BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	CG Docket No. 02-278
Petition of Virtuox, Inc. for Retroactive Waiver	)	
Of 47 C.F.R. §64.1200(a)(4)(iv)	)	CG Docket No. 05-338
	)	

PETITION FOR RETROACTIVE WAIVER

Pursuant to Section 1.3 of the Commissions' Rules, 47 C.F.R. § 1.3, and Paragraph 30 of the Commission's Order, CG Docket Nos. 02-278, 05-338, FCC 14-164 (rel. Oct. 30, 2014), Petitioner Virtuox, Inc. ("Petitioner" or "Virtuox"), through its attorneys, respectfully requests that the Commission grant a retroactive waiver of the opt-out notice requirement in Section 64.1200(a)(4)(iv) of its rules.

I. INTRODUCTION & BACKGROUND

Virtuox is a medical technology services company headquartered in Coral Springs, Florida. Virtuox provides diagnostic tools and services that assist healthcare professionals and organizations diagnose and treat respiratory diseases.

As the Commission is aware, opportunistic plaintiff attorneys are frequently filing putative class action lawsuits seeking windfall recoveries for alleged violations of the Telephone Consumer Protection Act's (the "TCPA") prohibition on sending unsolicited facsimile advertisements. These putative class action lawsuits oftentimes expose businesses to millions, if not billions, of dollars in liability for purported violations of the TCPA that, at best, have a minimal effect on the recipient of the facsimile advertisements. The named plaintiffs in such cases often participate in name only, deferring entirely to their respective counsel in the hopes of gaining some monetary award to compensate them for the nuisance of receiving a facsimile. The plaintiff attorneys, however, reap a

windfall sum in attorney fees and costs, in part, for the failure of the businesses to provide opt-out notices on facsimiles that their customers have consented to receive.

Virtuox is currently defending one such TCPA lawsuit.[1] The TCPA lawsuit in which Virtuox is currently defending alleges Plaintiff received two unsolicited facsimiles from Virtuox in 2013. In seeking to represent a nationwide putative class of individuals and entities, Plaintiff alleges Virtuox "likely transmitted unsolicited facsimile advertisements to tens of thousands of recipients" throughout the United States. *See* Ex. A ¶ 21.

This petition does not seek to have the Commission determine the merit, propriety or truthfulness of Plaintiff's claims and allegations or Virtuox's defenses, such as whether Plaintiff or any other of the putative class members invited or consented to receive the purported facsimiles at issue or whether the purported facsimiles at issue are "advertisements" as contemplated by the TCPA. Such determinations are properly left to the consideration of the district court. Rather, Virtuox seeks only a limited retroactive waiver from 47 C.F.R. § 64.1200(a)(4)(iv) consistent with the retroactive waivers that the Commission has provided to other similarly situated entities.

A. The Telephone Consumer Protection Act and the Commission's Regulations

The Telephone Consumer Protection Act ("TCPA") prohibits the use of any telephone, facsimile machine, computer, or other device to send an "unsolicited advertisement" to a facsimile machine. 47 U.S.C. §227(b)(1)(C). The TCPA was amended in 2005 by the Junk Fax Prevention Act ("JFPA"). *See* Junk Fax Prevention Act of 2005, Pub. L. no. 109-21, 119 Stat. 359 (2005). Relevant to the issues raised herein, the JFPA codified an exception to the prohibition for companies that send facsimile advertisements to those individuals and entities with whom the companies have an established business relationship. *See* 47 U.S.C. § 227(b)(1)(C)(i).

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[1] *See Mobility Solutions, LLC, v. Virtuox, Inc.;* Docket No. 14-cv-61352-RNS. A true and correct copy is attached hereto as Exhibit A.

The Commission amended the rules concerning fax transmissions to reflect the changes brought about by the JFPA. *See In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Junk Fax Prevention Act of 2005,* CG Docket Nos. 02-278 & 05-338, Report and Order and Third Order on Reconsideration, 21 FCC Rcd. 3787 (2006) (the "Junk Fax Order"). The Junk Fax Order adopted a rule stating that a facsimile advertisement "sent to a recipient that has provided prior express invitation or permission to the sender must include an opt-out notice that complies with the requirements in paragraph (a)(4)(iii) of this section." 47 C.F.R. § 64.1200(a)(4)(iv). However, the Junk Fax Order also contained a footnote that further stated "the opt-out notice requirement only applies to communications that constitute *unsolicited* advertisements." Junk Fax Order, 21 FCC Rcd. at 3810, fn. 154. (Emphasis added).

