

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION (AT CINCINNATI)**

GOODSON & COMPANY, LTD.	)	Civil Action No. 1:18-cv-34
ATTORNEYS AND COUNSELORS AT	)	
LAW, an Ohio corporation, individually and	)	
as the representative of a class of similarly-	)	
situated persons,	)	
	)	
Plaintiff,	)	<b>CLASS ACTION COMPLAINT</b>
	)	
v.	)	
	)	
ECLINICALWORKS, LLC,	)	
	)	
Defendant.	)	

Pursuant to Rules 7 and 8 of the Federal Rules of Civil Procedure, Plaintiff Goodson & Company, Ltd. Attorneys and Counselors at Law (“Goodson & Company” or “Plaintiff”) alleges the following against Defendant EClinicalWorks, LLC (“EClinicalWorks” or “Defendant”):

**PRELIMINARY STATEMENT**

1. This case involves the sending of unsolicited advertisements via facsimile.
2. The Telephone Consumer Protection Act (“TCPA”), which was modified and renamed the Junk Fax Prevention Act (“JFPA”) in 2005, is codified at 47 U.S.C. § 227.
3. EClinicalWorks sent documents to Goodson & Company on February 4, 2014 via facsimile (the “EClinicalWorks Fax”). A copy of the EClinicalWorks Fax is attached hereto as Exhibit A.
4. The receipt of an unsolicited advertisements via facsimile (or “junk fax”) causes damage to the recipient. A junk fax uses the office supplies of the recipient such as paper, toner, and the fax machine itself. A junk fax also ties up the phone line and the fax machine of the recipient, thereby precluding their use for legitimate, authorized facsimiles and other business.

Finally, a junk fax wastes the recipient's time in reviewing and discarding unwanted solicitations.

5. The claims of Goodson & Company and the other recipients of the EClinicalWorks Fax are all based on the same legal theory; *i.e.*, violations of the JFPA. This action seeks relief expressly authorized by the JFPA: (i) injunctive relief enjoining EClinicalWorks, their employees, agents, representatives, contractors, affiliates, and all persons and entities acting in concert with them, from sending unsolicited advertisements in violation of the JFPA; (ii) statutory damages in the amount of \$500.00 for each violation of the JFPA, and (iii) treble damages as provided by § 227(b)(3) of the JFPA.

#### **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 47 U.S.C. § 227, as the JFPA is a federal statute and, therefore, gives rise to federal question jurisdiction.

7. This Court has personal jurisdiction over EClinicalWorks because EClinicalWorks transacted business within this judicial district, made contracts within this judicial district, and/or committed tortious acts within this judicial district.

8. This Court has venue under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this district.

#### **PARTIES**

9. Goodson & Company is a corporation registered in the State of Ohio that operates a law practice in Cincinnati, Ohio.

10. EClinicalWorks, LLC is a Massachusetts corporation that sells practice management software from its principal place of business in Westborough, Massachusetts.

**FACTS**

11. EClinicalWorks sent material to Goodson & Company via its office facsimile machine that promoted the commercial availability or quality of EClinicalWorks's products on February 4, 2014.

12. EClinicalWorks receives some receives some or all of the revenues from the sale of the products, goods and services advertised in the EClinicalWorks Fax, and Defendants profit and benefits from the sale of the products, goods and services advertised in the EClinicalWorks Fax.

13. EClinicalWorks did not seek or obtain permission from Goodson & Company to send ads to Goodson & Company's fax number/fax machine prior to doing so.

14. The EClinicalWorks Fax did not contain an opt-out notice that complied with the requirements of the JFPA.

15. Based on information, belief, and the appearance of the EClinicalWorks Fax itself, EClinicalWorks sent the EClinicalWorks Fax to more than forty persons via facsimile.

**CLASS ACTION ALLEGATIONS**

16. In accordance with Fed. R. Civ. P. 23(b)(1), (b)(2) and (b)(3), Goodson & Company brings this class action pursuant to the JFPA, on behalf of the following class of persons:

All persons who (1) on or after four years prior to the filing of this action, (2) were sent telephone facsimile messages of material advertising the commercial availability or quality of any property, goods, or services by or on behalf of Defendant, (3) from whom Defendant did not obtain "prior express invitation or permission" to send fax advertisements, or (4) with whom Defendant did not have an established business relationship, or (5) where the fax advertisements did not include an opt-out notice compliant with 47 C.F.R. § 64.1200(a)(4)(iii).

Excluded from the Classes are the Defendant, its employees, agents and members of the Judiciary. Goodson & Company seeks to certify a class which include but are not limited to the fax advertisements sent to Plaintiff. Goodson & Company reserves the right to amend the class definition upon completion of class certification discovery.

