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10 **BEFORE THE**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **FOR THE BUREAU OF SECURITY AND INVESTIGATIVE SERVICES**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. IA 1996 8777

14 CHARLES RODRICK MARTIN
17671 Irvine Boulevard, Suite 113
15 Tustin, California 92780

**FIRST AMENDED
ACCUSATION**

16 Private Investigator License No. 13135

17 Respondent.
18

19 Complainant, for cause of accusation against CHARLES RODRICK MARTIN,
20 alleges as follows:

21 **PARTIES**

22 1. Complainant, Sherrie Moffet-Bell, is the Program Manager of the Bureau
23 of Security and Investigation Services within the Department of Consumer Affairs of the State of
24 California, and makes this First Amended Accusation in her official capacity.

25 2. On or about September 22, 1988, the Bureau of Security and Investigation
26 Services issued Private Investigator License No. PI 13135 to respondent CHARLES RODRICK
27 MARTIN (respondent "MARTIN"). The license is in full force and effect and will expire on
28 September 30, 2004, unless renewed.

Certified to be a true and correct
copy of the original on file with
the Department of Consumer Affairs
dated 12/2/03 [Signature]

1 9. At all times material herein, Fax.com, Inc., was and is a Delaware
2 corporation doing business from offices located at 120 Columbia, Suite 500, Aliso Viejo,
3 California. At all times material herein, Fax. Com was and is in the business of sending
4 facsimile advertisements on behalf of client companies. At all times material herein, Fax.com
5 routinely sent unwanted and unsolicited facsimile advertisements to fax numbers across the
6 nation. At all times material herein, Fax.com routinely violated the header/footer requirement for
7 sending facsimile advertisements as described in paragraph 8 hereinabove.

8 10. In December, 2000 and May, 2001, the Federal Communications
9 Commission ("FCC") issued Citations to Fax.com for violations of the TCPA. On August 7,
10 2002, the FCC issued a Notice of Apparent Liability for Forfeiture, in which the FCC found that
11 Fax.com engaged in a pervasive and egregious pattern of deception in the course of its fax
12 broadcasting business, and proposed a total fine of \$5,379,000.

13 11. At all times material herein, respondent MARTIN was and is an employee
14 of Fax.com, acting as the Vice-President of the Compliance Unit. At all times material herein,
15 respondent knew that Fax.com routinely sends unwanted and unsolicited facsimile
16 advertisements to fax numbers across the nation. At all times material herein, respondent's job
17 responsibilities at Fax.com included defending clients and/or the company against TCPA
18 lawsuits filed by persons who received unwanted and unsolicited facsimiles sent by Fax.com.

19 12. At all times material herein, DARRELL SMILEY was and is employed at
20 Fax.com as a Customer Service Supervisor. At all times material herein, SMILEY worked with
21 respondent MARTIN in defending Fax.com clients and/or Fax.com against TCPA lawsuits filed
22 by persons who have received unwanted and unsolicited facsimiles sent by Fax.com.

23 WAYNE STRANG vs. T.N.A. TRAVEL, INC.

24 13. At all times material herein, T.N.A. Travel, Inc. dba Holiday Marketing
25 ("T.N.A. Travel"), was and is a California corporation doing business from Sacramento,
26 California. At an undetermined time, T.N.A. Travel retained Fax.com to send facsimile
27 advertisements on behalf of T.N.A. Travel.

28 14. On or about May 11, 2000, Fax.com sent an unsolicited facsimile

1 advertisement for T.N.A. Travel to WAYNE STRANG, a resident of Torrance, California.

2 15. Based upon receipt of the unsolicited facsimile, on May 25, 2000,
3 STRANG brought suit against T.N.A. Travel under the TCPA in the Superior Court of
4 California, County of Los Angeles, South Bay Judicial District, Small Claims Case No. SBA
5 00S02035.

6 16. On or about August 17, 2000, the STRANG vs. T.N.A. Travel case was
7 tried. Respondent MARTIN appeared and defended T.N.A. Travel. During the trial, respondent
8 falsely told the judge that STRANG had telephoned Fax.Com and agreed to accept one facsimile
9 per week. This small claims court suit was decided in favor of T.N.A. Travel.

10 WAYNE STRANG vs.
11 AMERICAN BENEFIT MORTGAGE, INC.

12 17. At all times material herein, American Benefit Mortgage, Inc. was and is a
13 California corporation doing business from Aliso Viejo, California, in a suite of offices adjacent
14 to Fax.com. At an undetermined time, American Benefit retained Fax.com to send facsimile
15 advertisements on behalf of American Benefit Mortgage.

16 18. On or about November 16, 2000, Fax.com sent an unsolicited facsimile
17 advertisement for American Benefit Mortgage to WAYNE STRANG.

18 19. Based upon receipt of the unsolicited facsimile, on December 26, 2000,
19 STRANG brought suit against American Benefit Mortgage under the TCPA in the Superior
20 Court of California, County of Los Angeles, South Bay Judicial District, Small Claims Court
21 Case No. 00S04850.

22 20. On February 26, 2001, in the STRANG versus American Benefit
23 Mortgage proceeding, respondent MARTIN signed a Representative Appearance Declaration
24 Pursuant to CCP 116.540(B) representing that he was the Compliance Manager of American
25 Benefit Mortgage. On April 3, 2001, in the same case, respondent signed a Representative
26 Appearance Declaration Pursuant to CCP 116.540(B) representing that he was the Manager of
27 Human Resources and an officer at American Benefit Mortgage. Both declarations were false.
28 At no time was respondent MARTIN a regular employee or duly appointed or elected officer or

1 director of American Benefit Mortgage. Respondent signed and caused such declarations to be
2 filed with the specific intent of evading the requirements of Code of Civil Procedure
3 § 116.540(b).

4 21. On or about April 3, 2001, the STRANG v. American Benefit Mortgage
5 case was tried. Respondent MARTIN appeared and defended American Benefit Mortgage.
6 DARRELL SMILEY of Fax.Com appeared and testified on behalf of American Benefit
7 Mortgage. During the trial, respondent MARTIN made the following false statements and
8 presented the following false evidence:

9 a. Respondent falsely told the judge that in October, 2000, a person named
10 Kim telephoned Fax.com, talked with SMILEY and requested that STRANG'S fax number be
11 placed in the database maintained by Fax.com.

12 b. Respondent submitted as evidence a document entitled "Problem
13 Worksheet" which purported to show that on 10-23-00 Kim contacted Fax.com and requested
14 addition of STRANG's fax number to the database maintained by Fax.com. The Problem
15 Worksheet was fabricated with the knowledge and contrivance of respondent MARTIN.

16 c. Respondent MARTIN conspired with SMILEY who falsely
17 testified that he personally talked with a person named Kim on October 23, 2000, and that Kim
18 requested Fax.com to add a fax number belonging to STRANG to its database.

19 d. Respondent falsely told the judge that he had asked STRANG about Kim,
20 and that STRANG had stated that he was associated with Kim.

21 e. Respondent falsely told the judge that he was a full time employee of
22 American Benefit Mortgage.

23 f. STRANG attempted to introduce a Declaration of CHARLES KENNEDY
24 to support his case, and respondent MARTIN falsely told the judge that KENNEDY was under
25 criminal investigation for fraud.

26 22. On or about April 3, 2001, the court in STRANG vs. American Benefit
27 Mortgage entered a judgment for \$1,000 in favor of STRANG. On or about May 1, 2000,
28 respondent MARTIN submitted a Notice of Appeal from the judgment. On or about June 29,

1 2001, a trial de novo was conducted in the case. In the trial de novo, respondent MARTIN
2 defended American Benefit Mortgage, and SMILEY appeared to testify. In the trial de novo,
3 respondent made the same false statements and presented the same false evidence described in
4 paragraphs 21(a), 21(b) and 21(c) hereinabove. The trial de novo was decided in favor of
5 American Benefit Mortgage.

6 CHARLES KENNEDY vs. COLORJET, INC.

7 23. At all times material herein, Colorjet, Inc. ("Colorjet") was a California
8 corporation doing business from Redondo Beach, California. At an undetermined time, Colorjet
9 retained Fax.com to send facsimile advertisements on behalf of Colorjet.

10 24. On or about September 5, 2000, Fax.com sent an unsolicited facsimile
11 advertisement for Colorjet to CHARLES KENNEDY, a resident of Union City, California.

