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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION

11 RETINA ASSOCIATES MEDICAL)
GROUP, INC., individually and on)
12 behalf of all others similarly situated,)
13 Plaintiff,)
14 v.)
15 PROOPTICS LLC,)
16 Defendant.)

CLASS ACTION
JUNK-FAX COMPLAINT
JURY TRIAL DEMANDED

17
18 Plaintiff Retina Associates Medical Group, Inc., brings this class action under
19 Rule 23 of the Federal Rules of Civil Procedure against Defendant ProOptics LLC
20 for its violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227
21 (TCPA), and the regulations promulgated thereunder.

22 **JURISDICTION AND VENUE**

23 1. This Court has federal question subject matter jurisdiction pursuant to
24 28 U.S.C. § 1331 and 47 U.S.C. § 227.

25 2. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2),
26 because a substantial part of the events or omissions giving rise to the claims in this
27 case occurred in this District.

1 to Plaintiff and to at least 40 other persons as part of a plan to broadcast fax
2 advertisements, of which the Fax is an example, or, alternatively, the Fax was sent
3 on Defendant's behalf.

4 13. On information and belief, Defendant approved, authorized and
5 participated in the scheme to broadcast fax advertisements by (a) directing a list to
6 be purchased or assembled, (b) directing and supervising employees or third parties
7 to send the faxes, (c) creating and approving the fax form to be sent, and (d)
8 determining the number and frequency of the facsimile transmissions.

9 14. Defendant had a high degree of involvement in, actual notice of, or
10 ratified the unlawful fax broadcasting activity and failed to take steps to prevent such
11 facsimile transmissions.

12 15. Defendant created, made, or ratified the sending of the Fax and other
13 similar or identical facsimile advertisements to Plaintiff and other members of the
14 "Class" as defined below.

15 16. The Fax to Plaintiff and, on information and belief, the similar facsimile
16 advertisements sent by Defendant, lacked a proper notice informing the recipient of
17 the ability and means to avoid future unsolicited advertisements.

18 17. Under the TCPA and 47 C.F.R. § 64.1200(a)(4)(iii), the opt-out notice
19 for unsolicited faxed advertisements must meet the following criteria:

- 20 (A) The notice is clear and conspicuous and on the first page of the
21 advertisement;
- 22 (B) The notice states that the recipient may make a request to the sender of
23 the advertisement not to send any future advertisements to a telephone
24 facsimile machine or machines and that failure to comply, within 30
25 days, with such a request meeting the requirements under paragraph
26 (a)(4)(v) of this section is unlawful;
- 27 (C) The notice sets forth the requirements for an opt-out request under
28 paragraph (a)(4)(v) of this section
- (D) The notice includes—

- 1 (1) A domestic contact telephone number and facsimile machine
2 number for the recipient to transmit such a request to the sender;
3 and
4 (2) If neither the required telephone number nor facsimile machine
5 number is a toll-free number, a separate cost-free mechanism
6 including a Web site address or e-mail address, for a recipient to
7 transmit a request pursuant to such notice to the sender of the
8 advertisement. A local telephone number also shall constitute a
9 cost-free mechanism so long as recipients are local and will not
10 incur any long distance or other separate charges for calls made
11 to such number; and
12 (E) The telephone and facsimile numbers and cost-free mechanism
13 identified in the notice must permit an individual or business to make
14 an opt-out request 24 hours a day, 7 days a week.

15 18. The Fax and, on information and belief, Defendant's similar facsimile
16 advertisements lacked an opt-out notice containing a domestic contact telephone
17 number, thereby violating 47 U.S.C. § 227(b)(2)(D)(iv)(I) and 47 C.F.R. §
18 64.1200(a)(4)(iii)(D)(I).

19 19. On information and belief, Defendant faxed the same or other
20 substantially similar facsimile advertisements to the members of the Class in
21 California and throughout the United States without first obtaining the recipients'
22 prior express invitation or permission.

23 20. Defendant violated the TCPA by transmitting the Fax to Plaintiff and
24 to the Class members without obtaining their prior express invitation or permission
25 and by not displaying the proper opt-out notice required by 47 C.F.R. §
26 64.1200(a)(4).

