

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

In the Matter of:)	
)	CG Docket No. 02-278
Petition of Dental Fix Rx LLC)	
for Retroactive Waiver of)	CG Docket No. 05-338
47 C.F.R. § 64.1200(a)(4)(iv))	

PETITION FOR RETROACTIVE WAIVER

Pursuant to 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. October 30, 2014) (the “October 30, 2014 Order”), Petitioner, DENTAL FIX RX LLC (“Dental Fix” or “Petitioner”), respectfully requests that the Commission grant a retroactive waiver of the opt-out notice requirement in Section 64.1200(a)(4)(iv) of the Commission’s rules, 47 C.F.R. § 64.1200(a)(4)(iv), to Dental Fix with respect to any alleged advertising faxes sent with the recipients’ prior express invitation or permission.

INTRODUCTION

Dental Fix and its Chief Executive Officer, David Lopez, are defendants in a putative class action lawsuit that was originally filed in the Circuit Court for St. Louis County, Missouri, Case No. 15SL-CC00541, and subsequently removed to the United States District Court for the Eastern District of Missouri, Case No. 15-cv-01372-JAR, styled *Suzanne Degnen, D.M.D., P.C., d/b/a Sunset Tower Family Dentistry v. Dental Fix Rx LLC, et al.* (hereinafter, the “Litigation”), for claims that Dental Fix violated the requirement in Section 64.1200(a)(4)(iv) by sending a fax advertisement, even though with prior permission from the recipient, without the proper opt-out language specified in the Commission’s rules and under the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227, as amended by the Junk Fax Prevention Act of 2005 (the “TCPA”). *See* Amended Class Action Junk-Fax Petition (the “Complaint”) filed in the Litigation and attached

hereto as Exhibit “A.” Like numerous other petitioners who were granted a retroactive waiver by the Commission, Dental Fix faces the prospect of potentially substantial liability for failing to include in solicited faxes the precise opt-out language required by the Commission’s rules, even though the Commission found that there was understandable confusion about the applicability of the requirement for that opt-out language. As a party similarly situated to those petitioners who have received the Commission’s retroactive waivers, and for the same reasons that supported the grant of retroactive waivers in the October 30 Order and the more recent Order of the Commission, CG Docket Nos. 02-278, 05-338, DA 15-976, (rel. August 28, 2015) (the “August 28 Order”), Dental Fix respectfully requests that the Commission grant it the same retroactive waiver of 47 C.F.R. § 64.1200(a)(4)(iv).

BACKGROUND

In its October 30 Order, the Commission acknowledged that there was reasonable uncertainty as to senders’ obligations under the TCPA to include opt-out notices on solicited faxes. *See* October 30 Order, ¶ 24. The Junk Fax Order¹ 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.” 47 C.F.R. § 64.1200(a)(4)(iv); Junk Fax Order, 21 FCC Rcd. at 3812, par. 48. At the same time, the Junk Fax Order also stated in a footnote that “the opt-out notice requirement only applies to communications that constitute *unsolicited* advertisements.” Junk Fax Order, 21 FCC Rcd. at 3810 n.154 (emphasis added).

The Commission recognized that the “inconsistent footnote” in the Junk Fax Order “caused

¹ *See In re Rules and Regulation 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”).

confusion or misplaced confidence regarding the applicability of [the opt-out notice] requirement.” October 30 Order at ¶¶ 24, 28. 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.” *Id.* ¶ 24. In addition, the Commission acknowledged that the notice of its proposed rulemaking “did not make explicit that the Commission contemplated an opt-out requirement on fax ads sent with the prior express permission of the recipient” and that this lack of explicit notice “may have contributed to confusion or misplaced confidence about this requirement.” *Id.* ¶ 25. The Commission concluded that “this specific combination of factors presumptively establishes good cause for retroactive waiver of the rule.” *Id.* ¶ 26. The Commission 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 would ensure that any such confusion with the Junk Fax Order would not result in inadvertent violations of the opt-out notice requirement. *Id.* ¶ 27. As a result of these findings, the Commission granted retroactive waivers of Section 64.1200(a)(4)(iv) to certain of those parties who had petitioned for such relief. The Commission provided that “[o]ther, similarly situated parties, may also seek waivers such as those granted in this Order.” *Id.* ¶ 29.

