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Retina Associates Medical Group, Inc.
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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION

11 RETINA ASSOCIATES MEDICAL)
GROUP, INC., individually and on)
12 behalf of all others similarly situated,)
13 Plaintiff,)
14 v.)
15 SUNSET PHARMACEUTICALS,)
INC.,)
16 Defendant.)
17)
18)

CLASS ACTION
JUNK-FAX COMPLAINT
JURY TRIAL DEMANDED

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

23 **JURISDICTION AND VENUE**

24 1. This Court has federal question subject matter jurisdiction pursuant
25 to 28 U.S.C. § 1331 and 47 U.S.C. § 227.
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1 2. Venue in this judicial district is proper under 28 U.S.C. §
2 1391(b)(2), because a substantial part of the events or omissions giving rise to
3 the claims in this case occurred in this District.

4 3. The Court has personal jurisdiction over Defendant because it is a
5 California corporation, conducts business in this state, including substantial
6 business in this district, and is a resident of this state.

7 **PARTIES**

8 4. Plaintiff Retina Associates Medical Group, Inc., is a citizen of the
9 state of California, with its principal place of business in Orange County,
10 California.

11 5. Defendant Sunset Pharmaceuticals, Inc., is a California corporation
12 that filed a Statement of Information with the California Secretary of State
13 identifying Defendant's principal executive office at 5651 Palmer Way, Suite F,
14 Carlsbad, CA 92010.

15 6. Defendant, directly or through others acting on its behalf, conspired
16 to, agreed to, contributed to, assisted with, or otherwise caused the wrongful acts
17 and omissions, including the dissemination of the junk faxes addressed in this
18 Complaint.

19 **THE FAX**

20 7. On or about March 9, 2018, Defendant, or someone acting on its
21 behalf, used a telephone facsimile machine, computer, or other device to send to
22 Plaintiff's telephone facsimile machine at (714) 633-7470 an unsolicited
23 advertisement, a true and accurate copy of which is attached as **Exhibit A** (Fax).

24 8. Plaintiff received the Fax through Plaintiff's facsimile machine.

25 9. The Fax constitutes material advertising the quality or commercial
26 availability of any property, goods, or services.

1 10. On information and belief, Defendant has sent facsimile
2 transmissions of material advertising the quality or commercial availability of
3 property, goods, or services to Plaintiff and to at least 40 other persons as part of
4 a plan to broadcast fax advertisements, of which the Fax is an example, or,
5 alternatively, the Fax was sent on Defendant's behalf.

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

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

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

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

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

- 22 (A) The notice is clear and conspicuous and on the first page of the
23 advertisement;
- 24 (B) The notice states that the recipient may make a request to the
25 sender of the advertisement not to send any future
26 advertisements to a telephone facsimile machine or machines
27 and that failure to comply, within 30 days, with such a request
28 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

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- (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 e-mail 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.

16. The Fax and, on information and belief, Defendant’s similar facsimile advertisements lacked a notice stating that the recipient may make a request to the sender of the advertisement not to send future advertisements to a telephone facsimile machine or machines and that failure to comply, within 30 days, with such a request meeting 47 C.F.R. § 64.1200(a)(4)(v)’s requirements is unlawful.

17. The transmissions of facsimile advertisements, including the Fax, to Plaintiff, lacked a notice that complied with 47 U.S.C. § 227(b)(1)(C) and 47 C.F.R. § 64.1200(a)(4)(iii).

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

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

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

7 21. Pleading in the alternative to the allegations that Defendant
8 knowingly violated the TCPA, Plaintiff alleges that Defendant did not intend to
9 send transmissions of facsimile advertisements, including the Fax, to any person
10 where such transmission was not authorized by law or by the recipient, and to
11 the extent that any transmissions of facsimile advertisement was sent to any
12 person and such transmission was not authorized by law or by the recipient, such
13 transmission was made based on Defendant’s own understanding of the law or
14 on the representations of others on which Defendant reasonably relied.

15 22. The transmissions of facsimile advertisements, including the Fax, to
16 Plaintiff and the Class caused concrete and personalized injury, including
17 unwanted use and destruction of their property, e.g., toner or ink and paper,
18 caused undesired wear on hardware, interfered with the recipients’ exclusive use
19 of their property, cost them time, occupied their fax machines for the period of
20 time required for the electronic transmission of the data, and interfered with their
21 business or personal communications and privacy interests.

CLASS ACTION ALLEGATIONS

22 23. Plaintiff brings this class action on behalf of the following class of
23 persons, hereafter, the “Class”:
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1 All persons in the United States who on or after four years prior to the
2 filing of this action, (1) were sent by or on behalf of Defendant a
3 telephone facsimile message of material advertising the commercial
4 availability or quality of any property, goods, or services, (2) with
5 respect to whom Defendant cannot provide evidence of prior express
6 invitation or permission for the sending of such fax or (3) with whom
7 Defendant did not have an established business relationship, and (4)
8 the fax identified in subpart (1) of this definition (a) did not display a
9 clear and conspicuous opt-out notice on the first page stating that the
10 recipient may make a request to the sender of the advertisement not to
11 send any future advertisements to a telephone facsimile machine or
12 machines and that failure to comply, within 30 days, with such a
13 request meeting the requirements under 47 C.F.R. § 64.1200(a)(4)(v)
14 is unlawful or (b) lacked a facsimile number for sending the opt-out
15 request.

9 24. Excluded from the Class are Defendant, Defendant's employees,
10 and agents, and members of the judiciary.