B. The Commission's October 30, 2014, Order

On October 30, 2014, the Commission issued Order FCC 1-164 (the "Oct. 30 Order") regarding the requirement that opt-out notices be provided on facsimile advertisements, confirming the rules adopted by the Junk Fax Order, regardless of whether the recipient had consented to receiving the facsimile. In addition to its findings, and of paramount importance to this petition, the Commission granted retroactive waivers of the opt-out requirement to the petitioners to provide "temporary relief from any past obligation to provide the opt-out notice to such recipients required by [the Commission's] rules." Oct. 30 Order, ¶ 1.

Specifically, two factors were instrumental to the Commission's determination to grant the retroactive waivers. First, the Commission noted the language in a footnote in the Junk Fax Order which stated that "the opt-out notice requirement only applies to communications that constitute *unsolicited* advertisements." Junk Fax Order, 21 FCC Rcd. at 3810, fn. 154; Oct. 30 Order ¶ 24. Second, the Commission noted the "lack of explicit" notice regarding the new opt-out requirement on facsimile advertisements transmitted with the prior consent of the recipient. Oct.

30 Order ¶ 25. Because confusion resulted from these two special circumstances, the Commission also found good cause to grant the retroactive waivers of the rule enunciated in the Junk Fax Order, stating:

> The record indicates that inconsistency between a footnote contained in the *Junk Fax Order* and the rule caused confusion or misplaced confidence regarding the applicability of this requirement to faxes sent to those recipients who provided prior express permission.
>
> * * *
>
> Further, some commenters question whether the Commission provided adequate notice of its intent to adopt section 64.1200(a)(4)(iv). Although we find the notice adequate to satisfy the requirements of the Administrative Procedure Act, we acknowledge that the notice provided did not make explicit that the Commission contemplated an opt-out requirement on fax ads sent with the prior express permission of the recipient.
>
> * * *
>
> We find that this specific combination of factors presumptively establishes good cause for retroactive waiver of the rule.

Oct. 30 Order, ¶¶ 24-26.

Given the lack of explicit notice and the contradictory footnote, the Commission found that there was a "confusing situation for businesses" which "left some business potentially subject to significant damage awards under the TCPA's private right of action or possible Commission enforcement." Oct. 30 order, ¶ 27. Accordingly, the Commission recognized that the "TCPA's legislative history makes clear our responsibility to balance legitimate business and consumer interests[,]" and determined that granting the requested retroactive waivers would serve the public interest. *Id.*

After granting the retroactive waiver to the petitioning parties, the Commission stated that "[o]ther, similarly situated parties may also seek waivers such as those granted in this Order." Oct. 30 Order, ¶ 30. The Commission directed that parties making similar waiver requests make every effort to file within six months of the release of the Oct. 30 Order. *Id.*

II. VIRTUOX IS SIMILARLY SITUATED AND RESPECTFULLY REQUESTS A RETROACTIVE WAIVER OF THE OCT. 30 ORDER

A. The Allegations in the TCPA Lawsuit Against Virtuox

As stated, Virtuox is a defendant in a putative class action lawsuit alleging violations of the TCPA, which is currently pending in the United States District Court for the Southern District of Florida, *Mobility Solutions, LLC v. Virtuox, Inc.*, Docket No. 14-61352-RNS (the "Litigation"). *See* Ex. A. The Plaintiff in the Litigation seeks to recover damages on behalf of itself and others similarly situated based on allegations that Virtuox allegedly sent two facsimile transmissions in violation of the TCPA. Specifically, Plaintiff has alleged, in part, that the facsimiles do not contain opt-out notices that comply with the TCPA. Plaintiff seeks to recover on behalf of all persons who received faxes that did not contain the opt-out notice, regardless of whether the recipients had provided prior express permission to receive such facsimile transmissions. However, Virtuox has asserted in the Litigation that it is not liable under the TCPA because, among other reasons, the potential members of the putative class consented to receiving the alleged facsimiles.

