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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

NATHEN BARTON,

Plaintiff

v.

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

Defendants.

Case No.:

FIRST AMENDED COMPLAINT  
FOR A CIVIL CASE AND  
INJUNCTIVE RELIEF

Jury Trial:  Yes  No

**I. BASIS FOR JURISDICTION**

Plaintiff Nathen Barton (“Barton” or “Plaintiff”) is a natural person and resident of Clark County, Washington. Nearly all the acts alleged in this complaint occurred in Clark County, Washington State, during the year 2021.

Jurisdiction in this court is correct because of where Plaintiff resides, and his residence is a nexus where Plaintiff suffered personal injury and invasion of privacy at the hands of the

1 Defendant. All the specifically detailed telemarketing phone calls and text messages alleged in  
2 this complaint were made to one 360-area code cell phone with a phone number that is assigned  
3 to Plaintiff in exchange for a monthly service fee.

4 However, the defendants have a pattern of texting this and other phone numbers without  
5 the consent of the recipient.

6 All the specifically detailed calls and text messages alleged occurred during the year  
7 2021. Defendants were or should have been aware they were reaching into the Western area of  
8 Washington State by text messaging a 360-area code number.

## 9 II. THE PARTIES TO THE LITIGATION

10 Plaintiff Nathen Barton resides at 4618 NW 11<sup>th</sup> Cir, Camas WA 98607, inside the  
11 bounds of Clark County, Washington State.

12 Defendant Xanadu Marketing Inc, (“Xanadu”) is a Michigan company with the official  
13 address of 14200 Ironwood Dr, Suite B, Grand Rapids Michigan 49534.

14 However, on their website *xanadumarketing.com* they report the address 956 3 Mile  
15 Road NW, Grand Rapids MI 49544.

16 Xanadu’s Michigan registered agent is Edward Winkler, with the address of 956 3 Mile  
17 Road NW, Grand Rapids MI 49544.

18 Defendant Joe Delfgauw (“Delfgauw”), with the with address of 14200 Ironwood Dr,  
19 Suite B, Grand Rapids Michigan 49534, is the President and Secretary of Xanadu. In fact, he is  
20 the president of 10 Michigan companies that start with the word “Xanadu”.

21 Xanadu says of themselves:  
22  
23  
24

1 “Xanadu Marketing is not a telemarketer, but rather a marketing company that contacts  
2 individuals who have provided their information in response to products and/or services  
3 that the individual has expressed interest in.”<sup>1</sup>

4 Plaintiff never expressed interest that would entitle a defendant in this action to solicit  
5 him, nor invited or consented to a defendant in this action sending Plaintiff text messages or  
6 initiating phone calls to Barton for the purpose of encouraging the purchase of goods or services.  
7 Xanadu does not seem to be shy in sending unsolicited text messages, according to a 2019  
8 Federal court case 1:19-cv-12018-FDS. Even after being personally served this lawsuit,  
9 Delfgauw did not prevent further solicitation calls to Barton. For at least four months after  
10 Delfgauw was personally served this Lawsuit, Defendants have placed or caused to be placed  
11 solicitation calls to Barton.

12 Defendant Experian Information Solutions, Inc. (“Experian”), is an Ohio registered  
13 company with principal address of 475 Anton Blvd, Costa Mesa CA 92626.

14 Experian may be served with process via C T Corporation System, 711 Capitol Way S  
15 Ste 204, Olympia WA 98501.

16 Defendant Starter Home Investing Inc. (“Starter Home”) is a Michigan company with  
17 official address 3181 Prairie St Suite 104, Grandville MI 49418. Starter Home only has two  
18 d/b/a’s registered with the State of Michigan - LENDING CLOUD HOMES and LENDING  
19 CLOUD AUTO.

20 Starter Home may be served with process through Edward Winkler, with the address of  
21 956 3 Mile Road NW, Grand Rapids MI 49544.

22 John Doe 1-10 are other people and entities who materially participated in or had  
23 positions of responsibility supervising the alleged illegal conduct.

