

Honorable David G. Estudillo

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

NATHEN BARTON,

Plaintiff

v.

JOE DELFGAUW, XANADU
MARKETING INC., STARTER HOME
INVESTING INC, &
JOHN DOE 1-10
Defendant(s).

CASE NO. **3:21-cv-05610-DGE**

REPLY TO DKT 350

Due: 4/12/2024

In the conclusion of this document Barton makes a request to the Court which would be far easier than resolving the next 62 pages. Otherwise, on 1/29/2024, the Court said:

"It is undisputed the failure to answer or object to a *proper* request for admission is itself an admission. The rule itself so states." That's a quote from *Asea Inc. vs South Pacific Transport Company*, 669 F.2d, 1242 at 1245, Ninth Circuit, 1981.

The Court went on to Order:

I need the defense to point out for me, of these 130 that are in these stipulated facts that Mr. Barton was to present, I need the defense to

1 point out of those 130 which ones are not proper or were not proper.
2 Doesn't mean I am going to agree. I need to see what the defense's
3 perspective on these 130 are . . . If you have admitted something already,
4 that means you understood what it means and that is going to be allowed.
5 It is only these 130 that are not until -- unless they are proper . . . I want
6 this motion . . . It is not a motion. It is more a response to all these 130
7 RFAs . . . Mr. Barton, you will have 30 days after that to respond to
8 whichever ones she calls out. We will make a decision on those RFAs.

9 Barton does not see many hard and fast rules governing the exact formula between proper
10 and improper admissions. When opposing counsel objects to an RFA, he will rely largely on
11 pointing to similar admissions this and other courts have compelled other parties to answer,
12 under the theory that no court will compel a response to an improper RFA.

13 The defendants did not object to many of the RFAs in Dkts. 299, 301, and 303. The
14 Court may be of the opinion that some of those not-objected-to RFAs are questionable.
15 However, if the defense wants to an RFA as fact to reduce the number of issues for trial, Barton
16 believes it would be improper for the Court to step in and deny the defendants their right to do
17 that. The Court should not withdraw any admission the defense did not object to, and by
18 extension, want to stipulate to.

19 Barton will list every RFA in Dkts. 299, 301, and 303, in numerical order.

20 Dkt 299

21 Admission 299 #39

22	17	<u>ADMISSION NO. 39:</u>	Admit or deny that during all times relevant to this lawsuit website
23	18		<i>renttoownhomefinder.com</i> was under your control.
24	19	<u>ANSWER:</u>	

The defense accepted this RFA.

1 Admission 299 #40

1		<p><u>ADMISSION NO. 40:</u> Admit or deny that during the times relevant to this Lawsuit, the first day an entity or entities under your control texted (360) 910-1019, those entities texted that phone number 7 times.</p> <p><u>ANSWER:</u></p>
2		
3		
4		
5		

6 **Defense Objection:**

7
8 Improper Request: Federal Rules of Civil Procedure rule 36(a), states that, “Each matter of which an admission is requested shall be separately set forth”. Plaintiff is attempting to combine 7 separate occurrences into
9 one request. Plaintiff’s request does not comply with Federal Rule of
10 Civil Procedure rule 36(a), which states that, “Each matter of which an
11 admission is requested shall be separately set forth”. This is not a
properly presented request that can be stipulated too as fact.

12 **Plaintiff’s Response:** See *Choquette v. Warner*¹ where a party was ordered to answer:

13 “Admit you ingested three or more controlled substances for which you
14 did not have a prescription during any 12 month period in your life”

15 *Choquette’s* admission was open ended “three or more” and “during any 12 month
16 period”.

17 See also *Shapiro v. Am.’s Credit Union*² which compelled the defendant to answer the
18 RFA’s “[a]dmit that in the year 2011 the Plaintiff disputed to ACU several ACH transfers which
19 were executed”, “[a]dmit that ACU did not respond to any disputed claims made by the Plaintiff
20 regarding any online ACH transfers which were executed in the year 2011”, and “[a]dmit that
21 Alliant Credit Union and PNC Bank were among the financial institutions involved in the return
22 of funds by ACU from the Plaintiff’s accounts in the year 2011.”

23 ¹ *Choquette v. Warner*, CASE NO. 3:15-CV-05838-BHS-JRC, 4 (W.D. Wash. Jun. 21, 2017)

24 ² *Shapiro v. Am.’s Credit Union*, No. 12-cv-5237 RBL, 6 (W.D. Wash. Nov. 6, 2012)

1 See also RFA #23 in docket 212 of *Williams v. Lawson*, C21-5536 MJP, (W.D. Wash.
2 Dec. 11, 2023). Williams propounded the admission “inmate L’Anthony Williams has over 79
3 major infractions. Majority for assaulting inmates.” which is open ended “over 79 major
4 infractions” and undefined “Majority for assaulting inmates” and the defendant was ordered to
5 answer the RFA.

6 And finally, see RFA #4 in *Lynn v. Monarch Recovery Management, Inc.*³ “You were
7 attempting to collect a debt as defined above on the dates the calls alleged in paragraph 23 of the
8 complaint were made.” The RFA references multiple *calls* and the *Lynn* court said

9 “I note, preliminarily, that Defendant's original response to Plaintiff's
10 Request for Admission # 4 is insufficient. Unaccompanied by reasons, a
11 general statement that a party can neither admit nor deny a matter is an
insufficient response to a request for admission.”

12 The *Lynn* court took RFA #4 as a proper RFA and it referenced multiple calls. See also
13 *Lynn*’s RFAs #7, #8, and #9 that contain multiple *calls* in one RFA. Admission 299 #40 should
14 stand.

15
16 Admission 299 #41-A

5	<u>ADMISSION NO. 41:</u>	Admit or deny that during all times relevant to this lawsuit website
6		<i>thecardinalprogram.com</i> was under your control.
7	<u>ANSWER:</u>	

17
18
19
20 The defense accepted this RFA.

21
22
23
24 ³ *Lynn v. Monarch Recovery Management, Inc.*, 285 F.R.D. 350, 364 (D. Md. 2012)

1 Admission 299 #41-B

2 8 **ADMISSION NO. 41:** Admit or deny that that you do not dispute the date that the
3 9 Complaint lists each text message as having been received.
4 10 **ANSWER:**

5 **Defense Objection:**

6 Plaintiff, who alleges in his Amended Complaint Dkt 83, to have
7 received thirteen text messages and six phone calls, two of which were
8 missed and went unanswered, now attempts to combine the dates of each
9 of the nineteen alleged communications into one request. According to
10 Plaintiff, these alleged communications took place over five months.
11 This is not a properly presented request.

12 **Plaintiff's Response:** See Plaintiff's response to Admission 299 #40.

13 Admission 299 #42-A

14 14 **ADMISSION NO. 42:** Admit or deny that that you do not dispute that the date the
15 15 Complaint lists each text message as having been received is the date that the text message was
16 16 sent.
17 17 **ANSWER:**

18 **Defense Objection:**

19 This request, nearly identical to the previous request, again attempts to
20 combine the dates of each of the nineteen alleged communications into
21 one request, each of which is required to be separately set forth. This is
22 not a properly presented request.

23 **Plaintiff's Response:** See Plaintiff's responses to Admission 299 #40.

1 Admission 299 #42-B

2 11 **ADMISSION NO. 42:** Admit or deny that during all times relevant to this lawsuit website
3 12 *houses-into-homes.com* was under your control.
4 13 **ANSWER:**

5 The defense accepted this RFA.

6
7 Admission 299 #43

8 17 **ADMISSION NO. 43:** Admit or deny that during all times relevant to this lawsuit website
9 18 *apexpagebuilder.com* was under your control.
10 19 **ANSWER:**

11
12 The defense accepted this RFA.

13
14 Admission 299 #52

15 4 **ADMISSION NO. 52:** Admit or Deny that if a person “opted in” by providing a telephone
16 5 number and email address to website *educationschoolmatching.com* between the period of
17 6 March 29, 2021 and May 1, 2021, and that person clicked on a Link in an email resulting from
18 7 that “opt in”, it will be considered an a new “opt in” of the telephone number associated with that
19 8 email address on the date the person clicked that Link.
20 9 **ANSWER:**

21 **Defense Objection:**

22 Federal Rules of Civil Procedure rule 36(a), states in part, “A party may
23 serve upon any other party a written request for the admission, for
24 purposes of the pending action only, of the truth of any matters . . . that
relate to statements or opinions of fact or of the application of law to

1 fact". The key word here is "fact". Throughout these requests, Plaintiff
 2 creates hypothetical scenario in which he puts forth such queries as, "if"
 3 and "would". Plaintiff does not ask that Defendant admit or deny a fact
 4 that can be stipulated to, but rather that Defendant respond to a
 5 hypothetical scenario created by Plaintiff. Plaintiff stating "if" the person
 6 opting in were to do something and then click something else, this result
 7 would happen, is not a request regarding a fact as required by FRCP
 (36)(a). Plaintiff attempts to answer his own hypothetical scenario and
 request confirmation of his hypothetical scenario from Defendant. This is
 not a properly presented request designed to determine the truth of the
 request and is not a fact that can be stipulated too.

8 **Plaintiff's Response:**

9 FRCP 36(a)(1) allows requests to admit the truth of any matters related to "facts, the
 10 application of law to fact, or opinions about either". Admission #52 is asking for their opinion
 11 about facts in the case. And hypothetical questions are not improper by definition. See the
 12 court's ruling on a motion to compel an answer to RFA 88 in *Buchanan v. Chi. Transit Auth.*:⁴

13 RFA 88: CTA would have approved Plaintiff's Unforeseeable Claim
 14 Review regarding his July 6, 2015 absence if the form had been timely
 submitted to CTA.

15 The *Buchanan* court held:

16 "Plaintiff cannot to [sic] establish the critical presumptions implicit in
 17 RFA Nos. 88 . . . namely, that the forms regarding his absences were
 18 submitted in a timely fashion or approved. Plaintiff's presumptions have
 19 no basis in the record before the Court, such that RFA Nos. 88 . . . are
 essentially hypothetical questions "unconnected to the facts of the case at
 bar." . . . Plaintiff's motion is accordingly denied with respect to RFA
 20 Nos. 88 . . ."

21 Had RFA 88 been connected to the facts of the *Buchanan* case, RFA 88 would have been
 22 proper. The defendant here does not argue that the facts underpinning Plaintiff's RFA #52 are
 23 absent, they just object to the "if" and "would" nature of an RFA asking for an opinion based on

24 ⁴ *Buchanan v. Chi. Transit Auth.*, Case No. 16-cv-4577, 11 (N.D. Ill. Dec. 7, 2016)

1 facts of the case. See RFA #8 in docket 212 of *Williams v. Lawson*, C21-5536 MJP, (W.D.
2 Wash. Dec. 11, 2023). The court noted that (emphasis added)

3 “The RFA in no way asks Defendants to muse on whether the acts might
4 support a charge of assault. It presents a simple factual statement, and the
5 objection defies logic and the plain language of the request. *Even if did,*
6 *Rule 36(a)(1)(A) permits questions calling for the “application of law to*
7 *fact.”*”

8 This RFA should stand because it asks for their opinion based on facts of the case.

9 Admission 299 #53

10 **ADMISSION NO. 53:** Admit or Deny that for in exchange for receiving the information
11 contained in one or more rows of “opt in” data (of the six) shown on Exhibit A, some person or
12 entity was paid or given something of value by you or an entity under your control.