B. Good Cause Exists to Grant Virtuox a Waiver in these Circumstances

Under section 1.3 of the Commission's rules, the Commission may suspend, revoke, amend, or waive any of its rules at any time "for good cause shown." 47 C.F.R. § 1.3; *see also* Oct. 30 Order, ¶ 23; *Northeast Cellular Tel. Co. v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990). In addition to "good cause shown," waiver also requires the Commission find that a waiver is in the public interest. *See* Oct. 30 Order, ¶ 23; *see also Northeast Cellular Tel. Co.*, 897 F. 2d at 1166 ("The FCC may exercise its discretion to waive a rule where particulate facts would make strict compliance inconsistent with the public interest."). The Commission has already determined that both of these requirements are satisfied in the context of the rule applying the opt-out notice requirement to solicited facsimiles. *See* Oct. 30 Order, ¶ 26-27.

C. Virtuox is Similarly Situated to Parties Granted Waiver By the Oct. 30 Order

Virtuox is similarly situated to the parties that were granted retroactive waivers by the Oct.

30 Order. In the Litigation, Virtuox is alleged to have sent facsimile transmissions that did not contain proper opt-out notices. Virtuox contends that such facsimiles were sent with the prior consent of the recipients. Virtuox did not understand and was reasonably uncertain whether the opt-out requirement applied to solicited facsimiles. In short, as with the parties that were granted waivers by the Oct. 30 Order, Virtuox finds itself potentially subject to significant liability, as well as the costs of litigation, based on the application of a provision of the Junk Fax Order, regarding which the Commission has recognized there was confusion.

D. A Limited Retroactive Waiver is Appropriate

The Commission may grant a waiver where, as here, the underlying purpose of the rule would not be served or would be frustrated by application in the instant case, and granting the waiver would be in the public interest. 47 C.F.R. §1.925(b)(3)(i). The Commission may also grant a waiver where, under the factual circumstances, application of the rule would be inequitable, unduly burdensome or contrary to the public interest. 47 C.F.R. § 1.925(b)(3)(ii); *see also* 47 C.F.R. § 1.3 (the Commission may waive any provision of its rules for good cause shown, at any time); *Keller Commc'ns, Inc. v. F.C.C.*, 130 F.3d 1073, 1076 (D.C. Cir. 1997) ("The Commission may waive its rules if particular facts would make strict compliance inconsistent with the public interest.") (internal quotations omitted).

Here, the underlying purpose of the Rule would not be served by applying the subject opt-out requirement to Petitioner. A purpose of Section 64.1200 is to allow consumers to stop unwanted faxes. *See* 47 CFR 64.1200(a)(4). This purpose would not be furthered by subjecting Petitioner to potentially significant liability for facsimile transmissions that did not contain proper opt-out notices where the recipients had provided prior express permission to receive such faxes and there was confusion regarding whether the opt-out requirement applied to such faxes.

Additionally, granting a limited and retroactive waiver to Petitioner would serve the public

interest. The factors that weighed in favor of granting a retroactive waiver to the parties addressed by the Oct. 30 Order are similarly applicable here. Specifically, the confusing nature of the contradictory footnote and lack of explicit notice have yielded a situation in which Petitioner, a small business, may be exposed to significant liability, even though Petitioner believed it was complying with the TCPA.

For the same reasons, under these unique factual circumstances, requiring application of 47 C.F.R. §64.1200(a)(4)(iv) to Petitioner would be inequitable.

Petitioner therefore respectfully requests a retroactive waiver of liability under the TCPA and the FCC's regulations and orders relating to facsimiles transmissions sent to recipients who had provided prior express invitation or permission to receive such faxes, but where such faxes did not contain opt-out notices in compliance with Section 64.1200(a)(4)(iii) and (iv).