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24 <sup>1</sup> See Exhibit 11 attached to Plaintiff’s original complaint, Case 1:19-cv-12018-FDS.

The role of each Defendant in the litigation will be explained below.

**III. STATEMENT OF CLAIM**

On July 9, 2020, Plaintiff registered and paid for a Washington State (360) telephone area code cellular number to be primarily used by his minor child. It is a Protected Computer as it is used in a manner that affects interstate or foreign commerce or communication. The phone is and was on a very limited service plan, with each call, text, or data usage subtracting from a fixed amount of each available each month.

The cell phone number at issue was registered on the FTC national *do-not-call* registry more than 31 days before April 1, 2021.

**Text Messages from SMS Short Code 33959**

On April 1, 2021, Plaintiff started receiving many text messages from the SMS short code 33959 which is registered to a Lending Cloud Homes<sup>2</sup>, a registered *doing-business-as* for the Michigan company Starter Home Investing Inc (“Starter Home”), with the official address of 956 3 Mile Road NW, Grand Rapids, MI 49544.

The following seven (7) messages were received from SMS short code 33959 on April 1, 2021, at the indicated times:

11:04am	You just filled out our Rent to Own or HomeBuyer from! Let’s get you Approved! Start here <a href="http://buyzerodowns.com">http://buyzerodowns.com</a>
11:07am	Did you get your Credit Score? Your Score will dictate your Options inlcuing (sic) Down Payment & Zero Down. Start below <a href="http://credit-score-first.com">http://credit-score-first.com</a>
11:10am	Here are 2, 3 and 4 Bedroom Rent to Own Homes! <a href="http://find-a-home.xyz">Http://find-a-home.xyz</a>
11:14am	Take our 30 Second Quiz & see if you Qualify for up to \$6000 in Grants <a href="http://begin-here2day.xyz">http://begin-here2day.xyz</a>

<sup>2</sup> See <https://usshortcodedirectory.com/search/?shortcode-number=33959>

1 2 3	11:24am	A Lot if (sic) Rent to Own Home seekers qualify for the Roud (sic) Up Settlement of \$15000 in Compensation. Claim your (sic) below <a href="http://settlements4u.xyz">http://settlements4u.xyz</a>
4 5	11:59am	Great News! Based on Your Score & Profile, you should get Approved for Zero Down Home Loans here <a href="http://buy-zero-down.xyz">http://buy-zero-down.xyz</a>
6 7	12:04pm	Lastly, Get \$500 to \$5000 for moving costs, security deposits and rent/houes (sic) payments. <a href="http://loans-for-u.xyz">http://loans-for-u.xyz</a> and <a href="http://get-started-2day.live">http://get-started-2day.live</a>

8 In every case, the links in the text messages redirected to intermediate links before finally  
9 opening a last webpage, or directly linked to *xanadutracking.com*. These intermediate links  
10 always used the domains *xanadutracking.com* or *xanaduemarketing.outgrow.com*.

11 *buyzerodowns.com* was advertising for Get Hope To Own.

12 *credit-score-first.com* was advertising for *credit-score-first.com*.

13 *find-a-home.xyz* was advertising for *yourent2own.com*.

14 *buy-zero-down.xyz* was advertising for Get Hope To Own.

15 *begin-here2day.xyz* was advertising for Degree Locate.

16 *settlement4u.xyz* was advertising for Lawsuit Winning.

17 *loans-for-u.xyz* was advertising for Lions Gate Loans.

18 *get-started-2day.live* was advertising for Honest Loans.

19 Xanadu uses *xanaduemarketing.outgrow.com* as a tool to improve their business.

20 Time passed.

21 The following one (1) message was received from SMS short code 33959 on April 12,  
22 2021, at the indicated time:

23 24	12:51pm	Complete this 60 second, 4 Question, Quiz to see if you Quality for \$6300 in Job Training/School Grants <a href="http://get-your-start.xyz/358819495">http://get-your-start.xyz/358819495</a>
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The link in the text message redirected to the *xanadumarketing.outgrow.us* domain.

