

Honorable David G. Estudillo

**UNITED STATES DISTRICT COURT  
IN AND FOR THE WESTERN DISTRICT OF WASHINGTON**

NATHEN BARTON,

Plaintiff,

vs.

JOE DELFGAUW, XANADU  
MARKETING INC., STARTER HOME  
INVESTING INC., & JOHN DOE 1-10  
Defendants.

) Case No. 3:21-cv-05610-DGE  
)  
) RESPONSE TO MOTION FOR PARTIAL  
) SUMMARY JUDGMENT ON PLAINTIFF'S  
) CLAIMS  
)  
) NOTED ON MOTION CALENDAR FOR  
) 12/10/24 AND RENOTED BY COURT  
)  
)  
)  
)

COMES NOW Defendants JOE DELFGAUW, XANADU MARKETING INC., STARTER HOME INVESTING INC., and respond to Plaintiff's Motion for Partial Summary Judgment on Plaintiff's Claims. This motions is based on the following brief and the records and files herein.

Dated: January 2, 2025

s/Donna Gibson  
Donna Gibson, WSBA #33583  
Attorney for Defendants  
JOE DELFGAUW, STARTER HOME  
INVESTING, INC. and XANADU MARKETING INC  
103 E Holly St, Suite 313  
Bellingham, WA 98225  
(206) 242-5529  
[donna@donnagibsonlaw.com](mailto:donna@donnagibsonlaw.com)

RESPONSE TO MOTION FOR PARTIAL SUMMARY  
JUDGMENT- 1  
3:21-cv-05610-DGE -

LAW OFFICE OF DONNA BEASLEY GIBSON  
103 E Holly St Suite 313  
Bellingham, WA 98225

1                                   **RESPONSE TO MOTION FOR PARTIAL SUMMARY JUDGMENT**

2                                   **Mr. Barton Has Not Met His Burden of Proof for Summary Judgment.**

3                                   The moving party bears the initial responsibility for informing the Court of the basis for its  
4 motion and identifying those portions of the pleadings, depositions, interrogatory answers,  
5 admissions and affidavits, if any, that it contends demonstrate the absence of a genuine issue of  
6 material fact. See *Celotex Corp. v. Catrett*, 477 U.S. 317,323 (1986).

7  
8                                   Mr Barton has included a declaration in the body of his motion for summary judgment.  
9 That declaration as improperly before the court and any effort to correct that should be denied as he  
10 has had plenty of time to fix it and knows that the declaration should be a separate document as he  
11 has filed dozens of motions in this case and his other matters. That declaration is slightly different  
12 from the Declaration that does appear as a separate document at Dkt 424 “Declaration of Nathen  
13 Baron in Support of the Motion for Partial Summary Judgment.” *See court docket.*

14  
15                                   In both declarations he references several videos and they are not noted as exhibits attached  
16 to his Declaration in Docket 424. They are not referenced in any of the subsequent docket entries in  
17 this case as of this date. As of this date there are 442 entries in the court docket and none of them  
18 reference or include these videos or any other attachment with that name or anywhere to access  
19 them. Further, counsel questions whether this Court – or any reviewing court-- is going to take the  
20 time to look at and listen to videos in ruling on this motion for partial summary judgment. There is  
21 no summary of what the videos are or what they encompass or how they are relevant. Defendants,  
22 pursuant to LCR 7(g) ask the court to strike any reference to them as they are not properly before the  
23 court.  
24

25  
26                                   Therefore, Defendants respectfully request this Court strike and not consider NB 324, NB  
27 310, NB 311, NB 392, NB 396, NB 349, NB 402, and NB 411 as they are not submitted in support

1 of this motion, and not properly before this court and should not form the basis for evidence or facts  
2 or anything to be considered regarding this motion.

