

WEST DISTRICT (19484)
SANTA MONICA COURTHOUSE
1725 MAIN STREET, SANTA MONICA, CA 90401

SMALL CLAIMS CASE NO: 04A01350

NOTICE TO ALL PLAINTIFFS AND DEFENDANTS:

Your small claims case has been decided. If you lost the case, and the court ordered you to pay money, your wages, money, and property may be taken without further warning from the court. Read the following pages for important information about your rights.

AVISO A TODOS LOS DEMANDANTES Y DEMANDADOS:

Su caso ha sido resuelto por la corte para reclamos judiciales menores. Si la corte ha decidido en su contra y ha ordenado que usted pague dinero, le pueden quitar su salario, su dinero, y otras cosas de su propiedad, sin aviso adicional por parte de la corte. Lea le reverso de este formulario para obtener informacion de importancia acerca de sus derechos.

PLAINTIFF/DEMANDANTE

DEFENDANT/DEMANDADO

THE FOUNDATION FOR TAXPAYER &
CUSUMER RIGHTS
1750 OCEAN PARK BLVD., STE 200
SANTA MONICA, CA 9045

KERRY K. ASSIL, M.D. ., INC.
2232 SANTA MONICA BLVD.
SANTA MONICA, CA 90411

JUDGMENT AND NOTICE OF ENTRY OF JUDGMENT

JUDGMENT WAS ENTERED AS STATED BELOW ON (DATE): 10/20/2004

Defendant (name, if more than one):

KERRY K. ASSIL, M.D. ., INC.

shall pay plaintiff (name, if more than one):

THE FOUNDATION FOR TAXPAYER & CUSUMER RIGHTS

\$ 500.00 principal and \$ 0.00 costs on plaintiff's claim.

Other (specify): SEE ATTACHED.

Enforcement of the judgment is automatically postponed for 30 days or, if an appeal is filed, until the appeal is decided.

CLERK'S CERTIFICATE OF MAILING - I certify that I am not a party to this action. This NOTICE OF ENTRY OF JUDGMENT was mailed first class, postage prepaid, in a sealed envelope to the parties at the addresses shown above. The mailing and this certification occurred at the place and on the date shown below.

Place of mailing: SANTA MONICA, CALIFORNIA. JOHN A. CLARKE, Executive Officer/Clerk

Date of mailing: 10/20/2004

By THEODORE W. MCDONALD, Deputy

- The county provides small claims advisor services free of charge.-

SC-130JC (Rev. 1-00)

JUDGMENT AND NOTICE OF ENTRY OF JUDGMENT

ACKNOWLEDGMENT OF SATISFACTION OF JUDGMENT

CASE NO: SM 04A01350

To the Clerk of the Court: I am the judgment creditor of record.

I agree that the judgment in this action has been paid in full or otherwise satisfied.

Dated: ____ / ____ / ____

In Chambers after being taken under submission: Plaintiff is a tax exempt, non-profit foundation which received unsolicited facsimile messages from defendants and sues pursuant to 47 USC section 227. Section 227 permits a private right of action in state court for the receipt of unsolicited facsimile messages. Section 227(b)(3).

In Foundation v. Assil, MD., Inc. (04A01350), the message sent by Defendant Assil Medical Corporation involved the hiring of a public relations organization which sent to Plaintiff Foundation a communication bearing the heading, "Assil Sinskey Eye Institute", and invited the recipient to watch Dr. Kerry K. Assil perform a life changing Operation on "Good Morning America" on a particular date. It states further that, "If you have been told that you are not a good LASIK candidate, watch Dr. Kerry Assil perform the newest breakthrough technology to make the blind see." It provided the date and time of the television broadcast, and then noted that Dr. Assil had locations in Santa Monica and San Diego, and gave a toll free telephone number to contact him. The message also provided a telephone number for future removal from the involved data base.

Defendant contends that the unsolicited document came within First Amendment protections rather than an "advertisement" within the meaning of section 227. The involved message appears to be commercial speech. Section 227 is not a ban on such commercial speech, but a constitutional mechanism for banning unsolicited facsimile messages. *Kaufman v. ACS Systems, Inc.* (2003) 110 Cal.App.4th 886, 911. Judgment in favor of Plaintiff in the sum of \$500 plus costs. The court is aware of its discretion to award treble damages for wilful or knowing violations and declines to exercise its discretion to award said damages.