1 *get-your-start.xyz* was advertising for Classes & Careers

2 Starter Home Investing Inc. has the following officers and directors:

Title	Name	Address
PRESIDENT	JOE DELFGAUW	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544 USA
TREASURER	NANCY GOULD	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544 USA
SECRETARY	EDWARD WINKLER	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544 USA
DIRECTOR	JOE DELFGAUW	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544 USA

3  
4  
5  
6  
7 Xanadu Marketing Inc. owns *xanadutracking.com* and uses  
8 *xanaduemarketing.outgrow.com* and uses both in their telemarketing efforts. Xanadu Marketing  
9 Inc. has the following officers and directors:

PRESIDENT	JOE DELFGAUW	14200 IRONWOOD DR. NW SUITE B GRAND RAPIDS, MI 49534 USA
TREASURER	NANCY GOULD	14200 IRONWOOD DR. NW SUITE B GRAND RAPIDS, MI 49534 USA
SECRETARY	JOE DELFGAUW	14200 IRONWOOD DR. NW SUITE B GRAND RAPIDS, MI 49534 USA
DIRECTOR	ANGELA COLE	14200 IRONWOOD DR. NW SUITE B GRAND RAPIDS, MI 49534 USA

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11  
12  
13  
14 *XanaduMarketing.com*, owned by Xanadu Marketing Inc., lists the address of 956 3 Mile  
15 Rd NW, Grand Rapids MI 49544. Although Starter Home used materially significant Xanadu  
16 company assets as part of these eight text messages solicitations, Xanadu does not have an  
17 agreement or contract in place with Starter Home.

18 This is part of a pattern and practice – when an entity under Delfgaw’s control has a  
19 need, and another entity under Delfgaw’s control has a resource that satisfies the need,  
20 Delfgaw simply bolts them together to make a new joint venture.

21 In doing so, Delfgaw comingles the business operations of many registered and  
22 unregistered businesses.

23 **Text Messages from SMS Short Code 365365**

1 On April 5, 2021, and April 8, 2021, Plaintiff received one text message each day from the  
 2 SMS short code 365365, a SMS short code registered to a “Lending Cloud Alerts” which appears  
 3 to be a business entity different yet from Starter Home and Xanadu.

4 The entity “Lending Cloud Alerts” is not a registered business name in the State of  
 5 Michigan.

6 “Lending Cloud Alerts” is an unregistered business entity under Delfgauw’s control.

7 Plaintiff alleges that Delfgauw operates the business “Lending Cloud Alerts” as a Sole  
 8 Proprietor.

9 5-Apr-21	
10 8:46am	2, 3 & 4 Bedroom, 2 Bath Homes from \$599/mo! <a href="http://clickto-startnow.club/358819495">http://clickto-startnow.club/358819495</a> Credit Issues Ok, Low Down Payment
11 8-Apr-21	
12 10.11am	New Auto Insurance Company offer #37/mo to people in your Zip Code! Plus 1-2 months of no payments! <a href="http://get-started-today.live/358819495">http://get-started-today.live/358819495</a>

14 The link <http://clickto-startnow.club/358819495> redirected through *xanadutracking.com*  
 15 to yet a different website.

16 *clickto-startnow.club* was advertising for [TheUltimateRentToOwnHomeProgram.com](http://TheUltimateRentToOwnHomeProgram.com).

17 *get-started-today.live* was advertising for Complete These Offers.

18 Plaintiff alleges that Delfgauw, acting in the legal capacity of a Sole Proprietor, used the  
 19 entity “Lending Cloud Alerts” in a Joint Venture with Xanadu to initiate these two text messages  
 20 to Plaintiff.

21 Xanadu has admitted there is no contract or agreement with any other entity related to the  
 22 telemarketing of Barton.

23 This is another example of Delfgauw co-mingling business operations of several entities,  
 24 and operating several entities under his control as one venture.

**Text Messages from (803) 618-8038**

On April 2, 2021, Plaintiff received a text message from (803) 618-8038 with the message “Your refund filing date is approaching. Arrange your meeting with Tax Axe and our licensed agents!