3 **DEFENDANTS' CORRECTION OF FACTS**

4 Mr. Barton's continued misuse of legal terms and the process has convoluted this case to no end.  
5 First of all, Dkt. 252 to which Barton cites for support of the "fact" that he received texts and calls is a  
6 declaration attached to Mr. Barton's Motion for Summary Judgment filed in November of 2022. That  
7 document is not "testimony." and should not be taken as such. It is undisputed, however, that text  
8 messages were sent to [phone number (360) xxx- 1019] by Xanadu Marketing Inc and Starter Home  
9 Investing, Inc. on behalf of affiliate marketing partners. See Decl. of Joe Delfgaw. It is also undisputed  
10 that Joe Delfgaw is the President of these entities: Xanadu Marketing Inc. and Starter Home Investing  
11 Inc. It is stipulated that Xanadu Marketing Inc and Start Home Investing Inc are entities owned by Joe  
12 Delfgaw, or rather, they are corporations of which Joe Delfgaw is the sole shareholder. See  
13 Declaration of Joe Delfgaw. However, the amount of contacts (texts/calls) as set forth in Mr. Barton's  
14 table and his motion is not stipulated to.  
15  
16  
17

18 Mr. Barton has documented certain text messages and phone calls in his Complaint and  
19 Amended Complaint and in his Declaration at Docket 252. Those are set forth and documented in the  
20 table in the motion to which defendants are responding; however that table also includes texts/calls that  
21 are not documented and have not been stipulated to or documented by Mr. Barton. He does not supply or  
22 cite to any support to evidence what these are or when they were supplied to defendants. Therefore,  
23 ONLY those texts and calls that are cited and referenced in Docket 252 or in his complaint are stipulated  
24 to at this time, as those are the only ones that defendants have been made aware being at issue in this  
25 lawsuit. The defendants ONLY stipulate to those which have previously been disclosed and documented  
26 to have originated from numbers or SMS codes directly owned by Xanadu Marketing Inc and Starter  
27

1 Home Investing inc. and have been sent to the 1019 phone number.

2 It is **not** stipulated and further it is disputed and denied by Defendants that phone numbers (360)  
 3 318-7867, (360)-230-6935; (360) 203-6631, (360) 203-6632, (360) 203-6633, (360) 203-6634 are  
 4 numbers that are registered to or controlled by either Xanadu Marketing Inc or Starter Home Investments  
 5 Inc. See Declaration of Joe Delfgauw . Those numbers are not owned or operated by any of the named  
 6 Defendants and Mr. Barton has provided no information to establish that they are. He has not because  
 7 they are not. *Id.* They are owned by entities that are not brought in this lawsuit and therefore are not  
 8 subject to this lawsuit. Thus, the court does not have jurisdiction or authority to rule on those texts and  
 9 calls other than to determined they are not subject to this lawsuit. Any effort by Mr. Barton to later amend  
 10 his lawsuit to include the correct entity would be extremely untimely.  
 11  
 12

13 The only calls that are subject to this lawsuit and this motion to which Defendants will stipulate  
 14 should be as follows:

Date	Call/Text	Calling Number	The screenshot location
4/1/2021	7 texts	<b>33959</b>	Dkt. 252 ¶10 & ¶11, NB307 & NB308
4/2/2021	1 text	(803) 618-8038	Dkt. 252 ¶12
4/5/2021	1 text	365365	Dkt. 252 ¶13NB385
4/8/2021	1 text	365365	Dkt. 252 ¶13NB385
4/12/2021	1 text	<b>33959</b>	Dkt. 252 ¶14 NB337
6/11/2021	1 text	94657	Dkt. 252 ¶17 NB395
7/13/2021	1 text	<b>33959</b>	Dkt. 252 ¶18NB343
8/4/2021	1 text	94657	Dkt. 252 ¶19 NB400
8/11/2021	1 text	33959	Dkt. 252 ¶18 NB347

