

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Scott Malcolm ) File No.: EB-TCD-12-00001013
DSM Supply, LLC ) NAL/Acct. No.: 201432170003
Somaticare, LLC ) FRN: 0023383201
Apparent Liability for Forfeiture )

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 24, 2014

Released: February 24, 2014

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Scott Malcolm, DSM Supply, LLC (DSM), and Somaticare, LLC (Somaticare) (collectively, the DSM parties) apparently willfully and repeatedly violated Section 227(b)(1)(C) of the Communications Act of 1934, as amended (the Communications Act or Act), and Section 64.1200(a)(4) of the Commission’s rules, by sending 115 unsolicited advertisements, or “junk faxes,” to the telephone facsimile machines of 26 consumers.1 The advertisements, which promote a variety of chiropractic supplies offered by “DSM Supply,” arrived in private homes and health care offices across the United States. The faxes have been an unwanted intrusion and expense for consumers and, as reported by some health care practitioners, a serious disruption to their practices. Further, because the faxes failed to include the required opt-out notice, the DSM parties made it difficult, if not impossible, for consumers to find relief. Numerous complainants consistently describe unsuccessful attempts to stop the onslaught of DSM advertisements—attempts that sometimes stretched over years but never brought an end to the unwanted faxes. Based on the facts and circumstances surrounding these 115 apparent violations, we apply the maximum forfeiture penalty and find that Mr. Malcolm, DSM, and Somaticare are apparently jointly and severally liable for a forfeiture in the amount of \$1,840,000.

II. BACKGROUND

2. The Telephone Consumer Protection Act of 1991 (TCPA) was enacted by Congress to address problems of abusive telemarketing, including junk faxes.2 Unsolicited faxes often impose unwanted burdens on the called party, including costs of paper and ink, and making fax machines unavailable for legitimate business messages. Section 227(b)(1)(C) of the Act thus makes it “unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States . . . to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement, unless the unsolicited advertisement is from a sender with an established business relationship with the recipient . . . .”3 As relevant here, an

1 See 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(4).

2 Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991) (codified at 47 U.S.C. § 227). See also Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, 119 Stat. 359 (2005).

3 47 U.S.C. § 227(b)(1)(C); see also 47 C.F.R. § 64.1200(a)(4).

“unsolicited advertisement” is “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.”<sup>4</sup> Nonetheless, it is permissible to send such fax advertisements to recipients with whom the sender has an established business relationship (EBR),<sup>5</sup> as long as the receiving fax number has been provided voluntarily by the recipient,<sup>6</sup> the advertisement includes a clear and conspicuous notice that tells the recipient how to avoid receiving additional fax advertisements,<sup>7</sup> and the EBR has not been effectively terminated by a party’s instructions to stop sending fax advertisements.<sup>8</sup>

3. All unsolicited facsimile advertisements must contain an opt-out notice on the first page of the advertisement stating that the recipient is entitled to request that the sender not send any future advertisements.<sup>9</sup> This notice must include a domestic contact telephone number and a facsimile machine number that the recipient may use to transmit an opt-out request to the fax sender 24 hours a day, 7 days a week.<sup>10</sup> A fax sender must honor such opt-out requests within the shortest reasonable time, not to exceed 30 days, and is expressly prohibited from sending unsolicited advertisements to any party—including a party doing business with the sender—who has made a valid opt-out request unless that party subsequently provides the sender prior express invitation or permission to deliver a fax advertisement.<sup>11</sup> Accordingly, under the Commission’s rules, a do-not-fax request terminates an established business relationship for purposes of fax advertising so that unsolicited facsimile advertisements may no longer lawfully be sent even if the party opting out continues to do business with the sender.<sup>12</sup>

4. On December 20, 2011, in response to numerous consumer complaints alleging that DSM had faxed unsolicited advertisements, the Enforcement Bureau (Bureau) issued a citation to DSM, Somaticare, and Mr. Malcolm, as President of both DSM and Somaticare,<sup>13</sup> pursuant to Section 503(b)(5)

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<sup>4</sup> 47 U.S.C. § 227(a)(5); 47 C.F.R. § 64.1200(f)(15).

<sup>5</sup> For purposes of faxing, an established business relationship is defined as “a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a business or residential [telephone] subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.” 47 C.F.R. § 64.1200(f)(6); *see also* 47 U.S.C. § 227(a)(2); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order and Third Order on Reconsideration, 21 FCC Rcd 3787, 3797–99, paras. 18–20 (2006) (*Junk Fax Prevention Act R&O*), *modified on other grounds*, 23 FCC Rcd 15059 (2008).

<sup>6</sup> 47 U.S.C. § 227(b)(1)(C)(ii); 47 C.F.R. § 64.1200(a)(4)(ii).

<sup>7</sup> 47 U.S.C. § 227(b)(1)(C)(iii); 47 C.F.R. § 64.1200(a)(4)(iii).

<sup>8</sup> 47 C.F.R. § 64.1200(a)(4)(vi).

<sup>9</sup> 47 U.S.C. § 227(b)(1)(C)(iii); 47 C.F.R. § 64.1200(a)(4).

<sup>10</sup> 47 C.F.R. § 64.1200(a)(4)(iii)(D) and (E); *see also* 47 U.S.C. § 227(b)(2)(D)(iv)(I). If neither the required telephone number nor facsimile machine number is toll-free, a separate cost-free mechanism such as a website or e-mail address must be available for a recipient to transmit an opt-out request. 47 C.F.R. § 64.1200(a)(4)(iii)(D)(2); 47 U.S.C. § 227(b)(2)(D)(iv)(II).

<sup>11</sup> 47 C.F.R. § 64.1200(a)(4)(vi); *see also* 47 U.S.C. § 227(b)(2)(D)(ii). The opt-out notice must state that failure to honor an opt-out request within 30 days is unlawful. 47 C.F.R. § 64.1200(a)(4)(iii)(B); *see also* 47 U.S.C. § 227(b)(2)(D)(ii).

<sup>12</sup> *See* 47 C.F.R. § 64.1200(a)(4)(vi); *Junk Fax Prevention Act R&O*, 21 FCC Rcd at 3806, para. 35.

