

**DISTRICT COURT, ARAPAHOE COUNTY,
COLORADO**
Court Address: 7325 S. Potomac Street, Centennial, CO
80112
Phone Number: (303) 649-6355

Plaintiff(s):
USA TAX LAW CENTER, INC., dba US FAX LAW
CENTER, INC.

Defendant(s):
PERRY JOHNSON, INC.

Attorneys for Plaintiff
Frank J. Ball, Atty. Reg. #16477
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▲ COURT USE ONLY ▲

Case No. 02CV5317

Div.: 402

Ctrm.:

**PLAINTIFF'S RESPONSE TO DEFENDANT'S SECOND AMENDED FIRST SET OF
INTERROGATORIES TO PLAINTIFF AND DEFENDANT'S SECOND SET OF
INTERROGATORIES TO PLAINTIFF AND DEFENDANT'S FIRST AND SECOND
REQUESTS FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF**

The Plaintiff, USA Tax Law Center, Inc., dba US Fax Law Center, Inc. ("Plaintiff"), by and through its counsel, Law Offices of Frank J. Ball, Stephen S. Allen, files its Response to Defendant's Second Amended First Set of Interrogatories to Plaintiff and Defendant's Second Set of Interrogatories to Plaintiff and Defendant's First and Second Request for Production of Documents to Plaintiff propounded by the Defendant Perry Johnson, Inc. ("Defendant").

GENERAL OBJECTION

Plaintiff objects to each and every inquiry, regardless of how designated, which seeks from Plaintiff specific information, records, documents, or other data from or pertaining to a third person or entity who is not a party to this action and which is not within the possession or knowledge of Plaintiff.

SECOND AMENDED FIRST SET OF INTERROGATORIES

INTERROGATORY NO. 1:

For each assignor and each assignment of each assignor at issue in this case (see your

Complaint), state the name, address and phone numbers of each person/individual acting for or on behalf of each assignor with whom the Plaintiff and its representatives had any contact or dealings whatsoever.

RESPONSE: Objection. Plaintiff objects to this interrogatory to the extent that the terms “contact” and “dealings” are vague, ambiguous and undefined by Defendant. Plaintiff objects to this interrogatory to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action. Finally, Plaintiff objects to the extent that the interrogatory seeks from Plaintiff specific information pertaining to a third person or entity who is not a party to this action and which is not within the knowledge of Plaintiff.

Notwithstanding the foregoing, and without waiving any objections, Plaintiff states that copies of the Assignments directly relevant to the within action have already been provided to the Defendant with its Disclosures. The best information in the possession of Plaintiff is the information contained on the face of the Assignments themselves. The information sought by this interrogatory, and not objected to, is self evident from the face of the disclosed documents.

INTERROGATORY NO. 2:

For each assignor and each assignment of each assignor at issue in this case (see your Complaint), state the names, current addresses and phone numbers of each and every representative, employee, or agent of the Plaintiff who has engaged in any dealings or communications with that assignor.

RESPONSE: Objection. Plaintiff objects to this interrogatory to the extent that the terms “dealings” and “communications” are vague, ambiguous and undefined by Defendant. Plaintiff objects to this interrogatory to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action.

Notwithstanding the foregoing, and without waiving any objections, Plaintiff states that copies of the Assignments directly relevant to the within action have already been provided to the Defendant with its Disclosures. The best information in the possession of Plaintiff is the information contained on the face of the Assignments themselves. The information sought by this interrogatory, and not objected to, is self evident from the face of the disclosed documents.

INTERROGATORY NO. 3:

For each assignor and each assignment of each assignor at issue in this case (see your Complaint), describe all communications (whether written, verbal or electronic) between any and all representatives of the Plaintiff and any and all representatives of the assignor prior to the time that the assignment was executed and delivered including the identification of all persons involved in those communications.

RESPONSE: Objection. Plaintiff objects to this interrogatory to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action. Plaintiff further objects to the extent that the interrogatory seeks from Plaintiff specific information pertaining to a third person or entity who is not a party to this action and which is not within the knowledge of Plaintiff.