Date: April 6, 2015

Respectfully submitted,

/s/ Beth-Ann E. Krimsky

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

MOBILITY SOLUTIONS, LLC., Plaintiff vs. VIRTUOX, INC., Defendant.	CIVIL ACTION NO. **CLASS ACTION**

CLASS ACTION COMPLAINT

In 1991, Congress enacted the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, to regulate the explosive growth of the telemarketing industry. In so doing, Congress recognized that "unrestricted telemarketing . . . can be an intrusive invasion of privacy . . ." 47 U.S.C. § 227, Congressional Statement of Findings #5. Specifically, in enacting the TCPA, Congress outlawed telemarketing via unsolicited facsimile ("Junk Fax"). See 47 U.S.C. § 227. Plaintiff, Mobility Solutions, LLC ("Plaintiff"), who has long been inundated with illegal Junk Faxes and who now comes forward, on behalf of itself and all persons and entities similarly situated, and files this complaint against the Defendant, Virtuox, Inc. ("Virtuox"), for its violation of federal telemarketing law.

THE PARTIES

1. Plaintiff, Mobility Solutions, LLC, is a South Carolina corporation with its principal place of business at 1538 Sunset Blvd. in West Columbia, SC 29169.

EXHIBIT A

2. Defendant, Virtuox, Inc., is a privately held medical technology services company headquartered, residing and domiciled in this Judicial District at 5850 Coral Ridge, Dr., Suite 304, in Coral Springs, FL 33076.

JURISDICTION

3. The District Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331. *See Mims v. Arrow Financial Services, Inc.*, 132 S.Ct. 740 (2012).

4. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c) because a substantial portion of the facts and circumstances that give rise to the cause of action occurred in this District, as the facsimile advertisements were sent by the Defendant from this District.

THE LEGAL BASIS OF THE CLASS CLAIMS

5. This putative class action arises from the violation by Virtuox of federal law prohibiting privacy violations via invasive telemarketing practices.

6. The claims of the Plaintiff, and the class of persons and entities it seeks to represent, arise pursuant to the provisions of the TCPA, a federal statute enacted to prohibit unreasonable invasions of privacy via certain telemarketing practices.

7. The TCPA was also enacted to protect the property rights of the recipients of unsolicited facsimile advertisements.

8. The TCPA prohibits the use of a facsimile machine to send unsolicited advertisements for goods and services. 47 U.S.C. §227(b)(1)(C).

9. The TCPA requires that even facsimile advertisements being sent to companies who consented to receipt, or with whom the advertiser had an established business relationship, must include language on the facsimile which clearly informs the recipient that they may request that future facsimiles cease, and that failure to remove the consumer's facsimile from the

telemarketer's database within thirty days is itself a violation of the TCPA. These requisites are referred to as "Compliant Opt Out Notice." *See* 47 U.S.C. §227(b)(2)(D).

10. The TCPA, 47 U.S.C. §227(b)(3), provides a private right of action as follows:

> A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State, (A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation, (B) an action to recover for actual monetary loss from such a violation, or to receiver $500 in damages for each violation, whichever is greater, or (C) both such actions.

11. Plaintiff brings this action individually and as the representative of all members of a nationwide class pursuant to Rule 23 of the Federal Rules of Civil Procedure and Local Rule 23.1 of the United States District Court for the Southern District of Florida.

FACTUAL ALLEGATIONS AS TO THE REPRESENTATIVE PLAINTIFF

12. On April 18, 2013 and July 11, 2013, Virtuox transmitted a Junk Fax to Plaintiff to thousands of other entities throughout the United States. Copies of the Junk Faxes are attached at Exhibit 1.

13. At no time did Plaintiff give Virtuox its express prior invitation or permission, or prior consent in any fashion, for the transmission of the Junk Faxes.

14. The Junk Faxes did not contain a Compliant Opt Out Notice.

15. The Junk Faxes indicated that they were sent from "VirtuOx, Inc." in the header.

16. The Junk Faxes also indicated that if you wanted more info, you could contact Daniel Labi at Daniel.Labi@virtuox.net or (877) 456-3529 ext. 312.

17. The phone number for (877) 456-3529 is Virtuox's corporate headquarters in Coral Springs, FL. *See* https://www.virtuox.net/contactus.aspx (Last Visited June 10, 2014).

18. Daniel Labi was an agent, employee and/or representative of Virtuox at the time he sent the Junk Faxes at issue. He acted with actual, implied or apparent authority from Virtuox to transmit the Junk Faxes. At all relevant times, he acted pursuant to Virtuox's control and instruction. In addition to its own direct liability, Virtuox is liable for the actions of Daniel Labi based on the doctrines of vicarious liability, respondeat superior, agency, authority and ratification.