ARGUMENT

Pursuant to 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 Nat’l Ass’n of Broadcasters v. FCC*, 569 F.3d 416, 426 (D.C. Cir. 2009). A waiver may be granted by the Commission “if: (1) special circumstances warrant a deviation from the general rule and (2) the waiver would better serve the public interest than would application of the rule.” October 30 Order, ¶ 23; August 28 Order, ¶ 14; *see also Northeast Cellular v. FCC*, 897 F.2d 1164 (D.C. Cir.

1990)). In the October 30 Order and the August 28 Order, the Commission found that both of these requirements were satisfied with respect to the petitioners' challenge of the application of the opt-out notice requirement to solicited faxes. October 30 Order, ¶¶ 26-27; August 28 Order, ¶¶ 13-14. The Commission found that the confusion regarding the applicability of the opt-out requirement to solicited fax ads constituted "special circumstances" that warrant a deviation from the general rule. October 30 Order, ¶¶ 24-26. The Commission further found that this confusion could subject parties to potentially substantial damages and, therefore, waiver served the public interest to ensure that any confusion did not result in inadvertent violations of the opt-out requirement. *Id.*, ¶ 27. In the August 28 Order, the Commission granted further retroactive waivers to petitioners who had "demonstrated that they are similarly situated to the initial waiver recipients and are deserving of a limited retroactive waiver for those fax ads sent prior to April 30, 2015, with recipients' prior express consent or permission." August 28 Order, ¶ 14.

Dental Fix is similarly situated to the petitioners to whom the Commission has granted retroactive waivers. Here, Dental Fix is the target of a putative class action lawsuit for sending a one-page fax to the plaintiff in the Litigation, Suzanne Degnen, D.M.D., P.C. d/b/a Sunset Tower Family Dentistry, with plaintiff's prior express consent,² but without the opt-out notice required by 47 § 227(b)(1)(C) and 47 C.F.R. § 64.1200(a)(4)(iii). *See* the Affidavit of David Lopez, ¶ 4, which is attached hereto as Exhibit "B." *See also* Exhibit A, ¶¶ 21-23. As a result, Dental Fix is potentially subject to a significant damage award on the grounds that it violated the Junk Fax Order, when the Commission has already found that significant uncertainty and confusion exists as to the opt-out notice requirement for solicited faxes. Dental Fix did not understand that it needed to comply with the opt-out notice requirement for solicited faxed advertisements. Exhibit B, ¶ 6.

² The plaintiff in the Litigation removed its prior allegations that the fax was unsolicited because it knows that Dental Fix obtained its prior express consent before it sent the subject fax.

As a result, Dental Fix is in the same position as the petitioners who were granted retroactive waivers by the October 30 Order and the August 28 Order. Granting a retroactive waiver to Dental Fix would serve the public interest. As noted in the October 30 Order, it serves the public interest to grant a retroactive waiver to ensure that any such confusion did not result in inadvertent violation of the opt-out notice requirement for solicited fax advertisements. October 30 Order, ¶ 27. Therefore, good cause exists to grant a retroactive waiver to Dental Fix for the subject fax that was sent to the plaintiff in the Litigation on June 18, 2014, and any other solicited faxes that were sent by Dental Fix prior to April 30, 2015.

Finally, although the October 30 Order provided that the Commission expected parties making similar waiver requests to make every effort to file by April 30, 2015, the August 28 Order noted that a few of the petitions resolved by the August 28 Order were filed after the April 30, 2015 deadline referenced in the October 30 Order, but that such petitions sought waiver for faxes sent prior to the April 30, 2015 deadline. October 30 Order, ¶ 30; August 28 Order, ¶ 20. The retroactive waiver sought herein by Dental Fix is for the fax that was sent to the plaintiff in the Litigation, Suzanne Degnen, D.M.D., P.C., with its express prior permission on June 18, 2014, and for any other similar faxes that Dental Fix may have sent with the express prior permission of the recipient prior to April 30, 2015.

CONCLUSION

Dental Fix is similarly situated to those petitioners who received retroactive waivers in the Commission's October 30 Order and August 28 Order. Given the confusion and uncertainty over the Commission's rules concerning the opt-out notice requirement for solicited fax advertisements, and Dental Fix's potential substantial liability for allegations that it violated this requirement, the public interest is best served by granting Dental Fix a retroactive waiver.

Therefore, Dental Fix respectfully requests that the Commission grant it a retroactive waiver from liability with respect to any fax advertisements sent by Dental Fix with the prior express consent or permission of the recipients or their agents, but which did not contain a proper opt-out notice required under 47 C.F.R. § 64.1200(a)(4)(iv).

Dated: September 11, 2015.

