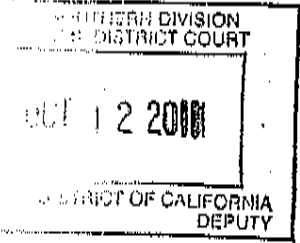


1 AYTAN Y. BELLIN
 (motion for admission *pro hac vice* to be filed)
 2 AYTAN.BELLIN@BELLINLAW.COM
 BELLIN & ASSOCIATES LLC
 3 85 Miles Avenue
 White Plains, New York 10606
 4 Telephone: (914) 358-5345
 5 Facsimile: (212) 571-0284



6 JOSEPH R. COMPOLI, JR.
 (motion for admission *pro hac vice* to be filed)
 7 josephcompoli@sbcglobal.net
 612 East 185th Street
 Cleveland, Ohio 44119
 8 Telephone: (216) 481-6700
 9 Facsimile: (216) 481-1047

10 ROGER FURMAN (STATE BAR NO. 149570)
 roger.furman@yahoo.com
 11 7485 Henefer Avenue
 Los Angeles, California 90045
 12 Telephone: (310) 568-0640
 Facsimile: (310) 694-9083

13 Attorneys for plaintiffs Michael A.
 14 Vandervort and U.S. Sample Services, Inc.

15 UNITED STATES DISTRICT COURT
 16 CENTRAL DISTRICT OF CALIFORNIA
 17 SOUTHERN DIVISION

18 MICHAEL A. VANDERVORT and)
 U.S. SAMPLE SERVICES, INC., on)
 19 behalf of themselves and all others)
 similarly situated,)

Case No. **SACV 11-01578**
 Hon. **JST(JPR)**

20 Plaintiffs,

COMPLAINT FOR:

21 vs.

- 1. MONETARY RELIEF FOR VIOLATION OF 47 U.S.C. § 227(B) AND 47 C.F.R. § 64.1200
- 2. MONETARY RELIEF FOR VIOLATION OF 47 U.S.C. § 227(B) AND 47 C.F.R. § 64.1200
- 3. INJUNCTIVE RELIEF FOR VIOLATION OF 47 U.S.C. § 227(B) AND 47 C.F.R. § 64.1200

22 BALBOA CAPITAL CORPORATION,
 24 Defendant.

CLASS ACTION
DEMAND FOR JURY TRIAL

1 Plaintiffs Michael A. Vandervort ("Vandervort") and U.S. Sample
2 Services, Inc. ("Sample Services") (individually and collectively, "Plaintiffs"), on
3 behalf of themselves and all others similarly situated, by their attorneys, for their
4 complaint against defendant Balboa Capital Corporation ("Balboa" or
5 "Defendant"), allege as follows:

6 JURISDICTION AND VENUE

7 1. This Court has federal question jurisdiction over this action pursuant
8 to 28 U.S.C. § 1331 because this action is based on the federal Telephone
9 Consumer Protection Act, and regulations thereunder. This Court also has
10 diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332 because, upon
11 information and belief, the matter in controversy concerning the TCPA exceeds
12 \$5,000,000, exclusive of interest and costs, involves thousands of class members
13 and is a class action in which at least one member of the class, including the two
14 named Plaintiffs, is a citizen of a state different from the state of which Defendant
15 is a citizen.

16 2. Venue in this judicial district is proper pursuant to 28 U.S.C. §§
17 1391(a)(2) and 1391(b)(2) because, upon information and belief, a substantial
18 part of the events or omissions giving rise to the claims in this case occurred in
19 this judicial district.

20 THE PARTIES

21 3. Plaintiff Vandervort is a resident of the State of Ohio.

22 4. Plaintiff Sample Services is a corporation organized under the laws
23 of the State of Ohio, with its principal place of business located at 171 Pleasant
24 Avenue, Geneva, Ohio 44041.

25 5. Defendant Balboa is a corporation organized under the laws of the
26 State of California, with its principal place of business located at 2010 Main
27 Street, Suite 1150, Irvine, California 92614.
28

FACTS UNDERLYING THIS COMPLAINT

1
2 6. Plaintiffs bring this action against Defendant for violating the
3 Telephone Consumer Protection Act, 47 U.S.C. § 227 (the "TCPA"), and the
4 regulations promulgated thereunder. Congress enacted the TCPA in 1991 to
5 prevent the faxing of unsolicited advertisements to persons who had not provided
6 express invitation or permission to receive such faxes. Congress believed that
7 unsolicited fax advertisements improperly shift advertising costs to unwilling fax
8 recipients and interfere with the use of fax machines by those recipients, who are
9 consumers and businesses. Regulations enacted pursuant to the TCPA also
10 prohibit the sending of solicited fax advertisements that do not contain proper
11 opt-out notices.

12 7. Upon information and belief, on or about May 21, 2011, Defendant,
13 without Plaintiffs' express invitation or permission, arranged for and/or caused a
14 telephone facsimile machine, computer, or other device to send an unsolicited fax
15 advertisement (the "fax advertisement"), advertising the commercial availability
16 or quality of property, goods, or services, to Plaintiffs at Sample Services' fax
17 machine located in Geneva, Ohio. A copy of the unsolicited fax advertisement is
18 attached as Exhibit 1 and is incorporated by reference.

19 8. The fax advertisement attached as Exhibit 1 was wholly unsolicited
20 in that it was sent to Plaintiffs by Defendant without Plaintiffs' express invitation
21 or permission.

22 9. The fax advertisement contains a notice at the bottom that purports
23 to permit individuals to remove themselves from Defendant's fax advertising list.
24 The notice states: "To opt out from future faxes, go to
25 www.removeyourfaxnumber.com and enter PIN #1461 or call 877-284-7885. The
26 recipient may make a request to the sender not to send any future faxes and that
27 failure to comply within 30 days is unlawful."

28 10. The notice on the fax advertisement does not satisfy the requirements

1 of 47 U.S.C. § 227(b)(2)(D) because, among other things, the notice (A) does not
2 provide a facsimile machine number to which the recipient may transmit such an
3 opt-out request; (B) does not state that a person's request to opt out of future fax
4 advertising will be effective only if the request identifies the telephone number or
5 numbers of the telephone facsimile machine or machines to which the request
6 relates; and (C) does not state that such an opt-out request will be effective so
7 long as the person making the request does not, subsequent to such request,
8 provide express invitation or permission to the sender, in writing or otherwise, to
9 send such advertisements to such person at his or her telephone facsimile
10 machine.

11 11. The notice on the fax advertisement also does not satisfy the
12 requirements of 47 C.F.R. § 64.1200 (a)(3)(iii) because, among other things, the
13 notice (A) does not provide a facsimile machine number to which the recipient
14 may transmit such an opt-out request; (B) does not state that a person's request to
15 opt out of future fax advertising will be effective only if the request identifies the
16 telephone number or numbers of the telephone facsimile machine or machines to
17 which the request relates; and (C) does not state that such an opt-out request will
18 be effective so long as only if the person making the request does not, subsequent
19 to such request, provide express invitation or permission to the sender, in writing
20 or otherwise, to send such advertisements to such person at his or her telephone
21 facsimile machine.

22 12. Upon information and belief, Defendant has, from four years prior to
23 the date of the filing of the instant Complaint through the present, either
24 negligently or willfully and/or knowingly sent and/or arranged to be sent more
25 than 10,000 *unsolicited* fax advertisements, advertising the commercial
26 availability or quality of property, goods, or services, to fax machines and/or
27 computers belonging to thousands of persons all over the United States. Upon
28 information and belief, those facsimile advertisements contained a notice at the

1 bottom identical or substantially similar to that contained on the fax
2 advertisement sent to Plaintiffs.

3 13. Upon information and belief, Defendant has, from four years prior to
4 the date of the filing of the instant Complaint through the present, either
5 negligently or willfully and/or knowingly sent and/or arranged to be sent more
6 than 10,000 *unsolicited and/or solicited* fax advertisements, advertising the
7 commercial availability or quality of property, goods, or services, to fax machines
8 and/or computers belonging to thousands of persons all over the United States.
9 Upon information and belief, those facsimile advertisements contained a notice at
10 the bottom identical or substantially similar to that contained on the fax
11 advertisement sent to Plaintiffs.

12 **THE TELEPHONE CONSUMER PROTECTION ACT AND**
13 **REGULATIONS THEREUNDER**

14 14. The Telephone Consumer Protection Act of 1991, Pub. L. 102-243,
15 § 3(a), added Section 227 to Title 47 of the United States Code, 47 U.S.C. § 227.
16 In pertinent part, 47 U.S.C. § 227(b) provides that “[i]t shall be unlawful for any
17 person within the United States, or any person outside the United States if the
18 recipient is within the United States . . . to use any telephone facsimile machine,
19 computer, or other device to send an unsolicited advertisement to a telephone
20 facsimile machine[.]” 47 C.F.R. § 64.1200(a), a regulation prescribed under 47
21 U.S.C. § 227(b) and effective as of December 20, 1992, provides in pertinent part
22 that “[n]o person may . . . [u]se a telephone facsimile machine, computer, or other
23 device to send an unsolicited advertisement to a telephone facsimile machine.”

24 15. As used in both 47 U.S.C. § 227 and 47 C.F.R. § 64.1200, “[t]he
25 term ‘unsolicited advertisement’ means any material advertising the commercial
26 availability or quality of any property, goods, or services which is transmitted to
27 any person without that person’s prior express invitation or permission.” 47
28 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(5).

1 16. 47 U.S.C. § 227(b)(1)(C)(iii) further provides that it is unlawful to
2 send an unsolicited facsimile advertisement unless, among other things, the
3 unsolicited facsimile advertisement contains a notice meeting the requirements set
4 forth in 47 U.S.C. § 227(b)(2)(D), which in turn provides that:

5 a notice contained in an unsolicited advertisement complies with the
6 requirements under this subparagraph only if--

7 (i) the notice is clear and conspicuous and on the first page of
8 the unsolicited advertisement;

9 (ii) the notice states that the recipient may make a request to
10 the sender of the unsolicited advertisement not to send any future
11 unsolicited advertisements to a telephone facsimile machine or
12 machines and that failure to comply, within the shortest reasonable
13 time, as determined by the Commission, with such a request meeting
14 the requirements under subparagraph (E) is unlawful;

15 (iii) the notice sets forth the requirements for a request under
16 subparagraph (E);

17 (iv) the notice includes--

18 (I) a domestic contact telephone and facsimile machine
19 number for the recipient to transmit such a request to the
20 sender; and

21 (II) a cost-free mechanism for a recipient to transmit a
22 request pursuant to such notice to the sender of the unsolicited
23 advertisement; the Commission shall by rule require the
24 sender to provide such a mechanism and may, in the discretion
25 of the Commission and subject to such conditions as the
26 Commission may prescribe, exempt certain classes of small
27 business senders, but only if the Commission determines that
28

1 the costs to such class are unduly burdensome given the
2 revenues generated by such small businesses;

3 (v) the telephone and facsimile machine numbers and the cost-
4 free mechanism set forth pursuant to clause (iv) permit an individual
5 or business to make such a request at any time on any day of the
6 week; and

7 (vi) the notice complies with the requirements of subsection
8 (d) of [47 U.S.C. § 227].

9 17. 47 C.F.R. § 64.1200(a)(3) provides that no person or entity may:
10 Use a telephone facsimile machine, computer, or other device to
11 send an unsolicited advertisement to a telephone facsimile machine,
12 unless--:

13 * * *

14 (iii) The advertisement contains a notice that informs the recipient of
15 the ability and means to avoid future unsolicited advertisements. A
16 notice contained in an advertisement complies with the requirements
17 under this paragraph only if--

18 (A) The notice is clear and conspicuous and on the first page
19 of the advertisement;

20 (B) The notice states that the recipient may make a request to
21 the sender of the advertisement not to send any future
22 advertisements to a telephone facsimile machine or machines
23 and that failure to comply, within 30 days, with such a request
24 meeting the requirements under paragraph (a)(3)(v) of this
25 section is unlawful;

26 (C) The notice sets forth the requirements for an opt-out
27 request under paragraph (a)(3)(v) of this section;

28 (D) The notice includes--

1 (1) A domestic contact telephone number and facsimile
2 machine number for the recipient to transmit such a request to
3 the sender; and

4 (2) If neither the required telephone number nor
5 facsimile machine number is a toll-free number, a separate
6 cost-free mechanism including a Web site address or e-mail
7 address, for a recipient to transmit a request pursuant to such
8 notice to the sender of the advertisement. A local telephone
9 number also shall constitute a cost-free mechanism so long as
10 recipients are local and will not incur any long distance or
11 other separate charges for calls made to such number; and

12 (E) The telephone and facsimile numbers and cost-free
13 mechanism identified in the notice must permit an individual
14 or business to make an opt-out request 24 hours a day, 7 days
15 a week.

16 18. 47 C.F.R. § 64.1200(a)(3)(iv) further provides that “[a] facsimile
17 advertisement that is sent to a recipient that has provided prior express invitation
18 or permission to the sender must include an opt-out notice that complies with the
19 requirements in paragraph (a)(3)(iii) of this section.”

20 19. 47 U.S.C. § 227(b)(3) provides:

21 Private right of action

22 A person or entity may, if otherwise permitted by the laws or
23 rules of court of a State, bring in an appropriate court of that State --

24 (A) an action based on a violation of this subsection or the
25 regulations prescribed under this subsection to enjoin such
26 violation,

27 (B) an action to recover for actual monetary loss from such a
28 violation, or to receive \$500 in damages for each such

1 violation, whichever is greater, or

2 (C) both such actions.

3 If the court finds that the defendant willfully or knowingly violated
4 this subsection or the regulations prescribed under this subsection,
5 the court may, in its discretion, increase the amount of the award to
6 an amount equal to not more than 3 times the amount available under
7 subparagraph (B) of this paragraph.

8 20. 47 U.S.C. § 312(f)(1) provides that “[t]he term ‘willful,’ when used
9 with reference to the commission or omission of any act, means the conscious and
10 deliberate commission or omission of such act, irrespective of any intent to
11 violate any provision of [the chapter under which 47 U.S.C § 227 falls] or any
12 rule or regulation of the Commission authorized by [the chapter under which 47
13 U.S.C § 227 falls] or by a treaty ratified by the United States.”

14 **CLASS ACTION ALLEGATIONS**

15 21. Plaintiffs bring this class action on behalf of themselves and all
16 others similarly situated pursuant to Rule 23 of the Federal Rules of Civil
17 Procedure.

18 22. Statutory Reference. This litigation is properly maintainable as a
19 class action pursuant to Rules 23(b)(1)(A), 23(b)(2) and 23(b)(3).

20 23. Definition of the Proposed Class. Plaintiffs seek to represent two
21 classes of individuals (the “Classes”) defined as follows:

22 Class A: All persons from four years prior to the date of the filing of
23 the instant Complaint through the present to whom Defendant sent or caused to be
24 sent an *unsolicited* facsimile advertisement that advertised the commercial
25 availability or quality of any property, goods, or services, and contained an opt-
26 out notice identical or substantially similar to that contained on the facsimile
27 advertisement attached as Exhibit 1.

28

1 Class B: All persons from four years prior to the date of the filing of
2 the instant Complaint through the present to whom Defendant sent or caused to be
3 sent a *solicited or unsolicited* facsimile advertisement that advertised the
4 commercial availability or quality of any property, goods, or services, and
5 contained an opt-out notice identical or substantially similar to that contained on
6 the facsimile advertisement attached as Exhibit 1.

7 24. Approximate Size of the Proposed Class: Upon information and
8 belief there are, at a minimum, thousands of class members of Classes A and B.
9 Upon information and belief, the Classes' sizes and the identities of the individual
10 members thereof are ascertainable through Defendant's records, including, but
11 not limited to, Defendant's fax and marketing records. The Classes are so
12 numerous that joinder of all individual members in one action would be
13 impracticable. The disposition of the individual claims of the respective class
14 members through this class action will benefit both the parties and this Court.

15 25. Adequacy of Representation: Plaintiffs are adequate representatives
16 of the Classes because Plaintiffs' interests do not conflict with the interests of the
17 members of the Classes. Plaintiffs will fairly, adequately and vigorously represent
18 and protect the interests of the members of the Classes and have no interests
19 antagonistic to the members of the Classes. Plaintiffs have retained counsel who
20 are competent and experienced in litigation in the federal courts, TCPA litigation
21 and class action litigation.

22 26. Commonality of Questions of Fact and Law: There is a well-defined
23 community of common questions of fact and law affecting the Plaintiffs and
24 members of the Classes. The questions of fact and law common to Plaintiffs and
25 Class A predominate over questions that may affect individual members, and
26 include:

27 (a) Whether Defendant's conduct of sending and/or causing to be sent to
28 Plaintiffs and the members of Class A fax advertisements without

1 Plaintiffs' and members of Class A's express invitation or permission,
2 which advertised the commercial availability or quality of any property,
3 goods, or services and which contained an opt-out notice that was identical
4 or substantially similar to the opt-out notice contained in the fax attached as
5 Exhibit 1, by facsimile, computer or other device, violated 47 U.S.C. §
6 227(b) and/or the regulations thereunder;

7 (b) Whether Defendant's conduct of sending and/or causing to be sent to
8 Plaintiffs and the members of Class A unsolicited fax advertisements,
9 which advertised the commercial availability or quality of property, goods,
10 or services and which contained an opt-out notice that was identical or
11 substantially similar to the opt-out notice contained in the fax attached as
12 Exhibit 1, by facsimile, computer or other device, was knowing or willful;

13 (c) Whether Plaintiffs and the members of Class A are entitled to statutory
14 damages, triple damages and costs for Defendant's acts and conduct; and

15 (d) Whether Plaintiffs and members of Class A are entitled to a permanent
16 injunction enjoining Defendant from continuing to engage in their unlawful
17 conduct.

18 27. The questions of fact and law common to Plaintiffs and Class B
19 predominate over questions which may affect individual members and include:

20 (a) Whether Defendant's conduct of sending and/or causing to be sent to
21 Plaintiffs and the members of Class B fax advertisements, which advertised
22 the commercial availability or quality of property, goods, or services and
23 which contained an opt-out notice that was identical or substantially similar
24 to the opt-out notice contained in the fax attached as Exhibit 1, by
25 facsimile, computer or other device, violated 47 U.S.C. § 227(b);

26 (b) Whether Defendant's conduct of sending and/or causing to be sent to
27 Plaintiffs and the members of Class B fax advertisements, which advertised
28 the commercial availability or quality of property, goods, or services and

1 which contained an opt-out notice that was identical or substantially similar
2 to the opt-out notice contained in the fax attached as Exhibit 1, by
3 facsimile, computer or other device, was knowing or willful;

4 (c) Whether Plaintiffs and the members of Class B are entitled to statutory
5 damages, triple damages and costs for Defendant's acts and conduct; and

6 (d) Whether Plaintiffs and members of Class B are entitled to a permanent
7 injunction enjoining Defendant from continuing to engage in its unlawful
8 conduct.

9 28. Typicality of Claims and Defenses: Plaintiffs' claims are typical of
10 the claims of the members of Class A. The claims of the Plaintiffs and members
11 of Class A are based on the same legal theories and arise from the same unlawful
12 conduct. Plaintiffs and members of Class A each received at least one fax
13 advertisement advertising the commercial availability or quality of any property,
14 goods, or services, which contained an opt-out notice that was identical or
15 substantially similar to the opt-out notice contained in the fax attached as Exhibit
16 1, and which Defendant sent or caused to be sent without Plaintiff's and the
17 members of Class A's express permission or invitation.

18 29. Plaintiffs' claims also are typical of the claims of the members of
19 Class B. The claims of the Plaintiffs and members of Class B are based on the
20 same legal theories and arise from the same unlawful conduct. Plaintiffs and
21 members of Class B each received at least one fax advertisement, advertising the
22 commercial availability or quality of any property, goods, or services which
23 contained an opt-out notice that was identical or substantially similar to the opt-
24 out notice contained in the fax attached as Exhibit 1.

25 30. Nature of required/contemplated notice to the proposed class:
26 Members of the Classes may be notified of the pendency of this action by
27 techniques and forms commonly used in class actions, such as by published
28 notice, e-mail notice, website notice, fax notice, first class mail, or combinations

1 thereof, or by other methods suitable to this class and deemed necessary and/or
2 appropriate by the Court.

3 31. Additional allegations supporting Fed. R. Civ. P. 23(b)(3) Class
4 Action: In addition to the foregoing allegations regarding common questions of
5 law and fact that support this action proceeding as a class action pursuant to Rule
6 23(b)(3), a class action pursuant to Rule 23(b)(3) is superior to other available
7 means for the fair and efficient adjudication of the claims of the Classes. While
8 the aggregate damages which may be awarded to the members of the Classes are
9 likely to be substantial, the damages suffered by individual members of the
10 Classes are relatively small. As a result, the expense and burden of individual
11 litigation makes it economically unfeasible and procedurally impracticable for
12 each member of the Classes to individually seek redress for the wrongs done to
13 him, her or it. The likelihood that the individual members of the Classes will
14 prosecute separate claims is remote. Individual litigation also would present the
15 potential for varying, inconsistent or contradictory judgments, and would increase
16 the delay and expense to all parties and the court system resulting from multiple
17 trials of the same factual issues. Plaintiffs do not know of any other litigation
18 concerning this controversy already commenced against Defendant by any
19 member of the Classes. In contrast, the conduct of this matter as a class action
20 presents fewer management difficulties, conserves the resources of the parties and
21 the court system, and would protect the rights of each member of the Classes.
22 Plaintiffs know of no difficulty to be encountered in the management of this
23 action that would preclude its maintenance as a class action.

24 32. Injunctive Relief: Defendant has acted on grounds generally
25 applicable to Plaintiffs and members of the Classes, thereby making appropriate
26 final injunctive relief with respect to Plaintiffs and the Classes as a whole.

27
28

1 **FIRST CLAIM FOR MONETARY RELIEF FOR VIOLATION OF**
2 **47 U.S.C. § 227(B) AND 47 C.F.R. § 64.1200**

3 33. Plaintiffs repeat and reallege all the allegations set forth in
4 paragraphs 1 through 32.

5 34. By the conduct described above, Defendant committed more than
6 10,000 violations of 47 U.S.C. § 227(b) against Plaintiffs and the members of
7 Class A, to wit: the fax advertisements Defendant sent and/or caused to be sent to
8 Plaintiffs and the members of Class A were unsolicited and did not contain a
9 notice meeting the requirements of 47 U.S.C. § 227(b)(2)(D) and/or 47 C.F.R. §
10 64.1200(a)(3)(iii);

11 35. By reason of the Defendant's violations of 47 U.S.C. § 227(b) and
12 47 C.F.R. § 64.1200(a)(3)(iii), Plaintiffs and the members of Class A are entitled
13 to statutory damages under 47 U.S.C. § 227(b) in an amount greater than
14 \$5,000,000 from Defendant.

15 36. If it is found that Defendant willfully and/or knowingly sent and/or
16 caused to be sent unsolicited fax advertisements that did not contain a notice
17 meeting the requirements of 47 U.S.C. § 227(b)(2)(D) and/or 47 C.F.R. §
18 64.1200(a)(3)(iii) to Plaintiffs and the members of Class A, Plaintiffs and Class A
19 are entitled to a tripling of the statutory damage award against Defendant.

20 **SECOND CLAIM FOR MONETARY RELIEF FOR VIOLATION OF**
21 **47 U.S.C. § 227(B) AND 47 C.F.R. § 64.1200**

22 37. Plaintiffs repeat and reallege all the allegations set forth in
23 paragraphs 1 through 32.

