

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ROBERT CARR INSURANCE AGENCY, INC.,)
individually and on behalf of all those similarly)
situated,)

Plaintiff,)

v.)

CAREER ADVANTAGE OF MAHONING)
VALLEY, INC., CAREER ADVANTAGE, INC.)
OF LAWRENCE COUNTY, CAREER)
ADVANTAGE, INC. OF MERCER COUNTY,)
KIMBERLY ANGELO-GABRIEL, and JOHN)
DOES 1-12)

Defendants.)

Case No.

COMPLAINT-CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Robert Carr Insurance Agency, Inc. (“Plaintiff”), brings this action on behalf of itself and all others similarly situated, through its 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 Career Advantage of Mahoning Valley, Inc., Career Advantage Inc. of Lawrence County, Career Advantage Inc. of Mercer County (collectively, “Career Advantage”), Kimberly Angelo-Gabriel (“Angelo-Gabriel”), and John Does 1-12 (collectively “Defendants”):

PRELIMINARY STATEMENT

1. This case challenges Defendants’ practice of faxing unsolicited advertisements.
2. Defendants sent advertisements in an attempt to market an employment agency.
3. The federal Telephone Consumer Protection Act, 47 USC § 227 (the “TCPA”), prohibits a person or entity from faxing or having an agent fax advertisements without the

recipient's prior express invitation or permission (such fax advertisements are commonly known as "junk faxes," "nuisance faxes," or "unsolicited faxes").

4. Even where a fax advertisement is sent with prior express invitation or permission, the TCPA mandates that it must include an opt-out notice with very specific requirements that is clearly and conspicuously displayed on the first page of the advertisement. *See* 47 U.S.C. § 227 (b) (2) (D); and 47 C.F.R. § 64.1200 (a) (4) (iii).

5. The TCPA provides a private right of action and statutory damages of \$500 per violation. If the advertisements were sent knowingly or willfully, then the damages may be trebled to \$1,500 per violation.

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

7. On behalf of itself and all others similarly situated, Plaintiff brings this case as a class action asserting claims against Defendants under the TCPA, and the common law of conversion.

8. Plaintiff seeks an award of statutory damages for each violation of the TCPA.

PARTIES, JURISDICTION AND VENUE

9. Plaintiff Robert Carr Insurance Agency, Inc. is an Ohio professional corporation with its principal place of business in Warren, Trumbull County, Ohio.

10. Defendant Career Advantage of Mahoning Valley, Inc. is an Ohio corporation, with its principal place of business in Youngstown, Mahoning County, Ohio.

11. Defendant Career Advantage Inc. of Lawrence County is a Pennsylvania corporation, with its principal place of business in New Castle, Lawrence County, Pennsylvania.

12. Defendant Career Advantage Inc. of Mercer County is a Pennsylvania corporation, with its principle place of business in Hermitage, Mercer County, Pennsylvania.

13. On information and belief, Defendant Kimberly Angelo-Gabriel is a resident of Lawrence County, Pennsylvania.

14. Plaintiff included John Does 1-12 as Defendants as it is not clear whether any entities or persons other than Career Advantage or Angelo-Gabriel actively participated in the transmission of the subject fax advertisement, or benefitted from the transmissions.

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

16. Personal jurisdiction exists in Pennsylvania because Defendants have transacted business and committed tortious acts within the State.

17. Venue is proper in the Western District of Pennsylvania because Defendants regularly conduct business in the Western District of Pennsylvania, committed a statutory tort within this district and a significant portion of the events out of which the cause of action arose took place there.

FACTS

18. On or about June 5, 2018 an unsolicited fax advertisement was sent to Plaintiff. Exhibit A, copy of the subject fax advertisement. The fax advertisement attached as Exhibit A was sent, or caused to be sent, by Defendants.

19. The subject faxes advertises the goods, products or services of Defendants. It is a two-page fax that markets Defendants' employment services by providing information about those services and contact information for Defendants. Defendants sent, or caused this unsolicited fax advertisement to be sent, to Plaintiff and a class of similarly-situated persons.

20. Plaintiff did not invite or give permission to anyone to send Exhibit A to it.

21. The fax attached as Exhibit A does not contain an opt-out notice that complies with federal requirements.

22. On information and belief, Defendants sent the same fax to Plaintiff and more than 39 other recipients without first receiving the recipients' express permission or invitation. This allegation is based, in part, on the fact that Plaintiff never gave permission to anyone to send the subject fax advertisement to it, that Plaintiff never conducted any business with Defendants, and that sending advertisements by fax is a very cheap way to reach a wide audience.

