

1 2. DOES 1 through 100 are other individuals or entities whose identities are presently
2 unknown to plaintiffs. Said defendants, at all times mentioned herein, assisted in and about the wrongs
3 complained of herein by providing financial support, advice, resources or other assistance. Plaintiff will
4 seek to amend this complaint to allege the true names and capacities of these DOE Defendants when they
5 are ascertained.

6 3. This action is brought by Plaintiff pursuant to California Code of Civil Procedure §382 on
7 behalf of a class and as an individual party plaintiff. The class is composed of all persons or business
8 entities, corporate or otherwise, who received unsolicited facsimile advertisements in violation of 47
9 U.S.C. §227(b)(1)(C) and violation of 47 C.F.R. §64.1200(a)(3) for the past four years pursuant to 28
10 U.S.C. §1658.

11 4. On behalf of the class and the general public, Plaintiff requests that this court decide that the
12 conduct of the Defendants constitutes the sending of unsolicited facsimile advertisements in violation of
13 the above-referenced statute and federal regulations set forth in Paragraph 4, and that the defendants pay
14 damages to each of the class members as set forth in 47 U.S.C. §227(b)(3) in the amount of \$500.00 for
15 each such violation, three times the amount available or \$1,500.00 based upon the Defendants willfully or
16 knowingly violating said section and the related regulations and for an injunction to prevent further
17 violations of said section.

18 5. Plaintiff's claims are typical of the claims of the Class, because Plaintiff and all Class
19 members sustained damages which arise out of the Defendants' wrongful conduct in violation of Federal
20 law as alleged herein.

21 6. Plaintiff is a representative party who willfully and adequately protects the interests of the
22 Class members, and have retained Class counsel who are experienced and competent in Class and contract
23 litigation. Plaintiff has no interests which are contrary to or in conflict with those of the Class that he seeks
24 to represent. The number and identity of the members of the Class are determinable from the records of the
25 Defendants. Class members may be notified of the pendency of this Class action by mail.

1 7. Plaintiff knows of no difficulty to be encountered in management of this action which would
2 preclude its maintenance as a Class action. Relief concerning Plaintiff's rights under the laws alleged
3 herein, and with respect to the Class as a whole, would be appropriate.

4 8. The likelihood of individual Class members prosecuting separate claims is remote and
5 individual members of the Class do not have a significant interest in individually controlling the
6 prosecution of separate actions. Additionally, the prosecution of separate actions by individual Class
7 members would create a risk of inconsistent and varying adjudications concerning the subject of this
8 action, which adjudications could establish incompatible standards of conduct for defendants under the
9 laws alleged herein. A class action is superior to any other method for the fair and efficient adjudication of
10 this controversy.

11 9. The class is so numerous that joinder of all members would be impracticable. There is a
12 well-defined community of interest in both questions of law and fact between Plaintiff and the Class
13 members. Questions of law and fact common to the members of the aforesaid Class predominate over any
14 questions which may affect only individual members, in that Defendants have acted on grounds generally
15 applicable to the entire Class. Among the questions of law and fact common to the Class are:

- 16 (a) Whether Federal law has been violated by Defendants as alleged herein;
- 17 (b) Whether defendants participated in and pursued the course of conduct complained
18 of;
- 19 (c) Whether the members of the Class have sustained damages, and if so, the proper
20 measure of damages.

21 10. The jurisdiction and venue is proper in this court based upon 47 U.S.C. §227(b)(3) granting
22 jurisdiction under federal law to the State Court for violations of this section, and because the Plaintiff
23 received these facsimiles within the County of San Mateo, the venue is proper in this county.

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1 **FIRST CAUSE OF ACTION**

2 (Violation of Federal Law)

3 (47 U.S.C. §227)

4 11. Plaintiff realleges and incorporates herein by this reference all of the allegations contained
5 in paragraphs 1 through 10, inclusive, of this complaint as though fully set forth herein.