12 25. Based upon receipt of the unsolicited facsimile, on October 24, 2000,
13 KENNEDY brought suit against Colorjet under the TCPA in the Superior Court of California,
14 County of Alameda, Fremont Hall of Justice, Case No. 2000096031.

15 26. On or about January 9, 2001, the KENNEDY vs. Colorjet case was tried.
16 Respondent MARTIN appeared and defended Colorjet. During the trial, the respondent made the
17 following false statements and presented the following false evidence:

18 a. Respondent falsely stated that he was an officer and salaried employee of
19 Colorjet.

20 b. Respondent falsely stated that KENNEDY telephoned Colorjet on
21 July 13, 2000, spoke with respondent, and requested addition of his fax number to the data base
22 maintained by Colorjet.

23 c. Respondent falsely stated that when KENNEDY called Colorjet on
24 July 13, 2000, he gave respondent his driver's license number.

25 d. Respondent presented as evidence a document entitled "FAX ID Problem
26 Sheet" which purported to show that KENNEDY had called Colorjet on July 13, 2000, and
27 provided both his phone number and fax number. This problem sheet was fabricated with the
28 knowledge and contrivance of respondent.

1 e. Respondent presented as evidence a document entitled "Fax.com Black
2 List Report" which purported to show that KENNEDY had telephoned Colorjet on July 13, 2000,
3 requested addition to the Colorjet database, and that the call lasted 18.3 minutes. In truth, the
4 Black List Report, *inter alia*, refers to a telephone call that KENNEDY made to Fax.com after
5 receipt of an unsolicited facsimile advertisement from American Benefit Mortgage on July 13,
6 2000.

7 27. On January 10, 2001, judgment for defendant was entered in the
8 KENNEDY vs. Colorjet case.

9 CHARLES KENNEDY vs. BRIDGE CELLULAR, INC.

10 28. At all times material herein, Bridge Cellular, Inc. ("Bridge Cellular") was
11 and is a California corporation doing business from San Jose, California. At an undetermined
12 time, Bridge Cellular retained Fax.com to send facsimile advertisements on behalf of Bridge
13 cellular.

14 29. On or about October 13, 2000, Fax.com sent an unsolicited facsimile
15 advertisement for Bridge Cellular to CHARLES KENNEDY.

16 30. Based upon the receipt of the unsolicited facsimile, on October 31, 2000,
17 KENNEDY brought suit against Bridge Cellular under the TCPA in the Superior Court of
18 California, County of Alameda, Fremont Hall of Justice, Case No. 2000096265.

19 31. On February 6, 2001, the Kennedy vs. Bridge Cellular case was tried.
20 Respondent MARTIN appeared and testified on behalf of Bridge Cellular. During the trial,
21 respondent made the following false statements and presented the following false evidence:

22 a. Respondent falsely stated that KENNEDY telephoned Fax.com on
23 July 13, 2000, spoke with respondent, and requested addition of his fax number to the data base
24 maintained by Fax.com.

25 b. Respondent falsely stated that when KENNEDY called Fax.com on
26 July 13, 2000, he gave respondent his driver's license number.

27 c. Respondent presented as evidence the FAX ID Problem Sheet, the same
28 fabricated document described in paragraph 26(d) hereinabove.

1 trial de novo, McNALLY presented the same false evidence described in paragraphs 31(a),
2 31(b), 31(c), and 31(d) hereinabove. On July 27, 2001, judgment in the trial de novo was entered
3 in favor of defendant Advanced Cellular.

4 PETER PELLAND vs. COLORJET, INC.

5 39. Complainant incorporates herein by this reference the allegations in
6 paragraph 23 hereinabove concerning Colorjet, Inc.

7 40. On August 18, 2000, October 10, 2000, and November 14, 2000, Fax.com
8 sent unsolicited facsimile advertisements for Colorjet to PETER PELLAND, a resident of
9 Haydenville, Massachusetts.

10 41. On or about January 23, 2001, PELLAND sent a letter to Colorjet
11 demanding payment of \$1,500 under the TCPA for sending the unsolicited facsimile
12 advertisements described in paragraph 40 hereinabove.

13 42. On or about February 16, 2001, respondent MARTIN telephoned
14 PELLAND. Respondent falsely stated that he was from Colorjet. Respondent denied
15 PELLAND'S claim under the TCPA, falsely stated that PELLAND had requested receipt of the
16 facsimile advertisements, and threatened to bring a harassment civil lawsuit against PELLAND
17 if he brought suit under the TCPA in Massachusetts.