27 21. Defendant knew or should have known that (a) facsimile
28 advertisements, including the Fax, were advertisements, (b) Plaintiff and the other
Class members had not given their express invitation or permission to receive
facsimile advertisements, (c) no established business relationship existed with
Plaintiff and the other Class members, and (d) Defendant's facsimile advertisements
did not display a proper opt-out notice.

1 22. Pleading in the alternative to the allegations that Defendant knowingly
2 violated the TCPA, Plaintiff alleges that Defendant did not intend to send
3 transmissions of facsimile advertisements, including the Fax, to any person where
4 such transmission was not authorized by law or by the recipient, and to the extent
5 that any transmissions of facsimile advertisement was sent to any person and such
6 transmission was not authorized by law or by the recipient, such transmission was
7 made based on Defendant's own understanding of the law or on the representations
8 of others on which Defendant reasonably relied.

9 23. The transmissions of facsimile advertisements, including the Fax, to
10 Plaintiff and the Class caused concrete and personalized injury, including unwanted
11 use and destruction of their property, e.g., toner or ink and paper, caused undesired
12 wear on hardware, interfered with the recipients' exclusive use of their property, cost
13 them time, occupied their fax machines for the period of time required for the
14 electronic transmission of the data, and interfered with their business or personal
15 communications and privacy interests.

16 **CLASS ACTION ALLEGATIONS**

17 24. Plaintiff brings this class action on behalf of the following class of
18 persons, hereafter, the "Class":

19 All persons in the United States who on or after four years prior to the filing
20 of this action, (1) were sent by or on behalf of Defendant a telephone facsimile
21 message of material advertising the commercial availability or quality of any
22 goods, (2) from which Plaintiff obtained the recipient's fax number from
23 Schaeffer Vicron Optical, Inc., or VS Corporation, (3) with respect to whom
24 Defendant cannot provide evidence of prior express invitation or permission
25 for the sending of such fax or (4) with whom Defendant did not have an
26 established business relationship, and (5) the fax identified in subpart (1) of
27 this definition (a) did not display a clear and conspicuous opt-out notice on
28 the first page stating that the recipient may make a request to the sender of the
advertisement not to send any future advertisements to a telephone facsimile
machine or machines and that failure to comply, within 30 days, with such a
request meeting the requirements under 47 C.F.R. § 64.1200(a)(4)(v) is
unlawful, (b) lacked a telephone number for sending the opt-out request, or
(c) lacked a facsimile number for sending the opt-out request.

1 25. Excluded from the Class are Defendant, its employees, agents, and
2 members of the judiciary.

3 26. This case is appropriate as a class action because:

4 a. Numerosity. On information and belief, based in part on review of the
5 sophisticated Fax and online research, the Class includes at least 40 persons
6 and is so numerous that joinder of all members is impracticable.

7 b. Commonality. Questions of fact or law common to the Class
8 predominate over questions affecting only individual Class members, e.g.:

- 9 i. Whether Defendant engaged in a pattern of sending unsolicited fax
10 advertisements;
- 11 ii. Whether the Fax, and other faxes transmitted by or on behalf of
12 Defendant, contains material advertising the commercial
13 availability of any goods;
- 14 iii. Whether the Fax, and other faxes transmitted by or on behalf of
15 Defendant, contains material advertising the quality of goods;
- 16 iv. The manner and method Defendant used to compile or obtain the
17 list of fax numbers to which Defendant sent the Fax and other
18 unsolicited faxed advertisements;
- 19 v. Whether Defendant faxed advertisements without first obtaining
20 the recipients' prior express invitation or permission;
- 21 vi. Whether Defendant violated 47 U.S.C. § 227;
- 22 vii. Whether Defendant willfully or knowingly violated 47 U.S.C. §
23 227;
- 24 viii. Whether Defendant violated 47 C.F.R. § 64.1200;
- 25 ix. Whether the Fax, and the other fax advertisements sent by or on
26 behalf of Defendant, displayed the proper opt-out notice required
27 by 47 C.F.R. § 64.1200(a)(4);
- 28 x. Whether the Court should award statutory damages per TCPA
violation per fax;
- xi. Whether the Court should award treble damages per TCPA
violation per fax; and
- xii. Whether the Court should enjoin Defendant from sending TCPA-
violating facsimile advertisements in the future.