Answer  
RTN55  
And proceed!”

The Tax Axe is a registered doing-business-as for Income Tax Planning Group Inc. (“TPG”). TPG uses the website *thetaxaxe.org*, and this website uses the same internet name servers as *xanadumarketing.com*<sup>3</sup>. This indicates that the two websites use the same web hosting account.

TPG’s corporate officers and directors are:

PRESIDENT	JOE DELFGAUW	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544 USA
TREASURER	NANCY GOULD	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544 USA
SECRETARY	JOE DELFGAUW	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544 USA
DIRECTOR	JOE DELFGAUW	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544 USA

And TPG’s official address is 956 3 Mile Road NW, Grand Rapids Michigan 49544.

On April 9, 2021, TPG sent a second text solicitation to Plaintiff.

Delfgaw chose to host the Xanadu and TPG websites on the same server.

Delfgaw chose to use the internet servers for Xanadu and TPG for two supposedly independent businesses.

Xanadu has admitted there are no contracts or agreements between Xanadu and Tax Planning Group Inc. related to this text message to Barton.

This is another example of Delfgaw co-mingling business operations of several entities, and operating several entities under his control as a Joint Venture.

<sup>3</sup> See <https://dnschecker.org/ns-lookup.php?query=thetaxaxe.org> and <https://dnschecker.org/ns-lookup.php?query=xanadumarketing.com>



1 In a pattern becoming all too familiar, 1st Time's officers and directors are

2 PRESIDENT	JOE DELFGAUW	956 3 MILE ROAD N.W. GRAND RAPIDS, MI 49544
3 TREASURER	NANCY GOULD	956 3 MILE ROAD N.W. GRAND RAPIDS, MI 49544
SECRETARY	JOE DELFGAUW	956 3 MILE ROAD N.W. GRAND RAPIDS, MI 49544
4 DIRECTOR	JOE DELFGAUW	956 3 MILE ROAD N.W. GRAND RAPIDS, MI 49544

5 Website *thecardinalprogram.com* uses the same internet name servers as  
 6 *xanadumarketing.com*<sup>4</sup>. This indicates that the two websites use the same web hosting account  
 7 and are co-mingling business operations..

8 Xanadu has admitted there are no contracts or agreements between Xanadu and 1st Time  
 9 Home Buyer Program Inc.. related to these phone calls to Barton. This is another example of  
 10 Delfgaw co-mingling business operations of several entities, and operating several entities  
 11 under his control as one venture.

12 On April 30, 2021, Plaintiff received a phone call from (360) 318-7867. The caller  
 13 identified herself as "Nesheka" a "housing specialist at The Cardinal Program".

14 She said she was calling about "Rent to own" options and went on to ask Barton about his  
 15 credit score and any 'bumps' in Barton's credit.

16 Nesheka called on behalf of 1st Time for the purpose of encouraging Plaintiff to purchase  
 17 housing and credit related goods or services.

18 *Nesheka* was advertising for 1st Time Home Buyer Program Inc.

19 **More about (360) 318-7867**

20 Plaintiff's phone revealed a history of calls from (360) 318-7867:

21 12:47pm, April 30, 2021, a call discussed above from 1st Time.

22  
 23  
 24 <sup>4</sup> See <https://dnschecker.org/ns-lookup.php?query=thecardinalprogram.com> and <https://dnschecker.org/ns-lookup.php?query=xanadumarketing.com>

1 2:55pm, April 13, 2021, an 8 minute 33 second incoming call, a call discussed above from  
2 1st Time

3 10:00am, April 5, 2021, a missed call from 1st Time, initiated for the purpose of  
4 encouraging Plaintiff to purchase goods or services.

5 10:10am, April 2, 2021 a 26 second incoming call from 1st Time, initiated for the purpose  
6 of encouraging Plaintiff to purchase goods or services.