<sup>13</sup> Citation from Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Somaticare, Inc. aka DSM Supply, LLC and DSM Supply, LLC aka Somaticare, Inc. (Dec. 20, 2011) (on file in EB-TCD-12-00001013) (Somaticare/DSM Citation). The citation was addressed to both DSM and Somaticare, and directed to the attention of Mr. Malcolm. It expressly warned that future violations of the Act and the Commission’s

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of the Act.<sup>14</sup> The Bureau cited DSM, Somaticare, and Mr. Malcolm for using a telephone facsimile machine, computer, or other device to send unsolicited advertisements to telephone facsimile machines in violation of Section 227(b)(1)(C) of the Act and Section 64.1200(a)(4) of the Commission's rules, and attached 20 representative consumer complaints documenting multiple violations. The citation informed the recipients that within 30 days of the date of the citation, they could either request an interview with Commission staff or provide a written statement responding to the citation. None of the DSM parties responded in any way.<sup>15</sup> Despite the citation's warning that subsequent violations could warrant monetary forfeitures, we have received over 350 additional complaints indicating that the DSM parties continued to send unlawful fax advertisements after the 2011 citation.

### III. DISCUSSION

#### A. Apparent Violations of Section 227(b)(1)(C) of the Act and Section 64.1200(a)(4) of the Commission's Rules Restricting Facsimile Advertisements

5. We find that Scott Malcolm, DSM Supply, LLC, and Somaticare, LLC, violated Section 227(b)(1)(C) of the Act and Section 64.1200(a)(4) of the Commission's rules by using a telephone facsimile machine, computer, or other device to send 115 unsolicited advertisements to 26 consumers between February 25, 2013 and January 21, 2014. Each of the consumers listed in Appendix A has provided evidence that he or she received at least one fax that advertised DSM's chiropractic supplies. These consumers have further indicated that they received the DSM advertisements without expressly authorizing such faxes to be sent. While three consumers confirm a purchase from DSM that created an EBR that entitled DSM to send its fax advertisements,<sup>16</sup> the advertisements did not include a notice to inform the recipients how to opt out of receiving additional ads in the future, a key requirement to satisfy the EBR exemption.<sup>17</sup> Additionally, one of the consumers who acknowledged an EBR with DSM also provided information showing that he told DSM to stop sending its advertisements at least 30 days before receipt of the fax ads at issue here<sup>18</sup>—notice that terminated DSM's permission to fax under the EBR exemption.<sup>19</sup> Numerous other consumers who never purchased anything from or made any inquiry to

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rules governing telephone solicitations and unsolicited advertisements “may subject you and your company to monetary forfeitures.” *Id.*

<sup>14</sup> 47 U.S.C. § 503(b)(5) (requiring the Commission to issue a citation of the violation charged, prior to a notice of possible forfeiture or determination of a forfeiture, against a person who does not hold a license, permit, certificate or other authorization issued by the Commission, who is not an applicant for any such instrumentality, or who is not engaged in any activities for which such instrumentality is necessary).

<sup>15</sup> The DSM parties acknowledged receipt of the citation, as evidenced by a signed United States Postal Service return receipt, Article Number 7009 0080 0000 6070 2476 (Somaticare, Inc. aka DSM Supply, LLC, Attn: Scott Malcolm, President/Owner, 1187 Judd Court, Suite 104, Dallas, TX 75243).

<sup>16</sup> See FCC Form 1088A—Junk Fax Complaint from R. LaFreniere (May 13, 2013) (LaFreniere Complaint); FCC Form 1088A—Junk Fax Complaint from D. Radke (Dec. 18, 2013) (December Radke Complaint); FCC Form 1088A—Junk Fax Complaint from J. Cain (June 20, 2013) (Cain Complaint).

<sup>17</sup> See 47 U.S.C. § 227(b)(1)(C)(iii); 47 C.F.R. § 64.1200(a)(4)(i)–(iii).

<sup>18</sup> December Radke Complaint (“Repeatedly requested removal from their fax list, by fax, and phone. Continued faxes despite their promises to remove—this has been going on for several years.”); FCC Form 1088A—Junk Fax Complaint from D. Radke (Nov. 25, 2013) (November Radke Complaint) (“Have requested MULTIPLE times to be removed from fax and phone solicitations, over the past several years.”). The other consumers who did business with DSM both reported having made do-not-fax requests, but were unable to provide a time frame for those requests to demonstrate that they were made at least 30 days prior to receipt of a subsequent DSM fax advertisement. LaFreniere Complaint (reporting do-not-fax requests “on no less than 3 occasions”); Cain Complaint (reporting “multiple” do-not-fax requests).

<sup>19</sup> Fax senders must honor opt-out requests within the shortest reasonable time, not to exceed 30 days, and are expressly prohibited from sending unsolicited advertisements to any party who has made a valid opt-out request

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DSM also report that their do-not-fax instructions were repeatedly ignored. Almost all of the consumers who filed complaints provided copies of DSM advertisements that do not contain any opt-out notice or affirmatively stated that the advertisements they received from DSM did not include such a notice.

6. Despite the absence of any opt-out notice on the DSM advertisements, all but one of the consumers listed in Appendix A have stated that they attempted to stop the faxes by contacting DSM by either a phone call to its sales number, a fax to its facsimile number, or a letter to its business address.<sup>20</sup> Without the required opt-out notice, fax recipients could only guess which means of contact might enable them to lodge a do-not-fax request that actually would be recorded and honored. The record demonstrates, however, that the DSM parties have done little or nothing to honor do-not-fax requests no matter how they were received. A few complainants have noted a brief respite from these faxes only to have the advertisements shortly resume in full force.<sup>21</sup> Two different complainants use identical words to summarize the typical DSM experience succinctly: “They will not stop.”<sup>22</sup>

7. Overwhelmingly, consumers have reported rude and unresponsive encounters during attempts to lodge a do-not-fax request with DSM. One consumer notes that a DSM representative “actually laughed and said ‘whatever’ when I informed him I would be reporting him to the FCC.”<sup>23</sup> Most significant, regardless of the response received when making a do-not-fax request, 25 consumers listed in Appendix A have reported receiving a fax advertisement from DSM *after* making such a request, and 17 consumers have shown that they received a DSM fax advertisement more than 30 days after they instructed Mr. Malcolm or one of his employees to stop faxing.

8. Consumers have compellingly documented the disruption, expense, and frustration caused both by receipt of the DSM parties’ unlawful advertisements and by the unpleasant and unsuccessful attempts to permanently stop them.

