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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

RESPONSIVE MANAGEMENT SYSTEMS, on behalf of itself and all others similarly situated,)	CLASS ACTION
)	No. 05-2-04728-3 SEA
Plaintiff,)	FIRST AMENDED
)	CLASS ACTION COMPLAINT
v.)	FOR INJUNCTIVE RELIEF
)	AND INCIDENTAL DAMAGES
ONVIA INC.,)	ARISING OUT OF TRANSMISSION
Defendant.)	OF UNSOLICITED FAXES

Plaintiff brings this action in an individual capacity and on behalf of a class and subclass of persons defined below and for its complaint alleges as follows:

NATURE OF ACTION

1. This is a proposed class action brought on behalf of persons and/or businesses that received an unsolicited advertisement to their telephone facsimile machine from Defendants.

2. Plaintiff alleges that Defendant's use of a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine violates the Telephone Consumer Protection Act of 1991 ("TCPA"), 47 U.S.C. § 227, and the Washington Unsolicited Telefacsimile statute, ("Washington Unsolicited Fax Law"), RCW 80.36.540. Moreover, a violation of the Washington Unsolicited Fax Law constitutes a *per se* violation of the Washington Consumer Protection Act ("WCPA"), RCW 19.86.

COPY

1 10. Defendant Onvia, Inc. contracted with a third party to transmitt the subject
2 facsimile to Plaintiff and others using a web-based software program operated by said third
3 party.

4 **CLASS ACTION ALLEGATIONS**

5 11. This class action is brought and may be maintained pursuant to CR 23(b)(2) and
6 (b)(3). Plaintiff seeks to represent a National Class comprised of:

7 All persons who received an unsolicited advertisement from Onvia
8 during the applicable statute of limitations in the form of Exhibit A or
9 similar form promoting "DemandStar by Onvia," or otherwise
10 advertising to recipients its services of assisting businesses to obtain
11 governmental entity bid opportunities via facsimile from Defendant.

12 12. Plaintiff and members of the National Class were recipients of unsolicited
13 facsimiles in violation of the TCPA.

14 13. Plaintiff also brings this action on behalf of a Subclass of the National Class
15 comprised of Washington State residents (hereinafter "Washington Subclass") comprised of:

16 All persons residing in Washington State who received an unsolicited
17 advertisement from Onvia during the applicable statute of limitations in
18 the form of Exhibit A or similar form promoting "DemandStar by
19 Onvia," or otherwise advertising to recipients its services of assisting
20 businesses to obtain governmental entity bid opportunities via facsimile
21 from Defendant.

22 14. Plaintiff and members of the Washington Subclass were recipients of unsolicited
23 facsimiles in violation of the TCPA, the Washington Unsolicited Fax Law, and the WCPA.

24 15. This action is properly brought as a class action under CR 23(b)(2), and (b)(3)
25 for the following reasons:

26 (a) Defendant sent or contracted to send thousands of the fascimiles at issue.
27 Therefore, the National Class and Washington Subclass consist of hundreds of persons and is
so numerous that joinder of all members is impracticable. Thousands of businesses and
consumers own facsimile machines, and Defendant targeted persons with facsimile machines.

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(b) There are questions of law or fact common to the National Class and Washington Subclass, which predominate over any questions affecting individual member, including:

- (i) Whether Defendant violated the TCPA, the Washington Unsolicited Fax Law, and the WCPA when sending unsolicited faxes in the form attached hereto or in a similar manner;
- (ii) Whether facsimiles that are the same or similar to Exhibit A constitute "unsolicited advertisements" under the TCPA;
- (iii) Whether facsimiles that are the same or similar to Exhibit A constitute "unsolicited . . . telefacsimile messages promoting goods and services for purchase by the recipient" under the Washington Unsolicited Fax Law;
- (iv) Whether Plaintiff and members of the National Class are entitled to damages under the TCPA;
- (v) Whether Plaintiff and members of the Washington Subclass are entitled to damages under the Washington Unsolicited Fax Law and the WCPA;
- (vi) Whether Plaintiff and members of the National Class are entitled to treble damages under the TCPA;
- (vii) Whether Plaintiff and members of the National Class are entitled to injunctive relief under the TCPA; and
- (viii) Whether Plaintiff and members of the Washington Subclass are entitled to injunctive relief under the Washington Unsolicited Fax Law and the WCPA.

(c) The claims asserted by Plaintiff are typical of the claims of the members of the National Class and Washington Subclass and there is uniformity in the law by federal

1 and state legislation prohibiting the practice complained of and providing statutory damages
2 that may be pursued in state court.

3 (d) Plaintiff will fairly and adequately protect the interests of the National
4 Class and Washington Subclass. Plaintiff's claims are typical of the members of the Class and
5 Subclass because they received one or more unsolicited faxes from Defendant attempting to
6 sell them a service that will notify them of governmental agency bid opportunities. Plaintiff
7 seeks no relief that is antagonistic or adverse to other members of the Class or Subclass.

