

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA**

BROWARD PSYCHOLOGY, P.A.,  
individually and on behalf of all others  
similarly situated,

*Plaintiff,*

v.

SINGLECARE SERVICES, LLC,  
a Delaware limited liability company,

*Defendant.*

Case No.

**CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Broward Psychology, P.A. (“Broward Psychology” or “Plaintiff”) brings this class action against Defendant SingleCare Services, LLC (“SingleCare” or “Defendant”), to stop its practice of sending unauthorized and unwanted fax advertisements, and to obtain redress for all persons and entities similarly injured by its conduct. Plaintiff alleges as follows upon personal knowledge as to itself and its own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by its attorneys.

**NATURE OF THE ACTION**

1. This case challenges SingleCare’s practice of sending unsolicited faxes to doctors’ and other medical practitioners’ offices.
2. The faxes advertise the commercial availability and quality of SingleCare’s network of medical, dental, and pharmacy providers in Florida.
3. Defendant SingleCare sent the faxes at issue to Plaintiff and the Class despite: (i) having no established business relationship with them; (ii) never receiving the recipients’ consent to send them such faxes; and (iii) that none of the faxes sent contained required opt-out notices.

4. As such, Defendant's fax advertisements violate the Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA"), and caused Plaintiff and putative members of the Class to suffer actual harm, including the aggravation and nuisance of receiving such faxes, the loss of use of their fax machines during the receipt of such faxes, and increased labor expenses.

5. Accordingly, Plaintiff seeks an injunction requiring Defendant to cease all unauthorized fax-based marketing activities, as well as an award of actual and/or statutory damages, along with costs.

### **PARTIES**

6. Plaintiff Broward Psychology, P.A. is a Florida professional association with its principal place of business in Hollywood, Florida.

7. Defendant SingleCare Services, LLC is a Delaware corporation with its principal place of business in Boston, Massachusetts.

### **JURISDICTION & VENUE**

8. This is an action for damages in excess of \$15,000, exclusive of interest, costs, and attorneys' fees, arising under the TCPA.

9. The Court has personal jurisdiction over Defendant and venue is proper in this Circuit because Defendant does business in this Circuit, the wrongful conduct giving rise to Plaintiff's cause of action occurred in this Circuit, and Plaintiff resides in this Circuit.

### **COMMON FACTUAL ALLEGATIONS**

10. Defendant SingleCare is a discount medical plan organization that provides consumers with access to a variety of medical, dental, and pharmacy services at negotiated prices.

11. As part of an overall marketing plan to advertise its programs and services and

grow its network in Florida, SingleCare sends unsolicited faxes to doctors and other medical practitioners. Copies of the four fax advertisements Plaintiff received are attached as Exhibit 1.

12. The unsolicited faxes advertise the commercial availability and quality of SingleCare's network of medical, dental, and pharmacy providers in Florida.

13. The fax advertisements, however, fail to provide recipients with proper opt-out notice information required by the TCPA and implementing regulations. Specifically, the faxes fail to provide notice that: (1) the recipient is legally entitled to opt-out of receiving future fax advertisements; (2) the sender must honor the opt-out request within 30 days, and that the sender's failure to do so is unlawful; and (3) the recipient may opt-out with respect to all of their fax numbers, and not just the fax number that received the unsolicited fax advertisement.

14. Defendant SingleCare sends these fax advertisements to consumers with which it has no existing business relationship, and without express invitation or permission, in violation of the TCPA.

15. SingleCare uses a fax machine, computer, or other device to send the fax advertisements at issue.

#### **FACTS SPECIFIC TO PLAINTIFF BROWARD PSYCHOLOGY**

16. On or about September 17, 2015, October 23, 2015, January 13, 2016, and March 3, 2016, SingleCare used a fax machine to send unsolicited fax advertisements to Plaintiff. Copies of the fax advertisements are attached as Exhibit 1.

17. The fax advertisements promoted the commercial availability and quality of SingleCare's goods and services.

18. The fax advertisements failed to contain the required opt-out notice indicating that: (1) the recipient is legally entitled to opt-out of receiving future fax advertisements; (2) the

sender must honor the opt-out request within 30 days, and that the sender's failure to do so is unlawful; and (3) the recipient may opt-out with respect to all of their fax numbers, and not just the fax number that received the unsolicited fax advertisement.

