

- 8- On April 1st, April 11th, April 16th, May 20th, June 3rd and June 19th of 2008, the Plaintiff, despite all efforts taken, received 6 more unsolicited faxes from Defendant promoting their vacation products. (see attached C-H, copy of faxes received by Plaintiff)
- 9- After the fax of May 20th, Plaintiff began to investigate the matter in preparation of lawsuit against the senders of these faxes.

This was made difficult by 2 factors:

1st- There is no identifying name or address on the faxes themselves.

2nd- The customer service representatives will not give out the name of the business. They will only refer to themselves as "Reservation Center" and if they are pressed for their corporate name or address, they hang up.

- 10- To identify and locate the Defendant, Plaintiff pretended to be a party interested in the vacations offered.

He called 3 times, each time using one of the phone numbers on the faxes (866-412-7543, 866-577-9783 and 877-573-2051). On the first call he was connected with a woman who identified herself as "Randi". She went through the sales presentation which turned out to include a tour of Summer Bay Resort. Plaintiff, on the second and third calls, was, on his request, put through to Randi, thus establishing that the same firm was responsible for all of the faxes.

Plaintiff then researched Summer Bay itself using their website located at: (www.summerbayresort.com) as well as the Better Business Bureau of Central Florida. He found the owners/managers; Mr. James Baker and Mr. Paul Caldwell.

Plaintiff then called Randi again and after she went through the sales pitch, he stated that he was concerned about the legitimacy of the firm, the fax flyer being a little suspicious, that it seemed a little odd. He stated that he had checked out Summer Bay and was satisfied that they were legitimate. Plaintiff asked Randi if he could call there and ask Mr. Caldwell or Mr. Baker if she and the rest of the Reservations Center was legitimate. She said yes.

Plaintiff called and spoke to both individuals who readily identified Randi and Reservations Center as parts of their business, thus identifying them as the source of the faxes.

Claim of Relief

- 11- Defendant has violated 47 USC §227(b)(1)(C) by sending 8 unsolicited faxes to the Plaintiffs fax machine without an EBR- Established Business Relationship.
- 12- As a result of the above violations, the Defendants are liable to the Plaintiff for declaratory judgment that Defendant's conduct violated the law, as well as Plaintiff's actual damages, statutory damages and costs.

Wherefore, Plaintiff respectfully prays that judgment be entered against the Defendants for the following:

- A. Declaratory judgment that Defendant's conduct violated 47 USC § 227 (b)(1)(C).
- B. Statutory damages of \$12,000 pursuant to 47 USC § 227(b)(3)(B)
(see Plaintiff's Motion to Treble Damages)
- C. For such other and further relief as the court may deem to be just and proper.

Respectfully Submitted,

Erik T. Robinson Plaintiff/Attorney Pro Se

Date

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**Erik T. Robinson
Plaintiff**

V.

**Summer Bay Resort
Defendant**

§
§
§
§
§
§
§
§

Case# 08-cv3076

**Plaintiff's Amended Personal Statement in Support of his
Motion to Proceed In Forma Pauperis**

When evaluating the eligibility of the Plaintiff to proceed in Forma Pauperis, the Plaintiff would like to offer the following points for consideration:

- Although the Plaintiff is currently employed, he does not make a high salary; only \$1,566 per month.
- Plaintiff is filing this action alone, without the benefit of an attorney willing to bear these costs against anticipated settlements.
- By not hiring an attorney and researching and preparing the complaint by himself, Plaintiff has made considerable effort to mitigate his expenses.
- Plaintiff has been approved to file In Forma Pauperis in other cases before the court including:
 - Robinson v. Cervelle 08-01592,
 - Robinson v. NCO et al 08-02930, 08-2707 and 08-2479
 - Robinson v. Medefile 08-3077
 - Robinson v. Hybrid Technologies 08-3075

Respectfully Submitted,

Erik Robinson, Plaintiff/Attorney Pro Se

Date

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**Erik T. Robinson
Plaintiff/Atty. ProSe**

V.

**Summer Bay Resort
Defendant**

§
§
§
§
§
§
§
§
§
§

Case # _____

Plaintiff's Motion to the Court For Jurisdiction

- 1- Before the court is a matter that involves the violation of a Federal law that has the unique characteristic of 2 separate rules regarding jurisdiction.
- 2- Pursuant to 47 USC §227(b)(3)(C), the individual consumers complaint of wrongful faxes would normally be heard in an appropriate court of the State for the Plaintiff. Senator Hollings, the bill's sponsor, states that these matters belong in small claims courts specifically to allow the average consumer the chance to fight these violators. (137 Cong. Rec. S16205-06 [daily ed. Nov. 7, 1991 at 30821-22)
- 3- There is however §227(f)(2) which authorizes Federal Courts to hear actions from State Attorneys for violations of a large enough scale and importance. While the Plaintiff is not a State Attorney, he feels that the nationwide scale of these offenses make it important enough to be heard in Federal Court.

Plaintiff also offers the following additional points for consideration:

- 4- There is a Diversity of Citizenship because the Plaintiff resides in Pennsylvania and the Defendant is in Florida. Although the amount in controversy is less than the minimum of \$75,000 pursuant to 28 USC §1332, there is a great geographic diversity of parties and a consequential need for consistent laws and procedures.
- 5- This matter is a Federal Question as per 28 USC §1331 which states that: "the district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." As the JFPA is a Federal law, this should be allowed to qualify for Federal jurisdiction pursuant to 28 USC §1331.
- 6- There are similar Federal consumer laws where the level of monetary damages is disregarded in favor of providing a venue for consumers to enforce Federal laws without the added cost of an attorney. An excellent example is the Fair Debt Collection Practices Act; 15 USC §1692 et seq. It's jurisdiction, founded in §1692k(d), allows Federal Courts to hear the complaint without regard to the amount of monetary damages involved.
- 7- The matter of junk faxes is not a difficult one to decide for the court, not requiring any special knowledge held by State courts as opposed to areas of knowledge of Federal courts.

8- Based on these points of consideration, Plaintiff motions for this court to hear this case.

Respectfully Submitted

Erik T. Robinson Plaintiff/Attorney Pro Se

Date

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**Erik T. Robinson
Plaintiff/Atty. ProSe**

V.

**Summer Bay Resort
Defendant**

§
§
§
§
§
§
§
§
§
§

Case # _____

Plaintiff's Attached Exhibits

- Attached A- Copy of fax received by Plaintiff on February 27th, 2008
- Attached B- Copy of fax received by Plaintiff on March 28th, 2008
- Attached C- Copy of fax received by Plaintiff on April 1st, 2008
- Attached D- Copy of fax received by Plaintiff on April 11th, 2008
- Attached E- Copy of fax received by Plaintiff on April 16th, 2008
- Attached F- Copy of fax received by Plaintiff on May 20th, 2008
- Attached G- Copy of fax received by Plaintiff on June 3rd, 2008
- Attached H- Copy of fax received by Plaintiff on June 19th, 2008
- Attached I- Copy of e-mail from US FTC indicating enrollment in National Do-Not-Call Registry

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Erik T. Robinson
Plaintiff/Atty. ProSe

§
§
§
§
§
§
§

V.

Case # _____

Summer Bay Resort
Defendant

Plaintiff's Motion to Treble Damages

1- 47 USC § 227(b)(3)(B) Allows for standard Statutory damages of \$500 per offense. The section also allows the court the discretion to treble this to \$1,500 if it can be shown that the Defendant knowingly and/or willingly violated the statute.

2- Plaintiff requests that the court, when evaluating damages in this matter, consider the following in favor of trebling the damages:

- 3- In April of 2007 Plaintiff registered the fax number with the National Do-Not-Call Registry. This registration is valid until 2012 and was well before the date of Defendant's transmissions. (see attached "F", copy of e-mail received by Plaintiff confirming enrollment in the service). This is a service provided by the Federal Government to prevent just this sort of annoying advertising. A firm whose main form of business is done by telemarketing or facsimile must subscribe to the Federal Trade Commission's service to receive regular updates of persons who do not wish to receive these forms of advertisement. (47 CFR Section 64.1200)

Because the Defendants have neither enrolled in this service nor followed it's policies, they cannot be considered a legitimate business and therefore any fax from these firms is, by definition, in violation. As the senders of the faxes knew or were sufficiently negligent to willingly allow this lack of compliance, they should be held accountable to the fullest extent of the law.

4- The court should consider the repetitive nature of the offenses. The Plaintiff has made all reasonable efforts to prevent these faxes without resorting to legal action. In addition to enrolling the fax number on the National Do-Not-Call list as mentioned above, he has used the "opt-out" number to attempt to be taken off of the circulation list for their faxes. He has also verbally requested the attendant at the Defendant's call center to remove him. In summary, Plaintiff has done all he could to protect himself from these annoying advertisements.

5- As the Defendants behavior was knowingly/willingly in violation of the law by not adhering to the rules of telemarketing/use of facsimile machine, and by the repetitive nature of the violations, Plaintiff motions for this court, as per 47 USC § 227(b)(3)(B), to award the statutory damages of \$500 per fax trebled to \$1,500 for a total of \$12,000.

Respectfully Submitted

Erik T. Robinson Plaintiff/Attorney Pro Se

Date

