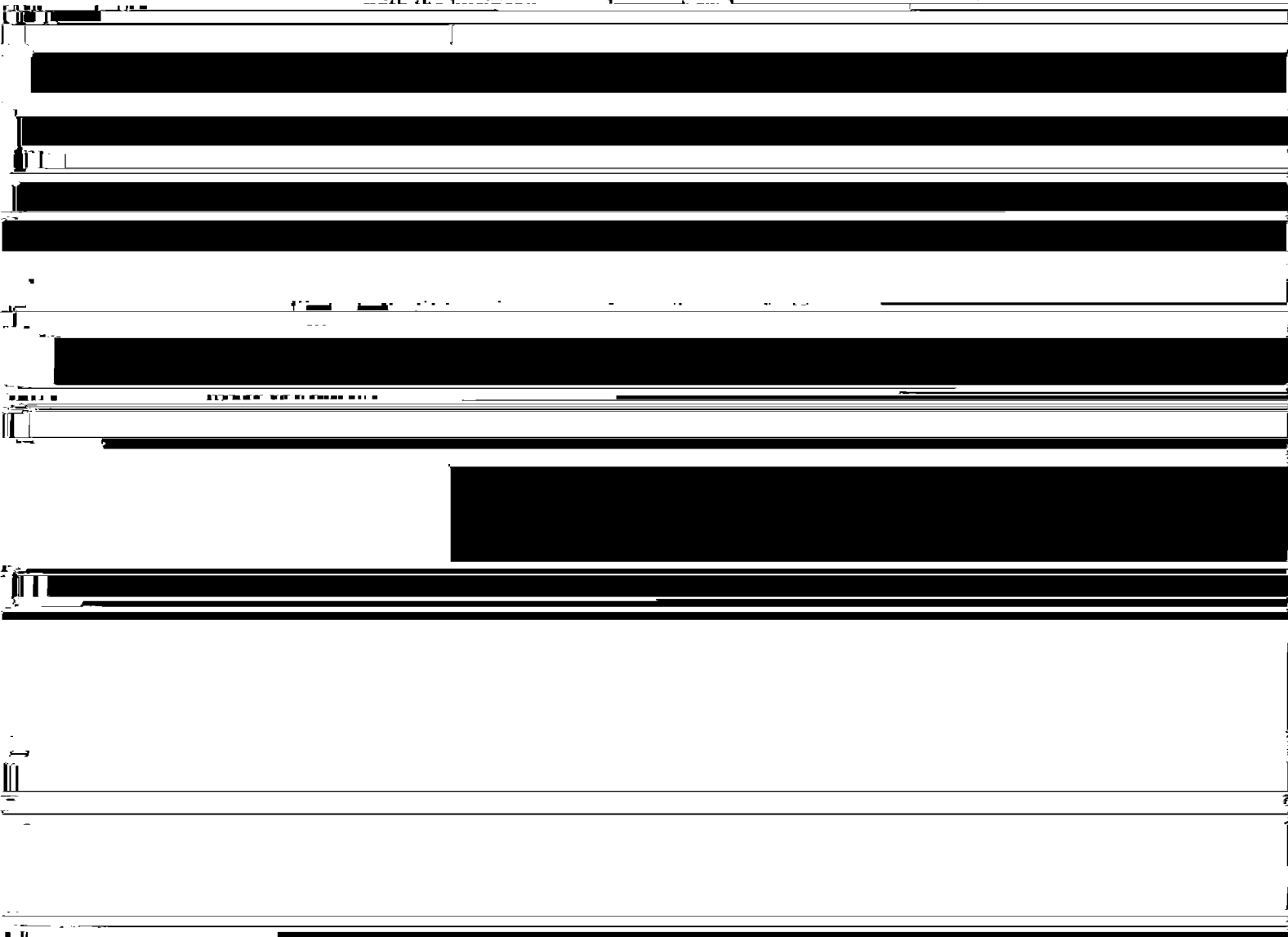
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~~Kevin Walsh shall deliver a copy of this Order and~~

the Compliance Guides to all principals, officers, directors, and managers of that business. Kevin Walsh shall also deliver copies of this Order and the Compliance Guides to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon defendant. For new

