

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

BOBO’S DRUGS, INC. d/b/a DAVIS)	
ISLANDS PHARMACY, individually and)	
as the representatives of a class of)	
similarly-situated persons,)	
)	
Plaintiff,)	
)	Case No.
v.)	
)	CLASS ACTION
FAGRON, INC., FAGRON ACADEMY,)	
LLC, FAGRON PROFESSIONAL)	
SERVICES, LLC, FAGRON HOLDING)	
USA, LLC, and B&B)	
PHARMACEUTICALS, INC.,)	
)	
Defendants.)	

CLASS ACTION COMPLAINT

Plaintiff, Bobo’s Drugs, Inc. d/b/a Davis Islands Pharmacy (“Plaintiff”) brings this action on behalf of itself and all other persons similarly situated and, except for those allegations pertaining to Plaintiff or its attorneys, which are based upon personal knowledge, allege the following upon information and belief against defendants, Fagron, Inc., Fagron Academy, LLC, Fagron Professional Services, LLC, Fagron Holding USA, LLC (collectively “Fagron”), and B&B Pharmaceuticals, Inc. (“B&B”):

PRELIMINARY STATEMENT

1. Defendants have sent advertisements by facsimile in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, and the regulations the Federal Communications Commission (“FCC”) has prescribed thereunder, 47 C.F.R. § 64.1200 (collectively, the “TCPA”).

2. Defendants sent Plaintiff at least two advertisements by facsimile and in violation of the TCPA. Exhibit A, Exhibit B. Exhibit A advertises the quality or availability of the Fagron Academy Compounding Technical Services, a continuing education program. Exhibit B advertises the quality or availability of pharmaceuticals. Plaintiff did not expressly consent to receive any advertisement from Defendants by fax. Moreover, Plaintiff does not have an established business relationship with Defendants.

3. Plaintiff brings this action against Defendants on behalf of a class of all persons or entities that Defendants sent one or more telephone facsimile messages (“faxes”) about one or more courses available from Fagron Academy Compounding Technical Services or pharmaceuticals available from Fagron, seeking statutory damages for each violation of the TCPA, trebling of the statutory damages if the Court determines Defendants’ violations were knowing or willful, injunctive relief, compensation and attorney fees (under the conversion count), and all other relief the Court deems appropriate under the circumstances.

4. Defendants’ unsolicited faxes damaged Plaintiff and the other class members. Unsolicited faxes tie up the telephone lines, prevent fax machines from receiving authorized faxes, prevent their use for authorized outgoing faxes, cause undue wear and tear on the recipients’ fax machines, and require additional labor to attempt to discern the source and purpose of the unsolicited message. The recipient of a “junk” fax loses the use of its fax machine while receiving an unsolicited fax transmission, and many lose their paper and ink toner in printing the fax. Such an

unsolicited fax interrupts the recipient's privacy. A junk fax wastes the recipient's valuable time that would have been spent on something else.

PARTIES, JURISDICTION, AND VENUE

5. Plaintiff, Bobo's Drugs, Inc. d/b/a Davis Islands Pharmacy, is an independent pharmacy located in Tampa, Florida.

6. On information and belief, Fagron Inc. is a Minnesota Corporation with its principal place of business in St. Paul, Minnesota.

7. On information and belief, Fagron Academy, LLC is a Delaware limited liability company with its principal place of business in Miami, Florida.

8. On information and belief, Fagron Professional Services, LLC is a Minnesota limited liability company with its principal place of business in St. Paul, Minnesota.

9. On information and belief, Fagron Holding USA, LLC is a Delaware limited liability company with its principal place of business in St. Paul, Minnesota.

10. On information and belief, B&B Pharmaceuticals, Inc. is a Colorado corporation with its principal place of business in Englewood, Colorado.

11. On information and belief, Fagron, Inc., Fagron Academy, LLC, Fagron Professional Services, LLC, and B&B Pharmaceuticals, Inc. are wholly owned subsidiaries of Fagron Holding USA, LLC.

12. Fagron Academy is engaged in the business of the wholesale and distribution of active and inactive pharmaceutical ingredients, bases, supplies, and equipment; education related to the compounding of customized medication; and

consulting with compounding pharmacies regarding matters related to pharmaceuticals. Exhibit C, Fagron Academy Compounding Technical Services (FACTS) Consulting Agreement.

13. On information and belief, Fagron Academy, Fagron, Inc., Fagron Professional Services, B&B Pharmaceuticals, and the other Fagron entities and subsidiaries provide services through Defendants' FACTS subscription program.

14. On information and belief, employees of Fagron Professional Services oversee all educational programs offered through Fagron, Inc., B&B Pharmaceuticals, and the other Fagron entities and subsidiaries.

15. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 47 U.S.C. § 227.

16. Personal jurisdiction exists over Defendants in Florida because Defendants have transacted business within the State, hold a Florida pharmacy license, and have committed tortious acts within the State.

17. Venue is proper in the Middle District of Florida because Defendants committed statutory torts within this District and a significant portion of the events took place here.

FACTS

18. Defendants sent advertisements by facsimile to Plaintiff and a class of similarly-situated persons. Whether Defendants did so directly or with the assistance of a third party (yet unknown to Plaintiff), Defendants are directly liable for violating the TCPA.

19. Plaintiff has received at least two of Defendants' advertisements by facsimile. A true and correct copy of the fax Plaintiff received on June 2, 2016 is attached as Exhibit A. A true and correct copy of the fax Plaintiff received on May 1, 2013 is attached as Exhibit B.

20. Exhibit A is a one-page document Defendants sent by fax. Exhibit A advertises the commercial availability of Defendants' pharmaceutical ingredients and pharmaceutical products. Exhibit A. In a bolded box which attracts the reader's eye, Exhibit A advertises the Fagron Academy Compounding Technical Services ("FACTS") program, a subscription continuing education and consulting service. Exhibit A.

21. Exhibit A advises recipients that the 2016 Summer Sale prices were valid only between June 1, 2016 and July 15, 2015. Exhibit A.

22. Exhibit A contains a toll-free telephone number in large, bold font which recipients could use to order "immediately." Exhibit A. Exhibit A provides Defendant B&B's website address. Exhibit A. Exhibit A also provides a telephone number and email address to subscribe to Defendants' FACTS program. Exhibit A.

23. Exhibit B is a one-page document Defendants sent by fax advertising the commercial availability of Defendants' pharmaceutical ingredients and pharmaceutical products. Exhibit B. Exhibit B informs the recipients that the prices of the "Emerald Specials" were only valid until May 31, 2013 or while supplies last. Exhibit B.

24. Exhibit B provides Fagron's address, toll free telephone number, and

toll free fax number which are all methods recipients could use to place an order for Defendants' pharmaceuticals.

25. Exhibit A and Exhibit B do not include the opt-out notice required by the TCPA. *See* 47 U.S.C. § 227 (b) (2) (D) & (E) and 47 C.F.R. § 64.1200 (a) (4) (iii) & (v).

