

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 0:18-cv-60412

BROWARD PSYCHOLOGY P.A.,
individually and on behalf of all
others similarly situated,

Plaintiff,

CLASS ACTION

JURY TRIAL DEMANDED

v.

JTH TAX, INC.
d/b/a LIBERTY TAX SERVICE,
a Delaware corporation,

Defendant.

CLASS ACTION COMPLAINT

Plaintiff Broward Psychology P.A. brings this class action against Defendant JTH Tax, Inc. d/b/a Liberty Tax Service, and alleges as follows upon personal knowledge as to itself and its own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by its counsel.

NATURE OF THE ACTION

1. This is a putative class action under the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”), arising from Liberty Tax’s knowing and willful transmission of fax advertisements without recipients’ consent.

2. Liberty Tax is a company that provides tax preparation services nationwide, including through its network of franchisees.

3. To boost its profits, Liberty Tax engages in unsolicited fax marketing, with no regard for the expense to recipients or recipients’ other rights.

4. This case arises from the transmission of fax advertisements to Plaintiff’s and

other's fax machines promoting Liberty Tax's tax preparation services.

5. Through this action, Plaintiff seeks injunctive relief to halt Liberty Tax's illegal conduct which has resulted in Plaintiff's and the Class's loss of money, loss of time, invasion of privacy, aggravation, intrusion on seclusion, loss of toner, loss of paper, and loss of use of their fax machines. Plaintiff also seeks statutory damages of between \$500 and \$1,500 per violation on behalf of itself and members of the Class, and any other available legal or equitable remedies.

JURISDICTION AND VENUE

6. Jurisdiction is proper under 28 U.S.C. § 1331 as Plaintiff alleges a violation of a federal statute for which there is federal question jurisdiction.

7. Venue is proper in the United States District Court for the Southern District of Florida pursuant to 28 U.S.C. §§ 1391(b) and (c) because Liberty Tax is deemed to reside in any judicial district in which it is subject to the court's personal jurisdiction, and because Liberty Tax provides and markets its services within this district thereby establishing sufficient contacts to subject it to personal jurisdiction. Further, Liberty Tax's tortious conduct against Plaintiff occurred within this district and, on information and belief, Liberty Tax has sent the same fax advertisement complained of by Plaintiff to others within this judicial district, subjecting Liberty Tax to jurisdiction here.

PARTIES

8. Plaintiff Broward Psychology P.A. is a Florida professional association with its principal place of business in Hollywood, Florida.

9. Defendant JTH Tax, Inc. d/b/a Liberty Tax Service is a Delaware corporation with its principal place of business located at 1716 Corporate Landing Parkway, Virginia Beach, VA 23454. Liberty Tax directs, markets, and provides its tax preparation services throughout the State of Florida.

THE TCPA

10. More than twenty five years ago, in response to countless complaints from American consumers and businesses about the cost, disruption, and nuisance imposed by unsolicited fax advertisements, Congress enacted the Telephone Consumer Protection Act, 47 U.S.C. § 227.

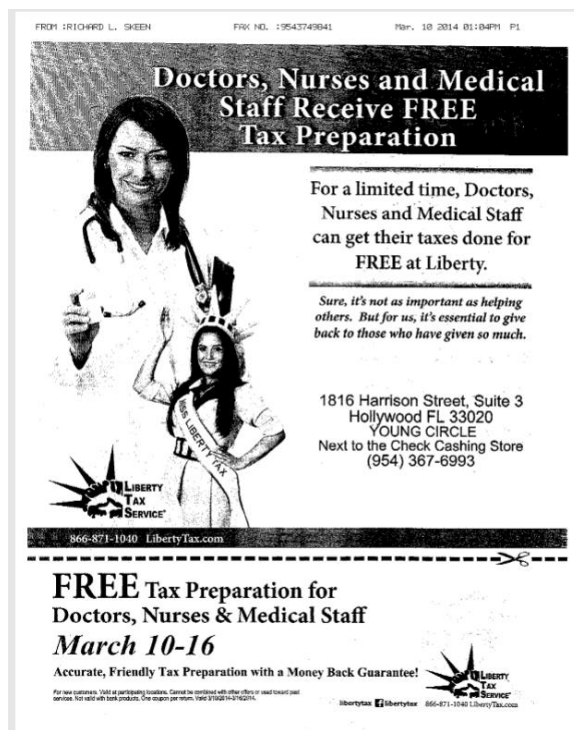
11. The TCPA prohibits any person or business from using a fax machine, computer, or other device to send an unsolicited advertisement to a fax machine. 47 U.S.C. § 227(b)(1)(C).