7 **Enter ApexPageBuilder.com**

8 On June 11, 2021, Plaintiff received a text message, seemingly from SMS short code  
9 94657. This SMS short code is associated with Houses into Homes, and email address  
10 [info@houses-into-homes.com](mailto:info@houses-into-homes.com). The internet domain houses-into-homes.com uses the internet  
11 name servers for and the same hosting as *xanadumarketing.com*. On the webpage *houses-into-*  
12 *homes.com/terms-of-service/*, the physical address for this business entity is listed as:

13 956 3 Mile Rd NW,  
14 Grand Rapids , MI 49544

15 Which matches the physical address used by many entities connected to Delfgauw. House  
16 into Homes is based in Michigan but is not a registered business entity or *doing-business-as* in  
17 the state of Michigan. Plaintiff alleges that legally, Delfgauw is operating House into Homes as  
18 a Sole Proprietorship under his control.

19 The June 11 text message from SMS short code 94657 said:

20 Add your Rent, Netflix & Amazon Prime to your Credit Report to increase your  
21 Score! Start below, It's Free <http://increasemyscore.live/358819495>

22 The internet domain *increasemyscore.live* uses the internet name servers for  
23 *xanadumarketing.com*. Clicking on the link for *increasemyscore.live* redirects to the domain  
24 *apexpagebuilder.com*. The domain *apexpagebuilder.com* uses the internet name servers for  
*xanadumarketing.com*.

Delfgauw owns and controls *apexpagebuilder.com*.

1 Xanadu has admitted there are no contracts or agreements between Xanadu and House  
2 into Homes related to these text messages initiated to Barton.

3 Delfgaw mixed and matched even more entities to create these solicitations. The domain  
4 *apexpagebuilder.com* lists the phone number (888) 631-7141, but that phone number is also  
5 associated with Assisting Renters Inc<sup>5</sup>. The officers and directors for Assisting Renters Inc are:

6	PRESIDENT	JOE DELFGAUW	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544
7	TREASURER	NANCY GOULD	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544
8	SECRETARY	EDWARD WINKLER	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544
	DIRECTOR	JOE DELFGAUW	956 3 MILE ROAD NW GRAND RAPIDS, MI 49544

9 And the website *cloudbasedcampaigns.com* also lists (888) 631-7141 as a contact  
10 telephone number.

11 To summarize, Barton received a text message from “Houses into Homes”, an  
12 unregistered business entity, that used Xanadu company assets to deliver a solicitation from  
13 *apexpagebuilder.com*, which uses a phone number tied to Assisting Renters Inc.

14 This is another example of Delfgaw creating a Frankenstein monster of a joint venture  
15 between various registered and unregistered business operations under his control. Clicking the  
16 link <http://increasemyscore.live/358819495> opens the website  
17 <https://apexpagebuilder.com/p/add-rent-your-credit-report-3>, and the purpose of that page is to  
18 encourage consumers to click a large red button that directs consumers to the website  
19 *Experian.com*, for the purpose of encouraging Plaintiff to sign up for *Experian.com* products and  
20 services. *Experian.com* is owned by Experian Information Solutions, Inc.

21 On August 4, 2021, Plaintiff received a text message, seemingly from SMS short code  
22 94657. The text message said

23  
24 <sup>5</sup> See <https://start.cortera.com/company/research/l8q8jgo7p/assisting-renters/>

1 Add your Rent, Netflix & Amazon Prime to your Credit Report to increase your  
2 Score! Start below, It's Free <http://increasemyscore.live/358819495>

3 Exactly as the June 11 text mentioned above, the solicitation used the same hodge podge  
4 Frankenstein monster of a joint venture to deliver a text message initiated with the intent to  
5 encourage Plaintiff to sign up for *Experian.com* products and services.

### 6 **Roundup Lawsuit unsolicited call #3**

7 On July 13, 2021, Plaintiff received a text message from SMS short code 33959 which is  
8 registered to a Lending Cloud Homes<sup>6</sup>, a registered *doing-business-as* for Starter Home. The  
9 message said:

10 Each Person that used Round Up can receive \$15,000 in Compensation.  
11 Claim yours below <http://rounduplawsuit.live/358819495>

12 The domain *rounduplawsuit.live* uses the internet name servers for *xanadumarketing.com*.  
13 Xanadumarketing.com is owned by Xanadu Marketing Inc.