Respectfully submitted,

/s/ Kaari Gagnon

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EXHIBIT "A"

**IN THE MISSOURI CIRCUIT COURT
FOR THE TWENTY-FIRST JUDICIAL CIRCUIT
COUNTY OF ST. LOUIS**

**SUZANNE DEGNEN, D.M.D., P.C.)
d/b/a SUNSET TOWER FAMILY)
DENTISTRY,)**

Plaintiff,)

v.)

**DENTALFIX RX LLC d/b/a)
DENTAL FIX RX,)**

**Serve:)
Robert Einhorn, Reg. Agent)
100 SE 2nd St., Ste. 2700)
Miami, FL 33131)
Or)
David Lopez)
Chief Exec. Officer/Member)
5742 SW 130th Ave.)
Southwest Ranches, FL 33330)**

**DAVID ANTHONY LOPEZ)
Serve:)
5742 SW 130th Ave.)
Southwest Ranches, FL 33330)**

and)

**JOHN DOES 1-10,)
Defendants.)**

Case No. 15SL-CC00541

Division: 11

JURY TRIAL DEMANDED

AMENDED CLASS ACTION JUNK-FAX PETITION

Plaintiff Suzanne Degnen, D.M.D., P.C. d/b/a Sunset Tower Family Dentistry brings this junk-fax class action, on behalf of itself and all others similarly situated, against Defendants Dentalfix RX LLC d/b/a Dental Fix RX, David Anthony Lopez, and John Does 1-10 under the Telephone Consumer Protection Act of 1991, as amended by the Junk Fax Prevention Act of 2005, 47 U.S.C. § 227, and the regulations promulgated thereunder (“TCPA”).

PARTIES, JURISDICTION, AND VENUE

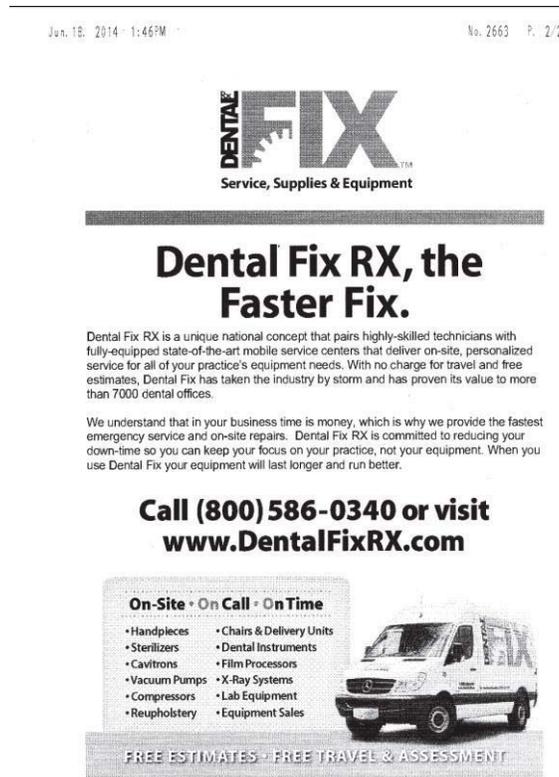
1. Plaintiff Suzanne Degnen, D.M.D., P.C. d/b/a Sunset Tower Family Dentistry is a Missouri corporation with its principal place of business in St. Louis County, Missouri.
2. Defendant Dentalfix RX LLC d/b/a Dental Fix RX (Dental Fix) is a New Jersey limited liability company with its principal place of business in Davie, Florida.
3. Dental Fix is a mobile dental-equipment-repair franchisor with franchises throughout the United States, including in Missouri.
4. Dental Fix is not registered with the Missouri Secretary of State to transact business in Missouri.
5. Defendant David Anthony Lopez resides in Florida and his business card identifies him as Dental Fix's "Chief Executive Officer."
6. John Does 1-10 will be identified through discovery.
7. Dental Fix, according to its website, <http://www.dentalfixrx.com/locations.html> (last visited June 30, 2015), has a franchise owner in Missouri, Mike Swider, with phone number (800) 586-0340.
8. On information and belief, Mike Swider is a member of Swider & Son Enterprises LLC d/b/a Swider & Son Enterprises LLC dba Dental Fix Rx.
9. John Does 1 and 2 may later be identified as Mike Swider and Swider & Son Enterprises LLC d/b/a Swider & Son Enterprises LLC dba Dental Fix Rx, respectively.

