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9 Attorneys for Complainant

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

12 In the Matter of the Accusation Against: ) Case No. IA 1996 8777  
 13 )  
 14 CHARLES RODRICK MARTIN dba )  
 MARTIN CHARLES R AND ASSOCIATES ) ACCUSATION  
 15 17671 Irvine Blvd. Suite 113 )  
 Tustin, California, 92780 )  
 16 )  
 17 Private Investigator License No. PI 13135 )  
 )  
 18 Respondent. )

19  
20 Complainant, for cause of accusation against CHARLES RODRICK MARTIN,

21 alleges as follows:

PARTIES

22 1. Complainant, Sherrie Moffet-Bell, is the Deputy Chief of the Bureau of  
 23 Security and Investigative Services within the Department of Consumer Affairs of the State of  
 24 California, and makes this Accusation in her official capacity.

25 2. On or about September 22, 1988, the Bureau of Security and Investigative  
 26 Services issued Private Investigator License No. PI 13135 to respondent CHARLES RODRICK  
 27 MARTIN dba MARTIN CHARLES R AND ASSOCIATES (respondent "MARTIN"). The  
 28 license is in full force and effect and will expire on September 30, 2002, unless renewed.

JURISDICTION

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2 3. Under Business and Professions Code § 7512.2, the Director of the  
3 Department of Consumer Affairs shall enforce the provisions of the Private Investigator Act  
4 which appears in Business and Professions Code § 7512 et. seq.

5 4. Under Business and Professions Code § 7561.1, the Director may suspend  
6 or revoke a license issued under the Private Investigator Act for violations set forth therein.

FACTS

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8 5. At all times material herein, the Telephone Consumer Protection Act, 47  
9 U.S.C. § 227 (TCPA), was and is a federal law concerned with the use of facsimile  
10 transmissions. The TCPA was enacted to "protect the privacy interest of residential telephone  
11 subscribers by placing restrictions on unsolicited, automated telephone calls to the home and to  
12 facilitate interstate commerce by restricting certain uses of facsimile machines and automatic  
13 dialers." *International Science & Technology Inst. v. Inacom*, 106 F.3d 1146, 1150 (4th Cir.  
14 1997).

15 6. At all times material herein, the TCPA prohibited the use of "any  
16 telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a  
17 telephone facsimile machine." 47 U.S.C. § 227(b)(1)(C).

18 7. At all times material herein, the TCPA created a private right of action by  
19 providing that "a person or entity may, if otherwise permitted by the laws or rules of court of a  
20 State, bring in an appropriate court of that State . . . an action based on a violation of this  
21 subsection or the regulations prescribed under this subsection to enjoin such violation." 47  
22 U.S.C. § 227(b)(3).

23 8. At all times material herein, Fax.Com, Inc., was and is a Delaware  
24 corporation doing business from offices located at 120 Columbia, Suite 500, Aliso Viejo,  
25 California. At all times material herein, Fax.Com was and is in the business of sending  
26 facsimile advertisements on behalf of client companies. At all times material herein, Fax.Com  
27 routinely sent unwanted and unsolicited facsimile advertisements to fax numbers across the  
28 nation.

1           9.       At all times material herein, respondent MARTIN was and is an employee  
2 of Fax.Com, acting as the Vice-President of the Compliance Unit. At all times material herein,  
3 respondent knew that Fax.Com routinely sent unwanted and unsolicited facsimile advertisements  
4 to fax numbers across the nation. At all times material herein, respondent's job responsibilities  
5 at Fax.Com included defending clients and/or the company against TCPA lawsuits filed by  
6 persons who received unwanted and unsolicited facsimiles sent by Fax.Com.

7           10.       At all times material herein, DARRELL SMILEY was and is employed at  
8 Fax.Com as a Customer Service Supervisor. At all times material herein, SMILEY worked with  
9 respondent MARTIN in defending Fax.Com clients and/or Fax.Com against TCPA lawsuits filed  
10 by persons who received unwanted and unsolicited facsimiles sent by Fax.Com.

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

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

16           12.       On or about May 11, 2000, Fax.Com sent an unsolicited facsimile  
17 advertisement for T.N.A. Travel to WAYNE STRANG, a resident of Torrance, California.

18           13.       Based upon receipt of the unsolicited facsimile, on May 25, 2000,  
19 STRANG brought suit against T.N.A. Travel under the TCPA in the Superior Court of  
20 California, County of Los Angeles, South Bay Judicial District, Small Claims Case No. SBA  
21 00502035.

22           14.       On or about July 27, 2000, the STRANG vs. T.N.A. Travel case was tried.  
23 Respondent MARTIN appeared and defended T.N.A. Travel. During the trial, respondent falsely  
24 told the judge that STRANG had telephoned Fax.Com and agreed to accept one facsimile per  
25 week. The case was decided in favor of T.N.A. Travel.