6 12. The TCPA took effect on December 20, 1992.

7 13. 47 U.S.C. §227(b)(1)(C) states as follows:

8 It shall be unlawful for any person within the United States . . . to
9 use any telephone facsimile machine, computer, or other device to
10 send an unsolicited advertisement to a telephone facsimile
11 machine.

12 14. 47 U.S.C. §227(a)(4) defines “unsolicited advertisement” as “any material advertising the
13 commercial availability or quality of any property, goods or services which is transmitted to any person
14 without the person’s prior express invitation or permission.”

15 15. On November 6, 2002, and in all likelihood on earlier occasions, the Defendants willfully
16 and knowingly violated the Telephone Consumer Protection Act by sending and/or causing to be sent a 47
17 U.S.C. §227(a)(4) “unsolicited advertisement” (junk fax) to the Plaintiff (see Exhibit 1 - sample of the
18 fax).

19 16. The Plaintiff seeks to recover damages (actual, statutory, multiple, and/or punitive) relating
20 to the “unsolicited advertisement” in the amount of \$500.00 for each violation, and/or \$1,500.00 for each
21 instance of Defendant’s violation of the Telephone Consumer Protection Act.

22 **SECOND CAUSE OF ACTION**

23 (Civil Conspiracy)

24 17. Plaintiff realleges and incorporates herein by reference all of the allegations contained in
25 Paragraphs 1 through 16, inclusive, of this complaint as though fully set forth herein.

26 18. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
27 entered into an agreement under which said defendants, acting in concert, agreed to willfully or knowingly
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1 violate the TCPA.

2 19. The acts of Defendants, and each of them, were in furtherance of a conspiracy to violate a
3 legal duty for their own personal financial gain.

4 20. Defendants had an independent duty to Plaintiff and all others similarly situated not to
5 engage in said conduct and their conduct involves a conspiracy to violate a legal duty in furtherance of
6 Defendants' financial gain.

7 21. Defendants at all times did the acts and things herein alleged pursuant to, and in furtherance
8 of, the conspiracy and agreement alleged above.

9 22. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff has
10 been damaged in a sum according to proof and for attorney's fees, costs, and interest according to proof.

11 **THIRD CAUSE OF ACTION**

12 (Unfair and Illegal Business Practices)

13 (B&P §17200 et seq.)

14 23. Plaintiff realleges and incorporates herein by reference all of the allegations contained in
15 Paragraphs 1 through 22, inclusive, of this complaint as though fully set forth herein.

16 24. Plaintiff alleges on information and belief that at or about the time when Defendants
17 violated the TCPA, these Defendants also did so with regard to other members of the general public.

18 25. By violating 47 USC §227, these Defendants engaged in unfair advertising or unfair
19 business acts or practices, and therefore engaged in unfair competition in violation of California's unfair
20 competition law, California Business & Professions Code §17200 – 17210. The Plaintiff so alleges on
21 behalf of its own interests and those of the general public.

22 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

23 1. Awarding damages on behalf of the Plaintiff as the result of violations of the TCPA in the
24 amount of \$500.00 for each violation;

25 2. Awarding damages on behalf of the Plaintiff as a result of a willful and knowing violation of
26 the Telephone Consumer Protection Act of 1991, in the amount of \$1,500.00 for each violation;

27 3. Against all Defendants and injunction as authorized by Business & Professions Code
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1 §17203 to prevent the use or employment of facsimile faxes which constitute unfair competition, and to
2 restore the persons in interest any money or property which was acquired by means of such unfair
3 competition.

4 4. Awarding the Plaintiff all costs of court and attorney fees, pursuant to California Code of
5 Civil Procedure §1021.5 or otherwise;

6 5. Granting injunctive relief, prohibiting the Defendants from violating the TCPA; and

7 6. Granting such further legal and equitable relief as the Court deems appropriate and just.

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9 DATED:

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11 JOHN L. FALLAT
12 Attorney for Plaintiff
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