19. Plaintiff has never communicated with SingleCare regarding its goods or services, has never had a business relationship with SingleCare, and has never provided SingleCare with its consent to send it advertisements by fax or otherwise.

### **CLASS ACTION ALLEGATIONS**

20. **Class Definition:** Plaintiff Broward Psychology brings this action under Rules 1.220(a), (b), and (e) of the Florida Rules of Civil Procedure individually and on behalf of a Class of similarly situated individuals defined as follows:

All persons who (i) on or before four years prior to the day the complaint is filed (ii) received a telephone facsimile message of material advertising the commercial availability or quality of any property, goods or services sent by or on behalf of SingleCare.

21. The following individuals are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, its subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion from the Class; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against Defendant have been fully and finally adjudicated and/or released.

22. **Numerosity:** Defendant faxed unsolicited advertisements to approximately ten thousands individuals and entities who fall into the definition of the Class. Class membership can be easily determined from Defendant's records.

23. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff is a member of the Class, and if Defendant violated the TCPA with respect to Plaintiff, then it violated the TCPA with respect to the other members of the Class. Plaintiff and the Class sustained the same damages as a result of Defendant's uniform wrongful conduct.

24. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

- a) How Defendant gathered, compiled, or obtained the fax numbers of Plaintiff and the Class;
- b) Whether Defendant's faxes advertised the commercial availability or quality of property, goods, or services;
- c) Whether Defendant sent the fax advertisements without first obtaining Plaintiff and the Class's prior express permission or invitation to do so;
- d) Whether Defendant's fax advertisements included the required opt out notice; and
- e) Whether Defendant's conduct was willful such that Plaintiff and the Class are entitled to treble damages.

25. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class and has retained counsel competent and experienced in complex class actions. Plaintiff has no interest antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff.

26. **Policies Generally Applicable to the Class:** This class action is appropriate for certification because Defendant has acted or refused to act on grounds generally applicable to the Class as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class, and making final injunctive relief

appropriate with respect to the Class as a whole. Defendant's practices challenged herein apply to and affect the members of the Class uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct with respect to the Class as a whole, not on facts or law applicable only to Plaintiff.

27. **Superiority:** This case is also appropriate for class certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy given that joinder of all parties is impracticable. The damages suffered by the individual members of the Class will likely be relatively small, especially given the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's actions. Thus, it would be virtually impossible for the individual members of the Class to obtain effective relief from Defendant's misconduct. Even if members of the Class could sustain such individual litigation, it would still not be preferable to a class action, because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this case. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions ensured.

**FIRST CAUSE OF ACTION**  
**Violation of 47 U.S.C. § 227**  
**(On Behalf of Plaintiff and the Class)**

28. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

29. The TCPA makes it unlawful for any person to "use any telephone facsimile machine, computer or other device to send, to a telephone facsimile machine, an unsolicited advertisement. . . ." 47 U.S.C. § 227(b)(1)(C).

30. The TCPA defines “unsolicited advertisement” as “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s prior express invitation or permission, in writing or otherwise.” 47 U.S.C. § 227(a)(5).

31. The faxes sent by Defendant advertised the commercial availability and quality of its goods and services and were therefore commercial in nature, constituting advertisements under the TCPA.

32. Defendant sent the fax advertisements at issue to Plaintiff and other members of the Class without their prior express invitation or consent, and despite the lack of an existing business relationship between it and members of the Class.

33. By sending the unsolicited fax advertisements to Plaintiff and other members of the Class without their prior express invitation or permission, Defendant violated 47 U.S.C. § 227(b)(1)(C).

34. As a result of Defendant’s conduct, Plaintiff and the other members of the Class suffered actual damages, including the conversion or loss of paper and toner consumed in the printing of the faxes, the loss of use of the recipients’ fax machines during the time required to receive, review and route the unauthorized faxes, as well as increased labor expenses.

35. Plaintiff and the other members of the Class are therefore entitled to a minimum of \$500 in damages for each violation under 47 U.S.C. § 227(b)(3)(B). To the extent Defendant’s misconduct is determined to be willful, the Court should treble the amount of statutory damages under 47 U.S.C. § 227(b)(3).