1	9/21/2021	1 text	33959	Dkt. 252 ¶20 NB355
2	11/17/2021	1 text	33959	Dkt. 252 ¶21 NB362
3	11/17/2021	3 texts	46758	Dkt. 252 ¶22NB410 & NB312
4	11/23/2021	1 text	33959	Dkt. 252 ¶23NB365
5	11/25/2021	2 texts	33959	Dkt. 252 ¶24NB368
6	11/25/2021	3 texts	46758	Dkt. 252 ¶25NB417 & NB418
7	12/6/2021	2 texts	33959	Dkt. 252 ¶26 NB373
8	12/6/2021	4 texts	46758	Dkt. 252 ¶27NB422 & NB423
9	12/9/2021	2 texts	33959	Dkt. 252 ¶29NB377
10	12/9/2021	4 texts	46758	Dkt. 252 ¶30NB428 & NB429
11	12/17/2021	2 texts	33959	Dkt. 252 ¶ 32NB380
12	12/17/2021	4 texts	46758	Dkt. 252 ¶33NB435 & NB436

16  
17 Additionally, Mr. Barton puts much emphasis on the stipulated facts document that was filed at  
18 Docket 378. Defendants are drafting for filing a separate motion for the court to find that stipulation is  
19 void based on mistake, fraud and a lack of meeting of the minds. If the court were to look at the  
20 documents and other evidence (as opposed to the Stipulation which is at issue) the court would find there  
21 is no basis for that stipulation and decide this case on the facts.

22  
23 Barton argues on page 26 that “if the Defendants had not deleted the call records Barton  
24 wouldn’t need to rely on his own testimony.” Barton has not been forthright with this court or  
25 Defendants. He did not include all the calls he felt he had received in any of the multiple times he  
26 amended his complaint, and Defendants cannot properly defend this lawsuit if he is going to bring up  
27 calls that are outside the scope of this lawsuit and are from entities not named in this suit. Further,  
28

1 Defendants did not “delete” calls. It was always Mr. Delfgauw and the entities’ position that a software  
2 update deleted some information and it is only recently that that information was discovered off-site with  
3 a third party. *See* Declaration of Joe Delfgauw, specifically Exhibit A.. (Again, Mr. Barton in his motion  
4 for summary judgment is referring to other motions as support for his “facts”. He cites for support of  
5 this “fact” of “deleting calls” Dkt 412 which is a Motion for Sanctions filed by Mr. Barton and Dkt 418 is  
6 Motion for Reconsideration the Court’s denial of sanctions. Neither of these motions – which are  
7 argument-- are “evidence” or “facts” that the court can use to determine summary judgment). Only  
8 undisputed facts, taken in the light most favorable to the non-moving party can be considered by this  
9 court. Summary judgment must be denied if, "viewing the evidence in the light most favorable to the  
10 non-moving party," there are genuine issues of material fact. *Leisek v. Brightwood Corp.*, 278 F.3d 895,  
11 898 (9th Cir.2002); *Nolan v. Heald College*, 551 F.3d 1148 (9th Cir. 2009).

14 Barton argues that the “Court has yet to rule on that the Defendants cannot benefit from the  
15 willful destruction of calling records.” (Motion, page 26) True, the court has not decided whether that  
16 occurred or how it is to play out or anything on those motions; therefore it is not a determined issue in  
17 this case. Thus, Barton cannot rely on that or put it forth at this juncture as a “fact”. Further, the court has  
18 not determined, nor has Barton presented ANY evidence to support that proposition in this motion or the  
19 other two motions he references. It is mere conjecture. Those motions have declarations by counsel and  
20 by Mr. Delfguaw to support Defendants’ positions. (If the court is going to consider Barton’s proposition  
21 in this motion, then Defendant’s refer to their responses and incorporate them. If not, then it is irrelevant  
22 to this motion.)  
23

24 //

25 //

1 **Barton Cannot Prove That There are No Material Issues of Fact as to All Elements of His**  
2 **TCPA 64.1200(c)(2) Claim**

3  
4 Again, Barton is confusing and conflating the process, procedures and documents as well  
5 as the status of facts and arguments. He cites dkt 395 (which is proposed jury instructions.) for the  
6 basis of support of an agreement to the elements of his TCPA claim. The court has not issued those  
7 jury instruction, acted on them, adopted them, or otherwise given them to a jury because they are  
8 proposed and not part of the case as of this juncture. *See* Docket. The defendants will, however,  
9 agree that the elements of a TCPA claim are, pursuant to the TCPA CFR Title 47 §64.1200(c)(2) :

- 10  
11 1) the defendant initiated two or more calls to a residential telephone number, or  
12 someone else initiated the calls on the defendant's behalf.