INTERROGATORY NO. 4:

For each assignor and each assignment of each assignor at issue in this case (see your Complaint), describe all communications (whether written, verbal or electronic) between any and all representatives of the Plaintiff and any and all representatives of the assignor at any time at or after the execution of the assignment, including the identification of all persons involved in those communications.

RESPONSE: Objection. Plaintiff objects to this interrogatory to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action. Plaintiff further objects to the extent that the interrogatory seeks from Plaintiff specific information pertaining to a third person or entity who is not a party to this action and which is not within the knowledge of Plaintiff.

Notwithstanding the foregoing, and without waiving any objections, Plaintiff states that all that generally exists is the written Assignment itself, a set of Commonly Asked Questions About Junk Faxing, pre-addressed and pre-stamped envelopes for mailing the Assignors' collected unsolicited fax advertisements, checks sent to the Assignors for payment, and occasionally an affidavit after it becomes necessary to file a law suit because of a junk-faxer's refusal to settle fairly for his illegal conduct. On occasion there may also be general correspondence about batching and submitting faxes. Occasionally communication occur as to whether there was specific permission on a fax or the nature of the relationship of an assignor to a particular faxer. Copies of Affidavits and correspondence directly relevant to the within action will be provided to Defendant herewith. The information sought by this interrogatory, and not objected to, is contained on the face of the Affidavits themselves.

INTERROGATORY NO. 5:

For each assignor and each assignment of each assignor at issue in this case (see your Complaint), specifically state any and all consideration given, promised, or exchanged for the assignment.

RESPONSE: Objection. Plaintiff objects to this interrogatory to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action. Finally, Plaintiff objects to the interrogatory to the extent that the

information sought is in the possession of and/or has already been provided to Defendant.

Notwithstanding the foregoing, and without waiving any objections, Plaintiff states that copies of the Assignments directly relevant to the within action have already been provided to the Defendant with its Disclosures. The best information in the possession of Plaintiff is the information contained on the face of the Assignments themselves. The information sought by this interrogatory, and not objected to, is self evident from the face of the disclosed documents. In addition, the following information reflects the amounts paid to date to each Assignor in this action:

| ASSIGNOR | AMOUNT PAID TO DATE |
|-------------------------------------|---------------------|
| Copy Cat | \$450.00 |
| CTC-Geotek, Inc. | \$900.00 |
| New Millennium Mortgage | \$1,400.00 |
| Key-Rite Security Lock & Safe, Inc. | \$1,350.00 |
| Lehrer Metal Products Co., Inc. | \$250.00 |
| Colorado Tool & Die, Inc. | \$150.00 |
| Carter Group | \$550.00 |
| Pat-Cin Enterprises, Inc. | \$1,750.00 |
| Adastra, Inc. | \$950.00 |
| M & W Glass Inc. | \$400.00 |
| Castle Rock Printing, Inc. | \$600.00 |
| Register Graphics LLC | \$200.00 |
| Dillingar Inv. Inc. dba Sign-A-Rama | \$650.00 |
| Afordable Printing | \$0.00 |
| Empire Bookeeping, Inc. | \$550.00 |
| Southeast Denver Graphics, Inc. | \$700.00 |
| Furniture Row, LLC | \$1,000.00 |
| The Daly Press | \$0.00 |
| Sponsored Publications, Inc. | \$0.00 |
| Alameda Ornamental Iron, Inc. | \$900.00 |
| All American Awning & Sign, Inc. | \$50.00 |
| Corey Electrical Engineering, Inc. | \$150.00 |
| Kwik Kopy Printing | \$100.00 |
| Electric Innovations, Inc. | \$150.00 |
| Lion Capital, LLC | \$10,200.00 |

INTERROGATORY NO. 6:

For each assignor at issue in this case (see your Complaint), describe each and every manner in which the Plaintiff believes that such assignor became aware and/or may have become aware of the Plaintiff's willingness to accept such assignment(s), or the Plaintiff's willingness to pursue a TCPA claim.

