



unsolicited advertisements on or about March 13, 2018 and March 27, 2018 (“the Faxes”), true and correct copies of which are attached hereto as Exhibit A, and made a part hereof. The Faxes describe the commercial availability or quality of Defendant’s products, goods and services. Plaintiff is informed and believes, and upon such information and belief avers, that Defendant has sent, and continue to send, unsolicited advertisements via facsimile transmission in violation of the JFPA, including but not limited to those advertisements sent to Plaintiff.

3. Unsolicited faxes damage their recipients. A junk fax recipient loses the use of its fax machine, paper, and ink toner. An unsolicited fax wastes the recipient’s valuable time that would have been spent on something else. A junk fax interrupts the recipient’s privacy. Unsolicited faxes 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.

4. On behalf of itself and all others similarly situated, Plaintiff brings this case as a class action asserting claims against Defendant under the JFPA. Plaintiff seeks to certify a class including faxes sent to Plaintiff and other advertisements sent without proper opt-out language or without prior express invitation or permission, whether sent to Plaintiff or not.

5. Plaintiff is informed and believes, and upon such information and belief avers, that this action is based upon a common nucleus of operative facts because the facsimile transmissions at issue were and are being done in the same or similar manner. This action is based on the same legal theory, namely liability under the JFPA. This action seeks relief expressly authorized by the JFPA: (i) injunctive relief enjoining Defendant, its employees, agents, representatives, contractors, affiliates, and all persons and entities acting in concert with them, from sending unsolicited advertisements in violation of the JFPA; and (ii) an award of

statutory damages in the minimum amount of \$500 for each violation of the JFPA, and to have such damages trebled, as provided by § 227(b)(3) of the Act.

### **JURISDICTION AND VENUE**

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

7. This court has personal jurisdiction over Defendant because Defendant transacts business within this judicial district, has made contacts within this judicial district, and/or has committed tortious acts within this judicial district.

### **PARTIES**

8. Plaintiff, SCOMA CHIROPRACTIC, P. A., is a Florida corporation.

9. On information and belief, Defendant, INNOVATION COMPOUNDING, INC., is a Georgia corporation.

### **FACTS**

10. On information and belief, on or about March 13, 2018 and March 27, 2018, Defendant used a telephone facsimile machine, computer, or other device to send two unsolicited facsimiles to Plaintiff. Copies of the facsimiles are attached hereto as Exhibit A.

11. On information and belief, Defendant receives some or all of the revenues from the sale of the products, goods and services advertised on Exhibit A, and Defendant profits and benefits from the sale of the products, goods and services advertised on Exhibit A.

12. Plaintiff did not give prior express invitation or permission to Defendant to send the faxes.

13. On information and belief, Defendant faxed the same and other unsolicited facsimiles without the required opt-out language to Plaintiff and at least 40 other recipients or sent the same and other advertisements by fax with the required opt-out language but without

first receiving the recipients' express invitation or permission and without having an established business relationship as defined by the TCPA and its regulations.

14. There is no reasonable means for Plaintiff (or any other class member) to avoid receiving unauthorized faxes. Fax machines are left on and ready to receive the urgent communications their owners desire to receive.

15. Defendant's facsimiles attached as Exhibit A do not display a proper opt-out notice as required by 47 C.F.R. § 64.1200.

### **CLASS ACTION ALLEGATIONS**

16. In accordance with Fed. R. Civ. P. 23(b)(1), (b)(2) and (b)(3), Plaintiff brings this class action pursuant to the JFPA, on behalf of the following class of persons:

All persons who (1) on or after four years prior to the filing of this action, (2) were sent telephone facsimile messages of material advertising the commercial availability or quality of any property, goods, or services by or on behalf of Defendant, (3) from whom Defendant did not obtain "prior express invitation or permission" to send fax advertisements, or (4) with whom Defendant did not have an established business relationship, or (5) where the fax advertisements did not include an opt-out notice compliant with 47 C.F.R. § 64.1200(a)(4)(iii).

