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7 SUPERIOR COURT OF CALIFORNIA  
8 COUNTY OF SAN MATEO  
9 UNLIMITED JURISDICTION

10  
11 HYPERTOUCHE, INC., a California  
12 corporation, individually, and on behalf of  
all others similarly situated,

13 Plaintiffs,

14 vs.

15 PERRY JOHNSON, INC., a Michigan  
16 corporation, PERRY JOHNSON  
REGISTRARS, INC., a Michigan  
17 corporation, and DOES 1 through 100,

18 Defendants.

) Case No. 418600

) **CLASS ACTION**

) **FIRST AMENDED COMPLAINT FOR**  
) **DAMAGES AND INJUNCTIVE**  
) **RELIEF BASED ON:**

) **1. VIOLATION OF FEDERAL LAW;**  
) **2. CIVIL CONSPIRACY**

) **JURY TRIAL DEMANDED**  
)  
)  
)

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20  
21 Plaintiffs, by their attorneys of record, bring this challenge to Defendants' unlawful business  
22 practices in connection with the violation of the Telephone Consumer Protection Act of 1991 ("TCPA")  
23 (codified at 47 U.S.C. §227.) They sue on behalf of themselves and a class of all others similarly situated.  
24 Plaintiffs seek injunctive relief and damages, against the above-named Defendants and allege as follows:

25 **THE PARTIES**

26 1. Plaintiff Hypertouch, Inc., is a California corporation with its principal place of business in  
27 Redwood City, California.

1           2.       Plaintiff is informed and believes that defendant Perry Johnson, Inc. (hereinafter “defendant  
2 PJJ”) is, and at all times material hereto was, a Michigan corporation, with a place of business at 222 N.  
3 Sepulveda Blvd., #1328, El Segundo, California 90245.

4           3.       Plaintiff is informed and believes that defendant Perry Johnson Registrars, Inc. (hereinafter  
5 “defendant PJRI”) is the alter ego of PJI and at all times material hereto was, a Michigan corporation, with  
6 a place of business at 222 N. Sepulveda Blvd., #1328, El Segundo, California 90245.

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

12           5.       This action is brought by Plaintiff pursuant to California Code of Civil Procedure §382 on  
13 behalf of a class and as an individual party plaintiff. The class is composed of all persons or business  
14 entities, corporate or otherwise, who received unsolicited facsimile advertisements in violation of 47  
15 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  
16 U.S.C. §1658.

17           6.       On behalf of the class and the general public, Plaintiff requests that this court decide that the  
18 conduct of the Defendants constitutes the sending of unsolicited facsimile advertisements in violation of  
19 the above-referenced statute and federal regulations set forth in Paragraph 4, and that the defendants pay  
20 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  
21 each such violation, three times the amount available or \$1,500.00 based upon the Defendants willfully or  
22 knowingly violating said section and the related regulations and for an injunction to prevent further  
23 violations of said section.

24           7.       Plaintiff’s claims are typical of the claims of the Class, because Plaintiff and all Class  
25 members sustained damages which arise out of the Defendants’ wrongful conduct in violation of Federal  
26 law as alleged herein.

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

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

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

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

- 21           (a)      Whether Federal law has been violated by Defendants as alleged herein;
- 22           (b)      Whether defendants participated in and pursued the course of conduct complained  
23           of;
- 24           (c)      Whether the members of the Class have sustained damages, and if so, the proper  
25           measure of damages.



1 **SECOND CAUSE OF ACTION**

2 Civil Conspiracy

3 19. Plaintiff realleges and incorporates herein by reference all of the allegations contained in  
4 Paragraphs 1 through 18, inclusive, of this complaint as though fully set forth herein.

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

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

10 22. Defendants had an independent duty to Plaintiff and all others similarly situated not to  
11 engage in said conduct and their conduct involves a conspiracy to violate a legal duty in furtherance of  
12 Defendants' financial gain.

13 23. Defendants at all times did the acts and things herein alleged pursuant to, and in furtherance  
14 of, the conspiracy and agreement alleged above.

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

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

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

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

22 3. Awarding the plaintiff all costs of court and attorney fees;

23 4. Granting injunctive relief, prohibiting the Defendants from violating the TCPA; and

24 5. Granting such further legal and equitable relief as the Court deems appropriate and just.

25  
26 DATED: October 9, 2001.

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JOHN L. FALLAT  
Attorney for Plaintiff