12. 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 with that person’s prior express invitation or permission, in writing or otherwise.”

13. The TCPA provides for statutory damages of no less between \$500 and \$1,500 per violative fax.

FACTS

14. On March 10, 2014, Liberty Tax, using a fax machine, computer, or other device, sent a fax to Plaintiff’s fax machine:



15. The fax constitutes an “unsolicited advertisement” because it advertises the

commercial availability of Liberty Tax's tax preparation services.

16. On information and belief, the fax was prepared by Liberty Tax as a means of advertising Liberty Tax's services nationwide. In fact, franchisees throughout the United States used the identical fax advertisement, which identified Liberty Tax's toll-free number and website, to advertise Liberty Tax's tax preparation services. This is to be expected, because as the 2017 Form 10-K for the company that owns Liberty Tax explains, one of the key aspects of Liberty Tax's franchisee support is "the marketing plan" and "marketing and advertising programs" it provides its franchisees. Therefore, Liberty Tax is either directly or vicariously liable for transmission of the unsolicited Liberty Tax fax advertisement.

17. Plaintiff is the owner of the fax machine at which Liberty Tax's unsolicited fax advertisement was received.

18. Liberty Tax's fax advertisement caused Plaintiff actual harm, including the monetary costs associated with receiving faxes, invasion of privacy, aggravation, annoyance, intrusion on seclusion, trespass, and conversion. Liberty Tax's fax advertisement also inconvenienced Plaintiff, and wasted its time.

CLASS ALLEGATIONS

PROPOSED CLASS

19. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23, on behalf of itself and a Class of all others similarly situated defined as follows:

All persons and businesses within the United States who, within the four years prior to the filing of this Complaint, were sent an unsolicited advertisement to their fax machine by Liberty Tax, or anyone on Liberty Tax's behalf.

20. Liberty Tax and its employees or agents are excluded from the Class. Plaintiff does not know the number of members in the Class, but believes the Class members number in the several

thousands, if not more.

NUMEROSITY

21. Upon information and belief, Liberty Tax faxed advertisements to fax machines belonging to thousands of businesses and consumers throughout the United States without their prior express invitation or permission. The members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

22. The exact number and identities of the Class members are unknown at this time and can be ascertained only through discovery. Identification of the Class members is a matter capable of ministerial determination from Liberty Tax's fax records.

COMMON QUESTIONS OF LAW AND FACT

23. There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual members of the Class. Among the questions of law and fact common to the Class are:

- a. Whether Liberty Tax sent fax advertisements to Plaintiff's and Class members' fax machines;
- b. Whether Liberty Tax can meet its burden of showing that it obtained prior express invitation or permission to send fax advertisements;
- c. Whether Liberty Tax's conduct was knowing and willful;
- d. Whether Liberty Tax is liable for damages, and the amount of such damages; and
- e. Whether Liberty Tax should be enjoined from such conduct in the future.

24. The common questions in this case are capable of having common answers. If Plaintiff's claim that Liberty Tax faxed advertisements without the recipients' prior express invitation or permission is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

TYPICALITY

25. Plaintiff's claims are typical of the claims of the Class members, as they are all based on the same factual and legal theories.

PROTECTING THE INTERESTS OF THE CLASS MEMBERS

26. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class, and has retained competent counsel.

PROCEEDING VIA CLASS ACTION IS SUPERIOR AND ADVISABLE

27. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are in the millions of dollars, the individual damages incurred by each member of the Class resulting from Liberty Tax's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Additionally, the prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Liberty Tax.

COUNT I

Violation of the TCPA, 47 U.S.C. § 227(b)(1)(C)

28. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set forth herein.

29. It is a violation of the TCPA to use a fax machine, computer, or other device to send an unsolicited advertisement to a fax machine.

30. Liberty Tax – or third parties directed by Liberty Tax – used a fax machine, computer, or other device to send unsolicited fax advertisements to Plaintiff and other members of the Class.

