192-3157

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina M. Khan, Chair**
Rebecca Kelly Slaughter
Christine S. Wilson
Alvaro M. Bedoya

In the Matter of

LCA-VISION, a corporation, also d/b/a LASIKPLUS, also d/b/a JOFFE MEDICENTER.

DOCKET NO. C-4789

COMPLAINT

The Federal Trade Commission, having reason to believe that LCA-Vision, a corporation, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent LCA-Vision ("LCA-Vision"), also doing business as LasikPlus and Joffe MediCenter, is an Ohio corporation with its principal office or place of business at 7840 Montgomery Road, Cincinnati, Ohio 45326.

2. Respondent operates vision centers in numerous states under the name LasikPlus or Joffe MediCenter (collectively the "company"). In connection with these centers, Respondent has advertised, marketed, offered for sale, and sold LASIK surgery to consumers. LASIK surgery is a "service" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

Respondent's LASIK Surgery Services

4. Respondent provides management and administrative services for all LasikPlus centers and Joffe MediCenters, including marketing, advertising, and public relations, billing and collection, the patient call center, patient scheduling, accounting, and other back office support. Each surgery center employs optometrists, technicians, center directors, and other support personnel, and contracts with affiliated independent medical professionals—ophthalmological surgeons—who perform LASIK surgery at one or more LCA centers.

5. Respondent's surgery centers conduct eye examinations and consultations and perform LASIK surgery. LASIK surgery includes both laser-assisted in situ keratomileusis ("LASIK") and photorefractive keratectomy ("PRK"). The surgeries are refractive procedures that can correct myopia (difficulty seeing distance, commonly known as nearsightedness), hyperopia (difficulty seeing near objects, commonly known as farsightedness), and astigmatism (having an oval-shaped cornea, resulting in visual distortion), by reshaping the cornea, the clear window at the front of the eye. The purpose of LASIK surgery is to restore patients' eyesight to near 20/20 vision as measured on the Snellen eye chart.

6. Respondent's centers typically use two types of lasers for surgery, a VISX excimer laser ("Traditional VISX Laser") and a Wavelight excimer laser ("Wavelight Laser"). The Traditional VISX Laser uses an older "broad beam" laser technology, whereas the Wavelight Laser is a more technologically-advanced "flying spot" laser, allowing it to produce faster and more precise corneal corrections. The Wavelight Laser is less likely to oblate (flatten the sides of) the cornea and is better able to reduce spherical aberrations. Respondent claims the Wavelight Laser can more effectively treat patients with higher prescriptions (worse eyesight) and larger pupils, and is less likely to result in post-operative complications such as reduced night vision and seeing halos around lights.

7. Eligibility for vision correction surgery depends upon various factors, including a patient's prescription level, the thickness of the cornea, the size of the pupil, and the stability of the prescription. Respondent sets surgery price guidelines and parameters, including which prescriptions are eligible for certain pricing, but generally leave decisions as to a patient's eligibility for LASIK surgery, and the appropriate type of surgery and laser, to the judgment of its surgeons and optometrists. Some of the surgeons who contract with Respondent limit the use of the Traditional VISX Laser to patients who are nearsighted with relatively low prescriptions. Others use the Traditional VISX Laser to correct the eyesight of patients with a wide array of prescriptions, including those who are farsighted and those with a high degree of correction. Respondent estimates the retail value of its LASIK surgery is $4,000, or $2,000 per eye.

Respondent's Deceptive Business Practices

8. To induce consumers to purchase LASIK surgery, Respondent has disseminated, or has caused to be disseminated, various advertisements via television, radio, print, shopping flyers, email, and the Internet. LasikPlus advertisements convey that LASIK surgery is readily

available to consumers for the promotional price of $250, or $250 per eye. Joffe MediCenter advertisements convey that LASIK surgery is readily available to consumers for the promotional price of $295. Respondent's advertisements have failed to disclose, or failed to disclose adequately, among other things, the requirements consumers must meet to be eligible for the LASIK surgery price promotions. These advertisements include, but are not limited to, the attached **Exhibits A** through **L**, as detailed below.

Misleading LasikPlus Advertisements

9. Beginning in 2015 and through at least the first seven months of 2016, Respondent disseminated radio advertisements (example attached as **Exhibit A**) for LasikPlus with the following script:

> *Are you tired of paying for contacts and glasses year after year? Then come to LasikPlus. LasikPlus, America's most recommended LASIK provider, offers customized LASIK that treats nearsightedness, farsightedness, and astigmatism.*
>
> *Right now we're offering our best pricing, starting as low as $250. That's right, starting as low as $250.*
>
> *But only at LasikPlus, and only for a limited time. The LasikPlus surgeons have performed over 1.4 million procedures, and LasikPlus offers a lifetime satisfaction plan.*
>
> *For this limited time offer, call toll free 844-343-2020 or go to Lasik250.com to schedule your LASIK exam today. Call LasikPlus for limited time pricing starting as low as $250 at 844-343-2020 or visit Lasik250.com. Get your LASIK exam and our best price. This offer expires soon. So call 844-343-2020 before it's too late.*
>
> *Individual results may vary, restrictions apply, see details at Lasik250.com.*

10. Beginning in late 2016, Respondent disseminated radio advertisements (example attached as **Exhibit B**) for LasikPlus with the following script:

> *What if we told you there's a quick, easy way to get rid of the daily hassles of contacts and glasses? And even better… what if it could cost as little as $250? Well, it's all true… All thanks to LasikPlus. Now for a limited time only… LasikPlus can help fix your vision for only $250 per eye.*
>
> *With over 1.5 million procedures performed, LasikPlus will recommend the best treatment for your nearsightedness, farsightedness, or astigmatism… for our lowest price ever… $250!*

For more details about this amazing $250 offer, simply call 844-259-2020 or visit LASIK250.com to schedule your free LASIK exam.

That's 844-259-2020 or visit Lasik250.com. LasikPlus… You won't believe your eyes… or our amazing $250 LASIK special!"

Results may vary, restrictions apply, see details at Lasik250.com.

11. Beginning in 2018, Respondent aired a LasikPlus advertisement on various radio stations (Nebraska geographic market example attached as **Exhibit C** and transcribed below) with the following script:

For years you've been thinking about LASIK, you've been talking about LASIK, and now there's never been a better time do something about LASIK. Right now LasikPlus is offering LASIK starting at just $250 per eye.

If you're nearsighted, farsighted, or have an astigmatism, LasikPlus can help fix your vision for only $250. Our best price ever. So get rid of the daily hassles of contacts and glasses. And enjoy the newfound freedom of LASIK from LasikPlus.

Call 844-211-2020 today and schedule your free LASIK exam. Doctors Richard Maw and Dean Ellis together have performed over 85,000 procedures and are among the most experienced LASIK surgeons in Nebraska. [Doctor and locality names are tailored to geographical markets.]