1 c. Typicality. Plaintiff’s claim is typical of the other Class members’
2 claims, because, on information and belief, the Fax was substantially the same
3 as the faxes sent by or on behalf of Defendant to the Class, and Plaintiff is
4 making the same claim and seeking the same relief for itself and all Class
5 members based on the same statute and regulation.

6 d. Adequacy. Plaintiff will fairly and adequately protect the interests of
7 the other Class members. Plaintiff’s counsel is experienced in TCPA class
8 actions, having litigated many such cases, and having been appointed class
9 counsel in multiple cases. Neither Plaintiff nor its counsel has interests
10 adverse or in conflict with the Class members.

11 e. Superiority. A class action is the superior method for adjudicating this
12 controversy fairly and efficiently. The interest of each individual Class
13 member in controlling the prosecution of separate claims is small and
14 individual actions are not economically feasible.

15 27. The TCPA prohibits the “use of any telephone facsimile machine,
16 computer or other device to send an unsolicited advertisement to a telephone
17 facsimile machine.” 47 U.S.C. § 227(b)(1).

18 28. The TCPA defines “unsolicited advertisement,” as “any material
19 advertising the commercial availability or quality of any property, goods, or services
20 which is transmitted to any person without that person’s express invitation or
21 permission.” 47 U.S.C. § 227(a)(4).

22 29. The TCPA provides:

23 Private right of action. A person may, if otherwise permitted by the laws or
24 rules of court of a state, bring in an appropriate court of that state:

- 25 (A) An action based on a violation of this subsection or the regulations
prescribed under this subsection to enjoin such violation,
- 26 (B) An action to recover for actual monetary loss from such a violation, or
27 to receive \$500 in damages for each such violation, whichever is
greater, or

1 (C) Both such actions.

2 47 U.S.C. § 227(b)(3)(A)-(C).

3 30. The TCPA also provides that the Court, in its discretion, may treble the
4 statutory damages if a defendant “willfully or knowingly” violated Section 227(b)
5 or the regulations prescribed thereunder.

6 31. Defendant’s actions caused concrete and particularized harm to
7 Plaintiff and the Class, as

8 a. receiving Defendant’s faxed advertisements caused the recipients to
9 lose paper and toner consumed in printing Defendant’s faxes;

10 b. Defendant’s actions interfered with the recipients’ use of the recipients’
11 fax machines and telephone lines;

12 c. Defendant’s faxes cost the recipients time, which was wasted time
13 receiving, reviewing, and routing the unlawful faxes, and such time
14 otherwise would have been spent on business activities; and

15 d. Defendant’s faxes unlawfully interrupted the recipients’ privacy
16 interests in being left alone and intruded upon their seclusion.

17 32. Defendant intended to cause damage to Plaintiff and the Class, to
18 violate their privacy, to interfere with the recipients’ fax machines, or to consume
19 the recipients’ valuable time with Defendant’s advertisements; therefore, treble
20 damages are warranted under 47 U.S.C. § 227(b)(3).

21 33. Defendant knew or should have known that (a) Plaintiff and the other
22 Class members had not given express invitation or permission for Defendant or
23 anyone else to fax advertisements about Defendant’s goods, (b) the Fax and the other
24 facsimile advertisements were advertisements, (c) Defendant did not have an
25 established business relationship with Plaintiff and the other Class members, (d) any
26 established business relationship that Plaintiff and the other Class members might
27 have had with Schaeffer Vicron Optical, Inc., did not allow Defendant to send

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1 Plaintiff and the other Class members fax advertisements, and (e) the Fax and the
2 other facsimile advertisements did not display the proper opt-out notice.

3 34. Defendant violated the TCPA by transmitting the Fax to Plaintiff and
4 substantially similar facsimile advertisements to the other Class members without
5 obtaining their prior express invitation or permission and by not displaying the
6 proper opt-out notice required by 47 C.F.R. § 64.1200(a)(4)(iii).

