

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	CG Docket No. 02-278
)	
Petition of the American Association)	CG Docket No. 05-338
for Justice for Waiver of)	
Section 64.1200(a)(4)(iv) of the)	
Commission's Rules)	

REPLY COMMENTS OF THE AMERICAN ASSOCIATION FOR JUSTICE

Daniel JT McKenna
Kim Phan
Ballard Spahr LLP
1909 K Street, NW
Washington, DC 20006
(202) 661-2200

Counsel for the American Association for Justice

Dated: January 20, 2015

I. Executive Summary

Petitioner American Association for Justice (AAJ[®]) submits these reply comments in response to the comments submitted by Timothy Blake opposing AAJ's Petition for a retroactive waiver of Section 64.1200(a)(4)(iv) of the Commission's rules.¹

Mr. Blake filed a putative class action lawsuit against AAJ seeking statutory damages for facsimile advertisements allegedly sent to some AAJ members with their prior express permission.² The sole commentator to AAJ's Petition, Mr. Blake seeks to preclude AAJ from obtaining a retroactive waiver of Section 64.1200(a)(4)(iv) in order to pursue his putative class action.³

Mr. Blake does not dispute the fact that he gave AAJ his prior express permission to send facsimile advertisements. He does not challenge the Commission's authority to provide the relief granted in the *Solicited Fax Order*.⁴ He does not contest the Commission's finding that a retroactive waiver of Section 64.1200(a)(4)(iv) is warranted under the circumstances. He does not even challenge the fact that AAJ believed that the inclusion of opt-out notices in all facsimile advertisements was a best practice, but that the failure to include opt-out notices in solicited facsimile advertisements sent with the prior express permission of the recipient did not violate the Telephone Consumer Protection Act (TCPA),⁵ as amended by the Junk Fax Prevention Act (JFPA).⁶

Instead, Mr. Blake posits the untenable position that: (1) statements made in amicus briefs filed without the knowledge or authorization of AAJ that do not reflect AAJ's position and filed by attorneys, some of whom have never been AAJ members; and (2) an article expressing the view of one former AAJ member, one of AAJ's nearly 23,000 members, with respect to an issue wholly unrelated to solicited facsimile advertisements should be imputed upon AAJ and considered evidence that AAJ understood that it was required to provide opt-out notices in solicited facsimile advertisements.

¹ Comments of Timothy Blake, CG Dockets Nos. 02-278, 05-338 (filed Jan. 13, 2015).

² First Amended Complaint, *Blake v. American Association for Justice*, No. 1:14-cv-23781 (S.D. Fla. Nov. 20, 2014).

³ J.L. Barnes Insurance Agency, Inc., which is a co-defendant in *Blake v. American Association for Justice*, No. 1:14-cv-23781 (S.D. Fla. Nov. 20, 2014), also filed a petition for retroactive waiver, CG Dockets Nos. 02-278, 05-338 (filed Dec. 5, 2014).

⁴ *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Junk Fax Prevention Action of 2005, Application for Review filed by Anda, Inc., Petitions for Declaratory Ruling, Waiver, and/or Rulemaking Regarding the Commission's Opt-Out Requirement for Faxes Sent with the Recipient's Prior Express Permission*, CG Docket Nos. 02-278, 05-338, Order, FCC 14-164 (October 30, 2014) ("*Solicited Fax Order*").

⁵ Public Law No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227.

⁶ Public Law No. 109-21, 119 Stat. 359 (2005).

Mr. Blake’s position has no support in the facts or the law. The simple, undisputed, and indisputable fact is that AAJ reasonably believed it was, and intended to be, in compliance with Section 64.1200(a)(4)(iv) when sending solicited facsimile advertisements, but may have not fully complied with that rule as clarified by the *Solicited Fax Order*. Thus, AAJ is similarly situated to the parties who were granted waivers by the *Solicited Fax Order* and should be granted a retroactive waiver of Section 64.1200(a)(4)(iv) with respect to facsimiles transmitted with the prior express permission of the recipients.

II. Argument

Mr. Blake has not identified any action or statement by AAJ that supports his conclusion that AAJ “understood that fully compliant opt-out notices are, and always have been, required for facsimile advertisements sent with the prior express permission of the recipients.”⁷ Absent such statements or conduct, the views of a single former member expressed in an article and arguments made in unauthorized amicus briefs cannot, as a matter of law, be attributed to AAJ.⁸

These documents, which are the only documents Mr. Blake relies upon in his Comment, similarly do not, and cannot, support the inference that AAJ knew opt-out notices were required for solicited facsimile advertisements.

A. Statements Made By A Single Former AAJ Member On An Issue Unrelated To Solicited Facsimile Advertisements Do Not Evidence Lack Of Confusion By AAJ.

As a voluntary bar association, AAJ provides its members with multiple mediums to deliver opinions and educational presentations. These mediums contain clear disclaimers that the statements contained or provided therein reflect the views of the authors and presenters only and that those statements cannot be attributed to AAJ. For example, the Business Torts Section newsletter which houses the 2008 article upon which Mr. Blake relies⁹ contains the following disclaimer:¹⁰

This Section Newsletter is intended to be a forum of opinion and information pertaining to the interest of Section members. Unless specifically stated otherwise, its contents reflect the views of authors only, and should not be interpreted as a statement of the position or policies of AAJ or the Section itself.

⁷ Blake Comments at 3.

⁸ See, e.g., 3 Am. Jur. 2d § 66, *et seq.* (actual agency is created only by agreement); *id.* at § 71, *et seq.* (apparent agency is created only through the actions or statements of the principal and cannot be created by the actions or statements of the purported agent).

⁹ Blake Comments at 3.

¹⁰ Blake Comments at Ex. 1, p. 2.

Similar disclaimers are included in the materials AAJ provides at its educational seminars.¹¹ Thus, Mr. Blake’s attempt to attribute what is clearly the statement of an individual former AAJ member author to AAJ as an institution is not just simply inaccurate but fundamentally flawed in suggesting that bar associations cannot provide forums for its members’ legal theories without adopting them.¹²

Regardless, the article Mr. Blake relies upon does not address whether opt-out notices are required in solicited facsimile advertisements. Instead, it discusses only the opt-out requirements for facsimile advertisements sent under the existing business relationship (EBR) exception:

Having an EBR is only one part of a five-legged stool, which also includes voluntary publication or public distribution of the recipients’ fax numbers, proper identification of the sender with date and time transmission notice, conspicuous notice to opt-out of future faxes, and a 24 hour opt-out toll free phone line. If any leg is missing, then the stool falls over and the sender is not entitled to send the fax.¹³

Sending facsimile advertisements under the EBR exception is different from sending facsimile advertisements with the recipient’s prior express permission.¹⁴ The Commission made this clear in the *Solicited Fax Order*, stating that the waiver applied only to solicited facsimile advertisements and “does *not* extend to the similar requirement to include an opt-out notice on fax ads sent pursuant to an established business relationship as there is no confusion regarding the applicability of this requirement to such faxes.”¹⁵

Since the views stated in the article relied upon by Mr. Blake cannot properly be attributed to AAJ and, in any event, have nothing to do with solicited facsimile advertisements, the article does not, and cannot, evidence lack of confusion by AAJ as to the requirement for opt-out notices in solicited facsimile advertisements.¹⁶

¹¹ See Exhibit ___, AAJ program book information page.

¹² Needless to say, no member of AAJ can bind AAJ to his or her view of the law, including those who write articles for its publications and participate in its CLEs. In fact, it is not unusual for two presenters or authors to have opposing views on the some aspects of a matter.

¹³ Blake Comments at Ex. 1, p. 4.

¹⁴ See 47 C.F.R. § 64.1200(a)(4)(iii); *id.* at § 64.1200(a)(4)(iv); *id.* at § 64.1200(f)(5)-(6).

¹⁵ *Solicited Fax Order* n.99 (emphasis in original).

¹⁶ The article published by the American Bar Association, which is not AAJ, similarly does not address the applicability of Section 64.1200(a)(4)(iv) to solicited facsimile advertisements and its characterization of AAJ members and reference to CLEs do not evidence lack of confusion by AAJ as to the requirement for opt-out notices in solicited facsimile advertisements. (Blake Comments at 3, Ex. 2 p. 19).

B. Statements Made In Amicus Briefs Prepared And Filed Without The Knowledge Or Authorization Of AAJ Do Not Evidence Lack Of Confusion By AAJ.

In addition to providing its members with speaking and publication opportunities, AAJ has litigation groups, which provide members with a means to network, share documents, and engage in discussions and debates on certain topics. These litigation groups are not authorized to speak on behalf of AAJ or to advocate any position on behalf of AAJ or the specific litigation group. In fact, AAJ expressly precludes its litigation groups from filing any “pleadings or any other documents in court relating to any case on behalf of the Litigation Group without prior approval of the [Section and Litigation Group Coordination Committee] and the AAJ Executive Committee.”¹⁷

In preparing its Petition, AAJ learned for the first time that amicus briefs were filed with the Supreme Court of Ohio and with the Court of Appeals of Ohio in the Eighth and Sixth Appellate Districts purportedly on behalf of one of AAJ’s member groups in violation of this policy and procedure.¹⁸

These briefs were not filed, written, or approved by AAJ, and AAJ had no knowledge of their preparation or filing. More critically, the briefs do not reflect AAJ’s position or belief with respect to whether opt-out notices were required for solicited facsimile advertisements. Thus, AAJ reached out to the briefs’ authors and requested that, pursuant to their ethical obligations, they apprise the respective Ohio Courts that each brief was filed without proper authorization and cannot be said to reflect positions taken by AAJ.¹⁹ AAJ similarly notified each court of this issue and filed motions to strike each improper amicus brief.²⁰

Despite the foregoing, Mr. Blake opines that AAJ should be bound by the statements made in those amicus briefs, particularly those made in a brief authored by attorney Michael J. Downing, who has never been a member of AAJ, simply because Mr. Downing and the other authors improperly and without AAJ’s permission or knowledge claimed to file the briefs on behalf of one of AAJ’s litigation groups.²¹

AAJ cannot be bound by statements made in amicus briefs filed in violation of AAJ’s policies and procedures and long-standing amicus approval process when AAJ did not know that the

¹⁷ See Exhibit ___, AAJ Litigation Group Policies and Procedures § 10.12 (redacted). This restriction is a longstanding AAJ policy, and was in existence when all of the unauthorized briefs were filed. See Exhibit ___, ATLA Litigation Groups Policies and Procedures § IX.11 (redacted).

¹⁸ *In re Petition of the American Association for Justice for Waiver of Section 64.1200(a)(4)(iv) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338, at n.9 (Nov. 26, 2014) (“AAJ Petition”).

¹⁹ See, e.g., Exhibit ___, e-mails between AAJ and Joseph R. Compoli, Jr. and Michael J. Downing; *AAJ Petition* at n.9.

²⁰ See Exhibit __; *AAJ Petition* at n.9.

²¹ Blake Comments at 3.

briefs were being filed, did not authorize their filing, and did not reflect policies duly adopted by AAJ simply because the authors unilaterally, and without permission, used the name of one of AAJ's litigation groups.²² Indeed, that the authors filed these briefs without first seeking permission or even notifying AAJ underscores the fact that the briefs do not reflect AAJ's position. These *ultra vires* acts demonstrate that the briefs' authors secretly mapped out a position both unknown to and without the authorization of AAJ and improperly invoked AAJ's name to give their positions gravitas.