18 43. Based upon receipt of the unsolicited facsimile advertisements, on March
19 15, 2001, PELLAND brought suit against Colorjet under the TCPA in the Trial Court of
20 Massachusetts, District Court Department, Northhampton Division, Small Claims Sessions, Case
21 No. 0145 SC 331.

22 44. On or about June 13, 2001, the PELLAND vs. Colorjet case was tried.
23 Respondent MARTIN appeared and defended Colorjet. DARRELL SMILEY appeared and
24 testified on behalf of Colorjet. During the trial, respondent made the following false statements
25 and presented the following false evidence:

26 a. Respondent MARTIN falsely claimed that he was a Human Resources
27 Manager for Colorjet, that he worked for Colorjet, and that his former company was Fax.com.

28 b. Respondent falsely told the magistrate that PELLAND telephoned

1 Fax.com on May 31, 2000 and October 4, 2000, and, through an automated telephone system,
2 requested the addition of his fax number to the database maintained by Fax.com. In truth, the
3 only reason PELLAND telephoned Fax.com was to inquire about the receipt of unsolicited
4 facsimile advertisements and to remove his number from the database.

5 c. Respondent conspired with SMILEY who presented fabricated company
6 records that purported to show that PELLAND had telephoned Fax.com on May 31, 2000 and
7 October 4, 2000, and requested the addition of his fax number to the database maintained by
8 Fax.com.

9 d. Respondent falsely informed the magistrate that, as of February 16, 2001,
10 PELLAND'S fax number had been removed from the database maintained by Fax.com, when, in
11 truth, Fax.com broadcast numerous unsolicited facsimile advertisements to PELLAND after said
12 date.

13 45. On June 13, 2001, judgment for defendant Colorjet was entered in the
14 PELLAND vs. Colorjet case.

15 PIERPONT INTERIOR vs.
16 ADVANCED CELLULAR

17 46. On or about November 1, 2000, Fax.com sent an unsolicited facsimile
18 advertisement for Advanced Cellular to SONIA TANIO, a resident of Cuyahoga County, Ohio.

19 47. On or about November 1, 2000, December 21, 2000, and February 15,
20 2001, Fax.com sent unsolicited facsimile advertisements for Advanced Cellular to NORBERTO
21 JUAN, a resident of Cuyahoga County, Ohio.

22 48. Based upon the receipt of the unsolicited facsimiles, TANIO and JUAN
23 brought a TCPA lawsuit entitled *Pierpont Interior vs. Advanced Cellular Communications* in the
24 State of Ohio, Cuyahoga County Common Pleas Court, Case No. 42331, Arbitration Case No.
25 70149.

26 49. On or about March 18, 2002, the *Pierpont Interior vs. Advanced Cellular*
27 *Communications* case was tried before three arbitrators. Respondent MARTIN appeared and
28 testified at the arbitration hearing, made the following false statements and presented the

1 following false evidence:

2 a. Respondent falsely stated that SONIA TANIO called Fax.com on April 19,
3 2000, and requested the addition of her fax number to the database maintained by Fax.com.

4 b. Respondent submitted as evidence a document entitled "FAX ID Problem
5 Sheet" which purported to show that SONIA TANIO called Fax.com on April 19, 2000, and
6 requested the addition of her fax number to the database maintained by Fax.com. This document
7 was fabricated with the knowledge and contrivance of respondent MARTIN.

8 c. Respondent falsely stated that NORBERTO JUAN called Fax.com on
9 May 3, 2000, and requested the addition of his fax number to the database maintained by
10 Fax.com.

11 d. Respondent submitted as evidence a document entitled "FAX ID Problem
12 Sheet" which purported to show that NORBERTO JUAN called Fax.com on May 3, 2000, and
13 requested the addition of his fax number to the database maintained by Fax.com. This document
14 was fabricated with the knowledge and contrivance of respondent MARTIN.

15 50. From the arbitration hearing in *Pierpont Interior vs. Advanced Cellular*
16 *Communications*, an award of \$1,000 to SONIA TANIO and an award of \$1,500 to NORBERTO
17 JUAN was granted.

