

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	<b>CG Docket No. 02-278</b>
	)	
<b>Petition for Waiver of ACT, Inc.</b>	)	<b>CD Docket No. 05-338</b>
	)	
	)	

**RESPONSE OF PETITIONER ACT, INC.  
TO BAIS YAAKOV OF SPRING VALLEY'S COMMENTS  
ON ACT'S PETITION FOR WAIVER**

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Dated: December 19, 2014

## INTRODUCTION

On November 12, 2014, ACT filed a Petition requesting a retroactive waiver from Section 64.1200(a)(4)(iv) of the Commission's regulations. ACT filed this request in light of the Commission's Order of October 30, 2014, which granted waivers from Section 64.1200(a)(4)(iv) to approximately 25 petitioners and stated that "[o]ther, similarly situated entities likewise may request retroactive waivers..." Order at 2 n.4, 11-15.

On December 12, 2014, comments were submitted on ACT's Petition by Bais Yaakov of Spring Valley.<sup>1</sup> Bais Yaakov opposes ACT's waiver request – just as it opposed the waiver requests that the Commission granted in the October 30 Order.<sup>2</sup> These oppositions are not surprising. Bais Yaakov is a serial TCPA plaintiff, and ACT is one of the entities that Bais Yaakov has sued. See Bellin 2/13/14 Comments at 1 n.1.

Based upon its receipt of three facsimiles from ACT in 2012,<sup>3</sup> Bais Yaakov has filed a putative class action lawsuit that seeks millions of dollars in statutory damages from ACT.<sup>4</sup> The faxes were sent to Bais Yaakov and other high schools, many if not most of which have longstanding relationships with ACT.

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<sup>1</sup> See Bais Yaakov of Spring Valley's Comments on ACT, Inc. Petition Seeking 'Retroactive Waiver' of the Commission's Rule Requiring Opt-Out Notices on Fax Advertisements Sent with Permission (Dec. 12, 2014). ("Bais Yaakov Comments"). On December 15, 2014, three days after the Commission's due date for comments, Bais Yaakov filed a set of "Corrected Comments." See Bais Yaakov of Spring Valley's, Roger H. Kaye and Roger H. Kaye, MD PC's Corrected Comments on ACT, Inc.'s, Amicus Mediation and Arbitration Group, Inc.'s and Hillary Earle's Petitions Seeking 'Retroactive Waiver' of the Commission's Rule Requiring Opt-Out Notices on Fax Advertisements Sent with Permission (Dec. 15, 2014). The supplemental comments do not appear to make any substantive changes to the earlier comments, at least insofar as ACT's petition is concerned.

<sup>2</sup> See Comments Submitted by Bellin & Associates on Feb. 13, 2014 ("Bellin 2/13/14 Comments"); Comments Submitted by Bellin & Associates on April 11, 2014 ("Bellin 4/11/14 Comments"); Notification of Ex Parte Presentation by Bellin & Associates Submitted on April 11, 2014 ("Bellin 4/11/14 Ex Parte Presentation").

<sup>3</sup> As noted in its Petition, ACT is a non-profit entity that develops and administers the ACT college admission test. The facsimiles sent to Bais Yaakov related to the ACT test. Two of the facsimiles encouraged school counseling staff to remind their students about upcoming ACT test registration deadlines, and the third invited Bais Yaakov to apply to serve as an ACT testing site. They did not market goods or services to Bais Yaakov.

<sup>4</sup> See *Bais Yaakov of Spring Valley v. ACT, Inc.*, No. 4:12-CV-40088-TSH (D. Mass.).

The faxes that are the subject of Bais Yaakov's lawsuit include faxes sent with the permission or consent of the recipients. See Bais Yaakov 12/12/14 Comments at 2 (stating that Bais Yaakov has sued ACT for sending "solicited and permission-based" faxes). In Bais Yaakov's case, however, the faxes were sent without Bais Yaakov's permission. That means that Bais Yaakov will *not* be affected by ACT's request for a waiver from the Commission. To the extent the school can otherwise establish the elements of a TCPA claim, the waiver requested by ACT will have no effect on the school's individual claims against ACT.

