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“Lieff Cabraser Announces \$2.2 Trillion Class Action Lawsuit Filed to Stop Junk Faxes”

Mountain View, CA – August 22, 2002

In a strategic partnership between the public and private sector, Redefining Progress – a non-profit public policy organization – and Internet entrepreneur Steve Kirsch, filed federal and state class action lawsuits against junk fax broadcaster fax.com, Inc. Lieff, Cabraser, Heimann and Bernstein, LLP will represent the plaintiffs in this case. Also named in the federal suit is fax.com’s telecommunications provider, Cox Business Services, a division of Cox Communications, Inc. (NYSE:COX), as well as fax.com’s advertisers. All are being accused of violating federal law prohibiting junk faxes.

“When the defendant class is certified, we will ask the court for the minimum statutory remedy of \$500 per fax from each of fax.com’s advertisers over the past 4 years that have used fax.com to send unsolicited faxes. We believe that there are companies with substantial assets in this group. We will seek treble damages of \$1,500 per unsolicited fax from fax.com and Cox Communications,” Kirsch said. The suit comes on the heels of the August 7 announcement made by the Federal Communications Commission of a proposed fine of \$5.38M against fax.com.

A consortium of individuals and community groups have expressed their support for the suit, including California Assemblymember Elaine Alquist, El Camino Hospital, California Public Interest Research Group (CALPIRG), Congress of California Seniors, Steve Westly, former senior VP of eBay and private as well as local businesses, employees, and citizens.

The plaintiffs will hold a press conference detailing the suit at 11 am, Thursday, August 22 in Silicon Valley at El Camino Hospital in Mountain View, CA.

“As with e-mail spam, junk faxing has recently gotten out of control,” Kirsch said. “Fax.com alone claims to send 3 million unsolicited faxes per day. They are more than a nuisance; in some cases, they can even endanger public safety. They claim to have more fax numbers in their database than there are fax machines in the US. If you are receiving junk faxes or get a call on your voice line from a fax machine, chances are excellent that you are being called by fax.com.”

Lives endangered as war-dialing impacts hospitals

The serious impact of sending a flood of faxes or “war dialing” has already been felt in the medical community. “In the past, fax.com made over 1,000 telephone calls at once to the University of Washington Medical Center” said Walter Neary, Assist. Dir. of Media and Community Relations, University of Washington . As a result the hospital joined the Washington State Attorney General’s office effort in taking legal action against fax.com.

Businesses and consumers are also victims. Each year, junk faxing costs tens of millions of dollars in paper, toner, maintenance and handling expenses according to figures from a report by the Public Utilities Commission. “That figure does not include additional business losses from blocked phone lines and time spent by employees trying to get off these damaging and evasive lists,” says Kirsch.

Kirsch’s company, Propel, was attacked by a fax.com “war dialer” on May 12, 2002. “Fax.com called almost every phone in our company looking for new fax machines. This practice is now prohibited under California law ([California PUC sec. 2875.5](#)), but fax.com has ignored the law,” says Kirsch.

“They only way that this practice will stop is if enough people step forward and use the legal system to enforce their rights.” Kirsch says. “In every state, individuals who receive a junk fax can recover a minimum of \$500 for each fax (up to \$1,500 per fax) by bringing an action in small claims court. If only a fraction of the people who receive junk faxes were to take legal action against the companies that send them, we’d see a significant decrease in the number of junk faxes that are sent.”

In addition to the filing of the lawsuit, Kirsch has set up a website, www.junkfax.org to help people fight junk faxing. “You can identify who is sending you the fax by following the steps at www.junkfax.org,” Kirsch says.

CA Attorney General supports the fight against junk faxes

Complaints arising from junk faxing have been so extensive that California Attorney General Bill Lockyer is also investigating fax.com. The Attorney General’s office released this statement about the suit brought by Redefining Progress and Kirsch:

“It is highly unusual for the California AG’s office to participate as an amicus in cases before they reach the appellate courts. However, the problem of unsolicited faxes is of such concern, that our office will carefully review the suit filed by Redefining Progress and Mr. Kirsch and will consider amicus support in the trial court.”

Kirsch has retained the services of one of the nation’s top consumer class action law firms, Lieff, Cabraser, Heimann and Bernstein, LLP. The firm has a record of winning significant cases in the area of consumer fraud, securities fraud, employment discrimination, antitrust and defective products. This includes the recovery of over \$10 billion for California Cities and Counties in the landmark tobacco litigation against all the

major tobacco companies. Barry Himmelstein is the partner in charge of the Redefining Progress/Kirsch suits.

“The very existence of a company like fax.com, whose only ‘business plan’ is to violate the federal anti-fax spamming law millions of times a day is offensive,” Himmelstein said. “They need to be put out of business – the sooner, the better.”

“Fax.com has tried to hide behind a recent ruling in a lower court in Missouri by Rush Limbaugh’s uncle that the federal junk fax law is unconstitutional, but Limbaugh’s ruling was found to be faulty by a Missouri Circuit Court judge just one month later,” Kirsch said. “The federal junk fax law, also known as the Telephone Consumer Protection Act (TCPA), has been around for more than 10 years, and has been upheld by high courts, such as the 9th Circuit Court of Appeals, as being constitutional. fax.com has also tried to hide behind California’s junk fax law, but there again, if you examine the enrolled bill report for California’s junk fax law, you’ll find it is clear that the intent of the California law is to comply with federal law, and not to “opt out” of the federal law as fax.com often claims. So in all 50 states, you are entitled to at least \$500 per junk fax and you can sue in small claims court and win.”

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Extensive background information about junk faxes can be found at:
http://www.junkfax.org/fax/basic_info/junk_fax_qa.htm