So take advantage of this amazing $250 price today. Call 844-211-2020 or visit lasik250.com.

Results may vary, restrictions apply, see details at lasik250.com.

12. As shown in **Exhibits A, B**, and **C**, the radio ads for LasikPlus failed to disclose that few people would qualify for the promotion or list any other price for the surgery. Nor did the ads provide any information about the eligibility requirements or the fact that farsighted patients were ineligible for the $250-price surgeries, apart from generic disclaimers spoken in the last sentence that "results may vary" and "restrictions apply." Consumers who visited lasik250.com, or called the phone numbers provided in the radio advertising, did not readily learn the eligibility requirements for the $250 surgery for the reasons explained below in paragraphs 20-23.

13. In 2016, Respondent disseminated advertisements through the Internet radio site Pandora with the following script (attached as **Exhibit D)**:

What if we told you there's a quick, easy way to get rid of the daily hassles of contacts and glasses? And even better… what if it could cost as low as Two Hundred and Fifty Dollars?

Well, it's all true…all thanks to LasikPlus.

Now… LasikPlus can help fix your vision for only Two Hundred and Fifty Dollars…our lowest price ever!

Click or call 800-841-2020 to schedule your free LASIK exam.

Results may vary, restrictions apply, see details at LasikPlusPandora.com

As with the other radio ads, the Pandora radio commercials failed to disclose that few people would qualify for the promotion or list any other price for the surgery. Nor did the ads provide any information about the eligibility requirements, apart from the generic disclaimers at the end of the commercials. Consumers who called the phone number provided in the radio advertising, or visited LasikPlusPandora.com—which redirects to a LasikPlus landing page—would not readily learn details about the requirements for the $250 surgery for the reasons explained below in paragraphs 20-23.

14. Beginning in 2015 and airing into 2016, Respondent disseminated video commercials on television and the Internet (example attached as **Exhibit E**) for LasikPlus with the following voiceover script:

Frustrated with glasses or contact lenses? Now you can improve your vision to 20/20 with LASIK at LasikPlus, America's most highly recommended LASIK provider. Now, for a limited time, get LASIK at LasikPlus for as low as $250. Call now or go online to schedule your no obligation LASIK exam absolutely free.

Visit mylasik250.com or call 1-844-226-2020 for your free LASIK exam.

These ads failed to disclose that few people would qualify for the promotion or list any other price for the surgery. Nor did the ads provide any information about the eligibility requirements for the promotion. In the last few seconds of the advertisement, however, multiple disclaimers appeared on the screen in small print, stating:

Individual results and recovery times may vary. 'Most recommended' claim based on 2013 LasikPlus study. See website for details. $250 per eye price for select prescriptions only. Not available at all locations. Other restrictions apply, see website for details. Drs. Alban, Groden, Karp and Straub among other LasikPlus surgeons, are included in the advertisement. FL Residents: The patient and any other person responsible for payment has a right to refuse to pay, cancel payment

or be reimbursed for payment for any service, examination or treatment that is performed as a result of and within 72 hours of responding to the advertisement for the free, discounted fee or reduced fee service, examination or treatment. ©2014 LCA-Vision Inc. dba LasikPlus. All Rights Reserved.

15. Beginning in 2017 and airing at least into 2019, Respondent disseminated video commercials on television and the Internet (example attached as **Exhibit F)** with testimonials from LasikPlus patients and the following script:

PATIENT: *My life after LASIK with LasikPlus has been absolutely incredible.*

ANNOUNCER: *People all over the country are singing the praises of LASIK from LasikPlus.*

PATIENT: *Absolutely, 100%, I would recommend the procedure.*

PATIENT: *Getting LASIK was the best thing I've ever done for myself, ever.*

ANNOUNCER: *Now for a limited time only, LasikPlus can help fix your vision starting at $250 per eye, our best price ever.*

PATIENT: *Knowing what I know now, I would have paid double to get the results that I got.*

ANNOUNCER: *Since 1995, the surgeons at LasikPlus have performed over 1.5 million procedures, and can customize an all-laser LASIK procedure to help treat your vision.*

PATIENT: *I wish I would have done it sooner*

PATIENT: *LASIK at LasikPlus was absolutely the best decision I've ever made.*

ANNOUNCER: *Call 844-293-2020 or visit 250Lasik.com to schedule your free LASIK vision exam. LasikPlus, you won't believe your eyes.*

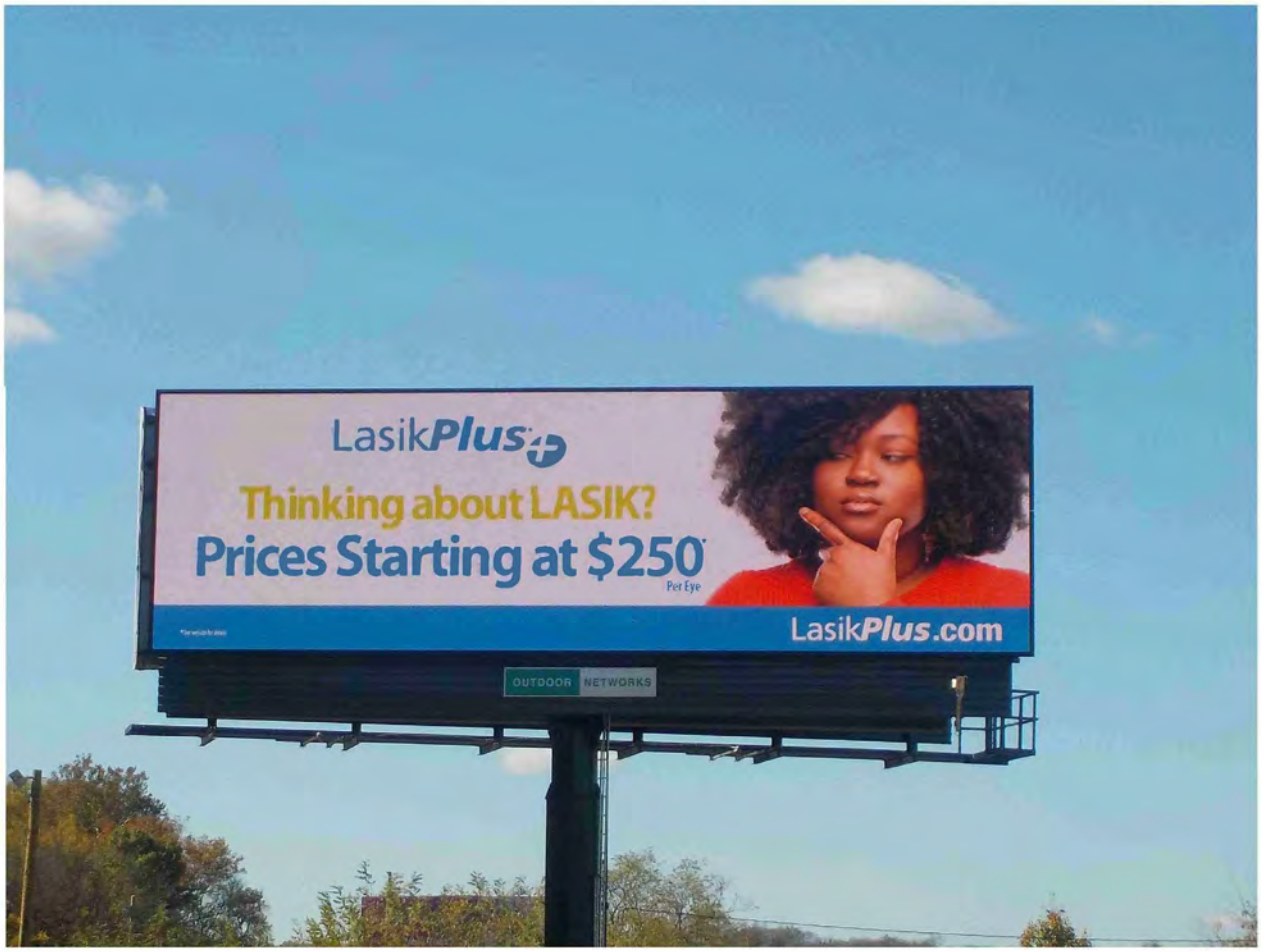
The visuals in the LasikPlus commercial reiterated and emphasized the $250 promotional price by displaying the website address 250lasik.com throughout most of the 60-second advertisement, and by showing the following display for several seconds:

The ads failed to include any other information about the cost or disclose that few people would qualify for the $250 price. The voice announcer failed to reveal any eligibility requirements for the promotion. In the last few seconds of the ad, however, various disclaimers appeared in small print at the bottom of the screen:

The disclaimers stated:

> Individual results and recovery times may vary. Other restrictions apply. See website for details. $250 per eye price for selected prescriptions only. FL Residents: the patient and any other person responsible for payment has a right to refuse to pay, cancel payment or be reimbursed for payment for any service, examination or treatment that is performed as a discounted fee or reduced fee service, examination or treatment. ©2017 LCA-Vision, Inc. dba LasikPlus. All rights reserved.

16. In 2019, Respondent disseminated advertisements for LasikPlus on Outdoor Networks billboards, such as **Exhibit G**, which ran on Interstate 75 near Cincinnati:



The LasikPlus billboard did not reveal information about who would qualify for the $250 price, or that few people would, but contained a small ♥ symbol next to the price and a corresponding symbol down and to the left with the words "See website for details." Consumers who visited Respondent's websites would not readily learn details about eligibility requirements for reasons explained below in paragraphs 20-23.

Joffe MediCenter $295 Price Advertisements

17. Beginning in 2018, a Joffe MediCenter ad aired on Minnesota radio (example attached as **Exhibit H**) with the following script (voiced by a radio DJ):

> *It's 2018, why are you still dealing with the stresses and cost of glasses and contacts? Make this year the year you finally get that LASIK procedure you've been thinking about. Joffe MediCenter is the Twin Cities' home for custom LASIK. With top laser technology, experienced doctors, and the most affordable*

pricing for all-laser LASIK. Joffe MediCenter is now offering custom LASIK starting at just $295 per eye. Give them a call at 844-200-EYES, that's 844-200-EYEs, or go to Joffe.com today.

The ad lacked any disclosures regarding eligibility requirements for the promotion, or generic disclaimers such as "results may vary" or "restrictions apply."

18. In 2018, this ad for Joffe MediCenter was included in Red Plum shopping inserts (Louisville example is attached as **Exhibit I**; similar ads ran in Atlanta, Houston, and Minneapolis):

Apart from the generic statement "[s]ome restrictions apply" in small print, the Joffe MediCenter inserts lacked any disclosures regarding who would qualify for $295 LASIK, or the fact promotional price was $295 per eye.

19. In 2019, Respondent advertised for Joffe MediCenter in Valpak shopping inserts (Louisville example attached as **Exhibit J**; similar ads ran in Minneapolis and Atlanta)

$295 LASIK

HURRY: OFFER EXPIRES NOV 30th

CALL JOFFE FOR YOUR **FREE LASIK EYE EXAM**

and to See How You Qualify for $295 LASIK

855•52•JOFFE | JOFFE.COM | @JoffeMediCenter

Joffe Louisville: 4902 Shelbyville Road Louisville, KY 40207

GET RID OF THE HASSLES
OF GLASSES & CONTACTS TODAY

- Best Price in Louisville & Guaranteed Financing
- We treat Nearsightedness, Farsightedness & Astigmatism
- The Best Technology, including All-Laser LASIK

