

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

In the Matter of	)	
	)	
Royal Canin U.S.A., Inc.’s Petition	)	CG Docket No. 02-278
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 Federal Communications Commission’s (“Commission”) Rules, 47 C.F.R. § 1.3, and Paragraph 30 of the Commission’s October 30, 2014 Order,<sup>1</sup> Royal Canin U.S.A., Inc. (“Royal Canin”) respectfully requests that the Commission grant it a retroactive waiver of 47 C.F.R. § 64.1200(a)(4)(iv) (“the Opt-Out Notice Rule”). The Commission’s October 30, 2014 Order granted a retroactive waiver of the Opt-Out Notice Rule to certain fax advertisement senders and invited other similarly situated parties to seek a retroactive waiver. Royal Canin is also a defendant in a class action lawsuit alleging that it failed to comply with the Opt-Out Notice Rule and is similarly situated to the parties that have been granted a retroactive waiver. Accordingly, Royal Canin respectfully requests that the Commission grant it a retroactive waiver from the Opt-Out Notice Rule.

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<sup>1</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Junk Prevention Act 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*, Order, 29 FCC Rcd. 13,998 (2014) (“October 30, 2014 Order”).

## **I. BACKGROUND**

Royal Canin is a pet health nutrition company headquartered in St. Charles, Missouri. Royal Canin manufactures and supplies dog and cat food to retailers, veterinarians, and breeders throughout the United States.

### **A. The Class Action Lawsuit**

Royal Canin is a defendant in a putative class action lawsuit alleging violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227. The lawsuit was filed March 12, 2015, and is currently pending in the U.S. District Court for the Northern District of Illinois.<sup>2</sup> The plaintiff, on behalf of himself and a putative class, seeks damages for violations of the TCPA, including on the ground that Royal Canin allegedly sent facsimile advertisement(s) that did not bear the opt-out notice required by the Opt-Out Notice Rule.<sup>3</sup>

### **B. The Telephone Consumer Protection Act and the Commission’s Regulations**

The TCPA prohibits the use of any telephone facsimile machine, computer, or other device to send an “unsolicited advertisement” to a fax machine.<sup>4</sup> The statute was amended in 2005 by the Junk Fax Prevention Act (“JFPA”).<sup>5</sup> In relevant part, the JFPA codified an

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<sup>2</sup> See *Fauley v. Royal Canin U.S.A., Inc., et al.*, No. 1:15-cv-02170 (N.D. Ill. Mar. 12, 2015) (a copy of the complaint is attached as Exhibit A).

<sup>3</sup> As of the date of this Petition, Royal Canin has not filed a responsive pleading, which is due May 4, 2015. This Petition does not seek to have the Commission determine the validity of the plaintiff’s allegations or Royal Canin’s defenses in this lawsuit, such as whether the plaintiff or any other of the putative class members invited or consented to receive the facsimiles at issue. Those issues will be decided in the district court. Rather, Royal Canin seeks only a limited retroactive waiver from the Opt-Out Notice Rule, consistent with the retroactive waivers that the Commission has provided to other similarly situated entities.

<sup>4</sup> 47 U.S.C. § 227(b)(1)(C).

<sup>5</sup> See Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, 119 Stat. 359 (2005).

exception for companies that send fax advertisements to those with whom they have an established business relationship.<sup>6</sup>

In 2006, the Commission amended the rules concerning fax transmissions to reflect the changes brought about by the JFPA.<sup>7</sup> The 2006 Order adopted a rule stating that a fax 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.”<sup>8</sup> At the same time, the 2006 Order explained in a footnote that “the opt-out notice requirement only applies to communications that constitute *unsolicited* advertisements.”<sup>9</sup>

### **C. The Commission’s October 30, 2014 Order**

After receiving numerous petitions challenging the application of the opt-out notice requirement to solicited faxes, the Commission issued an Order on October 30, 2014, recognizing in part that the “inconsistent footnote” in its 2006 Order “caused confusion or misplaced confidence regarding the applicability of [the opt-out notice] requirement.”<sup>10</sup> The Commission explained that the footnote “may have caused some parties to misconstrue the Commission’s intent to apply the opt-out notice to fax ads sent with the prior express permission of the recipient.”<sup>11</sup> In addition, the Commission acknowledged that the “lack of explicit notice” in its notice of proposed rulemaking that it was contemplating an opt-out requirement on fax ads

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<sup>6</sup> See 47 U.S.C. § 227(b)(1)(C)(i).

