

EXHIBIT J

UNITED STATE DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 8:13-cv-1592-17 AEP

CIN-Q AUTOMOBILES, INC., and
MEDICAL & CHIROPRACTIC CLINIC,
INC., Florida corporations, individually and
as the representative of a class of
similarly-situated persons,

Plaintiffs,

v.

BUCCANEERS LIMITED PARTNERSHIP
and JOHN DOES 1-10,

Defendants.

**DEFENDANT BUCCANEERS LIMITED PARTNERSHIP'S AMENDED ANSWER,
AFFIRMATIVE DEFENSES, AND DEMAND FOR JURY TRIAL TO PLAINTIFF'S
SECOND AMENDED CLASS ACTION COMPLAINT**

Defendant, Buccaneers Limited Partnership (hereinafter "BLP") , by and through its undersigned counsel hereby files its Amended Answer, Affirmative Defenses, and Demand for Jury Trial to Plaintiff's Second Amended Class Action Complaint, and states as follows:

PRELIMINARY STATEMENT

1. BLP admits that this case challenges the alleged practice that BLP sent unsolicited facsimiles but BLP denies the same.
2. Denied.
3. Denied.
4. Denied.
5. Denied.

JURISDICTION AND VENUE

6. Admit.
7. BLP admits that venue is proper but denies that BLP committed a statutory tort.

PARTIES

8. Without knowledge, therefore denied.
9. Without knowledge, therefore denied.
10. Denied.
11. Without knowledge, therefore denied.

FACTUAL ALLEGATIONS

12. Admit.
13. Denied.
14. Denied.
15. Denied.
16. Denied.
17. Denied.
18. Denied.
19. Denied.
20. Denied.
21. Without knowledge, therefore denied.
22. Denied.
23. Denied.
24. Denied.

CLASS ALLEGATIONS

25. Denied.

26. Denied.

27. Denied.

(a) Denied.

(b) Denied.

(c) Denied.

(d) Denied.

(e) Denied.

(f) Denied.

(g) Denied.

(h) Denied.

(i) Denied.

(j) Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

(a) Denied.

(b) Denied.

(c) Denied.

(d) Denied.

- (e) Denied.
- (i) Denied.
- (ii) Denied.
- (iii) Denied.
- (iv) Denied.
- (v) Denied.
- (vi) Denied.

COUNT I

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

33. BLP reasserts and realleges all responses to paragraphs 1 through 32 as if fully set forth herein.

34. The allegations set forth in Paragraph 34 are legal conclusions that do not call for a response, and accordingly, are denied.

35. The allegations set forth in Paragraph 35 are legal conclusions that do not call for a response, and accordingly, are denied.

36. The allegations set forth in Paragraph 36 are legal conclusions that do not call for a response, and accordingly, are denied.

1. The allegations set forth in Paragraph 36(1) are legal conclusions that do not call for a response, and accordingly, are denied.

2. The allegations set forth in Paragraph 36(2) are legal conclusions that do not call for a response, and accordingly, are denied.

3. The allegations set forth in Paragraph 36(3) are legal conclusions that do not call for a response, and accordingly, are denied.

37. The allegations set forth in Paragraph 37 are legal conclusions that do not call for a response, and accordingly, are denied.

A. The allegations set forth in Paragraph 37(A) are legal conclusions that do not call for a response, and accordingly, are denied.

B. The allegations set forth in Paragraph 37(B) are legal conclusions that do not call for a response, and accordingly, are denied.

C. The allegations set forth in Paragraph 37(C) are legal conclusions that do not call for a response, and accordingly, are denied.

D. The allegations set forth in Paragraph 37(D) are legal conclusions that do not call for a response, and accordingly, are denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

COUNT II
Conversion

44. BLP reasserts and realleges all responses to paragraphs 1, 3 and 8 through 23 as if fully set forth herein.

45. Denied.

46. Denied.

47. Denied.

- 48. Denied.
- 49. Denied.
- 50. Denied.
- 51. Denied.
- 52. Denied.

AFFIRMATIVE DEFENSES

1. BLP affirmatively states that the Plaintiffs had a duty to take reasonable steps to mitigate and/or avoid their alleged damages and failed to do so by failing to opt-out of receiving facsimiles. Furthermore, Medical & Chiropractic Clinic, Inc., failed to follow the directive by the Court to file a motion for default judgment in Medical & Chiropractic Clinic, Inc. v. Michael Wayne Clement, Steve Simms, Wayne Clement and Carl Simms d/b/a Faxqom.com, Case No. 8:12-cv-607-T-26TGW in the United States District Court Middle District of Florida Tampa Division. Additionally, Cin-Q failed to mitigate its damages by not collecting on the judgment in Cin-Q Automobiles, Inc. v. Michael Wayne Clement, doing business as FaxQom.com, Case No. 8:11-cv-01502-JSM-AEP in the United States District Court Middle District of Florida Tampa Division, and to the extent that it has done so, it is not entitled to a recovery from BLP.
2. BLP affirmatively states that any alleged unlawful facsimiles were sent by FaxQom and were sent beyond the scope of authority given to FaxQom by BLP. Therefore, any alleged violations of the Telephone Consumer Protection Act were by FaxQom and BLP is not liable for the same.
3. BLP affirmatively states that Plaintiffs' claims are barred as BLP is not vicariously liable for the actions of FaxQom and/or any individuals or entities whom FaxQom hired to send facsimiles.

4. BLP affirmatively states that Plaintiffs failed to plead that BLP was vicariously liable for the actions of FaxQom and/or any individuals or entities whom FaxQom hired to send facsimiles.

