

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LOOP SPINE & SPORTS CENTER, LTD.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
AMERICAN COLLEGE OF	)	
MEDICAL QUALITY, INC.,	)	22 cv 4198
AFFINITY STRATEGIES, LLC, and	)	
DANIEL J. MCLAUGHLIN,	)	
	)	
Defendants.	)	

**DANIEL J. MCLAUGHLIN’S ANSWER TO
PLAINTIFF’S SECOND AMENDED COMPLAINT**

NOW COMES the Defendant, Daniel J. McLaughlin, by and through his attorneys, Hart McLaughlin & Eldridge, LLC, and for his Answer to Plaintiff LOOP SPINE & SPORTS CENTER, LTD.’s Second Amended Complaint, states as follows:

MATTERS COMMON TO MULTIPLE COUNTS

INTRODUCTION

1. Plaintiff Loop Spine & Sports Center, Ltd. brings this action to secure redress for the actions of Defendants American College of Medical Quality, Inc., Affinity Strategies, LLC, and Daniel J. McLaughlin, in sending or causing the sending of unsolicited advertisements to telephone facsimile machines in violation of the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”), the Illinois Consumer Fraud Act, 815 ILCS 505/2 (“ICFA”), and the common law.

ANSWER: Daniel J. McLaughlin admits that at all times relevant to Plaintiff’s Complaint he acted as the authorized agent for Defendant Affinity Strategies, LLC and/or Defendant American College of Medical Quality, Inc. and/or Creative Civic Solutions. Daniel J. McLaughlin denies that he violated the TCPA, the Illinois Consumer Fraud Act (“ICFA”), or any

common law, and denies that any class should be certified, and denies that Plaintiff (or anyone or entity) is entitled to any relief.

2. The TCPA expressly prohibits unsolicited fax advertising. Unsolicited fax advertising damages the recipients. The recipient is deprived of its paper and ink or toner and the use of its fax machine. The recipient also wastes valuable time it would have spent on something else. Unsolicited faxes prevent fax machines from receiving and sending authorized faxes, cause wear and tear on fax machines, and require labor to attempt to identify the source and purpose of the unsolicited faxes.

ANSWER: Paragraph 2 consists of purported statements of law, not allegations of fact directed at Daniel J. McLaughlin, therefore he makes no answer thereto.

PARTIES

3. Plaintiff Loop Spine & Sports Center, Ltd. is a corporation with offices in Chicago, Illinois where it maintains a stand alone fax machine that automatically prints incoming faxes onto paper using toner/ ink.

ANSWER: Daniel J. McLaughlin lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 3 of the Complaint.

4. Defendant American College of Medical Quality, Inc., is a Pennsylvania corporation. Defendant American College of Medical Quality, Inc. also has offices at 403 W. Saint Charles Road, Suite 403B, Lombard, Illinois 60148. It's registered agent and office is Northwest Registered Agent, LLC, 502 W. 7th Street, Suite 100, Erie, Pennsylvania 16502.

ANSWER: Daniel J. McLaughlin lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 4 of the Complaint.

5. Defendant Affinity Strategies, LLC is an Illinois limited liability company. Its registered agent and address is Elizabeth A. Schumacher, 3S502 Warren Avenue, Warrenville, Illinois 60555. It has offices at the same address as American College of Medical Quality, Inc., at 403 W. Saint Charles Road, Suite 403B, Lombard, Illinois 60148.

ANSWER: Daniel J. McLaughlin lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 5 of the Complaint.

6. In addition to sharing office space, Defendants Affinity Strategies, LLC and American College of Medical Quality, Inc. share the same post office box address, PO Box 1488, Warrenville, Illinois 60555.

ANSWER: Daniel J. McLaughlin lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 6 of the Complaint.

7. Defendant Daniel J. McLaughlin is an Illinois resident and resides within this district.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 7 of the Complaint.

JURISDICTION AND VENUE

8. This Court has jurisdiction under 28 U.S.C. §§1331 and 1367. *Mims* v. *Arrow Financial Services, LLC*, 565 U.S. 368, 132 S. Ct. 740, 751-53 (2012); *Brill* v. *Countrywide Home Loans, Inc.*, 427 F.3d 446 (7th Cir. 2005).

ANSWER: Paragraph 8 consists of purported statements of law, not allegations of fact directed at Daniel J. McLaughlin, therefore he makes no answer thereto.

9. Personal jurisdiction exists under 735 ILCS 5/2-209, in that each Defendant:
- a. Has committed tortious acts in Illinois by causing the transmission of unlawful communications into the state.
 - b. Has transacted business in Illinois.³

c. Defendants American College of Medical Quality, Inc. and Affinity Strategies, LLC each have an office in Illinois.

d. Defendant Daniel J. McLaughlin resides in Cook County, Illinois.

ANSWER: Daniel J. McLaughlin admits that he resides in Cook County, Illinois but denies that he has transacted any business resulting in a tortious act as alleged.

10. Venue in this District is proper for the same reason.

ANSWER: Paragraph 10 consists of purported statements of law, not allegations of fact directed at Daniel J. McLaughlin, therefore he makes no answer thereto.

FACTS

Business of Affinity Strategies, LLC and Relationship Between Affinity Strategies, LLC and American College of Medical Quality, Inc.

11. Defendant American College of Medical Quality, Inc. is a medical professional organization.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 11 of the Complaint.

12. According to its website, www.affinity-strategies.com/about/, Defendant Affinity Strategies, LLC “provides professional associations in the health care industry customized services to improve operations, member engagement, and marketing.”

ANSWER: Daniel J. McLaughlin states that Affinity Strategies, LLC website speaks for itself.

13. Defendant Affinity Strategies, LLC is a “healthcare association management and stakeholder engagement firm.” (“House Call, An Affinity Strategies Podcast”, November 22, 2022.)

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 13 of the Complaint.

14. In 2020-2022, Defendant Affinity Strategies, LLC (“AS”) provided customized association management services for Defendant American College of Medical Quality, Inc. (“ACMQ”), including strategic planning, member engagement and marketing. (Exhibit B)

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 14 of the Complaint.

15. In 2020, Defendant ACMQ published an article in its professional medical journal, The American Journal of Medical Quality (“AJMQ”), about its partnership with Defendant AS. (Exhibit B)

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 15 of the Complaint.

16. Defendant AS published an article on April 1, 2021 on its website (blog) describing Defendant ACMQ as its “client”. (Exhibit C)

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 16 of the Complaint.

