

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>ADVANCED DERMATOLOGY,</b>	:	
	:	<b>Case No. 5:18-CV-194</b>
<b>Plaintiff,</b>	:	
	:	<b>Judge Sara Lioi</b>
<b>v.</b>	:	
	:	
<b>MTI, INC.,</b>	:	
	:	
<b>Defendant.</b>	:	

**ANSWER**

Defendant MTI, Inc. (hereinafter “MTI” or the “Defendant”), through counsel, hereby answers Advanced Dermatology’s (“Plaintiff”) complaint (hereinafter “Complaint”), responding to the correspondingly numbered paragraphs of the Complaint as follows:

1. Paragraph 1 constitutes a legal conclusion, to which no responsive contention is required.
2. Defendant admits the allegations contained in paragraph 2 of the Complaint.
3. Defendant admits it sells medical devices internationally, Defendant denies all remaining allegations contained in paragraph 3.
4. Defendant admits it sells medical devices to medical offices, Defendant denies all remaining allegations contained in paragraph 4.
5. Defendant is without information or knowledge sufficient to determine the truth or falsity of the allegations contained in paragraph 5 of the Complaint and, on that basis, therefore, denies them.
6. Defendant admits the allegations contained in paragraph 6 of the Complaint.

7. Defendant admits venue is proper, Defendant denies all remaining allegations contained in paragraph 7.

8. Defendant is without information or knowledge sufficient to determine the truth or falsity of the allegations contained in paragraph 8 of the Complaint and, on that basis, therefore, denies them.

9. Exhibit A speaks for itself, and Defendant denies all allegations in paragraph 9 of the Complaint that are inconsistent with Exhibit A.

10. Exhibit A speaks for itself, and Defendant denies all allegations in paragraph 10 of the Complaint that are inconsistent with Exhibit A.

11. Defendant is without information or knowledge sufficient to determine the truth or falsity of the allegations contained in paragraph 11 of the Complaint and, on that basis, therefore, denies them.

12. Exhibit A speaks for itself, Defendant denies all remaining allegations contained in paragraph 12.

13. Defendant denies the allegations contained in paragraph 13 of the Complaint.

14. Defendant denies the allegations contained in paragraph 14 of the Complaint.

15. Defendant denies the allegations contained in paragraph 15 of the Complaint.

16. Defendant denies the allegations contained in paragraph 16 of the Complaint.

17. Defendant denies the allegations contained in paragraph 17 of the Complaint.

18. Defendant denies the allegations contained in paragraph 18 of the Complaint.

19. Defendant denies the allegations contained in paragraph 19 of the Complaint.

20. Defendant denies the allegations contained in paragraph 20 of the Complaint.

31. Defendant incorporates its answers to paragraphs 1-20 as set forth above.<sup>1</sup>

32. Paragraph 32 constitutes a legal conclusion, to which no responsive contention is required.

33. Defendant denies the allegations contained in paragraph 33 of the Complaint.

34. Defendant denies the allegations contained in paragraph 34 of the Complaint.

35. Paragraph 35 constitutes a legal conclusion, to which no responsive contention is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 35 of the Complaint.

36. Defendant denies each and every remaining allegation of the Complaint not otherwise expressly admitted in this Answer as well as the Prayer for Relief. Defendant denies that Plaintiff and the purported class members are entitled to any relief whatsoever.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff's and the purported class members' damages, if any, are not the result of the alleged conduct.

#### **THIRD AFFIRMATIVE DEFENSE**

The damages claimed by Plaintiff and the purported class members are not available at law to remedy the conduct alleged.

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<sup>1</sup> This Answer's numbering matches the numbering of the Complaint, which contained numbering errors.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's and the purported class members' damages, if any, are the result of Plaintiffs' and the purported class members' own actions, omissions, or conduct.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's and the purported class members' damages, if any, are the result of third parties over whom Defendant has no control.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's and the purported class members' claims are barred in whole or in part to the extent Plaintiff and the purported class members has, have or had a business relationship(s) with Defendant.

**SEVENTH AFFIRMATIVE DEFENSE**

Defendant cannot be held vicariously liable for the allegedly offending faxes because Defendant did not exercise sufficient control over the faxing methods, acts and/or practices.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's and the purported class members' claims are barred in whole or in part to the extent Plaintiff and the purported class members gave express consent for the telephone calls at issue in this action.

**NINTH AFFIRMATIVE DEFENSE**

Defendant specifically denies that it acted with any willfulness, knowledge, or malice toward Plaintiff and the purported class members.

### **TENTH AFFIRMATIVE DEFENSE**

Defendant specifically gives notice that it intends to rely upon such other defenses as may become available by law, or pursuant to statute, or during any further discovery proceedings of this case, and hereby reserves the right to amend its Answer and assert such defenses.

### **PRAYER FOR RELIEF**

WHEREFORE, Defendant prays for an order of adjudication in its favor and against the Plaintiff and the purported class members as to the requests as follows:

1. Dismissal of the Plaintiff's and the purported class members' claims with prejudice and on the merits;
2. Award of Defendant's costs and reasonable attorneys' fees; and
3. Such other and further relief as this adjudicative body deems appropriate.

Respectfully submitted,

/s/ Daniel N. Jabe

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*Attorney for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 21, 2018, I electronically filed the foregoing using the Court's e-Filing system, which will send a notice of electronic filing to all counsel of record.

**/s/ Daniel N. Jabe**  
Daniel N. Jabe