- “On 11-26-2012 Scott from DSM Supply promised to stop unwanted faxes. The faxes have kept coming regularly despite several other requests to stop.”<sup>24</sup>
- “For the last 15 months we have been in business I have called EVERY time we receive a fax to have us removed. The person on the other end is rude and we are not removed. . . . These faxes come multiple times per month.”<sup>25</sup>

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unless that party subsequently provides to the sender prior express invitation or permission to deliver a fax advertisement. 47 C.F.R. § 64.1200(a)(4)(vi).

<sup>20</sup> As noted below, both the voice and facsimile numbers displayed for DSM on the fax advertisements belong to Somaticare. *See infra* para. 18.

<sup>21</sup> *See, e.g.*, FCC Form 1088A—Junk Fax Complaint from M. Servant (Mar. 22, 2013) (Servant Complaint) (“Have contacted DSM multiple times over the past year to ask to have my fax # removed from their list. After a few weeks, the faxes resume.”); FCC Form 1088A—Junk Fax Complaint from K. Oricchio (Nov. 26, 2013) (“They stopped faxing for 3 months and are now back faxing—3 pages per fax.”).

<sup>22</sup> FCC Form 1088A—Junk Fax Complaint from S. Pagano (May 13, 2013) (Pagano Complaint); LaFreniere Complaint.

<sup>23</sup> Servant Complaint. *See also* FCC Form 1088A—Junk Fax Complaint from K. Durham (June 17, 2013) (“I have also told them that I was going to have to report them to the FCC and they then hung up on me.”).

<sup>24</sup> FCC Form 1088A—Junk Fax Complaint from D. Riffel (June 14, 2013) (June Riffel Complaint). *See also* FCC Form 1088A—Junk Fax Complaint from D. Riffel (Jan. 16, 2013) (“We have made at least six requests in the last six months, some verbal by phone number listed on the fax . . . several by fax back to number listed on the margin. There is no opt-out information and none of the requests have been honored, they don’t even offer to comply when asked verbally. Flagrant disregard of our requests.”).

<sup>25</sup> FCC Form 1088A—Junk Fax Complaint from T. Ibinger (Feb. 25, 2013).

- “They send multiple faxes daily and use up ink and paper. Please help.”<sup>26</sup>
- “We have called, faxed, etc. dozens of time to this vendor and yet still keep getting 3 faxes a week at 3 pages per fax.”<sup>27</sup>
- “They have sent us faxes for years. We call them every time we receive a fax and ask them to remove us. On one occasion I called several times and they hung up on me, laughed at me, and never removed us from their list.”<sup>28</sup>
- “These faxes are graphic laden and consume a lot of toner, costing my company money.”<sup>29</sup>
- “I was verbally abused . . . after asking them to stop sending me faxes.”<sup>30</sup>
- “Have requested MULTIPLE times to be removed from fax and phone solicitations, over the past several years, and yet we continue to get at least two sets (multiple pages, multiple copies) of faxes from this company on a regular basis. When we call, the representatives are actually hostile to us. . . . The one time we DID order from them was five or better years ago . . . now they want us to continue to pay for their advertisements in toner and fax minutes!”<sup>31</sup>

9. The experiences of these complainants provide convincing evidence that the unlawful and abusive practices by the DSM parties have been both consistent and longstanding. Based on the record before us, we conclude that Mr. Malcolm, DSM, and Somaticare apparently violated Section 227(b)(1)(C) of the Act and Section 64.1200(a)(4) of the Commission’s rules by sending at least 115 unsolicited facsimile advertisements between February 25, 2013 and January 21, 2014 that did not meet the statutory requirements for an EBR or corresponding notice.

#### **B. Proposed Forfeiture**

10. After we have first issued a citation to a person, as we have in this case, Section 503(b) of the Act authorizes the Commission to propose a forfeiture for subsequent conduct of the type described in the citation that violates the Act, or any rule, regulation, or order issued by the Commission under the Act.<sup>32</sup> Section 503(b)(2)(E) mandates that, “[i]n determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>33</sup> Our forfeiture guidelines set forth the base amount for penalties for certain kinds of violations and identify criteria, consistent with the Section 503(b)(2)(E) factors, that may influence whether we adjust the base amount downward or upward.<sup>34</sup> For example, we may adjust a penalty upward for “[e]gregious misconduct,” an “[i]ntentional violation,” or where the subject of an enforcement action has engaged in “[p]rior violations of any FCC requirements”

<sup>26</sup> FCC Form 1088A—Junk Fax Complaint from L. Addison (May 13, 2013) (Addison Complaint).

<sup>27</sup> FCC Form 1088A—Junk Fax Complaint from K. Miller (Mar. 1, 2013).

<sup>28</sup> FCC Form 1088A—Junk Fax Complaint from A. Ortelli. (May 21, 2013).

<sup>29</sup> Servant Complaint.

<sup>30</sup> Pagano Complaint.

<sup>31</sup> November Radke Complaint.

<sup>32</sup> 47 U.S.C. § 503(b)(5).

<sup>33</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>34</sup> See 47 C.F.R. § 1.80(b)(8) note. The absence of a particular type of violation from the forfeiture guidelines must “not be taken to mean that the violation is unimportant or nonexistent,” and “[t]he Commission retains discretion to impose forfeitures for other violations. . . .” *Commission’s Forfeiture Policy Statement, Report & Order*, 12 FCC Rcd 17087, 17110 (1997).

or a “[r]epeated or continuous violation.”<sup>35</sup> Currently, the maximum penalty that the Commission may impose against a party such as Mr. Malcolm, DSM, or Somaticare is \$16,000 per violation.<sup>36</sup>

11. The Commission has generally considered \$4,500 per unsolicited fax advertisement an appropriate base forfeiture for violating the prohibition against sending them.<sup>37</sup> In addition, when a consumer requests that facsimile messages stop but they continue, the Commission has previously considered \$10,000 per unsolicited fax advertisement the appropriate forfeiture for such an egregious violation.<sup>38</sup> Over time, however, proposed forfeitures of these sizes have failed to deter the more persistent violators of the junk fax rules. Accordingly, the Commission has applied upward adjustments to multiple and repeated violations of our junk fax rules<sup>39</sup> and to violators whose practices are egregious.<sup>40</sup>

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<sup>35</sup> 47 C.F.R. § 1.80(b)(8) note, sec. II (Adjustment Criteria for Section 503 Forfeitures).