13 **ANSWER:**

14 **Defense Objection:**

15 In this request, Plaintiff attempts to combine six separate lines, each a
16 separate occurrence in which information was exchanged, into a single
17 request. This clearly violates the requirement that, “Each matter of which
18 an admission is requested shall be separately set forth”. FRCP 36(a).

19 **Plaintiff’s Response:** See Plaintiff’s responses to Admission 299 #40. Referring to plural things
20 is not improper. See also *Morrison v. Quest Diagnostics Inc.*⁵ where Quest was ordered to
21 answer:
22
23

24 ⁵ *Morrison v. Quest Diagnostics Inc.*, Case No. 2:14-cv-01207-RFB-PAL, 4 (D. Nev. Mar. 3, 2016)

Request for Admission No.28:

Admit YOU knew that many ailments such as the ones listed below, and not liited to the below list, (*that have nothing to do with the human immunodeficiency virus*), can trigger a false positive reaction on each of the tests used on TOMMY such as the ELISA, by Abbott, and the WESTERNBLOT:

Specimens from individuals with medically unrelated conditions (to the virus/HIV) will always cause *False Positive reactions* and QUEST negligently assumes it is related to HIV, such as:

- herpes, cancer, elevated triglycerides, upper respiratory tract infection
- anemia, steroids, sinusitis, rheumatoid factor, fungal infections
- Epstein Barr Virus, Flu Vaccine, Drugs, High Serum Protein,
- Bilirubin, Alcoholic Cirrhosis
- ...{ and a further 80 or more ailments that are not contagious in the ring - but will REACT with the solutions and instruments used in these tests }

Admission 299 #57

ADMISSION NO. 57: Admit or Deny that if the person who “opted in” by providing the telephone number (360) 910 1019 and the email address ivettealfredomartinez@gmail.com to website *educationschoolmatching.com* between the period of March 29, 2021 and May 1, 2021, clicked on a link in one of the resulting emails, it would create a new row of “opt in” data in the database represented by Exhibit A.

ANSWER:

Defense Objection: Same as RFA 299 #52 above.

Plaintiff’s Response: Same as RFA 299 #52 above.

1 Admission 299 #61

2 9
3 10 **ADMISSION NO. 61:**
4 11 Admit or deny that on July 13, 2021 entities under your control sent a text message to phone
5 12 number (360) 910 1019 that contained “Each Person that used Round Up can receive \$15,000 in
6 13 Compensation. Claim yours below <http://rounduplawsuit.live/358819495>”.
7 14 **ANSWER:**

8 The defense accepted this RFA.

9
10 Admission 299 #62

11 18
12 19 **ADMISSION NO. 62:** Admit or deny that on April 12, 2021 entities under your control
13 20 sent a text message to phone number (360) 910 1019 that contained “Complete this 60 second, 4
14 21 Question, Quiz to see if you Quality for \$6300 in Job Training/School Grants [http://get-your-](http://get-your-start.xyz/358819495)
15 22 [start.xyz/358819495](http://get-your-start.xyz/358819495)”.
16 23 **ANSWER:**

17 The defense accepted this RFA.

18
19 Admission 299 #71-A

20 19 **ADMISSION NO. 71:** Admit or deny that you control the day-to-day operations of Starter
21 20 Home Investing Inc..
22 21 **ANSWER:**

23 The defense accepted this RFA. The Court did note that “I perceive the RFA as possibly
24 improper, might be improper” because “[w]hat does "control" mean? What are considered "day-

1 to-day operations””. However, if the defense wants to stipulate this as fact to reduce the number
 2 of issues for trial, Barton believes it would be improper for the Court to step in and deny the
 3 defendants their right to do that. The Court should not withdraw any admission the defense did
 4 not object to, and by extension, want to stipulate to.

5
 6 Admission 299 #71-B

7 5 Introduction to Admission No. 71: On 1/21/2022, Donna Gibson said “Essentially, as to
 8 6 Admission #40 on page 17. The Dialer that would have been used at the time of the alleged calls
 9 7 has been updated and most of the previous data has been lost, therefore all we can do is
 10 8 acknowledge what you alleged.”
 11 9 **ADMISSION NO. 71:**
 12 10 Admit or deny that the Dialer data was deleted to deprive Barton of the evidence.
 13 11 **ANSWER:**

14 **Defense Objection:**

15 As part of the previous discovery, Plaintiff received the screenshot
 16 attached to declaration of Donna Gibson as Exhibit B stating that the
 17 dialer was updated on July 3, 2021. Plaintiff is aware of this fact but
 18 seeks to harass Defendant and to push this court to create a new false
 19 fact. Plaintiff filed his lawsuit on August 23, 2021, a full 51 days after
 20 the Defendants dialer was updated and previous logs no longer made
 21 available; Plaintiff is aware of this. However, in order for this to be
 22 stipulated as fact, Plaintiff must explain how Defendant deleted
 23 information to deprive Plaintiff of evidence, 51 days prior to Defendant
 24 even knowing that Plaintiff existed. Plaintiff is hoping the court will
 disregard the actual fact and create a new false fact that will support
 Plaintiff’s case. As stated, Plaintiff has meticulously laid out all nineteen
 of the communications he has alleged to have received. Plaintiff seeks
 the unavailable dialer logs for the purpose of alleging additional
 communication to one or more of the multiple phones owned by
 Plaintiff, however, FRCP 36(a) limits requests for admissions for

1 purposes of the pending action only and Plaintiff has set forth one phone
2 and nineteen communications in the pending case. To allow this request
and to stipulate to a false fact would be to spit in the face of justice.

3 **Plaintiff's Response:** The Defendant's response does not claim this RFA is improper as written,
4 they just want to deny it. Their objection is outside the scope of the Court's order.

5
6 Admission 299 #72

7
8 **ADMISSION NO. 72:** Admit or deny that you control the day-to-day operations of
Xanadu Marketing Inc.

9
10 **ANSWER:**

11 The defense accepted this RFA.

12
13 Admission 299 #75

14
15 **ADMISSION NO. 75:** Admit or deny that you control the day-to-day operations of 1st
Time Home Buyer Program Inc.

16
17 **ANSWER:**

18 The defense accepted this RFA.

19
20 Admission 299 #77

21
22 **ADMISSION NO. 77:** Admit or deny that you control the day-to-day operations of House
into Homes, or the entity that owns it.

23
24 **ANSWER:**

1 The defense accepted this RFA.

2
3 Admission 299 #79

4	1	<u>ADMISSION NO. 79:</u>	Admit or deny that you are involved in managing the call centers
5	2		that entities under your control use to place solicitation calls.
6	3	<u>ANSWER:</u>	

7
8 **Defense Objection:**

9 Plaintiff improperly attempts to request an admission or denial based on
10 the management of multiple call centers which are under contract with
11 multiple entity. The operations of each call center and the individual
12 dealings with each call center are separate occurrences, each of which
13 requires a separate request for admission as required by FRCP 36(a).
14 This is not a properly presented request.

15 **Plaintiff's Response:** See Plaintiff's responses to Admission 299 #40. Under their argument the
16 *Choquette* admission should have identified one controlled substance per admission, and one
17 specific date in *Choquette's* life. The *Choquette* court did not require that there, and this Court
18 should not require it here.

19 Admission 299 #88

20	12	<u>ADMISSION NO. 88:</u>	Admit or deny that most of the time you spend working is spent
21	13		with entities under your control whose primary revenue stream is from sending text message
22	14		solicitation or phone call solicitation.
23	15	<u>ANSWER:</u>	
24	16		

The defense accepted this RFA.

1 Admission 299 #94

20 This admission is in regards to the email from Alex Jakimtschuk sent on 11/17/2021 that you
turned over to Barton.
21 **ADMISSION NO. 94:** Admit or deny that Tort Experts (LGNB LLC) did not allow
22 Xanadu to SMS anymore because Tort Experts (LGNB LLC) does not let any entity solicit Tort
23 Experts (LGNB LLC) products or services via SMS messages.
24 **ANSWER:**

7 The defense accepted this RFA.

9 Admission 299 #95

4 This admission is in regards to the email from Alex Jakimtschuk sent on 11/17/2021 that you
turned over to Barton.
5 **ADMISSION NO. 95:** Admit or deny that The Mountaintop Affiliate Network was in
6 violation of their contract with Tort Experts (LGNB LLC) by hiring you or entities under your
7 control to send SMS messages soliciting Tort Experts (LGNB LLC) products or services.
8 **ANSWER:**

15 The defense accepted this RFA.

17 Admission 299 #96

13 This admission is in regards to the email from Alex Jakimtschuk sent on 11/17/2021 that you
turned over to Barton.
14 **ADMISSION NO. 96:** Admit or deny that the contract between The Mountaintop Affiliate
15 Network and Tort Experts (LGNB LLC) prohibited any SMS soliciting of Tort Experts (LGNB
16 LLC) products or services.
17 **ANSWER:**

24 The defense accepted this RFA.

1 Admission 299 #97

2 1 This admission is in regards to the email from Alex Jakimtschuk sent on 11/17/2021 that you
3 2 turned over to Barton.
4 3 **ADMISSION NO. 97:** Admit or deny that you or entities under your control have some
5 4 ownership of The Mountaintop Affiliate Network.
6 **ANSWER:**

7 The defense accepted this RFA.

8 Admission 299 #98

9 8 This admission is in regards to the email from Alex Jakimtschuk sent on 11/17/2021 that you
10 9 turned over to Barton.
11 10 **ADMISSION NO. 98:** Admit or deny that The Mountaintop Affiliate Network has some
12 11 ownership of entities under your control.
13 **ANSWER:**

14 The defense accepted this RFA.

15 Admission 299 #99

16 16 This admission is in regards to the email from Alex Jakimtschuk sent on 11/17/2021 that you
17 17 turned over to Barton.
18 18 **ADMISSION NO. 99:** Admit or deny that Tort Experts (LGNB LLC) ended their business
19 19 relationship with The Mountaintop Affiliate Network because in the opinion of Tort Experts
20 20 (LGNB LLC), The Mountaintop Affiliate Network violated the contract they had with Tort
21 21 Experts (LGNB LLC)
22 22 **ANSWER:**

23 The defense accepted this RFA.

1 Admission 299 #100

2 This admission is in regards to the email from Alex Jakimtschuk sent on 11/17/2021 that you
3 turned over to Barton.
4 **ADMISSION NO. 100:** Admit or deny that The Mountaintop Affiliate Network no longer
5 hires you or entities under your control to send SMS messages advertising Tort Experts (LGNB
6 LLC) products or services because Tort Experts (LGNB LLC) no longer hires The Mountaintop
7 Affiliate Network to do any advertising for Tort Experts (LGNB LLC).