17. Defendant AS published an article on July 27, 2021 on its website (blog), it “was thrilled to bring onboard the American College of Medical Quality (ACMQ) in 2020.”, and described ACMQ as follows:

ACMQ was founded in Pennsylvania in 1973 as the American College of Utilization Review Physicians. In 1991 the name was changed to the American College of Medical Quality to reflect the evolving changes in the specialty. ACMQ is the owner and founder of the oldest peer-reviewed internationally renowned Quality journal in the world. The American Journal of Medical Quality (AJMQ) was founded in 1985 and is edited by David Nash, MD, Dean of the Thomas Jefferson College of Population Health, also with an illustrious Editorial Board consisting of the “who’s who” of international quality and patient safety.

(Exhibit D)

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 17 of the Complaint.

18. The Chief Operating Officer (“COO”) of Defendant AS was Sarah White in July-November, 2022. Ms. White’s profile was posted on Defendant AS’s website. (Exhibit E)

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 18 of the Complaint.

19. Elizabeth Schumacher is the founder and Chief Executive Officer of Defendant AS. Elizabeth Schumacher has a J.D. and was also an active, licensed attorney.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 19 of the Complaint.

20. Defendant AS’s website provides the following description of attorney Schumacher, “Liz was Executive Director of LUGPA, a national urology subspecialty association with over 2,400 members. As a senior legislative attorney for the American Medical Association, Liz managed nationwide health insurance public policy development and Affordable Care Act rulemaking.” (Exhibit F)

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 20 of the Complaint.

21. Sarah White described the business of Defendant AS to host Claire Vincent on Defendant AS’s “House Call, An Affinity Strategies Podcast” episode titled, “Let Affinity Strategies Support Your Association’s Forward Thinking”, dated November 22, 2022:

Affinity Strategies is an association management company, and I think a lot of people don’t know what an association management company does. When I first learned about it years ago, I asked a lot of questions because I couldn’t quite wrap my head around it. Basically, when you belong to any sort of professional organization, you come together because you have a like-minded interest, you want to network, you want to continue to get continuing ed credits, at times, in your preferred specialty. And so you pay a membership to an association in order to provide all of that to you, but you’ve got your day job. And you may elect a Board of volunteers that’s kind of in charge of running and strategizing the forward motion of an association, but we, as an association management company, kind of become that association’s brick and mortar office, for lack of a better word. We take on all the operations of the association because the volunteer Board has nine-to-five jobs, so we are able to provide website management, membership management, financial management, marketing, industry relations for our various associations. So, we just kind of take on all of these businesses running the association, so that the association can concentrate on its

mission and drive that forward. So, what makes Affinity Strategies different is that we actually only work with medical associations, so we've decided to specialize just in that realm because the needs of these medical associations are so unique.

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 21 of the Complaint.

22. There was a written agreement between Defendant AS and Defendant ACMQ that outlined the services Defendant AS would provide to Defendant ACMQ.

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 22 of the Complaint.

23. The agreement between Defendants ACMQ and AS outlined the comprehensive administrative services Defendant AS would provide to Defendant ACMQ as identified by Ms. White in the podcast, "Let Affinity Strategies Support Your Association's Forward Thinking".

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 23 of the Complaint.

24. As the association management company for Defendant ACMQ, Defendant AS took control of the operations of Defendant ACMQ. Defendant AS managed the day-to-day business of Defendant ACMQ and provided ACMQ marketing services to generate income.

In particular, Defendant AS assisted Defendant ACMQ with increasing Defendant ACMQ's membership and promoting the ACMQ's annual seminar.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 24 of the Complaint.

25. Defendants ACMQ and AS shared personnel, a mailing address and resources such as third-party vendors.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 25 of the Complaint.

26. Defendant ACMQ paid Defendant AS for its services provided on a monthly basis.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 26 of the Complaint.

27. Defendant ACMQ had no employees in 2022.

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 27 of the Complaint.

28. Defendant ACMQ did not have a telephone number in 2022.

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 28 of the Complaint.

29. The primary way to communicate with Defendant ACMQ was through its website, www.acmq.org, and by email at acmq@affinity-strategies.com.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 29 of the Complaint.

30. Communications received through Defendant ACMQ's website are received and managed by Defendant AS.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 30 of the Complaint.

31. The email address, acmq@affinity-strategies.com, was created for Defendant ACMQ and provided to Defendant ACMQ when it became Defendant AS's client.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 31 of the Complaint.

32. The email address, acmq@affinity-strategies.com, would be managed by Defendant ACMQ's Executive Director.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 32 of the Complaint.

33. Board Members for Defendant ACMQ had their own email addresses and were not provided with email addresses from Defendant AS.

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 33 of the Complaint.

34. Prior to March, 2022, Defendant ACMQ had an Executive Director that was an employee of Defendant AS.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 34 of the Complaint.

35. In 2022, Defendant ACMQ was financially struggling.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 35 of the Complaint.

36. Defendant ACMQ's main source of revenue was its annual conference.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 36 of the Complaint.

37. Another source of revenue for Defendant ACMQ was its membership.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 37 of the Complaint.

38. In order for Defendant AS to retain Defendant ACMQ as a client, Defendant AS needed to produce results, which here meant increasing revenue and reducing expenses.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 38 of the Complaint.

39. When Defendant AS's employee, who was the Executive Director of Defendant ACMQ left for another opportunity, Defendant AS identified a way to reduce Defendant

ACMQ's expenses by eliminating an employment position for Defendant ACMQ's Executive Director.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 39 of the Complaint.

40. Full-time employee benefits such as paid time off and insurance are more costly for employers than hiring agents or independent contractors.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 40 of the Complaint.

Defendants AS and ACMO Relationship with Defendant McLaughlin

41. Defendant AS helped identify and onboard agents and employees for Defendant ACMQ.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 41 of the Complaint.

42. In or about, January-February 2022, Defendant AS assisted Defendant ACMQ with finding an Executive Director.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 42 of the Complaint.

43. Defendant AS received a recommendation from an employee for a candidate for the new Executive Director for Defendant ACMQ.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 43 of the Complaint.

44. Defendant AS identified an Executive Director for Defendant ACMQ who was experienced in turning around the financial situations for professional associations and was only interested in part-time work.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 44 of the Complaint.

45. After a hasty meeting and without any competition for the position, Defendant AS recommended Defendant Daniel J. McLaughlin (“McLaughlin”) for the Executive Director position at Defendant ACMQ.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 45 of the Complaint.

46. Defendant ACMQ did not interview Defendant McLaughlin for the ACMQ Executive Director position.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 46 of the Complaint.

47. Defendant McLaughlin had experience turning around struggling associations and had substantial experience working with associations and was formerly a trustee and Mayor of Orland Park, Illinois.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 47 of the Complaint.