<sup>36</sup> Section 503(b)(2)(D) of the Act provides for forfeitures of up to \$10,000 for each violation by a person who is not a regulated entity such as a broadcast station licensee or common carrier. 47 U.S.C. § 503(b)(2)(D). The Commission periodically adjusts this and other forfeiture amounts for inflation. Both currently and at the time of the violations set forth in Appendix A, the maximum forfeiture was set at \$16,000 for each violation of this type committed by a party subject to section 503(b)(2)(D). See 47 C.F.R. § 1.80(b)(5) (2012), 47 C.F.R. § 1.80(b)(7) (amended and renumbered pursuant to *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 28 FCC Rcd 10785 (Enf. Bur. 2013)).

<sup>37</sup> See *Get-Aways, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 1805, 1812, para. 16 (1999); *Get-Aways, Inc.*, Forfeiture Order, 15 FCC Rcd 4843 (2000); *Five Star Adver., Inc.*, Notice of Apparent Liability For Forfeiture, 23 FCC Rcd 17699, 17701–02, para. 7 (2008) (*Five Star NAL*); *Five Star Adver., Inc.*, Forfeiture Order, 27 FCC Rcd 622 (2012) (*Five Star Forfeiture Order*).

<sup>38</sup> *Tri-StarMktg., Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 11295, 11300, para. 12 (2000); *Tri-Star Mktg., Inc.*, Forfeiture Order, 15 FCC Rcd 23198 (2000); *Five Star NAL*, 23 FCC Rcd at 17701–02, para. 7 (2008); *Five Star Forfeiture Order*, 27 FCC Rcd 622.

<sup>39</sup> In recent cases involving multiple and repeated violations of the junk fax rules—but not additional aggravating factors like deceit—the Commission has proposed the adjustment through a lump sum, resulting in an overall penalty that is more than the sum of applying the base forfeiture, but less than applying the statutory maximum, to all violations involved. See *Nat’l Emps. Benefit Grp.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 2734, 2737, para. 8 (2012) (*NEBG NAL*) (applying a \$150,000 upward adjustment in proposing a forfeiture for 97 junk fax violations); *Laser Techs.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 10792, 10795, para. 9 (2011) (applying a \$50,000 upward adjustment in proposing a forfeiture for 40 junk fax violations); *Presidential Who’s Who*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8989, 8993–95, paras. 11–13 (2011) (applying a \$150,000 upward adjustment in proposing a forfeiture for 31 junk fax violations, taking into account the violator’s 73 prior junk fax violations); *The Street Map Co.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8318, 8321–22, paras. 10–11 (2011) (applying a \$75,000 upward adjustment in proposing a forfeiture for 51 junk fax violations, taking into account the violator’s prior 11 junk fax violations). When aggravating factors, such as deceit, have accompanied numerous violations of the junk fax rules, the Commission has generally increased the forfeiture for each violation involved to the statutory maximum. See *Tim Gibbons/United Emp. Benefits Grp.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 11432, 11437–38, paras. 10–14 (2012) (*Gibbons/UEBG NAL*) (proposing the maximum forfeiture penalty for 99 junk fax violations, taking into account the violator’s prior violations, deceptive conduct, and related violations); *Patrick Keane a/k/a/ The Street Map Co.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 13757, 13761, paras. 9–13 (2012) (*Patrick Keane NAL*) (proposing the maximum forfeiture penalty for 38 junk fax violations, taking into account the violator’s prior violations, deceptive conduct, and related violations).

<sup>40</sup> In proposing maximum forfeiture penalties, the Commission has taken note of violators’ deceitful conduct, misrepresentation of material facts, and attempts to evade law enforcement. See *Sabrina Javani d/b/a EZ Bus. Loans*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 7921(2012) (*EZ Business NAL*); *Teresa Goldberg a/k/a Tammy Pocknett d/b/a Software Training Co. et al.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 2723 (2012); *Travel Club Mktg. d/b/a Travelink Corp. et al.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 15381 (2011).

12. As our past upward adjustments indicate, different and more substantial penalties are appropriate for persons and entities who engage in a significant number of violations, especially those whose conduct is egregious. The DSM facsimile advertisements prompted over 350 complaints to the Commission *after* the Bureau first warned these parties that their conduct violated the law. These complaints indicate that Mr. Malcolm, DSM, and Somaticare are knowing, flagrant, and persistent violators of the junk fax rules and are not likely to be deterred from continuing to send unsolicited faxes, and violating other junk fax rules, unless a substantial penalty is assessed. Although Section 503(b)(6) of the Communications Act<sup>41</sup> does not permit the Commission to assess a forfeiture for those violations that occurred more than one year prior to the date of this NAL, the volume and egregious nature of the apparent violations justifies the maximum penalty possible for the 115 violations that occurred within the past year.

13. Many of the consumers claim that they received DSM advertisements by fax for months or even for years, so that far more unwanted faxes were apparently sent to these parties than the specific faxes reported in their complaints and listed in Appendix A.<sup>42</sup> In addition, the DSM parties regularly sent as many as three separate advertisements in a single transmission,<sup>43</sup> and in some instances faxed duplicate transmissions containing multiple advertisements within minutes.<sup>44</sup> The complaints show that the multi-page transmissions with sizable text and graphic images consume undue amounts of consumers' paper and ink, while also extending the time that fax machines are unavailable for their owners' lawful use.<sup>45</sup> For the health care offices that have been the primary targets,<sup>46</sup> these faxes can be more than an inconvenience and unwarranted expense. Some health care professionals or office employees have described how the DSM parties' frequent and lengthy faxes disrupted their practices and possibly interfered with patient care.<sup>47</sup>

14. As described above, the faxes failed to provide any opt-out information to instruct recipients how to avoid receiving future fax advertisements from the DSM parties. Even more significant, the complaints powerfully demonstrate the DSM parties' complete indifference to the fax recipients' persistent efforts to make do-not-fax requests even without benefit of an opt-out notice.<sup>48</sup> The DSM parties either lacked procedures to record and honor do-not-fax requests, or simply disregarded such requests. All but one of the consumers listed in Appendix A attempted to make a do-not-fax request, and

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<sup>41</sup> 47 U.S.C. § 503(b)(6).

<sup>42</sup> *See, e.g.*, FCC Form 1088A—Junk Fax Complaint from M. Eisenberg (Mar. 11, 2013) (“I have copies of faxes from this sender that date back at least one year”); FCC Form 1088A—Junk Fax Complaint from R. Habeger (May 13, 2013) (Habeger Complaint) (reporting regular receipt of faxes despite 2010 do-not-fax request).

