

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

LOOP SPINE & SPORTS CENTER, LTD.,	)	
Plaintiff,	)	
v.	)	Case No.: 22-cv-4198
	)	
AMERICAN COLLEGE OF MEDICAL	)	
QUALITY, INC., et al,	)	
Defendants.	)	

**DEFENDANT’S SECOND ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF’S SECOND AMENDED COMPLAINT**

NOW COMES the Defendant, AMERICAN COLLEGE OF MEDICAL QUALITY, INC., by and through its attorneys, Progar Law Group LLC, and for its Answer and Affirmative Defenses to Plaintiff’s Second Amended Complaint at Law states as follows:

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: The allegations contained in Paragraph 1 of the Complaint discuss Plaintiff’s intent regarding the filing of the Complaint and do not require a response. To the extent a response is required, AMERICAN COLLEGE OF MEDICAL QUALITY denies that it violated the TCPA, the Illinois Consumer Fraud Act (“ICFA”), or any common law, 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: The allegations contained in Paragraph 2 of the Complaint purport to quote and paraphrase the TCPA and do not require a response. To the extent a response is required, the TCPA speaks for itself and AMERICAN COLLEGE OF MEDICAL QUALITY denies that it violated the statute. AMERICAN COLLEGE OF MEDICAL QUALITY denies the remaining allegations in Paragraph 2.

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: AMERICAN COLLEGE OF MEDICAL QUALITY lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 3 of the Complaint and, on that basis, denies the allegations.

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: Defendant admits it has an office at 403 W. Saint Charles Road, Suite 403B, Lombard, Illinois 60148. Defendant denies the remaining 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: Defendant admits that Affinity is an Illinois LLC with Elizabeth Schumacher as Registered Agent. The remaining allegations of paragraph 5 are denied.

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: Defendant admits using the same post office box. The remaining allegations of paragraph 6 are denied.

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

ANSWER: Admit.

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).

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.
 - 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: Paragraph 9 consists of legal conclusions to which no response is required. Defendant denies that the Court should exercise supplemental jurisdiction.

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

ANSWER: The allegations of paragraph 10 consist of legal conclusions which are denied.

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: Admit.

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: The allegations of paragraph 12 purport to quote from a website and do not require a response. To the extent a response is required, the website speaks for itself. Defendant denies that it violated the TCPA and denies the remaining allegations of paragraph 12.

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

ANSWER: Defendant is without sufficient knowledge or information to form a belief about the truth of paragraph 13, and on that basis, denies them.

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: The allegations of paragraph 14 refer to an exhibit which speaks for itself and to which no response is required. To the extent that a response is required, Defendant denies the allegations of paragraph 14, as alleged.

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: Defendant admits an article was published. The article speaks for itself.

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

ANSWER: The allegations of paragraph 16 refer to a website to which no response is required. To the extent a response is require, the article speaks for itself.

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: The allegations of paragraph 17 purport to quote a website and do not require a response. To the extent a response is required the website speaks for itself.

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: Defendant is without sufficient knowledge or information to form a belief about the truth of paragraph 18, and on that basis, denies them.

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: Admit.

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: The allegations of paragraph 20 purport to quote a website and do not require a response. To the extent a response is required, the website speaks for itself.

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: Defendant is without sufficient knowledge or information to form a belief about the truth of paragraph 21, and on that basis, denies them.

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

ANSWER: Defendant admits that a written agreement existed at one time. The terms of any such agreement speaks for itself.

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: Defendant denies the allegations of paragraph 23 as alleged.

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: Defendant denies the allegations of paragraph 24 as alleged.

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

ANSWER: Defendant denies the allegations of paragraph 25, as alleged.

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

ANSWER: Admit.

27. Defendant ACMQ had no employees in 2022.

ANSWER: Admit.

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

ANSWER: Admit.

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: Defendant denies the allegations of paragraph 29, as alleged.

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

ANSWER: Admit.

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: Admit.

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

ANSWER: Defendant denies the allegations of paragraph 32 as alleged.

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

ANSWER: Admit.

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

ANSWER: Defendant is without sufficient knowledge or information to form a belief about the truth of paragraph 34, and on that basis, denies them.

35. In 2022, Defendant ACMQ was financially struggling.

ANSWER: Admit.

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

ANSWER: Admit.

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

ANSWER: Admit.

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: Defendant denies the allegations of paragraph 38, as alleged.

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: Defendant denies the allegations of paragraph 39 as alleged.

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

ANSWER: Defendant is without sufficient knowledge or information to form a belief about the truth of paragraph 13, and on that basis, denies them.