13  
14 Short response: There is an issue as to whether the number is residential. So  
15 there is no agreement or stipulation and this element is in dispute.

- 16  
17  
18 2) the called phone number was registered on the FTC's National Do-Not-Call  
19 Registry more than 31 days before each call

20  
21 Short response: This may be true, however this can be rebutted by a showing of  
22 consent or an opt -in .

- 23  
24 3) the calls were initiated for the purposes of encouraging the purchase or rental  
25 of, or investment in, property, goods, or services.

26  
27 Short response: **Defendants concur on this element.**

1 4) the calls were initiated without the prior express consent of the called party.

2 Short response: This is at issue, especially in light of the recording that were  
3 discovered.  
4

5  
6 **Defendants' Position Is That the Phone Number In Question Is Not Barton's Residential Number**

7 Although the TCPA and its governing regulations do not define "residential telephone  
8 number". Barton would have the court think that in *Barton v. LeadPoint, Inc.*, No. 22-35130, 2-3  
9 (9th Cir. Jul. 20, 2023) the Ninth Circuit supports a finding that the number at issue in this litigation is  
10 residential. He cites to and argues this in this his pleading at page 4 lines 16-22:  
11

12 In *Barton v. LeadPoint, Inc.*, No. 22-35130, 2-3 (9th Cir. Jul. 20, 2023) the Ninth Circuit held  
13 a phone number on the national do-not-call registry is presumptively residential. Even if it  
14 wasn't, Kerrie Barton's testimony in Dkt 388-1 and Barton's own in-court testimony  
15 establishes it. The Court already backdoor ruled it is in Dkt. 276: *Courts have declined to find*  
16 *TCPA plaintiffs lack standing where the phone number [at issue] was not procured for the*  
17 *express purpose of receiving calls on which to base future TCPA litigation. Id* at 10, 3:5  
18  
19 Dkt 423, page 4, lines 26-22. However, Barton does not include the crux of what that ruling states. It  
20 states:  
21

22 **Barton does not have a cause of action under the TCPA because the number that**  
23 **received the messages prompting this action is not a residential phone number within the**  
24 **meaning of the TCPA.** [citation deleted] Although a phone number on the national do-not-  
25 call registry is presumptively residential, that presumption can be rebutted by considerations  
26 such as(1) how the plaintiff "hold[s][his]phone number[ ]out to the public"; (2) whether the  
27  
28

1 phone number is “registered with the telephone company as[a]residential or business line[]”;  
2 (3) how much the plaintiff” use[s] [his] phone[] for business or employment”; (4) “who pays  
3 for the phone bills”; and (5) “other factors bearing on how a reasonable observer would view  
4 the phone line.” *Chennette v. Porch.com, Inc.*, 50 F.4th 1217, 1225(9th Cir. 2022).

5  
6 Barton has made no representation that he uses the (718) area code number for anything  
7 other than court filings.  
8

9 *Barton v. LeadPoint*, 22-35130, 22-35691, memorandum attached to Declaration of Donna Gibson.