Bais Yaakov nonetheless opposes ACT's petition, making two arguments as to why a waiver should be denied. According to Bais Yaakov, (1) the Commission does not have the authority to grant retroactive waivers in this context (because doing so would purportedly "absolve defendants under a private right of action established by Congress"); and (2) even if the Commission has such authority, it should not grant a waiver because ACT has not satisfied the "heavy burden" to justify such a waiver. Bais Yaakov Comments at 2.

The same arguments have already been rejected by the Commission, at least implicitly, in granting retroactive waivers to the 25 petitioners who were the subject of the October 30 Order. Indeed, in substantial part, Bais Yaakov's arguments in opposition to ACT's waiver petition have simply been cut and pasted from comments that Bais Yaakov submitted in February 2014 and April 2014 in opposition to the numerous waiver petitions that were then pending before the Commission. Compare Bais Yaakov 12/12/14 Comments at 6-12, with Bellin 2/13/14 Comments at 9, 32-34, and Bellin 4/11/14 Comments at 2-4. The Commission did not find those arguments persuasive then, and they are no more persuasive now. A waiver is warranted for ACT for the same reasons that led the Commission to unanimously grant waivers to all 25 petitioners addressed in its October 30 Order.

**I. THE COMMISSION HAS THE AUTHORITY TO GRANT THE REQUESTED WAIVER**

ACT is asking the Commission to waive the requirements of Section 64.1200(a)(4)(iv) with respect to faxes sent by ACT with a recipient's prior express invitation or permission. Contrary to what Bais Yaakov has argued, see Bais Yaakov Comments at 6-8, the Commission clearly has the authority to grant this request.

The Commission may waive any provision of its rules "for good cause shown." 47 C.F.R. § 1.3. Good cause exists where the particular facts presented make imposition of a rule "inconsistent with the public interest." *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). The Commission may grant such waivers "at any time," provided it does not act out of "unbridled discretion or whim" and "clearly state[s] in the record its reasons for granting the waiver." *Keller Communications, Inc. v. FCC*, 130 F.3d 1073, 1076 (D.C. Cir. 1997) (citations omitted). "The Commission is charged with administration in the 'public interest,'" and the waiver mechanism provides an important "safety valve" when the public interest would not be served by applying a rule in an individual case. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

Courts "afford 'substantial judicial deference' to the FCC's judgments on the public interest." *MetroPCS California, LLC v. FCC*, 644 F.3d 410, 412-13 (D.C. Cir. 2011). They also "afford the FCC deference in interpreting its own regulations." *Id.* at 412. Here, the Commission has already determined that it has the regulatory authority to grant retroactive waivers from Section 64.1200(a)(4)(iv), and that it is in the public interest to do so in the context presented here. See October 30 Order at 8 ("[W]e find good cause exists to grant individual retroactive waivers of section 64.1200(a)(4)(iv)..."), and 11-13 ("[W]e find that granting a retroactive waiver would serve the public interest."). Those determinations were correct.

Bais Yaakov's contrary arguments are insubstantial. According to Bais Yaakov, the Commission "cannot extinguish private plaintiffs' right to sue through administrative action or even through a regulation" because doing so would be "inconsistent" with the private right of action that the TCPA authorizes for violation of Commission regulations. See Bais Yaakov Comments at 6. Bais Yaakov argues that granting waivers in this context would "violate [the] TCPA," "violate the Separation of Powers between Congress and the Executive Branch," and constitute impermissible "retroactive regulation" by the agency. Id. at 6-7

The identical arguments were made by Bais Yaakov in opposing the previously granted waiver petitions. See Bellin 4/11/14 Comments at 2-3 (arguing that Commission "cannot extinguish private plaintiffs' right to sue;" and that granting waivers would be "inconsistent" with the TCPA's private right of action, violate the Separation of Powers, and constitute impermissible "retroactive regulation"). The arguments were rejected by the Commission in ruling on those petitions, and they should be rejected with respect to ACT's Petition.

As an initial matter, there is obviously some irony in Bais Yaakov's assertion that granting a waiver from a regulation that is itself inconsistent with the TCPA<sup>5</sup> would be "inconsistent with the TCPA." More to the point, however, Bais Yaakov's arguments are meritless, and the Commission was correct in rejecting them.