7 WHEREFORE, Plaintiff, for itself and all others similarly situated, demands
8 judgment against Defendant as follows:

- 9 a. certify this action as a class action and appoint Plaintiff as Class
10 representative;
- 11 b. appoint the undersigned counsel as Class counsel;
- 12 c. award damages of \$500 per TCPA violation per facsimile pursuant to
13 47 U.S.C. § 227(a)(3)(B);
- 14 d. award treble damages up to \$1,500 per TCPA violation per facsimile
15 pursuant to 47 U.S.C. § 227(a)(3);
- 16 e. enjoin Defendant and its contractors, agents, and employees from
17 continuing to send TCPA-violating facsimiles pursuant to 47 U.S.C. §
18 227(a)(3)(A);
- 19 f. award class counsel reasonable attorneys' fees and all expenses of this
20 action and require Defendant to pay the costs and expenses of class
21 notice and claim administration;
- 22 g. award Plaintiff an incentive award based upon its time expended on
23 behalf of the Class and other relevant factors;
- 24 h. award Plaintiff prejudgment interest and costs; and
- 25 i. grant Plaintiff all other relief deemed just and proper.

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DOCUMENT PRESERVATION DEMAND

Plaintiff demands that Defendant take affirmative steps to preserve all records, lists, electronic databases, or other itemization of telephone or fax numbers associated with the Defendant and the communication or transmittal of advertisements as alleged herein.

DATED: August 9, 2018

By: /s/ Seth M. Lehrman
Seth M. Lehrman
Attorneys for Plaintiff
Retina Associates Medical Group, Inc.

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Exhibit A

ORDER BY PHONE
1.800.401.9502

ORDER ONLINE
SCHAEFFERVICRON.COM
 COUPON CODE: **SPRING18**



**SCHAEFFER
 VICRON**

PRICES VALID UNTIL 4-30-2018

**Buy Direct from the Manufacturer • Made in the USA
 Highest Quality • Best Prices • Same Day Shipping!**

POST MYDRIATIC SPECTACLES

Item #G100



QTY	PRICE/EA	SALE PRICE
5,000	27¢	24¢
2,500	28¢	25¢
1,000	29¢	26¢
500	35¢	31¢
250	37¢	33¢
100	38¢	34¢

- Large Side Shields
- Protective Envelopes
- Eliminates 95% of all UV Light up to 400nm
- Double Thick Temples for Extra Strength
- Packaged in Protective Envelopes with Instructions for Adjusting to Fit Children or Adults
- Box of 25 (Minimum Order: 100)
- **Made in the USA**

SLIP-IN MYDS

Item #SL1



- Best Design/Best Value
- Eliminates 95% of All UV Light up to 400nm
- Large Bridge Area Longer Tabs
- Accommodates Most Frame Styles
- Made of Special Scratch-Resistant Material
- Packaged in Box of 250 (Minimum Order: One Box)
- **Made in the USA**

QTY	PRICE/EA	SALE PRICE
5,000	20¢	18¢
2,500	21¢	19¢
1,000	23¢	21¢
500	25¢	23¢
250	27¢	24¢

TIGHT-TOP™

CONTACT LENS CASES

Item #B225

Tight-Tops are leak-proof soak-store-carry screw top lens cases. Contrasting color caps for easy identification of R vs. L lenses. Sold in bags of 50 bright assorted colors

\$15.98 per bag



CHIN REST PAPER

Item #CRP1000

These universal papers measure 5" W x 1½" D (3½" between holes). Designed to fit most slit lamps, Haag Streit, Marco, Nikon, Topcon and Mentor. Made in the USA by Pro-Optics.

Sold in packs of 1,000. \$7.95 ea

ROLL-UPS

Item #RL2

Post-Mydriatic sunglasses that may be worn either alone or behind prescription glasses. These uniquely designed glasses roll out allowing the ends of the roll-ups to rest on the patient's temples. Bronze Film with 6% Light Transmittance and 100% UVA protection. Packaged in protective paper sleeves.

Made in the USA

QTY	PRICE/EA	SALE PRICE
5,000	32¢	29¢
2,500	33¢	30¢
1,000	34¢	31¢
500	36¢	33¢
300	38¢	34¢
100	39¢	35¢



If you wish to discontinue receiving future faxed advertisements from this sender, send your opt-out request to us by email at fax@SchaefferVicron.com or by fax at 800-401-9508. Specify the telephone number(s) of the fax machine(s) covered by your request. As required by law we will comply with your request within the shortest reasonable time not to exceed 30 days.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Health Care Provider Sues ProOptics Over Allegedly Unsolicited Fax Advertisement](#)