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1 MARTIN submitted a Notice of Appeal from the judgment. On or about June 29, 2001, a trial de  
2 novo was conducted in the case. In the trial de novo, respondent MARTIN defended American  
3 Benefit, and SMILEY appeared to testify. In the trial de novo, respondent made the same false  
4 statements and presented the same false evidence described in paragraphs 18(a), (b) and (c)  
5 hereinabove. The trial de novo was decided in favor of American Benefit.

6 CHARLES KENNEDY vs. COLORJET, INC.

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

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

12 22. Based upon receipt of the unsolicited facsimile, on October 27, 2000,  
13 KENNEDY brought suit against Colorjet under the TCPA in the Superior Court of California,  
14 County of Alameda, Fremont Hall of Justice, Case No. 2000096031.

15 23. On or about January 9, 2001, the KENNEDY vs. Colorjet case was tried.  
16 Respondent MARTIN appeared and defended Colorjet. During the trial, respondent provided the  
17 court with the following false evidence:

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

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

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

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

1 e. Respondent presented as evidence a document entitled "Fax.Com Black  
2 List Report" which purported to show that KENNEDY had telephoned Colorjet on July 13, 2000,  
3 and that the call lasted 18.3 minutes. The Black List Report was fabricated with the knowledge  
4 and contrivance of respondent.

5 24. On January 10, 2001, judgment for defendant was entered in the  
6 KENNEDY vs. Colorjet case.

7 CHARLES KENNEDY vs. BRIDGE CELLULAR, INC.

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

12 26. On or about October 13, 2000, Fax.Com sent an unsolicited facsimile  
13 advertisement for Bridge Cellular to CHARLES KENNEDY.

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

17 28. On February 6, 2001, the KENNEDY vs. Bridge Cellular case was tried.  
18 Respondent MARTIN appeared and testified on behalf of Bridge Cellular. During the trial,  
19 respondent provided the court with the following false evidence:

20 a. Respondent falsely stated that KENNEDY telephoned Fax.Com on  
21 July 13, 2000, spoke with respondent, and requested addition of his fax number to the database  
22 maintained by Fax.Com.

23 b. Respondent falsely stated that when KENNEDY called Fax.Com on  
24 July 13, 2000, he gave respondent his driver's license.

25 c. Respondent presented as evidence the FAX ID Problem Sheet and the  
26 Fax.Com Black List Report, the same fabricated documents described in paragraphs 23(d) and  
27 23(e) hereinabove.

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

4                                   JAMES KINDER vs. ENEX MARKETING

5                   41.     At all times material herein, Enex Marketing was and is a California  
6 Corporation doing business from Vista, California. At an undetermined time, Enex Marketing

7                   42.     On or about January 11, 2001, Fax.Com sent an unsolicited facsimile  
8 advertisement for Enex Marketing to JAMES KINDER, a resident of the County of San Diego,  
9 California.

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

13                   44.     On or about June 22, 2001, the KINDER vs. Enex Marketing case was  
14 tried. Respondent MARTIN appeared and defended Enex Marketing. During the trial,  
15 respondent falsely told the court that he was a regular employee of Enex Marketing. Respondent  
16 also falsely testified that on May 10, 2000, KINDER telephoned Fax.Com and requested the  
17 addition of his fax number to the database maintained by Fax.Com. The case was decided in  
18 favor of Enex Marketing.

19                                   WILLIAM ADLER vs. ADVANCED WIRELESS  
20                                   CELLULAR COMMUNICATIONS

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

23                   46.     On or about April 4, 2001, May 3, 2001, and May 4, 2001, Fax.Com sent  
24 unsolicited facsimile advertisements for Advanced Wireless to WILLIAM ADLER, a resident of  
25 Washington, D.C.

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

3 48. On or about July 16, 2001, respondent MARTIN, acting from the  
4 Compliance Department of Fax.Com, responded to the July 2, 2001 WORSHAM letter.  
5 Respondent's letter stated in part: "Please be aware that it is not our intent to send unsolicited  
6 facsimile messages to any business or consumer who does not wish to receive them or with  
7 whom our clients have no relationship." At all times material herein, respondent knew that this  
8 statement was false in that the business of Fax.Com involves the sending of unwanted and  
9 unsolicited facsimile advertisements to fax numbers across the nation.

10 49. Based upon the receipt of the unsolicited facsimiles, on August 3, 2001,  
11 ADLER brought suit against Advanced Wireless under the TCPA in the Superior Court of the  
12 District of Columbia, Civil Division, Small Claims and Conciliation Branch, Case No. SC  
13 1294401. Attorney MICHAEL C. WORSHAM represented ADLER in this action.

14 50. On or about August 23, 2000, respondent MARTIN telephoned Attorney  
15 WORSHAM. During this telephone conversation, respondent falsely informed Attorney  
16 WORSHAM that he worked for Advanced Wireless.

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

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

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

27 c. SMILEY presented as evidence a document entitled "IVR Fax #  
28 Additions" which purported to show the addition of ADLER's fax number to the database



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

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

6 Defendant Fax.Com's response to Interrogatory No. 1 was as follows:

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

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

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

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

25 In response to the Document Request No. 1, defendant Fax.Com attached a  
26 document entitled "IVR Fax # Additions" which purports to show the addition of ADLER's fax  
27 number to the database maintained by Fax.Com. This is the same fabricated document described  
28 in Paragraph 51(c) hereinabove.