Defendants AS and ACMQ Relationship with Defendant McLaughlin

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

ANSWER: Defendant denies the allegations of paragraph 41 as alleged.

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

ANSWER: Admit.

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

ANSWER: Defendant is without sufficient knowledge or information to form a belief about the truth of paragraph 13, and on that basis, denies them.

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: Defendant admits the executive director was only interested in part time work. The remaining allegations of paragraph 44 are denied as alleged.

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: Defendant admits that Daniel J. McLaughlin was recommended for the job and that there were no other candidates. The remaining allegations of paragraph 45 are denied as alleged.

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

ANSWER: Defendant denies the allegations of paragraph 46 as alleged.

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: Defendant admits McLaughlin was formerly a trustee and Mayor with experience with associations. Defendant denies the remaining allegations of paragraph 47 as alleged.

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

ANSWER: Defendant is without sufficient knowledge or information to form a belief about the truth of paragraph 48, and on that basis, denies them.

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: Defendant is without sufficient knowledge or information to form a belief about the truth of paragraph 13, and on that basis, denies them.

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

ANSWER: Admit.

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

ANSWER: The allegations of paragraph 51 state legal conclusions which are denied.

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

ANSWER: Defendant is without sufficient knowledge or information to form a belief about the truth of paragraph 52, and on that basis, denies them.

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

ANSWER: Admit.

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

ANSWER: Defendant denies the allegations of paragraph 54 as alleged.

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

ANSWER: Defendant denies the allegations of paragraph 55 as alleged.

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

ANSWER: Defendant denies the allegations of paragraph 56 as alleged.

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

ANSWER: Defendant is without sufficient knowledge or information to form a belief about the truth of paragraph 57, and on that basis, denies them. .

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: The allegations of paragraph 58 purport to quote an article and do not require a response. To the extent a response is required, the article speaks for itself.

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

ANSWER: Defendant denies the allegations of paragraph 59 as alleged.

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: Defendant denies the allegations of paragraph 60 as alleged.

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: Defendant denies the allegations of paragraph 61 as alleged.

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

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 62 and on that basis denies them.

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: Defendant admits that ACMQ provided no training. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 63 and on that basis denies them.

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: The allegations of paragraph 64 state a legal conclusion, which defendant denies.

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

ANSWER: Defendant denies the allegations of paragraph 65 as alleged.

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

ANSWER: Defendant denies the allegations of paragraph 66 as alleged.

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: Defendant denies the allegations of paragraph 67.

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: Defendant denies the allegations of paragraph 68 as alleged.

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

ANSWER: Defendant admits AS was involved and participated in promoting ACMQ seminars and conferences. The remaining allegations of paragraph 69 are denied as alleged.

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

ANSWER: Defendant admits that AS employees were speakers. The remaining allegations of paragraph 70 are denied.

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: Defendant admits Charlotte Grill was a speaker. The remaining allegations of paragraph 71 are denied as alleged.

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

ANSWER: The allegations of paragraph 72 make reference to a document which requires no response. To the extent a response is required, the document speaks for itself.

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

ANSWER: Defendant admits the email is included. Defendant denies the remaining allegations of paragraph 73 as alleged.

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: Admit.

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: The allegations of paragraph 75 purport to quote from a website and do not require a response. To the extent a response is required, the website speaks for itself.

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

ANSWER: Defendant denies the allegations of paragraph 76 as alleged, but admits McLaughlin worked to promote the conference.

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: The allegations of paragraph 77 refer to different document which speak for themselves. Defendant denies the allegations of paragraph 77 as alleged.

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

ANSWER: Defendant admits an article was published. The document speaks for itself.

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

ANSWER: Defendant denies the allegations of paragraph 79 as alleged.

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

ANSWER: Defendant denies the allegations of paragraph 80.

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: The allegations of paragraph 81 make reference to a social media post which speaks for itself. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 81 and are denied on that basis.

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: The allegations of paragraph 82 make reference to an exhibit to which no response is required. To the extent that a response is required, the document speaks for itself.

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: Admit.

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

ANSWER: Defendant denies the allegations of paragraph 84 as alleged.

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: Defendant admits AS interviewed and retained Mary Kate de Leon. The remaining allegations of paragraph eighty-five are denied.

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

ANSWER: Admit.

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

ANSWER: Admit.

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

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 88 and on that basis denies them.

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

ANSWER: Defendant denies the allegations of paragraph 89 as alleged.

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

ANSWER: Admit.

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: Admit.

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: Defendant admits that a list was purchased. The remaining allegations of paragraph 92 are denied as alleged.