CLASS ACTION ALLEGATIONS

19. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure and Local Rule 23.1 of the United States District Court for the Southern District of Florida on behalf of a class of all other persons or entities similarly situated throughout the United States.

20. The transmission of generic facsimile advertisements promoting their services, including transmission to the Plaintiff twice, despite being located in a different state, indicates that Virtuox has engaged in widespread advertising via unsolicited facsimile transmission in violation of the TCPA.

21. Based on the generic style of the facsimile advertisement and the standard telemarketing reach of a Junk Fax campaign, Virtuox has likely transmitted unsolicited facsimile advertisements to tens of thousands of recipients throughout South Carolina, Florida and the United States.

22. Virtuox did not obtain the consent of facsimile recipients, including the Plaintiff and putative class, prior to the transmission of facsimile advertisements.

23. By not contacting the Plaintiff or any other individuals prior to sending them unsolicited marketing material, Virtuox carelessly and recklessly failed to obtain prior express invitation or permission from Plaintiff and the putative class members it seeks to represent, and

to take all steps necessary to ensure that the facsimile marketing campaign of Virtuox was compliant with telemarketing law.

24. To the extent facsimile advertisements were transmitted by Virtuox to consumers who had given consent, or had an established business relationship with Virtuox, of which there is no evidence at this time, the facsimile advertisements are still in violation of the TCPA as they did not contain the Compliant Opt Out Notice required by law.

25. The class of persons represented by Plaintiff is composed of all persons or entities within the United States to whom Virtuox sent facsimile advertisements promoting Virtuox and its services at any time within four years prior to the filing of the instant Complaint.

26. The class as defined above is identifiable by phone records, fax transmittal records, and fax number databases, used by Virtuox or its agents, in transmitting its unsolicited facsimile advertisements. On information and belief, the potential class members number in the thousands and constitute a class so numerous that joinder of all class members is impracticable. The Plaintiff is a member of the putative class.

27. There are questions of law and fact common to Plaintiff and to the proposed class, including but not limited to the following:

a. Whether Virtuox violated the TCPA and FCC promulgating regulations by engaging in illegal fax advertising;

b. Whether the facsimiles sent by Virtuox to class members constitute unsolicited advertisements; and

c. Whether the Plaintiff and the members of the class are entitled to statutory damages as a result of Virtuox's actions.

28. Plaintiff's claims are typical of the claims of the class.

29. Plaintiff is an adequate representative of the class because its interests do not conflict with the interests of the class, it will fairly and adequately protect the interests of the class, and it is represented by counsel skilled and experienced in class actions.

30. Common questions of law and fact predominate over questions affecting only individual members of the class, and a class action is the superior method for fair and efficient adjudication of the controversy. The only individual question concerns identification of class members, which will be ascertainable from records maintained by Virtuox and/or its agents.

31. The likelihood that individual members of the class will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation.

32. Plaintiff is not aware of any litigation concerning this controversy already commenced by others who meet the criteria for class membership described above.

33. Plaintiff is capable of and willing to represent the other members of the class.

CAUSES OF ACTION
COUNT I: VIOLATION OF THE TCPA

34. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

35. Virtuox, and/or its agents, caused unsolicited facsimile advertisements to be sent to Plaintiff and to the facsimile machines of other members of the putative class, in violation of the TCPA and the FCC's promulgating regulations.

36. By causing unsolicited facsimile advertisements to be sent to the class, Virtuox violated the privacy rights of the Plaintiff and class members.

37. By causing unsolicited facsimile advertisements to be sent to the class, Virtuox caused the Plaintiff and class members to sustain property damage and cost in the form of paper and toner.

38. By causing unsolicited facsimile advertisements to be sent to the Plaintiff and the class, Virtuox interfered with the Plaintiff's and class members' use of their property as Plaintiff's and class members' facsimile machines were encumbered by the transmission of Virtuox's unsolicited facsimile advertisements.

39. By causing unsolicited facsimile advertisements to be sent to the Plaintiff and the class, Virtuox caused the facsimile machines of the Plaintiff and class members to be encumbered by the transmission of unsolicited facsimiles.

40. Virtuox failed to provide the requisite Opt Out Notice on its advertisements informing the recipients of their right to cease receiving such advertisements and a cost free mechanism to make such request.