10. This Court has personal jurisdiction over Defendants under 47 U.S.C. § 227(b)(3), because Defendants sent at least one illegal fax into Missouri, Defendants transact business within this state, Defendants have made contracts within this state, Defendants have committed tortious acts within this state, including conversion of fax recipients' paper, ink, and toner, and/or Defendants otherwise have sufficient minimum contacts with this state.

11. Venue is proper under Missouri Revised Statutes § 508.010.2.

THE FAX

12. On June 18, 2014, Defendants used a telephone facsimile machine, computer, or other device to send to Plaintiff's telephone facsimile machine at (314) 849-1139 an unsolicited advertisement, a true and accurate copy of which is attached as **Exhibit 1** (the Fax), a smaller copy of which is copied below:



Ex. 1

13. Plaintiff received the Fax through Plaintiff's facsimile machine.

14. The Fax constitutes material advertising quality or commercial availability of any property, goods, or services, including emergency service, on-site repairs of dental equipment, and "Equipment Sales."

15. On information and belief, Defendants have sent other facsimile transmissions of material advertising the quality or commercial availability of property, goods, or services to Plaintiff and to at least 40 other persons as part of a plan to broadcast fax advertisements, of which the Fax is an example.

16. Defendants approved, authorized and participated in the scheme to broadcast fax advertisements by (a) directing a list to be purchased or assembled, (b) directing and supervising employees or third parties to send the faxes, (c) creating and approving the fax form to be sent, and/or (d) determining the number and frequency of the facsimile transmissions.

17. Defendants had a high degree of involvement in, or actual notice of, the unlawful fax broadcasting activity and failed to take steps to prevent such facsimile transmissions.

18. Defendants created or made the Fax and other fax advertisements, which they sent to Plaintiff and to other members of the "Class" as defined below.

19. The Fax, and the other similar or identical facsimile advertisements, is a part of Defendants' work or operations to market Defendants' products, goods, or services, which was sent by and on behalf of Defendants.

20. The Fax and the other facsimile advertisements constitute material furnished in connection with Defendants' work or operations.

21. The Fax sent to Plaintiff, and the other facsimile advertisements sent by Defendants, did not contain a notice that informs the recipient of the ability and means to avoid future unsolicited advertisements.

22. Defendants' similar facsimile advertisements, including the Fax to Plaintiff, did not contain a notice stating that the recipient may make a request to the sender of the advertisement not to send any future advertisements to a telephone facsimile machine or machines and that failure to comply, within 30 days, with such a request meeting the requirements under 47 C.F.R. § 64.1200(a)(4)(v) is unlawful.

23. The transmissions of facsimile advertisements, including the Fax, to Plaintiff, did not contain a notice that complied with 47 U.S.C. § 227(b)(1)(C) and 47 C.F.R. § 64.1200(a)(4)(iii).

24. The transmissions of facsimile advertisements, including the Fax, to Plaintiff was required to contain a notice that complied with the provisions of 47 U.S.C. § 27(b)(1)(C) and 47 C.F.R. § 64.1200(a)(4)(iii).

25. On information and belief, Defendants sent multiple facsimile advertisements to Plaintiff and members of the Class throughout the time period covered by the Class definition below.

26. There is no reasonable means for Plaintiff or other Class members to avoid receiving unlawful faxes but to receive lawful faxes.

27. Defendants violated the TCPA by transmitting the Fax to Plaintiff and to the Class members by not displaying the proper opt-out notice required by 47 C.F.R. § 64.1200(a)(4).

28. Defendants knew or should have known that (a) facsimile advertisements, including the Fax, were advertisements and (b) Defendants' facsimile advertisements did not display a proper opt-out notice.

29. Defendants failed to determine correctly the legal restrictions on the use of facsimile transmissions and the application of those restrictions to facsimile advertisements, including the Fax, both to Plaintiff and to the Class.

30. The transmissions of facsimile advertisements, including the Fax, to Plaintiff and the Class caused unwanted use and destruction of their property, including toner or ink and paper, and caused undesired wear on hardware.

31. The transmissions of facsimile advertisements, including the Fax, to Plaintiff and to Class interfered with their exclusive use of their property.

32. The transmissions of facsimile advertisements, including the Fax, to Plaintiff and the Class interfered with their business and/or personal communications and privacy interests.