14 Clicking on the URL in the text message opened up a new webpage for  
15 weedkillerclaim.com by use of the intermediate domain *xanadutracking.com*.

16 Xanadu has admitted there is no contract or agreement with Lending Cloud Homes  
17 related to the telemarketing of Barton. This is another example of Delfgaww co-mingling  
18 business operations of several entities, and operating several entities under his control as one  
19 venture..

### 20 **These calls are annoying**

21 The phone ringing and buzzing and missed calls are obnoxious, an invasion of privacy, and  
22 a waste of time. These phone calls were initiated to encourage Plaintiff to purchase goods or  
23 service.

24 <sup>6</sup> See <https://usshortcodedirectory.com/search/?shortcode-number=33959>

1 **Joe Delfgauw’s Personal Liability**

2 Delfgauw, as President and owner and manager, uses assets under his control, be they  
3 unregistered business entities or registered companies, of different companies under his control  
4 to initiates text messages and phone calls to consumers sell products and services such as  
5 consumer credit enhancement, higher education, home ownership, rental homes, loans, and tax  
6 preparation.

7 Under Delfgauw’s supervision and management, Plaintiff received many text message and  
8 phone call solicitations luring him to different websites and invitations to spend money for goods  
9 and services. The websites and outbound solicitations Barton received were done through a mis-  
10 mash of telephone numbers, internet domains, internet name servers, and phone numbers and  
11 hosting and business assets bolted together from many different corporations, all owned by or  
12 governed by Delfgauw.

13 In egregious examples, Barton received multiple text messages from “Houses into  
14 Homes”, and “Lending Cloud Alerts”, both unregistered business entities controlled by  
15 Delfgauw, that used Xanadu internet domain servers and web hosting to deliver multiple  
16 solicitations from *apexpagebuilder.com*. *Apexpagebuilder.com* is not a registered business or  
17 doing-business-as name in the State of Michigan, but it is controlled by Delfgauw, uses the same  
18 name servers as Xanadu (controlled by Delfgauw), yet different web hosting.

19 *Apexpagebuilder.com* directs people accessing that website to call a phone number shared  
20 by Assisting Renters Inc, another Delfgauw controlled company.

21 Put a different way, several solicitations alleged by Barton was sent by a Frankenstein  
22 monster joint venture between different registered and unregistered business entities – one to  
23 craft the text messages, one creates the websites displayed in the text message  
24 (*increasemyscore.live*, an unregistered business name controlled by Delfgauw), another dials the

1 phone and initiates transmission of the text message (Houses into Homes, an unregistered  
2 business name but controlled by Delfgauw), another answers the phone calls generated by the  
3 people clicking and visiting those destination websites (Assisting Renters Inc), and yet one more  
4 providing the internet and tracking infrastructure needed to make the system above functional  
5 (Xanadu Marketing Inc.) to create income for himself, his companies, and the entities paying  
6 Delfgauw and his companies to market the goods and services. Further, all these entities under  
7 Delfgauw's control that were used to telephone solicit Barton are shams and the alter ego of  
8 Delfgauw.

9 Delfgauw and Xanadu admit they have no agreements or contracts between these  
10 different registered and unregistered business names and entities. If some tool or entity or  
11 widget is needed that is under the control of Delfgauw, Delfgauw simply presses it into service  
12 as part of this large joint venture telemarketing program.

13 This is a breach of the duty Delfgauw owes to each separate company under his  
14 supervision, and to the extent that Delfgauw operates in a Sole Proprietor capacity with these  
15 unregistered business entity names, he does so with his personal liability.

16 Further, Holding Delfgauw personality liable for the widespread conduct of his business  
17 operations is likely the only way to ensure Plaintiff can collect a judgement against the different  
18 corporations under his supervision.