7 **ANSWER:**

8 The defense accepted this RFA.

9
10 Admission 299 #101

11
12 This admission is in regards to the email from Alex Jakimtschuk sent on 11/17/2021 that you
13 turned over to Barton.
14 **ADMISSION NO. 101:** Admit or deny that because Tort Experts (LGNB LLC) no longer
15 hires The Mountaintop Affiliate Network to do any advertising for Tort Experts (LGNB LLC),
16 The Mountaintop Affiliate Network no longer hires you to send SMS messages advertising Tort
17 Experts (LGNB LLC) products or services.

17 **ANSWER:**

18 The defense accepted this RFA.

19
20 Admission 299 #128

21 **ADMISSION NO. 128:** Admit or deny that *educationschoolmatching.com* collects the type
22 of computer that is used to “opt in” on the website.

23 **ANSWER:**

24 The defense accepted this RFA.

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

Admission 299 #129

8	<u>ADMISSION NO. 129:</u> Admit or deny that <i>educationschoolmatching.com</i> collects the
9	operating system of the device that is used to “opt in” on the website.
10	<u>ANSWER:</u>
11	

The defense accepted this RFA.

Admission 299 #130

16	<u>ADMISSION NO. 130:</u> Admit or deny that in 2018 you were convicted of Financial
17	Institution Fraud.
18	<u>ANSWER:</u>

Defense Objection:

Request for admission 130, 132, 133, 134, and 141, all seek information regarding a 2018 conviction of Defendant Joe Delfgauw. Plaintiff does not allege fraud in either his original Complaint Dkt 1, nor his Amended Complaint Dkt 83. Furthermore, the conviction took place four years prior to the communications which are at issue in this lawsuit. Plaintiff has attempted to use this prior unrelated conviction to distract from the actual issues in this case before. Plaintiff filed a motion asking the court to take judicial notice of defendant’s former conviction Dkt 70. The court, quickly realizing the irrelevance and imprudence of Plaintiff’s motion denied it Dkt 98. Now Plaintiff hopes to make an end run around the courts decision by having such irrelevant issues be stipulated too as facts.

Federal Rules of Civil Procedure rule 36(a), states, “A party may serve upon any other party a written request for the admission, for purposes of the pending action only”. An unrelated conviction, which is related to an incident that took place in 2008, thirteen years prior to the events that triggered this lawsuit, is not part of the pending action and were

1 requested for improper reasons, those reasons being to harass and
2 distract and therefore are not proper request for admission under FRCP
3 36(a).

3 **Plaintiff's Response:**

- 4
- The defendant is not claiming this RFA is not properly formed. Their objection is outside
5 the scope of the Court's order.
 - Delfgauw is a witness in this case. The credibility of his testimony is at issue.
 - This RFA was propounded for this lawsuit
 - The fraud conviction was in the last 10 years which is relevant under Fed. R. Ev. 609.

6

7

8

9 At the 1/29/2024 hearing the court noted "This, again, does not identify the exact crime
10 of conviction as it is unclear what is meant by "financial institution fraud." Therefore, it is vague
11 and likely doesn't identify a fact for which an admission can be given." However, the defendant
12 did not raise this argument here and for good reason. The exact crime of conviction is part of the
13 record of this case, see Dkt 115-2.

14 Plaintiff points the Court to docket 212 of *Williams v. Lawson*, C21-5536 MJP, (W.D.
15 Wash. Dec. 11, 2023). Williams propounded admissions related to his case the *Williams* court
16 did not object to the form of them. See for example RFA #5 "which asks Defendant to admit or
17 deny that "Allen Wallace DOC #352281, is incarcerated for rape." The *Williams* RFA 5 used a
18 commonly known moniker for the crime, not a technical definition, and the *Williams* court found
19 the RFA to be proper. Likewise, Admission 299 #130 should stand. Finally, their objection in
20 Dkt. 350 is not about the form of the RFA's request, but its *relevance*. This is outside the scope
21 of the Court's 1/29/2024 order.

22

23

24

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
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. D-1 JOSEPH DELFGAUW, Defendant.	Case No. <i>18-CR-20030</i> Hon. <i>AVERRA COHN</i> Offenses: 18 U.S.C. § 1344 (Count One) Financial Institution Fraud Maximum Penalty: 30 Years (Count One) Maximum Fine: \$1,000,000 (Count One) Maximum Supervised Release: 5 Years
---	---

RULE 11 PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, defendant
JOSEPH DELFGAUW (D-1) and the government agree as follows.

Admission 299 #132

3	<u>ADMISSION NO. 132:</u> Admit or deny that in 2018 you admitted to knowingly executing a
4	
5	
6	<u>ANSWER:</u>

Defense Objection: See Admission 299 #130.

Plaintiff's Response: See Plaintiff's response to Admission 299 #130.

Admission 299 #133

10	<u>ADMISSION NO. 133:</u> Admit or deny that in 2018 you admitted to obtaining money by
11	
12	
12	<u>ANSWER:</u>

1 **Defense Objection:** See Admission 299 #130.

2 **Plaintiff's Response:** See Plaintiff's response to Admission 299 #130.

3

4 Admission 299 #134

5

16	<u>ADMISSION NO. 134:</u> Admit or deny that in 2008 Citimortgage sustained a loss of
17	\$203,000 due to fraud you committed.
18	<u>ANSWER:</u>
19	

9 **Defense Objection:** See Admission 299 #132.

10 **Plaintiff's Response:** See Plaintiff's response to Admission 299 #130.

11

12 Admission 299 #135

13

1	<u>ADMISSION NO. 135:</u> Admit or deny that you are the President of Mountaintop Affiliate
14	2 Network Inc.
15	3 <u>ANSWER:</u>

16

The defense accepted this RFA.

17

18

Admission 299 #138

19

20	1 <u>ADMISSION NO. 138:</u> Admit or deny that you personally approved of entities under your
21	2 control using SMS messages to solicit Tort Expert (LGNB LLC) products or services.
22	3 <u>ANSWER:</u>

23 The defense accepted this RFA.

24

1 Admission 299 #139

2 8 **ADMISSION NO. 139:** Admit or deny that you were aware that the contract between Tort
3 9 Expert (LGNB LLC) and Mountaintop Affiliate Network Inc. prohibited using SMS messages to
4 10 solicit Tort Expert (LGNB LLC) products or services.
5 11 **ANSWER:**

6 The defense accepted this RFA.

7
8 Admission 299 #141

9 22 **ADMISSION NO. 141:** Admit or deny that in 2018 you were convicted of a Felony for
10 23 which you could have been sentenced to 21 months in prison.
11
12 1 **ANSWER:**

13 **Defense Objection:** See Admission 299 #130.

14 **Plaintiff's Response:** See Plaintiff's response to Admission 299 #130.

15
16 Admission 299 #146

17 9 **ADMISSION NO. 146:** Admit or deny that you do not dispute that entities under your
18 10 control sent the text messages as alleged in the Amended Complaint.
19 11 **ANSWER:**
20 12

21 **Defense Objection:**

22 Plaintiff, who alleges in his Amended Complaint Dkt 83, to have
23 received thirteen text messages and six phone calls, two of which were
24 missed and went unanswered and all of which were separate
occurrences, now attempts to combine both text messages and phone

1 calls (nineteen in total) into one request. According to plaintiff, these
2 alleged communications took place over five months. Plaintiff's request
3 is not properly requested because it does not comply with the
4 requirement of FRCP 36(a), that "Each matter of which an admission is
5 requested shall be separately set forth".

6 **Plaintiff's Response:** See Plaintiff's responses to Admission 299 #40.

7 Admission 299 #147

16	<u>ADMISSION NO. 147:</u> Admit or deny that you do not dispute that entities under your
17	control initiated the phone calls as alleged in the Amended Complaint.
18	<u>ANSWER:</u>

9
10
11 **Defense Objection:**

12 As with many of Plaintiff's improper requests, Plaintiff seeks to combine
13 multiple occurrences alleged in the Amended Complaint, into a single
14 request. Such practice is prohibited by Federal Rules of Civil Procedure
15 rule 36(a), which states, "Each matter of which an admission is requested
16 shall be separately set forth".

17 **Plaintiff's Response:** See Plaintiff's responses to Admission 299 #40. Under their argument the
18 *Choquette* admission should have identified one controlled substance per admission, and one
19 specific date in Choquette's life. The *Choquette* court did not require that there, and this Court
20 should not require it here.

21 Admission 299 #152

22	5 <u>ADMISSION NO. 152:</u> Admit or deny that you have no information that it was not a form
23	6 spammer who "opted in" and caused you injury.
24	7 <u>ANSWER:</u>

1 The defense accepted this RFA.

2

3 Admission 299 #156

4

7	<u>ADMISSION NO. 156:</u>	Admit or deny that Tim Kearney works for an entity that you
8		control.
9	<u>ANSWER:</u>	

5

6

7

8 The defense accepted this RFA.

9

10 Admission #157

11

13	<u>ADMISSION NO. 157:</u>	Admit or Deny that before 11/2/2021, entity Lending Cloud Alerts
14		is not a registered <i>doing-business-as</i> or a state registered business entity.
15	<u>ANSWER:</u>	

12

13

14

The defense accepted this RFA.

15

16

Admission 299 #158

17

18	<u>ADMISSION NO. 158:</u>	Admit or deny that during the times relevant to this Lawsuit, the
19		first day an entity or entities under your control texted (360) 910-1019, those entities texted that
20		phone number 7 times.
21	<u>ANSWER:</u>	

18

19

20

21

22

The defense accepted this RFA.