48. Defendant McLaughlin is the sole owner and employee of Creative Civic Solutions, LLC.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 48 of the Complaint.

49. Creative Civic Solutions, LLC is a limited liability company organized under the laws of the state of Illinois and offers consulting services. It was created to allow Defendant McLaughlin to accept temporary employment or consulting contracts under the protection of a limited liability company.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 49 of the Complaint.

50. No written agreement was executed between Defendant McLaughlin and Defendant AS until after this litigation was filed.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 50 of the Complaint.

51. From March through at least October, 2022, Defendant McLaughlin acted as an agent of Defendants AS and ACMQ.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 51 of the Complaint.

52. From March through at least October, 2022, Defendant McLaughlin was paid by Defendant AS through his business Creative Civic Solutions, LLC.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 52 of the Complaint.

53. Defendant AS provided Defendant McLaughlin with an email address, dan@affinity-strategies.com.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 53 of the Complaint.

54. According to the by-laws of ACMQ, the Executive Director is a member of the Executive Committee of ACMQ.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 54 of the Complaint.

55. Defendant AS's COO, Sarah White, was the Staff Representative on the Finance Committee at Defendant ACMQ.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 55 of the Complaint.

56. Defendant AS's employee Sarah White attended Defendant ACMQ executive committee meetings.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 56 of the Complaint.

57. In July and August 2022, Defendant McLaughlin was featured as part of Defendant AS's team on its website.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 57 of the Complaint.

58. In Defendant ACMQ's journal, AJMQ, an article was published in 2022, authored by Defendant ACMQ's then President Dr. Dan Westphal that provides, "I would like to welcome our new Executive Director, Dan McLaughlin. As part of our management team at Affinity Strategies, Dan comes to us with almost 30 years of associate management and legislative experience. We are excited to get Dan fully acclimated to ACMQ, and we look forward to working together to make our Annual Conference in Chicago an outstanding, don't miss event." (Exhibit G)

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 58 of the Complaint.

59. Defendant McLaughlin's responsibilities for Defendant ACMQ included carrying out the marketing services and strategic plan outlined by Defendant AS.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 59 of the Complaint.

60. Defendant McLaughlin described his responsibility for Defendant ACMQ to include: scheduling and running meetings, organizing and promoting the 2022 Annual Conference and communicating with Defendant AS employees.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 60 of the Complaint.

61. To effectuate Defendant ACMQ's goals of expanding attendance at its annual seminar, Defendant AS provided marketing services for Defendant ACMQ. Defendant AS optimized existing marketing channels and platforms for Defendant ACMQ including mass email marketing to a target audience of ACMQ members and social media posts.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 61 of the Complaint.

62. Defendant McLaughlin had a right to access Defendant ACMQ documents that were stored on Defendant AS's computer system.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 62 of the Complaint.

63. The outgoing Executive Director of Defendant ACMQ who was an employee of Defendant AS provided her notes and met with Defendant McLaughlin. Defendant McLaughlin was otherwise provided minimal training from Defendant AS and no training from Defendant ACMQ.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 63 of the Complaint.

64. Defendant AS controlled the manner or method of work performed by Defendant McLaughlin. For example, Defendant McLaughlin was instructed to work with Defendant AS employees on marketing and email blasts. (Exhibit H)

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 64 of the Complaint and further answers that he reported to and took direction from the Board Members of ACMQ.

65. Defendant McLaughlin reported to both Defendants Affinity (to Sarah White and Elizabeth Schumacher) and ACMQ.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 65 of the Complaint.

66. Defendant AS's Sarah White and Elizabeth Schumacher were the primary points of contact for Defendants ACMQ and McLaughlin.

ANSWER: Daniel J. McLaughlin admits that his primary points of contact at ACMQ were the ACMQ Board Members and at AS Sarah White and Elizabeth Schumacher.

67. All of Defendant McLaughlin's actions were taken individually, and in his capacity as the Executive Director of ACMQ and as an agent of Defendant AS.

ANSWER: Daniel J. McLaughlin denies that any of his actions germane to this lawsuit were taken in his individual capacity but he admits that his actions were at all times taken in his role as the Executive Director of ACMQ.

Defendants' Relationship with the ACMQ Conference

68. During 2020, 2021 and 2022, Defendant AS partnered with Defendant ACMQ to promote ACMQ membership and its conferences and educational seminars.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 68 of the Complaint.

69. Defendant AS was directly involved, managed and participated in promoting Defendant ACMQ, including its seminars and conferences.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 69 of the Complaint.

70. Defendant AS employees were featured speakers at Defendant ACMQ's seminars and conferences, and Defendant AS financially sponsored Defendant ACMQ's events.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 70 of the Complaint.

71. For example, Defendant AS carried out its marketing plan for Defendant ACMQ at the ACMQ 2021 Healthcare Equity Summit which featured speaker Charlotte Grill, Senior VP Strategy and Policy at Defendant AS. (Exhibit I)

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 71 of the Complaint.

72. The ACMQ 2021 Healthcare Equity Summit also identified "Elizabeth Schumacher and Affinity Strategies" as individual contributors. (Exhibit I)

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 72 of the Complaint.

73. Defendant AS designed the ACMQ 2021 prospectus for the annual conference which includes the email address, acmq@affinity-strategies.com. (Exhibit J)

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 73 of the Complaint.

74. Images and content from the ACMQ's website that were designed by Defendant AS, were used on Defendant ACMQ's annual conference prospectus and program books.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 74 of the Complaint.

75. Defendant AS continued to promote Defendant ACMQ on its website, www.affinity-strategies.com. For example, in July 2022, Defendant AS published on its website an article, “Member Spotlight: Bringing Quality to Medical Practice with Angelo Caprio with American College of Medical Quality & American Board of Medical Quality”. Dr. Caprio is identified in the article as the Vice President of ACMQ. (Exhibit K)

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 75 of the Complaint.

76. In 2022, Defendant McLaughlin worked with Defendants AS and ACMQ to promote the 2022 Annual Conference.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 76 of the Complaint.

77. Defendant McLaughlin worked with Daniel Hawley, an employee of Defendant AS, to promote the 2022 Annual Conference through digital methods including Defendant ACMQ’s website, email communications to ACMQ members, and email blasts. (Exhibits H, L)

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 77 of the Complaint.

78. In 2022, Defendant ACMQ published an article in its journal, ACMQ, called, “Join Us for Our Annual Conference at Fairmont Chicago Millennium Park Hotel.” (Exhibit G)

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 78 of the Complaint.