<sup>7</sup> See *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Junk Fax Prevention Act of 2005*, Report and Order and Third Order on Reconsideration, 21 FCC Rcd. 3787 (2006) (“2006 Order”).

<sup>8</sup> 47 C.F.R. § 1200(a)(4)(iv).

<sup>9</sup> 2006 Order ¶ 42, n.154 (emphasis added).

<sup>10</sup> October 30, 2014 Order ¶¶ 24, 28.

<sup>11</sup> *Id.* ¶ 24.

sent with the prior express permission of the recipient also “may have contributed to confusion or misplaced confidence.”<sup>12</sup>

Accordingly, the Commission concluded that “this specific combination of factors presumptively establishes good cause for retroactive waiver of the rule.”<sup>13</sup> It also found that “granting a retroactive waiver would serve the public interest,” because failure to comply with the rule “could subject parties to potentially substantial damages” and the public interest would not be served by imposing such damages for inadvertent failures to comply with a rule that was confusing.<sup>14</sup>

In light of these findings, the Commission granted a retroactive waiver of Section 64.1200(a)(4)(iv) to those parties who had petitioned for such relief—namely, a group of petitioners composed of businesses “subject to . . . a lawsuit in which a class of plaintiffs seek monetary damages under section 227(b) for alleged violations of the opt-out notice requirement for faxes allegedly sent at the request of the recipient.”<sup>15</sup> The Commission stated that “full compliance with the requirement to provide an opt-out notice on fax ads sent with the prior express permission of the recipient is expected from waiver recipients six months from the release date of this Order. . . .”<sup>16</sup> It also instructed that “[o]ther, similarly situated parties, may also seek waivers such as those granted in this Order” within six months from the date of the Order.<sup>17</sup>

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<sup>12</sup> *Id.* ¶ 25.

<sup>13</sup> *Id.* ¶ 26.

<sup>14</sup> *Id.* ¶ 27.

<sup>15</sup> October 30, 2014 Order ¶¶ 6, 29.

<sup>16</sup> *Id.* ¶ 29.

<sup>17</sup> *Id.* ¶ 30.

## II. THE COMMISSION SHOULD GRANT ROYAL CANIN A RETROACTIVE WAIVER

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.”<sup>18</sup> In addition to a showing of “good cause,” the Commission must find that a waiver would be in the public interest.<sup>19</sup>

As the Commission already found in its October 30, 2014 Order, both of these requirements are satisfied in the context of the rule applying the opt-out notice requirements to solicited faxes.<sup>20</sup> Good cause has been established due to the inconsistent footnote in the 2006 Order, along with the lack of explicit notice that the Commission was contemplating an opt-out requirement for solicited faxes.<sup>21</sup> Furthermore, “granting a retroactive waiver would serve the public interest” because, absent a waiver, companies like Royal Canin could be subjected to substantial monetary damages under the TCPA for failing to comply with a rule that the Commission has already decided was the subject of confusion.<sup>22</sup> The Commission explained that, to be entitled to a waiver, parties like Royal Canin need only show that they are “similarly situated” to the petitioners whose waiver petitions were already granted.<sup>23</sup>

Royal Canin is similarly situated to the parties that were granted retroactive waivers by the October 30, 2014 Order. As explained above, Royal Canin is facing a putative class action lawsuit in which the putative class seeks statutory damages pursuant to 47 U.S.C. § 227(b). And the plaintiff’s main allegation in the lawsuit is that the facsimile(s) at issue did not contain the

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<sup>18</sup> 47 C.F.R. § 1.3; see *Nat’l Ass’n of Broadcasters v. FCC*, 569 F.3d 416, 426 (D.C. Cir. 2009).

<sup>19</sup> See October 30, 2014 Order ¶ 23; *AT&T Corp. v. FCC*, 448 F.3d 426, 433 (D.C. Cir. 2006).

<sup>20</sup> See October 30, 2014 Order ¶¶ 26-27.

<sup>21</sup> See *id.* ¶¶ 24, 26.

<sup>22</sup> See *id.* ¶ 27.