23

24

1 Admission 299 #159

2 1 This admission is in regards to the email from Alex Jakimtschuk sent on 11/17/2021 that you
3 2 turned over to Barton.
4 3 **ADMISSION NO. 159:** Admit or deny that Tort Experts (LGNB LLC) did not allow
5 4 Xanadu Marketing Inc. to SMS anymore because Tort Experts (LGNB LLC) does not let any
6 5 entity solicit Tort Experts (LGNB LLC) products or services via SMS messages.
ANSWER:

7 The defense accepted this RFA.

8
9 Admission 299 #160

10 10 **ADMISSION NO. 160:** Admit or deny Validiform.com makes the statement “What
11 11 websites need lead certification?
12 12
13 13 Any website that collects personal information for use in electronic or telecommunication is
14 14 subject to certain regulations about being able to prove the user gave consent for the website
15 15 owner to do so. Validiform is designed to be a clearcut protection for fraudulent claims of these
16 16 violations.”
17 17 **ANSWER:**

18 **Defense Objection (emphasis added):**

19 Once again, Plaintiff ignores the Federal Rules of Civil Procedure and
20 disregards the requirement that each request for an admission must be for
21 purposes of the pending action only. Plaintiff takes yet another detour
22 down an irrelevant line of requests that are related to a software product
23 that did not even exist at the time Plaintiff alleges to have received the
24 first communication. The issue in the lawsuit is simply, did the plaintiff
opted into the defendants marketing campaign, or was plaintiff solicited
without consent. The evidence clearly shows that Plaintiff opted in
through means of fraud and therefore Plaintiff has put forth a great
amount of effort to distract from the issue by attempting to lead the court

1 in various unrelated directions such as unrelated convictions and obscure
 2 software products. *After defending against attempts to extort money by*
 3 *serial litigators such as Plaintiff, Defendant Joe Delfgaww felt that some*
 4 *kind of software product needed to be developed to protect businesses*
 5 *from these predators. Validiform was the name chosen for the product*
 6 *and six months after Plaintiff alleges to have received the first*
 7 *communication, a blog was written to promote the product. See screen*
 8 *shot from website validiform.com, showing links to blogs advertising the*
 9 *benefits of the Validiform product, attached to Declaration of Donna*
 10 *Gibson as Exhibit A. Note that the first blog article was written in*
 11 *October of 2021 and that Plaintiff alleges to have received the first*
 12 *communication in April of 2021, six months prior. Therefore, any*
 13 *requests for admissions regarding a software product that did not exist at*
 14 *the time of the allegations on which the present lawsuit is based and*
 15 *played no part in the present lawsuit would not be for purposes of the*
 16 *pending action as it would not have any relevance what-so-ever to the*
 17 *pending action. Plaintiff make eleven improper request in which he*
 18 *quotes lengthy sections of the blog articles related to the Validiform*
 19 *product; these requests are as follows:*

20 **Plaintiff's Response:**

- 21 • The defendant is not claiming this RFA is not properly formed. Their objection is
 22 outside the scope of the Court's order.
- 23 • RFA 299 #160 is for use in this lawsuit
- 24 • Opposing Counsel admits Validiform (and by extension the blog) was created in
 response to this lawsuit and other "serial litigators". See italicized text above.
- The relevant statements of an opposing party are always admissible
- Barton asked the Defendant to admit what amounts to a document – a statement
 on a website admittedly under Delfgaww's control. See *Management v. Mazer*⁶
 "it [FRCP 36] presupposes that the party proceeding under it knows the facts or
 has the document and merely wishes its opponent to concede their genuineness."
 Delfgaww was asked to admit the genuineness.

⁶ *Management v. Mazer*, Case No. 2:09-cv-01590-RLH-PAL, 7 (D. Nev. Aug. 16, 2011)

1 Admission 299 #161

2 1 **ADMISSION NO. 161:** Admit or deny Validiform.com makes the statement “If you’re
3 2 doing any sort of automated outbound marketing by phone or text message, you’re subject to be
4 3 compliant with the Telephone Consumer Protection Act (TCPA).

5 4 This essentially means that it’s your legal responsibility to be sure that all of your contacts are
6 5 up-to-date and that they have explicitly given you permission to call or text them with your
7 6 marketing efforts.

8 7
8 8 It’s crucial that you have validated, archived proof of consent to stay compliant with the TCPA,
9 9 or they can slap you with a fine of up to \$1,500 per call for violation. That’s a high price to pay
10 10 for one ill-placed phone call.”

11 11 **ANSWER:**

12
13 **Defense Objection:** See Admission 299 #160.

14 **Plaintiff’s Response:** See Admission 299 #160.

15
16 Admission 299 #162

17 16 **ADMISSION NO. 162:** Admit or deny Validiform.com makes the statement “One of the
18 17 most important things to remember is that this consent must be written, and documented, and
19 18 you need to be able to find it if you need it. The TCPA doesn’t mince words– it states clearly that
20 19 the burden of proof rests solely on you, the advertiser. If you can’t provide proof of consent,
20 20 you’re all but guaranteed to be hit with those hefty fines we talked about above. (Also note that
21 21 people often opt into things and forget, so you may even get complaints from people who you
22 22 legitimately had the right to contact.)”

23 23 **ANSWER:**

1 **Defense Objection:** See Admission 299 #160.

2 **Plaintiff's Response:** See Admission 299 #160.

3

4 Admission 299 #163

5

6 **ADMISSION NO. 163:** Admit or deny Validiform.com makes the statement “It’s sad, but
7 there are people out there who are going to try use form spamming to rip you off as an affiliate
8 marketer.

7

8 The way they do this is with bots that are programmed to find lead forms on web pages and fill
9 them out. This triggers a “conversion” for them as an affiliate, which technically means you owe
0 them revenue for it.

9

0 The issue is the conversion isn’t legitimate, so if you pay out on this conversion, you’re
1 essentially just giving money away to a fraudster that cheated you.

10

1 But it can get way worse– and can be much more expensive. See, the form spammers are getting
2 more sophisticated, and the bots they’re using are advanced enough to fill in real names, real
3 phone numbers, and real email addresses.

11

12

3 Since these form fills look legitimate, you’ll likely reach out to these people since (as far as you
4 know) they showed interest. The problem is, a bot filled out your form with their information,
5 and they have no earthly idea who you are.

13

14

6 If you contact them with an offer without their permission, you’re now in violation of TCPA
7 regulations and can face up to \$1,500 in fines if the person files a complaint.

15

16

7 You need a way to protect your affiliate marketing efforts against form spamming, or it could
8 end up costing you a lot of money.”

17

18

9 **ANSWER:**

19

Defense Objection: See Admission 299 #160.

20

Plaintiff's Response: See Admission 299 #160.

21

22

23

24

1 Admission 299 #164

2 4 **ADMISSION NO. 164:** Admit or deny Validiform.com makes the statement “It’s a sad
3 5 fact, but every form of digital marketing is susceptible to some type of fraud. Where it can be
4 6 especially dangerous and expensive is in the lead acquisition space.”
5 7 **ANSWER:**

6 **Defense Objection:** See Admission 299 #160.

7 **Plaintiff’s Response:** See Admission 299 #160.

8
9 Admission 299 #165

10 14 **ADMISSION NO. 165:** Admit or deny Validiform.com makes the statement “A spambot is
11 15 a malicious piece of software that is built to crawl your website and find specific code, and
12 16 interact with it, pretending to be human for fraudulent purposes. Spambots can do a number of
13 17 things, including leaving fake comments, creating fake accounts, and executing fake email sign-
14 18 ups, among many other things.
15 19 Many Spambots are programmed exclusively to perform fake sign-ups.
16 20 Since these tasks often only require the user to fill out a few fields, the Spambots are
17 21 programmed to do this automatically. Sometimes these Spambots are coded to invent entirely
18 22 new, fictional user information– but sometimes they’re loaded with real (often stolen)
19 23 information. Some Spambots are so sophisticated that they model human behavior before taking
20 24 action so they’re more difficult to detect.
21 3 Spambots are never good, but if they’re loaded with stolen, real information to execute fake sign-
22 4 ups it can be especially bad. If you try to send messages to these people, they’ll have no idea
23 5 who you are, and in almost every case, you’ll be breaking the law because you don’t have true
24 6 consent to contact them.”
7 **ANSWER:**

1 **Defense Objection: See Admission 299 #160.**

2 **Plaintiff's Response: See Admission 299 #160.**

3
4 Admission 299 #166

5 14 **ADMISSION NO. 166:** Admit or deny Validiform.com makes the statement “It begins
6 15 when a bad actor signs up for your affiliate program. They often already have access to illicitly
7 16 obtained customer data at this point. This is stolen customer information they’ve typically
8 17 purchased from a prohibited source like the dark web or illegal information brokers. These bad
9 18 actors then use Spambots to automate the signup process and use the stolen information to
10 19 execute a wave of fake sign-ups en masse.

11 20 Unless you catch these fake sign-ups quickly and accurately, you then pay out the affiliate
12 21 referral fee on false information. You think you’ve gotten a bunch of real sign-ups, but you
13 22 haven’t. So while you’re jumping up and down in excitement, a fraudster is taking your money
14 23 and disappearing. You’ll not only lose money but to make it even worse, now your database is
15 2 also tainted with a wave of fake customer data.”

16 3 **ANSWER:**
17 4

18 **Defense Objection: See Admission 299 #160.**

19 **Plaintiff's Response: See Admission 299 #160.**

1 Admission 299 #167

2 9 **ADMISSION NO. 167:** Admit or deny Validiform.com makes the statement
3 10 **“How to Protect Against Form Spam**
4 11 Good ‘Ol CAPTCHA
5 12 You’ve likely heard of CAPTCHA (or at the very least, had to fill one out). They’re essentially
6 13 puzzles that are crafted so that only humans can solve them. They work by requiring inputs that
7 14 bots can’t do easily or accurately.
8 15 CAPTCHA is a type of tool, not a single brand, so there are various kinds of CAPTCHA
9 16 solutions available that all attempt to vex and confound bots.
10 17 There are some downsides to CAPTCHA. Firstly, sometimes people are just plain annoyed by
11 18 them because they’re an extra step in completing online tasks. Secondly, bots are getting smarter
12 19 every day, and not all CAPTCHAs are unbeatable.
13 20 Having a CAPTCHA in place typically can’t hurt anything, and can be a good “catch-all” for bot
14 21 traffic protection.”
15 22 **ANSWER:**
16 23

16 **Defense Objection:** See Admission 299 #160.

17 **Plaintiff’s Response:** See Admission 299 #160.

1 Admission 299 #168

2 5 **ADMISSION NO. 168:** Admit or deny Validiform.com makes the statement “The baseline
3 6 method for stopping fake signups is the use of the latest version of a CAPTCHA (or the more
4 7 advanced ReCAPTCHA). While these tools aren’t perfect, they’re a strong complement to some
5 8 of the more robust solutions we’ve recommended. A CAPTCHA or ReCAPTCHA forces a
6 9 website’s user to interact with the site with specific clicks that can’t be faked by Spambots
7 10 easily. This can be checking a check box, or even selecting a group of similar pictures. Every site
8 11 should have a CAPTCHA or ReCAPTCHA as its first line of defense against fake signups.”
9 12 **ANSWER:**

10 **Defense Objection:** See Admission 299 #160.

11 **Plaintiff’s Response:** See Admission 299 #160.

12
13 Admission 299 #169

14 18 **ADMISSION NO. 169:** Admit or deny Validiform.com makes the statement
15 19 **“Don’t Try to Validate Leads Yourself**
16 20 Even if you can figure out the technical side of the equation (which is no simple matter), and you
17 21 can figure out a way to store the data in way you can find it, there is still one major reason you’ll
18 22 want to avoid validating leads yourself... the legal implications.
19 1 If someone does file a lawsuit against you, it doesn’t look great that your proof is coming from
20 2 your own in-house sources. Candidly, who’s to say you didn’t doctor the data before presenting
21 3 it? If your proof comes from an independent source, it’s often considered a much stronger piece
22 4 of evidence.”
23 5 **ANSWER:**

24 **Defense Objection:** See Admission 299 #160.