Since the amicus briefs were filed without the knowledge or authorization of AAJ and do not reflect AAJ's position or beliefs, they do not evidence lack of confusion by AAJ as to the requirement for opt-out notices for solicited facsimile advertisements.

III. Conclusion

The simple fact is that nothing in the record demonstrates that AAJ "understood that [it] did, in fact, have to comply with the opt out notice requirements for fax ads sent with prior express permission but nonetheless failed to do so."²³ Rather, the entirety of the evidence firmly establishes that AAJ reasonably believed that the failure to include opt-out notices in solicited facsimile advertisements sent with the prior express permission of the recipient did not violate the TCPA.

That Mr. Blake, who is motivated to oppose AAJ's Petition by personal interest in a lawsuit, is forced to base his Comments entirely upon an article expressing the opinion of a single former AAJ member about a topic wholly unrelated to solicited facsimile advertisements and amicus briefs filed without the knowledge or authorization of AAJ evidences this fact.

²² A common thread in Mr. Blake's Comments is attorney Joseph R. Compoli, Jr. He is the author of the article Mr. Blake relies upon and was also plaintiff's counsel in *Fackelman v. Micronix*, No. 13-0062 (Sup. Ct. Ohio 2013), the Ohio Supreme Court action in which attorney Michael J. Downing filed the amicus brief that Mr. Blake refers to. (Blake Comments Exs. 1, 3.) Neither Mr. Downing nor Mr. Compoli had or have authority to speak for AAJ or to authorize conduct on behalf of AAJ or its litigation groups and the disciplinary and sanctions histories for both attorneys emphasize the impropriety of their conduct and the weakness of Mr. Blake's proofs. See *Jacobson v. Jonathan Paul Eyewear*, 11th Dist. No. 2012-L-088, 2013-Ohio-3570; *Wilson-Simmons v. Lake County Sheriff's Dep't*, 207 F.3d 818 (6th Cir. 2000); *Omerza v. Bryant & Stratton*, 11th Dist. No. 2006-L-147, 2007-Ohio-5216; see also Exhibit ___, disciplinary histories for Michael J. Downing and Joseph R. Compoli.

²³ *Solicited Fax Order* ¶ 26.

Accordingly, because the materials relied upon by Mr. Blake do not, and cannot, demonstrate that AAJ as an institution understood that opt-out notices were required for solicited facsimile advertisements and Mr. Blake posits no other bases to oppose AAJ's Petition, and for the reasons stated in AAJ's Petition, AAJ again respectfully requests that the Commission grant AAJ a retroactive waiver of Section 64.1200(a)(4)(iv) for any solicited facsimile advertisements sent by or on behalf of AAJ, its member groups, providers, or affiliated entities with the prior express permission of the recipient(s).

Respectfully submitted,

Daniel JT McKenna
Kim Phan
Ballard Spahr LLP
1909 K Street, NW
Washington, DC 20006
(202) 661-2200

Counsel for the American Association for Justice

Dated: January 20, 2015

EXHIBIT A

Exercising Leadership Through Community Outreach
Rhonda Hill Wilson

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The views expressed in these papers are not necessarily representative of the views held by AAJ. Furthermore, appearance on an AAJ Education program does not imply that AAJ has endorsed a particular speaker in his or her field and members should always conduct their own due diligence prior to retention of any expert.

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*The endower of AAJ Education,
Power Rogers & Smith, has no control over the placement of
information or the editorial content of AAJ Education materials.*

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Information

Reference Materials

Convention Reference Materials

All registered members receive the AAJ Education Reference Materials, which include speaker papers and outlines. To receive your CD-ROM, present the ticket for Reference Materials (located in your registration packet) at registration in the Pratt Street Lobby on level 300.

For printed papers or assistance downloading files to your computer, please visit the AAJ Practice Resource Center at the Exhibit Experience.

Reference Materials are available for download onto iPads and other devices at www.justice.org/CLEmaterials.

Badge

CLE Programs/Meetings/Events Admittance

Please wear your badge at all times. Your convention badge is your official convention identification and is required for admission to all AAJ events.

CLE programs and all other meetings are open only to registered convention participants; however, those with black badges may only be admitted to a CLE program if they are a sponsor of that program.

Registrants agreed to a non-disclosure procedure as part of their registration. Refer to the regulations online at www.justiceannualconvention.org.

Speaker Evaluations

Your comments are needed to help ensure that future education programs meet your needs. Please complete education program evaluations, which are distributed in the program rooms. Evaluations can also be submitted through the convention app under the "survey" icon.

**Statements and opinions of speakers do not necessarily represent those of AAJ. Furthermore, appearance on an AAJ Education program does not imply that AAJ has endorsed a particular speaker in his or her field. Members should always conduct their own due diligence prior to the retention of any expert.*

**There may be last-minute speaker changes to education programs. View updated agendas on the convention app and online at www.justiceannualconvention.org/schedule.cfm.*

Speaker Applications

Interested in Speaking at Future AAJ Conventions and Events?

Share your expertise and advice with your colleagues! Submit programming ideas for AAJ Education's continuing legal education programs at our two annual conventions and ongoing programs throughout the year. Applications can be completed online at www.justice.org/CLESpeaker. Applications are accepted on a rolling basis. If selected, you will be contacted by AAJ Staff.

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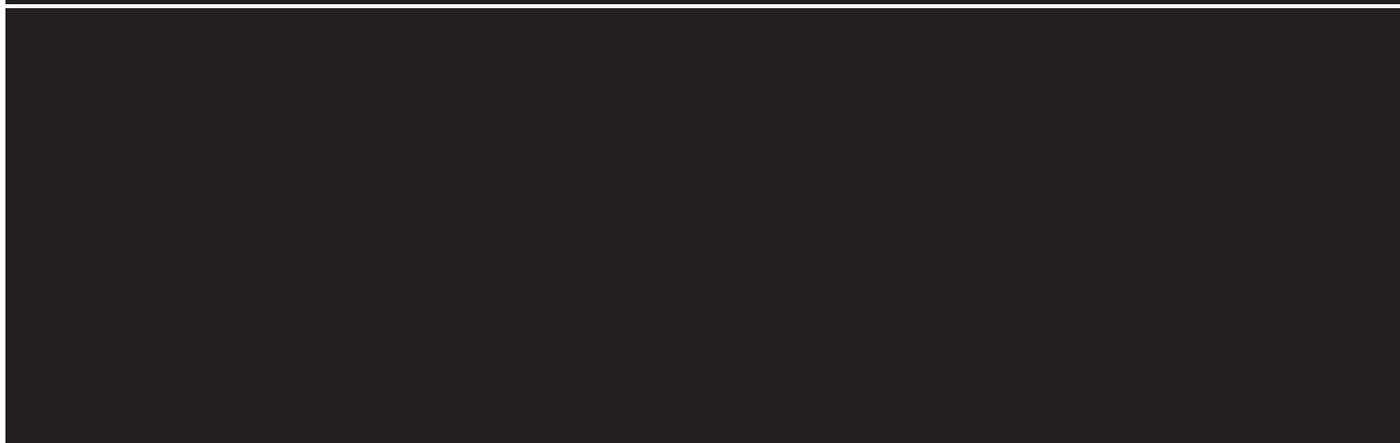
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CLE Certification
Form & Worksheets
are found in the
back of this book



EXHIBIT B

**AAJ* Litigation Group
Policies and Procedures¹**



10.12 Participation in Court Proceedings

Chairs, leaders, and members of Litigation Groups are prohibited from filing pleadings or any other documents in court relating to any case on behalf of the Litigation Group without prior approval of the Committee and the AAJ Executive Committee.

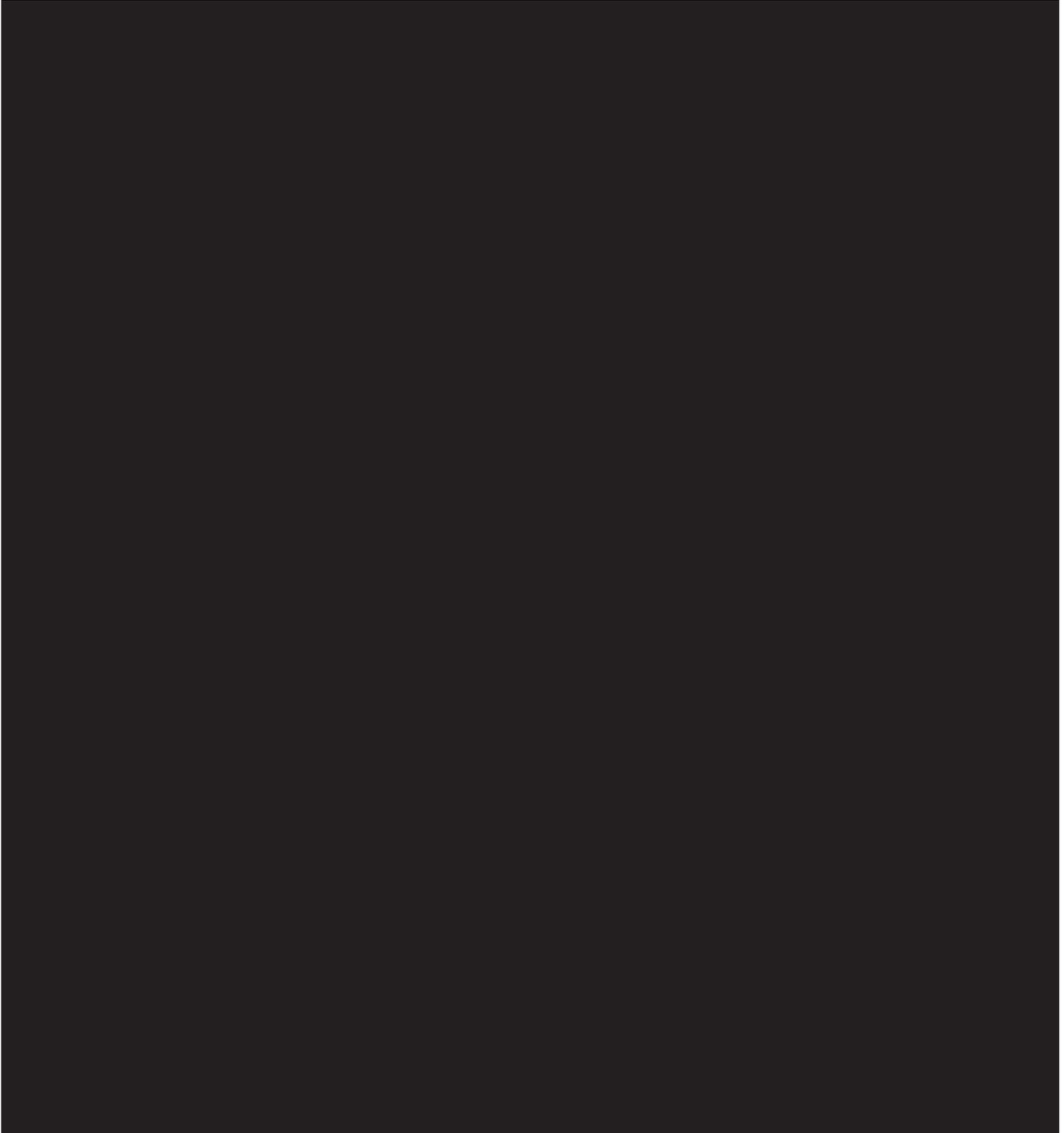


EXHIBIT C

ATLA LITIGATION GROUPS

Policies and Procedures¹

Approved by
ATLA Board of Governors



¹Last amended 5/4/02.