26. On information and belief, Defendants sent advertisements by facsimile to Plaintiff and more than 39 other persons in violation of the TCPA.

27. Plaintiff and the other class members owe no obligation to protect their fax machines from Defendants. Their fax machines are ready to send and receive their urgent communications, or private communications about patients' medical needs, not to receive Defendants' unlawful advertisements.

CLASS ACTION ALLEGATIONS

28. Plaintiff brings this action as a class action on behalf of itself and all others similarly situated as members of a class, initially defined as follows:

Each person sent one or more telephone facsimile messages from Fagron or B&B Pharmaceuticals promoting pharmaceutical products or educational services from the Fagron Academy Compounding Technical Services [FACTS] but did not inform recipients that to opt out of receiving further faxes they must identify the telephone number of the telephone facsimile machine to which their opt-out request relates, that a request must be made to the telephone number, facsimile number, Web site address or email address identified in the sender's facsimile advertisement, and that an opt-out request will be valid until the recipient subsequently provides express invitation or permission to the sender, in writing or otherwise, authorizing advertisements by fax.

Plaintiff anticipates modifying the proposed class definition, including proposing subclasses where appropriate, after discovery about the scope and breadth of

Defendant's fax advertising program and will do so through an amended motion for class certification pursuant to Fed. R. Civ. P. 23.

29. Excluded from the class are Defendants, any entity in which Defendants have a controlling interest, each of Defendants' officers, directors, legal representatives, heirs, successors, and assigns, and any Judge assigned to this action, including his or her immediate family.

30. In this action, Plaintiff intends to discover, include, and resolve the merits of claims about all advertisements Defendant sent by fax. Exhibit D, a Demand for Preservation of All Tangible Documents Including Electronically Stored Information.

31. This action is brought and may properly be maintained as a class action pursuant to Fed. R. Civ. P. 23. This action satisfies Rule 23 (a)'s numerosity, commonality, typicality, and adequacy requirements. Furthermore, the questions of law or fact that are common in this action predominate over any individual questions of law or fact making class representation the superior method to adjudicate this controversy under Rule 23 (b) (3).

32. **Numerosity/impracticality of joinder.** On information and belief, the class consists of more than 39 persons and, thus, is so numerous that individual joinder of each member is impracticable. The precise number of class members and their identities are unknown to Plaintiff, but will be obtained from Defendants' records or the records of third parties.

33. **Commonality and predominance.** There is a well-defined community of

interest and there are common questions of law and fact that predominate over any questions affecting only individual members of the class. These common legal and factual questions, which do not vary from one class member to another, and which may be determined without reference to the individual circumstances of any class member, include, but are not limited to the following:

- a. Whether Exhibit A, Exhibit B, and other yet-to-be-discovered facsimiles sent by or on behalf of Defendants advertised the commercial availability or quality of any property, goods or services;
- b. Whether Defendants were the senders of advertisements by facsimile promoting the commercial availability or quality of any property, goods, or services;
- c. The manner and method used to compile or obtain the list(s) of fax numbers to which Defendants sent fax advertisements;
- d. Whether the Court should award statutory damages to Plaintiff and the other class members;
- e. If the Court finds that Defendants willfully or knowingly violated the TCPA, whether the Court should exercise its discretion to increase the amount of the statutory damages award to an amount equal to not more than three times the amount;
- f. Whether the Court should enjoin Defendants from faxing advertisements in the future; and

g. Whether Defendants' conduct as alleged herein constituted conversion.

34. **Typicality of claims.** Plaintiff's claims are typical of the claims of the other class members, because Plaintiff and all class members were injured by the same wrongful practices. Plaintiff and the members of the class received Defendants' advertisements by facsimile and those advertisements did not contain the opt-out notice required by the TCPA. Under the facts of this case, because the focus is upon Defendants' conduct, if Plaintiff prevails on its claims, then the other putative class members will prevail as well.

35. **Adequacy of representation.** Plaintiff is an adequate representative of the class because its interests do not conflict with the interests of the class it seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation, and TCPA litigation in particular, and Plaintiff intends to vigorously prosecute this action. Plaintiff and his counsel will fairly and adequately protect the interest of members of the class.

36. **Prosecution of separate claims would yield inconsistent results.** Even though the questions of fact and law in this action are predominantly common to Plaintiff and the putative class members, separate adjudication of each class member's claims would yield inconsistent and varying adjudications. Such inconsistent rulings would create incompatible standards for Defendants to operate under if/when class members bring additional lawsuits concerning the same unsolicited fax advertisements or if Defendants choose to advertise by fax again in

the future.

37. A class action is the superior method of adjudicating the common questions of law or fact that predominate over individual questions. A class action is superior to other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all class members is economically unfeasible and procedurally impracticable. The likelihood of individual class members prosecuting separate claims is remote, and even if every class member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. Relief concerning Plaintiff's rights under the laws herein alleged and with respect to the class would be proper. Plaintiff envisions no difficulty in the management of this action as a class action.

COUNT I
TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227

38. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

39. Plaintiff brings Count I on behalf of itself and a class of similarly situated persons against Defendants.

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

41. The TCPA defines "unsolicited advertisement" as "any material

advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's express invitation or permission." 47 U.S.C. § 227 (a) (4).

42. Exhibit A advertises Defendants' commercially available pharmaceutical products and FACTS subscription services. Exhibit A.

43. Exhibit B advertises Defendants' commercially available pharmaceutical products. Exhibit B.

44. Defendants sent Exhibit A and Exhibit B to Plaintiff and the fax machines of other health professionals to promote its pharmaceutical products and services.

45. The TCPA provides a private right of action as follows:

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

(A) An action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) An action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or

(C) Both such actions.

47 U.S.C. § 227 (b) (3).

46. The Court, in its discretion, may treble the statutory damages if it determines that a violation was knowing or willful. 47 U.S.C. § 227 (b) (3).

47. Here, Defendants violated 47 U.S.C. § 227 (b) (1) (C) by sending

advertisements by facsimile (such as Exhibit A) to Plaintiff and the other class members without their prior express invitation or permission.

48. The TCPA expressly mandates the form and content of an opt-out notice. 47 U.S.C. § 227 (b) (2) (D) & (E), in relevant part, states:

In implementing the requirements of this subsection, the Commission ...

(D) shall provide that a notice contained in an unsolicited advertisement complies with the requirements under this subparagraph only if...