First, the Commission does not violate the TCPA when it grants a waiver from a regulation that might serve as a predicate for a statutory cause of action, any more than the Commission would violate the TCPA by amending such a regulation or by not enacting the regulation in the first place. Rulemaking authority resides in the Commission. That authority includes the express regulatory authority to grant waivers from Commission rules. Therefore,

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<sup>5</sup> The regulation requires opt-out notices for solicited faxes, even though "the text of the TCPA does not require solicited fax advertisements to contain the same detailed opt-out notice required of unsolicited advertisements." October 30 Order at 19 (Statement of Commissioner Pai).

while the Commission cannot waive a violation of the statute, it clearly retains the discretion to waive “violations of FCC rules.” *Hill v. FCC*, 496 Fed. Appx. 396, 398 (5th Cir. 2012); *Nat’l Ass’n of Broadcasters v. FCC*, 569 F.3d 416, 426 (D.C. Cir. 2009).

Second, and for the same basic reasons, the Commission does not violate the Separation of Powers between Congress and the Executive Branch by exercising longstanding *regulatory* authority to grant waivers from its own rules. Bais Yaakov concedes that “the Commission appears to have rejected” Bais Yaakov’s Separation of Powers argument in its Order of October 30. Bais Yaakov Comments at 7 n.10 (citing October 30 Order at 11, ¶ 21).

Third, granting a waiver would not constitute impermissible “retroactive regulation.” See *id.* at 6-7 (citing *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988)). The present situation bears no resemblance to the situation in *Bowen*, where the agency adopted cost-reimbursement rules for healthcare providers under the Medicare Act that were retroactive. The rules at issue there would have resulted in retroactive financial consequences for healthcare providers, relative to cost reimbursements by the federal government. Here, the agency is granting waivers from the requirements of a regulation, retroactively and for a period of six months from the date of the October 30 Order. No legally protected rights are affected by such waivers. While Bais Yaakov may have had an expectation that it could point to Section 64.1200(a)(4)(iv) in the future to support an argument that faxes sent with a recipient’s permission violate the TCPA, “an agency order that ‘alters the future effect, not the past legal consequences,’ of an action, or that ‘upsets expectations based on prior law,’ is not retroactive.” *Mobile Relay Associates v. FCC*, 457 F.3d 1, 11 (D.C. Cir. 2006) (citing *Bowen* and other cases).

The Commission has granted retroactive waiver in other contexts, see, e.g., *In re United Tel. Co.*, 25 FCCR 1648, 1650 nn. 13 & 14 (2010), and it has the authority to do so here.

## **II. ACT HAS SHOWN GOOD CAUSE FOR A WAIVER**

Bais Yaakov next argues that, even if the Commission has the authority to grant waivers in this context, it should not grant one to ACT because ACT has not provided “concrete evidentiary support for a waiver, much less articulated a public interest that supports granting any waiver of application of the Opt-Out regulation.” Bais Yaakov Comments at 9. This argument also fails.

ACT is similarly situated to the parties to whom waivers were granted in the Commission’s October 30 Order. The grounds for ACT’s Petition have already been thoroughly discussed and analyzed by the Commission in the context of that Order. As ACT noted in its Petition, ACT’s waiver request should be granted for the same “reasons set forth in the Commission’s Order.” ACT Petition at 5.

Applying Section 64.1200(a)(4)(iv) to faxes sent by ACT several years prior to the October 30 Order does not serve the public interest or the TCPA’s statutory purposes, because it subjects ACT to claims for significant statutory damages for sending facsimiles that Congress never intended to be covered by the Act. Nor does it serve the Commission’s goal of “preventing unwanted faxes.” Faxes sent with a recipient’s permission are by definition not unwanted. And if the recipient decides it does not want to receive additional faxes, it knows who the sender is and can ask the sender not to send other faxes.

Nor is the public interest served by the misallocation of resources that results from TCPA class action lawsuits. Here, for example, ACT has devoted significant resources to the defense of Bais Yaakov’s lawsuit that would otherwise have gone to the pursuit of ACT’s non-profit mission.