RESPONSE: Objection. Plaintiff objects to this interrogatory to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action. Plaintiff further objects to the extent that the interrogatory seeks from Plaintiff specific information pertaining to a third person or entity who is not a party to this action and which is not within the knowledge of Plaintiff. Finally, Plaintiff objects to the extent that the information sought is confidential, proprietary and/or trade secret protected.

INTERROGATORY NO. 7:

Describe and all modes or methods that the Plaintiff has ever engaged in at any time for the purpose of making third-party individuals or companies aware of the Plaintiff's willingness to pursue TCPA claims/action and assignments of TCPA claims.

RESPONSE: Objection. Plaintiff objects to this interrogatory to the extent that the terms "modes" and "methods" are vague, ambiguous and not defined by Defendant. Plaintiff objects to this interrogatory to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action. Finally, Plaintiff objects to the extent that the information sought is confidential, proprietary and/or trade secret protected.

INTERROGATORY NO. 8:

Describe all owners or shareholders of the Plaintiff, including the nature and extent of their share hold or other interest, and including their name, current address and phone number.

RESPONSE: Objection. Plaintiff objects to this interrogatory to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action. To the extent that this interrogatory seeks information that is accessible from the Colorado Secretary of State's web-site, that information is equally available to Defendant.

Notwithstanding the foregoing, and without waiving any objections, Plaintiff states that Andrew L. Quiat is the President and CEO of Plaintiff, and Ed Ott is the Vice-President of Plaintiff, 8200 S. Quebec Street, Suite A-3185, Englewood, CO 80112, 303.471.8558.

INTERROGATORY NO. 9:

Describe the nature and extent of the Plaintiff's business activities, including all business functions or activities and the number of employees employed by the Plaintiff at each location of the Plaintiff's business operations.

RESPONSE: Objection. Plaintiff objects to this interrogatory to the extent that it is overly

broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action.

Notwithstanding the foregoing, and without waiving any objections, Plaintiff states that the nature and extent of Plaintiff's business activities is the purchase of personal property consisting of unsolicited junk fax advertisements received by individuals, both inside and outside of the State of Colorado, in the form of Assignments as already provided to the Defendant in this matter.

INTERROGATORY NO. 10:

Describe all litigation to which the Plaintiff has ever been a party, including but not limited to, all TCPA actions ever brought by the Plaintiff for itself or as an assignee. Such description should include the case name, the court where filed (identify the court by level, location, and state), the case or action number, a description of the nature of that litigation and the issues involved therein, and the current status or final result/outcome of such litigation.

RESPONSE: Objection. Plaintiff objects to this interrogatory to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action. Plaintiff further objects to the interrogatory to the extent that the information sought is in the possession of and/or has already been provided to Defendant. Finally, to the extent that the interrogatory seeks information that accessible from public records, that information is equally available to Defendant.

Notwithstanding the foregoing, and without waiving any objections, Plaintiff states that there are hundreds of suits in which Plaintiff is or has been named as a party in pursuing its property rights with respect to the junk faxes it has purchased and/or directly received. Further, the herein action, USA Tax Law Center, Inc., dba US Fax Law Center, Inc. v. Perry Johnson, Inc., Case Number 03CV5317, in the District Court, Arapahoe County, Colorado, is a case which is responsive to the interrogatory. For a description of the nature of the litigation and issues involved therein, the best information is contained in the pleadings, motions and responsive briefs filed in the herein action. Information relating to the current status of the herein action is equally available to Defendant. As of the date of this response, Plaintiff has no information relating to the outcome of the herein action.

INTERROGATORY NO. 11:

Identify every person/individual who is or ever was a employee, agent, or representative of the Plaintiff who has ever testified in any of the litigation described in your answer to Interrogatory # 10 above, including the case, the date of the testimony, and the nature of the testimony (trial or deposition), and the subject matter of that testimony.

