

Honorable David G. Estudillo

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WA**

NATHEN BARTON,

Plaintiff
v.

Alleviate Tax LLC, and John Doe 1-10

Defendants.

Case No.: [3:23-cv-06071-DGE](#)

SURREPLY TO
DKT 15

Noted for January 12, 2023

Barton respectfully asks the court to accept this surreply to Dkt. 15.

Alleviate is correct which is why they are wrong

To the extent Alleviate equates “message” with “call”, they hit the nail right on the head:

“Section 64.1200(d)(4) deals with the content of messages – specifically, identification requirements within those messages.” Dkt. 15, 1:24-25. Where Alleviate goes wrong is [64.1200\(d\)\(4\)](#) includes *all telemarketing calls*, including voice calls for telemarketing purposes

“A *person or entity making* an artificial or prerecorded-voice telephone call pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing purposes must provide the called party with . . .” 64.1200(d)(4). Empasis added.¹

¹ 64.1200(d) contains the same broad language “or any call for telemarketing purposes”.

1 and [47 U.S. Code § 227](#)(d) is limited to fax machines [(d)(1) and (d)(2)] and artificial or
2 prerecorded voice *systems* [(d)(3)].

3 47 U.S. Code § 227(d) does not regulate *voice* calls but 64.1200(d)(4) does, so it follows
4 that 64.1200(d)(4) cannot be promulgated under 47 U.S. Code § 227(d). In fact, 47 U.S. Code §
5 227(d) does not regulate artificial or prerecorded voice, it regulates artificial or prerecorded voice
6 *systems*. This is far narrower than 64.1200(d) and 64.1200(d)(4), neither one of which regulate
7 artificial or prerecorded voice *systems*.

8 64.1200(d)(4) is not at odds with 47 U.S. Code § 227(c). Congress charged the FCC to
9 “protect residential telephone subscribers’ privacy rights to avoid receiving telephone
10 solicitations to which they object” and gave the FCC the power to “implement the methods and
11 procedures that the Commission determines are most effective and efficient to accomplish the
12 purposes of this section.” 47 U.S. Code § 227(c)(1)(E).

13 Knowing what telemarketer is calling is one step closer to “avoid[ing] receiving
14 telephone solicitations to which they object” 47 U.S. Code § 227(c)(1). There is no reason to
15 separate 64.1200(d)(4) from 64.1200(d). Both serve the purpose of 47 U.S. Code § 227(c).

16 Barton has cited “numerous other out-of-circuit decisions” supporting his position
17 because this issue does not appear to have been addressed in this circuit. Alleviate has not
18 pointed to any good law in any circuit supporting theirs.

19
20 /s/ Nathen Barton
(Nathen Barton)

1/13/2024
Dated

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing document to be electronically filed with the Clerk of the Court using the Electronic Filing (CM/ECF) system, which will send notification of such filing to all counsel of record and all pro se parties registered to use the CM/ECF system.

s/ Nathen Barton
Nathen Barton

1/13/2024
(Dated)