79. Defendant AS contracted on behalf of Defendant ACMQ in arranging the logistics for the 2022 Annual Conference.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 79 of the Complaint.

80. In 2022, Defendant AS sponsored the conference that is the subject of Exhibit A.
(Exhibit M)

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 80 of the Complaint.

81. Defendant AS's Sarah White in her capacity as COO of Defendant AS posted information about the conference that is the subject of Exhibit A on her LinkedIn page. (Exhibit N)

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 81 of the Complaint.

82. The ACMQ 2022 prospectus for the annual conference that is the subject of Exhibit A, includes the email address, acmq@affinity-strategies.com. The prospectus also invites "any questions or other ideas for partnership opportunities, please contact us at acmq@affinity-strategies.com." (Exhibit O)

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 82 of the Complaint.

Sending Junk Faxes

83. Defendant McLaughlin was aware that Defendant ACMQ was financially struggling and knew the annual conference was the greatest source of income for Defendant ACMQ.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 83 of the Complaint.

84. Defendant AS provided Defendants McLaughlin and ACMQ with additional resources to help promote the annual conference.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 84 of the Complaint.

85. Defendant AS interviewed and retained another agent for Defendant ACMQ named Mary Kate de Leon that had social media and graphic design skills.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 85 of the Complaint.

86. Defendant ACMQ was not involved in the process of retaining Mary Kate de Leon.

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 86 of the Complaint.

87. Mary Kate de Leon was paid by Defendant AS.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 87 of the Complaint.

88. Mary Kate de Leon worked with Defendant McLaughlin and Defendant AS's employees to promote the annual conference.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 88 of the Complaint.

89. Defendants McLaughlin and ACMQ decided to use fax broadcasting to advertise the 2022 annual conference.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 89 of the Complaint.

90. Defendant McLaughlin contacted a former political colleague, James Dodge, to assist with purchasing a list of fax recipients.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 90 of the Complaint.

91. James Dodge connected Defendant McLaughlin, with a third party, Michael Henry of Gulfcoleasingandfunding, LLC (“Gulfco”), to also assist with purchasing a list of fax recipients.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 91 of the Complaint.

92. The list of U.S. Physician Fax Numbers was purchased from CarePrecise LLC by Complete Campaigns James Dodge at the direction of Defendant McLaughlin, and included names, addresses, phone and fax numbers and NPI numbers for over 700,000 physicians and medical providers.

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 92 of the Complaint.

93. James Dodge connected Defendant McLaughlin, with Gulfco, who provided had experience with fax broadcasting and provided access to a third-party platform for transmission of fax advertisements.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 93 of the Complaint.

94. Defendant McLaughlin hired a third party, Gulfco, to assist with the transmission of Exhibit A via broadcast fax.

ANSWER: Daniel J. McLaughlin admits that in his role as Executive Director of ACMQ, on behalf of ACMQ, and for ACMQ’s benefit, he hired Gulfco.

95. The email address acmq@affinity-strategies.com is listed on Exhibit A.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 95 of the Complaint.

96. Defendant ACMQ produced a check signed by Defendant McLaughlin that was written from the account of Creative Civic Solutions, LLC, payable to Gulf Co Leasing LLC in the amount of \$1,200.00. The \$1,200.00 check was payment for providing Defendants a list of fax numbers and for the transmissions of at least 6,500 faxes in the form of Exhibit A.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 96 of the Complaint.

97. Defendant AS' agents Mary Kate de Leon and Defendant McLaughlin along with James Dodge and Gulfco designed Exhibit A.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 97 of the Complaint.

98. In August-October 2022, Defendant ACMQ's Executive Committee included Dr. Dan M. Westphal (President), Dr. Angelo A. Caprio (Secretary), Dr. Joel Bundy (Treasurer), and Dr. Aline M. Holmes (Chair, Education Committee).

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 98 of the Complaint.

99. In August-October 2022, Defendant ACMQ's Board of Trustees included Drs. Philip D. Parks, Mary Reich Cooper, J.D., Abha Agrawal, Charles R. Gill, and Cindy Lee.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 99 of the Complaint.

100. In July-August, 2022, Defendants ACMQ, McLaughlin and AS held one or more Program Committee meetings to discuss marketing, speakers and registrations for 2022 annual conference that is the subject of Exhibit A.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 100 of the Complaint.

101. The Program Committee meetings were attended by one or more persons in (a) Defendant ACMQ's Board of Trustees and Executive Leadership, (b) one or more employees of Defendant AS and (c) Defendant McLaughlin.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 101 of the Complaint.

102. On July 29, 2022, Defendant McLaughlin sent an email from dan@affinity-strategies.com to Defendant ACMQ's Executive Committee and Board of Trustees members and Defendant AS's CEO Elizabeth Schumacher and COO Sarah White that he was "trying to dramatically extend are[sic] reach by working with a firm that provides data basses [sic] and the ability to mass fax or email to those lists." (Exhibit P)

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 102 of the Complaint.

103. A week later, Prior to the sending of Exhibit A, Defendant McLaughlin, sent an email from dan@affinity-strategies.com to Defendant AS, including, Elizabeth Schumacher and Sarah White and to Defendant ACMQ, including President Dr. Westphal, Chair of the Education Committee, Dr. Aline M. Holmes and Dr. Mary Reich Cooper concerning the plan to mass broadcast faxes intending to reach approximately 16,000 doctors in Chicago and surrounding areas to advertise the 2022 annual conference. (Exhibit Q)

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 103 of the Complaint.

104. Neither Defendant AS, nor Defendant ACMQ investigated, objected to or repudiated Defendant McLaughlin's actions, responded negatively to his emails or otherwise discouraged the sending of Exhibit A.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 104 of the Complaint.

105. Defendant ACMQ's President complimented Defendant McLaughlin's blast fax marketing strategy to a purchased list of recipients.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 105 of the Complaint.

106. Following the filing of this lawsuit, Defendant ACMQ's President Dr. Westphal sent emails about the lawsuit to Defendants AS, McLaughlin and the ACMQ Executive Committee and Board of Trustees.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 106 of the Complaint.

107. Following the filing of this lawsuit, which initially only included Defendant ACMQ, Defendant AS maintained its high degree of involvement and control over Defendants ACMQ and McLaughlin by coordinating and participating in communications with counsel and insurance for Defendants ACMQ and McLaughlin.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 107 of the Complaint.

108. Following receipt of the Plaintiff's complaint, Defendant AS conducted an investigation of the alleged facts and its CEO and COO along with Defendant McLaughlin arranged a meeting with counsel for Defendant ACMQ.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 108 of the Complaint.