RESPONSE: Objection. Plaintiff objects to this interrogatory to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence.

Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action. Finally, to the extent that the interrogatory seeks information that is accessible from public records, that information is equally available to Defendant.

INTERROGATORY NO. 12:

To the extent that any of the communications described in your Answers to Interrogatories # 3, 4, 6, or 7 above include any facsimile transmissions, describe all of the contents of all such facsimile transmissions and all records kept by the Plaintiff concerning each facsimile transmission and the Plaintiff's permission to send such facsimile transmission.

RESPONSE: Objection. Plaintiff objects to this interrogatory to the extent that the phrase "Plaintiff's permission" is vague, ambiguous and undefined by Defendant. Plaintiff objects to this interrogatory to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action. Plaintiff further objects to the extent that the interrogatory seeks from Plaintiff specific information pertaining to a third person or entity who is not a party to this action and which is not within the knowledge of Plaintiff. Finally, Plaintiff objects to the extent that the information sought is confidential, proprietary and/or trade secret protected.

INTERROGATORY NO. 13:

State the name, address, telephone number, and relationship to you of each person who prepared or assisted in the preparation of the responses to these Interrogatories.

RESPONSE: (a) Andrew L. Quiat, President and CEO of Plaintiff, 8200 S. Quebec Street, Suite A-3185, Englewood, CO 80112, 303.471.8558; (b) Stephen S. Allen, counsel to Plaintiff, 7880 E. Berry Place, Greenwood Village, CO 80111, 303.629.7000, AS TO OBJECTIONS.

INTERROGATORY NO. 14:

Do you understand that under the Colorado Rules of Civil Procedure, Rule 33, you have the legal obligation in your answers to these interrogatories to furnish all information which is available from any of Plaintiff's records and from any of Plaintiff's employees or agents?

RESPONSE: No. To the extent that an interrogatory is objected to, Plaintiff is not aware of any authority that requires it to furnish the requested objectionable information. To the extent that the requested information is not available under Rule 33, C.R.C.P., Plaintiff is not aware of any authority that requires it to obtain the unavailable information from employees, agents, or third persons or entities who are not a party to this litigation.

INTERROGATORY NO. 15:

In answering these interrogatories, has your signing representative made a full inquiry of any and all employees, and examined all of Plaintiff's records, necessary to respond fully and accurately to the questions asked in these interrogatories?

RESPONSE: No. To the extent that an interrogatory is objected to and seeks information that is not discoverable, Plaintiff has not made a full inquiry, nor has it examined all of its records, in order to respond to the objectionable and undiscoverable questions asked in these interrogatories.

SECOND SET OF INTERROGATORIES

INTERROGATORY NO. 1:

Describe the circumstances of the receipt of each facsimile at issue in this case, including: (1) the date(s) the facsimile was allegedly received by the assignor; b) the full telephone number of the telephone line on which the facsimile was allegedly received; c) the owner of the telephone line described in (b) above and d) the identify of the person who first became aware that the facsimile was received on the above described telephone line.

RESPONSE: Objection. Plaintiff objects to this interrogatory to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action. Plaintiff further objects to the extent that the interrogatory seeks from Plaintiff specific information pertaining to a third person or entity who is not a party to this action and which is not within the knowledge of Plaintiff. Additionally, Plaintiff objects to the interrogatory to the extent that the information sought is in the possession of and/or has already been provided to Defendant. Finally, to the extent that the interrogatory seeks information that accessible from public records, that information is equally available to Defendant.

Without waiving any objections, Plaintiff states that copies of the facsimile advertisements at issue are attached to the Complaint and/or have already been disclosed to Defendant. The best information in the possession of Plaintiff is the information contained on the face of the facsimile advertisements themselves. The information sought by this interrogatory, and not objected to, is self evident from the face of the disclosed documents. Notwithstanding the foregoing, the burden of proof is on Defendant with regard to the issue of prior express invitation or permission and Defendant has a duty to maintain appropriate documentation with respect to such permission. *See Jemiola v. XYZ Corporation*, 802 N.E.2d 745 (Ohio C.P. 2003).