11 25. This case is appropriate as a class action because:

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

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

- 17 i. Whether Defendant engaged in a pattern of sending unsolicited
18 fax advertisements;
- 19 ii. Whether the Fax, and other faxes transmitted by or on behalf
20 of Defendant, contains material advertising the commercial
21 availability of any property, goods or services;
- 22 iii. Whether the Fax, and other faxes transmitted by or on behalf
23 of Defendant, contains material advertising the quality of any
24 property, goods or services;
- 25 iv. The manner and method Defendant used to compile or obtain
26 the list of fax numbers to which Defendant sent the Fax and
27 other unsolicited faxed advertisements;
- 28 v. Whether Defendant faxed advertisements without first
obtaining the recipients' prior express invitation or permission;
- vi. Whether Defendant violated 47 U.S.C. § 227;

- 1 vii. Whether Defendant willfully or knowingly violated 47 U.S.C.
- 2 § 227;
- 3 viii. Whether Defendant violated 47 C.F.R. § 64.1200;
- 4 ix. Whether the Fax, and the other fax advertisements sent by or
- 5 on behalf of Defendant, displayed the proper opt-out notice
- 6 required by 47 C.F.R. § 64.1200(a)(4);
- 7 x. Whether the Court should award statutory damages per TCPA
- 8 violation per fax;
- 9 xi. Whether the Court should award treble damages per TCPA
- violation per fax; and
- xii. Whether the Court should enjoin Defendant from sending
- TCPA-violating facsimile advertisements in the future.

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

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

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

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

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

5 28. The TCPA provides:

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

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

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

15 (C) Both such actions.

16 47 U.S.C. § 227(b)(3)(A)-(C).

17 29. The TCPA also provides that the Court, in its discretion, may treble
18 the statutory damages if a defendant “willfully or knowingly” violated Section
19 227(b) or the regulations prescribed thereunder.

20 30. Defendant’s actions caused concrete and particularized harm to
21 Plaintiff and the Class, as

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

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

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

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

1 31. Defendant intended to cause damage to Plaintiff and the Class, to
2 violate their privacy, to interfere with the recipients' fax machines, or to
3 consume the recipients' valuable time with Defendant's advertisements;
4 therefore, treble damages are warranted under 47 U.S.C. § 227(b)(3).

5 32. Defendant knew or should have known that (a) Plaintiff and the
6 other Class members had not given express invitation or permission for
7 Defendant or anyone else to fax advertisements about Defendants' property,
8 goods, or services, (b) Defendant did not have an established business
9 relationship with Plaintiff and the other Class members, (c) the Fax and the other
10 facsimile advertisements were advertisements, and (d) the Fax and the other
11 facsimile advertisements did not display the proper opt-out notice.

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

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

- 18 a. certify this action as a class action and appoint Plaintiff as Class
19 representative;
- 20 b. appoint the undersigned counsel as Class counsel;
- 21 c. award damages of \$500 per TCPA violation per facsimile pursuant
22 to 47 U.S.C. § 227(a)(3)(B);
- 23 d. award treble damages up to \$1,500 per TCPA violation per
24 facsimile pursuant to 47 U.S.C. § 227(a)(3);
- 25 e. enjoin Defendant and its contractors, agents, and employees from
26 continuing to send TCPA-violating facsimiles pursuant to 47 U.S.C.
27 § 227(a)(3)(A);

- 1 f. award class counsel reasonable attorneys’ fees and all expenses of
- 2 this action and require Defendant to pay the costs and expenses of
- 3 class notice and claim administration;
- 4 g. award Plaintiff an incentive award based upon its time expended on
- 5 behalf of the Class and other relevant factors;
- 6 h. award Plaintiff prejudgment interest and costs; and
- 7 i. grant Plaintiff all other relief deemed just and proper.

DOCUMENT PRESERVATION DEMAND

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

13 DATED: April 30, 2018

EDWARDS POTTINGER LLC

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15 By: /s/ Seth M. Lehrman
16 Seth M. Lehrman
17 Attorney for Plaintiff
18 RETINA ASSOCIATES MEDICAL
19 GROUP, INC.
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Exhibit A



Sunset Pharmaceuticals, Inc.
5651 Palmer Way, Suite F
Carlsbad, CA 92010
www.sunsetpharma.com
P: (888) 950-1950
F: (888) 950-1951

🕒 ORDERS PLACED FOR IN-STOCK PRODUCTS BEFORE 3:00 PM PST WILL ARRIVE NEXT BUSINESS DAY **📦** FREE NEXT DAY SHIPPING ON ALL ORDERS OVER \$150 (REFRIGERATED ITEMS ORDERED ON FRIDAY WILL SHIP MONDAY) **📄** C-II ITEMS REQUIRE 222 FORM SUBMISSION, PLEASE CONTACT US FOR THE PROPER FORM COMPLETION

NEW LOWER COST

Hello Buyer, Sunset Pharmaceuticals has just lowered your cost on these featured products.

NDC	DESCRIPTION	SIZE	WAS	COST
76014-0005-30	EPHEDRINE (AKOVAZ) 50 MG/ML SDV 1 ML	EA	\$ 32.63	\$ 29.25
70121-1049-05	KENALOG (TRIAMCINO ACET) 40 MG SDV 1 ML	EA	\$ 10.44	\$ 9.08
70121-1168-01	KENALOG (TRIAMCINO ACET) 40 MG SDV 5 ML	EA	\$ 52.93	\$ 42.96
76014-0003-33	NEOSTIGMINE (BLOXIVERZ) 1 MG/ML MDV 10 ML	EA	\$ 53.40	\$ 45.60
60505-0582-04	VIGAMOX (MOXIFLOXACIN) 0.5 % O/S 3 ML	EA	\$ 175.00	\$ 35.30

To order, please call Sunset Pharmaceuticals at
(888) 950 - 1950

To remove your fax number, please call our 24x7 toll free number (888) 950-1950

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Sunset Pharmaceuticals Facing Lawsuit Over Alleged Junk Faxes](#)