18 JAMES KINDER vs. ENEX MARKETING

19 51. At all times material herein, Enex Marketing was and is a California
20 Corporation doing business from Vista, California. At an undetermined time, Enex Marketing
21 retained Fax.com to send facsimile advertisements on behalf of Enex Marketing.

22 52. On or about January 11, 2001, Fax.com sent an unsolicited facsimile
23 advertisement for Enex Marketing to JAMES KINDER, a resident of the County of San Diego,
24 California.

25 53. Based upon receipt of the unsolicited facsimile, on May 1, 2001, KINDER
26 brought suit against Enex Marketing under the TCPA in the Superior Court of California, County
27 of San Diego, Central Division, Small Claims Case No. 114952.

28 54. On or about June 22, 2001, the KINDER vs. Enex Marketing case was

1 tried. Respondent MARTIN appeared and defended Enex Marketing. DARREL SMILEY
2 appeared and testified on behalf of defendant. During the trial, respondent made the following
3 false statements and presented the following false evidence:

4 a. Respondent falsely told the judge that he was a regular employee of Enex
5 Marketing.

6 b. Respondent falsely stated that on May 10, 2000, KINDER telephoned
7 Fax.com and requested the addition of his fax number to the database maintained by Fax.com.
8 In truth, KINDER called Fax.com for the purposes of removing his number from the database.

9 c. Respondent conspired with SMILEY who presented fabricated records,
10 including a document entitled FaxID Problem Sheet and a document entitled IVR Fax #
11 Additions, that purported to show that KINDER called Fax.com on May 10, 2000, and requested
12 the addition of fax numbers to the database maintained by Fax.com. In truth, Fax.com had faxed
13 unsolicited facsimile advertisements to KINDER prior to the May 10, 2000 date, including an
14 unsolicited facsimile that was received by KINDER on April 14, 2000.

15 55. The KINDER vs. Enex Marketing case was decided in favor of Enex
16 Marketing.

17
18 WILLIAM ADLER vs. ADVANCED WIRELESS
CELLULAR COMMUNICATIONS

19 56. On or about May 21, 2001, Advanced Cellular changed the name of the
20 corporation to Advanced Wireless Cellular Communications, Inc. ("Advanced Cellular").

21 57. On or about April 4, 2001, May 3, 2001, and May 4, 2001, Fax.com sent
22 unsolicited facsimile advertisements for Advanced Wireless to WILLIAM ADLER, a resident of
23 Washington, D.C.

24 58. On or about July 2, 2001, MICHAEL C. WORSHAM, attorney at law, on
25 behalf of ADLER, sent a letter to Advanced Wireless. The letter informed Advanced Wireless
26 about the receipt of the unsolicited facsimile advertisements and requested a settlement payment
27 of \$5,000.

28 59. On or about July 16, 2001, respondent MARTIN, acting from the

1 Compliance Department of Fax.com, responded to the July 2, 2001 WORSHAM letter.
2 Respondent's letter stated in part: "Please be aware that it is not our intent to send unsolicited
3 facsimile messages to any business or consumer who does not wish to receive them or with
4 whom our clients have no relationship." At all times material herein, respondent knew that this
5 statement was false in that the business of Fax.com involves the sending of unwanted and
6 unsolicited facsimile advertisements to fax numbers across the nation.

7 60. Based upon the receipt of the unsolicited facsimiles, on August 3, 2001,
8 ADLER brought suit against Advanced Wireless under the TCPA in the Superior Court of the
9 District of Columbia, Civil Division, Small Claims and Conciliation Branch, Case No. SC
10 1294401. Attorney MICHAEL C. WORSHAM represented ADLER in this action.

11 61. On or about August 23, 2000, respondent MARTIN telephoned Attorney
12 WORSHAM. During this telephone conversation, respondent falsely informed Attorney
13 WORSHAM that he worked for Advanced Wireless.

14 62. On or about October 1, 2001, the ADLER vs. Advanced Wireless case was
15 tried. DARREL SMILEY appeared and testified on behalf of Advanced Wireless. Respondent
16 MARTIN conspired with SMILEY to make the following false statmnts and present the
17 following false evidence at the trial:

18 a. SMILEY falsely stated that ADLER had called Fax.com on May 8, 2000,
19 requested that his fax number be placed in the database maintained by Fax.com, and provided
20 both his fax number and telephone number.