41. Failure to provide Opt Out Notice on a facsimile advertisement is a separate and distinct violation of the TCPA.

42. The TCPA provides for statutory damages in the amount of a minimum of $500 for each separate violation of the TCPA. The damages suffered by the Plaintiff, and the class it seeks to represent, are negligent or willful.

COUNT II: INJUNCTIVE RELIEF

43. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

44. The TCPA expressly authorizes injunctive relief to prevent future violations of the Act.

45. The Plaintiff, acting on behalf of the Class, respectfully petitions the Court to order Virtuox to immediately cease engaging in unsolicited facsimile advertising in violation of the TCPA.

PRAYER FOR RELIEF

WHEREFORE, on behalf of itself and the other members of the class, the Plaintiff prays for the following relief:

A. That Virtuox immediately be restrained from engaging in future telemarketing in violation of the TCPA.

B. That Virtuox, its agents, or anyone acting on its behalf, be immediately restrained from altering, deleting or destroying any documents or records that could be used to identify the members of the class.

C. That this Court certify the claims of the named Plaintiff and all other persons similarly situated as class action claims as provided by Rule 23 of the Federal Rules of Civil Procedure and Local Rule 23.1 of the United States District Court for the Southern District of Florida.

D. That the named Plaintiff and the other members of the class action so certified be awarded $500 for each negligent violation of the TCPA by Virtuox and $1,500 for each wilfull violation of the TCPA.

E. That the Court enter an appropriate order enjoining Virtuox, its agents, or anyone acting on its behalf, from altering, erasing, changing, deleting, destroying or otherwise disposing of any records, including computer disks or computer programs, in its possession or control which can be used to identify all persons, corporations, or other entities to whom defendants have transmitted unsolicited facsimile advertisements.

F. That the named Plaintiff and the members of the class be granted such other and further relief as is just and equitable under the circumstances.

JURY DEMAND

THE CLASS PLAINTIFF REQUESTS A JURY TRIAL AS TO ALL CLAIMS OF THE COMPLAINT SO TRIABLE.

Dated this 10th day of June, 2014.

s/ J. Matthew Stephens
J. Matthew Stephens (FL Bar No. 0688649)

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DEFEFENDANT TO BE SERVED AT:

VIRTUOX, INC.
C/o Steven F. Lica, Registered agent for service of process
6238 NW 120th Drive
Coral Springs, FL

EXHIBIT 1

VIRTUOX

Introducing the VPOD Ultra

Customize Device with your Logo

The new VPOD Ultra with Good Study Indicator or (GSI) has new technology that will 100% eliminate all failed uploads that normally would need retesting.

This could save your company potentially thousands of dollars each month

- $299
- FDA Approved
- (HRPO) High Resolution Pulse Oximetry, Measures in 1 second
- Good Study Indicator, Displays the Hours, Minutes & Scs recorded
- Non Volatile Memory, Never Loose Data or Set Time / Date Again
- High Definition OLED with Multi Directional Display
- Customized Device With Your Logo When Powered On
- 60 Hours of Data Storage
- Rechargeable Lithium Ion With 24 Hours of Battery Life
- Mini USB Probe / Download Cable at No Additional Charge
- Carrying case & car charger also available

High Definition OLED

If you use the 920m / 920mplus you could be repeating as much as 37% of your Overnight Oximetries. With Competitive Bidding you must reduce your Activity Based Costs in every department.

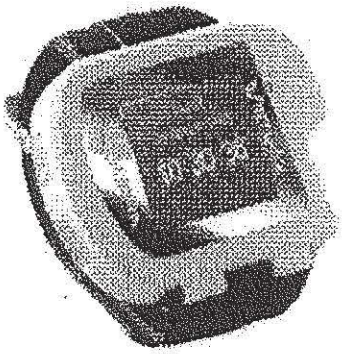
Now is the time to look at your Overnight Oximetry Program costs!

Inherent problems with the 920M / 920M Plus that require a retest

NO Data to Upload
When the batteries are removed or die the memory gets erased automatically.

Bad Date / Time
When the batteries are replaced in between patients the date and time automatically reset which you must remember to manually

No Good Study Indicator
When you pick up device you have no way of knowing if there's sufficient data on the device to get a successful upload.