<sup>23</sup> *Id.* ¶¶ 22, 30.

language of the Opt-Out Notice Rule. *See* Complaint at 11 (“Defendants are precluded from asserting any prior express permission or invitation because of the failure to comply with the Opt-Out Notice Requirements”). Like other parties granted a retroactive waiver, Royal Canin did not understand that the opt-out requirements applied to solicited facsimiles. In short, the findings that led the Commission to grant retroactive waiver to the original petitioners in its October 30, 2014 Order apply with equal force to Royal Canin.

### III. CONCLUSION

For the reasons stated above, Royal Canin respectfully requests that the Commission grant it a retroactive waiver of the Opt-Out Notice Rule (47 C.F.R. § 64.1200(a)(4)(iv)) for any and all facsimile advertisements sent without the opt-out requirements of the rule prior to April 30, 2015.

Respectfully submitted,

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*Attorneys for Royal Canin U.S.A., Inc.*

April 27, 2015

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

SHAUN FAULEY, individually and as the representative of a class of similarly- situated persons,	)	
	)	
	)	
Plaintiff,	)	Civil Action No.:
	)	
v.	)	<b>CLASS ACTION</b>
	)	
ROYAL CANIN U.S.A., INC. and JOHN DOES 1-10,	)	
	)	
Defendants.	)	

**CLASS ACTION COMPLAINT**

Plaintiff, SHAUN FAULEY (“Plaintiff”), brings this action on behalf of himself and all others similarly situated, through his attorneys, and except as to those allegations pertaining to Plaintiff or its attorneys, which allegations are based upon personal knowledge, alleges the following upon information and belief against Defendants, ROYAL CANIN U.S.A., INC. and JOHN DOES 1-10 (“Defendants”):

**PRELIMINARY STATEMENT**

1. This case challenges Defendants’ practice of sending unsolicited facsimiles.
2. The federal Telephone Consumer Protection Act of 1991, as amended by the Junk Fax Prevention Act of 2005, 47 USC § 227 (“JFPA” or the “Act”), and the regulations promulgated under the Act, prohibit a person or entity from faxing or having an agent fax advertisements without the recipient’s prior express invitation or permission. The JFPA provides a private right of action and provides statutory damages of \$500 per violation. Upon information and belief, Defendants have sent facsimile transmissions of unsolicited

advertisements to Plaintiff and the Class in violation of the JFPA, including, but not limited to, the facsimile transmission of an unsolicited advertisement on or about June 25, 2013 (“the Fax”), a true and correct copy of which is attached hereto as Exhibit A and made a part hereof. The Fax describes the commercial availability of Defendants’ goods and services. Plaintiff is informed and believes, and upon such information and belief avers, that Defendants have sent, and continue to send, unsolicited advertisements via facsimile transmission in violation of the JFPA.

3. Unsolicited faxes damage their recipients. A junk fax recipient loses the use of its fax machine, paper, and ink toner. An unsolicited fax wastes the recipient’s valuable time that would have been spent on something else. A junk fax interrupts the recipient’s privacy. Unsolicited faxes prevent fax machines from receiving authorized faxes, prevent their use for authorized outgoing faxes, cause undue wear and tear on the recipients’ fax machines, and require additional labor to attempt to discern the source and purpose of the unsolicited message.

4. On behalf of himself and all others similarly situated, Plaintiff brings this case as a class action asserting claims against Defendants under the JFPA.

5. Plaintiff is informed and believes, and upon such information and belief avers, that this action is based upon a common nucleus of operative fact because the facsimile transmissions at issue were and are being done in the same or similar manner. This action is based on the same legal theory, namely liability under the JFPA. This action seeks relief expressly authorized by the JFPA: (i) injunctive relief enjoining Defendants, their employees, agents, representatives, contractors, affiliates, and all persons and entities acting in concert

with them, from sending unsolicited advertisements in violation of the JFPA; and (ii) an award of statutory damages in the minimum amount of \$500 for each violation of the JFPA, and to have such damages trebled, as provided by § 227(b)(3) of the Act.

### **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 47 U.S.C. § 227.

7. This court has personal jurisdiction over Defendants because Defendants transact business within this judicial district, have made contracts within this judicial district, and/or have committed tortious acts within this judicial district.