36. Additionally, as a result of Defendant’s unlawful conduct, Plaintiff and the other members of the Class are entitled to an injunction under 47 U.S.C. § 227(b)(3)(A), to ensure that

Defendant's violations of the TCPA do not continue into the future.

**SECOND CAUSE OF ACTION**  
**Violation of 47 U.S.C. § 227**  
**(On Behalf of Plaintiff and the Class)**

37. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

38. The Junk Fax Prevention Act and its implementing regulations strengthened the TCPA's prohibitions against the sending of unsolicited advertisements by requiring that senders of faxed advertisements place a clear and conspicuous notice on the first page of the transmission that contains, among other things, the following:

- a. a statement that the recipient is legally entitled to opt-out of receiving future faxed advertisements;
  - b. a statement that the sender must honor a recipient's opt-out request within 30 days and the sender's failure to do so is unlawful; and
  - c. a statement advising the recipient that he or she may opt-out with respect to all of his or its facsimile telephone numbers, and not just with respect to the number or numbers at which fax advertisements have been received from the sender.
- 47 U.S.C. § 227(b)(2)(D)(ii); *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act, Junk Fax Prevention Act of 2005*, 21 FCC Rcd. 3787 (F.C.C. 2006).

39. The faxes sent by Defendant did not contain the required opt out notice.

40. By sending the unsolicited fax advertisements to Plaintiff and other members of the Class without the required opt out notice, Defendant violated 47 U.S.C. § 227(b)(2)(D).

41. Plaintiff and the other members of the Class are therefore entitled to a minimum of \$500 in damages for each violation under 47 U.S.C. § 227(b)(2)(D). To the extent Defendant's misconduct is determined to be willful, the Court should treble the amount of statutory damages under 47 U.S.C. § 227(b)(3).

42. Additionally, as a result of Defendant's unlawful conduct, Plaintiff and the other members of the Class are entitled to an injunction under 47 U.S.C. § 227(b)(3)(A), to ensure that Defendant's violations of the TCPA do not continue into the future.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Broward Psychology, P.A., on behalf of itself and the Class, prays for the following relief:

- A. An order certifying the Class as defined above, appointing Broward Psychology, P.A. as the representative of the Class, and appointing its counsel as Class Counsel;
- B. An order declaring that Defendant's actions, as set out above, violate the TCPA;
- C. An order declaring that Defendant's faxes constitute unsolicited advertisements, that they lacked the required opt-out language, and that Defendant sent the faxes without first obtaining prior express invitation or permission of the recipients, and enjoining Defendant from further violations, and otherwise protecting the interests of the Class;
- D. An award of statutory damages;
- E. An award of pre-judgment interest and costs; and
- F. Such further and other relief the Court deems just and proper.

### **JURY DEMAND**

Plaintiff requests a jury trial.

Dated: September 25, 2018.

/s/ Avi R. Kaufman

Avi R. Kaufman  
Florida Bar No. 84382  
KAUFMAN P.A.  
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*Counsel for Plaintiff Broward Psychology, P.A.  
and all others similarly situated*

# **EXHIBIT 1**



**From:** SingleCare Provider Relations

**Date:** 9/17/2015

**Re: SingleCare – A New Kind of Healthcare Company**

SingleCare, a new healthcare company that provides individuals with a new way to access and pay for healthcare, is expanding into the state of Florida and we are currently recruiting providers to participate in our network, with a targeted effective date of October 15, 2015.

SingleCare already operates in Arizona, Maryland, Pennsylvania, Virginia and Washington, DC and is the first company of its kind to connect individuals and providers through a healthcare network with absolutely no managed care controls. As an alternative to traditional health insurance, SingleCare provides individuals with access to “managed-care like” pricing and gives providers guaranteed, hassle-free payment for every service delivered.