109. No one from ACMQ's Executive Committee or Board of Trustees members were present at the meeting with Defendant ACMQ's counsel.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 109 of the Complaint to the extent it refers to ACMQ Executive Committee members in addition to himself, also the Executive Director of ACMQ and Executive Committee member.

110. After Defendant AS's CEO and COO and Defendant McLaughlin met with counsel for Defendant ACMQ, Defendant AS asked Defendant McLaughlin to sign an independent contractor agreement as a way for Defendant AS to disclaim responsibility.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 110 of the Complaint.

111. Defendant AS's actions and omissions with regard to the junk faxing complained of herein justify a reasonable assumption that it consented to the alleged unsolicited advertising at issue.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 111 of the Complaint.

112. In November, 2022, Defendant AS terminated Defendant McLaughlin.

ANSWER: Daniel J. McLaughlin states that his work as the Executive Director of ACMQ ended when there was no more work for him to do for ACMQ in his role as Executive Director of ACMQ.

Junk Fax to Plaintiff

113. On August 8, 2022, Plaintiff received the unsolicited fax advertisement attached as Exhibit A on its facsimile machine.

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 113 of the Complaint.

114. Discovery may reveal the transmission of additional faxes as well.

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 114 of the Complaint.

115. Defendants ACMQ, AS and Daniel J. McLaughlin are responsible for sending or causing the sending of Exhibit A.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 115 of the Complaint.

116. Defendants ACMQ and AS attempted to derive economic benefit from the sending of the fax by gaining attendees at the ACMQ 2022 Annual Conference.

ANSWER: Daniel J. McLaughlin denies that ACMQ or AS sent the alleged fax at issue.

117. The ACMQ 2022 Annual Conference offered in Exhibit A, costs between \$30 for students up to \$450 for non-members to attend. See, www.acmq.org/2022-annual-conference, website referenced on Exhibit A, and last visited August 10, 2022.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 117 of the Complaint.

118. Defendants either negligently or willfully violated the rights of Plaintiff and other recipients in sending the faxes.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 118 of the Complaint.

119. Plaintiff had no prior relationship with Defendants and had not authorized the sending of fax advertisements to Plaintiff. Plaintiff is not a member of the American College of Medial Quality.

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 119 of the Complaint.

120. The fax attached hereto as Exhibit A was sent as part of a mass broadcasting of faxes.

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 120 of the Complaint.

121. Exhibit A does not contain an “opt out” notice that complies with 47 U.S.C. §227.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 121 of the Complaint.

122. Defendants have transmitted similar unsolicited fax advertisements to at least 40 persons in Illinois.

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 122 of the Complaint.

123. There is no reasonable means for Plaintiff or other recipients of Defendants' unsolicited advertising faxes to avoid receiving illegal faxes. Fax machines must be left on and ready to receive the urgent communications authorized by their owners.

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 123 of the Complaint.

COUNT I – TCPA

124. Plaintiff incorporates ¶¶ 1-123.

ANSWER: Daniel J. McLaughlin makes no answer to Paragraph 124 as it contains no allegations of fact directed at him.

125. Defendants AS and ACMQ co-marketed and together participated in and controlled Defendant McLaughlin with mutual responsibility for any wrongful conduct of each other's actions within the scope of Defendant McLaughlin's authority.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 125 of the Complaint.

126. Defendant McLaughlin had authority to act on behalf of Defendants AS and ACMQ and Defendant McLaughlin was the authorized agent of Defendants AS and ACMQ.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 126 of the Complaint.

127. Defendants AS and ACMQ are responsible for the Defendant McLaughlin's conduct in initiating and causing to send the junk faxes at issue.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 127 of the Complaint regarding AS and ACMQ responsibility for Defendant McLaughlin but denies initiating or causing to send any faxes.

128. Defendant McLaughlin was the agent of Defendant AS.

ANSWER: Daniel J. McLaughlin admits that at all times he acted within the scope of authority provided to him by AS.

129. Defendant McLaughlin was the agent of Defendant ACMQ.

ANSWER: Daniel J. McLaughlin admits that at all times he acted within the scope of authority provided to him by ACMQ.

130. Defendant AS authorized Defendant McLaughlin to use the acmq@affinity-strategies.com email address.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 130 of the Complaint.

131. The content and images in Exhibit A were created by Defendant AS' agents Mary Kate de Leon and Defendant McLaughlin.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 131 of the Complaint.

132. Defendant McLaughlin was engaged by Defendant AS to assist with the marketing and promotion of Defendant ACMQ's Annual Conference.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 132 of the Complaint.

133. Having been provided with the plan to send a mass broadcast fax advertisement to a purchased list of recipients prior to the fax transmission, Defendant ACMQ expressly complimented Defendant McLaughlin for initiating and causing to send Exhibit A by broadcast fax.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 133 of the Complaint.

134. On behalf of Defendant ACMQ, Defendant AS's agent, Defendant McLaughlin caused to send Exhibit A by broadcast fax.

ANSWER: Daniel J. McLaughlin denies that he caused any fax to be sent.

135. Defendant ACMQ approved the sending of a mass broadcast fax advertisement.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 135 of the Complaint.

136. Having been provided with the plan to send a mass broadcast fax advertisement to a purchased list of recipients prior to the fax transmission, Defendant AS did not object or repudiate Defendant McLaughlin for initiating and causing to send Exhibit A by broadcast fax.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 136 of the Complaint.

137. Defendants AS and ACMQ were knowingly ready to accept the benefits of the junk fax broadcast, in the form of additional registrants and attendees at the 2022 ACMQ Annual Conference.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 137 of the Complaint but objects to the use of the phrase “junk fax” as not within his knowledge or understanding.

138. Defendant AS is vicariously liable for the actions of Defendants McLaughlin and ACMQ in violation of the TCPA.

ANSWER: The allegations in paragraph 138 call for a legal conclusion.

139. Defendant AS is vicariously liable for violating the TCPA due to the actions of its agent(s) in promoting the 2022 Annual Conference by unsolicited broadcast fax and jointly with Defendant ACMQ ratified the sending of mass broadcast fax advertisements to a purchased list of recipients.

ANSWER: The allegations in paragraph 139 call for a legal conclusion.

140. Defendant ACMQ is directly liable for violating the TCPA because its annual conference is the subject of Exhibit A.

ANSWER: The allegations in paragraph 140 call for a legal conclusion.

141. The Annual Conference promoted in Exhibit A is by and for Defendant ACMQ and Defendant ACMQ is a sender of Exhibit A.

ANSWER: The allegations in paragraph 141 call for a legal conclusion.