### **PARTIES**

8. Plaintiff, SHAUN FAULEY, is an Illinois resident.

9. On information and belief, Defendant, ROYAL CANIN U.S.A., INC., is a Delaware corporation its principal place of business in St. Charles, Missouri.

10. John Does 1-10 will be identified through discovery, but are not presently known.

### **FACTS**

11. On or about June 25, 2013, Defendants transmitted by telephone facsimile machine an unsolicited fax to Plaintiff. A copy of the facsimile is attached hereto as Exhibit A.

13. Defendants created or made Exhibit A which Defendants knew or should have known is a good or product which Defendants intended to and did in fact distribute to Plaintiff and the other members of the class.

14. Exhibit A is part of Defendants' work or operations to market Defendants' goods or services which were performed by Defendants and on behalf of Defendants.

Therefore, Exhibit A constitutes material furnished in connection with Defendants' work or operations.

15. Plaintiff had not invited or given permission to Defendants to send the fax.

16. On information and belief, Defendants faxed the same and other unsolicited facsimiles without the required opt out language to Plaintiff and more than 40 other recipients without first receiving the recipients' express permission or invitation.

17. There is no reasonable means for Plaintiff (or any other class member) to avoid receiving unauthorized faxes. Fax machines are left on and ready to receive the urgent communications their owners desire to receive.

18. Defendants' facsimiles did not display a proper opt-out notice as required by 47 C.F.R. § 64.1200.

#### **CLASS ACTION ALLEGATIONS**

19. In accordance with F. R. Civ. P. 23(b)(1), (b)(2) and (b)(3), Plaintiff brings this class action pursuant to the JFPA, on behalf of the following class of persons:

All persons who (1) on or after four years prior to the filing of this action, (2) were sent telephone facsimile messages of material advertising the commercial availability of any property, goods, or services by or on behalf of Defendants, (3) which Defendants did not have prior express permission or invitation, and (4) which did not display a proper opt-out notice.

Excluded from the Class are the Defendants, their employees, agents and members of the Judiciary. Plaintiff reserves the right to amend the class definition upon completion of class certification discovery.

20. Class Size (F. R. Civ. P. 23(a)(1)): Plaintiff is informed and believes, and upon such information and belief avers, that the number of persons and entities of the Plaintiff Class is

numerous and joinder of all members is impracticable. Plaintiff is informed and believes, and upon such information and belief avers, that the number of class members is at least forty.

21. Commonality (F. R. Civ. P. 23 (a) (2)): Common questions of law and fact apply to the claims of all class members. Common material questions of fact and law include, but are not limited to, the following:

- a) Whether the Defendants sent unsolicited fax advertisements;
- b) Whether the Defendants' faxes advertised the commercial availability of property, goods, or services;
- c) The manner and method the Defendants used to compile or obtain the list of fax numbers to which they sent Exhibit "A" and other unsolicited faxed advertisements;
- d) Whether the Defendants faxed advertisements without first obtaining the recipient's prior permission or invitation;
- e) Whether the Defendants sent the faxed advertisements knowingly;
- f) Whether the Defendants violated the provisions of 47 U.S.C. § 227 and the regulations promulgated thereunder;
- g) Whether the faxes contain an "opt-out notice" that complies with the requirements of § (b)(1)(C)(iii) of the Act, and the regulations promulgated thereunder, and the effect of the failure to comply with such requirements;
- h) Whether the Defendants should be enjoined from faxing advertisements in the future;
- i) Whether the Plaintiff and the other members of the class are entitled to statutory damages; and

j) Whether the Court should award treble damages.

22. Typicality (F. R. Civ. P. 23 (a) (3)): The Plaintiff's claims are typical of the claims of all class members. The Plaintiff received the same faxes as the faxes sent by or on behalf of the Defendants advertising goods and services of the Defendants during the Class Period. The Plaintiff is making the same claims and seeking the same relief for itself and all class members based upon the same federal statute. The Defendants have acted the same or in a similar manner with respect to the Plaintiff and all the class members by sending Plaintiff and each member of the class the same faxes.

23. Fair and Adequate Representation (F. R. Civ. P. 23 (a) (4)): The Plaintiff will fairly and adequately represent and protect the interests of the class. It is interested in this matter, has no conflicts and has retained experienced class counsel to represent the class.