(i) the notice is clear and conspicuous and on the first page of the unsolicited advertisement;

(ii) the notice states that the recipient may make a request to the sender of the unsolicited advertisement not to send any future unsolicited advertisements to a telephone facsimile machine or machines and that failure to comply, within the shortest reasonable time, as determined by the Commission, with such a request meeting the requirements under subparagraph (E) is unlawful;

(iii) the notice sets forth the requirements for a request under subparagraph (E);

(iv) the notice includes—

(I) a domestic contact telephone and facsimile machine number for the recipient to transmit such a request to the sender; and

(II) a cost-free mechanism for a recipient to transmit a request pursuant to such notice to the sender of the unsolicited advertisement; the Commission shall by rule require the sender to provide such a mechanism and may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, exempt certain classes of small business senders, but only if the Commission determines that the costs to such class are unduly burdensome given the revenues generated by such small businesses;

(v) the telephone and facsimile machine numbers and the cost-free mechanism set forth pursuant to clause (iv) permit an individual or business to make such a request at any time on any day of the week; and

(vi) the notice complies with the requirements of subsection (d) of this section;

(E) shall provide, by rule, that a request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if—

(i) the request identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates;

(ii) the request is made to the telephone or facsimile number of the sender of such an unsolicited advertisement provided pursuant to subparagraph (D)(iv) or by any other method of communication as determined by the Commission; and

(iii) the person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine;

49. The FCC's regulations at 47 C.F.R. § 64.1200 (a) (4) (iii) & (v) expressly require the following:

(iii) The advertisement contains a notice that informs the recipient of the ability and means to avoid future unsolicited advertisements. A notice contained in an advertisement complies with the requirements under this paragraph only if -

(A) The notice is clear and conspicuous and on the first page of the advertisement;

(B) The notice states 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 paragraph (a)(4)(v) of this section is unlawful;

(C) The notice sets forth the requirements for an opt-out request under paragraph (a)(4)(v) of this section;

(D) The notice includes -

(1) A domestic contact telephone number and facsimile machine number for the recipient to transmit such a request to the sender; and

(2) If neither the required telephone number nor facsimile machine number is a toll-free number, a separate cost-free mechanism including a Web site address or email address, for a recipient to transmit a request pursuant to such notice to the sender of the advertisement. A local telephone number also shall constitute a cost-free mechanism so long as recipients are local and will not incur any long distance or other separate charges for calls made to such number; and

(E) The telephone and facsimile numbers and cost-free mechanism identified in the notice must permit an individual or business to make an opt-out request 24 hours a day, 7 days a week.

...

(v) A request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if -

(A) The request identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates;

(B) The request is made to the telephone number, facsimile number, Web site address or email address identified in the sender's facsimile advertisement; and

(C) The person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine.

50. Here, Defendants violated 47 U.S.C. § 227 (b) (1) (C) by sending an advertisement by facsimile (such as Exhibit A) to Plaintiff and the other class members without their prior express invitation or permission.

51. Furthermore, Defendants violated 47 U.S.C. § 227 (b) (2) (D) and (E) and 47 C.F.R. § 64.1200 (a) (4) (iii) & (v) by failing to include a compliant opt-out notice. Exhibit A, Exhibit B.

52. In violation of the TCPA, Exhibit B does not inform recipients that Defendants' failure to comply with an opt-out request within 30 days is unlawful.

53. Furthermore, neither of Defendants' faxes informs its recipients of the requirements to opt-out of future facsimiles, as explained by 47 C.F.R. § 64.1200 (a) (4) (v). Specifically, Defendants' faxes do not inform Plaintiff and other putative class members that they must identify the telephone number of the telephone facsimile machine to which their opt-out request relates. Additionally, Defendants' faxes fail to inform Plaintiff and the putative class that a request must be made to the telephone number, facsimile number, Web site address or email address identified in the sender's facsimile advertisement. Finally, Defendants' faxes fail to inform recipients that an opt-out request will be valid until the recipient subsequently provides express invitation or permission to the sender, in writing or otherwise, authorizing advertisements by fax.

54. Facsimile advertising imposes burdens on recipients that are distinct from the burdens imposed by other types of advertising. The required opt-out notice provides recipients the necessary information to opt-out of future fax transmissions, including a notice that the sender's failure to comply with the opt-out request will be unlawful. 47 C.F.R. § 64.1200 (a) (4) (iii).

55. The TCPA is a strict liability statute and Defendants are liable to Plaintiff and the other class members even if Defendants' actions were negligent. 47 U.S.C. § 227 (b) (3).

56. If Defendants' actions were knowing or willful, then the Court has the

discretion to increase the statutory damages up to three times the amount. 47 U.S.C. § 227 (b) (3).

57. Fagron is liable for the fax advertisements at issue because it sent the faxes, caused the faxes to be sent, participated in the activity giving rise to or constituting the violation, approved the format and content of the faxes, the faxes were sent on its behalf, it instructed its subsidiaries to send advertisements by facsimile, or under general principles of vicarious liability, including actual authority, apparent authority and ratification.

58. B&B is liable for the fax advertisements at issue because it sent the faxes, caused the faxes to be sent, participated in the activity giving rise to or constituting the violation, approved the format and content of the faxes, the faxes were sent on its behalf, or under general principles of vicarious liability, including actual authority, apparent authority and ratification.

59. Defendants' actions damaged Plaintiff and the other class members. Receiving Defendants' junk faxes caused the recipients to lose paper and toner consumed in the printing of Defendants' faxes. The subject faxes used the fax machines of Plaintiff and the other class members. The subject faxes wasted Plaintiff's valuable time, requiring receipt and review Defendants' unlawful fax. Defendants' faxes unlawfully interrupted Plaintiff and the other class members' privacy interests in being left alone. Finally, the injury and property damage sustained by Plaintiff and the other class members from the sending of unlawful fax advertisements occurred outside Defendants' premises.

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, demands judgment in his favor and against Defendants, jointly and severally, as follows:

A. That the Court adjudge and decree that the present case may be properly maintained as a class action, appoint Plaintiff as the representative of the class, and appoint Plaintiff's counsel as counsel for the class;

B. That the Court award \$500.00 in statutory damages for each violation of the TCPA;

C. That, if it finds Defendants willfully or knowingly violated the TCPA's faxing prohibitions, the Court exercise its discretion to increase the amount of the statutory damages award to an amount equal to not more than 3 times the amount (Plaintiff requests trebling);

D. That the Court enter an injunction prohibiting Defendants from violating the TCPA; and

E. That the Court award costs and such further relief as the Court may deem just and proper.

COUNT II
CONVERSION

60. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

61. Plaintiff brings Count II on behalf of itself and a class of similarly situated persons and against Defendants.

62. By sending advertisements to their fax machines, Defendants

improperly and unlawfully converted the class's fax machines to Defendants' own use. Where printed (as in Plaintiff's case), Defendants also improperly and unlawfully converted the class members' paper and toner to Defendants' own use. Defendants also converted Plaintiff's time to Defendants' own use, as they did with the valuable time of the other class members.

63. Immediately prior to the sending of the unsolicited faxes, Plaintiff and the other class members each owned an unqualified and immediate right to possession of their fax machines, paper, toner, and employee time.

64. By sending them unsolicited faxes, Defendants permanently misappropriated the class members' fax machines, toner, paper, and employee time to their own use. Such misappropriation was wrongful and without authorization.

65. Defendants knew or should have known that its misappropriation of paper, toner, and employee time was wrongful and without authorization.