1 **Plaintiff's Response:** See Admission 299 #160.

2
3 Admission 299 #170

4 11 **ADMISSION NO. 170:** Admit or deny Validiform.com makes the statement "If a Spambot
5 12 uses someone's real information to sign up, and you contact them, your only course of action
6 13 will be to assume guilt and take the penalty or fine".
7 14 **ANSWER:**

8 **Defense Objection:** See Admission 299 #160.

9 **Plaintiff's Response:** See Admission 299 #160.

10
11 Admission 299 #176

12 8 **ADMISSION NO. 176:** Admit or deny that during the times of the alleged 'opt ins' by
13 9 Barton that caused you harm, *EducationSchoolMatching.com* did not take any measures to
14 10 prevent 'opt ins' from spoofed IP addresses.
15 11 **ANSWER:**

16
17 The defense accepted this RFA.

18
19 Admission 299 #177

20 15 **ADMISSION NO. 177:** Admit or deny that affiliate marketers could earn money from 'opt
21 16 ins' on *EducationSchoolMatching.com* during times relevant to this lawsuit.
22 17 **ANSWER:**
23 18

24 The defense accepted this RFA.

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

Admission 299 #185

21	<u>ADMISSION NO. 185:</u>	Admit or deny that you own a business that warns online marketers
22		that they cannot trust that those opting in are honest law abiding individuals.
23	<u>ANSWER:</u>	

The defense accepted this RFA.

Admission 299 #188

16	<u>ADMISSION NO. 188:</u>	Admit or deny that during all times relevant to this lawsuit only
17		websites under your control used the internet name server <i>ns1.xanadumarketing.com</i> .
18		
19	<u>ANSWER:</u>	

The defense accepted this RFA.

Dkt 301

Admission 301 #1

10	<u>ADMISSION NO. 1:</u>	Admit that you initiated text messages to phone number (360) 910
11		1019 using the SMS Short Code 33959 between the time period of April 1, 2021, and October
12		29, 2021.
13	<u>ANSWER:</u>	

The defense accepted this RFA.

1 Admission 301 #2

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18 **ADMISSION NO. 2:** Admit or deny that before you sent a text message on April 1,
19 2021, to phone number (360) 910 1019 advertising goods or services from Degree Locate, you
20 did not have the invitation or consent from Barton to do so.
21 **ANSWER:**

6 The defense accepted this RFA.

8 Admission 301 #4

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

13 The defense accepted this RFA.

16 Admission 301 #6

17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

21 The defense accepted this RFA.

1 Admission 301 #8

21 **ADMISSION NO. 8:** Admit or deny that before you sent a text message on April 1,
22 2021, to phone number (360) 910 1019 advertising goods or services from *yourent2own.com*,
23 you did not have the invitation or consent from Barton to do so.

1 **ANSWER:**

7 The defense accepted this RFA.

8

9 Admission 301 #10

14 **ADMISSION NO. 10:** Admit or deny that before you sent a text message on April 1,
15 2021, to phone number (360) 910 1019 advertising goods or services from Lawsuit Winning, you
16 did not have the invitation or consent from Barton to do so.

17 **ANSWER:**

14 The defense accepted this RFA.

15

16 Admission 301 #12

9 **ADMISSION NO. 12:** Admit or deny that before you sent a text message on April 1,
10 2021, to phone number (360) 910 1019 advertising goods or services from Lions Gate Loans,
11 you did not have the invitation or consent from Barton to do so.

12 **ANSWER:**

21 The defense accepted this RFA.

22

23

24

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

Admission 301 #14-A

10	<u>ADMISSION NO. 14:</u>	Admit that Starter Home initiated a text message to phone number
11		(360) 910 1019 using the SMS Short Code 33959 on September 21, 2021.
12	<u>ANSWER:</u>	

The defense accepted this RFA.

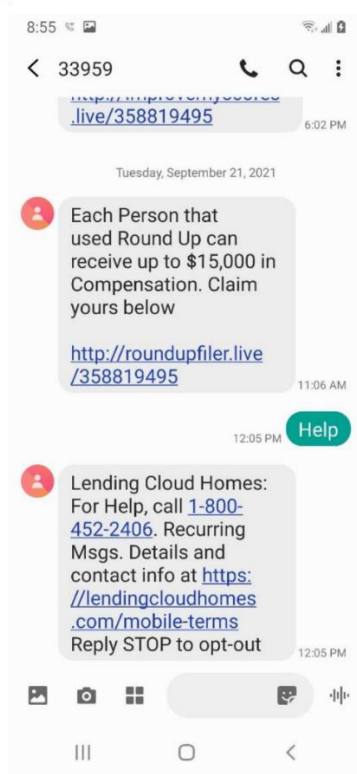
Admission 301 #14-B

2	<u>ADMISSION NO. 14:</u>	Admit or deny that before you sent a text message on April 1,
3		2021, to phone number (360) 910 1019 advertising goods or services from Honest Loans, you
4		did not have the invitation or consent from Barton to do so.
5	<u>ANSWER:</u>	

The defense accepted this RFA.

1 Admission 301 #15

2
3
4
17 **ADMISSION NO. 15:** Admit the following image, marked as received at 11:06AM on
18 September 21, 2021, is a true and accurate copy of a text message Starter Home initiated to phone
19 number (360) 910 1019 using the SMS Short Code 33959.



15 **ANSWER:**

16 The defense accepted this RFA.

17
18 Admission 301 #16-A

19
20
21
22
23
18 **ADMISSION NO. 16:** Admit or deny that before you sent a text message on April 1,
19 2021, to phone number (360) 910 1019 advertising goods or services from Classes & Careers,
20 you did not have the invitation or consent from Barton to do so.

21 **ANSWER:**

24 The defense accepted this RFA.

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

Admission 301 #16-B

19	<u>ADMISSION NO. 16:</u> Admit that on 11/17/2021, Starter Home initiated a text message to
20	phone number (360) 910 1019 from SMS short code 33959.
21	<u>ANSWER:</u>

The defense accepted this RFA.

Admission 301 #17-A

1	<u>ADMISSION NO. 17:</u> Admit or deny that you sent solicitation text messages using the
2	SMS short code 365365 on April 1, 2021, and April 8, 2021.
3	<u>ANSWER:</u>

Defense Objection:

As stated above, Federal Rules of Civil Procedure rule 36(a), states that, “Each matter of which an admission is requested shall be separately set forth”. Plaintiff attempts to combine two separate occurrences into one request for admissions. Plaintiff’s request is not properly presented and therefore cannot be stipulated too as fact.

Plaintiff’s Response: See Admission 299 #40. Admission 301 #17-A should stand.

Admission 301 #17-B

4	<u>ADMISSION NO. 17:</u> Admit that on 11/17/2021, Starter Home initiated three text
5	messages to phone number (360) 910 1019 from SMS short code 46758.
6	<u>ANSWER:</u>

Defense Objection:

Federal Rules of Civil Procedure rule 36(a), states, “A party may serve upon any other party a written request for the admission, for purposes of the pending action only”. Throughout Plaintiff’s Notice of Stipulated Facts Dkt 301, Plaintiff attempts to solicit responses regarding incidents that may or may not have happened outside of the scope of this lawsuit. Plaintiff, alleges in his Amended Complaint Dkt 83, to have received nineteen communications and/or attempted communications with the first having been received on April 1, 2021, and the last alleged communication having been received on August 4, 2021. Any properly requested admissions regarding the alleged communication would need to be within the requirements of FRCP 36(a), however, Plaintiff attempts to request admissions related to communications not alleged in Plaintiff’s pleadings and therefore, not, “for purposes of the pending action only”. As stated, the last communication Plaintiff alleges to have received from Defendants, in violation of the Telephone Communications Protection Act (TCPA), was August 4, 2021. All nine of the following requests solicit admissions outside of the parameters established by Plaintiff himself. Plaintiff does not allege receiving any communications in November or December of 2021, and therefore, such request for admissions for such communications would not be for purposes of the pending action only as required.

Plaintiff’s Response: First, the Defendants are not objecting that RFA form is improper. This is outside the scope of the Court’s order – objecting to RFAs that are improperly formed as RFAs. Second, the Defendants made these same arguments in Dkt. 162 which were overruled on 5/17/2022. See a few of these objections: page 9 (Amended Interrogatory No. 9, defendants ordered to pay Plaintiff \$100), page 16 (Interrogatory No. 1 defendants ordered to pay Plaintiff \$100), page 33 (Production request No. 13 and No. 14 defendants ordered to pay Plaintiff \$100 for each).

1 Admission 301 #18

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

7	<u>ADMISSION NO. 18:</u>	Admit or deny that you sent solicitation text messages using the
8		sending number (803) 618-8038 on April 2, 2021.
9	<u>ANSWER:</u>	

The defense accepted this RFA.

Admission 301 #19

13	<u>ADMISSION NO. 19:</u>	Admit or deny that you sent solicitation text messages using the
14		SMS short code 94657 on June 11, 2021.
15	<u>ANSWER:</u>	

The defense accepted this RFA.

Admission 301 #20

19	<u>ADMISSION NO. 20:</u>	Admit or deny that you sent solicitation text messages using the
20		SMS short code 94657 on August 4, 2021.
21	<u>ANSWER:</u>	

The defense accepted this RFA.

Admission 301 #21

1	<u>ADMISSION NO. 21:</u>	Admit or deny that you sent solicitation text messages using the
2		SMS short code 33959 on July 13, 2021.
3	<u>ANSWER:</u>	

1 **Defense Objection:** Same as Admission #301 17-B above

2 **Plaintiff's Response:** See Plaintiff's response to Admission 301 #17-B

3
4 Admission 301 #23

5 15 **ADMISSION NO. 23:** Admit or deny that the person who used and controlled the email
6 16 address ivettealfredomartinez@gmail.com is the person who caused you the injury you allege in
7 17 this Lawsuit
8 18 **ANSWER:**
9 19

10 The defense accepted this RFA.

11
12 Admission 301 #29

13 12 **ADMISSION NO. 29:** Admit or deny that the "opt in" presented at
14 13 *educationschoolmatching.com* only allows a maximum of three messages per week.
15 14 **ANSWER:**

16 The defense accepted this RFA.

17
18 Admission 301 #30

19 18 **ADMISSION NO. 30:** Admit or deny that during the times relevant to this Lawsuit, the
20 19 "opt in" presented at *educationschoolmatching.com* only allowed for a maximum of three
21 20 messages per week.
22 21 **ANSWER:**

23 The defense accepted this RFA.

1 Admission 301 #31

2	<u>ADMISSION NO. 31:</u>	Admit or deny that during the times relevant to this Lawsuit, the
3	3	first day you texted (360) 910-1019, you texted that phone number 7 times.
4	4	<u>ANSWER:</u>

5 **Defense Objection:**

6 Federal Rules of Civil Procedure rule 36(a), states that, “Each matter
7 ofwhich an admission is requested shall be separately set forth”. Plaintiff
8 is attempting to combine 7 separate occurrences into one request.
9 Plaintiff’s request does not comply with Federal Rule of Civil Procedure
10 rule 36(a), which states that, “Each matter of which an admission is
11 requested shall be separately set forth”. This is not a properly presented
12 request that can be stipulated too as fact.