5. BLP affirmatively states that Plaintiffs' claims are barred as the Plaintiffs do not have standing to bring such claims as they cannot established they received faxes from BLP.

6. BLP affirmatively states that BLP is entitled to a set off for the benefits the Plaintiffs have received from a collateral source. Specifically, BLP is entitled to a set off for the benefits received by Cin-Q from FaxQom/Michael Wayne Clement to satisfy a judgment in Cin-Q Automobiles, Inc. v. Michael Wayne Clement, doing business as FaxQom.com, Case No. 8:11-cv-01502-JSM-AEP in the United States District Court Middle District of Florida Tampa Division.

7. BLP affirmatively states that Plaintiffs' class allegations are barred as the legislative intent of the Telephone Consumer Protection Act is for the consumer to appear without an attorney in a small claims court. *Local Baking Products, Inc. v. Kosher Bagel Munch, Inc.*, 421 N.J.Super. 268, 273 (N.J. Super. App. Div. 2011); *Local Baking Products, Inc. v. Westfield Rental-Mart, Inc.*, Case No. L-4701-09, 2013 WL 709257, at *2 (N.J. Super. App. Div. 2013).

8. BLP affirmatively states that Cin-Q's claims are barred as Cin-Q has already been compensated for alleged violations of the Telephone Consumer Protection Act for receipt of the same fax at issue in this case in Cin-Q Automobiles, Inc. v. Michael Wayne Clement, doing business as FaxQom.com, Case No. 8:11-cv-01502-JSM-AEP in the United States District Court Middle District of Florida Tampa Division.

9. BLP affirmatively states that the Plaintiffs failed to allege demand or futility of demand for the return of the Plaintiffs' and other Class members' fax machines, toner, paper, and employee time. *Ginsburg v. Lennar Florida Holdings, Inc.*, 645 So. 2d 49 (Fla. 3d DCA 1994).

10. BLP affirmatively states that the Plaintiffs do not own, or possess rights to the other Class Members' fax machines, toner, paper and employee time that is the subject of the claim for Conversion in the Second Amended Class Action Complaint. *Page v. Matthews*, 386 So. 2d 815 (Fla. 5th DCA 1980).

11. BLP affirmatively states that Plaintiffs' claims are barred pursuant to 47 U.S.C. §227(b)(1)(C)(i), because Plaintiff and potential class members had an established business relationship with BLP.

12. BLP affirmatively states that Plaintiffs' claims are barred pursuant to 47 U.S.C. §227(b)(1)(C)(ii)(II), because Plaintiff and potential class members invited faxes by advertising or displaying their fax numbers publicly on business cards, advertisements, on the internet, etc.

13. The incident giving rise to this cause of action and the Plaintiffs' damages was the sole and proximate result or partially contributed thereto from the negligence or other conduct of persons other than BLP and over whom BLP exercised no control, and with whom BLP has no legal relationship. Pursuant to Fabre v. Marin, 623 So. 2d 1182 (Fla. 1993), any damages awarded to the Plaintiffs are subject to apportionment by the jury of the total fault of all participants in the subject incident. The apportionment of fault statute applies to all named parties, any settling defendants or parties, and any other person or entity that is discovered to have been negligent which operated as a legal cause of any injury or damage to the Plaintiffs, including, but not limited to, FaxQom, Westfax, Inc. a/k/a 127 High Street d/b/a 123 High Street, Rocket Messaging, Datalink USA Enterprises, Inc. a/k/a Coast to Coast Marketing a/k/a DMI

Marketing a/k/a Datalink, Datamark Inc., JCFFDATA, Inc. Clear Choice Sales, and Concord III, L.L.C., d/b/a Concord Technologies.

14. BLP affirmatively states that Plaintiffs' claims are barred because Plaintiffs failed to join an indispensable party. Specifically, Craig Cinque, on behalf of Plaintiff Cin-Q, testified during his deposition that Cin-Q does not own the facsimile number that received the facsimile for which it is suing BLP. This Court cannot accord complete relief among the existing parties in this required party's absence, and thus, the owner of this facsimile number is a required party to this action.

15. BLP specifically reserves the right to amend the Affirmative Defenses pled above and to assert additional Affirmative Defenses that become known to them during the course of discovery.

WHEREFORE, BLP requests all relief to which it is entitled, and any other relief the Court deems just and proper.

DEMAND FOR JURY TRIAL

BLP hereby demands trial by jury to all issues by right so triable.

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel of parties who are not authorized to receive electronically Notices of Electronic Filing.

COLE, SCOTT & KISSANE, P.A.
Attorneys for Defendant/Third-Party Plaintiff
1645 Palm Beach Lakes Blvd., 2nd Floor
West Palm Beach, Florida 33401
Telephone: (561) 383-9200
Facsimile: (561) 683-8977

By: /s/ David C. Borucke
BARRY A. POSTMAN
FBN: 991856
barry.postman@csklegal.com
JUSTIN C. SOREL
FBN: 0016256
justin.sorel@csklegal.com
DAVID C. BORUCKE
FBN: 39195
david.borucke@csklegal.com

SERVICE LIST

Michael C. Addison, Esquire
Florida Bar No. 145579
Addison & Howard
400 N. Tampa St., #1100
T: 813.223.2000
F: 813.223.6000

Ryan M. Kelly, Esquire
Florida Bar No. 90110
Brian J. Wanca, Esquire
Ross M. Good
George K. Lang
Anderson & Wanca
3701 Algonquin Rd., Suite 760
Rolling Meadows, IL 60008
T: 847.368.1500
F: 847.368.1501