66. Plaintiff and the other class members were deprived of the use of the fax machines, paper, toner, and employee time, which could no longer be used for any other purpose. Plaintiff and each class member thereby suffered damages as a result of their receipt of unsolicited fax advertisements from Defendants.

67. Defendants' unsolicited faxes effectively stole Plaintiff's employees' time because persons employed by Plaintiff were involved in receiving, routing, and reviewing Defendants' illegal faxes. Defendants knew or should have known employees' time is valuable to Plaintiff.

WHEREFORE, Plaintiff, individually and on behalf of all others similarly

situated, demands judgment in its favor and against Defendants, jointly and severally, as follows:

A. That the Court adjudge and decree that the present case may be properly maintained as a class action, appoint Plaintiff as the representative of the class, and appoint Plaintiff's counsel as counsel for the class;

B. That the Court award damages;

C. That the Court award punitive damages;

D. That the Court award attorney's fees;

E. That the Court award costs of suit; and

F. That the Court award such further relief as it may deem just and proper under the circumstances.

Respectfully submitted,

BOBO'S DRUGS, INC. d/b/a DAVIS ISLANDS
PHARMACY, individually and as the representative
of a class of similarly-situated persons,

By: /s/ Phillip A. Bock

Phillip A. Bock (FL 93985)
Bock, Hatch, Lewis & Oppenheim, LLC
134 N. LaSalle St., Ste. 1000
Chicago, IL 60602
P.O. Box 416474
Miami Beach, FL 33141
Telephone: 312-658-5500
Facsimile: 312-658-5555
service@classlawyers.com

EXHIBIT A

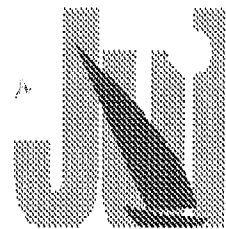


2016 Summer Sale

B&B Pharmaceuticals, Inc.

Prices Valid 06-01-2016 Thru 07-15-2016

800-499-3100



(DEA CSOS - Order CII's Immediately with no DEA 222 form - Call for details)

CII Chemicals

Cocaine HCL, USP

1gram	\$130.00
5grams	\$550.00

Codeine Phosphate, USP

10grams	\$45.00
25grams	\$95.00

Fentanyl Citrate, USP

5grams	\$1,295.00
--------	------------

Hydrocodone Bitartrate, USP

25grams	\$150.00
100grams	\$525.00

Hydromorphone HCL, USP

10grams	\$325.00
30grams (3x10grams)	\$900.00

Methadone HCL, USP

25grams	\$225.00
---------	----------

Levorphanol Tartrate, USP

1gram	\$700.00
-------	----------

Amitriptyline HCL, USP

100grams	\$40.00
----------	---------

Anastrozole, USP

1gram	\$150.00
-------	----------

Baclofen, USP

100grams	\$140.00
----------	----------

Buprenorphine HCL, USP

1gram	\$175.00
-------	----------

Cyclobenzaprine HCL, USP

100grams	\$295.00
----------	----------

Diclofenac Sodium, USP

100grams	\$30.00
----------	---------

Estradiol Micro., USP

5grams	\$25.00
25grams	\$95.00

Estriol, USP

25grams	\$350.00
---------	----------

Fluticasone Propionate, USP

25grams	\$5,700.00
---------	------------

Flurbiprofen, USP

100grams	\$95.00
1000grams	\$695.00

Gabapentin, USP

100grams	\$105.00
500grams	\$450.00

Ketamine HCL, USP

100grams	\$150.00
----------	----------

Ketoprofen, USP

1000grams	\$225.00
-----------	----------

Ketotifen Fumarate, USP

5grams	\$120.00
25grams	\$490.00

Nabumetone, USP

100grams	\$50.00
1000grams	\$450.00

Naltrexone HCL, USP

1gram	\$20.00
5grams	\$95.00

Ondansetron HCL, USP

1gram	\$25.00
-------	---------

Phentermine HCL, USP

100grams	\$95.00
----------	---------

In need of technical support? Join the FACTS program! (call for details)

Fagron Academy Compounding Technical Services [FACTS]

FACTS is available to offer pharmacies continued education in the form of live consultations, formulation database and development support, and up-to-date information on the latest compounding trends and information all led by the highly-skilled support staff. Let the FACTS staff help you grow your practice and support your continued compounding journey. **Contact today** info@fagronacademy.us or 305-575-2480 - Make sure to tell them B&B referred you

Short Dated:

7-Keto DHEA

25grams	Exp. 11/16	\$40.00
---------	------------	---------

Clonidine HCL, USP

5grams	Exp. 09/16	\$30.00
--------	------------	---------

CoEnzyme Q-10, USP

100grams	Exp. 11/16	\$150.00
----------	------------	----------

Meperidine HCL, USP

25grams	Exp. 11/16	\$75.00
---------	------------	---------

Testosterone Non-Micro., USP

100grams	Exp. 08/16	\$75.00
----------	------------	---------

B&B is in compliance with all federal and state licensing requirements and all products are repackaged in a class 1000 clean room. DEA and Board of Pharmacy License is required on file before shipping. All non CII products are tested in an outside analytical laboratory. Check us out on the web @ www.BBPharm.net

To "Opt-Out" of Future Fax's please call 800-499-3100 or fax back "Opt-Out" on this form to 303-755-5242

"The recipient may make request to the sender not to send any future faxes and that failure to comply with the request within 30days is unlawful"

EXHIBIT B

Emerald Specials

Qty	Article No.	Description	Size	Price
	F804689	Clobetasol Propionate USP Micro	250 MG	\$14.63
	F803575	Clobetasol Propionate USP Micro	1 G	\$26.61
	F803096	Clobetasol Propionate USP Micro	5 G	\$126.00
	F803947	Gabapentin USP	5 G	\$18.00
	F803496	Gabapentin USP	25 G	\$51.75
	F803495	Gabapentin USP	100 G	\$164.25
	F803497	Gabapentin USP	500 G	\$426.75
	F803498	Gabapentin USP	KG	\$651.75
	F801397	Kojic Acid	25 G	\$45.77
	F801403	Kojic Acid	100 G	\$148.32
	F804373	Hydrocortisone USP Micronized	25 G	\$51.75
	F804372	Hydrocortisone USP Micronized	100 G	\$166.75
	F804374	Hydrocortisone USP Micronized	500 G	\$825.00
	F804703	Hydroxyurea USP	50 G	\$36.32
	F804704	Hydroxyurea USP	250 G	\$148.32
	F804705	Hydroxyurea USP	500 G	\$247.97
	F804153	Lansoprazole USP	5 G	\$34.76
	F804154	Lansoprazole USP	25 G	\$84.98
	F803809	Ursodiol USP	100 G	\$186.75
	F803396	Ursodiol USP	500 G	\$674.25

Account Number:

Pharmacy Name:

Contact Person:

Phone Number:

To place your order fax (800) 339-1596 or call (800) 423-6967

SyrSpend[®] SF

Buy 2, Get 3rd Bottle
FREE-ANY SIZE!!