11 **Plaintiff’s Response:** See RFA 299 #40. Admission 301 #31 should stand.

12
13 Admission 301 #33-A

14	11	<u>ADMISSION NO. 33:</u>	Admit or deny that on November 17, 2021, you sent a text message
15	12		to phone number (360) 910-1019 from SMS Short Code 33959.
16	13	<u>ANSWER:</u>	

17 **Defense Objection:** Same as Admission 301 #17-B above

18 **Plaintiff’s Response:** See Plaintiff’s response to Admission 301 #17-B

19
20 Admission 301 #33-B

21	15	<u>ADMISSION NO. 33:</u>	Admit or deny that during all times relevant to this lawsuit you
22	16		used SMS short code 33959.
23	17	<u>ANSWER:</u>	

1 The defense accepted this RFA.

2
3 Admission 301 #34-A

4 18 **ADMISSION NO. 34:** Admit or deny that on November 23, 2021, you sent a text message
5 19 to phone number (360) 910-1019 from SMS Short Code 33959.
6 20 **ANSWER:**

7
8 **Defense Objection:** Same as Admission 301 #17-B above

9 **Plaintiff's Response:** See Plaintiff's response to Admission 301 #17-B

10
11 Admission 301 #34-B

12 21 **ADMISSION NO. 34:** Admit or deny that June 11, 2021 you used SMS short code 94657
13 22 to send a text message to (360) 910 1019.
14 23 **ANSWER:**

15 The defense accepted this RFA.

16
17 Admission 301 #35-A

18 1 **ADMISSION NO. 35:** Admit or deny that on November 25, 2021, you sent two text
19 2 messages to phone number (360) 910-1019 from SMS Short Code 33959.
20 3 **ANSWER:**

21
22 **Defense Objection:** Same as Admission 301 #17 above

23 **Plaintiff's Response:** See Plaintiff's response to Admission 301 #17-B

1 Admission 301 #35-B

4 **ADMISSION NO. 35:** Admit or deny that August 4, 2021, you used SMS short code
5 94657 to send a text message to (360) 910 1019.
6 **ANSWER:**

5 The defense accepted this RFA.
6

7 Admission 301 #35-C
8

9 **ADMISSION NO. 35:** Admit or deny that LENDING CLOUD HOMES was not on the
10 list of partners who might contact someone who “opts in” by providing a telephone number to
11 website educationschoolmatching.com during the times you allege Barton “opted in” and caused
12 you injury.
13 **ANSWER:**

14 The defense accepted this RFA.
15

16 Admission 301 #36-A

17 **ADMISSION NO. 36:** Admit or deny that on November 17, 2021, you sent three text
18 messages to phone number (360) 910-1019 from SMS Short Code 46758.
19 **ANSWER:**

20 **Defense Objection:** Same as Admission 301 #17-B above

21 **Plaintiff’s Response:** See Plaintiff’s response to Admission 301 #17-B
22
23
24

1 Admission 301 #36-B

2 16 **ADMISSION NO. 36:** Admit or deny that LENDING CLOUD AUTO was not on the list
3 17 of partners who might contact someone who “opts in” by providing a telephone number to
4 18 website educationschoolmatching.com during the times you allege Barton “opted in” and caused
5 19 you injury.
6 20 **ANSWER:**

7 The defense accepted this RFA.

8
9 Admission 301 #37-A

10 13 **ADMISSION NO. 37:** Admit or deny that on November 25, 2021, you sent three text
11 14 messages to phone number (360) 910-1019 from SMS Short Code 46758.
12 15 **ANSWER:**

13
14 **Defense Objection:** Same as Admission 301 #17-B above

15 **Plaintiff’s Response:** See Plaintiff’s response to Admission 301 #17-B

16
17 Admission 301 #37-B

18 3 **ADMISSION NO. 37:** Admit or deny that STARTER HOME INVESTING INC was not
19 4 on the list of partners who might contact someone who “opts in” by providing a telephone
20 5 number to website educationschoolmatching.com during the times you allege Barton “opted in”
21 6 and caused you injury.
22 7 **ANSWER:**

23 The defense accepted this RFA.

1 Admission 301 #47

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

ADMISSION NO. 47: Admit or deny that Lending Cloud Alerts was not on the list of partners who might contact someone who “opts in” by providing a telephone number to website educationschoolmatching.com during the times you allege Barton “opted in” and caused you injury.

ANSWER:

7 The defense accepted this RFA.

9 Admission 301 #48

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1 **ADMISSION NO. 48:** Admit or deny that on August 4, 2021 you sent a text message to phone number (360) 910 1019 that contained “Add your Rent, Netflix & Amazon Prime to your Credit Report to increase your Score! Start below, It’s Free <http://increasemyscore.live/358819495>”.

5 **ANSWER:**

15 The defense accepted this RFA.

17 Admission 301 #49-A

18
19
20
21
22
23
24

9 **ADMISSION NO. 49:**
10 Admit or deny that on July 13, 2021 you sent a text message to phone number (360) 910 1019
11 that contained “Each Person that used Round Up can receive \$15,000 in Compensation. Claim
12 yours below <http://rounduplawsuit.live/358819495>”.

14 **ANSWER:**

24 The defense accepted this RFA.

1 Admission 301 #49-B

2 14 **ADMISSION NO. 49:** Admit or deny that Income Tax Planning Group Inc was not on the
3 15 list of partners who might contact someone who “opts in” by providing a telephone number to
4 16 website educationschoolmatching.com during the times you allege Barton “opted in” and caused
5 17 you injury.
6 18 **ANSWER:**

7 The defense accepted this RFA.

8
9 Admission 301 #50

10 18 **ADMISSION NO. 50:** Admit or deny that on April 12, 2021 you sent a text message to
11 19 phone number (360) 910 1019 that contained “Complete this 60 second, 4 Question, Quiz to see
12 20 if you Quality for \$6300 in Job Training/School Grants <http://get-your-start.xyz/358819495>”.
13 21 **ANSWER:**

14 The defense accepted this RFA.

15
16 Admission 301 #51

17
18 7 **ADMISSION NO. 51:** Admit or deny that 1st Time Home Buyer Program Inc was not on
19 8 the list of partners who might contact someone who “opts in” by providing a telephone number
20 9 to website educationschoolmatching.com during the times you allege Barton “opted in” and
21 10 caused you injury.
22 11 **ANSWER:**
12 12

23 The defense accepted this RFA.

1 Admission 301 #52

2 16 **ADMISSION NO. 52:** Admit or deny that The Cardinal Program was not on the list of
3 17 partners who might contact someone who “opts in” by providing a telephone number to website
4 18 educationschoolmatching.com during the times you allege Barton “opted in” and caused you
5 19 injury.
6 20 **ANSWER:**

7 The defense accepted this RFA.

8
9 Admission 301 #55

10 19 **ADMISSION NO. 55:** Admit or deny that *apexpagebuilder.com* was not on the list of
11 20 partners who might contact someone who “opts in” by providing a telephone number to website
12 21 educationschoolmatching.com during the times you allege Barton “opted in” and caused you
13 22 injury.
14 23 **ANSWER:**
15 24

16 The defense accepted this RFA.

17 Admission 301 #56

18 3 **ADMISSION NO. 56:** Admit or deny that Experian was not on the list of partners who
19 4 might contact someone who “opts in” by providing a telephone number to website
20 5 educationschoolmatching.com during the times you allege Barton “opted in” and caused you
21 6 injury.
22 7 **ANSWER:**
23 8

24 The defense accepted this RFA.

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

Admission 301 #62 - A

17	<u>ADMISSION NO. 62:</u>
18	Admit or deny that you texted (360) 910 1019 during the month of November 2021.
19	<u>ANSWER:</u>

Defense Objection: Same as Admission 301 #17-B above

Plaintiff's Response: See Plaintiff's response to Admission 301 #17-B

Admission 301 #63

1	<u>ADMISSION NO. 63:</u>
2	Admit or deny that you texted (360) 910 1019 during the month of December 2021.
3	<u>ANSWER:</u>

Defense Objection: Same as Admission 301 #17-B above

Plaintiff's Response: See Plaintiff's response to Admission 301 #17-B

Admission 301 #136

18	<u>ADMISSION NO. 136:</u> Admit or deny that you do not dispute that the Amended
19	Complaint correctly identifies the entities whose offer was being solicited.
20	<u>ANSWER:</u>

Defense Objection:

Plaintiff, who alleges in his Amended Complaint Dkt 83, to have received nineteen alleged communications and/or attempted communications from at least seven different sources, combines these communications into one request and asks defendant to admit or deny

1 the seven different sources as if they were the same. Per FRCP 36(a),
2 Plaintiff's request must be set forth as seven separate requests and
3 because Plaintiff has failed to follow the rules, this is not a properly
4 presented request.

5 **Plaintiff's Response:** See Plaintiff's response to Admission 299 #40. Admission 301 #136
6 should stand.

7 Admission 301 #142

8 **ADMISSION NO. 142:** Admit or deny that you could have verified that Barton was the
9 person 'opting in' on EducationSchoolMatching.com by texting a code to the phone that had to
10 be entered into the website to complete the 'opt in'.

11 **ANSWER:**

12 **Defense Objection:**

13 Once again, Plaintiff creates the same hypothetical scenarios set forth in
14 Plaintiff's Notice of Stipulated Facts Dkt, 299. Federal Rules of Civil
15 Procedure rule 36(a), states in part, "A party may serve upon any other
16 party a written request for the admission, for purposes of the pending
17 action only, of the truth of any matters . . . that relate to statements or
18 opinions of fact or of the application of law to fact". The key word here
19 is "fact". Plaintiff again puts forth the same hypothetical scenarios in
20 which he states, "if" a person opting in were to do something and then
21 click on something else, this result would happen, or "if" Defendant
22 would have done this, this would have happened. Plaintiff attempts to
23 answer his own hypothetical scenario and request confirmation of his
24 hypothetical scenario from Defendant. This is not a properly presented
request designed to determine the truth of the request and is not a fact
that can be stipulated too. The three requests set forth below are
improperly presented requests for admissions as such cannot be
stipulated too as fact.

Plaintiff's Response: See Plaintiff's response to Admission 299 #52.

1 Admission 301 #143

21 **ADMISSION NO. 143:** Admit or deny that you could have verified that Barton was the
22 person who ‘opted in’ on EducationSchoolMatching.com by having a real person call the phone
23 number and verify the accuracy of the ‘opt in’.

5 1 **ANSWER:**

7 **Defense Objection: Same as RFA 301 #142 above.**

8 **Plaintiff’s Response: Same as RFA 301 #142 above.**

9
10 Admission 301 #144

11 6 **ADMISSION NO. 144:** Admit or deny that you could have used a reverse lookup to
12 7 identify if the “opt in” name matched Nathen Barton.