Plus, first 20 callers get $100 off LASIK

855•52•JOFFE | JOFFE.COM | @JoffeMediCenter

Joffe Louisville: 4902 Shelbyville Road Louisville, KY 40207

$295 LASIK

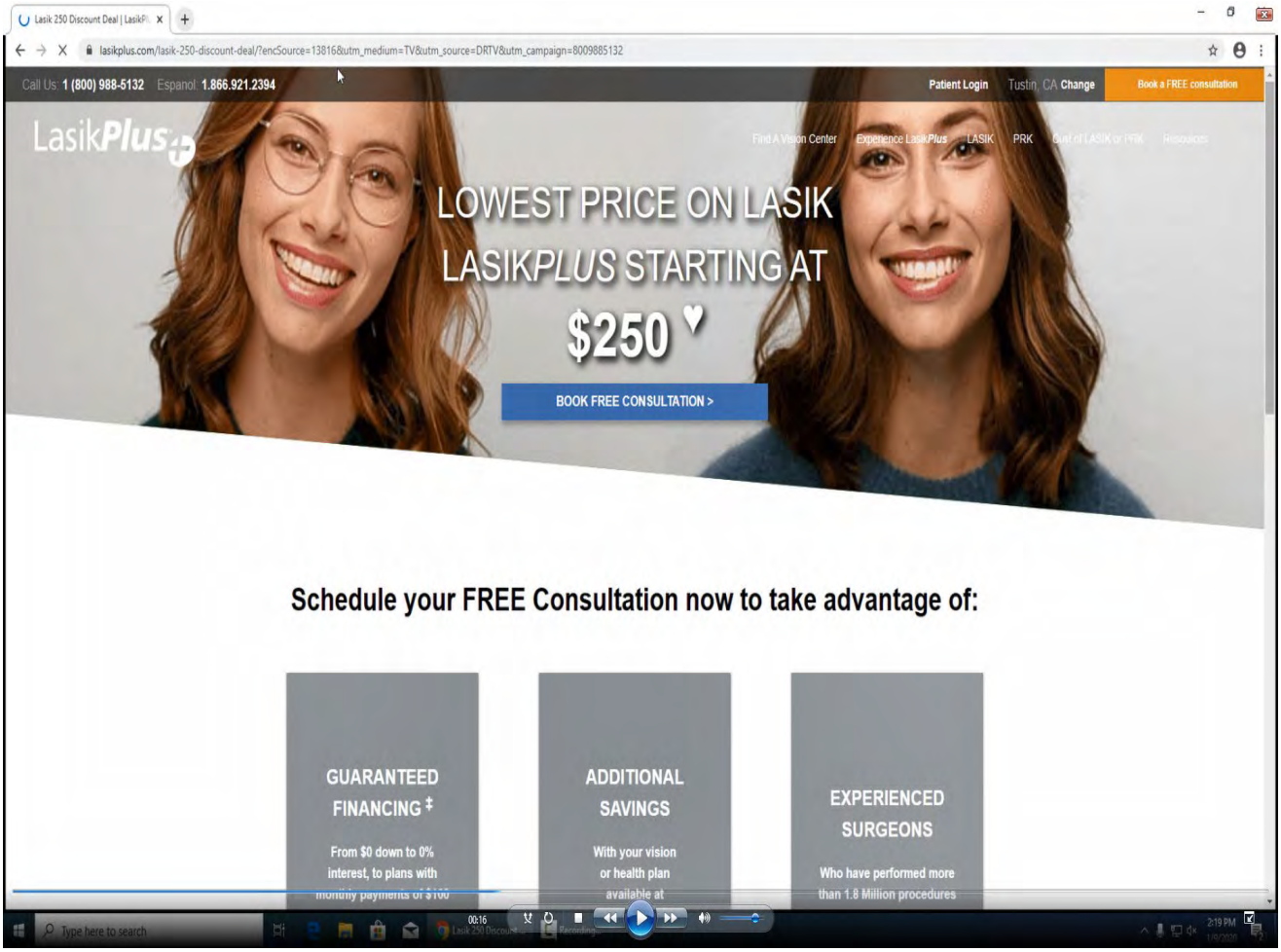
Schedule your FREE LASIK EXAM and find out how you qualify for $295 LASIK

Expires NOV 30th

The Joffe MediCenter Valpak inserts did not contain any disclosures regarding the eligibility requirements for the promotion, nor that the price was $295 "per eye." The inserts merely directed consumers to call the toll-free number "and see how you qualify for $295 LASIK."

Respondent's Websites and Landing Pages

20. Consumers who go to Respondent's websites—including 250lasik.com, lasik250.com, mylasik250.com, and hulu250.com, among others—arrive on landing pages such as **Exhibit K** (video of 250lasik.com landing page captured on January 9, 2020), screen shot shown below:



The 250lasik.com website landing page shown above fails to include information regarding eligibility requirements for the promotion, instead reiterating that LASIK surgery is available starting at $250 and urging consumers to book a consultation. Consumers who click on "Book Free Consultation" are taken to a scheduling page, which fails to include any disclaimers about the promotional price, and prompts the customer to schedule a visit by selecting available dates and times from a website calendar.

21. In some instances, Respondent's landing pages at lasikplus.com/affordable-lasik-250-discount (**Exhibit L**), provide information about the eligibility requirements, but only if consumers scroll all the way to the bottom—well below several buttons for scheduling an appointment—and read through numerous disclosures, as shown below:

Call Us: **1.866.755.2026** Espanol: **1.866.921.2394** | **Patient Login** | New York, NY **Change** | **Book a FREE consultation**

LasikPlus

Find A Vision Center | Experience Lasik*Plus* | LASIK | PRK | Cost of LASIK or PRK | Resources

Lowest Price on LASIK in Town! LASIK starting at $250!♥

With LASIK starting at $250▼, there is no better time to have LASIK at Lasik*Plus*! Schedule your FREE LASIK consultation today. At Lasik*Plus*, you can receive:

100% Bladeless LASIK procedure

A 100% Bladeless LASIK procedure offers you a virtually painless procedure with immediate results, meaning you can get back to work the next day.*

LASIK from a LASIK expert

Our surgeons are among the nation's most experienced having performed over 1.8 Million procedures.

Guaranteed Financing options‡

From $0 down to 0% interest, to plans with monthly payments of $100 or less‡

Book Free Consultation Now

CANDIDACY QUIZ

Find Out if LASIK is Right for You

Take this short quiz and find out if a Lasik*Plus* procedure is the right solution for you.