10 And the 9<sup>th</sup> Circuit held that the district court **did not** err in dismissing Barton’s complaint  
11 based on his number **not** being a residential number, .Mr. Barton’s registered home phone number is  
12 the **972** phone number. *Id.* That ruling was upheld.  
13

14 Research of his cases shows that Mr. Barton has asserted multiple residential phone numbers  
15 according to his lawsuits. For example, a 718 number formerly belonging to Wendy Wilson; (360)  
16 989 number formerly belonging to Franchesca Perez, a (972) number which was determined to be his  
17 primary number in *LeadPoint*, and (469) 347 number formerly belonging to Antonio Huerta. And  
18 the number that is the subject of this lawsuit which has a (360) area code and ends in 1019.  
19

20 *Declaration of Joe Delfgauw.*

21 The number at issue in this lawsuit is not Mr. Barton's primary number. The Ninth Circuit  
22 already ruled that the 972 number is Mr. Barton’s residential number during the time frame that Mr.  
23 Barton brought this lawsuit. *LeadPoint* was filed May 19, 2021. The instant case was filed August  
24 23, 2021, and involved calls stating April 2021. So, pursuant to *res judicata*, the court has already  
25 determined that the 972 number (which Mr. Barton still uses) is his residential number.  
26  
27  
28

1 The court can end this suit by finding that the number that is the subject of the *LeadPoint*  
2 lawsuit is Bartons’ residential number and that one that is the subject of the instant lawsuit is not and  
3 this case would –and should—be over. However, at a minimum it is a genuine issue of material fact  
4 and therefore the court cannot find summary judgment in favor of Mr. Barton.  
5

6 **Defendants Contend That There Was Consent, Via Opt-Ins and Interacting With Links In The**  
7 **Text Messages Or Responding To Calls.**

8  
9 Calls placed with the express consent of a called party are not actionable under the TCPA. See  
10 47 U.S.C. § 227(b)(1)(A)

11 **Barton Opted-In which Is Express Consent**  
12

13 Contrary to what Mr. Barton presents, it is contested that “collectively, the Defendants  
14 telephone solicited the 1019 phone number without consent on any level.” There was an opt-in on  
15 April 1, 2021. *See Declaration of Joe Delfgaw.* Barton opted in because when he opted in, he  
16 interacted with text message and we know that because the IP address that corresponds with the opt-  
17 in, is the same IP address matches the corresponding click from the text messages. *Id.*, Ex. C. The  
18 Opt-In IP address was 71.238.123.34. The IP address from the text was 71.238.123.34. . There is  
19 no way that it would have been from anyone else other than the person who had that cell phone .  
20

21 Further, based on the newly-discovered recordings, he is recorded interacting with the text  
22 message, which constitutes an opt-in. *See Declaration of Joe Delfgaw*, specifically Exhibit B.  
23

24 To understand how contact from Xanadu Marketing, Starter Homes or their affiliates works,  
25 someone goes to one of defendants’ or their affiliates’ websites. And fills in their name, email and  
26 phone number and then need to check a box. The checking of the box is consent; that box is not pre  
27 checked, a person actually has to check the box when they check that box. It says right on the check,  
28

1 “I agree to receive solicitations calls to up to 3 times per week, as many times as 3 times per week,  
2 possibly more.” A person can click a button on the websites and it would list all of the partners.

3 A sample is as follows:

4

5

6

7

8 **Enter Your Info Below**

9 First Name

10 Last Name

11 Phone Number

12 Email Address

13

14

15  By checking and clicking submit, I agree and expressly grant my consent to the site  
16 and their partners\* to contact me regarding programs and offers via email or  
17 telephone using automated technology to any wireless number I have provided in  
18 order to provide me with important information and exclusive offers. I understand that  
19 message & data rates may apply. I also acknowledge that I may receive up to 3  
20 messages per week. Reply STOP to the message to end all messages. Text HELP for  
21 customer service or call (800) 370-6254. I have read and agree to the Terms of Service  
22 and the Privacy Policy. Consent to such promotional message is not a condition of  
23 purchase.\*

24 **SUBMIT**

21 See Declaration of Joe Delfgaw.

22 Barton interacted with links provided in text messages and pretended to be someone else –  
23 the former owner of the phone numbers. He asserts that he received the first text message on April  
24 1, 2021, and that the message stated, “You just filled out our Rent to own or HomeBuyers form!  
25 Let’s get you Approved!”. Dkt 83 at 4. This is a response message generated in response to  
26 someone’s completion and submission of the online opt-in form. See screenshots taken of  
27