21 b. SMILEY presented as evidence a document entitled "Problem Sheet"
22 which purported to show that "Bill" called Fax.com on 5-8-00, and provided both his phone
23 number and fax number. The Problem Sheet was fabricated with the knowledge and contrivance
24 of respondent MARTIN.

25 c. SMILEY presented as evidence a document entitled "IVR Fax #
26 Additions" which purported to show the addition of ADLER's fax number to the database
27 maintained by Fax.com. The IVR Fax # Addition was also fabricated with the knowledge and
28 contrivance of respondent MARTIN.

1 a. Plaintiff's Interrogatory No. 1 stated as follows:

2 State the specific factual basis on which Fax.com, Inc.
3 alleges that it had either "prior express invitation or permission" or
4 an "established business relationship" within the meaning of 47
5 U.S.C. § 227(a)(4), to transmit the fax, including the date
6 permission was already received.

7 Defendant Fax.com's response to Interrogatory No. 1 was as follows:

8 On May 8, 2000, DARRELL SMILEY, the customer
9 service manager for Fax.com, received a telephone call from a
10 male adult who would be identified as "Bill." This gentleman was
11 interested in the services provided to businesses by Fax.com and
12 requested that his fax number be put into the Fax.com database.
13 The fax number which this gentleman wished to add to the
14 database was 202-986-9485. The telephone number from which
15 the gentleman was calling, as reported by SMILEY, was 202-686-
16 9132.

17 Defendant Fax.Com's response to plaintiff's Interrogatory No. 1 was false, and
18 respondent MARTIN at all times knew that the response was false.

19 b. Plaintiff's Document Request No. 1 stated as follows:

20 Provide the "IVR Fax # Additions" Sheet that represents or
21 purports to represent the addition of the number 202-986-9485 to
22 the Fax.com, Inc. database on May 8, 2000, or any other date(s)
23 that you assert resulted in the entry of the number (202) 986-9485
24 into Fax.com, Inc.'s facsimile database, and all of the "IVR Fax #
25 Additions" Sheets for May 8, 2000, or the other date(s)."

26 In response to the Document Request No. 1, defendant Fax.com attached a
27 document entitled "IVR Fax # Additions" which purports to show the addition of ADLER's fax
28 number to the database maintained by Fax.com. This is the same fabricated document described
in Paragraph 62(c) hereinabove.

c. Plaintiff's Document Request No. 3 stated as follows:

Provide all of the "Fax ID Problem Sheets" or other work
sheets for the entire day of May 8, 2000, or for any other date(s)
that you assert resulted in the entry of the number (202) 986-0485
into Fax.com, Inc.'s facsimile database.

In response to Document Request No. 3, defendant Fax.com provided a document
entitled "Problem Sheet" which purports to show that "Bill" had called on 5-8-00 and provided
both his phone number and fax number. This is the same fabricated document described in
paragraph 62(b) hereinabove.

1 on May 29, 2001, and entered his facsimile and telephone numbers into the database maintained
2 by Fax.com, the Answer is false, and respondent MARTIN at all times knew that the Answer was
3 false.

4 72. On or about October 18, 2001, the ROBINSON vs. Fax.com case was
5 tried. Respondent MARTIN appeared and testified on behalf of defendant Fax.com. During his
6 testimony, respondent made the following false statements and presented the following false
7 evidence:

8 a. Respondent testified falsely that ROBINSON called Fax.com on May 29,
9 2001, discussed the company's services with respondent, and requested addition of his fax and
10 telephone numbers to the database maintained by Fax.com.

11 b. Respondent testified falsely that respondent telephoned ROBINSON on
12 June 19, 2001, and requested a copy of a letter that ROBINSON had sent to Fax.com dated June
13 19, 2001, and that the letter was allegedly water damaged.

14 c. Respondent MARTIN presented as evidence a document entitled
15 "Worksheet" which purported to show that REGGIE ROBINSON called Fax.com on 5-29-01
16 and requested addition of his fax number. The Worksheet was fabricated with the knowledge
17 and contrivance of respondent.

18 d. Respondent MARTIN presented as evidence a document entitled "IVR
19 Fax # Additions" which purported to show the addition of ROBINSON's fax number to the
20 database maintained by Fax.com. The IVR Fax # Addition was also fabricated with the
21 knowledge and contrivance of respondent.