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

CLASS ACTION ALLEGATIONS

24. Plaintiff brings this action as a class action on behalf of itself and all others similarly situated as members of the class, initially defined as follows:

All persons who were sent one or more telephone facsimile messages on or after the date four years prior to the filing of this action, that advertised the commercial availability of property, goods, or services offered by "Career Advantage, Inc." and/or Kimberly Angelo-Gabriel, that did not contain a clear and conspicuous opt-out notice that complied with federal law.

(the "Class").

25. Excluded from the Class are Defendants, any entity in which Defendants have a controlling interest, any officers or directors of Defendants, the legal representatives, heirs, successors, and assigns of Defendants, and any Judge assigned to this action, and his or her family.

26. This action is brought and may properly be maintained as a class action pursuant to Fed. R. Civ. P. 23. This action satisfies the numerosity, commonality, typicality, adequacy requirements under Rule 23(a). Additionally, prosecution of Plaintiff's claims separately from the putative class's claims would create a risk of inconsistent or varying adjudications under Rule 23(b)(1)(A). Furthermore, the questions of law or fact that are common in this action predominate over any individual questions of law or fact making class representation the superior method to adjudicate this controversy under Rule 23(b)(3).

27. **Numerosity/Impracticality of Joinder:** On information and belief, the Class consists of more than thirty-nine people and, thus, is so numerous that joinder of all members is impracticable. The precise number of Class members and their addresses are unknown to Plaintiff, but can be obtained from Defendants' records or the records of third parties.

28. **Commonality and Predominance:** There is a well-defined community of interest and common questions of law and fact that predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from one Class member to another, and which may be determined without reference to the individual circumstances of any Class member, include, but are not limited to the following:

- a. Whether Defendants sent fax advertisements;
- b. Whether the fax contained in Exhibit A advertised the commercial availability of property, goods or services;

c. The manner and method Defendants used to compile or obtain the lists of fax numbers to which they sent the faxes shown in Exhibit A and other unsolicited fax advertisements;

d. Whether Defendants faxed advertisements without first obtaining the recipients' express permission or invitation;

e. Whether Defendants' opt-out notice violated the TCPA;

f. Whether each Defendant is, respectively, directly or vicariously liable for violating the TCPA;

g. Whether Plaintiff and the other Class members are entitled to statutory damages;

h. Whether Defendants should be enjoined from faxing advertisements in the future;

i. Whether the Court should award trebled damages;

j. Whether Defendants' conduct as alleged herein constituted conversion;

29. **Typicality of claims:** Plaintiff's claims are typical of the claims of the Class because Plaintiff and all Class members were injured by the same wrongful practices. Plaintiff and the members of the Class are all individuals who received unsolicited fax advertisements from Defendants that also did not contain an opt-out notice pursuant to the TCPA. Under the facts of this case, because the focus is upon Defendants' conduct, if Plaintiff prevails on its claims, then the putative Class members must necessarily prevail as well.

30. **Adequacy of Representation:** Plaintiff is an adequate representative of the Class because its interests do not conflict with the interest of the members of the Class it seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action

litigation and Plaintiff intends to vigorously prosecute this action. The interest of members of the Class will be fairly and adequately protected by Plaintiff and its counsel.

31. **Prosecution of Separate Claims Could Yield Inconsistent Results:** Separate adjudication of each Class member's claims could potentially yield inconsistent and varying adjudications. Such inconsistent rulings would create incompatible standards for Defendants to operate under if/when Class members bring additional lawsuits concerning the same unsolicited fax advertisements or if Defendants choose to advertise by fax again in the future.

32. **A Class Action is the Superior Method to Adjudicate the Common Questions of Law and Fact that Predominate:** A class action is superior to other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class members is economically unfeasible and procedurally impracticable. The likelihood of individual Class members prosecuting separate claims is remote, and even if every Class member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. Relief concerning Plaintiff's rights under the laws herein alleged and with respect to the Class would be proper. Plaintiff envisions no difficulty in the management of this action as a class action.

COUNT I
TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227

33. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

34. Plaintiff brings Count I on behalf of itself and a class of similarly situated persons.

35. 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).

36. 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).

37. The TCPA provides:

3. 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.