Take Candidacy Quiz Now

LasikPlus

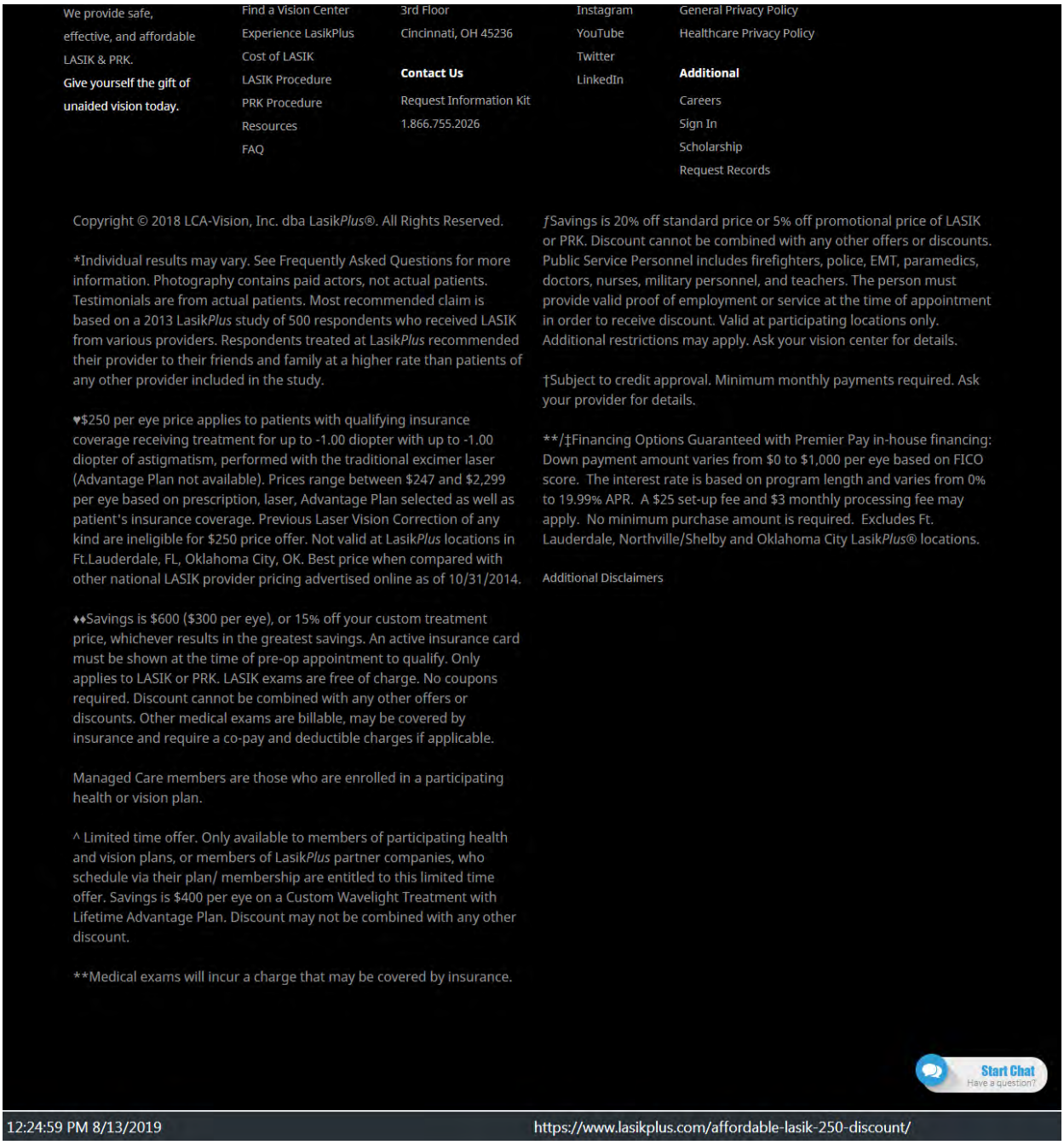
Explore
Home

Corporate Offices
7840 Montgomery Rd

Follow
Facebook

Legal & Privacy
Terms & Conditions

Next: Locations Near Me



The site's eligibility disclosure relating to the $250 surgery states:

> ♥$250 per eye price applies to patients with qualifying insurance coverage receiving treatment for up to -1.00 diopter with up to -1.00 diopter of astigmatism, performed with the traditional excimer laser (Advantage Plan not available). Prices range between $247 and $2,299 per eye based on prescription, laser,

Advantage Plan selected as well as patient's insurance coverage. Previous Laser Vision Correction of any kind are ineligible for the $250 price offer. Not valid at LasikPlus locations in Ft. Lauderdale, FL, Oklahoma City, OK. Best price when compared with other national LASIK provider pricing advertised online as of 10/31/2014.

The disclosure is not prominent nor in close proximity to the advertised price, nor is it clear and conspicuous and in a format consumers are likely to read. Instead, the disclosure appears on the page in small gray print on a black background. The only indication consumers receive regarding the disclosure is a small ♥ symbol next to the number $250 on the first screen of the landing page, and a corresponding heart symbol in the list of disclosures at the bottom of the next page.

22. In contrast to the small size of the disclosures, all of the Respondent's landing pages contain prominent clickable links such as "Book Free Consultation Now" and "Take Candidacy Quiz Now." Consumers who click on "Book Free Consultation Now" are taken to a scheduling page, which does not include disclaimers about the promotional price, and prompts the customer to schedule a visit by selecting available dates and times from a website calendar. Consumers who click on "Take Candidacy Quiz Now" are asked five questions, none of which refers or relates to eligibility for the promotional price. Regardless of how the consumer answers, finishing the quiz invariably takes the consumer to a page that states, "Congratulations! Your vision can most likely be corrected with a LASIK procedure." The "Congratulations" page directs the consumer to click on a scheduling button to arrange an office visit.

Very Few Consumers Qualify for and Undergo LASIK for the Advertised Price

23. Consumers who respond to Respondent's advertising by calling the listed telephone numbers receive little or no information about qualifying conditions for the promotional-price surgery. While the company's call center once provided such eligibility information to consumers when asked, Respondent changed call center policies because it found that consumers who learned the promotional-price limitations were less likely to come in for a consultation. Respondent now instructs call center employees not to reveal eligibility requirements for promotional-price surgery—even if a consumer repeatedly asks—and to respond that only the doctor, after a consultation, can determine whether a consumer is eligible.

24. Consumers who visit Respondent's centers for a consultation typically spend 90 minutes to two hours at the center. At the beginning of the consultation, Respondent's technicians check the prescription on the consumer's eyeglasses. Once technicians perform this quick task, they typically know whether the consumer qualifies for the promotional pricing. But if consumers inquire about their promotional-price eligibility at this stage in the consultation, Respondent's staff is, according to company policy, supposed to tell consumers that the price can only be determined after the consumer has undergone a more thorough exam and met with a company optometrist.

25. Consumers undergo multiple eye exams during their consultation, including refraction, full pupil dilation, and a corneal topographical exam. Only after all examinations are complete and the patient has met with the optometrist do consumers learn whether they qualify for the promotional price, and the actual price they must pay for LASIK surgery. Consumers learn that in order to qualify for the promotional price, they cannot be farsighted, or have a prescription greater than -1.00 diopter and -1.00 astigmatism. A -1.00 diopter prescription is roughly equivalent to eyesight of 20/30 or 20/40 vision as measured on the Snellen eye chart. 20/30 and 20/40 vision is classified by the World Health Organization as "near-normal vision," and is good enough to legally drive in the U.S. without wearing glasses or contacts.

26. If consumers ask why they cannot receive LASIK surgery for the promotional price, Respondent's staff often say that the Traditional VISX Laser used in surgery available at the promotional price is unsafe for patients with their prescription, or would leave them with faulty vision. In some instances, staff tell consumers that the Traditional VISX Laser only treats to prescriptions as strong as -1.00, or that the consumer's prescription is several times worse than what the Traditional VISX Laser can treat. While true in certain cases, Respondent's surgeons routinely use the Traditional VISX Laser for surgery on patients with eyesight worse than -1.00, including patients with prescriptions of -4.00 to -6.00.

27. Only 6.45% of consumers who visit Respondent's centers for a consultation qualify for the promotional price for both eyes. According to one LasikPlus doctor, at his center, "we treat at least a couple of patients every month for the $250, so it is available, albeit for a very very small number of qualified patients." Even for those who qualify for Respondent's promotional pricing, Respondent charges $250 or $295 *per eye*, not for the entire procedure. Those who only qualify for the promotion in one eye are quoted prices ranging from $695 to $2,295 for the other eye, depending on insurance, prescription, and choice of laser.

28. In many instances, Respondent's staff discourage consumers who qualify for the promotional price from taking advantage of the offer. Respondent's staff tell consumers that the more expensive Wavelight Laser is safer and more effective, even though Respondent permits its surgeons to use the Traditional VISX Laser to perform surgery on patients with high corrections who do not qualify for the promotional price.

29. In some instances, Respondent's staff sometimes tell consumers that the Traditional VISX Laser is an older technology that can leave a patient with poor night vision and halos around lights. At other times, Respondent's staff tell consumers that they may need "touch up" enhancements at a cost of $1,000 per eye after the initial surgery with the Traditional VISX Laser because the surgery may not result in 20/20 vision, or because a person's eyesight changes over time.