142. Defendant McLaughlin is vicariously liable for violating the TCPA for his actions on behalf of Defendants ACMQ and AS in causing to send Exhibit A.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 142 of the

Complaint.

143. Defendant McLaughlin acted with apparent authority of Defendants ACMQ and AS for reasons that include: (1) he identified third-parties to purchase a list of intended recipients and to provide a platform for the transmission of junk faxes to advertise the 2022 annual conference; (2) he used design resources of and provided by Defendant AS to create the content of the fax, used the ACMQ website, name and logo, ACMQ website images and email address provided by Defendant AS on Exhibit A. These manifestations of authority of Defendant McLaughlin to act as an agent of Defendants AS and ACMQ were reasonable and traceable to Defendants AS and ACMQ.

ANSWER: The allegations in paragraph 143 call for a legal conclusion.

144. At the time that Defendant AS requested that Defendant McLaughlin sign the independent contractor agreement in late August, 2022, Defendant AS had reviewed Exhibit A, met with ACMQ's counsel and knew that Defendant ACMQ was being sued by Plaintiff for violating the TCPA by sending broadcast junk faxes.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 144 of the Complaint.

145. Defendant AS knowingly attempted to disclaim responsibility for the junk faxes.

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 145 of the Complaint.

146. The ratification occurred by and through Defendants AS and ACMQ's conduct in which Defendant McLaughlin on multiple occasions notified leadership persons for both Defendants AS and ACMQ of sending a broadcast fax to a purchased list of recipients without any discouragement, objection or repudiation thereby consenting to be bound by the legal consequences of Defendants AS and ACMQ's agent, Defendant McLaughlin.

ANSWER: Daniel J. McLaughlin admits the allegations in Paragraph 146 of the Complaint.

147. The TCPA makes unlawful the “use of any telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine ...” 47 U.S.C. §227(b)(1)(C).

ANSWER: The allegations in paragraph 147 call for a legal conclusion.

148. The TCPA, 47 U.S.C. §227(b)(3), provides:

Private right of action.

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—

- (A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,**
- (B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or**
- (C) both such actions.**

If the Court finds that the Defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the subparagraph (B) of this paragraph.

ANSWER: The allegations in paragraph 148 call for a legal conclusion.

149. Plaintiff and each class member suffered damages as a result of receipt of the unsolicited faxes, in the form of paper and ink or toner consumed as a result. Furthermore, Plaintiff’s statutory right of privacy was invaded.

ANSWER: Daniel J. McLaughlin denies the allegations in paragraph 149 of the Complaint.

150. Plaintiff and each class member is entitled to statutory damages.

ANSWER: Daniel J. McLaughlin denies the allegations in paragraph 150 of the Complaint.

151. Defendants violated the TCPA even if their actions were only negligent.

ANSWER: Daniel J. McLaughlin denies the allegations in paragraph 151 of the Complaint.

152. Defendants should be enjoined from committing similar violations in the future.

ANSWER: The allegations in paragraph 152 call for a legal conclusion.

CLASS ALLEGATIONS

153. Pursuant to Fed.R.Civ.P. 23(a) and (b)(3), Plaintiff brings this claim on behalf of a class, consisting of (a) all persons with fax numbers (b) who, on or after a date four years prior to the filing of this action (28 U.S.C. §1658), (c) were sent faxes by or on behalf of Defendants American College of Medical Quality, Inc., Daniel J. McLaughlin, and Affinity Strategies, LLC, promoting the ACMQ 2022 Annual Conference (d) where Defendants do not have evidence of consent or an established business relationship prior to the sending of the faxes.

ANSWER: The allegations in Paragraph 153 discuss Plaintiff's intent regarding the filing of the Complaint as well as the class definitions and do not require a response by Daniel J. McLaughlin.

154. The class is so numerous that joinder of all members is impractical. Plaintiff alleges that there are more than 40 members of the class.

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 154 of the Complaint.

155. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. The predominant common questions

include:

- a. Whether Defendants engaged in a pattern of sending unsolicited fax advertisements;
- b. The manner in which Defendants compiled or obtained their list of fax numbers;

and

- c. Whether Defendants thereby violated the TCPA;

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 155 of the Complaint.

156. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither Plaintiff nor Plaintiff's counsel have any interests which might cause them not to vigorously pursue this action.

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 156 of the Complaint.

157. Plaintiff's claims are typical of the claims of the class members. All are based on the same factual and legal theories.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 157 of the Complaint.

158. A class action is the superior method for the fair and efficient adjudication of this controversy. The interest of class members in individually controlling the prosecution of separate claims against Defendants is small because it is not economically feasible to bring individual actions.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 158 of the Complaint.

159. Numerous courts have certified class actions under the TCPA. *Holtzman v. Turza*, 08cv2014, 2009 WL 3334909, 2009 U.S. Dist. LEXIS 95620 (N.D.Ill. Oct. 14, 2009), *aff'd in part, rev'd in part, vacated in part*, 728 F.3d 682 (7th Cir. 2013); *Ballard RN Center, Inc. v. Kohll's Pharmacy and Homecare, Inc.* 2015 IL 118644, 48 N.E.3d 1060; *American Copper & Brass, Inc. v. Lake City Indus. Products, Inc.*, 757 F.3d 540, 544 (6th Cir. 2014); *In re Sandusky Wellness Center, LLC*, 570 Fed.Appx. 437, 437 (6th Cir. 2014); *Sandusky Wellness Center, LLC v. Medtox Scientific, Inc.*, 821 F.3d 992, 998 (8th Cir. 2016); *Sadowski v. Med1 Online, LLC*, 07cv2973, 2008 WL 2224892, 2008 U.S. Dist. LEXIS 41766 (N.D.Ill. May 27, 2008); *CE Design Ltd. v. Cy's Crabhouse North, Inc.*, 259 F.R.D. 135 (N.D.Ill. 2009); *Targin Sign Systems, Inc. v. Preferred Chiropractic Center, Ltd.*, 679 F.Supp.2d 894 (N.D.Ill. 2010); *Garrett v. Ragle Dental Laboratory, Inc.*, 10cv1315, 2010 WL 4074379, 2010 U.S. Dist. LEXIS 108339 (N.D.Ill. Oct. 12, 2010); *Hinman v. M&M Rental Center, Inc.*, 545 F.Supp.2d 802 (N.D.Ill. 2008); *G.M. Sign, Inc. v. Group C Communications, Inc.*, 08cv4521, 2010 WL 744262, 2010 U.S. Dist. LEXIS 17843 (N.D.Ill. Feb. 25, 2010); *Kavu, Inc. v. Omnipak Corp.*, 246 F.R.D. 642 (W.D.Wash. 2007); *Display South, Inc. v. Express Computer Supply, Inc.*, 961 So.2d 451, 455 (La.App. 2007); *Display South, Inc. v. Graphics House Sports Promotions, Inc.*, 992 So.2d 510 (La.App. 2008); *Lampkin v. GGH, Inc.*, 146 P.3d 847 (Ok.App. 2006); *ESI Ergonomic Solutions, LLC v. United Artists Theatre Circuit, Inc.*, 203 Ariz. 94, 50 P.3d 844 (2002); *Core Funding Group, LLC v. Young*, 792 N.E.2d 547 (Ind.App. 2003); *Critchfield Physical Therapy v. Taranto Group, Inc.*, 293 Kan. 285, 263 P.3d 767 (2011); *Karen S. Little, L.L.C. v. Drury Inns, Inc.*, 306 S.W.3d 577 (Mo.App. 2010); *Lindsay Transmission, LLC v. Office Depot, Inc.*, 4:12cv221, 2013 WL 275568, 2013 U.S. Dist. LEXIS 9554 (E.D.Mo. Feb. 24, 2013).