13 8 **ANSWER:**

14 **Defense Objection: Same as RFA 301 #142 above.**

15 **Plaintiff’s Response: Same as RFA 301 #142 above.**

16
17 Admission 301 #145

18 13 **ADMISSION NO. 145:** Admit or deny that you have no information that it was not a form
19 14 spammer who “opted in” and caused you injury.

20 15 **ANSWER:**

21
22 The defense accepted this RFA.

23
24 Admission 301 #146

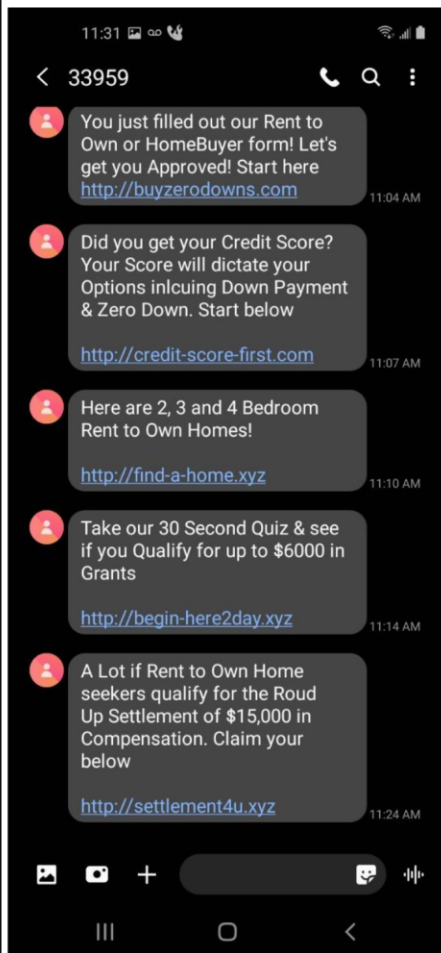
20 **ADMISSION NO. 146:** Admit or deny that the 'opt in' you allege caused you injury came
21 from a website that did not use any method to prevent fraudulent 'opt ins'.

22 **ANSWER:**

The defense accepted this RFA.

Admission 301 #165-A

2 **ADMISSION NO. 165:** Admit or deny that on the first day you allege Barton "opted in"
3 and caused you injury you sent each of the messages shown in the following image to phone
4 number (360) 910-1019.



21 **ANSWER:**

1 **Defense Objection:**

2 Plaintiff again attempts to combine multiple admissions into this one
3 request stating, “each of the messages shown”. Plaintiff’s request is not
4 properly requested and presents defendant with an all or nothing
response. This is not a properly presented request.

5 **Plaintiff’s Response:** See Plaintiff’s response to Admission 299 #40. Admission 301 #165-A
6 should stand.

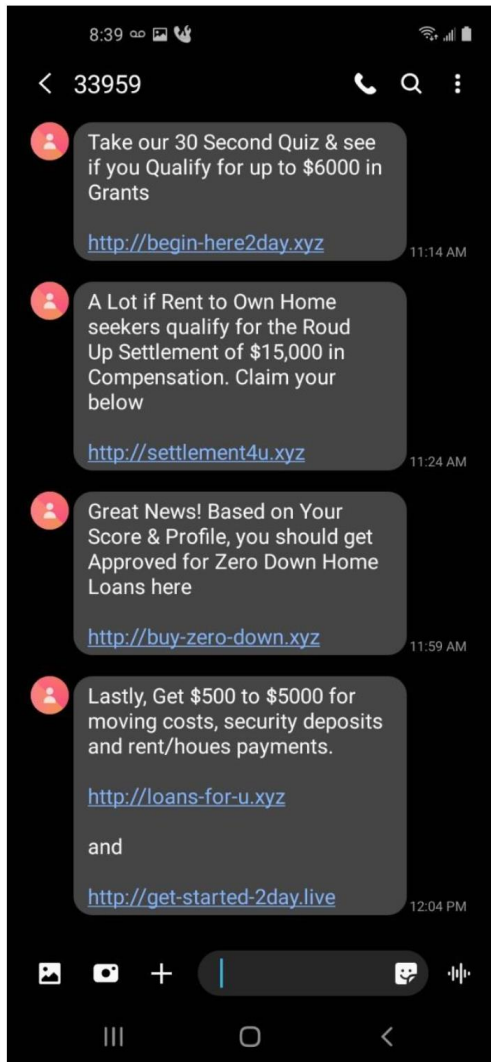
7
8 Admission 301 #165-B

9	22	<u>ADMISSION NO. 165:</u>	Admit or deny that Starter Home initiated a text message to phone
10	23		number (360) 910 1019 using the SMS Short Code 33959 on September 21, 2021.
11	24	<u>ANSWER:</u>	

12 The defense accepted this RFA.
13
14
15
16
17
18
19
20
21
22
23
24

Admission 301 #166

ADMISSION NO. 166: Admit or deny that on the first day you allege Barton “opted in” and caused you injury you sent each of the messages shown in the following image to phone number (360) 910-1019.



ANSWER:

Defense Objection:

Once again, Plaintiff again attempts to combine multiple admissions into this one request stating, “each of the messages shown”. Plaintiff’s request is not properly requested and presents defendant with an all or nothing response. This is not a properly presented request.

1 **Plaintiff's Response:** See Plaintiff's response to Admission 299 #40. Admission 301 #166
2 should stand.

3
4 **Dkt 303**

5 Admission 303 #9

6 7 **ADMISSION NO. 9:** Admit that on June 11, 2021, the *houses-into-homes.com* domain
7 8 used the internet name server *ns1.xanadumarketing.com*.
8 9 **ANSWER:**

9 The defense accepted this RFA.
10

11 Admission 303 #10

12 12 **ADMISSION NO. 10:** Admit that on June 11, 2021, *houses-into-homes.com* and
13 13 *xanadumarketing.com* were hosted through the same account on HIVELOCITY, Inc's servers.
14 14 **ANSWER:**

15 The defense accepted this RFA.
16

17 Admission 303 #22

18 19 13 **ADMISSION NO. 22:** Admit or deny that during all times relevant to this Lawsuit you
20 14 owned the website *renttoownhomefinder.com*.
21 15 **ANSWER:**

22 The defense accepted this RFA.
23

1 Admission 303 #23

2 19 **ADMISSION NO. 23:** Admit or deny that during all times relevant to this Lawsuit you
3 20 owned the website *houses-into-homes.com*.
4 21 **ANSWER:**

5 The defense accepted this RFA.

6
7 Admission 303 #24

8 3 **ADMISSION NO. 24:** Admit or deny that during all times relevant to this Lawsuit you
9 4 owned the website *apexpagebuilder.com*.
10 5 **ANSWER:**

11 The defense accepted this RFA.

12
13 Admission 303 #31

14
15 10 **ADMISSION NO. 31:** Admit or deny that during the times relevant to this Lawsuit, the
16 11 first day you texted (360) 910-1019, you texted that phone number 7 times.
17 12 **ANSWER:**

18 **Defense Objection:**

19 Improper Request: Federal Rules of Civil Procedure rule 36(a), states
20 that, “Each matter of which an admission is requested shall be separately
21 set forth”. Plaintiff is attempting to combine 7 separate occurrences into
22 one request. Plaintiff’s request does not comply with Federal Rule of
23 Civil Procedure rule 36(a), which states that, “Each matter of which an
24 admission is requested shall be separately set forth”. This is not a
properly presented request that can be stipulated too as fact.

1 **Plaintiff's Response:** See Plaintiff's response to Admission 299 #40. Admission #31 should
2 stand.

3
4 Admission 303 #105

5	17	<u>ADMISSION NO. 105:</u>	Admit or deny that the person who used and controlled the email
6	18		address ivettealfredomartinez@gmail.com is the person who caused you the injury you allege in
7	19		this Lawsuit
8	20	<u>ANSWER:</u>	

9 The defense accepted this RFA.

10
11 Admission 303 #125

12	11	<u>ADMISSION NO. 125:</u>	Admit or deny that you do not dispute the date that Amended
13	12		Complaint lists each text message as having been received.
14	13	<u>ANSWER:</u>	

15
16 **Defense Objection:**

17 Again, Federal Rules of Civil Procedure rule 36(a), states that, "Each
18 matter of which an admission is requested shall be separately set forth".
19 Plaintiff, who alleges in his Amended Complaint Dkt 83, to have
20 received thirteen text messages and six phone calls, two of which were
21 missed and went unanswered, now attempts to combine the dates of each
22 of the nineteen alleged communication into one request. According to
23 plaintiff, these alleged communications took place over five months.
24 Plaintiff's request is not properly requested and as such presents
Defendant with an all or nothing response. This is not a properly
presented request that can be stipulated too as fact.

23 **Plaintiff's Response:** See Plaintiff's response to Admission 299 #40. Admission #125 should
24 stand.

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

Admission 303 #126

18	<u>ADMISSION NO. 126:</u> Admit or deny that you do not dispute contents of each text
19	message listed in the Amended Complaint.
20	<u>ANSWER:</u>

Defense Objection:

Again. Federal Rules of Civil Procedure require that, “Each matter of which an admission is requested shall be separately set forth”. FRCP(36)(a). Plaintiff, again as in improper request 125 above, combines all nineteen alleged communications and/or attempted communications into one request. Nineteen alleged communications which took place over a period of five months are nineteen different and distinct occurrences that must be addressed separately. Plaintiff’s request is not properly requested that can be stipulated too as fact.

Plaintiff’s Response: See Plaintiff’s response to Admission 299 #40. Admission 303 #126 should stand.

Admission 303 #127

1	<u>ADMISSION NO. 127:</u> Admit or deny that you do not dispute that the Amended
2	Complaint correctly identifies the entities whose offer was being solicited.
3	<u>ANSWER:</u>

Defense Objection:

Yet again, Plaintiff, who alleges in his Amended Complaint Dkt 83, to have received nineteen alleged communications and/or attempted communications from at least seven different sources, combines these communications into one request and asks defendant to admit or deny the seven different sources as if they were the same. Plaintiff’s request is

not properly requested and presents defendant with an all or nothing response. This is not a properly presented request.

Plaintiff’s Response: See Plaintiff’s response to Admission 299 #40. Admission 303 #127 should stand.

Admission 303 #132

11	<u>ADMISSION NO. 132:</u>	Admit or deny that you do not dispute that the date the Amended
12		Complaint lists each text message as having been received is the date that the text message was
13		sent.
14	<u>ANSWER:</u>	

Defense Objection:

as stated in many of these statements of improper requests, the Federal Rules of Civil Procedure rule 36(a), states that, “Each matter of which an admission is requested shall be separately set forth”. Plaintiff, who alleges in his Amended Complaint Dkt 83, to have received nineteen alleged communications and/or attempted communications covering a span of 5 months, combines these communications into one request and asks defendant to admit or deny the different distinct dates as if they were the same. Plaintiff’s request is not properly requested and presents defendant with an all or nothing response. This is not a properly presented request.