24. Need for Consistent Standards and Practical Effect of Adjudication (F. R. Civ. P. 23 (b) (1)): Class certification is appropriate because the prosecution of individual actions by class members would: (a) create the risk of inconsistent adjudications that could establish incompatible standards of conduct for the Defendants, and/or (b) as a practical matter, adjudication of the Plaintiff's claims will be dispositive of the interests of class members who are not parties.

25. Common Conduct (F. R. Civ. P. 23 (b) (2)): Class certification is also appropriate because the Defendants have acted and refused to act in the same or similar manner with respect to all class members thereby making injunctive and declaratory relief appropriate. The Plaintiff demands such relief as authorized by 47 U.S.C. §227.

26. Predominance and Superiority (F. R. Civ. P. 23 (b) (3)): Common questions of law and fact predominate over any questions affecting only individual members, and a class

action is superior to other methods for the fair and efficient adjudication of the controversy because:

- a) Proof of the claims of the Plaintiff will also prove the claims of the class without the need for separate or individualized proceedings;
- b) Evidence regarding defenses or any exceptions to liability that the Defendants may assert and prove will come from the Defendants' records and will not require individualized or separate inquiries or proceedings;
- c) The Defendants have acted and are continuing to act pursuant to common policies or practices in the same or similar manner with respect to all class members;
- d) The amount likely to be recovered by individual class members does not support individual litigation. A class action will permit a large number of relatively small claims involving virtually identical facts and legal issues to be resolved efficiently in one (1) proceeding based upon common proofs; and
- e) This case is inherently manageable as a class action in that:
  - (i) The Defendants identified persons or entities to receive the fax transmissions and it is believed that the Defendants' computer and business records will enable the Plaintiff to readily identify class members and establish liability and damages;
  - (ii) Liability and damages can be established for the Plaintiff and the class with the same common proofs;
  - (iii) Statutory damages are provided for in the statute and are the same for all class members and can be calculated in the same or a similar manner;

(iv) A class action will result in an orderly and expeditious administration of claims and it will foster economics of time, effort and expense;

(v) A class action will contribute to uniformity of decisions concerning the Defendants' practices; and

(vi) As a practical matter, the claims of the class are likely to go unaddressed absent class certification.

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

27. The JFPA makes unlawful for any person to “use any telephone facsimile machine, computer or other device to send, to a telephone facsimile machine, an unsolicited advertisement . . . .” 47 U.S.C. § 227(b)(1)(C).

28. The JFPA defines “unsolicited advertisement” as “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise.” 47 U.S.C. § 227 (a) (5).

29. **Opt-Out Notice Requirements.** The JFPA strengthened the prohibitions against the sending of unsolicited advertisements by requiring, in § (b)(1)(C)(iii) of the Act, that senders of faxed advertisements place a clear and conspicuous notice on the first page of the transmission that contains the following among other things (hereinafter collectively the “Opt-Out Notice Requirements”):

1. a statement that the recipient is legally entitled to opt-out of receiving future faxed advertisements – knowing that he or she has the legal right to request an opt-out gives impetus for recipients to make such a request, if desired;

2. a statement that the sender must honor a recipient's opt-out request within 30 days and the sender's failure to do so is unlawful – thereby encouraging recipients to opt-out, if they did not want future faxes, by advising them that their opt-out requests will have legal “teeth”;

3. a statement advising the recipient that he or she may opt-out with respect to all of his or her facsimile telephone numbers and not just the ones that receive a faxed advertisement from the sender – thereby instructing a recipient on how to make a valid opt-out request for all of his or her fax machines;

The requirement of (1) above is incorporated from § (b)(D)(ii) of the Act. The requirement of (2) above is incorporated from § (b)(D)(ii) of the Act and the rules and regulations of the Federal Communications Commission (the “FCC”) in ¶ 31 of its 2006 Report and Order (*In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act, Junk Prevention Act of 2005*, 21 F.C.C.R. 3787, 2006 WL 901720, which rules and regulations took effect on August 1, 2006). The requirements of (3) above are contained in § (b)(2)(E) of the Act and incorporated into the Opt-Out Notice Requirements via § (b)(2)(D)(ii). Compliance with the Opt-Out Notice Requirements is neither difficult nor costly. The Opt-Out Notice Requirements are important consumer protections bestowed by Congress upon the owners of the telephone lines and fax machines giving them the right, and means, to stop unwanted faxed advertisements.