ANSWER: Paragraph 159 consists of purported statements of law, not allegations of fact directed at Daniel J. McLaughlin, therefore he makes no answer thereto.

160. Management of this class action is likely to present significantly fewer difficulties than those presented in many class actions, e.g. for securities fraud.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 160 of the Complaint.

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and the class and against Defendants for:

- a. Actual damages;
- b. Statutory damages;
- c. An injunction against the further transmission of unsolicited fax advertisements;
- d. Costs of suit;
- e. Such other or further relief as the Court deems just and proper.

ANSWER: Daniel J. McLaughlin denies that Plaintiff is entitled to any of the relief sought in its prayer for relief.

COUNT II – CONVERSION

161. Plaintiff incorporates ¶¶ 1-146.

ANSWER: Daniel J. McLaughlin repeats and re-alleges his answers to paragraphs 1-146 as though fully pleaded herein.

162. By sending Plaintiff and the class members unsolicited faxes, Defendants converted to their own use ink or toner and paper belonging to Plaintiff and the class members.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 162 of the Complaint.

163. Immediately prior to the sending of the unsolicited faxes, Plaintiff and the class members owned and had an unqualified and immediate right to the possession of the paper and ink or toner used to print the faxes.

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief about the truth of paragraph 163, and on that basis, denies them.

164. By sending the unsolicited faxes, Defendants appropriated to their own use the paper and ink or toner used to print the faxes and used them in such manner as to make them unusable. Such appropriation was wrongful and without authorization.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 164 of the Complaint.

165. Defendants knew or should have known that such appropriation of the paper and ink or toner was wrongful and without authorization.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 165 of the Complaint.

166. Plaintiff and the class members were deprived of the paper and ink or toner, which could no longer be used for any other purpose. Plaintiff and each class member thereby suffered damages as a result of receipt of the unsolicited faxes.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 166 of the Complaint.

167. Defendants should be enjoined from committing similar violations in the future.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 167 of the Complaint.

CLASS ALLEGATIONS

168. Pursuant to Fed.R.Civ.P. 23(a) and (b)(3), Plaintiff brings this claim on behalf of a class, consisting of (a) all persons with Illinois fax numbers (b) who, on or after a date five years prior to the filing of this action, (c) were sent faxes by or on behalf of Defendants American College of Medical Quality, Inc., Daniel J. McLaughlin, and Affinity Strategies, LLC, promoting the ACMQ 2022

Annual Conference (d) where Defendants do not have evidence of consent or an established business relationship prior to the sending of the faxes.

ANSWER: Daniel J. McLaughlin denies the allegations of paragraph 168. Defendant further denies that this case is entitled to class treatment and denies that the class action allegations have any legal merit.

169. The class is so numerous that joinder of all members is impractical. Plaintiff alleges that there are more than 40 members of the class.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 169 of the Complaint.

170. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. The predominant common questions include:

- a. Whether Defendants engaged in a pattern of sending unsolicited fax advertisements;
- b. Whether Defendants thereby converted the property of Plaintiff.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 170 of the Complaint, including subparagraphs a-b.

171. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither Plaintiff nor Plaintiff's counsel have any interests which might cause them not to vigorously pursue this action.

ANSWER: Daniel J. McLaughlin is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 171 and on that basis denies them.

172. Plaintiff's claims are typical of the claims of the class members. All are based on the same factual and legal theories.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 172 of the Complaint, as alleged.

173. A class action is the superior method for the fair and efficient adjudication of this controversy. The interest of class members in individually controlling the prosecution of separate claims against Defendants is small because it is not economically feasible to bring individual actions.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 173 as alleged. Daniel J. McLaughlin further denies that this case is entitled to class treatment and denies that the class action allegations have any legal merit.

174. Management of this class action is likely to present significantly fewer difficulties than those presented in many class actions, e.g. for securities fraud.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 174 of the Complaint.

COUNT III – TRESPASS TO CHATTELS

175. Plaintiff incorporates ¶¶ 1-146.

ANSWER: Daniel J. McLaughlin repeats and re-alleges his answers to paragraphs 1-146 as though fully pleaded herein.

176. Plaintiff and the class members were entitled to possession of the equipment they used to receive faxes.

ANSWER: Daniel J. McLaughlin lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 176 of the Complaint and, on that basis, denies the allegations.

177. Defendants' sending Plaintiff and the class members unsolicited faxes interfered with their use of the receiving equipment and constitutes a trespass to such equipment. *Chair King v. Houston Cellular*, 95cv1066, 1995 WL 1693093 at *2 (S.D. Tex. Nov. 7, 1995) (denying a motion to dismiss with respect to Plaintiff's trespass to chattels claim for unsolicited faxes), vacated on jurisdictional grounds 131 F.3d 507 (5th Cir. 1997).

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 177 of the Complaint.

178. Defendants acted either intentionally or negligently in engaging in such conduct.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 178 of the Complaint.

179. Plaintiff and each class member suffered damages as a result of receipt of the unsolicited faxes.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 179 of the Complaint.

180. Defendants should be enjoined from continuing trespasses.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 180 of the Complaint.

CLASS ALLEGATIONS

181. Pursuant to Fed.R.Civ.P. 23(a) and (b)(3), Plaintiff brings this claim on behalf of a class, consisting of (a) all persons with Illinois fax numbers (b) who, on or after a date five years prior to the filing of this action, (c) were sent faxes by or on behalf of Defendants American College of Medical Quality, Inc., Daniel J. McLaughlin and Affinity Strategies, LLC promoting the ACMQ 2022 Annual Conference (d) where Defendants do not have evidence of consent or an established business relationship prior to the sending of the faxes.