The public interest is instead served by discouraging opportunistic litigation that does nothing to further the purpose of the statute. Bais Yaakov has acknowledged that it suffered no actual damages as a result of receiving the faxes from ACT, beyond the toner and paper needed to print the three faxes. See Ex. A hereto at 101 – 102 (Deposition of Markus Sussman). It is nevertheless seeking millions of dollars in its lawsuit against ACT, just as it is doing in other TCPA lawsuits that it has brought. In all of these lawsuits, Bais Yaakov relies entirely on its litigation counsel to decide how the lawsuits will be resolved. Id. at 138 (“Mr. Bellin has my complete faith and trust and he has a free hand in negotiating settlements. And whatever he advises me to do, even after the fact, I would say, thank you, Mr. Bellin. You have done well for the organization.”). The public interest is not served by permitting such lawsuits, at least not when they are based, in whole or in part, on faxes sent with a recipient’s permission.

Against this background, Bais Yaakov argues that ACT should not be granted a waiver because it has not offered “concrete evidence” that ACT was “actually confused by the footnote or the Notice of Proposed Rulemaking” regarding the need for an opt-out notice on faxes sent with a recipient’s permission. Bais Yaakov Comments at 9.<sup>6</sup> It also argues that ACT has not submitted evidence regarding how ACT would be affected if Bais Yaakov were to prevail in its lawsuit, such as evidence regarding ACT’s financial condition or its insurance coverage. Id. at 10. Finally, it argues that ACT has not identified any public interest that would be served here

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<sup>6</sup> Bais Yaakov also asserts that “never once in the District Court litigation did ACT argue that the opt-out regulation was inapplicable to permission-based fax advertisements or that ACT was confused by a footnote in the *Junk Fax Order* about the applicability of that regulation,” or that it was “confused in 2005 or thereafter by the Commission’s 2005 Notice of Proposed Rulemaking....” Bais Yaakov Comments at 3. The point of these observations is unclear. Arguments made or not made by ACT in the pending lawsuit have no relevance to whether ACT should be granted a retroactive waiver by the Commission from Section 64.1200(a)(4)(iv). Moreover, there has been no need for ACT to make such arguments in the court papers it has filed to date. ACT’s answer broadly denied Bais Yaakov’s allegations and claims for relief, asserted that Bais Yaakov has failed to state a claim for which relief can be granted, and also asserted that “Plaintiff’s claims ... should be dismissed because the lack of a so-called opt-out notice does not create liability under the TCPA....” Answer at 9-13, *Bais Yaakov of Spring Valley v. ACT, Inc.* (D. Mass.).

beyond its own “*self-interest* in not being financially liable” for the alleged TCPA violations. Id. at 11 (original emphasis).

These arguments mirror arguments made by Bais Yaakov in opposing the 25 waiver petitions that the Commission has already granted. In two sets of comments and in an *ex parte* meeting with Commission representatives, Bais Yaakov’s lawyers argued against any retroactive waivers being granted by the Commission. See Bellin 2/13/14 Comments at 33-34 (“None of the petitioners have provided concrete evidentiary support for a waiver, much less articulated a public interest that supports granting any waiver of application of the Opt Out Regulation.... [T]he only interest that the petitioners have identified in support of their request for a waiver is their own *self-interest* in not being held financially liable for ... violations of the TCPA....”) (original emphasis); Bellin 4/11/14 Comments at 3-4 (“Petitioners ... have brought forward no concrete evidence [of]... their financial conditions....”); Bellin 4/11/14 Ex Parte Notification. These arguments were not deemed persuasive by the Commission in resolving those petitions, and they are not persuasive here.

In granting waivers in the October 30 Order, the Commission did not explore the financial situation of each petitioner or require evidence on that subject. While a handful of petitioners filed declarations or affidavits in support of their petitions, ACT is unaware of any petitioner that submitted “concrete evidence” regarding its financial condition, or any information regarding insurance coverage. Several petitioners noted, however, that they were the subject of putative class actions seeking millions of dollars in damages, and the Commission referenced this in its Order. See October 30 Order at 14 n.98. ACT likewise has been sued for millions of dollars in damages in a putative class action brought by Bais Yaakov, and it has provided the docket citation in its Petition. See ACT Petition at 2-3.