11. Chairs, leaders and members of Litigation Groups are prohibited from filing pleadings or any other documents in court relating to any case on behalf of the Litigation Group without prior approval of the Committee and the ATLA Executive Committee.



EXHIBIT D

McKenna, Daniel J. (Phila)

From: Jesseramsing, Anji [REDACTED]
Sent: Wednesday, November 19, 2014 3:43 PM
To: [REDACTED]
Subject: Follow up re Amicus Memorandum

Dear Joe,

Thank you for speaking with me earlier today. As we discussed, the American Association for Justice (AAJ), formerly the Association of Trial Lawyers of America (ATLA), did not authorize or approve the filing of the amicus memoranda on its behalf or on the behalf of any of its constituent groups, including the Telemarketing, SPAM and Junk Fax Litigation Group, in *Madorsky v. Malsha Products, Inc.*, No. 05-CA-086613, 2006 WL 1403696 (Ohio App. 8th Dist. 2006).

Thank you for agreeing to apprise the Court that the brief was filed without proper authorization to discharge the ethical obligations owed to the Court pursuant to Ohio Rule of Professional Conduct 3.3. While AAJ could undertake this responsibility itself and notify the Court, it may be better for you to apprise the Court rather than be on the receiving end of further inquiries from the Court. We ask that you copy me on your correspondence to the Court and that you send notice to the Court as soon as practicable.

As I shared, we only just learned of the filing of this memorandum last week. I have been reaching out to the other attorneys to ask they do the same. Mr. Goodluck emailed me today and I am letting him know that the memoranda were not authorized or approved by AAJ/ATLA. Any assistance you can provide to have Mr. Goodluck and any other attorneys you may have spoken with who filed similar briefs in other cases to apprise the Court in writing and copying AAJ, would be appreciated.

Anji

Anjali Jesseramsing
General Counsel
American Association for Justice
777 6th St., Suite 200
Washington, DC 20001
Tel: 202-944-2822
Fax: 202-625-7312
www.justice.org

McKenna, Daniel J. (Phila)

From: Jesseramsing, Anji [REDACTED]
Sent: Monday, November 17, 2014 2:31 PM
To: [REDACTED]
Subject: Follow up re Fackleman v. Micronix Amicus Memorandum

Dear Michael,

Thank you for speaking with me last week about the amicus memorandum filed in David Fackleman v. Micronix, No. CA-12-098320 (Ohio 2013). As we discussed, AAJ did not authorize or approve the filing of any amicus memorandum on its behalf or on the behalf of any of its constituent groups, including the Telemarketing, SPAM and Junk Fax Litigation Group.

We agree with you that it is necessary to apprise the Court that the brief was filed without proper authorization to discharge the ethical obligations owed to the Court pursuant to Ohio Rule of Professional Conduct 3.3. While AAJ could undertake this responsibility itself and notify the Court, it may be better for you to apprise the Court rather than be on the receiving end of further inquiries from the Court.

We ask that you copy me on your correspondence to the Court and that you send notice to the Court as soon as practicable.

Thank you,

Anji

Anjali Jesseramsing
General Counsel
American Association for Justice
777 6th St., Suite 200
Washington, DC 20001
Tel: 202-944-2822
Fax: 202-625-7312
www.justice.org

EXHIBIT E

IN THE SUPREME COURT OF OHIO

FACKELMAN, <i>et al.</i> ,	:	
Appellants,	:	
v.	:	Case No. CA-12-098320
MICRONIX, <i>et al.</i> ,	:	
Appellees.	:	

MOTION TO VACATE ORDER GRANTING LEAVE TO FILE AMICUS BRIEF

COME NOW, the American Association for Justice, by and through its undersigned attorney Mark Kitrick, and respectfully moves this Court to vacate its prior order granting leave to file an amicus curiae brief, allegedly on behalf of the Telemarketing, Spam & Junk Fax Litigation Group of American Association for Justice and filed January 14, 2013 in this Court in *Fackelman v. Micronix*, No. CA-12-098320, *appeals not accepted for review*, 135 Ohio St.3d 1413, 2013-Ohio-1622, 986 N.E.2d 30, table. The brief was filed in support of the Appellants' Petition for Jurisdiction, but was never authorized by the American Association for Justice and does not reflect a policy position taken by the Association.

It has only recently come to the attention of the American Association for Justice that a brief in this matter was filed in its name. The American Association for Justice ("AAJ"), formerly the Association of Trial Lawyers of America, is a voluntary bar association whose trial lawyer members primarily represent individual plaintiffs in civil suits and personal injury actions throughout the United States, Canada, and abroad.

Upon learning of this filing and consistent with Ohio R. of Prof. Conduct 3.3, requiring candor to the tribunal, AAJ is discharging its obligation to correct a misstatement made to this Court that AAJ was urging any action by this Court in the above-captioned matter. AAJ has notified the filing counsel and requested that, pursuant to his ethical obligations, counsel apprise the Court that the brief was filed without proper authorization. AAJ has similarly notified the Court of this issue by letter dated November 25, 2014. *See* Exhibit A.

AAJ's Board of Governors established an Amicus Curiae Committee to approve and direct the preparation of amicus curiae briefs to be filed by AAJ. The rules governing the approval of amicus briefs were issued by the Board in their current form in 1992. Pursuant to those rules, an amicus brief bearing AAJ's name may be filed with a federal appellate court or the highest court in a state, but not any lower courts, and only with approval of the AAJ Amicus Curiae Committee or the Executive Committee of the Board of Governors. The Amicus Curiae Committee and its counsel are charged with preparing or directing the preparation of amicus briefs and assuring that such briefs faithfully reflect AAJ policy.

No entity within AAJ, including litigation groups, is authorized to file an amicus brief on behalf of that entity or AAJ. AAJ litigation groups, such as the Telemarketing, Spam & Junk Fax Litigation Group that allegedly filed the subject amicus brief, are established under and governed by AAJ's bylaws and by AAJ's Litigation Group Policies and Procedures. The policies prohibit litigation groups and its members from "filing any pleadings or any other documents in court relating to any case on behalf of the Litigation Group without prior approval of the [Section and Litigation Group Coordination] Committee and AAJ Executive Committee."

The brief in question did not go through these required processes. It was not presented to the Amicus Curiae Committee for its consideration and approval. Nor was it approved by either

the Amicus Curiae Committee or the Executive Committee of AAJ. In addition, the filing counsel listed on the brief was never authorized to represent AAJ, to file any brief with the court, or to speak on AAJ's behalf. In this instance, the filing counsel was identified on the brief as Michael J. Downing, SCR No. 0022944, 75 Public Sq., Suite 920, Cleveland, OH 44113, Tel: (216) 861-9111, email: mjdowning@ameritech.net. Mark Kitrick files this Motion on behalf of the American Association for Justice. Mark Kitrick is a duly admitted, licensed Ohio attorney (0000021) and is an elected member of the Executive Committee of the American Association for Justice and thus has authority to act on the Association's behalf.

For the foregoing reasons, the American Association for Justice respectfully submits this Court should vacate its order accepting an amicus curiae brief on its behalf and take whatever other actions it deems appropriate.

Respectfully Submitted,

/s/Mark Kitrick

Mark Kitrick (0000021)
Kitrick, Lewis & Harris Co., L.P.A.
445 Hutchinson Ave, Suite 100
Columbus, Ohio 43235
Telephone: (614) 224-7711
Facsimile: (614) 225-8985
mkitrick@kitricklaw.com

Trial Attorney for AAJ

CERTIFICATE OF SERVICE

I certify that a copy of this Motion was mailed on January 16, 2015, to the following:

William M. Kovech
Travelers Insurance
Park Center Plaza II
6150 Oak Tree Blvd., Suite 450
Independence, Ohio 44131-6917

Attorney for Appellee

Joseph Compoli Jr.
James R. Goodluck
612 East 185 Street
Cleveland, Ohio 44119

Attorneys for Appellants

Michael John Downing
75 Public Square, Suite 920
Cleveland, Ohio 44113

/s/Mark Kitrick
Mark Kitrick (0000021)



November 25, 2014

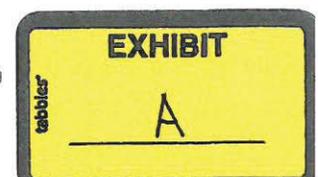
Sandra H. Grosko
Clerk of the Court
Supreme Court of Ohio
65 South Front Street
8th Floor
Columbus, OH 43215-3431

Dear Ms. Grosko:

It has come to my attention that a number of amicus curiae briefs were filed in the name of the American Association for Justice (“AAJ”), formerly known as the Association of Trial Lawyers of America (“ATLA”), in Ohio’s courts without AAJ’s authorization or permission. AAJ is a trial bar association with members in the United States, Canada, and abroad. The briefs filed in Ohio’s courts do not reflect a position on the law or the individual cases that was adopted by AAJ. I write to inform the Court that these briefs were not filed by or on behalf of AAJ or ATLA and the authors did not have permission to use AAJ’s or ATLA’s name.

The following documents were filed in Ohio courts purportedly on behalf of AAJ, without the knowledge, permission or authorization of AAJ:

1. “Brief of Amicus Curiae Telemarketing, Spam & Junk Fax Litigation Group of American Association for Justice in Support of Appellants Charles Stoneman and Stoneman Corporation Petition for Jurisdiction,” 2007 WL 5081211, filed July 5, 2007 in *Stoneman v. Turner Metal Products*, 115 Ohio St. 3d 1423, 874 N.E.2d 539 (2007) (Table), filed by Matthew McCue, Massachusetts BBO# 565319, 1 South Ave., Natick, MA 01760, (508) 655-1415, mmccue@massattorneys.net.
2. “Brief for amicus curiae Telemarketing, Spam & Junk Fax Litigation Group of the American Association for Justice,” in *Cardinal Partners, LTD v. Fernandez Discipline, LLC*, No. L-10-1180, 2010 WL 4683700 (Ohio Ct. App., 6th Dist., Nov. 19, 2010) filed by Matthew P. McCue. See also *Cardinal Partners, LTD v. Fernandez Discipline, LLC*, No. L-10-1180, 2010 WL 3629820 (Ohio Ct. App., 6th Dist., Sept. 1, 2010) at *1 (stating “Attorney Matthew P. McCue is permitted to appear solely in the capacity of counsel representing and filing an amicus curiae brief for the AAJ. Since the AAJ tendered its amicus brief with this motion, the brief is ordered to be filed *instanter*.”).



3. "Brief of Amicus Curiae, American Association for Justice—Telemarketing, Spam & Junk Fax Litigation Group," in *Fackelman v. Micronix*, No. 98320, 2012 WL 5987139 (Ohio Ct. App., 8th Dist., Nov. 29, 2012) filed by Mark S. Telich, Cleveland, OH; and "Memorandum of Amicus American Association for Justice/Telemarketing, Spam & Junk Fax Litigation Group in Support of Jurisdiction of Appellants David Fackelman and Swift Print," filed January 14, 2013 in *Fackelman v. Micronix*, No. CA-12-098320 (Ohio Jan. 14, 2013), filed by Michael J. Downing, SCR No. 0022944, 75 Public Square, Suite 920, Cleveland, OH 44113, Tel.: (216) 861-9111, Email: mjdowning@ameritech.net.