CLASS ACTION ALLEGATIONS

33. Plaintiff brings this class action on behalf of the following class of persons, hereafter, the “Class”:

All persons who (1) on or after four years prior to the filing of this action, (2) were sent a telephone facsimile message of material advertising the commercial availability or quality of any property, goods, or services by or on behalf of Defendants, (3) which (a) did not display a clear and conspicuous opt-out notice on the first page stating that the recipient may make a request to the sender of the advertisement not to send any future advertisements to a telephone facsimile machine or machines and that failure to comply, within 30 days, with such a request meeting the requirements under 47 C.F.R. § 64.1200(a)(4)(v) is unlawful, (b) lacked a telephone number for sending the opt-out request, or (c) lacked a facsimile number for sending the opt-out request.

34. Excluded from the Class are Defendants, their employees, agents, and members of the judiciary.

35. This case is appropriate as a class action because:

a. Numerosity. On information and belief, based in part on review of the sophisticated Fax and online research as to Defendants and their marketing practices, the Class includes at least 40 persons and is so numerous that joinder of all members is impracticable.

b. Commonality. Questions of fact or law common to the Class predominate over questions affecting only individual Class members, e.g.:

- i. Whether the Fax, and other faxes transmitted by or on behalf of Defendants, contains material advertising the commercial availability of any property, goods or services;
- ii. Whether the Fax, and other faxes transmitted by or on behalf of Defendants, contains material advertising the quality of any property, goods or services;

- iii. The manner and method Defendants used to compile or obtain the list of fax numbers to which Defendants sent the Fax and other unsolicited faxed advertisements;
 - iv. Whether Defendants violated 47 U.S.C. § 227;
 - v. Whether Defendants willingly or knowingly violated 47 U.S.C. § 227;
 - vi. Whether Defendants violated 47 C.F.R. § 64.1200;
 - vii. Whether the Fax, and the other fax advertisements sent by or on behalf of Defendants, displayed the opt-out notice required by 47 C.F.R. § 64.1200(a)(4);
 - viii. Whether the Court should award statutory damages;
 - ix. Whether the Court should award treble damages; and
 - x. Whether the Court should enjoin Defendants from sending TCPA-violating facsimile advertisements in the future.
- c. Typicality. Plaintiff's claim is typical of the other Class members' claims, because, on information and belief, the Fax was substantially the same as the faxes sent by or on behalf of Defendants to the Class, and Plaintiff is making the same claim and seeking the same relief for itself and all Class members based on the same statute and regulation.
- d. Adequacy. Plaintiff will fairly and adequately protect the interests of the other Class members. Plaintiff's counsel are experienced in class actions and TCPA claims. Neither Plaintiff nor Plaintiff's counsel has interests adverse or in conflict with the absent Class members.
- e. Superiority. A class action is the superior method for adjudicating this controversy fairly and efficiently. The interest of each individual Class member in controlling the prosecution of separate claims is small and individual actions are not economically feasible.

36. The TCPA prohibits the “use of any telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine.” 47 U.S.C. § 227(b)(1).

37. The TCPA 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 express invitation or permission.” 47 U.S.C. § 227(a)(4).

38. The TCPA provides:

Private right of action. A person 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 receive \$500 in damages for each such violation, whichever is greater, or

(C) Both such actions.

47 U.S.C. § 227(b)(3)(A)-(C).

39. The TCPA also provides that that Court, in its discretion, may treble the statutory damages if a defendant “willfully or knowingly” violated Section 227(b) or the regulations prescribed thereunder.

40. “A facsimile broadcaster will be liable for violations of [Section 64.1200(a)(4)]. . . , including the inclusion of opt-out notices on unsolicited advertisements, if it demonstrates a high degree of involvement in, or actual

notice of, the unlawful activity and fails to take steps to prevent such facsimile transmissions.” 47 C.F.R. § 64.1200(a)(4)(vii).

41. Because the TCPA is a strict liability statute; Defendants are liable to Plaintiff and the Class even if Defendants only acted negligently.

42. Defendants’ actions caused damage to Plaintiff and the Class, as
- a. receiving Defendants’ faxed advertisements caused the recipients to lose paper and toner consumed in printing Defendants’ faxes;
 - b. Defendants’ actions interfered with the recipients’ use of the recipients’ fax machines and telephone lines;
 - c. Defendants’ faxes cost the recipients time, which was wasted time receiving, reviewing, and routing the unlawful faxes, and such time otherwise would have been spent on business activities; and
 - d. Defendants’ faxes unlawfully interrupted the recipients’ privacy interests in being left alone.