Excluded from the Class are the Defendant, its employees, agents and members of the Judiciary. Plaintiff seeks to certify a class which include but are not limited to the fax advertisements sent to Plaintiff. Plaintiff reserves the right to amend the class definition upon completion of class certification discovery.

17. Class Size (Fed. R. Civ. P. 23(a)(1)): Plaintiff is informed and believes, and upon such information and belief avers, that the number of persons and entities of the Plaintiff Class is numerous and joinder of all members is impracticable. Plaintiff is informed and believes, and upon such information and belief avers, that the number of class members is at least forty.

18. Commonality (Fed. R. Civ. P. 23 (a) (2)): Common questions of law and fact apply to the claims of all class members. Common material questions of fact and law include, but are not limited to, the following:

- (a) Whether the Defendant sent unsolicited fax advertisements;
- (b) Whether Defendant's faxes sent to other persons, not the Plaintiff, constitute advertisements;
- (c) Whether the Defendant's faxes advertised the commercial availability or quality of property, goods, or services;
- (d) The manner and method the Defendant used to compile or obtain the list of fax numbers to which they sent Exhibit A, other unsolicited faxed advertisements or other advertisements without the required opt-out language;
- (e) Whether the Defendant faxed advertisements without first obtaining the recipient's prior invitation or permission;
- (f) Whether the Defendant sent the faxed advertisements knowingly;
- (g) Whether the Defendant violated the provisions of 47 U.S.C. § 227 and the regulations promulgated thereunder;
- (h) Whether the faxes contain an "opt-out notice" that complies with the requirements of § (b)(1)(C)(iii) of the Act, and the regulations promulgated thereunder, and the effect of the failure to comply with such requirements;
- (i) Whether the Defendant should be enjoined from faxing advertisements in the future;
- (j) Whether the Plaintiff and the other members of the class are entitled to statutory damages; and
- (k) Whether the Court should award treble damages.

19. Typicality (Fed. R. Civ. P. 23 (a) (3)): The Plaintiff's claims are typical of the claims of all class members. The Plaintiff received the same or similar faxes as the faxes sent by or on behalf of the Defendant advertising products, goods and services of the Defendant during the Class Period. The Plaintiff is making the same claims and seeking the same relief for itself and all class members based upon the same federal statute. The Defendant has acted in the same or in a similar manner with respect to the Plaintiff and all the class members by sending Plaintiff and each member of the class the same or similar faxes or faxes which did not contain the proper opt-out language or were sent without prior express invitation or permission.

20. Fair and Adequate Representation (Fed. R. Civ. P. 23 (a) (4)): The Plaintiff will fairly and adequately represent and protect the interests of the class. It is interested in this matter, has no conflicts, and has retained experienced class counsel to represent the class.

21. Need for Consistent Standards and Practical Effect of Adjudication (Fed. R. Civ. P. 23 (b) (1)): Class certification is appropriate because the prosecution of individual actions by class members would: (a) create the risk of inconsistent adjudications that could establish incompatible standards of conduct for the Defendant, and/or (b) as a practical matter, adjudication of the Plaintiff's claims will be dispositive of the interests of class members who are not parties.

22. Common Conduct (Fed. R. Civ. P. 23 (b) (2)): Class certification is also appropriate because the Defendant has acted in the same or similar manner with respect to all class members thereby making injunctive and declaratory relief appropriate. The Plaintiff demands such relief as authorized by 47 U.S.C. §227.

23. Predominance and Superiority (Fed. R. Civ. P. 23 (b) (3)): Common questions of law and fact predominate over any questions affecting only individual members, and a class

action is superior to other methods for the fair and efficient adjudication of the controversy because:

(a) Proof of the claims of the Plaintiff will also prove the claims of the class without the need for separate or individualized proceedings;

(b) Evidence regarding defenses or any exceptions to liability that the Defendant may assert and attempt to prove will come from the Defendant's records and will not require individualized or separate inquiries or proceedings;

(c) The Defendant has acted and is continuing to act pursuant to common policies or practices in the same or similar manner with respect to all class members;