FIRST AND SECOND REQUESTS FOR PRODUCTION

As a preliminary matter, Plaintiff objects to Defendant's unilateral setting of a time, date, and location for Plaintiff's production of documents because the time, date, and location, chosen by counsel for Defendant was not coordinated with Plaintiff's counsel, was not reasonable, and was not set in conformance with the time period provided for serving a written response under Rules 6(e), 34(b), C.R.C.P.

REQUEST NO. 1: Every written or electronic communication between the Plaintiff or its representatives and each assignor or its representatives, at any time, including all those communications described in Plaintiff's Answers to Interrogatories.

RESPONSE: Objection. Plaintiff objects to this request to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action. Finally, Plaintiff objects to the extent that the information sought is confidential, proprietary and/or trade secret protected.

Notwithstanding the foregoing, and without waiving any objections, copies of the Affidavits and correspondence are enclosed herewith.

REQUEST NO. 2: All communications, advertisements, or other materials the Plaintiff has ever used to inform any third-parties of the Plaintiff's willingness to accept assignments for pursuit of TCPA claims/actions.

RESPONSE: Objection. Plaintiff objects to this request to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action. Finally, Plaintiff objects to the extent that the information sought is confidential, proprietary and/or trade secret protected.

REQUEST NO. 3: Transcripts of all deposition or trial testimony ever given by any representative of the Plaintiff during any litigation, as described in Plaintiff's Answers to Interrogatories 10 & 11.

RESPONSE: Objection. Plaintiff objects to this request to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action. Finally, to the extent that the request seeks information that accessible from public records, that information is equally available to Defendant.

REQUEST NO. 4: Produce copies of any and all advertisements, solicitations, or informational communications Plaintiff has ever sent to any third-parties at any time, including all versions and variations thereof, concerning the Plaintiff's business or services.

RESPONSE: Objection. Plaintiff objects to this request to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action. Finally, Plaintiff objects to the extent that the information sought is confidential, proprietary and/or trade secret protected.

REQUEST NO. 5: Produce copies of all records kept by the Plaintiff regarding the Plaintiff's

permission to send the facsimiles or other communications that are described in Plaintiff's answer to Interrogatory #12, or are produced in response to Defendant's Requests for Production #1, 2, 4.

RESPONSE: Objection. Plaintiff objects to the request to the extent that the phrase "Plaintiff's permission" is vague, ambiguous and undefined by Defendant. Plaintiff objects to this request to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action.

REQUEST NO. 6: All documents containing or constituting an authorization, approval, or permission that Plaintiff has ever obtained or received from any person or entity for the facsimile communications or advertisements described in Plaintiff's Answer to Interrogatory # 12.

RESPONSE: Objection. Plaintiff objects to this request to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action.

REQUEST NO. 7: Any and all court pleadings, orders, or settlement agreements pertaining to any litigation or claims between Plaintiff and any other entity related to claims made or brought pursuant to the TCPA at any time.

RESPONSE: Objection. Plaintiff objects to this request to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action. Plaintiff further objects to the request to the extent that the information sought is in the possession of and/or has already been provided to Defendant. In addition, Plaintiff objects to the extent that the information sought is confidential, proprietary and/or trade secret protected. Finally, to the extent that the request seeks information that accessible from public records, that information is equally available to Defendant.

Notwithstanding the foregoing, and without waiving any objections, to the extent that the documents filed in the herein litigation are responsive to this request, those documents are in the possession of Defendant, have already been provided to Defendant, and/or are public records equally available to Defendant.

REQUEST NO. 8: All notes, records, or other documents of the Plaintiff or its representatives regarding the communications described in your answers to Interrogatories 3, 4, & 5.