17. Numerosity: Based on information, belief, and the appearance of the EClinicalWorks Fax, the number of putative class members exceeds forty. Facsimile advertisements are typically sent to hundreds if not thousands of persons. The joinder of such a large group of persons in a single lawsuit would be impracticable.

18. Commonality: Common questions of law and fact apply to the claims of the putative class members. These include the following:

- (a) Whether the EClinicalWorks Fax constitutes an “unsolicited advertisement” within the meaning of the JFPA;
- (b) How EClinicalWorks compiled or obtained the list of fax numbers to which the EClinicalWorks Fax was sent;
- (c) Whether EClinicalWorks obtained “express invitation or permission” within the meaning of the JFPA from the intended targets prior to sending them the EClinicalWorks Fax;
- (d) Whether the EClinicalWorks Fax contained opt-out notices that complied with the requirements of the JFPA;
- (e) Whether EClinicalWorks violated the JFPA and the regulations promulgated thereunder with regard to the EClinicalWorks Fax; and
- (f) Whether EClinicalWorks sent the EClinicalWorks Fax intentionally, knowingly, or willfully.

19. Typicality: Goodson & Company’s claims are typical of the claims of the putative class members. Goodson & Company is asserting the same claim under the same

federal statute as the other members of the putative class. Goodson & Company is also seeking the same relief for itself and the other members of the putative class.

20. Adequacy: Goodson & Company will fairly and adequately represent the interests of the putative class members. Goodson & Company has no interests in conflict with the putative class members, has the resources and inclination to prosecute this action to completion, and has retained experienced counsel to assist it in doing so.

21. Predominance: The questions of law and fact common to the putative class members predominate over any questions affecting only individual members because:

- (a) Goodson & Company's claim depends on the same factual and legal issues as that of the putative class members;
- (b) the evidence supporting EClinicalWork's likely defenses will come solely from EClinicalWork's own records and will not require any information or inquiries from individual class members;
- (c) the damages for all putative class members are set by statute and will, therefore, be the same for each and every member of the putative class; and
- (d) the identity of the putative class members can be readily ascertained from EClinicalWork's or its agents' computer records, phone records, or other business records.

22. Superiority: A class action would be superior to individual actions by the putative class members for the following reasons:

- (a) the damages suffered by any one class member are too low to justify a stand-alone lawsuit;
- (b) the JFPA contains no provision for awarding attorney fees. As such, individual claimants would, as a practical matter, have to proceed *pro se* against a large, sophisticated defendant;
- (c) many of the putative class members are legal entities that would not be permitted to proceed in court *pro se*; and

- (d) the evidence concerning each of putative class member's claims is so similar that the adjudication of each on an individual basis would be repetitive, inefficient, and wasteful.

**CLAIM FOR RELIEF – VIOLATIONS OF THE JFPA**

23. The JFPA 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).

24. The JFPA 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).

25. EClinicalWorks sent the EClinicalWorks Fax to the facsimile machines of Goodson & Company and numerous other persons.

26. The EClinicalWorks Fax promoted the commercial availability and/or quality of the goods and/or services of EClinicalWorks.

27. EClinicalWorks did not obtain prior express invitation or permission from Goodson & Company before sending the EClinicalWorks Fax to Goodson & Company's fax number/fax machine.

28. EClinicalWorks' conduct has caused Goodson & Company and the putative class members to suffer actual and statutory damages under the JFPA.

WHEREFORE, Plaintiff Goodson & Company, individually and on behalf of all others similarly situated, demands judgment in its favor and against Defendant EClinicalWorks, LLC as follows:

- (1) that the Court adjudge and decree that the present case may be properly maintained as a class action, appoint Goodson & Company as the representative of the class, and appoint Goodson & Company's counsel as counsel for the class;
- (2) that the Court award actual or statutory damages to Goodson & Company and the other members of the class for each violation of the JFPA by EClinicalWorks;
- (3) that the Court enjoin EClinicalWorks from additional violations of the JFPA; and
- (4) that the Court award Goodson & Company pre-judgment interest, post-judgment interest, attorney fees, treble damages, costs, and such other relief as may be just and proper.

Respectfully submitted,

GOODSON & COMPANY, LLC, ATTORNEYS  
AND COUNSELORS AT LAW, individually and  
as the representative of a class of similarly-situated  
persons,

/s/Matthew E. Stubbs

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GEORGE D. JONSON (0027124)  
MATTHEW W. STUBBS (0066722)  
MONTGOMERY, RENNIE & JONSON  
36 E. Seventh Street, Suite 2100  
Cincinnati, OH 45202  
Telephone: 513-241-4722  
Facsimile: 513-241-8775 (fax)  
Email: [gjonson@mrjlaw.com](mailto:gjonson@mrjlaw.com)  
[mstubbs@mrjlaw.com](mailto:mstubbs@mrjlaw.com)

# eClinicalWorks

## eClinicalWorks V10 is here!

The most powerful Cloud EHR on your PC, Phone and iPad.