(d) The amount likely to be recovered by individual class members does not support individual litigation. A class action will permit a large number of relatively small claims involving virtually identical facts and legal issues to be resolved efficiently in one proceeding based upon common proofs; and

(e) This case is inherently manageable as a class action in that:

(i) The Defendant identified persons to receive the fax transmissions and it is believed that the Defendant's and/or Defendant's agents' computers and business records will enable the Plaintiff to readily identify class members and establish liability and damages;

(ii) Liability and damages can be established for the Plaintiff and the class with the same common proofs;

(iii) Statutory damages are provided for in the statute and are the same for all class members and can be calculated in the same or a similar manner;

(iv) A class action will result in an orderly and expeditious administration of claims and it will foster economics of time, effort and expense;

(v) A class action will contribute to uniformity of decisions concerning the Defendant's practices; and

(vi) As a practical matter, the claims of the class are likely to go unaddressed absent class certification.

**Claim for Relief for Violation of the JFPA, 47 U.S.C. § 227 *et seq.***

24. The JFPA makes it unlawful for any person to “use any telephone facsimile machine, computer or other device to send, to a telephone facsimile machine, an unsolicited advertisement . . . .” 47 U.S.C. § 227(b)(1)(C).

25. The JFPA 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 prior express invitation or permission, in writing or otherwise.” 47 U.S.C. § 227 (a) (5).

26. **Opt-Out Notice Requirements.** The JFPA strengthened the prohibitions against the sending of unsolicited advertisements by requiring, in § (b)(1)(C)(iii) of the Act, that senders of faxed advertisements place a clear and conspicuous notice on the first page of the transmission that contains the following among other things (hereinafter collectively the “Opt-Out Notice Requirements”):

(1) A statement that the recipient is legally entitled to opt-out of receiving future faxed advertisements – knowing that he or she has the legal right to request an opt-out gives impetus for recipients to make such a request, if desired;

(2) A statement that the sender must honor a recipient's opt-out request within 30 days and the sender's failure to do so is unlawful – thereby encouraging recipients to opt-out, if they did not want future faxes, by advising them that their opt-out requests will have legal “teeth”;



(3) A statement advising the recipient that he or she may opt-out with respect to all of his or her facsimile telephone numbers and not just the ones that receive a faxed advertisement from the sender – thereby instructing a recipient on how to make a valid opt-out request for all of his or her fax machines;

(4) The opt-out language must be conspicuous.

The requirement of (1) above is incorporated from § (b)(D)(ii) of the Act. The requirement of (2) above is incorporated from § (b)(D)(ii) of the Act and the rules and regulations of the Federal Communications Commission (the “FCC”) in ¶ 31 of its 2006 Report and Order (*In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act, Junk Prevention Act of 2005*, 21 F.C.C.R. 3787, 2006 WL 901720, which rules and regulations took effect on August 1, 2006). The requirements of (3) above are contained in § (b)(2)(E) of the Act and incorporated into the Opt-Out Notice Requirements via § (b)(2)(D)(ii). Compliance with the Opt-Out Notice Requirements is neither difficult nor costly. The Opt-Out Notice Requirements are important consumer protections bestowed by Congress upon the owners of the telephone lines and fax machines giving them the right, and means, to stop unwanted faxed advertisements.

27. **2006 FCC Report and Order.** The JFPA, in § (b)(2) of the Act, directed the FCC to implement regulations regarding the JFPA, including the JFPA’s Opt-Out Notice Requirements and the FCC did so in its 2006 Report and Order, which in addition provides among other things:

A. The definition of, and the requirements for, an established business relationship for purposes of the first of the three prongs of an exemption to liability under § (b)(1)(C)(i) of the Act and provides that the lack of an “established business

relationship” precludes the ability to invoke the exemption contained in § (b)(1)(C) of the Act (*See* 2006 Report and Order ¶¶ 8-12 and 17-20);

B. The required means by which a recipient’s facsimile telephone number must be obtained for purposes of the second of the three prongs of the exemption under § (b)(1)(C)(ii) of the Act and provides that the failure to comply with these requirements precludes the ability to invoke the exemption contained in § (b)(1)(C) of the Act (*See* 2006 Report and Order ¶¶ 13-16);

C. The things that must be done in order to comply with the Opt-Out Notice Requirements for the purposes of the third of the three prongs of the exemption under § (b)(1)(C)(iii) of the Act and provides that the failure to comply with these requirements precludes the ability to invoke the exemption contained in § (b)(1)(C) of the Act (*See* 2006 Report and Order ¶¶ 24-34);

D. The failure of a sender to comply with the Opt-Out Notice Requirements precludes the sender from claiming that a recipient gave “prior express invitation or permission” to receive the sender’s fax (*See* Report and Order ¶ 48).