4. "Brief of Amicus Curiae Telemarketing, Spam and Junk Fax Litigation Group of the American Association for Justice," 2008 WL 7087652, filed July 15, 2008 in *McPhillips v. Travelers Property Casualty Insurance Co*, Nos. 91286, 91561. 2009 WL 713021 (Ohio Ct. App., 8th Dist., Mar. 19, 2009), filed by Matthew P. McCue, 1 South Ave., Natick, MA 01760, Tel: (508) 655-1415, Email: mmccue@massattorneys.net.

5. "Brief of Amicus Curiae Telemarketing, Spam & Junk Fax Litigation Group of Association of Trial Lawyers of America," 2006 WL 4477390, filed March 20, 2006 in *Grady v. AMT Group, Inc.*, No. 87833, 2006 WL 3635342 (Ohio Ct. App., 8th Dist., Dec. 14, 2006) filed by Eric J. Moore, 183 W. Aurora Road, Northfield, OH 44067, Tel: (330) 468-6333, Email:ejm@clevelandaccidentlawyers.com.

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None of these briefs were approved by, or filed on behalf of, AAJ. In some instances, the attorney filing the brief was not even a member of AAJ. For instance, we have no record of Michael Downing or Mark Telich having ever been members of AAJ. Since 1946, our organization has sought to advance the law affecting plaintiffs seeking legal redress for wrongful injury. As part of that effort, AAJ has participated as amicus curiae in the Supreme Court of the United States, United States courts of appeals, and state supreme courts, including the Supreme Court of Ohio. *See, e.g., Moskovitz v. Mt. Sinai Med. Ctr.*, 69 Ohio St. 3d 638, 648, 635 N.E.2d 331, 341 (1994); *see also Toledo Bar Assn. v. Leizerman*, 64 Ohio St. 3d 1402, 591 N.E.2d 1245, 1246 (1992) (granting motion).

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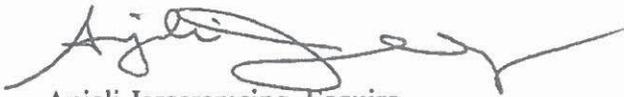
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None of the above-named documents was presented to the Amicus Curiae Committee for its consideration and approval. Nor was any of the above-named documents approved by either the Amicus Curiae Committee or the Executive Committee of AAJ. Nor was any counsel listed in the above-named documents authorized to represent AAJ, to file any brief with the court, or to speak on AAJ's behalf.

While none of these matters may be pending in the Ohio courts, AAJ has sought, with this letter, to correct the record and comply with the ethical obligation of candor to the tribunal in informing the courts of this discovery.

Prior to sending this letter, AAJ reached out to each individual identified as responsible for filing these briefs of AAJ's discovery and reminded those that it reached of their independent ethical obligation to self-report their conduct. As of the date of this letter, AAJ has not been copied on any self-reporting.

Respectfully,



Anjali Jesseramsing, Esquire
General Counsel
American Association for Justice
(202) 944-2822

cc: Joseph R. Compoli, Esquire
Michael Downing, Esquire
James R. Goodluck, Esquire
Matthew McCue, Esquire
Eric J. Moore, Esquire
Mark S. Telich, Esquire

primarily represent individual plaintiffs in civil suits and personal injury actions throughout the United States, Canada, and abroad.

Upon learning of this filing and consistent with Ohio R. of Prof. Conduct 3.3, requiring candor to the tribunal, AAJ is discharging its obligation to correct a misstatement made to this Court that AAJ was urging any action by this Court in the above-captioned matter. AAJ has notified the filing counsel and requested that, pursuant to his ethical obligations, counsel apprise the Court that the brief was filed without proper authorization. AAJ has similarly notified the Court of this issue by letter dated November 25, 2014. *See* Exhibit A.

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The brief in question did not go through these required processes. It was not presented to the Amicus Curiae Committee for its consideration and approval. Nor was it approved by either the Amicus Curiae Committee or the Executive Committee of AAJ. In addition, the filing counsel listed on the brief was never authorized to represent AAJ, to file any brief with the court, or to speak on AAJ's behalf. In this instance, the filing counsel was identified on the brief as Matthew McCue, Massachusetts BBO# 565319, 1 South Ave., Natick, MA 01760, Tel.: (508) 655-1415, email: mmccue@massattorneys.net. Mark Kitrick files this Motion on behalf of the American Association for Justice. Mark Kitrick is a duly admitted, licensed Ohio attorney (0000021) and is an elected member of the Executive Committee of the American Association for Justice and thus has authority to act on the Association's behalf.

For the foregoing reasons, the American Association for Justice respectfully submits this Court should vacate its order accepting an amicus curiae brief on its behalf and take whatever other actions it deems appropriate.

Respectfully submitted,

/s/Mark Kitrick

Mark Kitrick (0000021)
Kitrick, Lewis & Harris Co., L.P.A.
445 Hutchinson Ave, Suite 100
Columbus, Ohio 43235
Telephone: (614) 224-7711
Facsimile: (614) 225-8985
mkitrick@kitricklaw.com

Trial Attorney for AAJ

CERTIFICATE OF SERVICE

I certify that a copy of this Motion was mailed on January 16, 2015, to the following:

Michael G. Polito
21300 Lorain Rd.
Fairview Park, Ohio 44126

Attorney for Appellees

Joseph Compoli Jr.
James R. Goodluck
612 East 185 Street
Cleveland, Ohio 44119

Attorneys for Appellants

Matthew McCue
1 South Ave., 3rd Floor
Natick, Massachusetts 01760

/s/Mark Kitrick
Mark Kitrick (0000021)



November 25, 2014

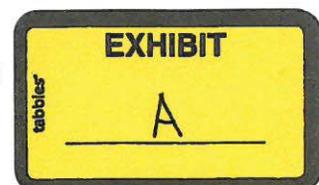
Sandra H. Grosko
Clerk of the Court
Supreme Court of Ohio
65 South Front Street
8th Floor
Columbus, OH 43215-3431

Dear Ms. Grosko:

It has come to my attention that a number of amicus curiae briefs were filed in the name of the American Association for Justice (“AAJ”), formerly known as the Association of Trial Lawyers of America (“ATLA”), in Ohio’s courts without AAJ’s authorization or permission. AAJ is a trial bar association with members in the United States, Canada, and abroad. The briefs filed in Ohio’s courts do not reflect a position on the law or the individual cases that was adopted by AAJ. I write to inform the Court that these briefs were not filed by or on behalf of AAJ or ATLA and the authors did not have permission to use AAJ’s or ATLA’s name.

The following documents were filed in Ohio courts purportedly on behalf of AAJ, without the knowledge, permission or authorization of AAJ:

1. “Brief of Amicus Curiae Telemarketing, Spam & Junk Fax Litigation Group of American Association for Justice in Support of Appellants Charles Stoneman and Stoneman Corporation Petition for Jurisdiction.” 2007 WL 5081211, filed July 5, 2007 in *Stoneman v. Turner Metal Products*, 115 Ohio St. 3d 1423, 874 N.E.2d 539 (2007) (Table), filed by Matthew McCue, Massachusetts BBO# 565319, 1 South Ave., Natick, MA 01760, (508) 655-1415, mmccue@massattorneys.net.
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Respectfully,



Anjali Jessoramsing, Esquire
General Counsel
American Association for Justice
(202) 944-2822

cc: Joseph R. Compoli, Esquire
Michael Downing, Esquire
James R. Goodluck, Esquire
Matthew McCue, Esquire
Eric J. Moore, Esquire
Mark S. Telich, Esquire

**IN THE OHIO COURT OF APPEALS
FOR THE EIGHTH DISTRICT
CUYHOGA COUNTY COMMON PLEAS**

MCPHILLIPS, *et al.*, :
Appellants, :
v. : Case No. 912861
TRAVELERS PROPERTY CASUALTY : Trial Case No. 07 CV 622493
INSURANCE CO., :
Appellee. :

NOTICE OF APPEARANCE OF MARK KITRICK

Mark Kitrick files this *Notice of Appearance* on behalf of the American Association for Justice. Mark Kitrick is a duly admitted, licensed Ohio attorney (0000021) and is an elected member of the Executive Committee of the American Association for Justice and thus has authority to act on the Association's behalf. This is Mr. Kitrick's first notice of appearance on this closed case and the purpose of this Notice is to file a *Motion to Vacate Order Granting Leave to File Amicus Brief* that is being filed contemporaneously with this Notice.

Respectfully submitted,

/s/Mark Kitrick
Mark Kitrick (0000021)
Kitrick, Lewis & Harris Co., L.P.A.
515 E. Main Street, Suite 515
Columbus, OH 43215
Telephone: (614) 224-7711
Facsimile: (614) 225-8985
mkitrick@kitricklaw.com

Trial Attorney for AAJ

CERTIFICATE OF SERVICE

I certify that a copy of this Motion was mailed on January 16, 2015, to the following:

Harold H. Reader
Skylight Office Tower
1660 West Second Street, Suite 1100
Cleveland, OH 44113-0000

Fredrick P. Marcyk
Drinker Biddle & Reath LLP
18th & Cherry Streets
Philadelphia, PA 19103-6996

Attorney for Appellees

James R. Goodluck
3517 St. Albans Road
Cleveland Heights, Ohio 44121

Paul W. Flowers
Terminal Tower, 35th Floor
50 Public Square
Cleveland, OH 44113-0000

Attorneys for Appellants

Matthew McCure
1 South Ave., 3rd Floor
Natick, Massachusetts 01760

/s/Mark Kitrick
Mark Kitrick (0000021)

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v. : Case No. 912861
TRAVELERS PROPERTY CASUALTY : Trial Case No. 07 CV 622493
INSURANCE CO., :
Appellee. :

MOTION TO VACATE ORDER GRANTING LEAVE TO FILE AMICUS BRIEF

COME NOW, the American Association for Justice, by and through its undersigned attorneys, and respectfully moves this Court to vacate its prior order granting leave to file an amicus curiae brief, allegedly on behalf of the Telemarketing, Spam & Junk Fax Litigation Group of American Association for Justice and filed in this Court July 15, 2008. The brief in question, available at 2010 WL 7087652, was filed on July 15, 2008 in *McPhillips v. Travelers Property Casualty Ins. Co.*, Nos. 91286, 91561, 2009 WL 713021 (Ohio Ct. App. 8th Dist. Mar. 19, 2009), *appeals not accepted for review*, 122 Ohio St. 3d 1522 (Sept. 16, 2009) (Table). The brief was filed as a “Brief for amicus curiae Telemarketing, Spam & Junk Fax Litigation Group of the American Association for Justice,” but was never authorized by the American Association for Justice and does not reflect a policy position taken by the Association.

Although the underlying matter was disposed of by this Court in *McPhillips v. Travelers Property Casualty Insurance Co.*, 122 Ohio St. 3d 1522 (Sept. 16, 2009) (Table), it has only recently come to the attention of the American Association for Justice that a brief in this matter was filed in its name. The American Association for Justice (“AAJ”), formerly the Association of Trial Lawyers of America, is a voluntary bar association whose trial lawyer members primarily represent individual plaintiffs in civil suits and personal injury actions throughout the United States, Canada, and abroad.

Upon learning of this filing and consistent with Ohio R. of Prof. Conduct 3.3, requiring candor to the tribunal, AAJ is discharging its obligation to correct a misstatement made to this Court that AAJ was urging any action by this Court in the above-captioned matter. AAJ has notified the filing counsel and requested that, pursuant to his ethical obligations, counsel apprise the Court that the brief was filed without proper authorization. AAJ has similarly notified the Court of this issue by letter dated November 25, 2014. *See* Exhibit A.