### Not an eClinicalWorks Customer? Make the switch to eClinicalWorks!

New pricing options with **NO START-UP COSTS** (only \$599/mo)

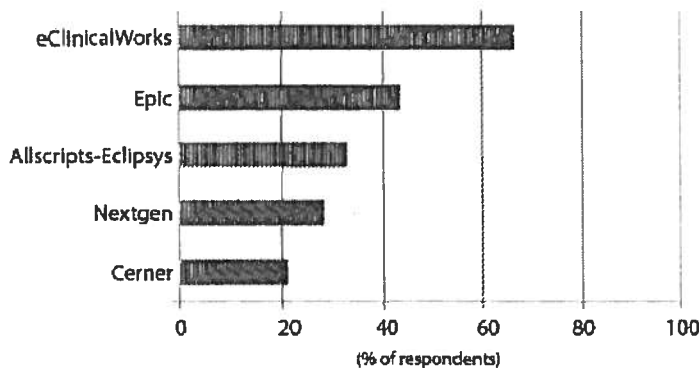
Ask how we can help with the financial barriers that are keeping practices from abandoning their legacy products from companies with questionable stability/viability.

- Free data conversion from your current ehr
- No start up costs for implementation
- No start up costs for on-site training

### Already an eClinicalWorks Customer? Save \$100's when you refer a friend

#### eClinicalWorks #1 in Customer Satisfaction

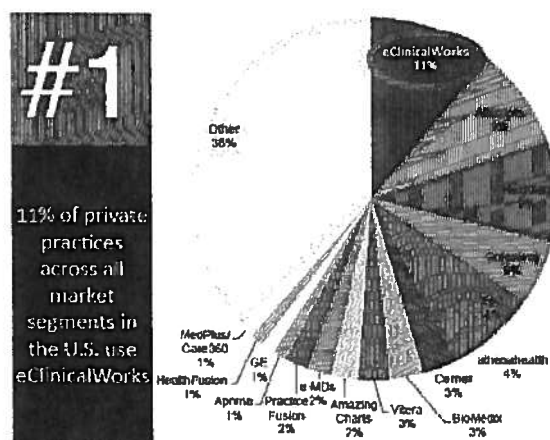
According to the Business Strategy: The Current State of Ambulatory EHR Buyer Satisfaction, November 2013 by IDC Health Insights, eClinicalWorks ranked #1 for buyer satisfaction.



Base = users for these top 5 most represented EHRs  
Source: IDC Health Insights' and MedData Group's EHR Satisfaction Survey, October 2013

#### eClinicalWorks Dominates in Market Share

According to the 5th Annual Ambulatory PM & EHR Study, June 2013 by HIMSS Analytics, eClinicalWorks is the dominant EHR provider for free-standing practices and a top market leader for hospital-owned practices.



**#1**  
11% of private practices across all market segments in the U.S. use eClinicalWorks

# For more information visit [www.eclinicalworks.com/promotions](http://www.eclinicalworks.com/promotions)



**Dr. Melissa Licari**

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**From:** SmartFax Notifications <reports@smartfax.com>  
**Sent:** Tuesday, February 4, 2014 12:10 PM  
**To:** drlicari@gmail.com  
**Subject:** Inbound Fax from: X at: 02/04/2014 09:09:01  
**Attachments:** 189650775-162860755.pdf



A fax has been received.

**MCFID** = 87381084  
**Time Received** = 02/04/2014 09:09:01 PST  
**Fax Number** = 8138640412  
**ANI** = X  
**Number of Pages** = 1  
**CSID** =  
**Fax Status Code** = Successful



Please do not reply to this email.

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Goodson & Company, Ltd., an Ohio Corporate, individually and as the representative of a class of similarly-situated persons

(b) County of Residence of First Listed Plaintiff Hamilton (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) George D. Jonson/Matthew E. Stubbs, Montgomery Rennie & Jonson 36 E. Seventh Street, Suite 2100 Cincinnati, OH 45202 (513-241-4722)

DEFENDANTS

Eclinical Works, LLC

County of Residence of First Listed Defendant Worcester (Mass) (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 47 U.S.C. Section 227

Brief description of cause: Violation of the Telephone Consumer Protection Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 01/19/2018 SIGNATURE OF ATTORNEY OF RECORD s/Matthew E. Stubbs

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Ohio

Goodson & Company, Ltd.

Plaintiff

v.

Eclinical Works, LLC

Defendant

Civil Action No. 1:18-cv-34

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Eclinical Works, LLC
2 Technology Drive
Westborough, MA 01581

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

George D. Jonson
Matthew Stubbs
MONTGOMERY, RENNIE & JONSON
36 East Seventh Street
Cincinnati, OH 45202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. 1:18-cv-34

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify):* \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: