

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

SPINE & SPORTS CHIROPRACTIC, INC.,	)	Case No. 2:16-cv-1051
an Ohio corporation, individually and as the	)	
representative of a class of similarly-situated	)	
persons,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<b>CLASS ACTION COMPLAINT</b>
	)	
ADVANTAGE IMAGING, LLC and JOHN	)	
DOES 1-5,	)	
	)	
DEFENDANTS.	)	

Pursuant to Rules 7 and 8 of the Federal Rules of Civil Procedure, Plaintiff Spine & Sports Chiropractic, Inc. (“Spine and Sports Chiropractic”) alleges the following against Defendants Advantage Imaging, LLC (“Advantage Imaging”) and John Does 1-5:

**PRELIMINARY STATEMENT**

1. This case challenges Advantage Imaging’s practice of sending unsolicited facsimiles.
  
2. The Telephone Consumer Protection Act (“TCPA”), which is codified at 47 U.S.C. 227, was passed in 1991. In 2005, the TCPA was amended and renamed the Junk Fax Prevention Act (“JFPA”). The JFPA, along with its implementing regulations, prohibit a person or entity from sending advertisements via facsimile without the prior express invitation or permission of the recipients. The JFPA allows private action to enforce this prohibition and provides statutory damages of \$500 per violation. Upon information and belief, Advantage Imaging has sent advertisements to the fax machines/fax numbers of Spine & Sports Chiropractic and other persons in violation of the JFPA, including, but not limited to,

advertisements dated March 1, 2016 and April 11, 2016 (“the Fax Ads”).

3. Unsolicited facsimile advertisements (or “junk faxes”) damage the recipients in a number of ways. A junk fax uses the fax machine, paper, and ink/toner of the recipient. A junk fax wastes the recipient’s time in having to review and sort through unwanted advertisements. A junk fax also interrupts the recipient’s privacy. Junk faxes also prevent fax machines from receiving and sending authorized faxes, cause wear-and-tear on fax machines, and require labor to discern and attempt to stop such unwanted advertisements.

4. On behalf of itself and all others similarly situated, Spine & Sports Chiropractic brings this case as a class action against Advantage Imaging under the JFPA. Spine & Sports Chiropractic seeks to certify a class consisting of junk faxes sent to Spine & Sports Chiropractic and other persons without the required opt-out language and/or prior express invitation or permission, regardless of whether Spine & Sports Chiropractic received all such advertisements.

5. Spine & Sports Chiropractic is informed and believes, and upon such information and belief avers, that this action is based upon a common nucleus of operative facts because the facsimile transmissions at issue were and are being done in the same or similar manner. This action is based on the same legal theory, namely liability under the JFPA. This action seeks relief expressly authorized by the JFPA: (i) injunctive relief enjoining Advantage Imaging, their employees, agents, representatives, contractors, affiliates, and all persons and entities acting in concert with them, from sending unsolicited advertisements in violation of the JFPA; and (ii) an award of statutory damages in the minimum amount of \$500 for each violation of the JFPA, and to have such damages trebled, as provided by § 227(b)(3) of the JFPA.

**JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 47 U.S.C. § 227, as the JFPA is a federal statute and, therefore, gives rise to federal question jurisdiction.

7. This Court has personal jurisdiction over Advantage Imaging because Advantage Imaging transacted business within this judicial district, made contracts within this judicial district, and/or committed tortious acts within this judicial district.

8. This Court has venue under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this district.

**PARTIES**

9. Spine & Sports Chiropractic is an Ohio corporation, and it operates a medical clinic located at 4000 Indianola Avenue in Columbus, Ohio.

10. Advantage Imaging, LLC is an Ohio corporation, and its principal place of business is located at 3733 Park East Drive, Suite 100, Beachwood, Ohio 44122.

11. Advantage Imaging operates diagnostic imaging facilities under the trade name “Advantage Diagnostics,” which is registered in the State of Ohio.

12. The Fax Ads promoted the services of an “Advantage Diagnostics” facility located at 6400 E. Broad Street, Suite 110, in Columbus, Ohio 43213.

