

Honorable David G. Estudillo

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

NATHEN BARTON,

Plaintiff

v.

JOE DELFGAUW, XANADU
MARKETING INC., & STARTER

HOME INVESTING INC,

Defendant(s).

Case No.: **3:21-cv-05610-DGE**

PLAINTIFF'S
MOTION TO STRIKE AND
RESPONSE TO DEFENDANTS
MOTION FOR SUMMARY
JUDGEMENT (DKT. 495)

DUE JULY 28, 2025

Nathen Barton responds to the defendants' motion for summary judgement, Dkt. 495, filed by the Defendants.

I. MOTIONS TO STRIKE

1. Plaintiff moves to strike anything on the record concerning opt ins on *renttoownhomefinder.com*. For example, see Dkt 495 page 9 and footnotes 3, 11, & 17, and Dkt. 496-2. Defendants have admitted that the only "opt in" that they allege Plaintiff committed that caused them injury occurred on website *educationschoolmatching.com*. The Court already granted this Motion to Strike in Dkt. 276, 4:3-6.
2. Plaintiff moves to strike any alleged opt in on *xanadutracking.com*. See Dkt 495, 7:9-11: *Barton has . . . has never denied pressing "see results" or "join" when presented with*

1 *TCPA-complaint consent language on Xanadutracking.com*. In Dkt. 276, 4:3-, the Court
2 already granted a similar Motion to Strike concerning similar allegations concerning
3 *renttoownhomefinder.com*.

- 4 3. Plaintiff moves to strike Dkt. 496-1, the deposition transcript of Nathen Barton. The
5 Defendants noticed Mr. Barton for the April 1, 2025, deposition on March 24, 2025.
6 Exhibit 471 ¶1. After unsuccessfully trying to change the deposition time or date, on
7 March 26, 2025, Mr. Barton timely moved in Dkt. 470 for a protective order under Rule
8 26(c)(1)(B)¹ to change the deposition date or time. FRCP 32(a)(5)(A) says:

9 **A deposition must not be used against a party** who, having received
10 less than 14 days’ notice of the deposition, promptly moved for a
11 protective order under Rule 26(c)(1)(B) requesting that it not be taken or
12 be taken at a different time or place—and this motion was still pending
13 when the deposition was taken. Emphasis added.

14 The motion in Dkt. 470 was still pending when the deposition was taken, so Dkt. 496-1
15 cannot be used against Mr. Barton and must be struck.

- 16 4. Plaintiff moves to strike their references to *Barton v. Leadpoint, Inc.* The ninth circuit
17 found that Judge Settle abused his power. One abuse of his power was attributing
18 hearsay on a “TCPA University” website to Mr. Barton. As this Court knows because it
19 presided over case *Barton v. Walmart Inc.*, No. 23-5063 DGE-RJB, 2024 (W.D. Wash.),
20 Diana Bartolome testified under oath that she created the website and all the content in it.
21 See a filing from that case, Exhibit A, attached to the associated declaration, pages 15-19.
22 5. Plaintiff moves to strike “Instead of responding “STOP”” (Dkt. 495, 9:21), “Instead of
23 texting “stop”” (Dkt. 495, 10:13), “does not allege responding to any text message with
24 “STOP.”” (Dkt. 495, 10:19), and “Barton does not enter “STOP” request when he

¹ Dkt. 470, 3:11-14.

1 received the text message” (Dkt. 495, 17:19-20). The Court ordered in Dkt. 371: *The*
2 *defendants/counter plaintiffs should not be allowed to argue to the jury that Barton*
3 *should have taken steps to prevent further calls.* Dkt. 371, 2:16-18.