38. In relevant part, the TCPA states that “[t]he [Federal Communications] Commission shall prescribe regulations to implement the requirements of this subsection . . . in implementing the requirements of this subsection, the Commission shall provide that a notice contained in an unsolicited advertisement complies with the requirements under this subparagraph only if . . . (i) the notice is clear and conspicuous . . .” 47 U.S.C. § 227 (b) (2) (D) (i).

39. Additionally, “a notice contained in an unsolicited advertisement complies with the requirements under this subparagraph only if . . . (ii) the notice states that the recipient may make a request to the sender of the unsolicited advertisement not to send any future unsolicited advertisements to a telephone facsimile machine or machines and that failure to comply, within the shortest reasonable time, as determined by the Commission, with such a request meeting the requirements under subparagraph (E) is unlawful . . .” 47 U.S.C. § 227 (b) (2) (D) (ii). The shortest reasonable time has been determined to be thirty (30) days. 47 C.F.R. § 64.1200 (a) (4) (iii) (B).

40. The opt-out notice must also include “a domestic contact telephone and facsimile number for the recipient to transmit such a request to the sender” as well as a “cost-free mechanism for a recipient to transmit a request pursuant to such notice . . .” 47 U.S.C. § 227 (b) (2) (D) (iv).

41. Moreover, “a notice contained in an unsolicited advertisement complies with the requirements under this subparagraph only if . . . (v) the telephone and facsimile machine numbers and the cost-free mechanism . . . permit an individual or business to make such a request at any time on any day of the week.” 47 U.S.C. § 227 (b) (2) (D) (v).

42. The Court, in its discretion, can treble the statutory damages if the violation was knowing. 47 U.S.C. § 227.

43. Defendants violated 47 U.S.C. § 227 *et seq.* by sending advertisements by fax (such as Exhibit A) to Plaintiff and the other Class members without first obtaining their prior express invitation or permission.

44. Defendants violated 47 U.S.C. § 227 *et seq.* by not providing a clear and conspicuous opt-out notice. The notice that Defendants did include was at the very bottom of the page and buried under Defendants’ own contact information. Exhibit A. Additionally, it is not clear whether Defendants provided a toll-free telephone number that allowed Plaintiff and the Class members to make an opt-out request at any time on any day of the week.

45. Defendants violated 47 U.S.C. § 227 *et seq.* by not including in the opt-out notice that Defendants were to comply with any opt-out request within 30 days, or their conduct would be considered unlawful. Furthermore, Defendants violated 47 U.S.C. § 227 *et seq.* by not including a domestic facsimile number for the recipients to make an opt-out request. Exhibit A.

46. Facsimile advertising imposes burdens on unwilling recipients that are distinct from the burden imposed by other types of advertising. The content of the required opt-out notice is

designed to ensure that the recipients have the necessary contact information to opt-out of future fax transmissions. If senders do not clearly and conspicuously provide the opt-out content to the recipients, then the senders fail to enable the recipients with the appropriate information to stop the burden imposed by this form of advertisement.

47. The TCPA is a strict liability statute and Defendants are liable to Plaintiff and the other Class members even if their actions were negligent.

48. Moreover, Defendants are liable to Plaintiff and the other Class members under the TCPA for not including a compliant opt-out notice even if Defendants ultimately prove that they obtained prior express permission to send the advertisements by fax or prove that Defendants had an established business relationship with Plaintiff and the other Class members.

49. Each Defendant is liable because, respectively, it sent the faxes, caused the faxes to be sent, participated in the activity giving rise to and/or constituting the violation, the faxes were sent on its behalf, and/or under general principles of vicarious liability applicable under the TCPA, including actual authority, apparent authority and ratification.

50. Defendants knew or should have known that Plaintiff and the other Class members had not given express invitation or permission for Defendants or anybody else to fax advertisements about Defendants' goods, products, or services, that Plaintiff and the other Class members did not have an established business relationship with Defendants, that the fax contained in Exhibit A is an advertisement, and that Exhibit A did not display an opt-out notice as required by the TCPA.

51. Defendants' actions caused damages to Plaintiff and the other Class members. The subject faxes used and tied up Plaintiff's and the Class's fax machines. The subject faxes cost Plaintiff time, as Plaintiff and/or its employees wasted time receiving, reviewing and routing

Defendants' illegal faxes. That time otherwise would have been spent on Plaintiff's business activities. Defendants' faxes unlawfully interrupted Plaintiff's and the other class members' privacy interests in being left alone. Moreover, for recipients like Plaintiff whose fax machines automatically print a paper fax, receiving Defendants' junk faxes caused the recipients to lose paper and toner consumed in the printing of Defendants' faxes. Finally, the injury and property damage sustained by Plaintiff and the other Class members from the sending of Exhibit A occurred outside Defendants' premises.

