

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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|--|---|----------------------|
| In the Matter of: |) | |
| |) | |
| Petition for Declaratory Ruling to Clarify |) | |
| Statutory Basis for Rule 64.1200(a)(3)(iv) |) | CG Docket No. 02-278 |
| and/or for Ruling Regarding Substantial |) | |
| Compliance with Section 64.1200(a)(4)(iii) |) | CG Docket No. 05-338 |
| and (iv) and/or Waiver |) | |

AFFIDAVIT OF SCOTT BUCHOLZ

SCOTT BUCHOLZ, first duly sworn upon oath, states that I am over the age of eighteen, of sound mind, competent to testify and have personal knowledge as to the following:

1. I am the Executive Vice President of Magna Chek. I have worked with Magna Chek for approximately six years.
2. Magna Chek has been in business since 1971.
3. Magna Chek specializes in non-destructive testing services. In particular, Magna Chek specializes in analyzing and testing critical safety components of automotive, aerospace, defense and agriculture equipment to discover surface and sub-surface discontinuities.
4. Over the last two years, Magna Chek had approximately \$2 million in gross sales and has operated at a loss. Despite this fact, Magna Chek has been an active supporter of the Detroit Metropolitan area, supporting groups such as the Local American Legion, POW/MIA 5K Run, Susan G. Komen 3-Day Walk, multiple local youth athletic teams, as well as the Madison Heights Police Canine Program.

5. Magna Chek has approximately 35 employees, consisting of 25 manufacturing employees, 10 office employees, and approximately 5 to 10 temporary employees at any given time.

6. Magna Chek has utilized many different methods of advertising over the years, including cold-calls, direct mailers, print advertising, and emails.

7. When the cost of direct mailing began to exceed three to four dollars per mailing and emails were not as effective, Magna Chek looked for alternative methods.

8. In 2011, Magna Chek entered into an agreement with Westfax, Inc. for purposes of advertising through faxes. Westfax, Inc. informed Magna Chek that it needed to have an opt-out notice on the bottom of the one-page fax and told Magna Chek exactly what language to use. Westfax also informed Magna Chek that it needed to have a free phone number for recipients to call and opt-out of future notices.

9. Magna Chek incorporated Westfax, Inc.'s recommended language and a toll-free phone number onto each fax advertisement sent on behalf of Magna Chek, relying on Westfax, Inc.'s expertise and experience in the fax advertising industry.

10. The toll-free phone number is available twenty-four hours a day, seven days a week.

11. Since 2011, Magna Chek, through Westfax, Inc., has transmitted multiple fax advertising campaigns. Magna Chek, through Westfax, Inc., sends faxes to targeted geographic regions or to specific categories of current and prospective customers.

12. In comprising the database of fax recipients, Magna Chek maintained a record of all people from whom Magna Chek had orders, with whom Magna Chek had previously done business, and to whom Magna Chek had provided quotes. That sales database was merged into a

marketing database, which was supplemented by trade show contacts and opt-in lists which Magna Chek purchased from various vendors. Over the last decade, Magna Chek has had one or more full-time employees doing marketing, calling individuals in the database and on purchased lists to ask if they wished to receive faxes regarding Magna Chek's services. Magna Chek has hundreds of pages of notes recording the work performed by these marketing individuals. When people said they did not want to receive faxes, Magna Chek took them out of the database. When people requested to opt-out after receiving a fax, Magna Chek immediately removed them from the database. Based on this compilation process, it is Magna Chek's belief that the vast majority, if not all, of the entities in the database are either prior customers or entities that have agreed to receive advertisements by fax. However, there is no notation in the database that indicates how each entry came to be in Magna Chek's database, such as whether they were a prior customer or were from a purchased list.

13. Since being sued in the Northern District of Illinois, 14-c-1024, in which plaintiff alleges that Magna Chek's opt out notice does not comply with TCPA, Magna Chek has revised its opt out notice on fax advertisements to read as follows:

If you no longer wish to receive faxes from Magna Chek, you may request that we not send faxes to your telephone fax machine(s). In order for your request to be valid, (i) the request must clearly identify the fax number(s) to which the request relates; (ii) the request must be communicated to us by calling 888-876-1394 or by sending a fax to 248-597-0440; and (iii) you must not have subsequently provided express permission, whether written or unwritten, to us to transmit faxes to the fax number(s) identified in the request. Our failure to comply with a proper request within 30 days is unlawful.

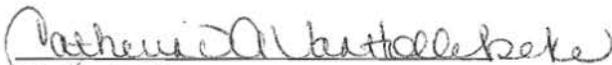
14. If plaintiff is successful in obtaining class certification and Magna Chek is found to have violated the TCPA, Magna Chek's potential liability would substantially exceed its net worth and annual gross sales thereby forcing Magna Chek out of business.

FURTHER AFFIANT SAYETH NAUGHT.



Scott Bucholz
Executive Vice President, Magna Chek, Inc.

Subscribed and sworn to before me
this 28 day of March, 2014.


Notary Public

Catherine A. Vanhollebeke, Notary Public
State of Michigan, County of Macomb
My commission expires Sept. 14, 2019
Acting in the County of Oakland