Plaintiff’s Response: See *Choquette v. Warner*⁷ where a party was ordered to answer:

“Admit you ingested three or more controlled substances for which you did not have a prescription during any 12 month period in your life”

Choquette’s admission was an open ended “three or more” and “any 12 month period in your life”. Admission #132 should stand.

⁷ *Choquette v. Warner*, CASE NO. 3:15-CV-05838-BHS-JRC, 4 (W.D. Wash. Jun. 21, 2017)

1 Admission 303 #133

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

19	<u>ADMISSION NO. 133:</u> Admit or deny that you could have verified that Barton was the
20	person 'opting in' on <i>EducationSchoolMatching.com</i> by texting a code to the phone that had to
21	be entered into the website to complete the 'opt in'.
22	<u>ANSWER:</u>

6 **Defense Objection:**

7 As he did in both Dkt 299 and Dkt 301, Plaintiff creates the same
8 hypothetical scenarios. Federal Rules of Civil Procedure rule 36(a),
9 states in part, "A party may serve upon any other party a written request
10 for the admission, for purposes of the pending action only, of the truth of
11 any matters . . . that relate to statements or opinions of fact or of the
12 application of law to fact". The key word once again is "fact". Plaintiff
13 yet again puts forth the same hypothetical scenarios in which he states,
14 "if" a person opting in were to do something and then click on something
15 else, this result would happen, or "if" Defendant would have done this,
16 this would have happened. Again, Plaintiff attempts to answer his own
17 hypothetical scenario and request confirmation of such scenario from
18 Defendant. This is not a properly presented request designed to
19 determine the truth of the request and is not a fact that can be stipulated
20 too. The three requests set forth below are improperly presented requests
21 for admissions as such cannot be stipulated too as fact.

16 **Plaintiff's Response:** See Plaintiff's response to Admission 299 #52.

18 Admission 303 #134

19
20
21
22
23
24

5	<u>ADMISSION NO. 134:</u> Admit or deny that you could have verified that Barton was the
6	person who 'opted in' on <i>EducationSchoolMatching.com</i> by having a real person call the phone
7	number and verify the accuracy of the 'opt in'.
8	<u>ANSWER:</u>

23 **Defense Objection:** Same as RFA 303 #133

1 **Plaintiff’s Response:** Same as RFA 303 #133

2

3 Admission 303 #135

13	<u>ADMISSION NO. 135:</u> Admit or deny that you could have used a reverse lookup to
14	identify if the “opt in” name matched Nathen Barton.
15	<u>ANSWER:</u>

7

Defense Objection:

8

This request is the same request made in Dkt 301, as request 144. Plaintiff once again does not ask that Defendant admit or deny a fact that can be stipulated too, but rather that Defendant respond to the same hypothetical scenario. Defendant had no knowledge of anyone named Nathen Barton. As stated above, a reverse lookup would have provided Defendant with the name provided in the opt-in. Such report would have helped in confirming that the phone number in question is associated with the name used to opt-in. By following Plaintiff’s suggestion Defendant would have further believed that they had been contacted by the person whose name appeared on the opt-in and not an imposter soliciting calls so as to file another lawsuit. This is not a properly presented request designed to determine the truth of a fact.

9

10

11

12

13

14

15

Plaintiff’s Response: See Plaintiff’s response to Admission 299 #52.

16

17

18 Admission 303 #136

19	<u>ADMISSION NO. 136:</u> Admit or deny that you have no information that it was not a form
20	spammer who “opted in” and caused you injury.
21	<u>ANSWER:</u>

21

22 The defense accepted this RFA.

23

24 Admission 303 #137

4 **ADMISSION NO. 137:** Admit or deny that during all times relevant to this lawsuit you did
5 not use any method on *EducationSchoolMatching.com* to prevent a fraudulent 'opt in'.

6 **ANSWER:**

4 The defense accepted this RFA.

6 Admission 303 #146

8 **ADMISSION NO. 146:** Admit or deny that *EducationSchoolMatching.com* did not take
9 any measures to prevent 'opt ins' from spoofed IP addresses during the times of the alleged 'opt
10 ins' by Barton that caused you harm.

11 **ANSWER:**

12 The defense accepted this RFA.

14 Admission 303 #147

9 **ADMISSION NO. 147:** Admit or deny that affiliate marketers could earn money from 'opt
10 ins' on *EducationSchoolMatching.com* during times relevant to this lawsuit.

11 **ANSWER:**

19 The defense accepted this RFA.

Conclusion

Barton points out the following to the Court. At the 1/29/2024 hearing, Barton asked the Court to rule on his Motion in Limine (Dkt 305) section G because the defendants have admitted a key fact (Dkt 276,4:3-6), allowing the Court to dismiss their counterclaim.

3	The Court grants plaintiff's motions as to allegations that he opted in via
4	renttoownhomefinder.com. See Dkts. 257 at 2; 259 at 2. Plaintiff provides an admission from
5	defendants that plaintiff <i>only</i> opted in from educationschoolmatching.com. See Dkt. 258-7 at 28.
6	There is no evidence that defendants ever amended their answer.

The Court said on 1/29/2024 that it punted on this issue because it didn't know if the RFA above was part of RFA's at issue in Dkts 299, 301, or 303:

2	THE COURT: That's one of the other reasons, now that
3	you mention it, I didn't want to rule on motions in limine
4	because some deal with the RFAs. I wasn't trying to cross
5	reference to see which ones are part of the 130 versus which
6	ones might be part of the 345. I was like, forget this, I am
7	not going to do this right now, which is why I want you all
8	to go back and look at this.

However, in Dkt 258-7 page 28 (which Judge Creatura relied on in Dkt. 276) the Court can see the Defendants actively made that admission, and signed off on the admission (Dkt. 258-7 page 35). It is not a deemed admission:

1
2
3
4 **ADMISSION NO. 69:** Admit or deny that the only “opt ins” you allege Barton to have
5 committed that caused you injury occurred on the website *educationschoolmatching.com*.

6 **ANSWER:**

7 Admitted that at this time it has been determined that Plaintiff opted into marketing
8 campaigns through website *educationschoolnatch.com*.

6 At the 1/29/2024 hearing the Court clearly ruled that because the defendants signed off
7 on Admission 69 above, is not subject to withdrawal:

8 20 If you have admitted something already, that means you
9 21 understood what it means and that is going to be allowed. It
10 22 is only these 130 that are not until -- unless they are
11 23 proper.

12 The only other concern the Court had in ruling on Section G was *if* the admission above
13 was only admitted for the purposes of defeating a summary judgement motion.

14 4 THE COURT: I would have to go back and look at his
15 5 wording. I think, and I could be wrong, I would have to go
16 6 back again to look. I thought, if I recall correctly, he
17 7 said something to the effect: For purposes of the summary
18 8 judgment motion, it was deemed admitted. Thereby, it created
19 9 a question of fact that would defeat the motion for summary
20 10 judgment. I could be wrong on the exact wording, but that is
21 11 what is in my mind right now.

22 Dkt 276 only mentioned one admission – this one – and outside of Dkt 276,4:3-6 it was
23 never mentioned again. Nothing in Dkt. 276 spoke of something admitted only for the purposes

1 of Dkt. 276. The Court can now see this Dkt 276 admission is not a contested admission. This is
2 highly relevant because the Defendants made the following admission:

3	11	<u>ADMISSION NO. 1:</u>	Admit or deny that on April 1, 2021, Starter Home sent a text
4	12		message to phone number (360) 910 1019 for the purpose of advertising goods or services from
5	13		Degree Locate.
6	14	<u>ANSWER:</u>	
7	15		Admitted

8 The Defendants do not object to the following (Admission 301 #2) that is part of the 130:

9	18	<u>ADMISSION NO. 2:</u>	Admit or deny that before you sent a text message on April 1,
10	19		2021, to phone number (360) 910 1019 advertising goods or services from Degree Locate, you
11	20		did not have the invitation or consent from Barton to do so.
12	21	<u>ANSWER:</u>	

13
14 The Defendants made the following admission:

15	4	<u>ADMISSION NO. 3:</u>	Admit or deny that on April 1, 2021, Starter Home sent a text
16	5		message to phone number (360) 910 1019 for the purpose of advertising goods or services from
17	6		Get Hope To Own.
18	7	<u>ANSWER:</u>	
19	8		Admitted

20 The Defendants do not object to the following (Admission 301 #4) that is part of the 130:
21
22
23
24

12 **ADMISSION NO. 4:** Admit or deny that before you sent a text message on April 1,
13 2021, to phone number (360) 910 1019 advertising goods or services from Get Hope To Own,
14 you did not have the invitation or consent from Barton to do so.

15 **ANSWER:**

6 The Defendants made the following admission:

20 **ADMISSION NO. 5:** Admit or deny that on April 1, 2021, Starter Home sent a text
21 message to phone number (360) 910 1019 for the purpose of advertising goods or services from
22 *credit-score-first.com*.

23 **ANSWER:**

24 Admitted

12 The Defendants do not object to the following (Admission 301 #6) that is part of the 130:

5 **ADMISSION NO. 6:** Admit or deny that before you sent a text message on April 1,
6 2021, to phone number (360) 910 1019 advertising goods or services from *credit-score-first.com*,
7 you did not have the invitation or consent from Barton to do so.

8 **ANSWER:**

18 The defendants have admitted texting Barton's phone number at least twice on April 1,
19 2024, without invitation or consent, which was the point of Barton's Dkt 305 motion in limine
20 Section G. The defendants' counterclaim should be dismissed due to the above six admissions,
21 or because of the admission in Dkt. 305 section G. Trial preparation and trial on a counterclaim
22 that is already resolved is a waste of everyone's time.

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

/s Nathe Barton
Nathen Barton

3/22/2024
Dated

Nathen Barton
(469) 347 2139
4618 NW 11th Cir
Camas WA 98607
bluewind33@protonmail.com

DECLARATION OF NATHEN BARTON

My name is Nathen Barton and I live at 4618 NW 11th Cir, Camas WA 98607. I am over the age of eighteen, and otherwise competent to be a witness in this matter. Except as expressly set forth herein, I make this declaration in my personal capacity and based on my personal knowledge.

- The screenshots of admission requests are true and correct.
- The screenshots of admission requests and any responses thereto are true and correct.
- The text of their objections is true and correct.
- The screenshots of the 1/29/2024 court transcript are true and correct.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

<u>/s/ Nathen Barton</u>	<u>3/22/2024</u>	Signed in Camas Washington
Signed by Nathen Barton	Date	Clark County

I. CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2024, I electronically filed the foregoing with the Clerk of the Court using the Court’s CM/ECF System, which will automatically generate a Notice of Electronic Filing to all parties in the case who are registered users of the CM/ECF System, which includes the Defendant. The said Notice of Electronic Filing specifically identifies recipients of electronic notice.

/s/ Nathen Barton

Nathen Barton