30. **2006 FCC Report and Order.** The JFPA, in § (b)(2) of the Act, directed the FCC to implement regulations regarding the JFPA, including the JFPA's Opt-Out Notice Requirements and the FCC did so in its 2006 Report and Order, which in addition provides among other things:

A. The definition of, and the requirements for, an established business relationship for purposes of the first of the three prongs of an exemption to liability under § (b)(1)(C)(i) of the Act and provides that the lack of an “established business relationship” precludes the ability to invoke the exemption contained in § (b)(1)(C) of the Act (*See* 2006 Report and Order ¶¶ 8-12 and 17-20);

B. The required means by which a recipient’s facsimile telephone number must be obtained for purposes of the second of the three prongs of the exemption under § (b)(1)(C)(ii) of the Act and provides that the failure to comply with these requirements precludes the ability to invoke the exemption contained in § (b)(1)(C) of the Act (*See* 2006 Report and Order ¶¶ 13-16);

C. The things that must be done in order to comply with the Opt-Out Notice Requirements for the purposes of the third of the three prongs of the exemption under § (b)(1)(C)(iii) of the Act and provides that the failure to comply with these requirements precludes the ability to invoke the exemption contained in § (b)(1)(C) of the Act (*See* 2006 Report and Order ¶¶ 24-34);

D. The failure of a sender to comply with the Opt-Out Notice Requirements precludes the sender from claiming that a recipient gave “prior express permission or invitation” to receive the sender’s fax (*See* Report and Order ¶ 48);

As a result thereof, a sender of a faxed advertisement who fails to comply with the Opt-Out Notice Requirements has, by definition, transmitted an unsolicited advertisement under the JFPA. This is because such a sender can neither claim that the recipients of the faxed advertisement gave “prior express permission or invitation” to receive the fax nor can the sender claim the exemption from liability contained in § (b)(C)(1) of the Act.

31. **The Fax.** Defendants sent the on or about June 25, 2013, advertisement via facsimile transmission from telephone facsimile machines, computers, or other devices to the telephone lines and facsimile machines of Plaintiff and members of the Plaintiff Class. The Fax constituted an advertisement under the Act. Defendants failed to comply with the Opt-Out Requirements in connection with the Fax. The Fax was transmitted to persons or entities without their prior express permission or invitation and/or Defendants are precluded from asserting any prior express permission or invitation because of the failure to comply with the Opt-Out Notice Requirements. By virtue thereof, Defendants violated the JFPA and the regulations promulgated thereunder by sending the Fax via facsimile transmission to Plaintiff and members of the Class.

32. **Defendants' Other Violations.** Plaintiff is informed and believes, and upon such information and belief avers, that during the period preceding four years of the filing of this Complaint and repeatedly thereafter, Defendants have sent via facsimile transmission from telephone facsimile machines, computers, or other devices to telephone facsimile machines of members of the Plaintiff Class faxes that constitute advertisements under the JFPA that were transmitted to persons or entities without their prior express permission or invitation (and/or that Defendants are precluded from asserting any prior express permission or invitation because of the failure to comply with the Opt-Out Notice Requirements in connection with such transmissions). By virtue thereof, Defendants violated the JFPA and the regulations promulgated thereunder. Plaintiff is informed and believes, and upon such information and belief avers, that Defendants are continuing to send unsolicited advertisements via facsimile transmission in violation of the JFPA and the regulations promulgated thereunder, and absent intervention by this Court, will do so in the future.

33. The TCPA/JFPA provides a private right of action to bring this action on behalf

of Plaintiff and the Plaintiff Class to redress Defendants' violations of the Act, and provides for statutory damages. 47 U.S.C. § 227(b)(3). The Act also provides that injunctive relief is appropriate. *Id.*

34. The JFPA is a strict liability statute, so the Defendants are liable to the Plaintiff and the other class members even if their actions were only negligent.

35. The Defendants knew or should have known that (a) the Plaintiff and the other class members had not given express invitation or permission for the Defendants or anybody else to fax advertisements about the Defendants' goods or services; (b) the Plaintiff and the other class members did not have an established business relationship; (c) Defendants transmitted advertisements; (d) the Faxes did not contain the required Opt-Out Notice; and (e) Defendants' transmission of advertisements that did not contain the required opt-out notice was unlawful.