52. Even if Defendants did not intend to cause damage to Plaintiff and the other Class members, did not intend to violate their privacy, and did not intend to waste the recipients' valuable time with Defendants' advertisements, those facts are irrelevant because the TCPA is a strict liability statute.

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, demands judgment in its favor and against Defendants, 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 Plaintiff as the representative of the class, and appoint Plaintiff's counsel as counsel for the class;

B. That the Court award \$500.00-\$1,500.00 in damages for each violation of the TCPA;

C. That the Court enter an injunction prohibiting Defendants from engaging in the statutory violations at issue in this action; and

D. That the Court award costs and such further relief as the Court may deem just and proper.

COUNT II
CONVERSION

53. Plaintiff incorporates the prior paragraphs as though fully set forth herein.

54. Plaintiff brings Count II on behalf of itself and a class of similarly situated persons.

55. By sending Plaintiff and the other Class members unsolicited faxes, Defendants improperly and unlawfully converted their fax machines, toner and paper to its own use. Defendants also converted Plaintiff's and/or Plaintiff's employees' time to their own use.

56. Immediately prior to the sending of the unsolicited faxes, Plaintiff and the other Class members owned an unqualified and immediate right to possession of their fax machines, paper, toner, and employee time.

57. By sending the unsolicited faxes, Defendants permanently misappropriated the Class members' fax machines, toner, paper, and employee time to their own use. Such misappropriation was wrongful and without authorization.

58. Defendants knew or should have known that their misappropriation of paper, toner, and employee time was wrongful and without authorization.

59. Plaintiff and the other Class members were deprived of the use of the fax machines, paper, toner, and employee time, which could no longer be used for any other purpose. Plaintiff and each Class member thereby suffered damages as a result of their receipt of unsolicited fax advertisements from Defendants.

60. Each of Defendants' unsolicited faxes effectively stole Plaintiff's and/or Plaintiff's employees' time because Plaintiff and persons employed by Plaintiff were involved in receiving, routing, and reviewing Defendants' illegal faxes. Defendants knew or should have known Plaintiff's time and/or Plaintiff's employees' time is valuable to Plaintiff.

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, demands judgment in its favor and against Defendants, 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 Plaintiff as the representative of the class, and appoint Plaintiff's counsel as counsel for the class;
- B. That the Court award appropriate damages;
- C. That the Court award punitive damages;
- D. That the Court award attorney's fees;
- E. That the Court award costs of suit; and
- F. That the Court award such further relief as it may deem just and proper.

Dated: October 17, 2018

Respectfully submitted,

ROBERT CARR INSURANCE AGENCY INC.,
individually and on behalf of all others similarly-
situated,

By: s/Joseph N. Kravec, Jr.
Joseph N. Kravec, Jr. (PA No. 68992)

Taylor E. Gillan (PA No. 322873)
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Attorneys for Plaintiff and the Proposed Class

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

Robert Carr Insurance Agency, Inc.

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Feinstein Doyle Payne & Kravec, LLC 429 Fourth Avenue, Law & Finance Building, Suite 1300 Pittsburgh, PA 15219 (412) 281-8400

DEFENDANTS Career Advantage of Mahoning Valley, Inc., Career Advantage, Inc. of Lawrence County, Career Advantage, Inc. of Mercer County, Kimberly Angelo-Gabriel, and John Does 1-12

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 (U.S. Government Not a Party), 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, 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 (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 USC § 227

Brief description of cause: Sending unsolicited faxes in violation of 47 USC § 227

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ In excess of \$5,000,000 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE October 17, 2018

SIGNATURE OF ATTORNEY OF RECORD s/Joseph N. Kravec, Jr.

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

JS 44A REVISED June, 2009
IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA
THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the (Erie Johnstown Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang or Warren, OR any plaintiff or defendant resides in one of said counties.
2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.
3. Complete if on **ERIE CALENDAR**: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.
4. Complete if on **JOHNSTOWN CALENDAR**: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.