(Must be three products of the same size and price to qualify for this special)

SyrSpend[®] SF

- 500 mL / \$14.95
- GAL / \$64.95

SyrSpend[®] SF Cherry

- 500 mL / \$14.95
- GAL / \$64.95

SyrSpend[®] SF Grape

- 500 mL / \$14.95
- GAL / \$64.95

SyrSpend[®] SF Alka

- 60 mL / \$10.95
- 100 mL / \$12.95

SyrSpend[®] SF Alka Cherry

- 60 mL / \$10.95
- 100 mL / \$12.95

SyrSpend[®] SF Powder

- 60 mL / \$10.95

SyrSpend[®] SF
Stability Studies
on select APIs
available @
syrspendsf.com



EXHIBIT C

Fagron Academy Compounding Technical Services

FAGRON ACADEMY COMPOUNDING TECHNICAL SERVICES (FACTS) CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT ("Agreement") is made effective as of the _____ day of _____, 20____ (the "Effective Date"), by and between _____ ("Company") and Fagron Academy, a Florida corporation ("Consultant"). Company and Consultant are each referred to herein as a "party" and collectively as the "parties".

RECITALS

WHEREAS, Consultant is currently engaged in the business of (a) the wholesale and distribution of active and inactive pharmaceutical ingredients, bases, supplies, and equipment ("Products"), (b) education related to the compounding of customized medication by compounding pharmacies, and (c) consulting with compounding pharmacies regarding certain matters related to pharmaceuticals; WHEREAS, Company is a compounding pharmacy that is appropriately licensed in the states that it conducts business and desires to engage Consultant to provide Company with certain consulting services pursuant to the terms of this Agreement; and WHEREAS, Company and Consultant desire to set forth in writing the terms and conditions of their agreements and understandings. NOW, THEREFORE, in consideration of the foregoing, of the mutual promises and undertakings herein contained, the consideration set forth hereafter, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending legally to be bound, hereby agree as follows:

TERMS AND CONDITIONS

1. Consulting

- a. Subject to the terms of this Agreement, Company hereby engages Consultant for a period of one (1) year from the Effective Date (the "Term") as a consultant to Company, unless such engagement is earlier terminated pursuant to the terms of this Agreement. During such engagement and except as provided herein, Consultant will provide Company with (i) research and consulting services related to pharmaceutical regulatory guidelines, (ii) consulting services related to pharmaceutical equipment use, (iii) access to Consultant's database of example pharmaceutical formulas (the "Example Formulas"), and (iv) technical information regarding certain pharmaceutical products (collectively, the "Services").
- b. The Services will be provided (i) by employees, contractors or agents of the Consultant ("Consultant Representatives"), (ii) through telephone, email or other electronic communication between the Consultant Representatives and representatives of Company, and (iii) during Consultant's normal business hours, except as may be otherwise determined by Consultant. Company understands and agrees that Consultant, in its sole discretion, may at any time alter, change or eliminate any of the Services or how such Services are offered.

2. Termination

Company's engagement of Consultant pursuant to this Agreement may be immediately terminated by either party at any time during the Term upon written notice thereof to the other party. If not so terminated, Company's engagement of Consultant will automatically terminate upon the expiration of the Term. Upon the termination of the Company's engagement of Consultant pursuant to the terms of this Agreement and except as provided herein, all rights, duties and obligations of the parties under this Agreement shall immediately terminate.

3. Consulting Fees

As remuneration for the Services to be rendered to Company by Consultant under this Agreement, Company shall pay Consultant a fee of \$1,200 (the "Consulting Fee"), which shall be due and payable on the earlier of (a) the last day of the Term, and (b) the date the consulting engagement is terminated pursuant to the terms of this Agreement (such earlier date referred to in this Paragraph 3 as the "Final Date"). In the event that, between the Effective Date and the Final Date, Company purchases at least \$5,000 worth of combined Products from Fagron Companies (B&B Pharmaceuticals, Fagron US, and/or Freedom Pharmaceuticals), then the Consulting Fee will be waived by Consultant and will not be owed by Company.

Fagron Academy Compounding Technical Services

4. Representations and Warranties

Company represents, warrants and covenants to Consultant that: (a) throughout the Term, Company will maintain all licenses and permits necessary to conduct the business in which it is engaged, (b) throughout the Term, Company will remain compliant with all terms of United State Pharmacopeia (“USP”) Chapter 795 and, if applicable to Company, USP Chapter 797, (c) throughout the Term and thereafter, Company will not solely rely on any Example Formulas that are accessed by Company pursuant to the terms of this Agreement, and that Company will undertake any and all steps necessary to independently verify any formulation, concentrations, and raw amounts of components provided in the Example Formulas, including any formulation that is the same or similar to any Example Formula, that is used in Company’s business, to ensure the accuracy of all product components and component concentrations, as well as the compatibility and stability of all formulation components, and (d) throughout the Term, Company will ensure that it will not infringe, misappropriate, or violate any intellectual property rights of any third party, related in any way to the Services, including the patents, trademarks, copyrights, and trade secrets of any third party. Company’s representations, warranties and covenants, and obligations and duties related thereto, shall survive the termination of Company’s engagement of Consultant in perpetuity.

5. Independent Contractor Relationship

It is understood, agreed, and it is the intention of the parties that the relationship between them is an independent contractor relationship. Neither party is an agent, partner, co-venturer, owner or representative of the other, and neither party shall have the right to bind the other to any contract or commitment, oral or written, expressed or implied. Each party hereto covenants and agrees that they will not hold themselves out to the public or others as an agent, partner, co-venturer, owner or representative of the other, and further covenants and agrees that they will not execute contracts binding on the other party without the other party’s express prior written consent. In the event of the breach of this Paragraph by a party hereto, such breaching party shall indemnify and hold the other party harmless from and against any and all claims, causes of action, obligations or liabilities of any nature whatsoever arising out of or in connection with such breach. The parties rights, duties and obligations related to this Paragraph shall survive the termination of Company’s engagement of Consultant in perpetuity.