8 (e) Plaintiff has retained counsel competent and experienced in class and
9 consumer litigation and has no conflict of interest with other National Class and Washington
10 Subclass members in the maintenance of this class action. In addition, Plaintiff has no
11 relationship with Defendant. Plaintiff will vigorously pursue the claims of the National Class
12 and Washington Subclass.

13 (f) Defendant has acted on grounds generally applicable to Plaintiff and the
14 National Class and Washington Subclass as alleged herein, thereby making appropriate final
15 injunctive relief and incidental damages with respect to the National Class and Washington
16 Subclass as a whole.

17 (g) A class action is superior to any other available means for the
18 adjudication of this controversy. This action will cause an orderly and expeditious
19 administration of the National Class' and Washington Subclass' claims; economies of time,
20 effort and expense will be fostered; and uniformity of decisions will be ensured at the lowest
21 cost and with the least expenditure of judicial resources.

22 (h) Because the loss suffered by individual National Class and Washington
23 Subclass members may be relatively small, the expense and burden of individual litigation
24 makes it impracticable for National Class and Washington Subclass members to individually
25 seek redress for the wrongs done to them. Plaintiff believes that National Class and
26 Washington Subclass members, to the extent they are aware of their rights against Defendant,
27 would be unable to secure counsel to litigate their claims on an individual basis because of the

AMENDED CLASS ACTION COMPLAINT - 5

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1 relatively small nature of the individual damages warranted and/or the value of individual
2 injunctive relief. Hence, a class action is the only feasible means of recovery for the National
3 Class and Washington Subclass members. Furthermore, without a class action, National Class
4 and Washington Subclass members will continue to suffer damages and Defendant will
5 continue to violate federal and state law, retaining and reaping the proceeds of their wrongful
6 marketing practices and ignoring and flaunting the law.

7 (i) Plaintiff does not anticipate any difficulty in management of this action
8 because the evidence proving Defendant's violation of the statutes is ascertainable through
9 discovery. The identities of the Class and Subclass members are known by Defendant, and
10 damages can be calculated from Defendant's records. This action poses no unusual difficulties
11 that would impede its management by the Court as a class action.

12 **COUNT I**

13 **VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT**
14 **(47 U.S.C. § 227 *et seq.*)**

15 16. Defendant used a telephone facsimile machine, computer, or other device to
16 send unsolicited advertisements to telephone facsimile machines, including a telephone
17 facsimile machine owned by Plaintiff.

18 17. In each instance, Defendant did so willfully or knowingly.

19 18. On information and belief, in each instance Defendant transmitted or contracted
20 to transmit the unsolicited faxes to telephone facsimile machines; it compensated a third party
21 for transmitting the unsolicited faxes to telephone facsimile machines; and it knew that Plaintiff
22 and other recipients had not authorized the faxes' transmission by prior express invitation or
23 permission.

24 19. As a result of said conduct, Plaintiff and members of the National Class have
25 sustained damages. Under the TCPA, Plaintiff and all members of the National Class are
26 entitled to injunctive relief enjoining Defendant's unlawful conduct, as well as incidental
27 statutory damages in the amount of \$1,500.

AMENDED CLASS ACTION COMPLAINT - 6

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COUNT II

**VIOLATION OF THE WASHINGTON UNSOLICITED FAX LAW
AND THE WCPA
(RCW 80.36.540 & RCW 19.86.020)**

20. Defendant initiated the unsolicited transmission of facsimile messages promoting goods and services for purchase by Plaintiff and members of the Washington Class, in violation of the Washington Unsolicited Fax Law.

21. Defendant initiated the unsolicited transmission of facsimile messages to Plaintiff and members of the Washington Class, with whom Defendants had no prior contractual or business relationship, removing their actions from the exception set forth in RCW 80.36.540(3)(a).

22. As a result of said conduct, Plaintiff and members of the Washington Subclass have sustained damages. Under the Washington Unsolicited Fax Law, Plaintiff and all members of the Washington Subclass are entitled to injunctive relief enjoining Defendants' unlawful conduct, as well as incidental statutory damages in the amount of \$500, or treble that amount as determined by law.

RELIEF SOUGHT

WHEREFORE, Plaintiff requests judgment against Defendant for itself and the members of the National Class and Washington Subclass as follows:

- A. Certification of the National Class and Washington Subclass pursuant to CR 23(b)(2) and CR 23(b)(3);
- B. Granting extraordinary, equitable, and/or injunctive relief as permitted by law to ensure that Defendant will not continue to send unsolicited faxes;

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- C. Judgment in the amount of \$500 for Plaintiff and each member of the National Class and the Washington Subclass for incidental statutory damages for each individual unsolicited fax received by them from Defendants;
- D. Judgment in the amount equal to three times the damages to Plaintiff and members of the National Class under the TCBA, and Washington Subclass under the WCPA;
- E. Judgment for costs and fees incurred in connection with this action, including reasonable attorneys' fees, expert witness fees, and other costs, as provided by law; and
- F. Granting such other and further relief as the Court deems just and proper.

DATED this 13 day of September, 2005.

KELLER ROHRBACK L.L.P.

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