- ii. Any changes in his employment status (including self-employment), and any change in his ownership of any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each such business that Kevin Walsh is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of his duties and responsibilities in connection
- 

names; and

- b. Defendants shall notify the Commission of any changes in the corporate structure

of Walsh Optical or any business entity that Kevin Walsh directly or indirectly

16. Within sixty (60) days after the date of entry of this Order, Walsh Optical and Kevin Walsh each shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with

this Order. This report shall include, but need not be limited to,

- v. A sample copy of each different type of communication used to request prescription information from consumers including, but not limited to, any online form, email message, telephone script, web page, or screen;
- vi. A sample copy of each different type of communication used to submit verification requests to prescribers, including, but not limited to, any fax form, email message, or telephone script;

RECORDKEEPING

19. For a period of six (6) years from the date of entry of this Order, defendants shall maintain, and make available to the Commission pursuant to Paragraph 11, business records demonstrating full compliance with the terms and provisions of this Order, including, but not limited to: a sample copy of every different type of communication used to request prescription information from consumers or to submit verification requests to prescribers; copies of all acknowledgments of receipt of this Order, required by Paragraph 10; and all reports submitted to

the Commission pursuant to Paragraphs 15 and 16. The Commission shall have the right to

The parties, by their counsel, hereby consent to the terms and conditions of the Consent

Debra is not fairly shown and consent to the terms and conditions of Debra's testimony as stated in that manner

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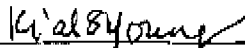
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FOR THE DEFENDANTS

WALSH OPTICAL, INC.

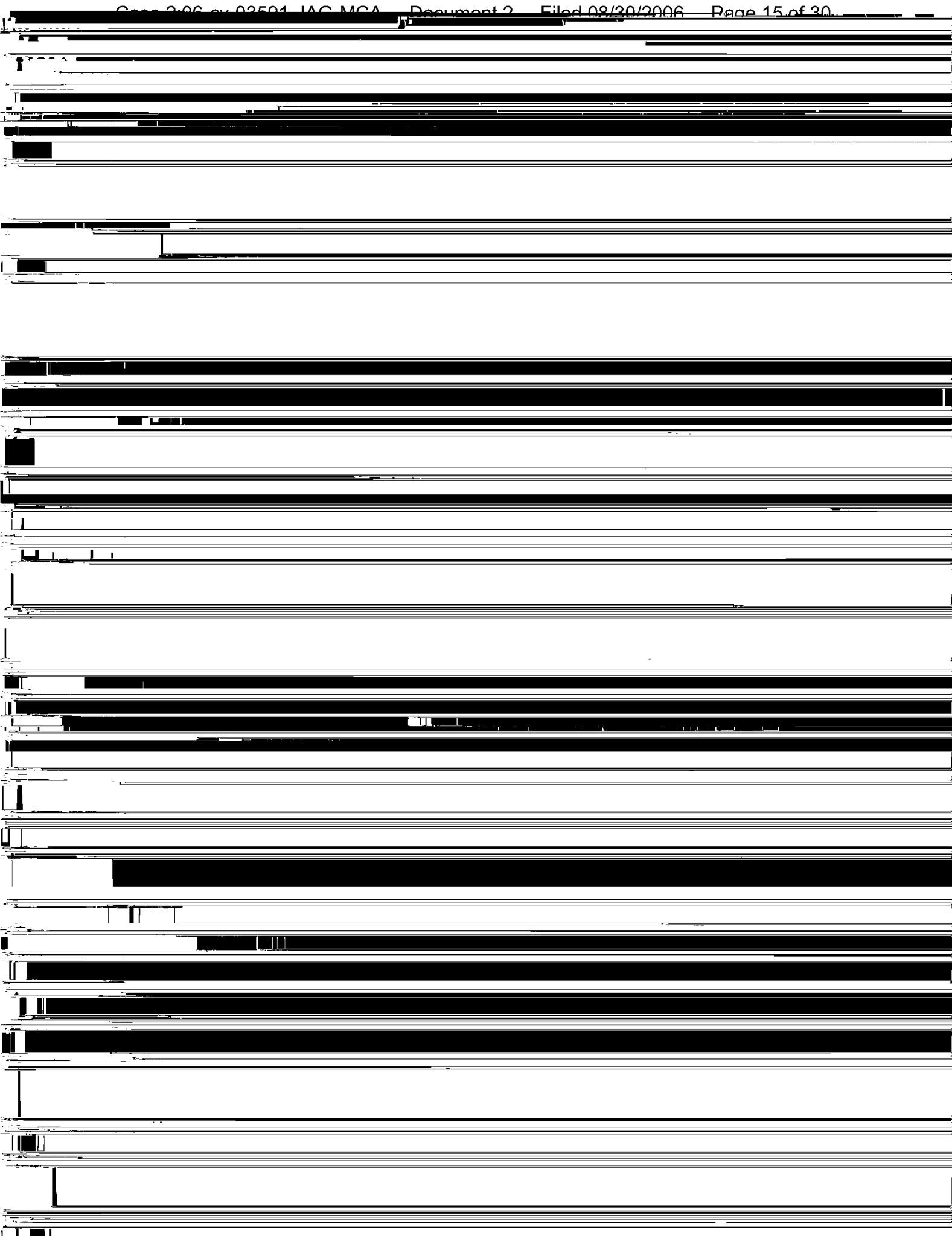


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Attorney for the Defendants

ATTACHMENT A



Federal Trade Commission

§ 315.5

§ 315.5 Availability of contact lens prescriptions to patients.

(a) *In general.* When a prescriber completes a contact lens fitting, the prescriber:

- (1) Whether or not requested by the patient, shall provide to the patient a copy of the contact lens prescription; and
- (2) Shall, as directed by any person

(2) Verified by direct communication.

(b) *Information for verification.* When seeking verification of a contact lens prescription, a seller shall provide the prescriber with the following information through direct communication:

- (1) The patient's full name and address;
- (2) The contact lens power, manufac-

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Facts for Business

or appropriate designation, and diameter
when appropriate

the complete verification request that the pre-
scription is inaccurate, expired, or otherwise

Facts for Business

recipient, or leaving a voice message on the telephone answering machine of the intended recipient.

Direct communication by facsimile or electronic mail requires that the intended recipient actually receive the facsimile or electronic mail message.

For more details about compliance, see "Q&A: The Contact Lens Rule and the Equalizer"

TTY: 1-866-653-4261. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

Your Opportunity to Comment

The National Small Business Ombudsman and 10 Regional Fairness Boards collect com-

FTC FACTS for Business

Complying with the Contact Lens Rule

BUSINESS

Facts for Business

- **Does the Contact Lens Rule apply to non-corrective "cosmetic" or "decorative" contact lenses?**
The Contact Lens Rule applies to contact lenses that require a prescription.

2. The Prescription

- **When am I required to give my patients their contact lens prescriptions?**

You must give your patients their contact lens prescriptions.

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Facts for Business

4. “Eight business hours” for Verification

- **I’m a prescriber. How much time do I have to verify a prescription?**

The Act and the Rule give prescribers “eight business hours” to verify a prescription regardless of when the prescriber receives a properly completed verification request. “Eight business hours” is not the same as “eight hours.”

A “business hour” is an hour during the period from 9 a.m. to 5 p.m., Monday through Friday (excluding federal holidays), plus hours on Saturday that the seller actually knows the prescriber is regularly open for business. Business hours are calculated based on the prescriber’s time zone.

- **How is the “eight business hour” period calculated if the seller’s verification request is received during business hours?**

If you receive the verification request during business hours, the “eight business hour” period starts when the prescriber receives the request from the

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Facts for Business

5. Direct Communication

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[REDACTED]

Facts for Business

- **I've received a seller's verification request via an automated telephone message but I can't understand it. What can I do?**
Automated telephone verification messages must be delivered in a volume and cadence that a reasonable person can understand. If you are unable to hear or understand an automated verification request, FTC staff attorneys encourage you to contact the seller directly. If you cannot contact the seller, file a complaint with the FTC at ftc.gov.
- **Sometimes I can't get my calls or faxes through to the sellers. What can I do?**
If some attempts to contact the seller are unsuccessful, try other methods of communication. For example, if your fax transmission fails, try contacting the seller via telephone or email. If you cannot contact the seller, file a complaint with the FTC at ftc.gov. Document your attempts; details make complaints more helpful.

7. Filing a Complaint with the FTC.

You can file a complaint with the FTC online or by phone. To file a complaint online, visit ftc.gov, click "File a Complaint," and enter your information into the form. At the section entitled, "Subject of Your

REASONS FOR SETTING ASIDE

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