1 <https://renttoownhomefinder.com> at Declaration of Joe Delfgauw Exhibit D. As Exhibit D shows,  
2 someone would have had to have gone to the website and advance through three screens, in order to  
3 have reached the point where he could have filled out the form that generated the response message  
4 he received. The first screen asks him to, “Choose Your Desired Home Style” and upon doing that a  
5 second screen appears that asked him, “Do You Have Pets?”. After answering yes or no to the pet’s  
6 question, Counter defendant was taken to a third screen that asked, “When do you need to move  
7 by?”. *Id.*

9 After advancing through these three screens, someone arrived at the fourth screen which  
10 required him to provide information and to check the box giving consent to be contacted, all prior to  
11 clicking on the submit button. Without advancing through these three screens and providing  
12 information and consent required on the fourth screen, Defendants would not have had the  
13 information needed to send the response message that Barton claims to have received. *Id.*

15 “While there is a minority of courts that have found otherwise, the great weight of authority  
16 holds that an individual who knowingly provides his telephone number to another party without  
17 limiting instructions has given prior express consent to receive calls at that number from that party.”  
18 *See Daniel v. Five Stars Loyalty, Inc.*, No. 15-CV-03546-WHO, 2015 WL 7454260, at \*6 (N.D. Cal.  
19 Nov. 24, 2015). In its 1992 order interpreting the TCPA, the FCC observed that persons who  
20 knowingly release their phone numbers have in effect given their invitation or permission to be  
21 called at the number which they have given, absent instructions to the contrary. Hence, telemarketers  
22 will not violate our rules by calling a number which was provided as one at which the called party  
23 wishes to be reached. 7 F.C.C. Rcd. 8752 ¶ 31 (1992)

26 Further, if consent is received, it is valid for 18 months. The TCPA says that an opt in is  
27 valid for 18 months. The terms of service for Delfgauw’s entities states that there would be up to 3

1 text messages a week from any partner. The only way a number would be in the computer systems  
2 is for someone to have opted-in, provided their number. And that is what Barton did—or someone  
3 who had the phone prior to him, or on his behalf.  
4

5  
6 **JOE DELFGAUW IS NOT PERSONALLY LIABLE**

7 The standard for personal liability is not met in this case. Washington caselaw sets forth  
8 that:

9 A corporation exists as an organization distinct from the personality of its  
10 shareholders. *State v. Northwest Magnesite Co.*, 28 Wash.2d 1, 182 P.2d 643 (1947). When  
11 the shareholders of a corporation, who are also the corporation's officers and directors,  
12 conscientiously keep the affairs of the corporation separate from their personal affairs, and  
13 no fraud or manifest injustice is perpetrated upon third-persons who deal with the  
14 corporation, the corporation's separate entity should be respected. *Frigidaire Sales Corp. v.*  
15 *Union Properties, Inc.*, 88 Wash.2d 400, 562 P.2d 244 (1977).  
16  
17 *Grayson v. Nordic Construction Co.*, 92 WN.2d 548, 599 Pd.1271 (1979).

18  
19 Mr. Delfgauw has not met the standard for which courts have found personal liability. For  
20 example:

21 Personal liability was found when officers personally participated in tortious  
22 acts. *Harrigan-Peach*, 79 Wn.2d at 753 (officers liable where they participated in fraudulent acts  
23 and maintained close control); *State v. Ralph Williams' NW Chrysler Plymouth, Inc.*, 87 Wn.2d 298,  
24 322, 553 P.2d 423 (1976) (officer personally responsible for many of the company's unlawful acts  
25 that violated the Consumer Protection Act (CPA), chapter 19.86 RCW); *Grayson*, 92 Wn.2d 548,  
26 551, 554, 599 P.2d 1271 (1979) (officer who drafted and directed the mailing of brochure containing  
27