4 II. RESPONSE TO DKT. 495

5 Introduction

6 Their motion is a mess of false statements, conclusory statements, misstatements of the
7 law, and contradictions of their own testimony and stipulations, but they are correct about one
8 thing, it is their burden to prove *prior* express consent. Dkt. 495, 12:12. Thus, to win their
9 motion *that party must support its motion with credible evidence -- using any of the materials*
10 *specified in Rule 56(c) -- that would entitle it to a directed verdict if not controverted at trial.*
11 *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). Only then does Mr. Barton have a burden. *Id.*

12 Existential Problems with their Motion

13 Mr. Barton cannot respond to things that do not exist – such as the Delfgauw Decl. at Ex
14 B: Defendants’ Webform referenced in Footnotes 3 & 17, or Delfgauw Decl. at Ex C: Call Log
15 referenced in footnote 4, 13 14, 15 & 16. No Delfgauw declaration Exhibit C seems to contain a
16 call log. Similarly, there is no Delfgauw Decl. at Ex D: Dates and Information Used To Opt In
17 referenced in footnote 5 and 12.

18 Evidentiary Problems with their Motion

19 Their motion doesn’t address the elephant in the room – after nearly four years to
20 investigate this case, all Mr. Delfgauw can say is *[i]t is believed that Barton filled out a Starter*
21 *Homes Investing Inc.-Rent to Own webform on all the above dates except June 12, 2022.* Dkt.
22 398-10 Interrogatory #4 p. 6. Four years later all Mr. Delfgauw has is a belief consistent with his
23 pocketbook and conclusory statements that Mr. Barton did anything on any website. While Mr.
24 Delfgauw painted himself into a corner with lies, contradictions, and admissions.

1 Such as Mr. Delfgaw testifying they don't have written consent to telephone solicit Mr.
2 Barton on behalf of any Seller (Dkt 497 pp 2-3). How could they. They don't seem to know
3 what website they allegedly received the 1019 phone number from (Dkt 497 pp 11-13). In their
4 own motion they claimed *renttoownhomefinder.com*, then jumped to *xanadutracking.com* –
5 *critically, [Barton] never denied pressing “see results” or “join” when presented with TCPA-*
6 *complaint consent language on Xanadutracking.com, Dkt. 495, 7:10-11)* – and now have jumped
7 *again* to *xanaduemarketing.outgrow.com* – Dkt 504, 4:15. If their story about an opt in was true,
8 why does the story keep changing?

9 Ignorant of the website that allegedly received the 1019 phone number, they don't know
10 what the website displayed to the entity submitting the 1019 phone number. See Mr. Delfgaw's
11 testimony in Dkt. 398-10 Interrogatory #4 p. 6: *Defendant's system does not save the webform*
12 *or give them what webform was filled out on dates above* [the dates of the alleged opt ins]. And
13 beyond the written consent problems, they stipulated that none of the text messages they initiated
14 to the 1019 number were with consent. Dkt. 378 ¶6. Mr. Delfgaw was asked in Dkt 498-10
15 Interrogatory #26 (p. 21) if there were any facts in Dkt. 378 he now contended were not true. He
16 didn't mention ¶6.

17 **Legal Problems with their Motion**

18 Even if the Court chooses to violate the hearsay rule *[t]he telemarketers state that they*
19 *are calling in response to Plaintiff's request for information, suggesting his consent to the call*
20 (Dkt. 462, 11:22), the claim of an unknown telemarketer calling from an unknown entity on
21 behalf of an unknown entity isn't summary judgement material. And clicking a link in a text
22 message isn't opting into more. How could clicks be consent when Mr. Delfgaw testified they
23 have no idea what links they sent to the 1019 phone, and could not know if links were clicked.
24 Dkt. 497 pp 10-11. In Dkt. 504 7:23 they say:

1 Defendants have never had the text messages that Plaintiff received from
2 them. Defendants' software does not store any sent text messages to
3 anyone.