As a result thereof, a sender of a faxed advertisement who fails to comply with the Opt-Out Notice Requirements has, by definition, transmitted an unsolicited advertisement under the JFPA. This is because such a sender can neither claim that the recipients of the faxed advertisement gave “prior express invitation or permission” to receive the fax nor can the sender claim the exemption from liability contained in § (b)(C)(1) of the Act.

28. **The Faxes.** Defendant sent the advertisements on or about March 13, 2018 and March 27, 2018, via facsimile transmission from telephone facsimile machines, computers, or other devices to the telephone lines and facsimile machines of Plaintiff and members of the Plaintiff Class. The Faxes constituted advertisements under the Act. Defendant failed to comply

with the Opt-Out Requirements in connection with the Faxes. The Faxes were transmitted to persons or entities without their prior express invitation or permission and/or Defendant is precluded from asserting any prior express invitation or permission or that Defendant had an established business relationship with Plaintiff and other members of the class, because of the failure to comply with the Opt-Out Notice Requirements. By virtue thereof, Defendant violated the JFPA and the regulations promulgated thereunder by sending the Fax via facsimile transmission to Plaintiff and members of the Class. Plaintiff seeks to certify a class which includes these Faxes and all others sent during the four years prior to the filing of this case through the present.

29. **Defendant's Other Violations.** Plaintiff is informed and believes, and upon such information and belief avers, that during the period preceding four years of the filing of this Complaint and repeatedly thereafter, Defendant has sent via facsimile transmission from telephone facsimile machines, computers, or other devices to telephone facsimile machines of members of the Plaintiff Class other faxes that constitute advertisements under the JFPA that were transmitted to persons or entities without their prior express invitation or permission (and/or that Defendant is precluded from asserting any prior express invitation or permission or that Defendant had an established business relationship because of the failure to comply with the Opt-Out Notice Requirements in connection with such transmissions). By virtue thereof, Defendant violated the JFPA and the regulations promulgated thereunder. Plaintiff is informed and believes, and upon such information and belief avers, that Defendant may be continuing to send unsolicited advertisements via facsimile transmission in violation of the JFPA and the regulations promulgated thereunder, and absent intervention by this Court, will do so in the future.

30. The TCPA/JFPA provides a private right of action to bring this action on behalf of Plaintiff and the Plaintiff Class to redress Defendant's violations of the Act, and provides for statutory damages. 47 U.S.C. § 227(b)(3). The Act also provides that injunctive relief is appropriate. *Id.*

31. The JFPA is a strict liability statute, so the Defendant is liable to the Plaintiff and the other class members even if its actions were only negligent.

32. The Defendant knew or should have known that (a) the Plaintiff and the other class members had not given prior express invitation or permission for the Defendant or anybody else to fax advertisements about the Defendant's products, goods or services; (b) the Plaintiff and the other class members did not have an established business relationship; (c) Defendant transmitted advertisements; (d) the Faxes did not contain the required Opt-Out Notice; and (e) Defendant's transmission of advertisements that did not contain the required opt-out notice or were sent without prior express invitation or permission was unlawful.

33. The Defendant's actions caused damages to the Plaintiff and the other class members. Receiving the Defendant's junk faxes caused Plaintiff and the other recipients to lose paper and toner consumed in the printing of the Defendant's faxes. Moreover, the Defendant's faxes used the Plaintiff's and the other class members' telephone lines and fax machine. The Defendant's faxes cost the Plaintiff and the other class members time, as the Plaintiff and the other class members and their employees wasted their time receiving, reviewing and routing the Defendant's unauthorized faxes. That time otherwise would have been spent on the Plaintiff's and the other class members' business activities. The Defendant's faxes unlawfully interrupted the Plaintiff's and other class members' privacy interests in being left alone.