We are asking that you consider contracting with us. As one of our contracted providers, SingleCare promises you an industry leading experience that will help you grow your practice through:

- **No Third-Party Controls** – SingleCare is not insurance so there are no prior authorizations, no claim forms to submit, no benefit limitations.
- **Zero Collections Risk** – SingleCare takes full responsibility for collecting from the patient and guarantees your payment for every service billed through SingleCare.
- **Fast Payment** – Payment processed within 48 hours for all services billed.
- **More Efficient Management of Self-Pay Patients** – SingleCare helps you by setting a standard fee schedule (no negotiating!) and the simplest billing for your existing self-pay patients.
- **Access to New Patients** – *No extra marketing required!* SingleCare will be marketing through traditional direct-to-consumer methods (direct mail and cooperative mail inserts) as well as online marketing (paid search, ads, Facebook, email) and to employers in your area. Tap into the growing number of individuals seeking affordable healthcare without traditional insurance obstacles.
- **No cost to participate** – You always receive 100% of your contracted rate and there are no credit card processing fees with services billed through SingleCare.
- **Easy to use** – Access your fee schedule, billing history, and more through your personalized provider portal.

A packet of information has already been mailed to you, with all the details. Joining is as easy as returning the completed forms to us by email at [providers@singlecare.com](mailto:providers@singlecare.com) or by fax at 877-929-5845 to ensure your participation in the SingleCare network.

If you did not receive your SingleCare contract package or have questions, our team is ready to assist, just give us a call at 877-929-5845 or e-mail us at [providers@singlecare.com](mailto:providers@singlecare.com) if you'd like to get started today!

SingleCare Provider Relations



**From:** SingleCare Provider Relations

**Date:** 10/23/2015

**Re: SingleCare – A New Kind of Healthcare Company**

SingleCare, a new healthcare company that provides individuals with a new way to access and pay for healthcare, is expanding into the state of Florida and we are currently recruiting providers to participate in our network, while simultaneously finalizing our marketing approach and multi-channel campaign expenditures for entering the consumer marketplace before year's end.

SingleCare already operates in Arizona, Maryland, Pennsylvania, Virginia and Washington, DC and is the first company of its kind to connect consumers and providers through a healthcare network with absolutely no managed care controls. As an alternative to traditional health insurance, SingleCare provides consumers with access to "managed-care like" pricing and gives providers guaranteed, hassle-free payment for every service delivered.

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SingleCare Provider Relations



**From:** SingleCare Provider Relations

**Date:** 1/11/16

**Re: Top Reasons to Contract with SingleCare in Florida!**

SingleCare is a new kind of healthcare company that provides self-pay patients with great pricing and offers providers guaranteed payment. We open for business in Florida soon in 2016 – and **our network is filling up fast!** Top reasons to join us are:

1. Great Solution for Your Self-Pay Patients – SingleCare helps you by setting a standard fee schedule (no negotiating!) and the simplest billing for your existing cash-pay patients.
2. Zero Collections Risk – SingleCare takes full responsibility for collecting from the patient and guarantees provider payment.
3. Fast Payment – Payment processed within 48 hours for all services billed.
4. Access to New Patients – *No extra marketing required!* Tap into the growing number of individuals seeking affordable self-pay healthcare without traditional insurance obstacles.
5. No Third-Party Controls – SingleCare is not insurance so there are no prior authorizations, no claim forms to submit, no benefit limitations.
6. No cost to participate – You always receive 100% of your contracted rate and there are no credit card processing fees with SingleCare patients.
7. Easy to use – Access your fee schedule, billing history, and more through your personalized provider portal.
8. Tens of thousands of members – after only 7 months in operation!

**Look at what actual provider offices like yours are saying about SingleCare:**

“We have had a great experience with SingleCare. I like that we can sign up members same day while they are in the office waiting for appointments. We plan to have our [cash-pay] members who are uninsured and concerned about funding their treatment call SingleCare...”

– **Chitra, Dentist**

“Everything is going great! ...SingleCare incorporated our feedback... It's been smooth sailing...”

– **Pearl, Office Manager**

“I appreciate that SingleCare periodically calls to follow up with us to make sure that we are satisfied with their services. We really like SingleCare...”

– **Ivy, Office Manager**

“The provider relations representative I spoke with was extremely helpful and pleasant and walked me through how to use their services. I like the idea of not having to worry if an insurance company received a claim or not. SingleCare is simple and easy...”

– **Lindsay, Insurance Coordinator**

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SingleCare Provider Relations



**From:** SingleCare Provider Relations

**Date:** 2/29/16

**Re: Top Reasons to Contract with SingleCare in Florida!**

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"Everything is going great! ...SingleCare incorporated our feedback... It's been smooth sailing..."

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– **Lindsay, Insurance Coordinator**

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SingleCare Provider Relations