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For the foregoing reasons, the American Association for Justice respectfully submits this Court should vacate its order accepting an amicus curiae brief on its behalf and take whatever other actions it deems appropriate.

Respectfully submitted,

/s/Mark Kitrick

Mark Kitrick (0000021)

Kitrick, Lewis & Harris Co., L.P.A.

515 E. Main Street, Suite 515

Columbus, OH 43215

Telephone: (614) 224-7711

Facsimile: (614) 225-8985

mkitrick@kitricklaw.com

Trial Attorney for AAJ

CERTIFICATE OF SERVICE

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Cleveland, OH 44113-0000

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/s/Mark Kitrick
Mark Kitrick (0000021)



November 25, 2014

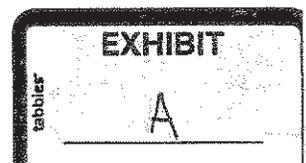
Ute Lindenmaier Vilfroy
Court Administrator
Ohio Eighth District Court of Appeals
Cuyahoga County Court House
1 Lakeside Avenue #202
Cleveland, OH 44113-1085

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Anjali Jesseramsing, Esquire
General Counsel
American Association for Justice
(202) 944-2822

cc: Joseph R. Compoli, Esquire
Michael Downing, Esquire
James R. Goodluck, Esquire
Matthew McCue, Esquire
Eric J. Moore, Esquire
Mark S. Telich, Esquire

IN THE OHIO COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CLEVELAND HEIGHTS MUNICIPAL COURT

MADORSKY, :
Appellant, :
v. : Case No. 05-CA-086613
MALSHA PRODUCTS INC., :
Appellee. :

NOTICE OF APPEARANCE OF MARK KITRICK

Mark Kitrick files this *Notice of Appearance* on behalf of the American Association for Justice. Mark Kitrick is a duly admitted, licensed Ohio attorney (0000021) and is an elected member of the Executive Committee of the American Association for Justice and thus has authority to act on the Association's behalf. This is Mr. Kitrick's first notice of appearance on this closed case and the purpose of this Notice is to file a *Motion to Vacate Order Granting Leave to File Amicus Brief* that is being filed contemporaneously with this Notice.

Respectfully submitted,

/s/Mark Kitrick

Mark Kitrick (0000021)
Kitrick, Lewis & Harris Co., L.P.A.
515 E. Main Street, Suite 515
Columbus, OH 43215
Telephone: (614) 224-7711
Facsimile: (614) 225-8985
mkitrick@kitricklaw.com

Trial Attorney for AAJ

CERTIFICATE OF SERVICE

I certify that a copy of this Motion was mailed on January 16, 2015, to the following:

Brendan Delay
24500 Center Ridge Rd. Suite 160
Westlake, OH 44145-0000

Attorney for Appellees

Joseph Compoli Jr.
612 East 185 Street
Cleveland, Ohio 44119

James R. Goodluck
3517 St. Albans Road
Cleveland Heights, Ohio 44121

Attorneys for Appellees

Robert Willis
5001 May field Rd., Suite 201
Cleveland, OH 44124-0000

Attorney for Appellants

/s/Mark Kitrick
Mark Kitrick (0000021)

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MADORSKY, :
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v. : Case No. 05-CA-086613
MALSHA PRODUCTS INC., :
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MOTION TO VACATE ORDER GRANTING LEAVE TO FILE AMICUS BRIEF

COME NOW, the American Association for Justice, by and through its undersigned attorneys, and respectfully moves this Court to vacate its prior order granting leave to file an amicus curiae brief, allegedly on behalf of the Telemarketing, Spam & Junk Fax Litigation Group of American Association for Justice and filed in this Court. The brief in question, available at 2006 WL 1403696, was filed January 19, 2006 in *Madorsky v. Malsha Products Inc.*, No. 05-CA-086613 (Ohio App. 8th Dist.) as a “Brief of Amicus Curiae Telemarketing, Spam & Junk Fax Litigation Group of Association of Trial Lawyers of America,” but was never authorized by the American Association for Justice and does not reflect a policy position taken by the Association.

It has only recently come to the attention of the American Association for Justice that a brief in this matter was filed in its name. The American Association for Justice (“AAJ”),

formerly the Association of Trial Lawyers of America, is a voluntary bar association whose trial lawyer members primarily represent individual plaintiffs in civil suits and personal injury actions throughout the United States, Canada, and abroad.

Upon learning of this filing and consistent with Ohio R. of Prof. Conduct 3.3, requiring candor to the tribunal, AAJ is discharging its obligation to correct a misstatement made to this Court that AAJ was urging any action by this Court in the above-captioned matter. AAJ has notified the filing counsel and requested that, pursuant to their ethical obligations, counsel apprise the Court that the brief was filed without proper authorization. AAJ has similarly notified the Court of this issue by letter dated November 25, 2014. *See* Exhibit A.

AAJ's Board of Governors established an Amicus Curiae Committee to approve and direct the preparation of amicus curiae briefs to be filed by AAJ. The rules governing the approval of amicus briefs were issued by the Board in their current form in 1992. Pursuant to those rules, an amicus brief bearing AAJ's name may be filed with a federal appellate court or the highest court in a state, but not any lower courts, and only with approval of the AAJ Amicus Curiae Committee or the Executive Committee of the Board of Governors. The Amicus Curiae Committee and its counsel are charged with preparing or directing the preparation of amicus briefs and assuring that such briefs faithfully reflect AAJ policy.

No entity within AAJ, including litigation groups, is authorized to file an amicus brief on behalf of that entity or AAJ. AAJ litigation groups, such as the Telemarketing, Spam & Junk Fax Litigation Group that allegedly filed the subject amicus brief, are established under and governed by AAJ's bylaws and by AAJ's Litigation Group Policies and Procedures. The policies prohibit litigation groups and its members from "filing any pleadings or any other documents in court

relating to any case on behalf of the Litigation Group without prior approval of the [Section and Litigation Group Coordination] Committee and AAJ Executive Committee.”

The brief in question did not go through these required processes. It was not presented to the Amicus Curiae Committee for its consideration and approval. Nor was it approved by either the Amicus Curiae Committee or the Executive Committee of AAJ. In addition, the filing counsel listed on the brief was never authorized to represent AAJ, to file any brief with the court, or to speak on AAJ’s behalf. In this instance, the filing counsel was identified on the brief as Joseph R. Compoli Jr., 612 E. 185 St., Cleveland, OH 44119, Tel.: (216) 820-3064, email: josephcompoli@yahoo.com and James R. Goodluck, 3517 St. Albans Rd., Cleveland Heights, OH 44121, Tel.: (216) 916-4534, email: goodlucks7@msn.com. Attorney James R. Goodluck sent AAJ a copy of a letter dated December 1, 2014 that he addressed to the Court. *See Exhibit B.*

For the foregoing reasons, the American Association for Justice respectfully submits this Court should vacate its order accepting an amicus curiae brief on its behalf and take whatever other actions it deems appropriate.

Respectfully submitted,

/s/Mark Kitrick

Mark Kitrick (0000021)
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November 25, 2014

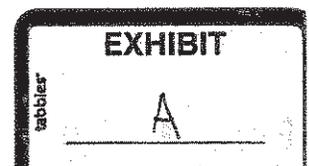
Ute Lindenmaier Vilfroy
Court Administrator
Ohio Eighth District Court of Appeals
Cuyahoga County Court House
1 Lakeside Avenue #202
Cleveland, OH 44113-1085

Dear Mr. Vilfroy:

It has come to my attention that a number of amicus curiae briefs were filed in the name of the American Association for Justice ("AAJ"), formerly known as the Association of Trial Lawyers of America ("ATLA"), in Ohio's courts without AAJ's authorization or permission. AAJ is a trial bar association with members in the United States, Canada, and abroad. The briefs filed in Ohio's courts do not reflect a position on the law or the individual cases that was adopted by AAJ. I write to inform the Court that these briefs were not filed by or on behalf of AAJ or ATLA and the authors did not have permission to use AAJ's or ATLA's name.

The following documents were filed in Ohio courts purportedly on behalf of AAJ, without the knowledge, permission or authorization of AAJ:

1. "Brief of Amicus Curiae Telemarketing, Spam & Junk Fax Litigation Group of American Association for Justice in Support of Appellants Charles Stoneman and Stoneman Corporation Petition for Jurisdiction." 2007 WL 5081211, filed July 5, 2007 in *Stoneman v. Turner Metal Products*, 115 Ohio St. 3d 1423, 874 N.E.2d 539 (2007) (Table), filed by Matthew McCue, Massachusetts BBO# 565319, 1 South Ave., Natick, MA 01760, (508) 655-1415, mmccue@massattorneys.net.
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3. "Brief of Amicus Curiae, American Association for Justice—Telemarketing, Spam & Junk Fax Litigation Group," in *Fackelman v. Micronix*, No. 98320, 2012 WL 5987139 (Ohio Ct. App., 8th Dist., Nov. 29, 2012) filed by Mark S. Telich, Cleveland, OH; and "Memorandum of Amicus American Association for Justice/Telemarketing, Spam & Junk Fax Litigation Group in Support of Jurisdiction of Appellants David Fackelman and Swift Print," filed January 14, 2013 in *Fackelman v. Micronix*, No. CA-12-098320 (Ohio Jan. 14, 2013), filed by Michael J. Downing, SCR No. 0022944, 75 Public Square, Suite 920, Cleveland, OH 44113, Tel.: (216) 861-9111, Email: mjdowning@ameritech.net.

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None of these briefs were approved by, or filed on behalf of, AAJ. In some instances, the attorney filing the brief was not even a member of AAJ. For instance, we have no record of Michael Downing or Mark Telich having ever been members of AAJ. Since 1946, our organization has sought to advance the law affecting plaintiffs seeking legal redress for wrongful injury. As part of that effort, AAJ has participated as amicus curiae in the Supreme Court of the United States, United States courts of appeals, and state supreme courts, including the Supreme Court of Ohio. *See, e.g., Moskovitz v. Mt. Sinai Med. Ctr.*, 69 Ohio St. 3d 638, 648, 635 N.E.2d 331, 341 (1994); see also *Toledo Bar Assn. v. Leizerman*, 64 Ohio St. 3d 1402, 591 N.E.2d 1245, 1246 (1992) (granting motion).

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None of the above-named documents was presented to the Amicus Curiae Committee for its consideration and approval. Nor was any of the above-named documents approved by either the Amicus Curiae Committee or the Executive Committee of AAJ. Nor was any counsel listed in the above-named documents authorized to represent AAJ, to file any brief with the court, or to speak on AAJ's behalf.

While none of these matters may be pending in the Ohio courts, AAJ has sought, with this letter, to correct the record and comply with the ethical obligation of candor to the tribunal in informing the courts of this discovery.

Prior to sending this letter, AAJ reached out to each individual identified as responsible for filing these briefs of AAJ's discovery and reminded those that it reached of their independent ethical obligation to self-report their conduct. As of the date of this letter, AAJ has not been copied on any self-reporting.