WHEREFORE, Plaintiff, SCOMA CHIROPRACTIC, P. A., individually and on behalf of all others similarly situated, demands judgment in its favor and against Defendant, INNOVATION COMPOUNDING, INC., as follows:

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

B. That the Court award actual monetary loss from such violations or the sum of five hundred dollars (\$500.00) for each violation, whichever is greater, and that the Court award treble damages of \$1,500.00 if the violations are deemed "willful or knowing";

C. That Court enjoin the Defendant from additional violations; and

D. That the Court award pre-judgment interest, costs, and such further relief as the Court may deem just and proper.

Respectfully submitted,

SCOMA CHIROPRACTIC, P. A., individually,  
and as the representative of a class of similarly-  
situated persons

By: /s/ Ryan M. Kelly  
Ryan M. Kelly – FL Bar No.: 90110

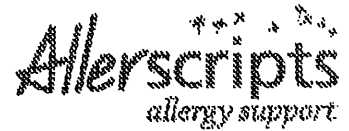
ANDERSON + WANCA  
3701 Algonquin Road, Suite 500  
Rolling Meadows, IL 60008  
Telephone: 847/368-1500  
Fax: 847/368-1501  
[rkelly@andersonwanca.com](mailto:rkelly@andersonwanca.com)

**EXHIBIT A**



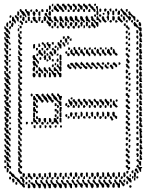
**PRODUCT INFORMATION FOR YOUR PRACTICE**

**Is Your Office Ready for the Spring Allergy Season?**



As trees start to bloom and release pollen this Spring, your patients will likely begin experiencing allergy symptoms.

Innovation Compounding offers a comprehensive package of allergy testing and treatment options designed to provide your patients relief from their allergies.



**Allergy Skin Testing:** A fast, simple method for providing a diagnosis to identify specific respiratory allergy triggers.



**Subcutaneous Immunotherapy (SCIT):** Also known as allergy shots, SCIT has been used for over 100 years to treat the immune system and provide long-term relief.



**Sublingual Immunotherapy (SLIT):** Using the same treatment formulations found in allergy shots, SLIT can be administered at home without the need for regular visits to the office.

**Getting Started is Easy!**

Adding allergy testing and treatment to your practice is both simple and affordable. We provide full clinical training in addition to guidance on patient management and billing/coding for allergy procedures.

*Ask about start-up kits for testing and learn how you can offer your patients a real solution to their allergies!*

Information contained on these materials is provided as an informational aide and for reference use only. The content herein is not intended to be, act as, or replace medical advice or diagnosis for individual health conditions nor is it making evaluations as to the risks or benefits of particular preparations. Please consult a licensed healthcare professional about diagnosis and treatment. Information and statements on this material have not been evaluated by the Food and Drug Administration.

**CONTACT US TO LEARN MORE**

For more information, please complete and fax to (855) 345-5506

<b>OFFICE CONTACT</b>	<input type="text"/>	<input type="text"/>
	Full Name	Email Address
<b>PRESCRIBER</b>	<input type="text"/>	<input type="text"/>
	Full Name	(000) 000-0000

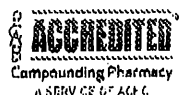
**OPT-OUT NOTICE:** If you do not wish to receive future faxes regarding Innovation Compounding, Inc.'s products and services, please check the box below, list all fax numbers to which your opt-out request applies, and fax your toll-free opt-out request 24/7 to (855) 345-5506 and we will gladly remove each fax number from our mailing list. The failure to comply with an opt-out request within the shortest reasonable time, not to exceed 30 days, is unlawful. Please note that any future request by you to receive faxed information from Innovation Compounding, Inc. will cancel your opt-out request.

I wish to opt-out of future faxes regarding Innovation Compounding, Inc.'s products and services.