1 deceptive advertising in violation of the CPA held liable). That is not case with Mr. Delfgaw In  
2 the *Grayson*, case the Washington Supreme Court found that the alter ego theory, upon which the  
3 trial court pierced the corporate veil and imposed personal liability upon Bergstrom was properly  
4 applied when the corporate entity has been disregarded by the principals themselves so that there is  
5 such a unity of ownership and interest that the separateness of the corporation has ceased to  
6 exist. *Kueckelhan v. Federal Old Line Ins. Co. (Mut.)*, 69 Wash.2d 392, 418 P.2d 443 (1966); *J. I.*  
7 *Case Credit Corp. v. Stark*, (64 Wash.2d 470, 392 P.2d 215 (1964)); *W. G. Platts, Inc. v. Platts*, 49  
8 Wash.2d 203, 298 P.2d 1107 (1956); *In re Estate of Trierweiler*, 5 Wash.App. 17, 486 P.2d  
9 314 (1971). *Burns v. Norwesco Marine, Inc.*, 13 Wash.App. 414, 418, 535 P.2d 860, 863 (1975).

10  
11  
12 There was no evidence in the case at issue that corporate records or formalities were not  
13 kept, nor does the record indicate an overt intention by Mr. Delfgaw to disregard the corporate  
14 entity.

15 If a corporate officer participates in wrongful conduct or with knowledge approves of the  
16 conduct, then the officer, as well as the corporation, is liable for the penalties. *State v. Ralph*  
17 *Williams' North West Chrysler Plymouth, Inc., supra*; *Johnson v. Harrigan-Peach Land Dev.*  
18 *Co.*, 79 Wash.2d 745, 489 P.2d 923 (1971). Mr. Delfgaw does not monitor or participate in the text  
19 sending of Starter Homes Investing Inc and Xanadu Marketing Inc. He did not decide which  
20 numbers get contacted and which do not. He has safeguards in place to only use numbers that were  
21 provided through opt-ins.  
22

23 Here, Mr. Delfgaw does not have “personal participation in” nor does he “personally  
24 authorize the conduct of the corporations sued. Although he has less than five employees,  
25 according to Mr. Delfgaw, he has trained two employees, Anna Cole (who has been an employee  
26 since 2016) and Jason Parish how to operate the system. When someone opts in, a computer  
27

1 automatically sends text message to that number. It is basically plugging information obtained from  
2 a database into a script, much like taking information from a spreadsheet into a form letter. Mr.  
3 Delfgauw did not write the program or provide the information, he does not enter the information, he  
4 does not routinely verify the information. He is not personally liable for the actions. He is not  
5 involved in that level of daily operations of the companies  
6

7 He should not be found personally liable.

8 **CONCLUSION**

9 Mr Barton’s motion for partial summary judgment should be denied. Not only that, the  
10 court should apply *res judicata* and find that he does not have a claim because the number at issue is  
11 not his residential number pursuant to the finding in the *LeadPoint* case.  
12

13 Further, Mr. Barton should not be able to assert any claims for any calls or texts from  
14 numbers not registered to Xanadu Marketing Inc. or Stater Home Investing Inc. Mr. Barton cannot  
15 show that numbers (360) 318-7867, (360)-230-6935; (360) 203-6631, (360) 203-6632, (360) 203-6633,  
16 (36) 203-6634 are numbers that are registered to or controlled by either Xanadu Marketing Inc or  
17 Starter Home Investments Inc.  
18

19 Mr Delfgauw does not have personal liability in this case.

20 This motion should be denied.

21 Respectfully submitted this 2nd day of January, 2025

22 s/Donna Gibson  
23 Donna Gibson, WSBA #33583  
24 Attorney for Defendants/Counterclaimants  
25 JOE DELFGAUW, STARTER HOME  
26 INVESTING, INC. and XANADU MARKETING INC  
27 103 E Holly St, Suite 313  
28 Bellingham, WA 98225  
(206) 242-5529  
donna@donnagibsonlaw.com

I certify that this memorandum contains 4002 words, in compliance with the Local Civil Rules.