ANSWER: Daniel J. McLaughlin denies the allegations of paragraph 181. Defendant further denies that this case is entitled to class treatment and denies that the class action allegations have any legal merit.

182. The class is so numerous that joinder of all members is impractical. Plaintiff alleges that

there are more than 40 members of the class. (Omit?)

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 182 of the Complaint.

183. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. The predominant common questions include:

- a. Whether Defendants engaged in a pattern of sending unsolicited fax advertisements;
- b. Whether Defendants thereby committed a trespass to chattels.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 183, subparagraphs a – b inclusive.

184. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither Plaintiff nor Plaintiff's counsel have any interests which might cause them not to vigorously pursue this action.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 184 and on that basis denies them.

185. Plaintiff's claims are typical of the claims of the class members. All are based on the same factual and legal theories.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 185 of the Complaint.

186. A class action is the superior method for the fair and efficient adjudication of this controversy. The interest of class members in individually controlling the prosecution of separate claims against Defendants is small because it is not economically feasible to bring individual actions.

ANSWER: Defendant denies the allegations of paragraph 186 as alleged. Defendant further denies that this case is entitled to class treatment and denies that the class action allegations have any

legal merit.

187. Management of this class action is likely to present significantly fewer difficulties that those presented in many class actions, e.g. for securities fraud.

ANSWER: Daniel J. McLaughlin denies the allegations in Paragraph 187 of the complaint.

AFFIRMATIVE DEFENSES

NOW COMES the Defendant, Daniel J. McLaughlin, and for his Affirmative Defenses to the Plaintiff, LOOP SPINE & SPORTS CENTER, LTD.'s Second Amended Complaint, states as follows:

FIRST AFFIRMATIVE DEFENSE (Failure to State a Claim)

The Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE
(Lack of Standing and Lack of Subject Matter Jurisdiction)**

The Complaint and each purported claim contained therein are barred to the extent that Plaintiff or any member of the putative class lacks standing, including Article III standing.

**THIRD AFFIRMATIVE DEFENSE
(Prior Express Consent)**

The Complaint and each purported claim contained therein are barred to the extent that Plaintiff or any member of the putative class provided consent for the alleged facsimiles.

**FOURTH AFFIRMATIVE DEFENSE
(Waiver, Estoppel, Laches, Unclean Hands, Ratification, and Statute of Limitations)**

The claims asserted in the Complaint are barred, in whole or in part, by the doctrines of waiver, estoppel, laches, unclean hands, ratification, and/or applicable statutes of limitations.

**FIFTH AFFIRMATIVE DEFENSE
(Lack of Personal Jurisdiction and Improper Venue)**

Plaintiff's lawsuit is barred to the extent that the Court lacks personal jurisdiction and venue is improper.

**SIXTH AFFIRMATIVE DEFENSE
(Plaintiff's Own Actions or Inaction)**

Plaintiff's damages, and the damages of the putative class members, if any, have been caused by their own action or inaction.

**SEVENTH AFFIRMATIVE DEFENSE
(Failure to Mitigate)**

Plaintiff and the putative class members have failed to mitigate their damages.

**EIGHTH AFFIRMATIVE DEFENSE
(Unconstitutional Vagueness and Overbreadth)**

Interpretations of the Telephone Consumer Protection Act upon which Plaintiff's Complaint is based are unconstitutionally vague and overbroad and thus violate the Due Process Clause of the Fifth Amendment to the United States Constitution, and the Due Process provisions of the

Fourteenth Amendment to the United States Constitution.

**NINTH AFFIRMATIVE DEFENSE
(Defenses Specific to Class Members)**

Daniel J. McLaughlin may have additional unique affirmative defenses applicable to different putative members of Plaintiff's proposed class. Daniel J. McLaughlin reserves the right to assert such additional affirmative defenses as the need arises, insofar as class certification has not been granted and is not appropriate in this case.

**TENTH AFFIRMATIVE DEFENSE
(Excessive Penalties)**

The statutory penalties sought by Plaintiff and members of the putative class are excessive and thus violate the Due Process Clause of the Fifth Amendment to the United States Constitution, and the Due Process provision of the Fourteenth Amendment to the United States Constitution.

**ELEVENTH AFFIRMATIVE DEFENSE
(Substantial Compliance with Law)**

Daniel J. McLaughlin is not liable to Plaintiff or members of any putative class because Daniel J. McLaughlin as the authorized agent for Defendant Affinity Strategies, LLC and/or Defendant American College of Medical Quality, Inc. and/or Creative Civic Solutions acted reasonably and with due care and substantially complied with all applicable statutes, regulations, ordinances, and/or other laws.

**TWELFTH AFFIRMATIVE DEFENSE
(Improper Class Action)**

This action is not maintainable as a class action, and relief on a class-wide basis is not appropriate because Plaintiff has failed to allege and cannot prove the facts and prerequisites necessary for the maintenance of a class action, including typicality, numerosity, commonality, or ascertainability.

**THIRTEENTH AFFIRMATIVE DEFENSE
(Damages Not Measurable On A Class-wide Basis)**

Plaintiff's alleged damages, if any, are incapable of proof on a class-wide basis.

**FOURTEENTH AFFIRMATIVE DEFENSE
(Established Business Relationship and Public Distribution of Number)**

Daniel J. McLaughlin is not liable to Plaintiff or members of any putative class to the extent that there was an established business relationship between the parties. Additionally, Daniel J. McLaughlin is not liable to Plaintiff or members of any putative class to the extent that they voluntarily agreed to make their facsimile numbers available for public distribution on a directory, advertisement, or internet site.

**FIFTEENTH AFFIRMATIVE DEFENSE
(Reservation of Rights)**

Daniel J. McLaughlin reserves the right to supplement his Answer and to assert any other defenses available to him under applicable law.

WHEREFORE, Daniel J. McLaughlin denies that Plaintiff is entitled to any of the relief sought in its prayer for relief.

Respectfully submitted,

HART MCLAUGHLIN & ELDRIDGE, LLC

By: /s/ Robert J. McLaughlin
One of the attorneys for Defendant
Daniel J. McLaughlin

Robert J. McLaughlin (ARDC 6272701)
Hart McLaughlin & Eldridge, LLC
One South Dearborn, Suite 1400
Chicago, Illinois 60603
Tel: (312) 955-0545
rmclaughlin@hmelegal.com