13. John Does 1-5 assisted Advantage Imaging in its facsimile advertising activities by providing a list of fax numbers, transmitting the Fax Ads, providing advice or assistance on the content of the Fax Ads, *etc.* The identity of the John Doe defendants is not presently known but will be identified through discovery.

**FACTS**

14. On March 1, 2016 and April 11, 2016, Advantage Imaging transmitted by telephone facsimile machine an advertisement to Spine & Sports Chiropractic via its office facsimile machine/fax number. Copies of the Fax Ads are attached hereto as Exhibit A and B.

15. Advantage Imaging receives some or all of the revenues from the sale of the products, goods, and services advertised by the Fax Ads. Advantage Imaging profits and benefits from the sale of the products, goods and services advertised by the Fax Ads.

16. Spine & Sports Chiropractic had not invited or given permission to Advantage Imaging to send the Fax Ads to its office facsimile machine/fax number.

17. On information and belief, Advantage Imaging faxed the same and other advertisements without the required opt-out language to Spine & Sports Chiropractic and more than twenty-five 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.

18. There is no reasonable means for Spine & Sports Chiropractic (or any other class member) to avoid receiving faxes as fax machines are left on and receive all communications transmitted to them.

19. The Fax Ads did not display a proper opt-out notice as required by 47 C.F.R. § 64.1200.

**CLASS ACTION ALLEGATIONS**

20. In accordance with Fed. R. Civ. P. 23(b)(1), (b)(2) and (b)(3), Spine & Sports Chiropractic 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 Advantage Imaging, and (3) from which Advantage Imaging did not have prior express invitation or permission, or (4) which did not display a proper opt-out notice.

This class of persons constitutes the putative class members. Spine & Sports Chiropractic may amend the class definition after discovery identifies potential class members, additional facsimile advertisements, and/or the specific contours of the class.

21. Numerosity: Advertisements are typically sent to hundreds if not thousands of persons. Based on information, belief, and the appearance of the Fax Ads, the Fax Ads were sent to more than forty persons via their respective fax machines/fax numbers. The joinder of such a large group of persons in a single lawsuit would be impracticable.

22. Commonality: Common questions of law and fact apply to the claims of the putative class members. These include the following:

- (a) Whether the Fax Ads constitute “unsolicited advertisements” within the meaning of the JFPA;
- (b) How Advantage Imaging compiled or obtained the list of fax numbers to which the Fax Ads were sent;
- (c) Whether Advantage Imaging violated the JFPA and the regulations promulgated thereunder with regard to the Fax Ads; and
- (d) Whether Advantage Imaging sent the Fax Ads intentionally, knowingly, or willfully.

23. Typicality: Spine & Sports Chiropractic claims are typical of the claims of the putative class members. Spine & Sports Chiropractic is asserting the same claim under the same federal statute as the other members of the putative class. Spine & Sports Chiropractic is also seeking the same relief for itself and the other members of the putative class.

24. Adequacy: Spine & Sports Chiropractic will fairly and adequately represent the interests of the putative class members. Spine & Sports Chiropractic has no interests in conflict with the putative class members, has the resources and inclination to prosecute this action to completion, and has retained experienced counsel to assist it in doing so.

25. Need for Consistent Standards and Practical Effect of Adjudication: 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 Advantage Imaging, and/or (b) as a practical matter, adjudication of Spine & Sports Chiropractic's claims will be dispositive of the interests of class members who are not parties.

26. Common Conduct: Class certification is also appropriate because Advantage Imaging has acted in the same or similar manner with respect to all class members thereby making injunctive and declaratory relief appropriate. Spine & Sports Chiropractic demands such relief as authorized by 47 U.S.C. §227.

27. Predominance: The questions of law and fact common to the putative class members predominate over any questions affecting only individual members because:

- (a) Spine & Sports Chiropractic's claim involves the same facts and legal issues as that of the putative class members;
- (b) the evidence supporting Advantage Imaging's likely defenses will come solely from Advantage Imaging's own records and will not require any information or inquiries from individual class members;
- (c) the damages for all putative class members are set by statute and will, therefore, be the same for each and every member of the putative class; and

- (d) the identity of the putative class members can be readily ascertained from Advantage Imaging or its agents' computer records, phone records, or other business records.