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

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

34 In response to Document Request No. 3, defendant Fax.Com provided a  
35 document entitled "Problem Sheet" which purports to show that "Bill" had called on 5-8-00 and  
36 provided both his phone number and fax number. This is the same fabricated document  
37 described in paragraph 51(b) hereinabove.

REGINALD ROBINSON vs. FAX.COM

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2 57. From June 8, 2001 to August 10, 2001, Fax.Com sent eight (8) unsolicited  
3 facsimile advertisements to REGINALD ROBINSON, a resident of Fort Washington, Maryland.  
4 The unsolicited facsimiles included advertisements of vacation cruises in the Bahamas and toner  
5 specials for copy machines.

6 58. Based upon receipt of the unsolicited facsimiles, on June 22, 2001,  
7 ROBINSON brought suit against Fax.Com under the TCPA in the District Court of Maryland for  
8 Prince George's County, Case No. 19397-2001. On October 1, 2001, ROBINSON filed a  
9 Second Amended Complaint in this action.

10 59. As part of the Fax.Com case, plaintiff ROBINSON propounded written  
11 Interrogatories to defendant Fax.Com. On September 28, 2001, defendant Fax.Com provided  
12 Answers to the Interrogatories. Respondent MARTIN signed the Answers to Interrogatories  
13 under penalty of perjury. In the Answers, respondent provided the following false evidence:

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

15 Identify each person, other than person intended to be  
16 called as an expert witness at trial, having discoverable information  
17 that intends to support a position that you have taken or intend to  
18 take in this action, including any claim for damages, and state the  
19 subject matter of the information possessed by that person.

18 Defendant Fax.Com's response to Interrogatory No. 1 was as follows:

19 Charles Martin, Vice President, Fax.Com, is expected to testify at  
20 trial with regard to Fax.Com's policies and procedures relating to the  
21 sending of faxes. Further, Mr. DARRELL SMILEY will testify that Mr.  
22 ROBINSON called Fax.Com's database on May 29, 2001 and entered  
23 both his telephone and facsimile numbers into our database.

24 To the extent that the Answer states that ROBINSON called SMILEY at Fax.Com  
25 on May 29, 2001, and entered his facsimile and telephone numbers into the database maintained  
26 by Fax.Com, the Answer is false, and respondent MARTIN at all times knew that the Answer  
27 was false.

28 60. On or about October 18, 2001, the ROBINSON vs. Fax.Com case was  
29 tried. Respondent MARTIN appeared and testified on behalf of defendant Fax.Com. During his  
30 testimony, respondent presented the court with the following false evidence:





1 Business and Professions Code § 480.

2           71. Business and Professions Code § 480(a)(2) provides that a board,  
3 including the Bureau, may deny a license on the ground that the applicant has done any act  
4 involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or  
5 substantially injure another. Business and Professions Code § 480(a)(3) provides that a board  
6 may deny a license on the ground that the applicant has done any act which, if done by a  
7 licentiate of the business or profession in question, would be grounds for suspension or  
8 revocation of license. Under Business and Professions Code § 480, a board may deny a license  
9 only if the act is substantially related to the qualifications, functions or duties of the business or  
10 profession for which application is made.

11           72. Under Business and Professions Code § 7561.4, the Director may suspend  
12 or revoke a license issued under the Private Investigator Act if the license holder has committed  
13 any act in the course of the licensee's business constituting dishonesty or fraud. Under section  
14 7561.4(a), "dishonesty or fraud" constitutes knowingly making a false statement relating to  
15 evidence or information obtained in the course of employment. Under section 7561.4(c),  
16 "dishonesty or fraud" also constitutes the manufacturing of evidence.

17           73. The private investigator license held by respondent MARTIN is subject to  
18 discipline under Business and Professions Code § 7561.1(f), for conduct that constitutes the basis  
19 for the denial of the application for a private investigator license under the provisions of Business  
20 and Professions Code §§ 7538(b), 7538(c), 480(a)(2) and 480(a)(3), in that respondent  
21 committed numerous acts of dishonesty and fraud in defending TCPA actions brought against  
22 Fax.Com or advertising clients of Fax.Com, as described in paragraphs 11 through 67  
23 hereinabove. Respondent's conduct, in falsifying evidence, manufacturing evidence, making  
24 false statements in court proceedings and threatening to bring harassment lawsuits supported by  
25 falsified evidence, if performed by a private investigator under his or her license, would  
26 constitute the basis for discipline under the provisions of Business and Professions Code  
27 § 7561.4, and, therefore, constitutes acts which are substantially related to the qualifications,  
28 functions and duties of a private investigator.



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PRAYER


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

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

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

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

DATED: August 5, 2002

  
SHERRIE MOFFET-BELL  
Deputy Chief  
Bureau of Security and Investigative Services  
Department of Consumer Affairs  
State of California

Complainant