30. In most instances, consumers who qualify for Respondent's promotional price choose not to undergo LASIK surgery via the Traditional VISX Laser. Consequently, only 1.3% of consumers who receive a consultation at Respondent's centers undergo LASIK surgery for the promotional price.

31. Respondent loses money on every LASIK surgery performed for $250 or $295 per eye. Respondent's revenue only exceeds their advertising costs if their promotional advertisements attract customers who do not qualify for the promotional price. The primary target of Respondent's advertising is not consumers who can obtain surgery for the promotional price, but rather customers who will pay the standard LasikPlus price of $1,800-$2,295 per eye.

32. Respondent has formulated training policies, guides, and instructional videos to teach personnel how to convert consumers attracted by promotional-price advertising to consumers willing to purchase LASIK surgery at the regular retail price. These guides instruct staff how to "overcome" patient objections and switch them to the company's regular-price LASIK surgery. Recommended approaches include touting the experience and expertise of the surgeons, the quality and safety of the equipment, the life-changing benefits of not wearing glasses or contacts, and the availability of extended financing that can make Respondent's surgery "affordable" even when it costs thousands of dollars instead of $250 or $295.

33. Respondent has instructed company personnel in how to "manage" patients who come in expecting to get LASIK surgery for the promotional price, and "transition" them to full-priced LASIK. In at least one instance, personnel were directed to wait until after the patient eye examinations were complete, and the staff had an opportunity to discuss the benefits of LASIK surgery and "make the patient really want it," before revealing that the patient did not qualify for the promotional pricing.

34. The true aim of Respondent's advertising is not to offer LASIK surgery for $250 or $295 but to obtain contacts, or leads, for persons interested in buying services of the type advertised, and convert them to higher-priced surgery. In the words of Respondent's company personnel, the goal of the promotional-price advertising is to "make the phones ring" and "get people in the door," and then convert as many as possible to Respondent's standard pricing.

35. For consumers who did not qualify for the advertised promotion—the vast majority of consumers—Respondent's promotional price offer is not a bona fide offer, but rather an alluring but insincere offer to sell a service that Respondent in truth does not intend or want to sell. These consumers were harmed in that they wasted 90 minutes to two hours of their time, after being lured into sitting for a consultation by Respondent's deceptive advertising.

Consumers Are Misled by Respondent's Advertising

36. Respondent has received hundreds of comments and complaints from consumers stating that its advertising is misleading and deceptive. Consumer complaints and reviews include the following statements, among many others:

(a) "They advertise a great price but then you find it only applies if you barely have any eyesight issues. For people with actual eyesight issues, the price is

really closer to $4000. That's like a restaurant offering a hamburger for $2.50 but when you get there they explain the burger is the size of an M&M but if you want a regular sized burger it's going to cost you $40.00[.]"

(b) "Misleading advertising. Period. $250 per eye 'if you qualify.' I expected maybe a higher price. 2 times higher, 3 times higher. Well, the quote was about 12 times higher. Clearly, this is a bait and switch tactic. It's misleading and you don't get the 2 plus hours you spend there back."

(c) "Get you in on a special that no one looking into Lasik qualifies for. Wouldn't discuss pricing over the phone other than deals that once you are there you learn, anyone over a 1.0 prescription does not qualify. Spent 20 minutes in waiting room and appointment took over an hour and a half. Quoted $3,500 for a 1.75 prescription. Disappointed, feel there are some deceptive business tactics at work[.]"

(d) "Based on their advertising I booked a consultation and exam. Once the exam was completed, I was told I was a perfect candidate for the Lasik surgery. I was then told the cost would be $4,200.00. I questioned what about the $250.00 per eye advertised and was told that was for an old lazer [sic], 23 years old that they don't use anymore."

37. Respondent has also received complaints from company personnel that their advertising misleads consumers, with some staff members referring to the advertising message as "bait and switch," "somewhat misleading," "unrealistic," and promoting the "false dream" of LASIK surgery for $250.

38. Respondent's internal company communications contain the following statements, among others, from company personnel:

(a) "It's simple bait and switch and it works. Let's not start acting like we're doing it for the sa[k]e of the world. If you want honesty in advertising we should advertise affordability via financing –but when does any corporation advertise honestly?"

(b) "I agree that the $250 promotion is deceptive and not consistent with what we are or what we want to be."

(c) "Our advertising here in KC mentions "starting" at $250 once in the commercial. It mentions 3 times about call now/schedule now to get this $250 treatment. It definitely makes you believe that we offer treatment for only $250 ALL THE TIME and IT IS EASY TO GET THE $250 TREATMENT."

(d) "So we have had 3 patients today mention that they had talked to the call center about the $250 promotion and they felt misled about the promotion. This is a common occurrence in the Minneapolis market, as we promote $250 very strongly. They asked what percentage of patients actually qualify and they were told lots of people qualify. These patients came from 45 min to 1 hour away and took off work to come in. They felt that we lied to them by telling them they have a good chance they qualify for the $250 promotion and were upset that they drove all the way here, only to not qualify."

(e) "I know you guys [in marketing] want to get people in the door to try to convince them to have surgery with us anyway, but many of our people are coming from 2+ hours away and feel like we wasted their time driving out to see us when they don't qualify for $250 and that's the only reason they came to see us instead of seeing their local provider."

(f) "It doesn't help that we come out as liars with 'come get your lasik for $250.' It angers a lot of patients when they find out our price."

39. Respondent's' personnel have complained to the company's marketing department that disclosures about the company's promotions are not always clear and conspicuous. One center director stated, "I know that we do have a disclaimer in the very small print on the bottom about qualifying Rx's, but it is hard to tell/find. A heart next to something is not usually an indication of a bullet in the small print."

40. Respondent's doctors have also complained internally that the radio advertising misrepresents that they treat farsighted (hyperopic) patients for the promotional price, and, as a result, such patients come in with the wrong "expectations." One doctor told Respondent's marketing department, "I think if we continue to use this language, we'll need to have a $250/eye offer for hyperopic treatments, otherwise this can and will be interpreted as a 'bait and switch' ploy."

41. Respondent is aware that many consumers and company personnel view the company's advertisements as misleading. Company doctors and center directors have informed Respondent that consumers complain that they feel misled, and share negative consumer reviews with him. When told of one consumer review alleging "[b]ait and-switch" tactics, Respondent's leadership advised company staff to "get lots of new, positive online reviews and hopefully 'bury it.'"

42. Despite the complaints about the advertising, Respondent expanded the use of the promotional-price advertising because the company's marketing executives determined that the low price ads are more effective at bringing patients in for consultations—and ultimately converting them to regular-priced LASIK surgery—than advertising the typical or average price for Respondent's surgery.

43. According to one of Respondent's marketing executives, while the advertising causes some "push-back" from deceived consumers, this is "off-set by the increase in overall bookings."

44. When Respondent fully rolled out promotional-price advertising, consumer bookings increased by approximately 33% and overall treatment revenue increased by approximately 47%, even as overall conversion rates (the percentage of consumers examined who decide to get LASIK surgery) declined.

45. In defending the promotional-price advertising to doctors who said that it was misleading, some LCA personnel remarked that "advertising low price is the 'dirty little secret' in our business ... that works!"

Count I
Misrepresentation of Price

46. In connection with the advertising, marketing, promotion, offering for sale, or sale of LASIK surgery, including through the means described in Paragraphs 8-45, Respondent has represented, directly or indirectly, expressly or by implication, that consumers will be able to obtain LASIK surgery from Respondent:

(a) At or near the price of $250 or $250 per eye at LasikPlus centers; and
(b) At or near the price of $295 or $295 per eye at Joffe MediCenters.

47. In fact, in numerous instances, consumers could not obtain LASIK surgery from Respondent at or near the price of $250 or $250 per eye at LasikPlus centers, or at or near the price of $295 or $295 per eye at Joffe MediCenters. Instead, consumers typically paid between $1,800-$2,295 per eye for LASIK surgery. Therefore, the representations set forth in Paragraph 49 are false or misleading.

Count II
Deceptive Failure to Disclose Eligibility Limitations for Promotional Price

48. In connection with the advertising, marketing, promotion, offering for sale, or sale of LASIK surgery, Respondent has represented, directly or indirectly, expressly or by implication, that consumers can readily obtain such surgery for a promotional price of $250 or $295.

49. In instances in which Respondent has made the representation set forth in Paragraph 48, Respondent has failed to disclose, or failed to disclose adequately, material information relating to the promotional price, including that: (1) few consumers are eligible; (2) only consumers having prescriptions with a diopter and astigmatism of -1.00 or less are eligible; (3) farsighted patients are excluded; (4) consumers who have undergone LASIK in the past are ineligible; (4) the advertised price is per eye; and (5) the vast majority of consumers will pay between $1,800-

$2,295 per eye. These facts would be material to consumers' conduct regarding Respondent's advertised LASIK surgery services.

50. Respondent's failure to disclose, or disclose adequately, the material information described in Paragraph 49, in light of the representation set forth in Paragraph 48, is a deceptive act or practice.

Violations of Sections 5 And 12

51. The acts and practices of Respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this 13th day of March, 2023, has issued this Complaint against Respondent.

By the Commission, Commissioner Wilson dissenting.

April J. Tabor
Secretary

SEAL:

192-3157

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina M. Khan, Chair**
Rebecca Kelly Slaughter
Christine S. Wilson
Alvaro M. Bedoya

In the Matter of

LCA-VISION, a corporation, d/b/a LASIKPLUS, also d/b/a JOFFE MEDICENTER

DECISION AND ORDER

DOCKET NO. C-4789

DECISION

The Federal Trade Commission ("Commission") initiated an investigation of certain acts and practices of the Respondent named in the caption. The Commission's Bureau of Consumer Protection ("BCP") prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondent with violations of the Federal Trade Commission Act.

Respondent and BCP thereafter executed an Agreement Containing Consent Order ("Consent Agreement"). The Consent Agreement includes: 1) statements by Respondent that it neither admits nor denies any of the allegations in the draft Complaint, except as specifically stated in this Decision and Order, and that only and solely for purposes of this action, it admits the facts

necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission's Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 business days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Section 2.34 of its Rules, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. The Respondent is LCA-Vision, doing business as LasikPlus and Joffe MediCenter, an Ohio corporation with its principal place of business at 7840 Montgomery Road, Cincinnati, OH 45326.

2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondent, and the proceeding is in the public interest.

ORDER

Definitions

For the purposes of this Order, the following definitions apply:

A. "**Clearly and conspicuously**" means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

   1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure ("triggering representation") is made through only one means.

   2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

   3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the triggering representation appears.

6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, "ordinary consumers" includes reasonable members of that group.

B. "**Close proximity**" means that the disclosure is very near the triggering representation. For example, a disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in close proximity to the triggering representation.

C. "**LASIK"** means both laser-assisted in situ keratomileusis, commonly called LASIK, and photorefractive keratectomy, or PRK, another form of laser eye surgery.

D. "**The price most consumers pay per eye for Respondent's LASIK**" means the price range from the 25th to 75th percentile of prices paid per eye by consumers during the previous calendar year, or the second previous calendar year during the first calendar quarter of a then-current year, such as "most consumers paid between $X and $Y per eye in 2021."

Provisions

I. Prohibited Misleading Representations

IT IS ORDERED that Respondent, and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, promotion, offering for sale, or sale, of a particular LASIK service offering must not misrepresent in any manner, expressly or by implication:

A. the price of such LASIK service offering from Respondent, including but not limited to the total costs for such LASIK service offering; or

B. the average price for all LASIK service offerings from Respondent or other providers; or

C. any material restrictions, limitations, or conditions that affect the price consumers will pay for such LASIK service offering, other than restrictions, limitations, or conditions

resulting from clinical decisions made by Respondent's affiliated independent medical professionals in their professional judgment in the course of their professional medical practice.

II. Required Disclosure of Conditions and Requirements

IT IS FURTHER ORDERED that:

A. Respondent, and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with advertising, promoting, or offering for sale, or sale, of LASIK for a price or discount for which a majority of consumers, during the time the offer is valid, likely will not be able to meet the requirements or qualifications necessary to obtain such price or discount, must not make any representation, expressly or by implication, about such price or discount without disclosing, Clearly and Conspicuously, and in Close Proximity to that representation:

1. If the price for LASIK is per eye;

2. The price most consumers pay per eye for Respondent's LASIK;

3. The requirements or qualifications necessary to obtain the promoted price or discount, including, but not limited to, any restrictions on eligible prescriptions or eye conditions, such as that the promoted price or discount only applies for

    a) prescriptions with a diopter (or power) falling within a specified range;
    b) prescriptions with an astigmatism within a specified range;
    c) patients who are nearsighted (myopia), farsighted (hyperopia), need bi-focals (presbyopia), or are affected by any other medically recognized diagnosis; or
    d) patients who have or have not had LASIK surgery of any kind before,

but not including requirements or qualifications resulting from clinical decisions made by Respondent's affiliated independent medical professionals in their professional judgment in the course of their professional medical practice.

B. *Provided, however*, that for a space-constrained advertisement, a disclosure will be deemed compliant with Paragraph A(3) of this Section as long as: (i) the disclosure specifies the types of requirements and medical conditions (e.g., prescriptions, nearsightedness) necessary to obtain the promoted price or discount; (ii) the disclosure is made Clearly and Conspicuously and in Close Proximity to at least one prominent representation of such promoted price or discount; (iii) the space-constrained advertisement includes a hyperlink in Close Proximity to the disclosure that leads to a webpage that Clearly and Conspicuously discloses all of the information required by this Section, including the disclosures required by Paragraph A(3); (iv) any other hyperlink contained in the space-constrained advertisement leads to a webpage that Clearly and

Conspicuously discloses all of the information required by this Section, including the disclosures required by Paragraph A(3); and (v) to the extent that any telephone number or short code/short number is included in such space-constrained advertisement, before any consumer who calls or sends a text message to such telephone number or short code/short number is scheduled for an appointment at Respondent's vision centers, all of the information required by this Section, including the disclosures required by Paragraph A(3), is disclosed Clearly and Conspicuously to such consumer.

C. *Provided, however*, that a price or discount offered (i) to a limited differentiated consumer group in which the offer Clearly and Conspicuously discloses the group limitation (e.g., that the offer is only available for recent graduates, managed-care members); (ii) on a redeemable coupon only available to the holder; or (iii) to an individual patient in-person or following their pre-operative consultation, is not subject to the disclosure requirement in Paragraph A(2) of this Section so long as the offer does not contain additional eligibility limitations or a representation of a "starting at," "as low as," or "from" price or similar representation.

D. For purposes of this Section, "space-constrained advertisement" means any communication (including, but not limited to, Internet search results and banner ads) that has space, format, size, or technological restrictions ("Space Constraint") that limit Respondent from being able to make the disclosures required by Paragraph A(3) of this Section. Respondent bears the burden of showing that there is a Space Constraint to make a required disclosure that is Clear and Conspicuous and in Close Proximity to the triggering representation.

E. In determining whether a majority of consumers, during the time the offer is valid, likely will not be able to meet the requirements or qualifications necessary to obtain such price or discount, Respondent may rely upon generally-accepted industry data or reliable and relevant third-party analyses, research, and studies released during the preceding five years. For purposes of making this determination, "consumers" means all adults—either nationwide or in the applicable advertising target area of such price or discount—with a refractive error in one or both eyes.

III. Monetary Relief

IT IS FURTHER ORDERED that:

A. Respondent must pay to the Commission One Million Two Hundred Fifty Thousand Dollars ($1,250,000.00), which Respondent stipulates its undersigned counsel holds in escrow for no purpose other than payment to the Commission.

B. Such payment must be made within 8 business days of the effective date of this Order by electronic fund transfer in accordance with instructions provided by a representative of the Commission.

IV. Additional Monetary Provisions

IT IS FURTHER ORDERED that:

A. Respondent relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

B. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission to enforce its rights to any payment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

C. The facts alleged in the Complaint establish all elements necessary to sustain an action by or on behalf of the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

D. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other relief (including consumer information remedies) as it determines to be reasonably related to Respondent's practices alleged in the Complaint. Any money not used is to be deposited to the U.S. Treasury. Respondent has no right to challenge any activities pursuant to this Provision.

E. In the event of default on any obligation to make payment under this Order, interest, computed as if pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment. In the event such default continues for 10 business days beyond the date that payment is due, the entire amount will immediately become due and payable.

F. Each day of nonpayment is a violation through continuing failure to obey or neglect to obey a final order of the Commission and thus will be deemed a separate offense and violation for which a civil penalty shall accrue.

G. Respondent acknowledges that its Taxpayer Identification Numbers (Social Security or Employer Identification Numbers), which Respondent has previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

V. Consumer Information

IT IS FURTHER ORDERED that Respondent must directly or indirectly provide sufficient information to enable the Commission to efficiently administer consumer redress to consumers who (i) visited Respondent' centers for a LASIK consultation from January 1, 2014,

to August 30, 2020, (ii) were found to be medically eligible for LASIK, and (iii) declined having LASIK. Respondent must supply such redress data within 8 days of the effective date of this Order. If a representative of the Commission requests in writing any information related to redress, Respondent must provide it, in the form prescribed by the Commission representative, within 14 business days.

VI. Acknowledgments of the Order

IT IS FURTHER ORDERED that Respondent obtain acknowledgments of receipt of this Order:

A. Respondent, within 10 business days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury;

B. For 10 years after the issuance date of this Order, Respondent must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives having managerial responsibilities for conduct related to the subject matter of this Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 10 business days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Respondent delivered a copy of this Order, that Respondent must obtain, within 30 business days, a signed and dated acknowledgment of receipt of this Order.

VII. Compliance Reports and Notices

IT IS FURTHER ORDERED that Respondent make timely submissions to the Commission:

A. One year after the issuance date of this Order, Respondent must submit a compliance report, sworn under penalty of perjury, in which:

1. Respondent must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission, may use to communicate with Respondent; (b) identify all of that Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales; (d) describe in detail whether and how Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes the Respondent made to comply with this Order; and (e) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.

B. Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 business days of any change in the following: (a) any designated point of contact; or (b) the structure of Respondent that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

C. Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Respondent within 14 business days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In re LCA-Vision.

VIII. Recordkeeping

IT IS FURTHER ORDERED that Respondent must create certain records for 20 years after the issuance date of this Order, and retain each such record for 5 years, unless otherwise specified below. Specifically, Respondent must create and retain the following records:

A. accounting records showing the revenues from all goods or services sold, the costs incurred in generating those revenues, and resulting net profit or loss;

B. personnel records showing, for each person providing services in relation to any aspect of this Order, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

C. copies or records of all consumer complaints and refund requests relating to pricing and advertising, whether received directly or indirectly, such as through a third party, and any response thereto; provided this requirement shall not impose a duty upon Respondent to actively monitor third parties or request complaints from parties who may receive such complaints;

D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and

E. a copy of each unique advertisement (or the full inventory of the variable elements of any dynamic advertisement campaign) or other marketing material making a representation subject to this Order.

IX. Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondent's compliance with this Order:

A. Within 10 business days of receipt of a written request from a representative of the Commission, Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.

B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with Respondent. Respondent must permit representatives of the Commission to interview anyone affiliated with Respondent who has agreed to such an interview. The interviewee may have counsel present.

C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondent or any individual or entity affiliated with Respondent, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

X. Order Effective Dates

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate 20 years from the date of its issuance (which date may be stated at the end of this Order, near the Commission's seal), or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however,* that the filing of such a complaint will not affect the duration of:

A. Any Provision in this Order that terminates in less than 20 years; and

B. This Order if such complaint is filed after this Order has terminated pursuant to this Provision.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of this Order, and the dismissal or ruling is either not appealed or upheld on appeal, then this Order will terminate according to this Provision as though the complaint had never been filed, except that this Order will not terminate between the date such

complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner Wilson dissenting.

April J. Tabor
Secretary

SEAL:
ISSUED: March 13, 2023