36. The Defendants' actions caused damages to the Plaintiff and the other class members. Receiving the Defendants' junk faxes caused the recipients to lose paper and toner consumed in the printing of the Defendants' faxes. Moreover, the Defendants' faxes used the Plaintiff's telephone lines and fax machine. The Defendants' faxes cost the Plaintiff time, as the Plaintiff and its employees wasted their time receiving, reviewing and routing the Defendants' unauthorized faxes. That time otherwise would have been spent on the Plaintiff's business activities. The Defendants' faxes unlawfully interrupted the Plaintiff's and other class members' privacy interests in being left alone. Finally, the injury and property damage sustained by Plaintiff and the other class members from the sending of Defendants' advertisements occurred outside of Defendants' premises.

WHEREFORE, Plaintiff, SHAUN FAULEY, individually and on behalf of all others similarly situated, demands judgment in his favor and against Defendants, ROYAL CANIN U.S.A., INC. and JOHN DOES 1-10, jointly and severally, as follows:

A. That the Court adjudge and decree that the present case may be properly maintained as a class action, appoint the Plaintiff as the representative of the class, and appoint the Plaintiff's counsel as counsel for the class;

B. That the Court award actual monetary loss from such violations or the sum of five hundred dollars (\$500.00) for each violation, whichever is greater;

C. That Court enjoin the Defendants from additional violations; and

D. That the Court award pre-judgment interest, costs, and such further relief as the Court may deem just and proper.

Respectfully submitted,

SHAUN FAULEY, individually and as the representative of a class of similarly-situated persons,

By: s/ Brian J. Wanca  
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**EXHIBIT A**



## Having trouble getting cats to eat a Renal Diet?

Royal Canin has a solution with **FOUR** Palatability options!

Cats with Chronic Kidney Disease (CKD) can't get rid of waste products from their body as easily as healthy cats, causing toxins to build up in the bloodstream and leaving the cat feeling sick. With proper nutrition, many cats with kidney problems can have a better quality of life.

- The smell, flavor, texture and even temperature of the cat's food is important. Royal Canin's unique kibble shapes, flavor options and wet diets can help the pet want to eat.
- Cats with CKD have waxing and waning appetites. Providing them with a high energy dense food allows you to feed less, but still make sure they are getting all the nutrients their body needs.

A diet designed to help nutritionally manage Chronic Kidney Disease can't work if the cat won't eat it! Royal Canin Veterinary Diet Renal LP Modified appeals to the cat's senses of taste and smell with a variety of dry and canned options. Chronic Kidney Disease (CKD) is a progressive disease. Although CKD cannot be cured, together we can help extend a Pet's life expectancy and improve quality of life through nutrition.

Royal Canin Feline Renal Modified LP wet diets are available in two different formats: loaf and morsels and gravy. Feline Renal LP Modified dry is also available in two varieties: Renal LP Modified – P (pork) and Renal LP Modified – C (chicken)

It would be my pleasure to discuss with you and your staff the many benefits of our renal diets. Please call me to schedule a lunch or appointment.

**Don't forget to ask about our \$10 rebate offer.**

Thank you for choosing Royal Canin

Carrie Keough

630-333-6932 [carrie.keough@royalcanin.us](mailto:carrie.keough@royalcanin.us)

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.)

I. (a) PLAINTIFFS

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

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

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

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question, 4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause)

VII. Previous Bankruptcy Matters (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court. Use a separate attachment if necessary)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

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

IX. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

X. This case (check one box) Is not a refiling of a previously dismissed action is a refiling of case number previously dismissed by Judge

DATE

SIGNATURE OF ATTORNEY OF RECORD

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the six boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

**VII. Previous Bankruptcy Matters** For nature of suit 422 and 423 enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this court. Use a separate attachment if necessary.

**VIII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**IX. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**X. Refiling Information.** Place an "X" in one of the two boxes indicating if the case is or is not a refiling of a previously dismissed action. If it is a refiling of a previously dismissed action, insert the case number and judge.

**Date and Attorney Signature.** Date and sign the civil cover sheet.