Fax Number(s): \_\_\_\_\_



6095 Pine Mountain Rd., NW Suite 108 Kennesaw, GA 30152  
Ph: (800) 547-1399 Fax: (866) 635-2329





# PRODUCT INFORMATION FOR YOUR PRACTICE



## Your Patients' Allergies Are In Good Hands!



Robert Erskine is the Director of Allergy at Innovation Compounding where he oversees the entire portfolio of allergy products and services, including AllerScripts, the flagship clinical program for allergy skin testing, subcutaneous immunotherapy (SCIT), and sublingual immunotherapy (SLIT).

- Robert is a recognized expert in allergy testing and treatment.
- He offers guidance on the selection of allergens for skin test panels and the preparation of SCIT and SLIT formulations.
- He also helps practices with strategies for patient education, shot room administration, and billing & coding for allergy procedures.

He previously served as Scientific Affairs Manager and later Associate Scientific Director for the world's largest allergenic extract manufacturer, ALK. During his time at ALK, he worked directly with allergy specialists as well as primary care providers offering scientific training and clinical guidance on the use of allergenic extracts. Mr. Erskine also organized and led four key opinion leader (KOL) advisory board meetings in the US and Canada and has been a guest lecturer at Allergy Fellowship and ENT Residency training programs throughout North America.

Mr. Erskine has over 10 years of academic and industry research experience with publications spanning multiple disciplines including Immunology, Biochemistry and Cell Biology. He has held academic research positions at Harvard University and University of Texas Southwestern Medical School as well as a contract role at Biogen supporting the preclinical development of drug candidates for autoimmune disorders.

Mr. Erskine received a Bachelor's of Science in Microbiology from Texas A&M University and studied for 3 years as a PhD candidate in the Department of Immunology at Harvard Medical School, Division of Medical Sciences.

To read about Robert's personal history with allergies and asthma, read our blog at [www.innovationcompounding.com](http://www.innovationcompounding.com).

*Connect with our Director of Allergy and learn how to enhance your practice with Allerscripts today!*

Information contained on these materials is provided as an informational aide and for reference use only. The content herein is not intended to be, act as, or replace medical advice or diagnosis for individual health conditions nor is it making evaluations as to the risks or benefits of particular preparations. Please consult a licensed healthcare professional about diagnosis and treatment. Information and statements on this material have not been evaluated by the Food and Drug Administration.

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For more information, please complete and fax to (855) 345-5506

OFFICE CONTACT	<input type="text"/>	<input type="text"/>
	Full Name	Email Address
PRESCRIBER	<input type="text"/>	PHONE <input type="text"/>
	Full Name	(000) 000-0000

OPT-OUT NOTICE: If you do not wish to receive future faxes regarding Innovation Compounding, Inc.'s products and services, please check the box below, list all fax numbers to which your opt-out request applies, and fax your toll-free opt-out request 24/7 to (855) 345-5506 and we will gladly remove each fax number from our mailing list. The failure to comply with an opt-out request within the shortest reasonable time, not to exceed 30 days, is unlawful. Please note that any future request by you to receive faxed information from Innovation Compounding, Inc. will cancel your opt-out request.  
 I wish to opt-out of future faxes regarding Innovation Compounding, Inc.'s products and services.

Fax Number(s): \_\_\_\_\_



6095 Pine Mountain Rd., NW Suite 108 Kennesaw, GA 30152  
Ph: (800) 547-1399 Fax: (866) 635-2329





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

Scoma Chiropractic, P.A., a Florida corporation, individually and as the representative of a class of similarly-situated persons

(b) County of Residence of First Listed Plaintiff Brevard (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Anderson + Wanca (847) 368-1500 3701 Algonquin Road, Suite 500 Rolling Meadows, IL 60008

DEFENDANTS

Innovation Compounding, Inc.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status: 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)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal codes and descriptions.

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. Section 227

Brief description of cause: Violation of the Telephone Consumer Protection Act/Junk Fax Prevention Act of 2005

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 04/18/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Ryan M. Kelly

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**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.

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