PART B (You are to check ONE of the following)

1. This case is related to Number _____ . Short Caption _____
2. This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit

EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

PART C

I. CIVIL CATEGORY (Select the applicable category).

1. Antitrust and Securities Act Cases
2. Labor-Management Relations
3. Habeas corpus
4. Civil Rights
5. Patent, Copyright, and Trademark
6. Eminent Domain
7. All other federal question cases
8. All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9. Insurance indemnity, contract and other diversity cases.
10. Government Collection Cases (shall include HEW Student Loans (Education), V A Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, SBA Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

Date: October 17, 2018

s/Joseph N. Kravec, Jr.

ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH FORMS MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.

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.

EXHIBIT A

TRANSMISSION VERIFICATION REPORT

TIME : 06/06/2018 16:18
 NAME :
 FAX : 3308566675
 TEL : 3308566675
 SER.# : K9N460242

DATE, TIME : 06/06 16:18
 FAX NO./NAME : 3307882491
 DURATION : 00:00:52
 PAGE(S) : 01
 RESULT : OK
 MODE : STANDARD

06-06-18 16:03 FROM: 3308566675 724-052-0820 T-189 P0001-0001 F-101

Why hire on your own when Career Advantage can get the job done less expensive?
 Below is an example that outlines what your costs are to hire on your own and the amount of money we can save you.

Your Approximate Cost To Hire On Your Permanent Payroll

Based on an Hourly Rate of:	\$ 9.00 per hour
Payroll Taxes (S. S., Medicare, SUTA & FUTA)	\$ 1.40 per hour
Worker's Comp	(Rate Varies)
Average Monthly Benefit Costs for full time employees	\$ 2.25 per hour

YOUR Cost To Hire An Employee on your payroll \$12.65 PER HOUR

This example **does NOT include** worker's comp. Due to the varying rates for workers' comp depending on which code your employees work under, the workers' comp can add \$1.00 per hour or even as much as \$4.00 per hour, raising your approximate cost to as much as \$16.65 to hire on your own payroll.

Your approximate payroll expense of shown above of \$3.65 is over and above the regular hourly rate for employees that you will hire on your own payroll, not including workers' comp., which varies from 7% to as much as 60% of the employee's gross wages, depending on the job classification of the employee. You might also have to spend time and money to advertise for "Help Wanted," drug testing and background searches, which are include in our mark-up, costing you hundreds of dollars for each employee.

If you use our service we will show you how we can dramatically reduce that mark-up to a mark-up much more manageable for your company. If we are able to lower your cost to hire, your savings would be considerable, possibly saving you \$1,500.00 per year **FOR EACH EMPLOYEE** that you hire through us.

In addition, we offer you a **FOUR-HOUR WRITTEN GUARANTEE**. For any reason, within the first four hours that our temp is on the job and you decide he is not the right fit for your company, call us and tell us to remove him or her from the job site, and there will be no charge to you for those four hours.

If we have shown you enough reasons why you might want to consider using our services and would like to hear more about us, please contact us and we will be glad to schedule an appointment to meet with you.

Thank you for your time, and I will be looking forward to your call.

Why hire on your own when Career Advantage can get the job done less expensive?
Below is an example that outlines what your costs are to hire on your own and the amount of money we can save you.

Your Approximate Cost To Hire On Your Permanent Payroll

Based on an Hourly Rate of:	\$ 9.00 per hour
Payroll Taxes (S. S., Medicare, SUTA & FUTA)	\$ 1.40 per hour
Worker's Comp	(Rate Varies)
Average Monthly Benefit Costs for full time employees	\$ 2.25 per hour

YOUR Cost To Hire An Employee on your payroll \$12.65 PER HOUR

This example **does NOT include** worker's comp. Due to the varying rates for workers' comp depending on which code your employees work under, the workers' comp can add \$1.00 per hour or even as much as \$4.00 per hour, raising your approximate cost to as much as \$16.65 to hire on to your own payroll.

Your approximate payroll expense of shown above of \$3.65 is over and above the regular hourly rate for employees that you will hire on your own payroll, not including workers' comp., which varies from 7% to as much as 60% of the employee's gross wages, depending on the job classification of the employee. You might also have to spend time and money to advertise for "Help Wanted," drug testing and background searches, which are include in our mark-up, costing you hundreds of dollars for each employee.

*If you use our service, we will show you how we can dramatically reduce that mark-up to a mark-up much more manageable for your company. If we are able to lower your cost to hire, your savings would be considerable, possibly saving you \$1,500.00 per year **FOR EACH EMPLOYEE** that you hire through us.*

In addition, we offer you A FOUR-HOUR WRITTEN GUARANTEE. If, for any reason, within the first four hours that our temp is on the job and you decide he is not the right fit for your company, call us and tell us to remove him or her from the job site, and there will be no charge to you for those four hours.