24 38. By the conduct described above, Defendant committed more than
25 10,000 violations of 47 U.S.C. § 227(b) against Plaintiffs and the members of
26 Class B, to wit: the fax advertisements Defendant sent and/or caused to be sent to
27 Plaintiffs and the members of Class B were either unsolicited and did not contain
28 a notice meeting the requirements of 47 C.F.R. § 64.1200(a)(3)(iii) and/or §

1 227(b)(2)(D) , or were solicited and did not contain a notice meeting the
2 requirements of 47 C.F.R. § 64.1200(a)(3)(iii) as required by 47 C.F.R. §
3 64.1200(a)(3)(iv).

4 39. By reason of Defendant's violations of 47 U.S.C. § 227(b), 47
5 C.F.R. § 64.1200(a)(3)(iii) and 47 C.F.R. § 64.1200(a)(3)(iv), Plaintiffs and the
6 members of Class B are entitled to statutory damages under 47 U.S.C. § 227(b) in
7 an amount greater than \$5,000,000 from Defendant.

8 40. If it is found that Defendant willfully and/or knowingly sent and/or
9 caused to be sent fax advertisements that did not contain a notice meeting the
10 requirements of 47 C.F.R. § 64.1200(a)(3)(iii) to Plaintiffs and the members of
11 Class B, Plaintiffs are entitled to a tripling of the statutory damage award against
12 Defendant.

13 **THIRD CLAIM FOR INJUNCTIVE RELIEF FOR VIOLATION OF**
14 **47 U.S.C. § 227(B) AND 47 C.F.R. § 64.1200**

15 41. Plaintiffs repeat and reallege all the allegations set forth in
16 paragraphs 1 through 40.

17 42. Upon information and belief, Defendant committed thousands of
18 violations of 47 U.S.C. § 227(b).

19 43. Under 47 U.S.C. § 227(b)(3)(A), Plaintiffs and the members of the
20 Classes are entitled to an injunction against Defendant prohibiting Defendant
21 from committing further violations of the above-mentioned statutes and
22 regulations.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs, on behalf of themselves and the members of the
25 Classes, request:

26 A. an order certifying the Classes, appointing Plaintiffs as the
27 representatives of the Classes, and appointing the law firms representing Plaintiffs
28 as counsel for the Classes;

1 B. on the first and second claims, an award to Plaintiffs and the
 2 members of Classes A and B, and against Defendant, of statutory damages in
 3 excess of \$5,000,000 for each of Classes A and B, pursuant to 47 U.S.C.
 4 § 227(b), for Defendant's violations of that statute and the regulations thereunder;

5 C. on the first and second claims, if it is found that Defendant willfully
 6 and/or knowingly sent and/or caused to be sent fax advertisements to Classes A
 7 and/or B, a tripling of the award of statutory damages pursuant to 47 U.S.C.
 8 § 227(b) to an amount in excess of \$15,000,000 for each of Classes A and B
 9 against Defendant;

10 D. on the third claim, an injunction against Defendant prohibiting
 11 Defendant from committing further violations of the above-mentioned statutes
 12 and regulations; and

13 E. such further relief as the Court deems proper.

14 Dated: October 12, 2011



16 ROGER FURMAN, ESQ.

17 AYTAN BELLIN, ESQ.
 18 BELLIN & ASSOCIATES LLC

19 JOSEPH R. COMPOLI, ESQ.

20
 21 Attorneys for plaintiffs Michael A.
 22 Vandervort and U.S. Sample
 23 Services, Inc., on behalf of
 24 themselves and all others similarly
 25 situated
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DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all issues so triable.

Dated: October 12, 2011



ROGER FURMAN, ESQ.


AYTAN BELLIN, ESQ.
BELLIN & ASSOCIATES LLC

JOSEPH R. COMPOLI, ESQ.

Attorneys for plaintiffs Michael A. Vandervort and U.S. Sample Services, Inc., on behalf of themselves and all others similarly situated

8

17
COMPLAINT

 <p>2010 Main St. 11th Floor Irvine, CA 92614</p> <p>www.balboacapital.com</p>	<p>To: Michael Vandervort Company: U S Sample Services Inc Fax number: 440-466-3411</p>
	<p>From: Derek Thomas Fax number: (949) 809-8835</p>
	<p>Date: 5/21/2010</p>
<p>Regarding: Equipment Leasing</p>	

For more than 22 years, Balboa Capital has been helping thousands of businesses acquire the equipment they need to fuel their growth. Plus, with our **LOWEST PAYMENT PLEDGE** - we guarantee the lowest equipment lease payments, or we'll make your first month's payment for you, up to \$500!

Call me or fax back the Quick Quote form below to receive a free quote on your equipment lease and learn why America's small businesses trust Balboa with their equipment financing needs.

Quick Quote Request

What type of equipment are you interested in leasing? _____

What is the equipment cost? \$ _____

What is the lease term you're looking for? (circle one)

24 months 36 months 48 months 60 months

Name: _____

Telephone: _____

Email: _____

(Fax the completed form to 949 809-8835)

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18
COMPLAINT

Vandervort

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Josephine Tucker and the assigned discovery Magistrate Judge is Jean P. Rosenbluth.

The case number on all documents filed with the Court should read as follows:

SACV11- 1578 JST (JPRx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Case 8:11-cv-01578-JST-JPR Document 1
Name & Address:

Filed 10/12/11 Page 21 of 23 Page ID #:33

Aytan Y. Bellin, Esq., Bellin & Associates, 85 Miles Avenue, White Plains, NY 10606; Joseph R. Compoli, Jr., Esq., 612 E. 185th St., Cleveland, OH 44119; Roger Furman, Esq., 7485 Henefer Avenue, Los Angeles, CA 90045

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL A. VANDERVORT and U.S. SAMPLE SERVICES, INC., on behalf of themselves and all others similarly situated,

PLAINTIFF(S)

v.

BALBOA CAPITAL CORPORATION,

DEFENDANT(S).

CASE NUMBER

SACV 11-01578 JST/JPA

SUMMONS

TO: DEFENDANT(S): Balboa Capital Corporation

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Roger Furman, Esq., whose address is 7485 Henefer Avenue, Los Angeles, California 90045. If you fail to do so, 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, U.S. District Court

Dated: 10/12/11

By: Dwight Roberts
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself) Michael A. Vandervort and U.S. Sample Services, Inc.
DEFENDANTS Balboa Capital Corporation
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
Aytan Y. Bellin, Bellin & Associates, LLC, 85 Miles Avenue, White Plains, NY 10606 (914) 358-5345; Roger Furman, 7485 Henefer Avenue, Los Angeles, CA 90045 (310) 568-0640; Joseph R. Compoli, Jr., 612 E. 185 St., Cleveland, OH

II. BASIS OF JURISDICTION (Place an X in one box only.)
III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)
Citizen of This State PTF DEF
Citizen of Another State PTF DEF
Citizen or Subject of a Foreign Country PTF DEF

IV. ORIGIN (Place an X in one box only.)
Original Proceeding
Removed from State Court
Remanded from Appellate Court
Reinstated or Reopened
Transferred from another district (specify):
Multi-District Litigation
Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)
CLASS ACTION under F.R.C.P. 23: Yes No
MONEY DEMANDED IN COMPLAINT: \$ 30,000,000 plus

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
47 U.S.C. Sec. 227(b), - Defendant transmitted solicited and unsolicited fax advertisements to Plaintiff and the Classes which had deficient opt-out notices

VII. NATURE OF SUIT (Place an X in one box only.)
OTHER STATUTES
CONTRACT
REAL PROPERTY
TORTS
PERSONAL INJURY
IMMIGRATION
TORTS
PERSONAL PROPERTY
BANKRUPTCY
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
PROPERTY RIGHTS
SOCIAL SECURITY
FEDERAL TAX SUITS

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Michael A. Vandervort - Highland County, Ohio U.S. Sample Services, Inc. - Ashtabula County, Ohio

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Balboa Capital Corporation - Orange County	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER): [Signature] Date October 12, 2011

Notice to Counsel/Parties: The CV-71 (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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))