22 73. On October 18, 2001, the judge in ROBINSON vs. Fax.com, after the trial
23 in the matter, gave judgment to defendant Fax.com.

24 ROBERT BRAVER VS. FAX.COM

25 74. At all times material herein, Sento Training Corp. ("Sento") was and is
26 a corporation organized and doing business in the State of Utah. At an undetermined time,
27 Sento retained Fax.com to send facsimile advertisements on behalf of Sento.

28 75. In or about November, 1999, Fax.com sent unsolicited facsimile

1 advertisements for Sento to ROBERT BRAVER, a resident of Norman, Oklahoma.

2 76. Based upon receipt of the unsolicited facsimiles, on February 11, 2000,
3 BRAVER brought suit against Sento and Fax.com under the TCPA in the District Court,
4 Cleveland County, State of Oklahoma, Case No. CJ-2000-202.

5 77. On May 30, 2000, a Journal of Entry of Judgment, or default judgment,
6 was entered in Case No. CJ-2000-202. The Journal of Entry of Judgment awarded BRAVER
7 the sum of \$6,000, plus court costs of \$79.

8 78. On or about January 12, 2002, BRAVER telephoned respondent MARTIN
9 at Fax.vom for the purpose of discussing collection of the \$6,000 default judgment entered in
10 Case No. CJ-2000-202. During the course of this phone conversation, respondent threatened to
11 bring a harassment civil lawsuit against BRAVER if he attempted to enforce the default
12 judgment in California. Respondent further threatened to produce false evidence showing that
13 BRAVER had requested addition of his fax number to the database maintained by Fax.com
14 in order to support the harassment lawsuit.

15 79. In fact, respondent MARTIN routinely threatens persons who have
16 received unsolicited facsimile advertisements sent by Fax.com and who have brought or intend
17 to bring TCPA actions against Fax.com with harassment lawsuits supported by false evidence as
18 a method of discouraging such suits or obtaining a dismissal of such suits. The persons who have
19 received such threats include, but are not limited to, the following: LAWRENCE MARKEY
20 (resident of California), MIKE MALLOY (resident of Texas), and NOMY LAPURGA (resident
21 of Ohio), and DAVID PHELAN (resident of Maryland).

22 LAWRENCE MARKEY vs. FAX.COM

23 80. On October 16, 2001, Fax.com sent an unsolicited facsimile
24 advertisement for Internet Marketing Solutions, Inc., to LAWRENCE MARKEY, a resident
25 of Redondo Beach, California.

26 81. Based upon the receipt of the unsolicited facsimile, on May 16, 2002,
27 MARKEY brought suit against Fax.com under the TCPA in the Superior Court of California,
28 County of Los Angeles, South Bay Judicial District, Small Claims Court No. SBA 02S01806.

1 82. On July 1, 2002, based upon a default by Fax.com, a Judgment and
2 Notice of Entry of Judgment was entered in favor of MARKEY in Case No. SBA 02S01806.
3 Judgment was for \$2,500 in principal and \$28 in costs.

4 83. On July 15, 2002, respondent MARTIN telephoned MARKEY and left
5 the following message on his phone voice mail:

6 Mr. Markey, this is Charles Martin. I'm V.P. of Fax.com.
7 I thought I would give you a fair warning what we're gonna do. You filed a case
8 against our company. I was out of town at the time, on another thing, another
9 case. We didn't make it, you got a judgment. I have a choice to set the judgment
10 aside and moving on with the case, wherein you won't win in court, you will lose.
11 However, I can just simply do that and then simply at the same time, file a motion
12 to . . . a violation down here. On what we've done on a couple of cases, in Superior
13 Court, and we'll go to court down here on some of these things that you're filing.
14 As you well know, the TCPA does not apply in L.A. If its applied in L.A., uh . . .
15 you will go up in front of anybody that knows what they're talking about. Judges
16 have pretty much dismissed it. Ann Kough has decided that case already and it's
17 up on an appeal right now, but that's still the decision of the L.A. courts. I'll give
18 you 72 hours to dismiss the case and give me a call, let me know that you've done
19 that, voluntarily, and then you can go on about suing whoever you want, I could
20 care less. But if you don't, I'm gonna take a couple guys and we'll go down to the
21 courthouse and we'll find out everybody you're suing, and we'll give them a call,
22 the defendants in the cases, and we'll start helping them represent themselves in
23 courts against you. Uh, it's just that simple. So, you can do what you want, but
24 not against Fax.com or Cambridge Homes. It's that simple. Take it for whatever
25 you want. I suggest that you also talk to Wayne Strang. Anyway, that's the last
26 time I'm gonna call you. If I don't hear something in the next 72 hours, I'll just
27 take it that you don't want to do it. I'll set the motion aside. We'll go through the
28 process and find out who the defendants are in your cases in the future - you and
Wayne Strang - and we'll enlighten them. So, please give me a call at 949-916-6530.
I'm just looking for a voluntary compliance to dismiss the case. Do it or don't do it,
just give me a call.