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: Defendant denies the allegations of paragraph 93 as alleged.

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

ANSWER: Defendant denies the allegations of paragraph 94 as alleged.

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

ANSWER: Admit.

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: Defendant admits that McLaughlin signed a check to Gulfco Leasing.

Defendant denies the remaining allegations of paragraph 96.

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

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 97 and on that basis denies them.

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: Admit.

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: Admit.

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: Defendant admits that meetings took place. The remaining allegations of paragraph 100 are denied as alleged.

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: Defendant denies the allegations of paragraph 101 as alleged.

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: Defendant admits an email was sent. The document speaks for itself.

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: Defendant admits that an email was sent but denies that a mass fax to 16,000 doctors occurred.

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: Defendant denies the allegations of paragraph one 104 as alleged.

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

ANSWER: Defendant admits complimenting Defendant McLaughlin but denies a "blast

fax” was ever sent.

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: Admit.

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: Defendant denies the allegations of paragraph 107.

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: Defendant admits a meeting and investigation took place. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 108 and on that basis denies them.

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

ANSWER: Admit.

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: Defendant is without sufficient knowledge or information to form a belief as to

the truth of the allegations in paragraph 110 and on that basis denies them.

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: Defendant denies the allegations of paragraph 111.

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

ANSWER: Defendant denies the allegations of paragraph 112 as alleged.

Junk Fax to Plaintiff

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

ANSWER: Defendant denies the allegations of paragraph 113 as alleged. Defendant further denies sending an unsolicited fax.

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

ANSWER: Defendants deny the allegations of paragraph 114.

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

ANSWER: The allegations of paragraph 115 state a legal conclusion, which is denied. Defendant further denies sending any faxes in violation of the TCPA.

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: Defendant denies the allegations of paragraph 116 as alleged.

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: The allegations of paragraph 117 make reference to a website which does not require a response. To the extent a response is required, the website speaks for itself.

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

ANSWER: Defendant denies the allegations of paragraph 118.

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: Defendant admits plaintiff had no prior relationship with and is not a member of ACMQ. Defendant denies Plaintiff had not authorized the sending of fax advertisements.

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

ANSWER: Defendant denies the allegations of paragraph 120.

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

ANSWER: The allegations of paragraph one hundred twenty-one state a legal conclusion which is denied.

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

ANSWER: Defendant denies the allegations of paragraph 122.

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: Defendant denies the allegations of paragraph 123.

COUNT I – TCPA

124. Plaintiff incorporates ¶¶ 1-123.

ANSWER: Defendant repeats and re-alleges its answers to paragraphs 1-123 as though fully pleaded herein.

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: Defendant denies the allegations of paragraph 125.

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: Defendant denies the allegations of paragraph 126 as alleged.

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: Defendant denies the allegations of paragraph 127.

128. Defendant McLaughlin was the agent of Defendant AS.

ANSWER: The allegations of paragraph 128 state a legal conclusion which is denied.

129. Defendant McLaughlin was the agent of Defendant ACMQ.

ANSWER: The allegations of paragraph 129 state a legal conclusion which is denied.

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

ANSWER: Admits.

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

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 131 and on that basis denies them.

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

ANSWER: Defendant denies the allegations of paragraph 132 as alleged.

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: Defendant denies the allegations of paragraph 133 as alleged.

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

ANSWER: Defendant denies the allegations of paragraph 134 as alleged.

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

ANSWER: Defendant denies the allegations of paragraph 135 as alleged.

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: Defendant denies the allegations of paragraph 136 as alleged.

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: Defendant denies the allegations of paragraph 137 as alleged.

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

ANSWER: Defendant denies the allegations of paragraph 138.

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: Defendant denies the allegations of paragraph 139. Defendant further denies that the sending of a mass broadcast fax took place and further denies the TCPA was violated.

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

ANSWER: Defendant denies the allegations of paragraph 140.

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

ANSWER: Defendant denies the allegations of paragraph 141 as alleged.

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: Defendant denies the allegations and legal conclusions of paragraph 142 and denies that the TCPA was violated.

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 of paragraph 143 state a legal conclusion which is denied.

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: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 144 and on that basis denies them.

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

ANSWER: Defendant denies the allegation of paragraph one hundred forty-five as alleged.

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: Defendant denies the allegations of paragraph 146.

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 of paragraph one hundred forty-seven purport to quote the TCPA and do not require a response. To the extent that a response may be required, defendant denies any violation of the Act.

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 of paragraph one hundred forty-seven purport to quote the TCPA and do not require a response. To the extent that a response may be required, defendant denies any violation of the Act.