28. Superiority: A class action would be superior to individual actions by the putative class members for the following reasons:

- (a) the damages suffered by any one class member are too low to justify a stand-alone lawsuit;
- (b) the JFPA contains no provision for awarding attorney fees. As such, individual claimants would, as a practical matter, have to proceed *pro se* against a large, sophisticated defendant;
- (c) many of the putative class members are legal entities that would not be permitted to proceed in court *pro se*; and
- (d) the evidence concerning each of the putative class member's claims is so similar that the adjudication of each on an individual basis would be repetitive, inefficient, and wasteful.

#### **CLAIM FOR RELIEF – VIOLATIONS OF THE JFPA**

29. Under the JFPA, it is “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. Under the JFPA, “the term ‘unsolicited advertisement’ means 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. **Opt-Out Notice Requirements.** The JFPA strengthened the prohibitions against the sending of unsolicited advertisements by requiring, in § (b)(1)(C)(iii) of the JFPA, that senders of faxed advertisements place a clear and conspicuous notice on the first page of the

transmission that contains the following (hereinafter collectively referred to as the “Opt-Out Notice Requirements”):

- (a) A statement that the recipient is legally entitled to opt-out of receiving future faxed advertisements – knowing that he or she has the legal right to request an opt-out gives impetus for recipients to make such a request, if desired;
- (b) A statement that the sender must honor a recipient’s opt-out request within 30 days and the sender’s failure to do so is unlawful – thereby encouraging recipients to opt-out, if they did not want future faxes, by advising them that their opt-out requests will have legal “teeth”;
- (c) A statement advising the recipient that he or she may opt-out with respect to all of his or her facsimile telephone numbers and not just the ones that receive a faxed advertisement from the sender – thereby instructing a recipient on how to make a valid opt-out request for all of his or her fax machines;
- (d) The opt-out language must be conspicuous.

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



32. **2006 FCC Report and Order.** The JFPA, in § (b)(2) of the JFPA, directed the FCC to implement regulations regarding the JFPA, including the JFPA’s Opt-Out Notice Requirements and the FCC did so in its 2006 Report and Order, which in addition provides among other things:

- (a) The definition of, and the requirements for, an established business relationship for purposes of the first of the three prongs of an exemption to liability under § (b)(1)(C)(i) of the JFPA and provides that the lack of an “established business relationship” precludes the ability to invoke the exemption contained in § (b)(1)(C) of the JFPA (*See* 2006 Report and Order ¶¶ 8-12 and 17-20);
- (b) The required means by which a recipient’s facsimile telephone number must be obtained for purposes of the second of the three prongs of the exemption under § (b)(1)(C)(ii) of the JFPA and provides that the failure to comply with these requirements precludes the ability to invoke the exemption contained in § (b)(1)(C) of the JFPA (*See* 2006 Report and Order ¶¶ 13-16);
- (c) The things that must be done in order to comply with the Opt-Out Notice Requirements for the purposes of the third of the three prongs of the exemption under § (b)(1)(C)(iii) of the JFPA and provides that the failure to comply with these requirements precludes the ability to invoke the exemption contained in § (b)(1)(C) of the JFPA (*See* 2006 Report and Order ¶¶ 24-34);
- (d) The failure of a sender to comply with the Opt-Out Notice Requirements precludes the sender from claiming that a recipient gave “prior express invitation or permission” to receive the sender’s fax (*See* Report and Order ¶ 48).

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

33. **The Fax Ads.** Advantage Imaging sent the advertisement on March 1, 2016 and April 11, 2016, via facsimile transmission from telephone facsimile machines, computers, or other devices to the telephone lines and facsimile machines of Spine & Sports Chiropractic and the other members of the putative class. The Fax Ads constitute advertisements under the JFPA. Advantage Imaging failed to comply with the Opt-Out Requirements in connection with the Fax Ads. The Fax Ads were transmitted to persons or entities without their prior express invitation or permission and/or Advantage Imaging is precluded from asserting any prior express invitation or permission or that Advantage Imaging had an established business relationship with Spine & Sports Chiropractic and other members of the class, because of the failure to comply with the Opt-Out Notice Requirements. By virtue thereof, Advantage Imaging violated the JFPA and the regulations promulgated thereunder by sending the Fax Ads via facsimile transmission to Spine & Sports Chiropractic and members of the Class. Spine & Sports Chiropractic seeks to certify a class which includes this fax and all others sent during the four years prior to the filing of this case through the present.

34. **Advantage Imaging's Other Violations.** Spine & Sports Chiropractic is informed and believes, and upon such information and belief avers, that during the period preceding four years of the filing of this Complaint and repeatedly thereafter, Advantage Imaging has sent via facsimile transmission from telephone facsimile machines, computers, or other devices to telephone facsimile machines of members of the Putative class other faxes that constitute advertisements under the JFPA that were transmitted to persons or entities without their prior express invitation or permission (and/or that Advantage Imaging is precluded from asserting any prior express invitation or permission or that Advantage Imaging had an established business relationship because of the failure to comply with the Opt-Out Notice

Requirements in connection with such transmissions). By virtue thereof, Advantage Imaging violated the JFPA and the regulations promulgated thereunder. Spine & Sports Chiropractic is informed and believes, and upon such information and belief avers, that Advantage Imaging may be continuing to send unsolicited advertisements via facsimile transmission in violation of the JFPA and the regulations promulgated thereunder, and absent intervention by this Court, will do so in the future.

35. The JFPA provides a private right of action to bring this action on behalf of Spine & Sports Chiropractic and the Putative class to redress Advantage Imaging's violations of the JFPA, and provides for statutory damages. 47 U.S.C. § 227(b)(3). The JFPA also provides that injunctive relief is appropriate. *Id.*

36. As the JFPA is a strict liability statute, Advantage Imaging is liable to Spine & Sports Chiropractic and the other class members even if their actions were only negligent.

37. Advantage Imaging knew or should have known that (a) Spine & Sports Chiropractic and the other class members had not given express invitation or permission for Advantage Imaging or anybody else to fax advertisements about Advantage Imaging's products, goods or services; (b) Spine & Sports Chiropractic and the other class members did not have an established business relationship; (c) Advantage Imaging transmitted advertisements; (d) The Fax Ads did not contain the required Opt-Out Notice; and (e) Advantage Imaging's transmission of advertisements that did not contain the required opt-out notice or were sent without prior express invitation or permission was unlawful.

38. Advantage Imaging's actions caused damages to Spine & Sports Chiropractic and the other class members. Receiving Advantage Imaging's junk faxes caused the recipients to lose paper and toner consumed in the printing of Advantage Imaging's faxes. Moreover,

Advantage Imaging's faxes used Spine & Sports Chiropractic's and the other class members' telephone lines and fax machine. Advantage Imaging's faxes cost Spine & Sports Chiropractic and the other class members time, as Spine & Sports Chiropractic and the other class members and their employees wasted their time receiving, reviewing, and routing Advantage Imaging's unauthorized faxes. That time otherwise would have been spent on Spine & Sports Chiropractic's and the other class members' business activities. Advantage Imaging's faxes unlawfully interrupted Spine & Sports Chiropractic's and other class members' privacy interests in being left alone.

WHEREFORE, Spine & Sports Chiropractic, Inc., individually and on behalf of all others similarly situated, demands judgment in its favor and against Defendants Advantage Imaging, LLC and John Does 1-5 as follows:

- (1) that the Court adjudge and decree that the present case may be properly maintained as a class action, appoint Spine & Sports Chiropractic as the representative of the class, and appoint Spine & Sports Chiropractic's counsel as counsel for the class;
- (2) that the Court award actual or statutory damages to Spine & Sports Chiropractic and the other members of the class for each violation of the JFPA by Advantage Imaging;
- (3) that the Court enjoin Advantage Imaging from additional violations of the JFPA; and
- (4) that the Court award Spine & Sports Chiropractic pre-judgment interest, post-judgment interest, attorney fees, treble damages, costs, and such other relief as may be just and proper.