### 19 **Commercial Telephone Solicitors**

20 RCW 19.158.020 says:

21 (1) A "commercial telephone solicitor" is any person who engages in commercial  
22 telephone solicitation

23 (2) "Commercial telephone solicitation" means:  
24

1 (a) An unsolicited telephone call to a person initiated by a salesperson and  
2 conversation for the purpose of inducing the person to purchase or invest in  
property, goods, or services;

3 RCW 19.158.050(1) says in part:

4 “In order to maintain or defend a lawsuit or do any business in this state, a commercial  
5 telephone solicitor must be registered with the department of licensing.”

6 Although RCW 19.158.050(3) says “The department of licensing shall issue a  
7 registration number to the commercial telephone solicitor.”, in practice this Commercial  
8 Telephone Solicitor “registration number” appears as an endorsement on the business license  
9 issued by The Washington State Department of Revenue.

10 Experian is licensed to do business in Washington but does not have this endorsement on  
11 their Washington State business license

12 The other Defendants are not registered to do any business in Washington State, thus do  
13 not have this endorsement on their not-existing Washington State business license, and they  
14 acted as unlicensed commercial telephone solicitors while soliciting goods and services to  
15 Plaintiff in conversation.

#### 16 **IV. RELIEF**

##### 17 **Federal Claims**

##### 18 **TCPA 47 U.S.C. 227**

19 Defendants violated the regulations governing the TCPA, 47 C.F.R § 64.1200, and TCPA  
20 47 U.S.C. 227(c)(5) by calling or texting Plaintiff’s cellular telephone number without invitation  
21 or consent.

22 Defendants also violated the regulations governing the TCPA, 47 C.F.R § 64.1200(d)(4),  
23 and thus TCPA 47 U.S.C. 227(c) by failing to provide the called party with the name of the  
24 individual caller, the name of the person or entity on whose behalf the call is being made, and a

1 telephone number or address at which the person or entity may be contacted, as found in *Robison*  
2 *v. 7PN, LLC*, Case No. 2:21-cv-00308-TC, 2021 U.S. Dist. LEXIS 211963 (D. Ut. November 1,  
3 2021)

4 **Washington State Claims**

5 **RCW 19.158**

6 RCW 19.158.040 says:

7 Unprofessional conduct.

8 In addition to the unprofessional conduct described in RCW 18.235.130, the  
9 director of the department of licensing may take disciplinary action for any of the  
10 following conduct, acts, or conditions:

- 11 (1) It shall be unlawful for any person to engage in unfair or deceptive commercial  
12 telephone solicitation.  
13 (2) A commercial telephone solicitor shall not place calls to any residence which will  
14 be received before 8:00 a.m. or after 9:00 p.m. at the purchaser's local time.  
15 (3) A commercial telephone solicitor may not engage in any conduct the natural  
16 consequence of which is to harass, intimidate, or torment any person in  
17 connection with the telephone call.

18 Defendants were not registered as Commercial Telephone Solicitors with the Washington  
19 State Department of Licensing when many of the solicitation calls were placed to Plaintiff, in  
20 violation of RCW 19.158.050(1).

21 RCW 19.158.110(1) requires:

22 (1) Within the first minute of the telephone call, a commercial telephone solicitor or  
23 salesperson shall:

- 24 (a) Identify himself or herself, the company on whose behalf the solicitation is being  
made, the property, goods, or services being sold;

In many solicitation calls initiated by Defendants to Plaintiff, Defendants violated  
Washington State RCW 19.158.110(1) by not identifying the company on whose behalf the  
solicitation was being made.

Defendants violated Washington State RCW 19.158.150 many times by soliciting  
Plaintiff on his cell phone while they were not registered on with the Washington State

1 Department of Licensing as Commercial Telephone Solicitors, or while working on behalf of an  
2 unregistered Commercial Telephone Solicitor.

3 **RCW 80.36.390(2)**

4 Washington State RCW 80.36.390(2) says

5 A person making a telephone solicitation must identify him or herself and the company or  
6 organization on whose behalf the solicitation is being made and the purpose of the call  
within the first thirty seconds of the telephone call.

7 In many solicitation calls the Defendants failed to identify a legally identifiable company or  
8 organization name behind the solicitation within the first 30 seconds of the phone calls.