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: Defendant denies the allegations of paragraph 149.

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

ANSWER: Defendant denies the allegations of paragraph 150.

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

ANSWER: Defendant denies the allegations of paragraph 151.

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

ANSWER: Defendant denies the allegations of paragraph 152 and further denies committing any violations.

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: Defendant denies the allegations of paragraph 153. Defendant further denies that this case is entitled to class treatment and denies that the class action allegations have any legal merit.

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: Defendant denies the allegations of paragraph 154.

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: Defendant denies the allegations of paragraph 155, subparagraphs a-c inclusive.

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: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 156 and on that basis denies them.

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

ANSWER: Defendant denies the allegations of paragraph 157.

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: Defendant denies the allegations of paragraph 158. Defendant further denies that this case is entitled to class treatment and denies that the class action allegations have any legal merit.

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: The allegations of paragraph one hundred fifty-nine contain a string citation that does not require a response. To the extent that a response is required, defendant denies that a class should be certified.

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: Defendant denies the allegations of paragraph 160.

COUNT II – CONVERSION

161. Plaintiff incorporates ¶¶ 1-146.

ANSWER: Defendant repeats and re-alleges its 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: Defendant denies the allegations of paragraph 162.

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: Defendant 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: Defendant denies the allegations of paragraph 164.

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

ANSWER: Defendant denies the allegations of paragraph 165.

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: Defendant denies the allegations of paragraph 166.

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

ANSWER: Defendant denies the allegations of paragraph 167.

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: Defendant 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. (Omit?)

ANSWER: Defendant denies the allegations of paragraph 169.

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: Defendant denies the allegations of paragraph 170, subparagraphs a-b inclusive.

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: Defendant 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: Defendant denies the allegations of paragraph 172, 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: Defendant denies the allegations of paragraph 173 as alleged. Defendant

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: Defendant denies the allegations of paragraph 174.

COUNT III – TRESPASS TO CHATTELS

175. Plaintiff incorporates ¶¶ 1-146.

ANSWER: Defendant repeats and re-alleges its 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: : Defendant 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: Defendant denies the allegations of paragraph 177.

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

ANSWER: Defendant denies the allegations of paragraph 178.

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

ANSWER: Defendant denies the allegations of paragraph 179.

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: Defendant 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: Defendant denies the allegations of paragraph 182.

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: Defendant denies the allegations of 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: Defendant denies the allegations of paragraph 185 as alleged.

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 than those presented in many class actions, e.g. for securities fraud.

ANSWER: Defendant denies the allegations of paragraph 187.

JURY DEMAND

Defendant demands trial by jury on all issue herein triable.

AFFIRMATIVE DEFENSES

NOW COMES the Defendant, AMERICAN COLLEGE OF MEDICAL QUALITY, INC., by and through its attorneys, Progar Law Group LLC, and for its Affirmative Defenses to Count I of the Plaintiff, LOOP SPINE & SPORTS CENTER, LTD, Complaint - Class Action, (Doc. 1), 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)

AMERICAN COLLEGE OF MEDICAL QUALITY may have additional unique affirmative defenses applicable to different putative members of Plaintiff's proposed class. AMERICAN COLLEGE OF MEDICAL QUALITY 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)

AMERICAN COLLEGE OF MEDICAL QUALITY is not liable to Plaintiff or members of any putative class because AMERICAN COLLEGE OF MEDICAL QUALITY 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)

AMERICAN COLLEGE OF MEDICAL QUALITY 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, AMERICAN COLLEGE OF MEDICAL QUALITY 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)

AMERICAN COLLEGE OF MEDICAL QUALITY reserves the right to supplement its Answer and to assert any other defenses available to it under applicable law.

WHEREFORE, the Defendant, AMERICAN COLLEGE OF MEDICAL QUALITY, INC., denies that Plaintiff is entitled to any of the relief sought in its prayer for relief. Specifically, Plaintiff is not entitled to actual damages, statutory damages, injunctive relief, costs, or any other type of relief. The Defendant, AMERICAN COLLEGE OF MEDICAL QUALITY, INC., requests that the Court dismiss Plaintiff's Complaint with prejudice at Plaintiff's cost, award the Defendant, AMERICAN COLLEGE OF MEDICAL QUALITY, INC., its costs, and grant the Defendant, AMERICAN COLLEGE OF MEDICAL QUALITY, INC., all such other relief as the Court deems just and proper.

Respectfully submitted,

AMERICAN COLLEGE OF MEDICAL QUALITY, INC.,

By: /s/ John E. Broussard

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