31. These faxes were sent without regard to whether Liberty Tax had first obtained express invitation or permission from the recipients to send such faxes. In fact, Liberty Tax did not have prior express invitation or permission from Plaintiff or other members of the putative Class when its faxes were transmitted.

32. Liberty Tax has, therefore, violated § 227(b)(1)(C) of the TCPA. In fact, Liberty Tax knew or should have known that its conduct as alleged herein violated the TCPA, because Liberty Tax knew that it did not have prior express invitation or permission to send fax advertisements to Plaintiff and the Class.

33. As a result of Liberty Tax's conduct and pursuant to § 227(b)(3) of the TCPA, Plaintiff and the other members of the putative Class were harmed and are each entitled to a minimum of \$500 in damages, and up to \$1,500 in damages, for each violation. Plaintiff and the class are also entitled to an injunction against future fax advertisements.

WHEREFORE, Plaintiff Broward Psychology P.A., on behalf of itself and the other members of the Class, prays for the following relief:

- a. A declaration that Liberty Tax's practices described herein violate the Telephone Consumer Protection Act, 47 U.S.C. § 227;
- b. A declaration that Liberty Tax's violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, were willful and knowing;
- c. An injunction prohibiting Liberty Tax from transmitting fax advertisements without the prior express invitation or permission of the recipient;

- d. An award of statutory damages or trebled statutory damages; and
- e. Such further and other relief the Court deems reasonable and just.

JURY DEMAND

Plaintiff and Class members hereby demand a trial by jury.

DOCUMENT PRESERVATION DEMAND

Plaintiff demands that Liberty Tax take affirmative steps to preserve all records, lists, electronic databases or other itemization of telephone numbers associated with the communication or transmittal of the fax advertisements as alleged herein, including but not limited to those maintained by any franchisees or other companies that transmitted the fax advertisements on Liberty Tax's behalf.

Dated: February 26, 2018

Respectfully submitted,

/s/ Avi R. Kaufman

Avi R. Kaufman (Florida Bar No. 84382)

KAUFMAN P.A.

400 NW 26TH Street

Miami, Florida 33127

Tel: (305) 469-5881

Email: kaufman@kaufmanpa.com

Counsel for Plaintiff Broward Psychology P.A.

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 BROWARD PSYCHOLOGY P.A., individually and on behalf of all others similarly situated DEFENDANTS JTH TAX, INC. d/b/a LIBERTY TAX SERVICE

(b) County of Residence of First Listed Plaintiff BROWARD (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant VIRGINIA BEACH (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) Avi R. Kaufman, Kaufman P.A., (305) 469-5881 400 NW 26th Street, Miami, FL 33127 Attorneys (If Known)

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

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

Form with checkboxes for jurisdiction and citizenship options. Includes categories like U.S. Government Plaintiff/Defendant, Federal Question, Diversity, Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, and Incorporated or Principal Place of Business.

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

Large grid of checkboxes for nature of suit categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PERSONAL INJURY, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, LABOR, 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 Re-filed (See VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation Transfer 7 Appeal to District Judge from Magistrate Judgment 8 Multidistrict Litigation - Direct File 9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case [] YES [x] NO b) Related Cases [] YES [x] NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION 47 USC 227 - violation of the Telephone Consumer Protection Act 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): LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: [x] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: [x] Yes [] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE February 26, 2018 SIGNATURE OF ATTORNEY OF RECORD

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida



BROWARD PSYCHOLOGY P.A.,
individually and on behalf of all
others similarly situated,

Plaintiff(s)

v.

JTH TAX, INC.
d/b/a LIBERTY TAX SERVICE,
a Delaware corporation,

Defendant(s)

Civil Action No. 0:18-cv-60412

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) JTH TAX, INC. d/b/a LIBERTY TAX SERVICE
C/O CORPORATE CREATIONS NETWORK INC.
11380 PROSPERITY FARMS ROAD #221E
PALM BEACH GARDENS, FL 33410

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:

Avi R. Kaufman (Florida Bar No. 84382)
KAUFMAN P.A.
400 NW 26TH Street
Miami, Florida 33127
Tel: (305) 469-5881
Email: kaufman@kaufmanpa.com

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

Civil Action No. 0:18-cv-60412

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Liberty Tax Service Hit with TCPA Suit Over Allegedly Unwanted Fax Advertisements](#)