Respectfully,



Anjali Jessoramsing, Esquire
General Counsel
American Association for Justice
(202) 944-2822

cc: Joseph R. Compoli, Esquire
Michael Downing, Esquire
James R. Goodluck, Esquire
Matthew McCue, Esquire
Eric J. Moore, Esquire
Mark S. Telich, Esquire

JAMES R. GOODLUCK

Attorney at Law

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Cleveland Heights, Ohio 44121

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Email: goodlucks7@msn.com

Ms. Ute Lindenmaier Vilfroy
Court Administrator
Ohio Court of Appeals, 8th District
Cuyahoga County Court House
1 Lakeside Avenue #202
Cleveland, OH 44113-1085

December 1, 2014

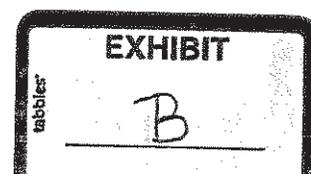
Re: *Fackelman v. Micronix*
(Case No. 12-CA-98320), 2012-Ohio-5513
McPhillips v. Travelers Indemn. Co.
(No. 09-CA-91286 & 91561), 2009-Ohio-596
Grady v. AMT Group
(Case No. 06-CA-87833), 2006-Ohio-6597
Madorsky v. Malsha Products, Inc.
(Case No. 05-CA-086613), 2006 WL 1403696

Dear Ms. Vilroy:

I am writing in regard to the above referenced cases, in which I served as associate counsel for the plaintiffs-appellants, with the exception of the *Madorsky* matter.

Amicus Curiae briefs were filed on behalf of the Telemarketing, Spam & Junk Fax Litigation Group of the American Association for Justice (AAJ), in the said cases. During the past week, I have learned that these briefs were, in fact, not authorized by the AAJ at the time that they were filed. I believe that the Litigation Group or its chairperson misunderstood the procedure for obtaining approval to submit an Amicus brief on behalf of the AAJ or a Litigation Group of the organization. Also, I am evidently listed as assistant counsel on the *Madorsky* Amicus brief. I have no recollection of this case (which was dismissed at appellant's request), and it is my belief that I was listed by secretarial or clerical error.

Furthermore, to best of my knowledge and understanding, the position that was advocated in these amicus briefs was entirely consistent with the philosophy of AAJ, in supporting broader rights of civil recovery for victimized plaintiffs against tortfeasors and insurance companies. In addition, the filing of these briefs does not appear to have affected the outcome of the cases, since the plaintiff-appellant did not prevail.



Although I am certain that the submission of these briefs was a good-faith error, rather than deliberate wrongdoing by any of the counsel involved, I believe that I have an ethical responsibility to bring this matter to the attention of the court, notwithstanding that these cases were heard and decided years ago, and involve issues that are highly unlikely to ever arise again.

Sincerely,

James R. Goodluck

**IN THE OHIO COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY COMMON PLEAS**

GRADY, <i>et al.</i> ,	:	
Appellants,	:	
v.	:	Case No. 06 CA 87833
AMT GROUP, INC.,	:	Trail Case No. 05- CV 571661
Appellee.	:	

NOTICE OF APPEARANCE OF MARK KITRICK

Mark Kitrick files this *Notice of Appearance* on behalf of the American Association for Justice. Mark Kitrick is a duly admitted, licensed Ohio attorney (0000021) and is an elected member of the Executive Committee of the American Association for Justice and thus has authority to act on the Association's behalf. This is Mr. Kitrick's first notice of appearance on this closed case and the purpose of this Notice is to file a *Motion to Vacate Order Granting Leave to File Amicus Brief* that is being filed contemporaneously with this Notice.

Respectfully submitted,

/s/Mark Kitrick
Mark Kitrick (0000021)
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515 E. Main Street, Suite 515
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Telephone: (614) 224-7711
Facsimile: (614) 225-8985
mkitrick@kitricklaw.com

Trial Attorney for AAJ

CERTIFICATE OF SERVICE

I certify that a copy of this Motion was mailed on January 16, 2015, to the following:

AMT Group, Inc.
4400 Rt. 9 South, Suite 1000
Freehold, NJ 07728-0000

Pro Se

Joseph Compoli Jr.
612 East 185 Street
Cleveland, Ohio 44119

James R. Goodluck
3517 St. Albans Road
Cleveland Heights, Ohio 44121

Attorneys for Appellants

/s/Mark Kitrick
Mark Kitrick (0000021)

**IN THE OHIO COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY COMMON PLEAS**

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MOTION TO VACATE ORDER GRANTING LEAVE TO FILE AMICUS BRIEF

COME NOW, the American Association for Justice, by and through its undersigned attorneys, and respectfully moves this Court to vacate its prior order granting leave to file an amicus curiae brief, allegedly on behalf of the Telemarketing, Spam & Junk Fax Litigation Group of American Association for Justice and filed in this Court. The brief in question, available at 2006 WL 4477390 filed March 20, 2006 in *Grady v. AMT Group, Inc.* No. 87833, 2006 WL 3635342 (Ohio Ct. App., 8th Dist. Dec. 14, 2006), was filed as a “Brief of Amicus Curiae Telemarketing, Spam & Junk Fax Litigation Group of Association of Trial Lawyers of America,” but was never authorized by the American Association for Justice and does not reflect a policy position taken by the Association.

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formerly the Association of Trial Lawyers of America, is a voluntary bar association whose trial lawyer members primarily represent individual plaintiffs in civil suits and personal injury actions throughout the United States, Canada, and abroad.

Upon learning of this filing and consistent with Ohio R. of Prof. Conduct 3.3, requiring candor to the tribunal, AAJ is discharging its obligation to correct a misstatement made to this Court that AAJ was urging any action by this Court in the above-captioned matter. AAJ has notified the filing counsel and requested that, pursuant to his ethical obligations, counsel apprise the Court that the brief was filed without proper authorization. AAJ has similarly notified the Court of this issue by letter dated November 25, 2014. *See Exhibit A.*

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The brief in question did not go through these required processes. It was not presented to the Amicus Curiae Committee for its consideration and approval. Nor was it approved by either the Amicus Curiae Committee or the Executive Committee of AAJ. In addition, the filing counsel listed on the brief was never authorized to represent AAJ, to file any brief with the court, or to speak on AAJ’s behalf. In this instance, the filing counsel was identified on the brief as Eric J. Moore, 183 W. Aurora Rd., Northfield, OH 44067, Tel.: (330) 468-6333, email: ejm@clevelandaccidentlawyers.com.

For the foregoing reasons, the American Association for Justice respectfully submits this Court should vacate its order accepting an amicus curiae brief on its behalf and take whatever other actions it deems appropriate.

Respectfully submitted,

/s/Mark Kitrick

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November 25, 2014

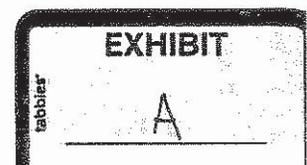
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While none of these matters may be pending in the Ohio courts, AAJ has sought, with this letter, to correct the record and comply with the ethical obligation of candor to the tribunal in informing the courts of this discovery.

Prior to sending this letter, AAJ reached out to each individual identified as responsible for filing these briefs of AAJ's discovery and reminded those that it reached of their independent ethical obligation to self-report their conduct. As of the date of this letter, AAJ has not been copied on any self-reporting.

Respectfully,



Anjali Jessoramsing, Esquire
General Counsel
American Association for Justice
(202) 944-2822

cc: Joseph R. Compoli, Esquire
Michael Downing, Esquire
James R. Goodluck, Esquire
Matthew McCue, Esquire
Eric J. Moore, Esquire
Mark S. Telich, Esquire

IN THE OHIO COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

FACKELMAN, <i>et al.</i> ,	:	
Appellants,	:	
v.	:	Case No. 98320
MICRONIX, <i>et al.</i> ,	:	Municipal Court No. 11 CVI 04576
Appellees.	:	

NOTICE OF APPEARANCE OF MARK KITRICK

Mark Kitrick files this *Notice of Appearance* on behalf of the American Association for Justice. Mark Kitrick is a duly admitted, licensed Ohio attorney (0000021) and is an elected member of the Executive Committee of the American Association for Justice and thus has authority to act on the Association's behalf. This is Mr. Kitrick's first notice of appearance on this closed case and the purpose of this Notice is to file a *Motion to Vacate Order Granting Leave to File Amicus Brief* that is being filed contemporaneously with this Notice.

Respectfully submitted,

/s/Mark Kitrick

Mark Kitrick (0000021)
Kitrick, Lewis & Harris Co., L.P.A.
515 E. Main Street, Suite 515
Columbus, OH 43215
Telephone: (614) 224-7711
Facsimile: (614) 225-8985
mkitrick@kitricklaw.com

Trial Attorney for AAJ

CERTIFICATE OF SERVICE

I certify that a copy of this Motion was mailed on January 16, 2015, to the following:

William M. Kovech
Travelers Insurance
Park Center Plaza II
6150 Oak Tree Blvd., Suite 450
Independence, Ohio 44131-6917

Attorney for Appellees

Joseph Compoli Jr.
612 East 185 Street
Cleveland, Ohio 44119

James R. Goodluck
3517 St. Albans Road
Cleveland Heights, Ohio 44121

Attorneys for Appellants

Mark S. Telich
782 East 185th Street
Cleveland, Ohio 44119

/s/Mark Kitrick
Mark Kitrick (0000021)

**IN THE OHIO COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

FACKELMAN, <i>et al.</i> ,	:	
Appellants,	:	
v.	:	Case No. 98320
MICRONIX, <i>et al.</i> ,	:	Municipal Court No. 11 CVI 04576
Appellees.	:	

MOTION TO VACATE ORDER GRANTING LEAVE TO FILE AMICUS BRIEF

COME NOW, the American Association for Justice, by and through its undersigned attorneys, and respectfully moves this Court to vacate its prior order granting leave to file an amicus curiae brief, allegedly on behalf of the Telemarketing, Spam & Junk Fax Litigation Group of American Association for Justice and filed in *Fackelman v. Micronix*, No. 98320, 2012 WL 5987139, *appeals not accepted for review*, 135 Ohio St. 3d 1413 (Apr. 24, 2013) (Table). This brief was never authorized by the American Association for Justice and does not reflect a policy position taken by the Association.

It has only recently come to the attention of the American Association for Justice that a brief in this matter was filed in its name. The American Association for Justice (“AAJ”), formerly the Association of Trial Lawyers of America, is a voluntary bar association whose trial

lawyer members primarily represent individual plaintiffs in civil suits and personal injury actions throughout the United States, Canada, and abroad.

Upon learning of this filing and consistent with Ohio R. of Prof. Conduct 3.3, requiring candor to the tribunal, AAJ is discharging its obligation to correct a misstatement made to this Court that AAJ was urging any action by this Court in the above-captioned matter. AAJ has notified the filing counsel and requested that, pursuant to his ethical obligations, counsel apprise the Court that the brief was filed without proper authorization. AAJ has similarly notified the Court of this issue by letter dated November 25, 2014. *See* Exhibit A.

AAJ's Board of Governors established an Amicus Curiae Committee to approve and direct the preparation of amicus curiae briefs to be filed by AAJ. The rules governing the approval of amicus briefs were issued by the Board in their current form in 1992. Pursuant to those rules, an amicus brief bearing AAJ's name may be filed with a federal appellate court or the highest court in a state, but not any lower courts, and only with approval of the AAJ Amicus Curiae Committee or the Executive Committee of the Board of Governors. The Amicus Curiae Committee and its counsel are charged with preparing or directing the preparation of amicus briefs and assuring that such briefs faithfully reflect AAJ policy.

No entity within AAJ, including litigation groups, is authorized to file an amicus brief on behalf of that entity or AAJ. AAJ litigation groups, such as the Telemarketing, Spam & Junk Fax Litigation Group that allegedly filed the subject amicus brief, are established under and governed by AAJ's bylaws and by AAJ's Litigation Group Policies and Procedures. The policies prohibit litigation groups and its members from "filing any pleadings or any other documents in court relating to any case on behalf of the Litigation Group without prior approval of the [Section and Litigation Group Coordination] Committee and AAJ Executive Committee."

The brief in question did not go through these required processes. It was not presented to the Amicus Curiae Committee for its consideration and approval. Nor was it approved by either the Amicus Curiae Committee or the Executive Committee of AAJ. In addition, the filing counsel listed on the brief was never authorized to represent AAJ, to file any brief with the court, or to speak on AAJ's behalf. In this instance, the filing counsel was identified as Mark S. Telich, 782 East 185th St., Cleveland, OH 44119; Tel.: (216) 531-4470.

For the foregoing reasons, the American Association for Justice respectfully submits this Court should vacate its order accepting an amicus curiae brief on its behalf and take whatever other actions it deems appropriate.

Respectfully submitted,

/s/Mark Kitrick

Mark Kitrick (0000021)
Kitrick, Lewis & Harris Co., L.P.A.
515 E. Main Street, Suite 515
Columbus, OH 43215
Telephone: (614) 224-7711
Facsimile: (614) 225-8985
mkitrick@kitricklaw.com

Trial Attorney for AAJ

CERTIFICATE OF SERVICE

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Attorney for Appellees

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3517 St. Albans Road
Cleveland Heights, Ohio 44121

Attorneys for Appellants

Mark S. Telich
782 East 185th Street
Cleveland, Ohio 44119

/s/Mark Kitrick
Mark Kitrick (0000021)



November 25, 2014

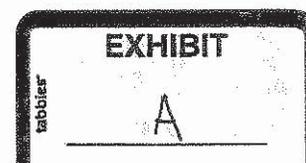
Ute Lindenmaier Vilfroy
Court Administrator
Ohio Eighth District Court of Appeals
Cuyahoga County Court House
1 Lakeside Avenue #202
Cleveland, OH 44113-1085

Dear Mr. Vilfroy:

It has come to my attention that a number of amicus curiae briefs were filed in the name of the American Association for Justice ("AAJ"), formerly known as the Association of Trial Lawyers of America ("ATLA"), in Ohio's courts without AAJ's authorization or permission. AAJ is a trial bar association with members in the United States, Canada, and abroad. The briefs filed in Ohio's courts do not reflect a position on the law or the individual cases that was adopted by AAJ. I write to inform the Court that these briefs were not filed by or on behalf of AAJ or ATLA and the authors did not have permission to use AAJ's or ATLA's name.

The following documents were filed in Ohio courts purportedly on behalf of AAJ, without the knowledge, permission or authorization of AAJ:

1. "Brief of Amicus Curiae Telemarketing, Spam & Junk Fax Litigation Group of American Association for Justice in Support of Appellants Charles Stoneman and Stoneman Corporation Petition for Jurisdiction." 2007 WL 5081211, filed July 5, 2007 in *Stoneman v. Turner Metal Products*, 115 Ohio St. 3d 1423, 874 N.E.2d 539 (2007) (Table), filed by Matthew McCue, Massachusetts BBO# 565319, 1 South Ave., Natick, MA 01760, (508) 655-1415, mmccue@massattorneys.net.
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3. "Brief of Amicus Curiae, American Association for Justice—Telemarketing, Spam & Junk Fax Litigation Group," in *Fackelman v. Micronix*, No. 98320, 2012 WL 5987139 (Ohio Ct. App., 8th Dist., Nov. 29, 2012) filed by Mark S. Telich, Cleveland, OH; and "Memorandum of Amicus American Association for Justice/Telemarketing, Spam & Junk Fax Litigation Group in Support of Jurisdiction of Appellants David Fackelman and Swift Print," filed January 14, 2013 in *Fackelman v. Micronix*, No. CA-12-098320 (Ohio Jan. 14, 2013), filed by Michael J. Downing, SCR No. 0022944, 75 Public Square, Suite 920, Cleveland, OH 44113, Tel.: (216) 861-9111, Email: mjdowning@ameritech.net.

4. "Brief of Amicus Curiae Telemarketing, Spam and Junk Fax Litigation Group of the American Association for Justice," 2008 WL 7087652, filed July 15, 2008 in *McPhillips v. Travelers Property Casualty Insurance Co*, Nos. 91286, 91561. 2009 WL 713021 (Ohio Ct. App., 8th Dist., Mar. 19, 2009), filed by Matthew P. McCue, 1 South Ave., Natick, MA 01760, Tel: (508) 655-1415, Email: mmccue@massattorneys.net.

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None of these briefs were approved by, or filed on behalf of, AAJ. In some instances, the attorney filing the brief was not even a member of AAJ. For instance, we have no record of Michael Downing or Mark Telich having ever been members of AAJ. Since 1946, our organization has sought to advance the law affecting plaintiffs seeking legal redress for wrongful injury. As part of that effort, AAJ has participated as amicus curiae in the Supreme Court of the United States, United States courts of appeals, and state supreme courts, including the Supreme Court of Ohio. *See, e.g., Moskovitz v. Mt. Sinai Med. Ctr.*, 69 Ohio St. 3d 638, 648, 635 N.E.2d 331, 341 (1994); *see also Toledo Bar Assn. v. Leizerman*, 64 Ohio St. 3d 1402, 591 N.E.2d 1245, 1246 (1992) (granting motion).

AAJ's Board of Governors established the Amicus Curiae Committee to approve and direct the preparation of amicus curiae briefs to be filed by AAJ. The rules governing the approval of amicus briefs were issued by the Board in their current form in 1992.

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Respectfully,



Anjali Jesseramsing, Esquire
General Counsel
American Association for Justice
(202) 944-2822

cc: Joseph R. Compoli, Esquire
Michael Downing, Esquire
James R. Goodluck, Esquire
Matthew McCue, Esquire
Eric J. Moore, Esquire
Mark S. Telich, Esquire



The Law Firm of

Kitrick, Lewis & Harris Co., L.P.A.

445 Hutchinson Avenue, Suite 100
Columbus, Ohio 43235-5677

Mark Kitrick*
Mark Lewis, J.D., LL.M.
John A. (Sean) Harris, IV
Elizabeth Mote
Robert J. Wagoner**
Charles J. Kettlewell**

*Also admitted in the states of
New York, Texas, and Washington
**Of Counsel

FAX

TO: 6th Appellate Court
FROM: Mark Kitrick
DATE: January 16, 2015
PAGES: ||
FAX: (419) 213-4503
RE: Case No. L-10-1180

Dear Clerk:

In compliance with Sixth District Loc. R. 8 and Lucas County Loc. R. 1.05, enclosed please find a *Notice of Appearance* and a *Motion to Vacate Order Granting Leave to File Amicus Brief* with attached Exhibit A for filing.

Case Caption: Cardinal Partners, LTD. v. Fernandez Discipline, LLC
Case No.: Appeals Court Case No. L-10-1180; Trial Court Case No. CI08-7058
Assigned Judge: Trial Court Judge James D. Bates
Attorney Information (Name, Address, Registration No., Phone, Fax):

Mark Kitrick (0000021)
Kitrick Lewis & Harris Co., LPA
445 Hutchinson Ave., Ste. 100
Columbus, OH 43235
(614) 224-7711
(614) 224-8985 – Fax
mkitrick@klhlaw.com

Date & Time of Tax Initiation:
Number of Pages Transmitted (Including Cover):

Do not hesitate to contact our office should you have any questions or concerns. Your assistance is greatly appreciated. Thank you.

Sincerely,

Leigh Cordetti
leigh@klhlaw.com
Paralegal

Phone 614-224-7711

Toll Free 866-227-7711

Fax 614-225-8985

www.KLHLaw.com

IN THE OHIO COURT OF APPEALS
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

CARDINAL PARTNERS, LTD,	:	
Appellant,	:	
v.	:	Case No. L-10-1180
FERNANDEZ DISCIPLINE, LLC,	:	Trial Court No. CI08-7058
Appellee.	:	

NOTICE OF APPEARANCE OF MARK KITRICK

Mark Kitrick files this *Notice of Appearance* on behalf of the American Association for Justice. Mark Kitrick is a duly admitted, licensed Ohio attorney (0000021) and is an elected member of the Executive Committee of the American Association for Justice and thus has authority to act on the Association's behalf. This is Mr. Kitrick's first notice of appearance on this closed case and the purpose of this Notice is to file a *Motion to Vacate Order Granting Leave to File Amicus Brief* that is being filed contemporaneously with this Notice.

Respectfully ~~submitted~~,


Mark Kitrick (0000021)
Kitrick, Lewis & Harris Co., L.P.A.
445 Hutchinson Ave, Suite 100
Columbus, Ohio 43235
Telephone: (614) 224-7711
Facsimile: (614) 225-8985
mkitrick@kitricklaw.com

Trial Attorney for AAJ

CERTIFICATE OF SERVICE

I certify that a copy of this Motion was mailed on January 16, 2015, to the following:

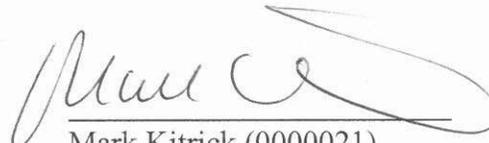
Wayne Pearsall
P.O. Box 392
Amherst, OH 44001

Attorney for Appellee

Joseph Compoli Jr.
James R. Goodluck
612 East 185 Street
Cleveland, Ohio 44119

Attorneys for Appellants

Matthew McCue
1 South Ave., 3rd Floor
Natick, Massachusetts 01760


Mark Kitrick (0000021)

**IN THE OHIO COURT OF APPEALS
SIXTH APPELLATE DISTRICT
LUCAS COUNTY**

CARDINAL PARTNERS, LTD,

Appellant,

v.

FERNANDEZ DISCIPLINE, LLC,

Appellee.

Court of Appeals No. L-10-1180

Trial Court No. CI08-7058

MOTION TO VACATE ORDER GRANTING LEAVE TO FILE AMICUS BRIEF

Filed by: Mark Kitrick (0000021), Attorney for American Association for Justice (“AAJ”)
Kitrick, Lewis & Harris Co., LPA
445 Hutchinson Ave., Ste. 100
Columbus, OH 43235
(614) 224-7711
(614) 224-8985 – Fax
mkitrick@klhlaw.com

COME NOW, the American Association for Justice, by and through its undersigned attorneys, and respectfully moves this Court to vacate its prior order granting leave to file an amicus curiae brief, allegedly on behalf of the Telemarketing, Spam & Junk Fax Litigation Group of American Association for Justice, in *Cardinal Partners, LTD. v. Fernandez Discipline, LLC*, No. L-10-1180, 2010 WL 3629820 (Ohio Ct. App. 6th Dist. Sept. 1, 2010). The brief in question was filed as a “Brief for amicus curiae Telemarketing, Spam & Junk Fax Litigation Group of the American Association for Justice,” in *Cardinal Partners, LTD v. Fernandez Discipline, LLC*, No. L-10-1180, 2010 WL 4683700 (Ohio Ct. App., 6th Dist. Nov. 19, 2010), *appeals not accepted for review*, 128 Ohio St. 3d 1501 (May 25, 2011) (Table). This brief was

never authorized by the American Association for Justice and does not reflect a policy position taken by the Association.