6. Confidential Information

- a. Company acknowledges that in order for Consultant to provide the Services, it shall be necessary for the Consultant to disclose to Company certain Confidential Information (as defined below). Company agrees that it will (i) only use the Confidential Information in connection with its business as it is being conducted as of the Effective Date, (ii) only disclose the Confidential Information to the Company’s officers and employees who have a need to know such information and agree in writing to be bound by the obligations of this paragraph of the Agreement, and (iii) will not disclose the Confidential Information to any other individual or entity unless the Consultant consents in writing prior to such disclosure. All rights, duties and obligations related to this paragraph remain in effect in perpetuity after Consultant’s engagement is terminated.
- b. As used herein, “Confidential Information” shall mean any and all information, data, reports, analyses, compilations, records, notes, summaries, discussions, studies, sketches, graphs, designs, photographs, drawings and other materials (in whatever form or media maintained) containing or reflecting information relating to the Consultant or the Services provided to, learned or developed by Company or its officers, employees, agents or others during the Company’s engagement of Consultant pursuant to the terms of this Agreement. Confidential Information includes but is not limited to: (i) information or materials which relate to the Consultant’s assets, liabilities, properties, accounts, financial information, budgets, operations, marketing studies, plans and materials, services, products, processes, trade secrets, intellectual property or other proprietary rights, know-how, concepts, ideas, inventions, discoveries, research and development, business plans, models or strategies, manufacturing or distribution methods, processes or systems, software and related documentation, object code, source code, database technologies, systems, structures, architectures, customers, customer lists, customer requirements, vendors, suppliers, advertisers, personnel, training techniques, pricing and other proprietary information; (ii) all data, reports, analysis, compilations, extracts, summaries, writings, studies, interpretations, forecasts, records or other materials (whether documentary, electronic or otherwise) prepared by or on behalf of the Consultant that relate to, are based on or contain any of the information listed in (i) above or that reflect a summary, review or evaluation of any of the business, plans, operations, data, documents or customers of the Consultant; (iii) the existence of any discussions or negotiations between the parties; and/or (iv) any other information which is marked or expressly designated as

Fagron Academy Compounding Technical Services

“Confidential” by the Consultant, or by reason of its nature would reasonably be concluded to be of a confidential nature. All Confidential Information, including any materials that contain any Confidential Information, shall be returned to the Consultant immediately upon termination of the engagement of Consultant.

7. Delegation of Duties and Assignment of Rights

Neither party may delegate the performance of any of its obligations or duties hereunder, or assign any rights hereunder except upon the prior written consent of the other party. In the event of an assignment or delegation by a party, respectively, each reference in this Agreement to such party shall include such assignee or delegate from and after the date of such assignment or delegation.

8. Waiver of Breach

The waiver by Consultant or Company of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach thereof.

9. Severability

The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity and enforceability of the other provisions.

10. Responsibility

As a material inducement to Consultant to enter into this Agreement with Company, Company agrees that it shall not attempt to exercise any control or direction over Consultant, or over the manner and means by which Consultant shall perform the Services. Consultant shall be and remain free and fully responsible for the proper performance of the Services. Included in such responsibility is the right to direct and control the performance of the Services provided for herein.

11. Applicable Law

This Agreement shall be construed and performed according to the laws of the state of Florida without regard for the conflicts of laws principles thereof, and shall be binding upon the parties thereto, their successors and assigns. The parties hereto, by their signature at the end of this Consulting Agreement, hereby agree that appropriate jurisdiction and venue for any and all claims under this Agreement or related in any way to the Agreement or the subject matter hereof shall be in the state and federal courts located in Miami-Dade County, Florida. The parties hereto waive any right they may have to remove said litigation to any other court in the United States.

12. Notice

Any notice required to be given shall be sufficient if it is in writing and sent by certified mail or registered mail, return receipt requested, first class postage prepaid, to the appropriate address listed on the signature page hereto.

13. Entire Agreement

This Agreement, and the documents and agreements referred to herein and executed in connection herewith contains the entire agreement and understanding by and between Company and Consultant with respect to the herein referenced engagement. No change or modification hereof shall be valid or binding unless the same is in writing and signed by the party intended to be bound.

14. Indemnity

During the Company's engagement of Consultant pursuant to the terms of this Agreement and anytime thereafter:

- a. Company shall, at Company's sole expense, indemnify, defend and hold the Consultant and its directors, officers, employees, owners, agents, and affiliates (collectively "Indemnified Party" or "Indemnified Parties") harmless from and against all claims, actions, liabilities, losses, expenses, damages, judgments and costs (including without limitation reasonable legal expenses and attorneys' fees) (collectively, "Losses") that may at any time be incurred by the Consultant that directly or indirectly arise out of or relate to any breach by Company, its employees, officers, agents or representatives of any of the representations, warranties, covenants, or terms of this Agreement.
- b. Company shall, at Company's sole expense, indemnify and hold harmless the Indemnified Parties against all Losses arising out of or relating to any claims, suits, actions, demands, or other proceedings instituted by any person or entity ("Claims") against any Indemnified Party or Company alleging that the manufacture, use, importation, offer for sale, or sale of any formulation that is the same or similar to any Example Formula, infringes, induces infringement, misappropriates, or otherwise violates any intellectual property rights of any third party.
- c. Company shall, at Company's sole expense, indemnify and hold harmless the Indemnified Parties against all Losses arising out of or relating to any Claims against the Indemnified Parties or Company alleging that any Indemnified Party or Company is liable as a

Fagron Academy Compounding Technical Services

contributory infringer for any acts associated with the sale, offer for sale, distribution, or solicitation within the United States, or importation into the United States, of a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of a product or process protected by one or more patents of a third party.

- d. Company shall, at Company's sole expense, defend, indemnify, save and hold harmless the Indemnified Parties from and against any and all Losses arising out of any use of one or more trademarks of any third party. The indemnification includes any Claims asserted in or related to lawsuits, oppositions, Uniform Domain-Name Dispute Resolution Policy proceedings, or other proceedings against Company or the Indemnified Parties for infringement of the one or more trademarks of any third party.
- e. Company shall, at Company's sole expense, indemnify and hold harmless the Indemnified Parties from and against any and all Losses arising out of any actual or alleged death or injury to any person or damage to any tangible property resulting or claimed to result wholly or in part from any formulation that is the same or similar to the Example Formula.

15. Remedies

Company acknowledges that the injury that would be suffered by the Consultant as a result of a breach of the provisions of this Agreement by Company or by Company's partners, agents, representatives, servants, employers, independent contractors and/or any and all persons directly or indirectly acting for or with Company would be irreparable and that an award of monetary damages to Consultant for such a breach would be an inadequate remedy. Consequently, Consultant will, at any time, have the right, in addition to any other rights it may have, to obtain injunctive relief to restrain any breach or threatened breach or otherwise to specifically enforce any provision of this Agreement, and Consultant will not be obligated to post bond or other security in seeking such relief, provided that if such a bond or security is required by any law, court or governmental authority, the amount of such bond shall be five hundred dollars (\$500.00). Any and all of Consultant's remedies for the breach of this Agreement shall be cumulative and the pursuit of one remedy shall not be deemed to exclude any and all other remedies with respect to the subject matter of this Agreement.

16. IN WITNESS HEREOF, the parties execute this Agreement as of the Effective Date.

COMPANY: _____

Address: _____

By: _____ (signature)

Name: _____

Title: _____

CONSULTANT: Fagron Academy

Address: 1111 Brickell Ave, Suite 1550
Miami, FL 33131

By: _____ (signature)

Name: _____

Title: _____



EXHIBIT D

BOCK, HATCH, LEWIS & OPPENHEIM, LLC

134 North La Salle Street, Suite 1000

Chicago, IL 60602

312-658-5500 (Phone) • 312-658-5555 (Fax)

August 7, 2017

In re: *Bobo's Drugs, Inc. d/b/a Davis Islands Pharmacy v. Fagron, Inc., Fagron Academy, LLC, Fragron Professional Services, LLC, Fagron Holding USA, LLC, and B&B Pharmaceuticals, Inc.* (MD Florida).