9 **RCW 19.190**

10 Washington State RCW 19.190.060(1) prohibits anyone conducting business in  
11 Washington State from initiating the transmission of an electronic commercial text message to a  
12 telephone number assigned to a Washington state resident's cell phone.

13 The Washington State legislature determined that “[d]amages to the recipient of a . . .  
14 commercial electronic text message sent in violation of this chapter are five hundred dollars, or  
15 actual damages, whichever is greater.” RCW 19.190.040(1).

16 The Washington State legislature clearly stated that the sending of an email message  
17 prohibited by CEMA is a violation of the Consumer Protection Act (RCW 19.190.030(1))

18 The legislative history of RCW 19.190 states that the recipient of both commercial email  
19 messages and commercial text messages “may bring a civil action against the sender for the  
20 greater of \$500 or actual damages.” Wash. Final Bill Rep., 1998 Reg. Sess. H.B. 2752 (Apr. 6,  
21 1998); Wash. Final Bill Rep., 2003 Reg. Sess. H.B. 2007 (June 27, 2003). Having now  
22 determined that there is no private right of action under CEMA, the only way to give effect to the  
23 legislature's stated intent is to construe the liquidated damages provision as establishing the  
24

1 injury and causation elements of a CPA claim. *Gragg v. Orange Cab Company et al*, No.  
2 2:2012cv00576 - Document 162 (W.D. Wash. 2015)<sup>7</sup>

### 3 **Treble Damages**

4 Plaintiff believes the record shows that Defendants' violations of the law were willful or  
5 knowing. Therefore, Plaintiff asks for treble damages under TCPA 47 U.S.C. 227(c)(5) and the  
6 presumption that violations of RCW 19.158.030 triple damages under the Washington State  
7 Unfair Business Practices Act RCW 19.86.

### 8 **Injunctive Relief**

9 TCPA 47 U.S.C. 227(c)(5)(A) allows "an action based on a violation of the regulations  
10 prescribed under this subsection to enjoin such violation,".

11 Washington State RCW 80.36.390(6) says:

12 A person aggrieved by repeated violations of this section may bring a civil action  
13 in superior court to enjoin future violations, to recover damages, or both.

14 Plaintiff is not unique – he simply had the misfortune to be targeted by Defendants' mass  
15 calling and texting machine. It is reasonable to believe that Defendants have done this many  
16 times in the past and will continue harming the residents of this State and other States in the  
17 future.

18 Plaintiff asks this Court to enjoin the Defendants from calling phone numbers using pre-  
19 recorded or artificial voices without consent.

### 20 **All other Possible Damages**

21 Plaintiff prays for all possible damages, in law and in equity, statutory, real, and punitive,  
22 that he might entitled too, of not less than \$61,500. Plaintiff asks for other awards, examples

23 \_\_\_\_\_  
24 <sup>7</sup> <https://cases.justia.com/federal/district-courts/washington/wawdce/2:2012cv00576/183407/162/0.pdf?ts=1447174101>

1 being but are not limited to, court costs, attorney fees, pre-judgement interest, and post-  
2 judgement interest. Barton has consulted with an attorney in this matter and is obligated to pay  
3 that attorney the just and proper rate as agreed to in the attorney engagement agreement.

4 /s/ Nathen Barton  
5 Nathen Barton

12/31/2021  
Dated

6 Nathen Barton  
7 (718) 710 5784  
8 4618 NW 11<sup>th</sup> Cir  
9 Camas WA 98607  
FarmersBranch2014@gmail.com

10 **V. CERTIFICATE OF SERVICE**

11 I hereby certify that on December 31, 2021, I electronically filed the foregoing with the  
12 Clerk of the Court using the Court’s CM/ECF System, which will automatically generate a  
13 Notice of Electronic Filing to all parties in the case who are registered users of the CM/ECF  
14 System, which includes the Defendant. The said Notice of Electronic Filing specifically  
15 identifies recipients of electronic notice.

16 Executed on December 31, 2021.

17 /s/ Nathen Barton

18 Nathen Barton  
19 \_\_\_\_\_  
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