If we have shown you enough reasons why you might want to consider using our services and would like to hear more about us, please contact us and we will be glad to schedule an appointment to meet with you.

Thank you for your time, and I will be looking forward to your call.

KIM ANGELO-GABRIEL, PRESIDENT/OWNER

kimberlygabriel@careeradvantageonline.com



6004 MARKET STREET BOARDMAN, OHIO 44512 330-788-2328
2050 W. STATE STREET (WESTGATE PLAZA) NEW CASTLE, PA 16101 724-652-7400
30 SNYDER ROAD, SUITE B. HERMITAGE, PA 16148 - 724-342-5999

WWW.CAREERADVANTAGEONLINE.COM

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

UNITED STATES DISTRICT COURT

for the

Robert Carr Insurance Agency, Inc.,

Plaintiff(s)

v.

Career Advantage of Mahoning Valley, Inc., Career Advantage, Inc. of Lawrence County, Career Advantage, Inc. of Mercer County, Kimberly Angelo-Gabriel, and John Does 1-12.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Kimberly Angelo-Gabriel
2585 Hillsville Rd.
Edinburg, PA 16116

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:

Joseph N. Kravec, Jr., Esquire
Feinstein Doyle Payne & Kravec, LLC
429 Fourth Avenue
Law & Finance Building, Suite 1300
Pittsburgh, PA 15219

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. _____

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:

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

UNITED STATES DISTRICT COURT

for the

Robert Carr Insurance Agency, Inc.,

Plaintiff(s)

v.

Career Advantage of Mahoning Valley, Inc., Career Advantage, Inc. of Lawrence County, Career Advantage, Inc. of Mercer County, Kimberly Angelo-Gabriel, and John Does 1-12.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Kimberly Angelo-Gabriel
Career Advantage, Inc. of Lawrence County
2050 West State St.
Westgate Plaza
New Castle, PA 16101

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:

Joseph N. Kravec, Jr., Esquire
Feinstein Doyle Payne & Kravec, LLC
429 Fourth Avenue
Law & Finance Building, Suite 1300
Pittsburgh, PA 15219

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. _____

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:

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

UNITED STATES DISTRICT COURT

for the

Robert Carr Insurance Agency, Inc.,

Plaintiff(s)

v.

Career Advantage of Mahoning Valley, Inc., Career Advantage, Inc. of Lawrence County, Career Advantage, Inc. of Mercer County, Kimberly Angelo-Gabriel, and John Does 1-12.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Career Advantage, Inc. of Lawrence County
2050 West State St.
Westgate Plaza
New Castle, PA 16101

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:

Joseph N. Kravec, Jr., Esquire
Feinstein Doyle Payne & Kravec, LLC
429 Fourth Avenue
Law & Finance Building, Suite 1300
Pittsburgh, PA 15219

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. _____

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:

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

UNITED STATES DISTRICT COURT

for the

Robert Carr Insurance Agency, Inc.,

Plaintiff(s)

v.

Career Advantage of Mahoning Valley, Inc., Career Advantage, Inc. of Lawrence County, Career Advantage, Inc. of Mercer County, Kimberly Angelo-Gabriel, and John Does 1-12.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Career Advantage, Inc. of Mercer County
30 Snyder Road
Suite B
Hermitage, PA 16148

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:

Joseph N. Kravec, Jr., Esquire
Feinstein Doyle Payne & Kravec, LLC
429 Fourth Avenue
Law & Finance Building, Suite 1300
Pittsburgh, PA 15219

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. _____

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:

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

UNITED STATES DISTRICT COURT

for the

Robert Carr Insurance Agency, Inc.,

Plaintiff(s)

v.

Career Advantage of Mahoning Valley, Inc., Career Advantage, Inc. of Lawrence County, Career Advantage, Inc. of Mercer County, Kimberly Angelo-Gabriel, and John Does 1-12.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Career Advantage of Mahoning Valley, Inc.
c/o Terrance L. Platthy
103 W. Market Street, Suite 201
Warren, OH 44481

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:

Joseph N. Kravec, Jr., Esquire
Feinstein Doyle Payne & Kravec, LLC
429 Fourth Avenue
Law & Finance Building, Suite 1300
Pittsburgh, PA 15219

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. _____

PROOF OF SERVICE

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_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
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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: [Career Advantage Facing Lawsuit Over Allegedly Unsolicited Fax Advertisements](#)