Demand for Preservation of All Tangible Documents Including Electronically Stored Information

As part of the Class Action Complaint against Fagron, Inc., Fagron Academy, LLC, Fragron Professional Services, LLC, Fagron Holding USA, LLC, and B&B Pharmaceuticals, Inc. ("Defendants"), plaintiff, Bobo's Drugs, Inc. d/b/a Davis Islands Pharmacy, hereby issues a demand for Defendants to preserve all tangible documents, including electronically stored information.

As used in this document, "you" and "your" refers to each Defendant, and its predecessors, successors, parents, subsidiaries, divisions or affiliates, and its respective officers, directors, agents, attorneys, accountants, employees, partners or other persons occupying similar positions or performing similar functions.

You should anticipate that much of the information subject to disclosure or responsive to discovery in this matter is stored on your current and former computer systems and other media and devices (including personal digital assistants, voice-messaging systems, online repositories and cell phones).

Electronically stored information (hereinafter "ESI") should be afforded the broadest possible definition and includes (by way of example and not as an exclusive list) potentially relevant information electronically, magnetically or optically stored as:

- Digital communications (e.g., e-mail, voice mail, instant messaging);
- Word processed documents (e.g., Word or WordPerfect documents and drafts);
- Spreadsheets and tables (e.g., Excel or Lotus 123 worksheets);
- Accounting Application Data (e.g., QuickBooks, Money, Peachtree data files);
- Image and Facsimile Files (e.g., .PDF, .TIFF, .JPG, .GIF images);
- Sound Recordings (e.g., .WAV and .MP3 files);

- Video and Animation (e.g., .AVI and .MOV files);
- Databases (e.g., Access, Oracle, SQL Server data, SAP);
- Contact and Relationship Management Data (e.g., Outlook, ACT!);
- Calendar and Diary Application Data (e.g., Outlook PST, Yahoo, blog tools);
- Online Access Data (e.g., Temporary Internet Files, History, Cookies);
- Presentations (e.g., PowerPoint, Corel Presentations)
- Network Access and Server Activity Logs;
- Project Management Application Data;
- Computer Aided Design/Drawing Files; and,
- Back Up and Archival Files (e.g., Zip, .GHO)

ESI resides not only in areas of electronic, magnetic and optical storage media reasonably accessible to you, but also in areas you may deem not reasonably accessible. You are obliged to preserve potentially relevant evidence from both these sources of ESI, even if you do not anticipate producing such ESI.

The demand that you preserve both accessible and inaccessible ESI is reasonable and necessary. Pursuant to amendments to the Federal Rules of Civil Procedure that have been approved by the United States Supreme Court (eff. 12/1/05), you must identify all sources of ESI you decline to produce and demonstrate to the court why such sources are not reasonably accessible. For good cause shown, the court may then order production of the ESI, even if it finds that it is not reasonably accessible. Accordingly, even ESI that you deem reasonably inaccessible must be preserved in the interim so as not to deprive the plaintiffs of their right to secure the evidence or the Court of its right to adjudicate the issue.

A. Preservation Requires Immediate Intervention

You must act immediately to preserve potentially relevant ESI regarding the time period of February 2011 to the date You receive this letter. Potentially relevant ESI includes, but is not limited to information:

1. Regarding the events and causes of action described in Plaintiff's Class Action Complaint; and
2. Regarding Your claims or defenses to Plaintiff's Class Action Complaint.

Adequate preservation of ESI requires more than simply refraining from efforts to destroy or dispose of such evidence. You must also intervene to prevent loss due to routine operations and employ proper techniques and protocols suited to protection of ESI. Be advised that sources of ESI are altered and erased by continued use of your computers and other devices. Booting a drive, examining its contents or running any application will irretrievably alter the evidence it contains and may constitute unlawful spoliation of evidence. Consequently, alteration and erasure may result from your failure to act

diligently and responsibly to prevent loss or corruption of ESI. Nothing in this demand for preservation of ESI should be understood to diminish your concurrent obligation to preserve document, tangible things and other potentially relevant evidence.

B. Suspension of Routine Destruction

You are directed to immediately initiate a litigation hold for potentially relevant ESI, documents and tangible things, and to act diligently and in good faith to secure and audit compliance with such litigation hold. You are further directed to immediately identify and modify or suspend features of your information systems and devices that, in routine operation, operate to cause the loss of potentially relevant ESI. Examples of such features and operations include:

- Purging the contents of e-mail repositories by age, capacity or other criteria;
- Using data or media wiping, disposal, erasure or encryption utilities or devices;
- Overwriting, erasing, destroying or discarding back up media;
- Re-assigning, re-imaging or disposing of systems, servers, devices or media;
- Running antivirus or other programs effecting wholesale metadata alteration;
- Releasing or purging online storage repositories;
- Using metadata stripper utilities;
- Disabling server or IM logging; and,
- Executing drive or file defragmentation or compression programs.

C. Guard Against Deletion

You should anticipate that your employees, officers or others may seek to hide, destroy or alter ESI and act to prevent or guard against such actions. Especially where company machines have been used for Internet access or personal communications, you should anticipate that users may seek to delete or destroy information they regard as personal, confidential or embarrassing and, in so doing, may also delete or destroy potentially relevant ESI. This concern is not one unique to you or your employees and officers. It's simply an event that occurs with such regularity in electronic discovery efforts that any custodian of ESI and their counsel are obliged to anticipate and guard against its occurrence.

D. Preservation by Imaging

You should take affirmative steps to prevent anyone with access to your data, systems and archives from seeking to modify, destroy or hide electronic evidence on network or local hard drives (such as by deleting or overwriting files, using data shredding and overwriting applications, defragmentation, re-imaging or replacing drives, encryption, compression, steganography or the

like). With respect to local hard drives, one way to protect existing data on local hard drives is by the creation and authentication of a forensically qualified image of all sectors of the drive. Such a forensically qualified duplicate may also be called a bitstream image or clone of the drive. Be advised that a conventional back up of a hard drive is not a forensically qualified image because it only captures active, unlocked data files and fails to preserve forensically significant data that may exist in such areas as unallocated space, slack space and the swap file.

With respect to the hard drives and storage devices of each of the persons named below and of each person acting in the capacity or holding the job title named below, as well as each other person likely to have information pertaining to the instant action on their computer hard drive(s), demand is made that you immediately obtain, authenticate and preserve forensically qualified images of the hard drives in any computer system (including portable and home computers) used by that person during the period from February 2011 to today's date as well as recording and preserving the system time and date of each such computer.

Once obtained, each such forensically qualified image should be labeled to identify the date of acquisition, the person or entity acquiring the image and the system and medium from which it was obtained. Each such image should be preserved without alteration.

