

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY

NASHVILLE PHARMACY SERVICES,
LLC, individually and on behalf of all others
similarly situated,

Plaintiff,

v.

EMPIRE PHARMACY CONSULTANTS
L.L.C. and JOHN DOES 1-10,

Defendants.

Case No. 5:18-cv-50-GNS

CLASS ACTION

COMPLAINT

Plaintiff, Nashville Pharmacy Services, LLC, individually and on behalf of the class defined below, alleges the following against Defendants, Empire Pharmacy Consultants L.L.C. (“Empire”) and John Does 1-10:

INTRODUCTION

1. This lawsuit challenges Empire’s practice of sending unsolicited facsimiles.
2. The Telephone Consumer Protection Act of 1991 (the “TCPA”), as amended by the Junk Fax Prevention Act of 2005 (the “JFPA”), codified at 47 U.S.C. § 227, and the regulations promulgated thereunder, prohibit a person or entity from faxing advertisements, 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 for injunctive relief and statutory damages of \$500 per violation.
3. On information and belief, Empire has sent facsimile transmissions of unsolicited advertisements to Plaintiff and the class in violation of the JFPA, including but not limited to an

unsolicited fax advertisement sent to Plaintiff on or about March 8, 2018, a true and correct copy of which is attached hereto as Exhibit A. The fax in Exhibit A describes the commercial availability or quality of Empire's products, goods, and services. On information and belief, Empire has sent, and continues to send, unsolicited advertisements via facsimile transmission in violation of the JFPA, including but not limited to the fax advertisement sent to Plaintiff.

4. Unsolicited faxes damage the recipients. A junk fax recipient loses the use of its fax machine, paper, and ink or 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.

5. On behalf of itself and all others similarly situated, Plaintiff brings this case as a class action asserting claims against Empire under the JFPA. Plaintiff seeks to certify a class including faxes sent to Plaintiff and other advertisements sent without prior express invitation or permission, whether sent to Plaintiff or not.

6. This action seeks relief expressly authorized by the JFPA: (i) injunctive relief enjoining Empire, its 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 47 U.S.C. § 227(b)(3).

PARTIES

7. Plaintiff, Nashville Pharmacy Services, LLC, is a Tennessee limited liability company that is authorized to transact business in Kentucky. Plaintiff owns and operates a pharmacy in Paducah, Kentucky, where it maintains telephone facsimile equipment.

8. Defendant Empire Pharmacy Consultants L.L.C. is a Florida limited liability company with its principal place of business at 8323 NW 12th Street, Suite 108, Doral, Florida 33126. Empire's registered agent is Adam Rabinowitz, 1 Financial Plaza, Suite 2700, Ft. Lauderdale, Florida 33394.

9. John Does 1-10 are persons or entities who were involved in sending faxes to Plaintiff and the class members. John Does 1-10 will be identified through discovery but are not presently known to Plaintiff.

JURISDICTION AND VENUE

10. This Court has jurisdiction under 28 U.S.C. § 1331.

11. This Court has personal jurisdiction over Empire because Empire transacts business in this judicial district, has solicited business in this judicial district, has made contacts within this judicial district, and/or has committed tortious acts within this judicial district.

12. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2).

FACTS

13. On March 8, 2018, Empire transmitted by telephone facsimile machine an unsolicited facsimile to Plaintiff. A copy of the facsimile is attached hereto as Exhibit A.

14. Plaintiff's telephone facsimile equipment printed the fax when it was received, causing Plaintiff to lose paper and ink or toner.

15. On information and belief, Empire receives some or all of the revenues from the sale of the products, goods, and services advertised on the facsimile, and Empire profits and benefits from the sale of the products, goods, and services.

16. Plaintiff did not give prior express invitation or permission to Empire to send the facsimile.

17. The facsimile does not display a proper opt-out notice as required by 47 U.S.C. § 227 and 47 C.F.R. § 64.1200.

18. On information and belief, Empire faxed the same and other unsolicited facsimiles without proper opt-out language to Plaintiff and at least 40 other recipients or sent the same and other advertisements by fax with the required opt-out language but without first receiving the recipients' express invitation or permission or without having an established business relationship as defined by the TCPA and its regulations.

19. 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.

CLASS ACTION ALLEGATIONS

20. In accordance with Fed. 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 or quality of any property, goods, or services by or on behalf of Empire, and (3) from whom Empire did not obtain "prior express invitation or permission" to send fax advertisements, or (4) with whom Empire did not have an established business relationship, or (5) where the fax advertisements did not include an opt-out notice compliant with 47 C.F.R. § 64.1200(a)(4)(iii).

Excluded from the class are Empire, its employees, agents, and members of the Judiciary.

Plaintiff seeks to certify a class which include, but are not limited to, the fax advertisement sent to Plaintiff. Plaintiff reserves the right to amend the class definition upon completion of class certification discovery.

21. Numerosity – Fed. R. Civ. P. 23(a)(1). On information and belief, the number of persons and entities of the class is numerous and joinder of all members is impracticable. On information and belief, the number of class members is at least 40.

22. Commonality – Fed. 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 Empire sent unsolicited fax advertisements;
- (b) Whether Empire's faxes sent to other persons, not the Plaintiff, constitute advertisements;
- (c) Whether Empire's faxes advertised the commercial availability or quality of property, goods, or services;
- (d) The manner and method Empire used to compile or obtain the list of fax numbers to which they sent Exhibit A, other unsolicited faxed advertisements, or other advertisements without the required opt-out language;
- (e) Whether Empire faxed advertisements without first obtaining the recipient's prior invitation or permission;
- (f) Whether Empire sent the faxed advertisements knowingly;
- (g) Whether Empire violated the provisions of 47 U.S.C. § 227 and the regulations promulgated thereunder;

(h) Whether the faxes contain an opt-out notice that complies with the requirements of 47 U.S.C. § 227(b)(1)(C)(iii), and the regulations promulgated thereunder, and the effect of the failure to comply with such requirements;

(i) Whether Empire should be enjoined from faxing advertisements in the future;

(j) Whether Plaintiff and the other members of the class are entitled to statutory damages; and

(k) Whether the Court should award treble damages.

23. Typicality – Fed. R. Civ. P. 23(a)(3). Plaintiff's claims are typical of the claims of all class members. Plaintiff received the same or similar faxes as the faxes sent by or on behalf of Empire advertising products, goods, and services of Empire during the class period. Plaintiff is making the same claims and seeking the same relief for itself and all class members based upon the same federal statute. Empire has acted in 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 or similar faxes or faxes which did not contain the proper opt-out language or were sent without prior express invitation or permission.

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

25. Need for Consistent Standards and Practical Effect of Adjudication – Fed. 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 Empire, 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.

26. Common Conduct – Fed. R. Civ. P. 23(b)(2). Class certification is also appropriate because Empire has acted in the same or similar manner with respect to all class members thereby making injunctive and declaratory relief appropriate. Plaintiff demands such relief as authorized by 47 U.S.C. § 227.

27. Predominance and Superiority – Fed. 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 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 Empire may assert and attempt to prove will come from Empire's records and will not require individualized or separate inquiries or proceedings;

(c) Empire has acted and is 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 proceeding based upon common proofs; and

(e) This case is inherently manageable as a class action in that:

(i) Empire identified persons to receive the fax transmissions and it is believed that Empire and/or Empire's agents' computers 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 Plaintiff and the class with the same common proof;

(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 will foster economics of time, effort, and expense;

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

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

CLAIM FOR RELIEF
VIOLATION OF THE JUNK FAX PREVENTION ACT
47 U.S.C. § 227, *et seq.*

28. Plaintiff repeats and realleges each and every allegation in the preceding paragraphs of this Complaint as though fully set forth herein.

29. The JFPA makes it 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).

30. 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).

31. The JFPA requires that the senders of fax advertisements place an opt-out notice on the facsimile transmissions. The opt-out notice, among other things, must be clear and conspicuous on the first page of the transmission, must state that the recipient is entitled to opt out of receiving future fax advertisements, and must state that the sender must honor a recipient's opt-out notice request within 30 days and that the sender's failure to do so is unlawful.

31. Empire sent the fax advertisement to Plaintiff on or about March 8, 2018, via facsimile transmission from telephone facsimile machines, computers, or other devices to the telephone line and facsimile machine of Plaintiff. The fax sent to Plaintiff constituted an advertisement under the JFPA. Empire failed to comply with the JFPA's opt-out requirements in connection with the fax. The fax sent to Plaintiff was transmitted without Plaintiff's prior express invitation or permission. Alternatively, Empire is precluded from asserting any prior express invitation or permission and is precluded from asserting it had an established business relationship with Plaintiff because of its failure to comply with the JFPA's opt-out requirements. Empire thus violated the JFPA and its regulations by sending the fax advertisement via facsimile transmission to Plaintiff. Plaintiff seeks to certify a class that includes the recipients of the fax and all other faxes sent during the four years prior to the filing of this case through the present.

32. On information and belief, during the period preceding four years of the filing of this Complaint and repeatedly thereafter, Empire has sent via facsimile transmissions from telephone facsimile machines, computers, or other devices to the telephone facsimile machines of the class members other faxes that constitute advertisements under the JFPA that were transmitted without the class members' prior express invitation or permission. Alternatively, Empire is precluded from asserting any prior express invitation or permission and is precluded from asserting it had an established business relationship with the class members because of its

failure to comply with the JFPA's opt-out requirements in connection with such transmissions. Empire thus violated the JFPA and the regulations promulgated thereunder. On information and belief, Empire may be continuing to send unsolicited advertisements via facsimile transmissions in violation of the JFPA and the regulations promulgated thereunder, and, absent intervention by this Court, Empire will continue to 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 class to redress Empire's 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 Empire is liable to Plaintiff and the other class members even if their actions were only negligent.

35. Empire knew or should have known that (a) Plaintiff and the other class members had not given prior express invitation or permission for Empire or any other person to fax advertisements about Empire's products, goods, or services; (b) Plaintiff and the other class members did not have an established business relationship with Empire; (c) Empire transmitted the fax advertisements; (d) the faxes did not contain a proper opt-out notice; and (e) Empire's transmission of fax advertisements that did not contain a proper opt-out notice or that were sent without prior express invitation or permission was unlawful.

36. Empire's actions caused damages to the Plaintiff and the other class members. Receiving Empire's junk faxes caused Plaintiff and the other recipients to lose paper and toner and/or ink consumed in the printing of Empire's faxes. Moreover, Empire's faxes used the Plaintiff's and the other class members' telephone lines and fax machine. Empire's faxes cost Plaintiff and the other class members time, as the Plaintiff and the other class members and their employees wasted their time receiving, reviewing, and routing Empire's unauthorized faxes.

That time otherwise would have been spent on the Plaintiff's and the other class members' business activities. Empire's faxes unlawfully interrupted the Plaintiff's and other class members' privacy interests in being left alone.

WHEREFORE, Plaintiff and the class members pray:

A. That the Court determine this action may be maintained as a class action under Federal Rule of Civil Procedure 23, certify the class defined herein, appoint Plaintiff as the representative of the class, and appoint Plaintiff's counsel as counsel for the class;

B. That the Court enter judgment in favor of Plaintiff and the class members and against Defendants, jointly and severally, for actual monetary losses sustained or the sum of \$500 for each violation of the JFPA, whichever is greater, and that the Court award treble damages of \$1,500 if the violations are found to be "willful and knowing";

C. That the Court grant Plaintiff and the class members equitable relief enjoining Empire and its agents from additional violations of the JFPA; and

D. That the Court award Plaintiff and the class members pre-judgment interest, costs of this suit, and such further relief as the Court may deem just and proper.

Dated: April 3, 2018

Respectfully submitted,

/s/ Kendra Samson

Kendra Samson (#87008)

Charles Barrett (*pro hac vice to be submitted*)

Benjamin C. Aaron (*pro hac vice to be submitted*)

Neal & Harwell, PLC

1201 Demonbreun Street

Suite 1000

Nashville, TN 37203

(615) 244-1713

ksamson@nealharwell.com

cbarrett@nealharwell.com

baaron@nealharwell.com

EMPIRE PHARMACY CONSULTANTS

“ A PHARMACY STAFFING AND CONSULTING FIRM “



Who We Are

Empire Pharmacy Consultants is the most innovating Pharmacy Staffing and Consulting Firm in the industry. Providing service to all 50 states plus Washington D.C. and Puerto Rico. Let us show you the benefits of working with a service driven company that strongly believes there is no limit when it comes to quality of service.



Email: info@epcepc.com
Phone: (855) 374-1029
Fax: (855) 357-3557

Owned & Operated by a Pharmacist,

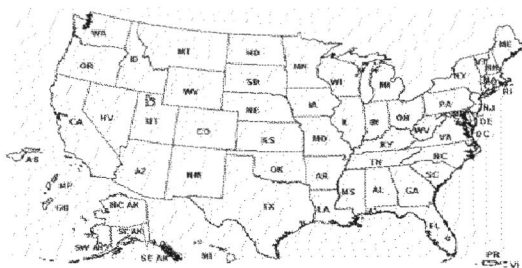
Dr. Michael Chen, Pharm D, CPH
President/CEO

Out of State Licensing

Are you thinking about expanding your business to other states? Your first step is to get licensed in the state where you want to start providing service.

Empire Pharmacy Consultants can help. We have years of experience in preparing out-of-state applications and have designed and perfected a method to expedite the process.

Non-Resident Applications: We can provide you with a full consult to prepare and file your non-residential applications in their entirety or just assist you with completing the applications. Regardless of which you choose, our service does not stop once your application has been sent to the Board of Pharmacy. We follow your application throughout the entire process from when it leaves our office until your license is approved. We are the experts with licensing and our consulting team has assisted many pharmacies across the country with getting licensed in other states.



Join us at EPC, and let us remove all your staffing concerns.

We provide:

- Retail, Compounding and Infusion Technicians
- Specialty, Compounding, Nuclear, Retail and
- Temporary Staffing & Permanent Placement
- High Quality Pharmacists and Technicians
- Vacation and Holiday Coverage
- Consulting Pharmacists
- Short Notice Coverage
- Emergency Coverage
- PIC Services

Pharmacy Consulting

- Assistance with ALL pharmacy applications
- Design new or re-design your pharmacy
- DOH/BOP Inspection Preparation
- Medicaid Inspection Preparation
- Open a Compounding Pharmacy
- Open a Retail Pharmacy
- Insurance Preparations
- Buy/Sell a Pharmacy
- Policy & Procedures



NPS PHARMACY
Page 1 of 1 03/08/2018 1:43 PM
Fax: (270) 933-1963

RECEIVED 03/08/2018 03:42PM 2709331963
From: Empire Pharmacy Co Fax: (855) 695-1454
To:

JS 44 (Rev. 06/17)

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

NASHVILLE PHARMACY SERVICES, LLC, individually and on behalf of all others similarly situated,

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

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

Kendra Samson, Neal & Harwell, PLC, 1201 Demonbreun Street, Suite 1000, Nashville, TN 37203 (615) 244-1713

DEFENDANTS

EMPIRE PHARMACY CONSULTANTS LLC AND JOHN DOES 1-10

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
- 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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

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 (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
47 U.S.C. § 227

Brief description of cause:
Violation of the Telephone Consumer Protection Act

VII. 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

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE SIGNATURE OF ATTORNEY OF RECORD

04/03/2018 /Kendra Samson

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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. 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.
- VIII. 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.

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

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

UNITED STATES DISTRICT COURT

for the

NASHVILLE PHARMACY SERVICES, LLC,
individually and on behalf of all others similarly
situated,

Plaintiff(s)

v.

EMPIRE PHARMACY CONSULTANTS LLC AND
JOHN DOES 1-10

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Empire Pharmacy Consultants LLC
c/o Registered Agent
Adam Rabinowitz
1 Financial Plaza, Suite 2700
Ft. Lauderdale, FL 33394

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:

Kendra Samson
Neal & Harwell, PLC,
1201 Demonbreun Street, Suite 1000
Nashville, TN 37203

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

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Civil Action No. _____

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: [Class Action Claims Empire Pharmacy Consultants Sent Junk Fax Without Required Opt-Out Notice](#)