RESPONSE: Objection. Plaintiff objects to this request to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action. Finally, Plaintiff objects to the extent that the information sought is confidential, proprietary and/or trade secret protected.

Notwithstanding the foregoing, and without waiving any objections, copies of the Affidavits and correspondence are enclosed herewith.

REQUEST NO. 9: All files of the Plaintiff, generated prior to December 1, 2003, concerning the claims or assignments at issue in this case.

RESPONSE: Objection. Plaintiff objects to the request to the extent that the phrase "all files ... generated" is vague, ambiguous, and undefined by Defendant. Plaintiff objects to this request to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action. Plaintiff further objects to the request to the extent that the information sought is in the possession of and/or has already been provided to Defendant. In addition, Plaintiff objects to the extent that the information sought is confidential, proprietary and/or trade secret protected. Finally, to the extent that the request seeks information that accessible from public records, that information is equally available to Defendant.

REQUEST NO. 10: For each facsimile and each assignment at issue in this case, produce all documents that would in any way prove or establish the particular telephone line/telephone number on which each facsimile was allegedly received.

RESPONSE: Objection. Plaintiff objects to this request to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action. Plaintiff further objects to the extent that the requests seeks from Plaintiff specific information pertaining to a third person or entity who is not a party to this action and which is not within the knowledge or possession of Plaintiff. In addition, Plaintiff objects to the request to the extent that the information sought is in the possession of and/or has already been provided to Defendant. Finally, to the extent that the request seeks information that accessible from public records, that information is equally available to Defendant.

Without waiving any objections, Plaintiff states that copies of the facsimile advertisements at issue are attached to the Complaint and/or have already been disclosed to Defendant. The best information in the possession of Plaintiff is the information contained on the face of the facsimile advertisements themselves. The information sought by this request, and not objected to, is self evident from the face of the disclosed documents. Notwithstanding the foregoing, the burden of proof is on Defendant with regard to the issue of prior express invitation or permission and Defendant has a duty to maintain appropriate documentation with respect to such permission. *See Jemiola v. XYZ Corporation*, 802 N.E.2d 745 (Ohio C.P. 2003).

REQUEST NO. 11: For each assignor and each facsimile received by each assignor at issue in this case, produce a full and complete copy of the telephone bill/statement - for the telephone line/telephone number that each facsimile was allegedly received through or on - for the month or time period during which the facsimile in question was allegedly received, together with any other documentation tending to established the identity of the owner of the particular telephone line on

which the facsimile was received at the time that the facsimile was allegedly received.

RESPONSE: Objection. Plaintiff objects to this request to the extent that it is overly broad, unduly burdensome, and would not likely lead to the discovery of admissible evidence. Plaintiff also objects to the extent that the information sought is irrelevant and is not related to an issue in controversy in this action. Plaintiff further objects to the extent that the requests seeks from Plaintiff specific information pertaining to a third person or entity who is not a party to this action and which is not within the knowledge or possession of Plaintiff.

Without waiving any objections, and notwithstanding the foregoing, the burden of proof is on Defendant with regard to the issue of prior express invitation or permission and Defendant has a duty to maintain appropriate documentation with respect to such permission. *See Jemiola v. XYZ Corporation*, 802 N.E.2d 745 (Ohio C.P. 2003).

DATED this 3rd day of September, 2004.

Respectfully submitted as to
objections,

LAW OFFICES OF FRANK J. BALL



Stephen S. Allen, #31974
Our File No. JF001800

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Plaintiff's Response to Defendant's Second Amended First Set of Interrogatories to Plaintiff and Defendant's Second Set of Interrogatories to Plaintiff and Defendant's First and Second Request for Production of Documents to Plaintiff* was served this 3rd day of September, 2004, via facsimile: (303) 860-1302, and by placing a true and correct copy thereof in the United States Mail, postage pre-paid, and properly address to the following:

Roger T. Castle, Esq.
Roger T. Castle, P.C.
1888 Sherman Street, Suite 415
Denver, CO 80203