4 Similarly, conversations with unknown telemarketers calling on behalf of unknown
5 sellers, but definitely not calling from Xanadu or Starter Home (Dkt. 497 pp 4-5), didn't give
6 Xanadu or Starter Home written consent (or any other kind) to call or text the 1019 phone
7 number. The Defendants cite *Johansen*, but that case is easily distinguishable because

8 Plaintiff [Johansen] submitted an affidavit stating that after NG&E *first*
9 contacted him by telephone on June 13, 2017, he called NG&E back to
10 express interest in its services and ultimately completed the enrollment
11 process to seemingly become one of its electric customers. Emphasis
12 added.

13 The Defendants do not allege that Mr. Barton ever called them back, expressed interest in
14 their services, and then became a customer. Feigning interest to identify the unwanted callers
15 does not retroactively generated consent for unwanted calls, it is simply a practical measure: *The*
16 *fact that some of those robocalls were made to "someone prepared to feign interest in their*
17 *product to remove the mask of anonymity behind disembodied robocalls, has no bearing on*
18 *whether he, and other members of the putative class, received illegal calls for which Defendants*
19 *are liable."* [Morales v. Sunpath](#), 2025 WL 2020053 (D. De. July 11, 2025) quoting *Spurlark v.*
20 *Dimension Serv. Corp.*, 2022 WL 2528098, at *7 (S.D. Ohio July 7, 2022). *At least one case*
21 *within the Third Circuit has acknowledged the practicality of feigning interest in a telemarketing*
22 *solicitation because "[a] plaintiff must know the name of the telemarketer that violated the*
23 *TCPA in order to bring suit against it, and the content of the message can help prove that it was*
24 *a solicitation."* *Id.*

Note what the *Morales* court then said: ***There is no evidence that Callier or Horton . . .***
manufactured TCPA violations by seeking out phone calls. The *Morales* court found feigning

1 interest to investigate the callers is not manufacturing TCPA violations by seeking out phone
2 calls.

3 **Illogical problems with their Motion**

4 The Defendants claim that receiving text messages or answering phone calls is a time
5 machine able to give *prior* express consent to phone calls *after* the calls are initiated:

6 Barton’s own allegations are that he affirmatively consented to receiving
7 text messages and telephone calls from Defendants. He admits when he
8 receives the text message from Defendants, he would click on the
9 message so it would redirect him to the owner of the message. FAC at
10 5:6-8. He also admits when he received telephone calls on his mobile
11 device, from Defendants agents he would engage with them by
12 [mis]using an identity. Dkt 497, 15:14-19.

13 Their illogical argument is that clicking or engaging *after* the call is the *prior* consent.
14 Activities that, by definition, occur *after* the phone rings or chirps. They also claim [*h*]ad Barton
15 *stopped there* [stopped what? Stopped where?], *he would not have “more than one telephone*
16 *call.* Dkt 495, 10:14-15. Yet they have no explanation for calling / texting the 1019 phone
17 number while it was removed from their database / calling list. Dkt. 497 pp. 13-16. *Defendants*
18 *report shows that Plaintiff’s phone number was placed do-not-call registry on September 13,*
19 *2021.* Dkt. 504, 8:19-20.

20 **Deception Problems with their Motion**

21 The Defendants can’t win on the merits, so they resort to lying. They attribute the fake
22 quoted words *Barton alleges that he “clicked on different website links”* to the FAC. And lie
23 that *Barton acknowledges that he clicked on the text message- and on that basis had to answer*
24 *questions of name, phone number, and email to find out the entity behind the solicitation . . .*

Conclusion

1 The Defendants claim that Mr. Barton consented to calls. But even they can't answer –
2 calls on behalf of what Sellers? Delfgaw testified they don't have written evidence of consent
3 for calls from any Seller. They stipulated that they didn't have consent to initiate calls for any of
4 the Sellers they were telephone soliciting for.