<sup>43</sup> Each of these advertisements constitutes a separate violation. When a complainant has documented receipt of multiple advertisements in a single transmission, typically by providing copies of the faxes, we apply a separate penalty for each advertisement. *See* Appendix A.

<sup>44</sup> *See, e.g.*, FCC Form 1088A—Junk Fax Complaint from T. Nicasio (May 13, 2013) (faxes attached to complaint show that duplicate multi-page transmissions were received within 15 minutes of one another).

<sup>45</sup> *See, e.g.*, Servant Complaint and Addison Complaint.

<sup>46</sup> Twenty-four of the 26 complainants listed in Appendix A are chiropractic or other health care offices.

<sup>47</sup> *See, e.g.*, FCC Form 1088A—Junk Fax Complaint from J. Danaka (Jan. 23, 2013) (“[T]he only way to avoid the faxes is to turn off our fax at night. This is a doctor’s office and we need our fax to receive information regarding our patients.”); FCC Form 1088A—Junk Fax Complaint from J. Dubats (Jan. 23, 2013) (“We have been having problems with this company sending faxes on our patient referral line. . . . [T]oday after I requested nicely that they please stop they hung up and faxed another sheet to our office.”).

<sup>48</sup> Habeger Complaint (stating receipt of 3–4 faxes per week since 2010 and documenting five do-not-fax requests); FCC Form 1088A—Junk Fax Complaint from K. Bauman (Apr. 22, 2013) (“Sent numerous faxes to opt out”); FCC Form 1088A—Junk Fax Complaint from A. Green (June 3, 2013) (made three phone calls and sent three faxes to opt-out).

17 of the consumers have provided information showing that they received at least one DSM fax advertisement more than 30 days after they made a do-not-fax request;<sup>49</sup> each such subsequent fax constitutes an additional violation of the Commission's rules that could carry a separate penalty of up to \$16,000 each. In this case, we consider these additional violations as aggravating factors that warrant upward adjustments of our base forfeiture amounts.<sup>50</sup>

15. Weighing the facts before us, we propose the maximum penalty allowed under the Act and the Commission's rules, \$16,000, for each of the 115 instances in which the DSM parties sent an unsolicited facsimile advertisement without satisfying the requirements to invoke the established business relationship exemption—a total penalty of \$1,840,000.

16. Consistent with prior NALs, the proposed penalty here applies to Mr. Malcolm personally, whether acting in his own name or through DSM or Somaticare.<sup>51</sup> As demonstrated more fully below, there exists such a unity of interest and ownership that no separate personality exists as between Mr. Malcolm and DSM or Somaticare. These entities merely function as instrumentalities of Mr. Malcolm, and Mr. Malcolm cannot be allowed to circumvent personal liability simply by forming purportedly different organizations.<sup>52</sup>

17. According to publicly available records maintained by the Texas Secretary of State, Scott Malcolm is both the president and director—and, in fact, the only “member” or corporate officer—of both DSM and Somaticare. DSM was formed as a limited liability company in 2006 with Mr. Malcolm designated as the sole “initial Member”;<sup>53</sup> no filings or records show any other member of the company from that time to the present. DSM was “forfeited” twice and designated “inactive” by the Secretary of State—in May of both 2008 and 2010—for failure to file a franchise tax return or pay state franchise tax. In October 2008, Mr. Malcolm sought and received reinstatement for DSM after the Texas Comptroller of Public Accounts cleared DSM for reinstatement. After DSM's May 2010 tax forfeiture, Mr. Malcolm did not correct the deficiencies or seek reinstatement for over two years. During that time, Mr. Malcolm, acting for himself and using the name of DSM, continued to send junk faxes in violation of the Act and the Commission's rules. In fact, some of the faxes that formed the basis for the December 20, 2011, citation to Mr. Malcolm, DSM, and Somaticare were sent during the period when DSM was not a legal

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<sup>49</sup> See *supra* para. 7.

<sup>50</sup> The Commission has previously treated opt-out notice violations as aggravating factors in assessing maximum forfeitures for faxing unsolicited advertisements, but the Commission has explicitly noted that these violations are separate and distinct, and could carry separate penalties of up to \$16,000 each. *Gibbons/UEBG NAL*, 27 FCC Rcd at 11438, para. 14; *EZ Business NAL*, 27 FCC Rcd at 7926, paras. 10–11.

<sup>51</sup> See *Patrick Keane NAL*, 27 FCC Rcd at 13762, para. 13; *Patrick Keane a/k/a The Street Map Co.*, Forfeiture Order, 28 FCC Rcd 6688, 6690, para. 6 (2013); *Gibbons/UEBG NAL*, 27 FCC Rcd at 11438–39, para. 15; *Tim Gibbons/United Emp. Benefits Grp.*, Forfeiture Order, 28 FCC Rcd 6679, 6681, para. 8 (2013).

<sup>52</sup> See *Texas v. Am. Blastfax*, 164 F. Supp. 2d 892, 897–98 (W.D. Texas 2001) (“[I]f the officer directly participated in or authorized the statutory violation, even though acting on behalf of the corporation, he may be personally liable” for violations of the TCPA). See also *United States v. Pollution Servs. of Oswego, Inc.*, 763 F.2d 133, 134–35 (2d Cir. 1985) (“In light of the clear congressional intent to hold ‘person[s]’ liable for violations [of the Rivers and Harbors Appropriations Act], we see no reason to shield from civil liability those corporate officers who are personally involved in or directly responsible for statutorily proscribed activity”). Like in the *Oswego* case, the TCPA embodies the congressional intent to hold “persons” liable for violations. See 47 U.S.C. § 227(b)(1). See also 47 U.S.C. § 153(39) (defining a “person” to include individuals as well as corporate entities). In other contexts the courts have found the responsible corporate officer of a company to be personally liable for unlawful acts where the corporate officer was in a position of responsibility *vis-à-vis* the illegal conduct, had the power to prevent others from engaging in such conduct or to promptly correct the violation, and failed to take action. See *e.g. United States v. Hodges X-Ray, Inc.*, 759 F.2d 557, 560–62 (6th Cir. 1985).