Similarly, in granting waivers in the October 30 Order, the Commission did not require evidence from each petitioner that it was “actually confused” by “a footnote contained in the Junk Fax Order ... regarding the applicability of [the opt-out notice] requirement to faxes sent to those recipients who provided prior express permission,” or because the Commission’s rulemaking notice “did not make explicit that the Commission contemplated an opt-out requirement on fax ads sent with the prior express permission of the recipient.” See October 30 Order at 8, 12. Nor did petitioners provide such evidence. Counsel for the petitioners sometimes noted that the Commission’s rulemaking history was confusing regarding the need for an opt-out notice on permission-based faxes, but evidence was not submitted showing that the petitioners themselves were confused, at the time they sent the faxes in question, about the need for an opt-out notice.<sup>7</sup>

Nor was any such evidence necessary for a waiver to be granted. As the Commission correctly acknowledged, the “inconsistency in the *Junk Fax Order*” in combination with the “lack of explicit notice” in the notice of the proposed rule resulted in a regulatory environment that was, at a minimum, “confusing.” October 30 Order at 13. It is the state of the regulatory environment that the Commission reasonably found to be a “special circumstance” that is appropriately considered in evaluating waiver requests, not whether any given petitioner can prove that it was “confused” when it sent its faxes about the need for an opt-out notice because of the rulemaking history of the regulation.

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<sup>7</sup> See, e.g., Petition of Crown Mortgage at 17-20 (Feb 21, 2014); Reply Comments of All Granite & Marble Corp. at 7-8 (Feb. 21, 2014); Reply Comments of Forest Pharmaceuticals, Gilead Sciences, and Purdue Pharma at 11-13 (Feb. 21, 2014); Petition of Magna Chek, Inc. at 10–12 (March 28, 2014); Petition of Masimo Corporation at 10–12 (April 1, 2014); Petition of S&S Firestone, Inc., d/b/a S&S Tire at 10–11 (May 7, 2014); Petition of Cannon & Associates LLC d/b/a Polaris Group at 12–13 (May 15, 2014); Petition of American CareSource Holdings, Inc. at 2, 8 (June 30, 2014); Petition of Stericycle, Inc. at 16–18 (June 6, 2014); Petition of UnitedHealth Group Incorporated at 2, 9-10 (July 11, 2014); Petition of Merck & Company, Inc. at 16-17 (July 11, 2014); Petition of CARFAX, Inc. at 11-12 (July 11, 2014); Petition of MedLearning, Inc. and Medica Inc. at 13-14 (July 16, 2014); Petition of Unique Vacations, Inc. at 9-11 (Aug. 20, 2014), and Reply Comments of Unique Vacations, Inc. at 5-8 (Sept. 26, 2014); Petition of Power Liens, LLC at 13-15 (Sept. 18, 2014).

The Commission further noted in its October 30 Order that there was “nothing in the record ... demonstrating that the petitioners understood that they did, in fact, have to comply with the opt-out notice requirement for fax ads sent with prior express permission but nonetheless failed to do so.” Id. at 13. The same is true here. Nothing in the record suggests that ACT knew that it was required to include an opt-out notice on permission-based faxes under the agency’s regulation “but nonetheless failed to do so.” Bais Yaakov does not suggest otherwise. See Bais Yaakov Comments at 9–10.

Finally, the Commission noted in its Order that some businesses might be subjected to “significant damage awards under the TCPA’s private right of action” for not complying with the rule, and that this risk, while not “by itself” an “adequate ground for waiver,” was appropriately considered by the Commission as one factor in evaluating the public interest. October 30 Order at 14. The Commission reasonably concluded that allowing such damage awards for sending facsimiles that were not “unsolicited” is not consistent with the public interest. Again, the same consideration applies with respect to ACT’s waiver request.

All of the factors referenced above provided “special circumstances” that made “enforcing the rule unjust or inequitable” relative to the petitioners covered by the Order, thereby justifying waivers for those petitioners and for “similarly situated parties.” Id. The Commission did not act haphazardly or out of whim, and it clearly stated why it was granting the waivers. The waivers did not reward “entities that have engaged in massive violations of the law,” Bais Yaakov Comments at 10, and instead reflected a proper balancing of “legitimate business and consumer interests” relative to the sending of solicited/permission-based faxes, see October 30 Order at 14.

## CONCLUSION

The considerations that supported the waivers granted in the October 30 Order apply equally to ACT. ACT is a “similarly situated party,” equally deserving of a waiver. The Commission should therefore grant ACT a waiver from 47 C.F.R. § 64.1200(a)(4)(iv) for all facsimiles sent by ACT subsequent to the regulation’s effective date and prior to six months from the release date of the October 30 Order.