5 There could be no other result. Mr. Delfgaw testified that they don't know what the
6 website that supposedly received the 1019 phone number - *Defendant's system does not save the*
7 *webform or give them what webform was filled out on dates above.* Dkt 498-10 answer to
8 Interrogatory #4 on page 6. And the only "evidence" they cite to support the claim that Mr.
9 Barton did anything on any website is investigating the calls – *he would click on the message so*
10 *it would redirect him to the owner of the message . . . he would engage with [the callers] by*
11 *[mis]using an identity.*

12 If this sham goes to a jury, they may be entertained for a few days by a telemarketer with
13 felony fraud conviction and a farcical story full of incongruent claims and contradictions, but
14 there isn't an actual case or controversy for them to decide. They'll just roll with laughter when
15 they see yet another contradiction. On September 21, 2022, Mr. Delfgaw testified that (Dkt.
16 252-6 p. 40 lines 9-11):

17 Q So for Campaign 11473 what is the IP address.

18 A It shows up as 205.185.223.105. I can slow that down if you need me to.

19 Campaign 11473 appears in the discredited document Dkt. 205-1 (p. 2)² but now Mr.
20 Delfgaw testified *The IP address the opt-in came from 71.238.123.34 (8.8.8.8= 71.238.123.34)*
21 *for all opt ins.* Dkt. 498-10, answer to Interrogatory #7(b) on page 7.

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24 ² Discredited in Dkt. 497, 13:8 – 16:5.

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Site Logo CBC Manage - Adm... CBC Manage - Dail... CBC Manage - Dail... My Network 0 Notifications CBC Manage - Dail... CBC Manage - Da

CBC Manage Dashboard Leads Profile Uploads Manage Reports Users Logout (101) **From Dkt 205-1**

ID	Campaign	Day/Time	First	Last	Phone	Email	Actions
449888701	11473	2022-06-12 4:06:01	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	View
408161203	12130	2021-12-08 15:00:39	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	View
408161197	12130	2021-12-08 15:00:37	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	View
367588486	12130	2021-04-30 15:50:09	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	View
367588483	12130	2021-04-30 15:50:08	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	View
362407192	12130	2021-04-13 17:58:07	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	View
362407183	12130	2021-04-13 17:58:02	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	View
361284364	13690	2021-04-09 18:29:38	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	View
358819495	3824	2021-04-01 14:04:11	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	View

9 It joins the long list of things to laugh about because Mr. Delfgaw could not keep his
10 lies straight. But like the stipulations in Dkt. 378, he should be congratulated for admitting the
11 following truths (they don't contest these facts in Dkt 504 p. 9, nor did they move to amend the
12 Answer).³

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¶	State Complaint Allegation	D's Response
56	The Defendants and their Affiliate Marketers form a symbiotic relationship – the Affiliate Marketers use spam bots or click farms or sources of human labor to fill out the forms on these cut and paste websites and fraudulently claim other people agreed to receive phone call solicitations on behalf of the unwitting actual owners of the phone numbers.	Admitted
57	They each know their role – the Affiliate Marketer creates the fraudulent consents, Delfgaw and his companies convert the phone calls to money, and no questions asked money flows back to the Affiliate Marketer.	Admitted
58	The Affiliate Marketer is happy – he gets paid. The Defendants are happy – they have another “customer” entered into their database!	Admitted

21 Their motion should be denied.

22
23 ³ Mr. Delfgaw filed the Answer shown in Dkt 498-5 to the complaint shown in Dkt 498-4. CR
24 8(d) says *Averments in a pleading to which a responsive pleading is required . . . are admitted when not denied in the responsive pleading.*

1 July 28, 2025

2
3 

4 (Nathen Barton)

5 Nathen Barton
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7 4618 NW 11th Cir
8 Camas WA 98607
9 FarmersBranch2014@gmail.com

10 **III. CERTIFICATE OF SERVICE**

11 I hereby certify that on July 28, 2025, I electronically filed the foregoing with the Clerk
12 of the Court using the Court's CM/ECF System, which will automatically generate a Notice of
13 Electronic Filing to all parties in the case who are registered users of the CM/ECF System, which
14 includes the Defendant. The said Notice of Electronic Filing specifically identifies recipients of
15 electronic notice.

16 /s/ Nathen Barton

17 Nathen Barton