It has only recently come to the attention of the American Association for Justice that a brief in this matter was filed in its name. The American Association for Justice (“AAJ”), formerly the Association of Trial Lawyers of America, is a voluntary bar association whose trial lawyer members primarily represent individual plaintiffs in civil suits and personal injury actions throughout the United States, Canada, and abroad.

Upon learning of this filing and consistent with Ohio R. of Prof. Conduct 3.3, requiring candor to the tribunal, AAJ is discharging its obligation to correct a misstatement made to this Court that AAJ was urging any action by this Court in the above-captioned matter. AAJ has notified the filing counsel and requested that, pursuant to his ethical obligations, counsel apprise the Court that the brief was filed without proper authorization. AAJ has similarly notified the Court of this issue by letter dated November 25, 2014. *See Exhibit A.*

AAJ’s Board of Governors established an Amicus Curiae Committee to approve and direct the preparation of amicus curiae briefs to be filed by AAJ. The rules governing the approval of amicus briefs were issued by the Board in their current form in 1992. Pursuant to those rules, an amicus brief bearing AAJ’s name may be filed with a federal appellate court or the highest court in a state, but not any lower courts, and only with approval of the AAJ Amicus Curiae Committee or the Executive Committee of the Board of Governors. The Amicus Curiae Committee and its counsel are charged with preparing or directing the preparation of amicus briefs and assuring that such briefs faithfully reflect AAJ policy.

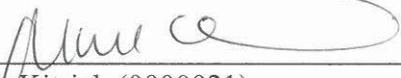
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Litigation Group that allegedly filed the subject amicus brief, are established under and governed by AAJ's bylaws and by AAJ's Litigation Group Policies and Procedures. The policies prohibit litigation groups and its members from "filing any pleadings or any other documents in court relating to any case on behalf of the Litigation Group without prior approval of the [Section and Litigation Group Coordination] Committee and AAJ Executive Committee."

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For the foregoing reasons, the American Association for Justice respectfully submits this Court should vacate its order accepting an amicus curiae brief on its behalf and take whatever other actions it deems appropriate.

Respectfully submitted,



Mark Kitrick (0000021)
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Columbus, OH 43235
Telephone: (614) 224-7711
Facsimile: (614) 225-8985
mkitrick@kitricklaw.com

Trial Attorney for AAJ

CERTIFICATE OF SERVICE

I certify that a copy of this Motion was mailed on January 16, 2015, to the following:

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P.O. Box 392
Amherst, OH 44001

Attorney for Appellee

Joseph Compoli Jr.
James R. Goodluck
612 East 185th Street
Cleveland, Ohio 44119

Attorneys for Appellant

Matthew McCue
1 South Ave., 3rd Floor
Natick, Massachusetts 01760



Mark Kitrick (0000021)



November 25, 2014

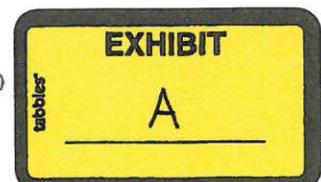
Jason A. Hill
Court Administrator
Ohio Sixth District Court of Appeals
One Constitution Avenue
Toledo, OH 43604

Dear Mr. Hill:

It has come to my attention that a number of amicus curiae briefs were filed in the name of the American Association for Justice (“AAJ”), formerly known as the Association of Trial Lawyers of America (“ATLA”), in Ohio’s courts without AAJ’s authorization or permission. AAJ is a trial bar association with members in the United States, Canada, and abroad. The briefs filed in Ohio’s courts do not reflect a position on the law or the individual cases that was adopted by AAJ. I write to inform the Court that these briefs were not filed by or on behalf of AAJ or ATLA and the authors did not have permission to use AAJ’s or ATLA’s name.

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6. "Brief of Amicus Curiae Telemarketing, Spam & Junk Fax Litigation Group of Association of Trial Lawyers of America," 2006 WL 1403696, filed January 19, 2006 in *Madorsky v. Malsha Products Inc.*, 2006 WL 1403696 (Ohio App. 8th Dist.) filed by Joseph R. Compoli Jr., 612 E. 185 St., Cleveland, OH 44119, Tel: (216) 820-3064, Email: josephcompoli@yahoo.com and James R. Goodluck, 3517 St. Albans Road, Cleveland Heights, OH 44121, Tel: (216) 916-4534, Email: goodlucks7@msn.com.

None of these briefs were approved by, or filed on behalf of, AAJ. In some instances, the attorney filing the brief was not even a member of AAJ. For instance, we have no record of Michael Downing or Mark Telich having ever been members of AAJ. Since 1946, our organization has sought to advance the law affecting plaintiffs seeking legal redress for wrongful injury. As part of that effort, AAJ has participated as amicus curiae in the Supreme Court of the United States, United States courts of appeals, and state supreme courts, including the Supreme Court of Ohio. *See, e.g., Moskovitz v. Mt. Sinai Med. Ctr.*, 69 Ohio St. 3d 638, 648, 635 N.E.2d 331, 341 (1994); see also *Toledo Bar Assn. v. Leizerman*, 64 Ohio St. 3d 1402, 591 N.E.2d 1245, 1246 (1992) (granting motion).

AAJ's Board of Governors established the Amicus Curiae Committee to approve and direct the preparation of amicus curiae briefs to be filed by AAJ. The rules governing the approval of amicus briefs were issued by the Board in their current form in 1992.

Pursuant to those rules, an amicus brief bearing AAJ's name may be filed with a federal appellate court or the highest court in a state, but not any lower courts, and only with approval of the AAJ Amicus Curiae Committee or the Executive Committee of the Board of Governors. The Amicus Curiae Committee and its counsel are charged with preparing or directing the preparation of amicus briefs and assuring that such briefs faithfully reflect AAJ policy.

No entity within AAJ, including litigation groups, is authorized to file an amicus brief on behalf of that entity or AAJ. Moreover, AAJ has a longstanding and well-established process for authorizing amicus briefs. AAJ litigation groups are established under and governed by AAJ's bylaws and by AAJ's Litigation Group Policies and Procedures. The policies prohibit litigation groups and its members from "filing any pleadings or any other documents in court relating to any case on behalf of the Litigation Group without prior approval of the [Section and Litigation Group Coordination] Committee and AAJ Executive Committee."

None of the above-named documents was presented to the Amicus Curiae Committee for its consideration and approval. Nor was any of the above-named documents approved by either the Amicus Curiae Committee or the Executive Committee of AAJ. Nor was any counsel listed in the above-named documents authorized to represent AAJ, to file any brief with the court, or to speak on AAJ's behalf.

While none of these matters may be pending in the Ohio courts, AAJ has sought, with this letter, to correct the record and comply with the ethical obligation of candor to the tribunal in informing the courts of this discovery.

Prior to sending this letter, AAJ reached out to each individual identified as responsible for filing these briefs of AAJ's discovery and reminded those that it reached of their independent ethical obligation to self-report their conduct. As of the date of this letter, AAJ has not been copied on any self-reporting.

Respectfully,



Anjali Jesseramsing, Esquire
General Counsel
American Association for Justice
(202) 944-2822

cc: Joseph R. Compoli, Esquire
Michael Downing, Esquire
James R. Goodluck, Esquire
Matthew McCue, Esquire
Eric J. Moore, Esquire
Mark S. Telich, Esquire

IN THE OHIO COURT OF APPEALS
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

CARDINAL PARTNERS, LTD,

Appellant,

v.

FERNANDEZ DISCIPLINE, LLC,

Appellee.

Court of Appeals No. L-10-1180

Trial Court No. CI08-7058

**ORDER VACATING LEAVE TO FILE
AMICUS BRIEF**

Decided: _____, 2015

Joseph Compoli Jr., and James R. Goodluck, Attorneys for Appellant.

Wayne Pearsall, Attorney for Appellee.

Matthew McCue, Attorney.

Mark Kitrick, Attorney for American Association for Justice (“AAJ”)

_____, J.

This matter is before the Court on the Motion to Vacate Order Granting Leave to File Amicus Brief filed by the American Association for Justice (“AAJ”). For the reasons set forth in AAJ’s Motion to Vacate and for good cause shown, the Motion is hereby **GRANTED**.

The Court vacates its order accepting the “Brief for amicus curiae Telemarketing, Spam & Junk Fax Litigation Group of the American Association for Justice.”

IT IS SO ORDERED.

JUDGE

EXHIBIT F

Attorney Discipline and Sanction History

Disciplinary sanctions entered against an attorney pursuant to **Gov. Bar R. V** and administrative suspensions entered against an attorney pursuant to **Gov. Bar R. VI** and **Gov. Bar R. X**, are displayed here.

Please click the link below for more information.

Attorney Discipline Explained

Registration
Number: **0022944** **Michael John Downing**

Disciplinary Action	Effective Date	Supreme Court Case Number
Attorney Registration Suspension	12/03/2007	
Attorney Registration Reinstatement	03/28/2008	
CLE Suspension	12/17/2010	
CLE Reinstated	03/23/2011	

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Disciplinary sanctions and administrative sanctions entered against an attorney by the Supreme Court pursuant to **Gov. Bar R. V, VI, and X**, (including suspensions for failing to comply with continuing legal education and attorney registration requirements), are displayed here. (Please note that disciplinary sanctions dated prior to 1957 may have been imposed by Ohio courts other than the Supreme Court of Ohio.) The information does not include grievances that may have been filed against an attorney because grievances are generally confidential unless a formal complaint is filed and probable cause determined. The list also does not include disciplinary matters that were dismissed by the Board of Commissioners on Grievances and Discipline or the Supreme Court or that currently are pending against an attorney but not yet decided by the Supreme Court.

Disciplinary information is added to the attorney's record by the Office of Attorney Services and will appear the next business day.

If an attorney has a CLE Suspension, CLE Reinstated, Attorney Registration Suspension, Attorney Registration Reinstatement or Attorney Registration Suspension Vacated, please contact the **Office of Attorney Services** at

614.387.9320 .

If you have further questions, please contact the **Office of Attorney Services**.

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Attorney Discipline and Sanction History

Disciplinary sanctions entered against an attorney pursuant to **Gov. Bar R. V** and administrative suspensions entered against an attorney pursuant to **Gov. Bar R. VI** and **Gov. Bar R. X**, are displayed here.

Please click the link below for more information.

Attorney Discipline Explained

Registration Number: **0031193** **Joseph Robert Compoli Jr.**

Disciplinary Action	Effective Date	Supreme Court Case Number
Attorney Registration Suspension	11/01/2013	
Attorney Registration Reinstatement	01/21/2014	

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Disciplinary sanctions and administrative sanctions entered against an attorney by the Supreme Court pursuant to **Gov. Bar R. V, VI, and X**, (including suspensions for failing to comply with continuing legal education and attorney registration requirements), are displayed here. (Please note that disciplinary sanctions dated prior to 1957 may have been imposed by Ohio courts other than the Supreme Court of Ohio.) The information does not include grievances that may have been filed against an attorney because grievances are generally confidential unless a formal complaint is filed and probable cause determined. The list also does not include disciplinary matters that were dismissed by the Board of Commissioners on Grievances and Discipline or the Supreme Court or that currently are pending against an attorney but not yet decided by the Supreme Court.

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