

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

NATHEN BARTON,  
  
Plaintiff,  
  
v.  
  
ALLEVIATE TAX LLC, and JOHN  
DOE1-10,  
  
Defendants.

CASE NO. 3:23-cv-6071-DGE-RJB  
  
ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS

This matter comes before the Court on Defendant Alleviate Tax LLC's Motion to Dismiss for Failure to State a Claim Under Federal Rule 12(b)(6) (Dkt. 11). The Court has considered all documents filed in support of, and in opposition to, the motion, as well as portions of the Code of Federal Regulations, federal and state statutes, pleadings, and cases as cited by the parties or of interest to the Court.

The Defendant's motion attacks only Counts 6 and 11 of Plaintiff's Amended Complaint. (Dkt. 5). The motion should be denied for the following reasons:

Count 6. The discussion of this Count involves whether Plaintiff's claim under 47 CFR 64.120(d)(4) is founded on 47 U.S.C. 227(c), where there may be a basis for a private cause of

1 action, or on 47 U.S.C. 227(d), where no private cause of action is allowed. Apparently this  
2 issue has been litigated in federal courts, with the majority having found that 47 U.S.C 227(c)  
3 prevails, and a private cause of action is appropriate. This Court agrees with that majority, and  
4 Defendant's Motion should be denied as to Count 6.


5 Count 11. Defendant argues that Plaintiff's allegations under Count 11 are incomplete, in  
6 that Plaintiff failed to allege "both automatically dial telephone numbers and transmit a recorded  
7 or artificial voice message upon establishing a connection." (Dkt. 11 at 4). Plaintiff's allegation,  
8 in Count 11, referred to calls without consent "while using an automatic dialing and announcing  
9 device for commercial solicitation." (Dkt. 5 at 46). Plaintiff's pleading is sufficient to cover  
10 what Defendant claims to be missing, and Defendant's motion should be denied as to Count 11.

11 Amendments. Plaintiff made inquiry in his pleadings about whether he should attempt to  
12 amend his pleading. That is a question Plaintiff must answer - the Court cannot advise litigants  
13 on such anticipatory matters.

14 Conclusion. For the foregoing reasons, Defendant's Alleviate Tax LLC's Motion to  
15 Dismiss for Failure to State a Claim Under Federal Rule 12(b)(6) (Dkt. 11) is hereby DENIED.

16 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
17 to any party appearing pro se at said party's last known address.

18 Dated this 21st day of March, 2024.

19 

20 ROBERT J. BRYAN  
21 United States District Judge  
22  
23  
24