43. Defendants intended to cause damage to Plaintiff and the Class, to violate their privacy, to interfere with the recipients’ fax machines, or to consume the recipients’ valuable time with Defendants’ advertisements; therefore, treble damages are warranted under 47 U.S.C. § 227(b)(3).

44. Defendants knew or should have known that (a) the Fax and the other facsimile advertisements were advertisements, and (b) the Fax and the other facsimile advertisements did not display an opt-out notice.

45. Defendants violated the TCPA by transmitting the Fax to Plaintiff and substantially similar facsimile advertisements to the other Class members without obtaining their prior express permission or invitation and by not displaying the opt-out notice required by 47 C.F.R. § 64.1200(a)(4)(iii).

WHEREFORE, Plaintiff Suzanne Degnen, D.M.D., P.C. d/b/a Sunset Tower Family Dentistry, individually and on behalf of all others similarly situated, demands judgment in its favor and against Defendants Dentalfix RX LLC d/b/a Dental Fix RX and John Does 1-10, jointly and severally, jointly and severally, as follows:

- a. certify this action as a class action and appoint Plaintiff as Class representative;
- b. appoint the undersigned counsel as Class counsel;
- c. award damages of \$500 per facsimile pursuant to 47 U.S.C. § 227(a)(3)(B);
- d. award treble damages up to \$1,500 per facsimile pursuant to 47 U.S.C. § 227(a)(3);
- e. enjoin Defendants and their contractors, agents, and employees from continuing to send TCPA-violating facsimiles pursuant to 47 U.S.C. § 227(a)(3)(A);
- f. award class counsel reasonable attorneys' fees and all expenses of this action and require Defendants to pay the costs and expenses of class notice and claim administration;
- g. award Plaintiff an incentive award based upon its time expended on behalf of the Class and other relevant factors;
- h. award Plaintiff prejudgment interest and costs; and
- i. grant Plaintiff all other relief deemed just and proper.

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CERTIFICATE OF SERVICE

The above-signed certifies that this pleading was filed through the eFiling system on July 1, 2015.

EXHIBIT "B"

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

In the Matter of:)	
)	CG Docket No. 02-278
Petition of Dental Fix Rx LLC)	
for Retroactive Waiver of)	CG Docket No. 05-338
47 C.F.R. § 64.1200(a)(4)(iv))	
)	

**AFFIDAVIT OF DAVID LOPEZ IN SUPPORT OF
DENTAL FIX RX LLC'S PETITION FOR RETROACTIVE WAIVER**

STATE OF FLORIDA)
)
COUNTY OF BROWARD)

Before me, the undersigned authority, personally appeared DAVID LOPEZ, who, being duly sworn, deposes and says as follows:

1. I, David Lopez, am of sound mind, capable of making this Affidavit and am personally acquainted with the facts herein stated. I hereby declare under penalty of perjury, pursuant to 28 U.S.C. 1746, that the foregoing is true and correct.

2. I am the Chief Executive Officer of Petitioner Dental Fix Rx LLC.

3. Dental Fix Rx LLC and myself, David Lopez, as well as John Does 1-10, are listed as defendants in a putative class action filed by Suzanne Degnen, D.M.D., P.C. d/b/a Sunset Tower Family Dentistry.

4. Dental Fix Rx LLC was given express prior consent and permission by Suzanne Degnen, D.M.D., P.C. d/b/a Sunset Tower Family Dentistry in a telephone call to send it the fax at issue. Dental Fix Rx LLC keeps a call log and noted in the call log at the time the call was made that it received permission from Suzanne Degnen, D.M.D., P.C. to send the fax. Only after this express permission was received did Dental Fix Rx LLC send the subject fax to Suzanne

Degnen, D.M.D., P.C. on June 18, 2014.

5. It is Dental Fix Rx LLC's policy and practice to obtain a recipient's prior express consent and permission prior to sending a fax to the recipient. This has always been the policy and practice of Dental Fix Rx LLC with respect to sending faxes.

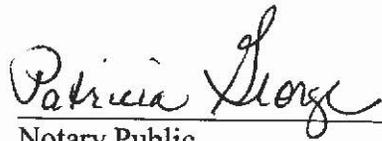
6. Dental Fix Rx LLC did not understand that it needed to comply with the opt-out notice requirement for solicited faxed advertisements.

Dated: September 11, 2015



DAVID LOPEZ
As CEO of Dental Fix Rx LLC

In witness whereof, I have hereunto subscribed my name and affixed my official seal this 11 day of September, 2015.



Notary Public

My Commission Expires:
December 8, 2018

