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8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SANTA CLARA**

10 STEVE KIRSCH ,

Case No. 2-03-SC-000406

11 Plaintiff

PLAINTIFF'S TRIAL BRIEF

12 vs.

13 QUALITY REPROGRAPHICS,

14 Defendant.
15

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17 **I. FACTUAL STATEMENT**

18 An unsolicited junk fax from Quality Reprographics was sent to plaintiff at his home fax
19 machine without his consent.

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21 **II. DISCUSSION**

22 Unsolicited faxes are illegal under USC, Title 47, § 227(b)(1)(C): "It shall be unlawful
23 for any person within the United States to use any telephone facsimile machine, computer, or
24 other device to send an unsolicited advertisement to a telephone facsimile machine:..."

25 The term "unsolicited advertisement" is defined in USC, Title 47, §227(a)(4): "The term
26 "unsolicited advertisement" means any material advertising the commercial availability or quality
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1 of any property, goods, or services which is transmitted to any person without that person's prior
2 express invitation or permission.

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4 There is a private right of action in state courts under USC, Title 47, §227(b)(3)(A): "A
5 person or entity may, if otherwise permitted by the laws or rules of court of a state, bring in an
6 appropriate court of that state."

7 The constitutionality of the TCPA was upheld by the United States Court of Appeals for
8 the Ninth Circuit. *Destination Ventures, Ltd. vs. FCC*, 46 F.3d 54 (9th Cir. 1995)."

9 The statutory remedy for sending an unsolicited fax is cited in 47 USC §227(b)(3)(B)(C).
10 "A person or entity may, if otherwise permitted by laws or rules of court of a state, bring in an
11 appropriate court of that state an action to recover for actual monetary loss from such a violation,
12 or to receive \$500 in damages for each such violation, whichever is greater, or both such
13 actions."

14
15 If the violator knowingly or willingly sent a fax, then a treble remedy applies, and is
16 supported by 47 USC, §227(b)(3). "If the court finds that the defendant willfully or knowingly
17 violated this subsection or the regulations prescribed under this subsection, the court may, in its
18 discretion, increase the amount of the reward to an amount equal to not more than 3 times the
19 amount available under subparagraph B of this paragraph."

20
21 On July 22, 2003, in *Kaufman v. ACS Systems* (2003) 110 Cal.App.4th 886, the
22 California Court of Appeals ruled that 1) the TCPA applies in California and that enabling
23 legislation is not required, 2) the TCPA is constitutional (already affirmed by the California
24 Supreme Court), and 3) that class actions can be brought in California under the TCPA.

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II. CONCLUSION

The court should award statutory damages of \$1,500.00 and attorneys fees and costs pursuant to CCP §§116.780 and 116.790.

PIERCE & SHEARER LLP

Dated: _____

By: _____
Andrew F. Pierce