Dated: December 19, 2014

Respectfully submitted,

/s/ Robert A. Burgoyne

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Counsel for ACT, Inc.

# **Exhibit A**

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October 23, 2013

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

C.A. No. 4:12-CV-40088-TSH

\*\*\*\*\* \*

BAIS YAAKOV OF SPRING VALLEY, \*

Plaintiff \*

vs. \*

ACT, INC., \*

Defendant \*

\*\*\*\*\* \*

DEPOSITION OF: MARKUS D. SUSSMAN  
DOHERTY, WALLACE, PILLSBURY, AND MURPHY, P.C.

1414 Main Street

Springfield, Massachusetts

October 23, 2013 10:14 A.M.

Sharon Waskiewicz

Court Reporter

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Springfield, MA Worcester, MA Boston, MA Providence, RI

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1 MR. BELLIN: Yes.

2 MR. LEONARD: Not that I agree.

3 MR. BELLIN: I know that you don't  
4 agree. This wouldn't be any fun if we all  
5 agreed.

6

7

8 MARKUS D. SUSSMAN, Deponent, having first been  
9 satisfactorily identified and duly affirmed, deposes  
10 and states as follows:

11

12

13 EXAMINATION BY MR. LEONARD:

14

15 Q. Mr. Sussman, as I was saying, my name is  
16 Robert Leonard. I'm an attorney, and I represent ACT  
17 in this lawsuit. I'm going to ask you questions  
18 today that I think are relevant to the issues in the  
19 lawsuit.

20 Do you understand you are obligated to  
21 answer them truthfully to the best of your knowledge  
22 and belief?

23 A. Absolutely.

24 Q. Now, is there anything regarding your

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1 A. Correct.

2 Q. Do you recall when you returned to  
3 employment with the plaintiff?

4 A. January, 1990.

5 Q. And what was your position when you  
6 rejoined the plaintiff in January of 1990?

7 A. Administrator.

8 Q. You were the Administrator?

9 A. Slash, Executive Director, yes.

10 Q. And that was when you became the  
11 Executive Director of the plaintiff?

12 A. Correct.

13 Q. Is that organization that you became  
14 employed by in January of 1990, is that the same  
15 organization that is the plaintiff in this lawsuit?

16 A. Correct. Yes, it is.

17 Q. Now, Mr. Sussman do you understand that  
18 you've been designated to testify on behalf of the  
19 plaintiff in this lawsuit, in this deposition, as the  
20 person who is most knowledgeable about certain  
21 topics?

22 A. Yes.

23 Q. What, if anything, did you do to prepare  
24 to testify on behalf of the plaintiff today?

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1       any federal, state, or local governmental  
2       organization that has any role in education?

3               MR. BELLIN: Objection. That is  
4       vague. I don't understand the question.

5               THE WITNESS: I'm thinking. The  
6       central's school district has asked us for  
7       our fax number and we have given it to them.  
8       The New York State Department of ED has  
9       requested our fax number and we've given it  
10      to them. And the Town of Ramapo also has  
11      asked for our facsimile and we've given it  
12      to them.

13              To answer your question other than  
14      that, I don't think we've given it to  
15      anybody.

16              Q.       (By Mr. Leonard) Do you know how much in  
17      expense is incurred by the plaintiff when a fax is  
18      sent to its fax machine and that fax is printed out?

19              A.       The exact expense, no, I do not.

20              Q.       Do you have any information concerning  
21      the expenses incurred by the plaintiff when a fax  
22      prints out on the fax machine?

23              A.       I know there is expensive toner and there  
24      is expensive paper. To me the main expense is the

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1 time and effort to pick up a piece of fax you haven't  
2 asked for. That's the primary annoyance.

3 MR. LEONARD: Let's take the lunch  
4 break now.

5  
6 (Recess taken)

7  
8 MR. LEONARD: Back on the record.  
9 Mark these, please.

10  
11 (Exhibit A, interrogatories, marked)  
12 (Exhibit B, response to Plaintiff's  
13 first set of interrogatories,  
14 marked)

15  
16 Q. (By Mr. Leonard) I'm going to show you a  
17 document that has been marked as Exhibit A. Do you  
18 have that document?