20 84. On November 8, 2002, Fax.com filed a Motion to Vacate Judgment in
21 Case No. SBA 02S01806. On December 3, 2002, the Motion to Vacate was heard by the
22 Honorable Mark McGhee, Judge Pro Tem. Respondent MARTIN appeared on behalf of
23 Fax.com, and made the following misrepresentations and false statements:

24 a. Respondent falsely informed the judge that Fax.com had no knowledge
25 of Case No. SBA 02S01806 until on or about October 22, 2002, when MARKEY served
26 documents on Fax.com. relating to the judgment in the matter.

27 b. MARKEY moved to rebut the false statement described in paragraph
28 84(a) by giving the judge an audiocassette of the phone message left by respondent on

1 MARKEY'S voice mail described in paragraph 83 hereinabove. After the judge listened to the
2 tape, respondent MARTIN falsely stated that the voice on the tape was not his voice.

3 85. The Motion to Vacate Judgment brought by Fax.com in Case No.
4 SBA 02S01806 was denied.

5 FIRST CAUSE OF ACCUSATION

6 Performance of Acts Constituting Cause
7 for Denial of a Private Investigator License

8 86. Complainant incorporates herein by this reference the preamble and each
9 of the allegations set forth in paragraphs 1 through 85 hereinabove.

10 87. Business and Professions Code § 7561.1(l) provides that the Director may
11 deny, suspend or revoke a license issued under the Private Investigator Act if he or she
12 determines that the licensee has committed any act which is a ground for denial of an application
13 for a license under the Act.

14 88. Business and Professions Code § 7538(b) provides that the Director may
15 deny an application for a license under the Private Investigator Act if the applicant has
16 committed any act constituting dishonesty or fraud. Business and Professions Code § 7538(c)
17 further provides that the Director may deny an application for a license under the Act if the
18 applicant has committed any act or crime constituting grounds for denial of licensure under
19 Business and Professions Code § 480.

20 89. Business and Professions Code § 480(a)(2) provides that a board,
21 including the Bureau, may deny a license on the ground that the applicant has done any act
22 involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or
23 substantially injure another. Business and Professions Code § 480(a)(3) provides that a board
24 may deny a license on the ground that the applicant has done any act which, if done by a
25 licentiate of the business or profession in question, would be grounds for suspension or
26 revocation of license. Under Business and Professions Code § 480, a board may deny a license
27 only if the act is substantially related to the qualifications, functions or duties of the business or
28 profession for which application is made.

1 the Administrative Law Judge who issues a Proposed Decision in this matter to include an Order
2 which provides for the recovery by the Board of the costs of investigation and enforcement of
3 this case against respondent MARTIN, according to proof.

4 PRAYER

5 WHEREFORE, Complainant prays that a hearing be held and that the Director of
6 the Department of Consumer Affairs of the State of California make his/her Order:

7 1. Revoking or suspending Private Investigator License No. 13135 issued to
8 respondent CHARLES RODRICK MARTIN.

9 2. Directing CHARLES RODRICK MARTIN, to pay the Bureau of Security
10 and Investigation Services with the Department of Consumer Affairs the actual and reasonable
11 costs of the investigation and prosecution of this case under Business and Professions Code
12 § 125.3, according to proof.

13 3. Taking such other and further action as may be deemed just and proper.

14
15 DATED: May 30, 2003

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17 

18 SHERRIE MOFFET-BELL
19 Deputy Chief
20 Bureau of Security and Investigative Services
21 Department of Consumer Affairs
22 State of California

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Complainant