Respectfully submitted,

SPINE & SPORTS CHIROPRACTIC, INC.,  
individually and as the representative of a class of  
similarly-situated persons,

/s/Matthew E. Stubbs

GEORGE D. JONSON (0027124)

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[mstubbs@mrjlaw.com](mailto:mstubbs@mrjlaw.com)



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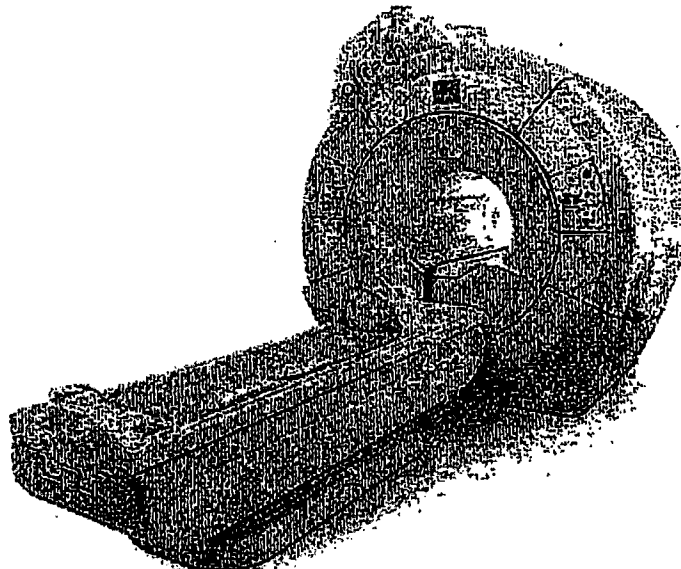
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# **ADVANTAGE DIAGNOSTICS**

**OF COLUMBUS EAST**

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TO JOIN US FOR OUR  
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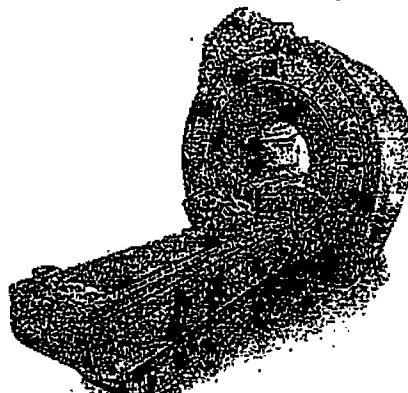
**FRIDAY APRIL 22, 2016**

**1PM -7PM**

**AT OUR NEW FACILITY**

**6400 E. BROAD ST, SUITE 110  
COLUMBUS, OHIO 43213**

**(Refreshments will be served)**



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

Spine and Sports Chiropractic, Inc., an Ohio Corporation, individually and as the representative of a class of similar-situated persons

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

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

Matthew Stubbs/George Jonson
Montgomery Rennie & Jonson, 36 E. 7th Street, Suite 2100
Cincinnati, OH 45202 (513-241-4722)

DEFENDANTS

Advantage Imaging, LLC

County of Residence of First Listed Defendant Cuyahoga (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)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

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

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

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 47 U.S.C. Section 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 11/03/2016 SIGNATURE OF ATTORNEY OF RECORD /s/Matthew E. Stubbs

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Print

Save As...

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## 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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. 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. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Ohio

Spine and Sports Chiropractic, Inc.

Plaintiff

v.

Advantage Diagnostics

Defendant

Civil Action No. 2:16-cv-1051

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Advantage Imaging, LLC
3733 Park East Drive, Suite 100
Beachwood, Ohio 441122

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:

George D. Jonson
Matthew Stubbs
MONTGOMERY, RENNIE & JONSON
36 East Seventh Street, Suite 2100
Cincinnati, OH 45202

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. 2:16-cv-1051

**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:

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