19 A. Yes.

20 Q. What is that document?

21 A. It looks like interrogatories.

22 Q. Let me suggest. Do you recognize Exhibit  
23 "A" to be a set of written questions, answers known  
24 as interrogatories that you signed on October 3,

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1 all matters.

2 Q. Did any of those officers authorize you  
3 to bring this lawsuit before it was filed?

4 A. No.

5 MR. BELLIN: You mean specifically  
6 this lawsuit?

7 MR. LEONARD: Yes. This lawsuit.

8 MR. BELLIN: He just said he had  
9 authorization generally.

10 MR. LEONARD: Right. Right.

11 Q. (By Mr. Leonard) Just so there is no  
12 misunderstanding. My question is: Did any of the  
13 officers of the plaintiff, either individually or as  
14 a group, authorize you to bring this lawsuit before  
15 it was filed in court?

16 A. No, it did not.

17 Q. Did you inform any of the officers that  
18 you were going to authorize the filing of this  
19 lawsuit before it was filed in court?

20 A. No, I did not.

21 Q. What information has been provided to any  
22 of the officers of the plaintiff concerning this  
23 lawsuit?

24 A. This lawsuit?

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1 Q. Yes.

2 A. None.

3 Q. So as far as you know, the officers of  
4 the plaintiff do not know that this lawsuit is in  
5 process or any other information?

6 A. That's correct. But they do know that  
7 I'm engaged in filing lawsuits in general.

8 Q. You mean you on behalf of the --

9 A. The plaintiff.

10 Q. The plaintiff, okay. Who selected the  
11 attorneys that are representing the plaintiff in this  
12 lawsuit?

13 A. I did.

14 Q. Now, what knowledge, if any, did you have  
15 concerning Attorney Bellin as an attorney prior to  
16 selecting him to represent the plaintiff in this  
17 lawsuit?

18 A. Again, I'm trusting just in this lawsuit?

19 Q. Yes.

20 A. The knowledge is that we have worked  
21 together on other cases.

22 Q. Meaning that Mr. Bellin has represented  
23 the plaintiff in other lawsuits?

24 A. In other lawsuits, yes.

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1 this.

2 Under what terms did the plaintiff  
3 authorize the settlement of that lawsuit?

4 MR BELLIN: If you recall.

5 THE WITNESS: I don't recall but I  
6 mean the general answer and the correct  
7 answer would be that Mr. Bellin has my  
8 complete faith and trust and he has a free  
9 hand in negotiating settlements. And  
10 whatever he advices me to do, even after the  
11 fact, I would say, thank you, Mr. Bellin.  
12 You've done well for the organization.

13 Q. (By Mr. Leonard) So is it your testimony  
14 the plaintiff has authorized Mr. Bellin to settle  
15 this lawsuit and others --

16 MR. BELLIN: Which lawsuit are you  
17 referring to, Bob?

18 MR. LEONARD: The lawsuit listed on  
19 No. 4 of 9.

20 Q. (By Mr. Leonard) -- has authorized  
21 Mr. Bellin to settle that lawsuit or any others that  
22 he determines are appropriate?

23 A. Yes, absolutely.

24 Q. Let me direct your attention to the next

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1 I, SHARON WASKIEWICZ, Notary Public, do hereby  
 2 certify that MARKUS D. SUSSMAN appeared before me and  
 3 satisfactorily identified himself on the 23rd day of  
 4 October, 2013, at the offices of DOHERTY, WALLACE,  
 5 PILLSBURY, AND MURPHY, P.C., 1414 Main Street,  
 6 Springfield, Massachusetts, and was by me duly sworn  
 7 to testify to the truth and nothing but the truth as  
 8 to his knowledge touching and concerning the matters  
 9 in controversy in this case; that he was thereupon  
 10 examined upon his oath and said examination reduced  
 11 to writing by me; and that the statement is a true  
 12 record of the testimony given by the witness, to the  
 13 best of my knowledge and ability.

14 I further certify that I am not a relative or  
 15 employee of counsel/attorney for any of the parties,  
 16 nor a relative or employee of such parties, nor am I  
 17 financially interested in the outcome of the action.

18 WITNESS MY HAND this 30th of October, 2013

19  
20 *Sharon Waskiewicz*  
21 -----



23 Sharon Waskiewicz

My Commission expires:

24 Notary Public

August 4, 2017

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