

3. The federal Telephone Consumer Protection Act, 47 USC § 227, prohibits a person or entity from faxing or having an agent fax advertisements without the recipient's prior express invitation or permission ("junk faxes" or "unsolicited faxes").

4. The TCPA mandates that when a person or entity sends a fax advertisement it must always include a very specific opt-out notice that is clearly and conspicuously displayed on the first page of the advertisement. *See* 47 U.S.C. § 227 (b) (2) (D); and 47 C.F.R. § 64.1200 (a) (4) (iii).

5. The TCPA provides a private right of action and provides statutory damages of \$500 - \$1,500 per violation. If the Court finds the advertisements were sent knowingly or willfully, then the Court can treble the damages.

6. 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 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.

7. On behalf of itself and all others similarly situated, Plaintiff brings this case as a class action asserting claims against Defendants under the TCPA, and the common law of conversion.

8. Plaintiff seeks an award of statutory damages for each violation of the TCPA.

PARTIES, JURISDICTION AND VENUE

9. Plaintiff is a Pennsylvania professional corporation with its principal place of business in Philadelphia, Pennsylvania.

10. Defendant Allied Medical is a Pennsylvania corporation, with its principal place of business in Drexel Hill, Pennsylvania.

11. On information and belief, Defendant Ehrlich is a resident of Pennsylvania.

12. Plaintiff included Defendants John Does 1-12, as it is not clear whether any entities or persons other than Allied Medical or Ehrlich actively participated in the transmission of the subject fax advertisement, or benefitted from the transmissions.

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

14. Personal jurisdiction exists in Pennsylvania because Defendants have transacted business and committed tortious acts within the State.

15. Venue is proper in the Eastern District of Pennsylvania because Defendants committed a statutory tort within this District and a significant portion of the events took place there.

FACTS

16. On or about December 3, 2020 an unsolicited fax advertisement was sent to Plaintiff. *See* Subject Fax Advertisement, attached hereto as Exhibit A. The fax advertisement was sent, or caused to be sent, by Defendants.

17. The subject faxes advertise the goods, products or services of Defendants. *Id.* Exhibit A is a one-page fax that attempts to market Defendants' physical rehabilitation services. Exhibit A contains information about their services for both new and "established clients/patients,"

and methods to get in contact with Defendants. Defendants sent or caused this unsolicited fax advertisement to be sent to Plaintiff and a class of similarly situated persons.

18. Plaintiff did not invite or give permission to anyone to send Exhibit A to it.

19. The fax contained within Exhibit A does not contain a clear and conspicuous opt-out notice.

20. On information and belief, Defendants sent the same facsimile to Plaintiff and more than 39 other recipients without first receiving the recipients' express permission or invitation. This allegation is based, in part, on the fact that Plaintiff never gave permission to anyone to send the subject fax advertisement to it, that Plaintiff never conducted business with Defendants, and that sending advertisements by fax is a very cheap way to reach a wide audience.

21. There are no reasonable means for Plaintiff (or any other putative Class member) to avoid receiving illegal faxes. Fax machines are left on and ready to receive the urgent communications their owners desire to receive.

CLASS ACTION ALLEGATIONS

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

All persons who were sent one or more telephone facsimile messages on or after four years prior to the filing of this action, that advertised the commercial availability of property, goods, or services offered by "Allied Medical Associates" that did not contain an opt-out notice that complied with federal law.

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

24. This action is brought and may properly be maintained as a class action pursuant to Fed. R. Civ. P. 23. This action satisfies the numerosity, commonality, typicality, adequacy

requirements under Rule 23(a). Additionally, prosecution of Plaintiff's claims separately from the putative class's claims would create a risk of inconsistent or varying adjudications under Rule 23(b)(1)(A). 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).

25. **Numerosity/Impracticality of Joinder:** On information and belief, the Class consists of more than thirty-nine people and, thus, is so numerous that joinder of all members is impracticable. The precise number of Class members and their addresses are unknown to Plaintiff, but can be obtained from Defendants' records or the records of third parties.

26. **Commonality and Predominance:** There is a well-defined community of interest and 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 Defendants sent fax advertisements;
- b. Whether the fax contained in Exhibit A advertised the commercial availability of property, goods or services;
- c. The manner and method Defendants used to compile or obtain the lists of fax numbers to which they sent the faxes contained in Exhibit A and other unsolicited fax advertisements;
- d. Whether Defendants faxed advertisements without first obtaining the recipients' express permission or invitation;
- e. Whether Defendants' opt-out notice violated the TCPA;

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