E. Preservation in Native Form

You should anticipate that certain ESI, including but not limited to spreadsheets and databases, will be sought in the form or forms in which it is ordinarily maintained. Accordingly, you should preserve ESI in such native forms, and you should not select methods to preserve ESI that remove or degrade the ability to search your ESI by electronic means or make it difficult or burdensome to access or use the information efficiently in the litigation. You should additionally refrain from actions that shift ESI from reasonably accessible media and forms to less accessible media and forms if the effect of such actions is to make such ESI not reasonably accessible.

F. Metadata

You should further anticipate the need to disclose and produce system and application metadata and act to preserve it. System metadata is information describing the history and characteristics of other ESI. This information is typically associated with tracking or managing an electronic file and often includes data reflecting a file's name, size, custodian, location and dates of creation and last modification or access. Application metadata is information automatically included or embedded in electronic files but which may not be apparent to a user, including deleted content, draft language,

commentary, collaboration and distribution data and dates of creation and printing. Be advised that metadata may be overwritten or corrupted by careless handling or improper steps to preserve ESI. For electronic mail, metadata includes all header routing data and Base 64 encoded attachment data, in addition to the To, From, Subject, Received Date, CC and BCC fields.

G. Servers

With respect to servers like those used to manage electronic mail (e.g., Microsoft Exchange, Lotus Domino) or network storage (often called a user's "network share"), the complete contents of each user's network share and e-mail account should be preserved. There are several ways to preserve the contents of a server depending upon, e.g., its RAID configuration and whether it can be downed or must be online 24/7. If you question whether the preservation method you pursue is one that we will accept as sufficient, please call to discuss it.

H. Home Systems, Laptops, Online Accounts and Other ESI Venues

Though we expect that you will act swiftly to preserve data on office workstations and servers, you should also determine if any home or portable systems may contain potentially relevant data. To the extent that officers, board members or employees have sent or received potentially relevant e-mails or created or reviewed potentially relevant documents away from the office, you must preserve the contents of systems, devices and media used for these purposes (including not only potentially relevant data from portable and home computers, but also from portable thumb drives, CD-R disks and the user's PDA, smart phone, voice mailbox or other forms of ESI storage.). Similarly, if employees, officers or board members used online or browser-based email accounts or services (such as AOL, Gmail, Yahoo Mail or the like) to send or receive potentially relevant messages and attachments, the contents of these account mailboxes (including Sent, Deleted and Archived Message folders) should be preserved.

I. Ancillary Preservation

You must preserve documents and other tangible items that may be required to access, interpret or search potentially relevant ESI, including logs, control sheets, specifications, indices, naming protocols, file lists, network diagrams, flow charts, instruction sheets, data entry forms, abbreviation keys, user ID and password rosters or the like.

You must preserve any passwords, keys or other authenticators required to access encrypted files or run applications, along with the installation disks, user manuals and license keys for applications required to access the ESI. You must preserve any cabling, drivers and hardware, other than a standard 3.5"

floppy disk drive or standard CD or DVD optical disk drive, if needed to access or interpret media on which ESI is stored. This includes tape drives, bar code readers, Zip drives and other legacy or proprietary devices.

J. Paper Preservation of ESI is Inadequate

As hard copies do not preserve electronic searchability or metadata, they are not an adequate substitute for, or cumulative of, electronically stored versions. If information exists in both electronic and paper forms, you should preserve both forms.

K. Agents, Attorneys and Third Parties

Your preservation obligation extends beyond ESI in your care, possession or custody and includes ESI in the custody of others that is subject to your direction or control. Accordingly, you must notify any current or former agent, attorney, employee, custodian or contractor in possession of potentially relevant ESI, including but not limited to persons/entities involved in marketing, advertising, and fax broadcasting on your behalf, to preserve such ESI to the full extent of your obligation to do so, and you must take reasonable steps to secure their compliance.

L. System Sequestration or Forensically Sound Imaging

We suggest that, with respect to Defendants removing their ESI systems, media and devices from service and properly sequestering and protecting them may be an appropriate and cost-effective preservation step. In the event you deem it impractical to sequester systems, media and devices, we believe that the breadth of preservation required, coupled with the modest number of systems implicated, dictates that forensically sound imaging of the systems, media and devices is expedient and cost effective. As we anticipate the need for forensic examination of one or more of the systems and the presence of relevant evidence in forensically accessible areas of the drives, we demand that you employ forensically sound ESI preservation methods. Failure to use such methods poses a significant threat of spoliation and data loss.

By “forensically sound,” we mean duplication, for purposes of preservation, of all data stored on the evidence media while employing a proper chain of custody and using tools and methods that make no changes to the evidence and support authentication of the duplicate as a true and complete bit-for-bit image of the original. A forensically sound preservation method guards against changes to metadata evidence and preserves all parts of the electronic evidence, including the so-called “unallocated clusters,” holding deleted files.

M. Preservation Protocols

We are desirous of working with you to agree upon an acceptable protocol for forensically sound preservation and can supply a suitable protocol, if you will furnish an inventory of the systems and media to be preserved. Else, if you will promptly disclose the preservation protocol you intend to employ, perhaps we can identify any points of disagreement and resolve them. A successful and compliant ESI preservation effort requires expertise. If you do not currently have such expertise at your disposal, we urge you to engage the services of an expert in electronic evidence and computer forensics. Perhaps our respective expert(s) can work cooperatively to secure a balance between evidence preservation and burden that's fair to both sides and acceptable to the Court.

N. Do Not Delay Preservation

I'm available to discuss reasonable preservation steps; however, you should not defer preservation steps pending such discussions if ESI may be lost or corrupted as a consequence of delay. Should your failure to preserve potentially relevant evidence result in the corruption, loss or delay in production of evidence to which we are entitled, such failure would constitute spoliation of evidence, and we will not hesitate to seek sanctions.

O. Confirmation of Compliance

Please confirm that you have taken the steps outlined in this letter to preserve ESI and tangible documents potentially relevant to this action. If you have not undertaken the steps outlined above, or have taken other actions, please describe what you have done to preserve potentially relevant evidence.

Respectfully,

Phillip A. Bock
Bock, Hatch, Lewis & Oppenheim, LLC
134 N. LaSalle St., Suite 1000
Chicago, IL 60602
512-739-0390 (cell)
312-658-5515 (direct)
todd@classlawyers.com

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
BOBO'S DRUGS, INC. d/b/a DAVIS ISLANDS PHARMACY, individually and as the representatives of a class of similarly-situated persons,
(b) County of Residence of First Listed Plaintiff Hillsborough, FL
(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS
FAGRON, INC., FAGRON ACADEMY, LLC, FAGRON PROFESSIONAL SERVICES, LLC, FAGRON HOLDING USA, LLC, and B&B PHARMACEUTICALS, INC.
County of Residence of First Listed Defendant Ramsey County, MN
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
47 U.S.C. § 227
Brief description of cause:
Violation of the Telephone Consumer Protection Act.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 08/07/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Phillip A. Bock

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE
Print Save As... Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Tampa, FL Pharmacy Hits Fagron Holding USA, Subsidiaries with Junk Fax Suit](#)