<sup>53</sup> Certificate of Formation of DSM Supply, LLC (filed in the Office of the Secretary of State of Texas, Corporations Division; June 29, 2006).



entity. DSM was reinstated on May 30, 2012, and apparently has remained active since then.

18. Somaticare was incorporated as Somaticare, Inc., in 1999<sup>54</sup> and then converted to a limited liability company in 2000. Again, Scott Malcolm is listed as the sole corporate officer of Somaticare, and the Texas Secretary of State records show no other individual with an interest in either the corporation or company. In 2006, Somaticare—like DSM—was forfeited for tax infractions. Somaticare, however, never sought reinstatement and remains inactive according to the Texas Secretary of State. Despite these facts, billing records show that “Somaticare, Inc.” is the subscriber for contact telephone numbers that appear on both DSM’s advertisements and its website.<sup>55</sup> Specifically, the junk faxes associated with the complaints herein say they are from DSM Supply and show a telephone number for the sending fax machine (800-290-6642) and a telephone number for responses to DSM (800-285-2807); both telephone numbers are registered in the name of “Somaticare, Inc.” and at the same street address that is recorded for DSM (both on the fax advertisements themselves and with the Texas Secretary of State). The response number that is listed on the faxes and is assigned to “Somaticare, Inc.” is also listed as the response number on DSM’s website.<sup>56</sup> Thus, while neither Somaticare, Inc., nor Somaticare, LLC, are recognized legal entities, Mr. Malcolm continues to use the name to conduct his business and send the apparent unlawful junk faxes that form the basis of this NAL.

19. In light of these facts, Sections 217 and 227 of the Act provide additional bases for holding Mr. Malcolm personally liable. Section 217 provides in relevant part that “the act, omission, or failure of any officer, agent, or other person acting for or employed by any . . . user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such . . . user as well as that of the person.”<sup>57</sup> In *21st Century Fax(es) LTD. aka 20<sup>th</sup> Century Fax(es)*, the Commission cited Section 217 as applying in a case involving TCPA matters and suggested that a junk fax sender is a “user” as contemplated by Section 217.<sup>58</sup> Thus, under Section 217, Mr. Malcolm, as well as DSM and Somaticare, are “users” under Section 217, and to the extent that someone other than Mr. Malcolm physically operated the facsimile machines, liability for those actions is attributable to Mr. Malcolm and the companies. In *21st Century*, the Commission further explained that under Section 227(b)(1), “the term ‘person’ . . . includes the individual who actually performs the faxing as well as the corporate entity on whose behalf he or she is acting.”<sup>59</sup> Again, because the evidence described above demonstrates that Mr. Malcolm either personally sent the unwanted faxes or was responsible for their transmission, we find that Mr. Malcolm was sufficiently involved in the operations of the companies that he is a “person” liable for unlawful conduct within the meaning of Section 227. In sum, for multiple reasons we find that Mr. Malcolm, DSM, and Somaticare are jointly and severally liable for the apparently unlawful conduct.

20. Accordingly, we propose the maximum \$16,000 penalty for each of the 115 violations of Section 227(b)(1)(C) of the Act and Section 64.1200(a)(4) of the Commission’s rules that are explained above and recorded in Appendix A, for a total penalty of \$1,840,000. This penalty takes into account, in

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<sup>54</sup> Articles of Incorporation of Somaticare, Inc. (filed in the Office of the Secretary of State of Texas, Corporations Section; Nov. 16, 1999).

<sup>55</sup> E-mail from Brenda Weaver, Logix Communications, LP, to Lisa Williford, Telecommunications Consumers Division, FCC Enforcement Bureau (May 28, 2013, 12:16 PM); e-mail from Brenda Weaver, Logix Communications, LP, to Al McCloud, Telecommunications Consumers Division, FCC Enforcement Bureau (Jan. 13, 2013, 2:54 PM).

<sup>56</sup> See <http://dsmsupply.com> (last visited Nov. 25, 2013).

<sup>57</sup> 47 U.S.C. § 217 (emphasis added).

<sup>58</sup> *21st Century Fax(es) LTD. aka 20<sup>th</sup> Century Fax(es)*, Forfeiture Order, 17 FCC Rcd 1384, at 1386 n.16 (2002) (*21<sup>st</sup> Century*).

<sup>59</sup> *Id.* at 1386, para. 5.

the language of Section 503(b)(2)(E), the “degree of culpability” and “history of prior offenses,”<sup>60</sup> and in the language of our forfeiture guidelines, the DSM parties’ apparent “egregious misconduct” and “intentional” and “repeated” violations.<sup>61</sup>

#### IV. CONCLUSION

21. We have determined that Scott Malcolm, DSM Supply, LLC, and Somaticare, LLC apparently violated Section 227(b)(1)(C) of the Act and Section 64.1200(a)(4) of the Commission’s rules, by using a telephone facsimile machine, computer, or other device to send 115 unsolicited fax advertisements to the 26 consumers identified in Appendix A. For these 115 apparent violations, we have further determined that Mr. Malcolm, DSM, and Somaticare are apparently jointly and severally liable for a forfeiture in the amount of \$1,840,000.

#### V. ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and 1.80 of the rules,<sup>62</sup> Scott Malcolm, DSM Supply, LLC, and Somaticare, LLC are hereby **NOTIFIED** of their **APPARENT JOINT and SEVERAL LIABILITY FOR A FORFEITURE** in the amount of one million, eight hundred and forty thousand dollars (\$1,840,000) for willful and repeated violations Section 227(b)(1)(C) of the Communications Act, 47 U.S.C. § 227(b)(1)(C), and Section 64.1200(a)(4) of the Commission’s rules, 47 C.F.R. § 64.1200(a)(4).

23. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Commission’s rules,<sup>63</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Scott Malcolm, DSM Supply, LLC, or Somaticare, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

24. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Scott Malcolm, DSM Supply, LLC, and/or Somaticare, LLC shall send electronic notification of payment to Johnny Drake at [Johnny.Drake@fcc.gov](mailto:Johnny.Drake@fcc.gov) on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>64</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions the DSM parties should follow based on the form of payment they select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.

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<sup>60</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>61</sup> 47 C.F.R. § 1.80(b)(8) note, sec. II (Adjustment Criteria for Section 503 Forfeitures).

<sup>62</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

<sup>63</sup> 47 C.F.R. § 1.80.

<sup>64</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

25. Any request for full payment under an installment plan must be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>65</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

26. The response, if any, must be mailed both to: Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554, Attn: Enforcement Bureau –Telecommunications Consumers Division; and to Richard A. Hindman, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554, and must include the NAL/Acct. No. referenced in the caption. Documents sent by overnight mail (*other than* United States Postal Service Express Mail) must be addressed to: Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. Hand or messenger-delivered mail should be directed, without envelopes, to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554 (deliveries accepted Monday through Friday 8:00 a.m. to 7:00 p.m. only). See [www.fcc.gov/osec/guidelines.html](http://www.fcc.gov/osec/guidelines.html) for further instructions on FCC filing addresses.

27. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

28. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail Return Receipt Requested and First Class mail to DSM Supply, LLC, Attn: Scott Malcolm, President/Owner, 11837 Judd Court, Suite 106E, Dallas, TX 75243; Somaticare, LLC, Attn: Scott Malcolm, President/Owner, 11837 Judd Court, Suite 106E, Dallas, TX 75243; Scott Malcolm, 11837 Judd Court, Suite 106E, Dallas, TX 75243; and to Michael R. Cramer, registered agent for DSM Supply, LLC, 10440 N. Central Expwy, Suite 520, Dallas, TX 75231.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>65</sup> See 47 C.F.R. § 1.1914.

## APPENDIX A

Complainants and Violation Dates<sup>1</sup>

| Complainant received facsimile solicitation(s)                     | Violation Date(s)  |
|--|--|
| M. Eisenberg   | 2/25/13 (2 advertisements)<br>3/1/13 (3 advertisements)<br>3/11/13 |
| J. Cain, Ford Chiropractic, Inc.                                   | 3/1/13<br>3/11/13<br>3/22/13                                       |
| K. Bauman  | 3/11/13  |
| K. Miller, ACSC, Inc.  | 2/25/13<br>2/27/13<br>3/1/13 (3 advertisements)                    |
| R. Zimmerman, Wendell Nelson Chiropractic                          | 2/25/13 (2 advertisements)<br>3/1/13 (3 advertisements)            |
| M. Splinter-Kelleher, Soundview Physical Therapy, Inc.             | 2/25/13<br>3/1/13 (3 advertisements)                               |
| A. Green, Apopka Wellness Center                                   | 3/11/13<br>3/22/13   |
| R. Bell, Renaissance Chiropractic                                  | 5/13/13<br>5/24/13<br>5/29/13                                      |
| R. Hanley, Cheyenne Mountain Chiropractic                          | 5/13/13  |
| K. Durham, Zega Chiropractic                                       | 5/13/13<br>5/20/13<br>5/24/13<br>5/29/13<br>6/17/13                |
| R. LaFreniere, Hartsville Family Chiropractic                      | 5/15/13  |
| K. Oricchio, Adirondack Physical Therapy and Sports Rehabilitation | 5/20/13<br>5/29/13 (2 advertisements)<br>6/3/13                    |
| Dr. S. Fender  | 2/25/13<br>5/24/13<br>5/29/13<br>6/3/13                            |
| S. Sparks, Diaz Olson Physical Therapy and Sports Rehab            | 5/29/13 (2 advertisements)<br>5/30/13<br>6/4/13                    |

<sup>1</sup> Some complainants appear on both lists, because they reported receiving one or more faxes before they requested not to receive any more faxes, and also received one or more faxes after such requests.

| Complainant received facsimile solicitation(s) at least 30 days after requesting no more be sent | Violation Date(s)   |
|--|---|
| T. Ibinger, Simply Chiropractic Center   | 2/25/2013   |
| J. Goldstein, Goldstein Chiropractic   | 2/25/13<br>3/22/13<br>5/29/13<br>6/3/13   |
| T. Nicasio, Shaw Chiropractic  | 2/25/13 (4 advertisements)<br>3/1/13 (6 advertisements)<br>3/11/13 (2 advertisements)<br>3/22/13 (2 advertisements)<br>5/13/13 (4 advertisements) |
| D. Riffel, Metropolitan Chiropractic   | 3/1/13 (3 advertisements)<br>5/29/13 (2 advertisements)   |
| R. Habeger, Back in Motion Chiropractic  | 3/1/13 (3 advertisements)<br>3/11/13<br>5/13/13 (2 advertisements)<br>5/20/13<br>5/24/13  |
| K. Bauman  | 3/22/13   |
| M. Servant, Authentic Healing  | 3/22/13   |
| S. Pagano, Pagano Chiropractic Clinic PC   | 5/13/13   |
| A. Green, Apopka Wellness Center   | 5/13/13<br>5/20/13<br>5/24/13<br>6/3/13   |
| L. Addison, Rothfeld Center for Integrative Medicine   | 5/13/13 (2 advertisements)<br>5/24/13<br>5/29/13 (2 advertisements)   |
| J. Cain, Ford Chiropractic, Inc.   | 5/13/13<br>5/20/13<br>5/29/13<br>6/3/13<br>6/17/13  |
| A. Ortelli, Stamford Family Wellness   | 5/17/13<br>5/20/13<br>10/1/13<br>11/18/13<br>11/25/13   |
| T. Edgil, Edgil Family Chiropractic  | 5/29/13 (2 advertisements)  |
| S. Sparks, Diaz Olson Physical Therapy and Sports Rehab  | 8/1/13  |
| D. Radke, Radke Chiropractic Office  | 11/25/13 (2 advertisements)<br>12/16/13   |

|  |                     |
|--|---------------------|
| R. Allred, Whidbey General Hospital Rehabilitation Services North  | 11/25/13<br>1/21/14 |
| K. Oricchio, Adirondack Physical Therapy and Sports Rehabilitation | 11/25/13            |

APPENDIX B

Examples of Faxes<sup>1</sup>

FROM: 800 290 6642 TO: 05/29/13 10:51 Pg 1 of 2

**DSM SUPPLY**

**Special Offer !!**

**BIOFREEZE<sup>®</sup> Sale...**

Get up to \$50.00 off your Biofreeze order.



**Special Offers:**  
 Special# 1: Buy 48 Patient Size Products ( Tube, Roll-On, or Spray ) and GET \$50.00 off your order.  
 Special#2 Buy 24 Patient Size Products ( Tube, Roll-On, or Spray) and GET \$25.00 off your order.

**Description of Products**

- 4 fl. oz Gel Tube
- New Colorless 4 fl. oz. Gel Tube
- 3 fl. Oz. Roll-on
- New Colorless 3fl. oz. Roll-on
- 4 fl. oz. Spray

**Call for Lowest Prices!!**

Sale Ends May 31, 2013

**Call Toll-Free 1-800-285-2807**

DSM Supply 11837 Judd Court Dallas, TX 75243

<sup>1</sup> Receiving fax numbers redacted by the FCC.

FROM: 800 290 6642 TO:

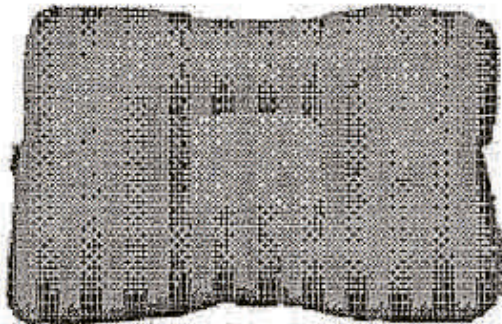
05/29/13 10:51 Pg 2 of 2

LUMBAR BACK SUPPORT • TENS UNIT 3000 • INTERFERENTIAL UNITS • ORTHOPEDIC SUPPORTS • HOT/COLD PACKS • STIM SIMULATOR • WHITE FOAM/TOP ELECTRODES • CLINICAL ELECTRICAL MUSCLE STIMULATOR • CERVICAL MEMORY FOAM PILLOW • PORTABLE THERAPEUTIC ULTRASOUND UNIT • TENS UNIT 2500 • CRYOCOLD THERAPY • ULTRASOUND GEL • DENTAL ABD ELECTRODES • WHITE FABRIC/TOP ELECTRODES • BIOPREZZE GEL • HEADREST PAPER • ELECTRICAL MUSCLE STIMULATOR EMS • TRUE SINE



ABLE THERAPEUTIC ULTRASOUND UNIT • TENS UNIT 2500 •

# Special Offer !! Call today 1-800-285-2807 CERVICAL PILLOWS



Item #D1

Extremely nice, fiber filled chiropractic indentation pillow. Evenly filled fiber pillow that gives great support while being patient soft friendly.

- SIZES
- STANDARD (24" X 16")
- MID-SIZE (22" X 15")
- PETITE (19" X 12")

## \$9.49

3 per case

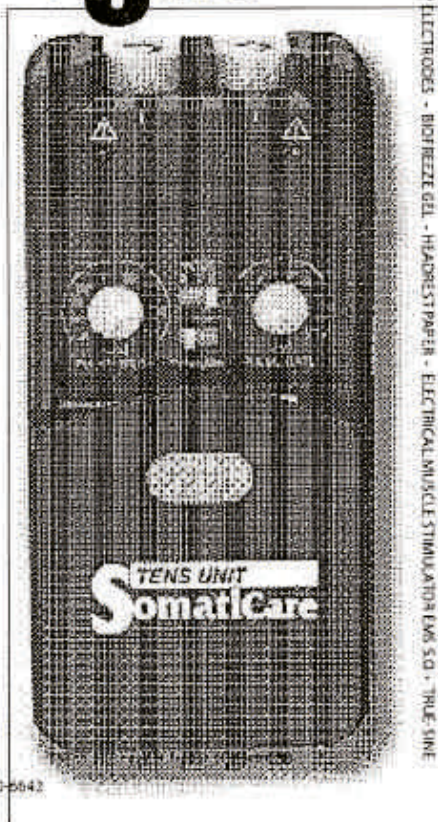
# TENS 3000

Item #3000

The TENS 3000 is a dual channel device TENS Unit with three modes of operation (B, N, M). Both it's pulse width and frequency are adjustable. It also comes equipped with a 15 and 30 minute timer. Carrying Case included. Have your clinic name printed right on the case. Great for referrals.

# 15<sup>99</sup> EACH

Sale Ends on May 31, 2013



LUMBAR SEAT BACK CUSHIONS • TENS UNIT 3000 • CERVICAL PILLOWS • FAX: 1-800-290-6642

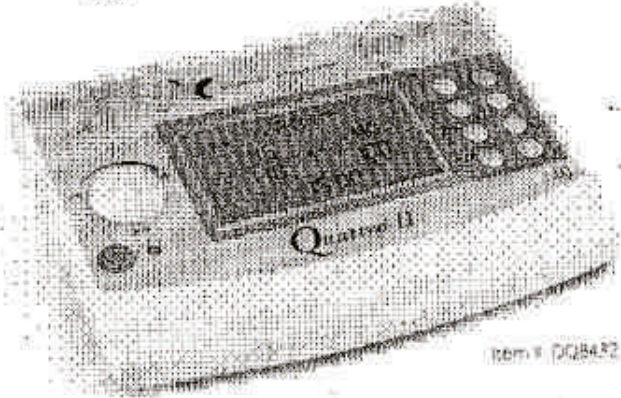


FROM: 800 290 6642 TO:

03/11/15 09:13:29 pg. 1 of 1

# Quattro™ II

Call Toll-Free 1-800-285-2807



Item # DC28432

The microprocessor controlled Quattro™ II is a professional four-channel electrotherapy device that provides IF 4-Pole, IF 2-Pole, Russian, EMS and TENS waveform. Its portable design lets you take it to your patient or keep it at the clinic. It's easy to use and up and running within minutes. And its advanced operating system ensures a complete range of therapy no matter where you use it! You can choose between several different amplitude modulation options. The Interferential and premodulated modes offer frequency modulation as well as a static frequency option.

A complete range of therapy no matter where you use it!

Professional Four-Channel Electrotherapy Device.

Treat up two patients at the same time!

## Product Features

- Four channels of electrical stimulation output
- Large easy-to-read graphical LCD display with exact dial performance and programmable timer
- Waveforms include TENS, EMS, 2-pole Interferential, 4-pole Interferential and Russian
- 10-presets per waveform, totaling 50-presets in all
- User-defined memory positions for user protocols
- Designed for tabletop, therapy cart or mobile use
- Includes eight sets of electrodes, eight sets of rubber electrodes with sponges, eight straps, four sets of lead wires and a user manual
- Product dimensions: 10 1/2" (W) x 15" (L) x 8" (H)
- Product weight: 6.7 lbs.

Call Today for a Free Trial Unit. 1-800-285-2807

DSM Supply  
11837 Judd Court #106E  
Dallas, TX 75243