Call Patient to Verify Usage

Get a 30 day Free Trial

Email Daniel.Labi@VirtuOx.net for more info
Call Daniel @ 877-456-3529 ext. 312 for more info

VirtuOx Corporate
5850 Coral Ridge Dr
Suite 304
Coral Springs, FL. 33076
Phone: 877.337.7111

VirtuOx Laboratory
1001 Bayhill Drive
Second Floor
San Bruno, CA 94006
Phone: 877.337.7111

VIRTUOX

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Summer Savings Opportunity!

With Round 2 competitive bidding set to begin on July 1st, now is the time to

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- **4 VirtuOx Bags**
- **4 Car chargers for Ultra**
- **4 Finger Tip Pulse Oximeters (great for spot checks)**

(Use Promo code "Hot Summer")

These savings will only be taking place until July 15th ONLY!

Hot Summer Package Price-Only $1079

In order to Take Advantage of this Limited Time Offer Fill Out the Form at the bottom and fax it back to **800-586-4301**

ACT NOW AND SAVE OVER $400!

Company Name: _____

Contact Person: _____

Phone Number: _____

Fax Number: _____

Email Address: _____

VirtuOx, Inc
5850 Coral Ridge Dr.
suite 304
Coral Springs, FL 33076

Phone: 877-456-3529 Ext. 312
Fax: 800-586-4301
Email: DANIEL.LABI@virtuox.net

IF YOU WISH TO BE REMOVED FROM FUTURE NOTIFICATIONS PLEASE EMAIL SALES@VIRTUOX.NET

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)* **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS Mobility Solutions, LLC

DEFENDANTS Virtuox, Inc.

(b) County of Residence of First Listed Plaintiff Lexington County, SC
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Broward County, FL
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
James Matthew Stephens, 2201 Arlington Avenue South, Birmingham, AL, 205-939-0199

Attorneys *(If Known)*

(d) Check County Where Action Arose: ☐ MIAMI-DADE ☐ MONROE ☑ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

☐ 1 U.S. Government Plaintiff
☑ 3 Federal Question *(U.S. Government Not a Party)*
☐ 2 U.S. Government Defendant
☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury
☐ 362 Personal Injury - Med. Malpractice

PERSONAL INJURY
☐ 365 Personal Injury - Product Liability
☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

CIVIL RIGHTS
☐ 440 Other Civil Rights
☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/ Accommodations
☐ 445 Amer. w/Disabilities - Employment
☐ 446 Amer. w/Disabilities - Other
☐ 448 Education

PRISONER PETITIONS
Habeas Corpus:
☐ 463 Alien Detainee
☐ 510 Motions to Vacate Sentence
Other:
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights
☐ 555 Prison Condition
☐ 560 Civil Detainee – Conditions of Confinement

FORFEITURE/PENALTY
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 690 Other

LABOR
☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 740 Railway Labor Act
☐ 751 Family and Medical Leave Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
☐ 462 Naturalization Application
☐ 465 Other Immigration Actions

BANKRUPTCY
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY
☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
☐ 375 False Claims Act
☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 850 Securities/Commodities/ Exchange
☒ 890 Other Statutory Actions
☐ 891 Agricultural Acts
☐ 893 Environmental Matters
☐ 895 Freedom of Information Act
☐ 896 Arbitration
☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed (See VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district *(specify)* ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment ☐ 8 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case ☐YES ☑NO b) Related Cases ☐YES ☑NO

JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause *(Do not cite jurisdictional statutes unless diversity)*:
Violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq.

VIII. REQUESTED IN COMPLAINT:

LENGTH OF TRIAL via 5 days estimated (for both sides to try entire case)

☑ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☑ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE: June 10, 2014

SIGNATURE OF ATTORNEY OF RECORD: James Matthew Stephens

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

Mobility Solutions, LLC *Plaintiff(s)*	)	
v.	)	Civil Action No.
Virtuox, Inc. *Defendant(s)*	)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* VIRTUOX, INC.
C/o Steven F. Lica, Registered agent for service of process
6238 NW 120th Drive
Coral Springs, FL

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: J. Matthew Stephens
McCallum, Methvin & Terrell, PC
2201 Arlington Avenue South
Birmingham, AL 35205
205-939-0199

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk