UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK W. DOBRONSKI,

Plaintiff,

v.

JOSEPH EARL UPPLEGER, III, *et al.*,

Defendants.

Case No. 2:25-cv-10168

Honorable Judith E. Levy
United States District Judge

Honorable Elizabeth A. Stafford
United States Magistrate Judge

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT ADVISORWORLD.COM INC.'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(1), FED. R. CIV. P. 12(b)(6), AND THE DOCTRINE OF *FORUM NON CONVENIENS*

Plaintiff, Mark W. Dobronski, appearing *in propria persona*, hereby responds in opposition to *Defendant Advisorworld.Com Inc.'s Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1)9, Fed. R. Civ. P. 12(b)(6), and the Doctrine of Forum Non Conveniens* [ECF No. 21] ("Motion").

WHEREFORE, for the reasons set forth in the appurtenant brief, Plaintiff respectfully requests that this Court issue its order that Defendant's Motion be denied.

Respectfully submitted,

Date: September 2, 2025

Mark W. Dobronski
Post Office Box 99
Dexter, Michigan 48130-0099
Telephone: (734) 641-2300
Email: markdobronski@yahoo.com
Plaintiff *In Propria Persona*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK W. DOBRONSKI,	Case No. 2:25-cv-10168
Plaintiff,	Honorable Judith E. Levy United States District Judge
v.	
JOSEPH EARL UPPLEGER, III, *et al.*,	Honorable Elizabeth A. Stafford United States Magistrate Judge
Defendants.	

PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT ADVISORWORLD.COM INC.'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(1), FED. R. CIV. P. 12(b)(6), AND THE DOCTRINE OF *FORUM NON CONVENIENS*

CONCISE STATEMENT OF ISSUES PRESENTED

1. Should this Court dismiss the First Amended Complaint pursuant to the doctrine of *forum non conveniens* where Plaintiff consented to the exclusive jurisdiction of the courts of Ontario, Canada?

   Advisorworld.com says: Yes.

   Plaintiff says: No.

2. Should this Court dismiss the First Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1) because Plaintiff lacks standing under the terms of the applicable statutes?

   Advisorworld.com says: Yes.

   Plaintiff says: No.

3. Should this Court dismiss the First Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6) where Plaintiff fails to state valid claims under the applicable statutes?

   Advisorworld.com says: Yes.

   Plaintiff says: No.

MOST RELEVANT OR CONTROLLING AUTHORITIES

Abramson v. Oasis Power LLC, No. 2:18-CV-00479, 2018 WL 4101857 (W.D. Pa. July 31, 2018), report and recommendation adopted, No. CV 18-479, 2018 WL 4095538 (W.D. Pa. Aug. 28, 2018)

Cancer Step Outside the Box, LLC v. Dep't of State, No. 3:24-CV-01465, 2025 WL 1932166 (M.D. Tenn. July 14, 2025)

Chazen v. Deloitte & Touche, LLP, No. 03-11472 EE, 2003 WL 24892029 (11th Cir. Dec. 12, 2003)

Cunningham v. Rapid Response Monitoring Servs., Inc., 251 F. Supp. 3d 1187 (M.D. Tenn. 2017)

Dobronski v. CHW Group, Inc., No. 24-cv-11649, 2025 WL 2426370 (E.D. Mich. Aug. 21, 2025)

Dobronski v. Selectquote Ins. Servs., 773 F. Supp. 3d 373 (E.D. Mich. Mar. 25, 2025)

Newell v. JR Capital, LLC, No. CV 25-1419, 2025 WL 2004706 (E.D. Pa. July 16, 2025)

Federal Trade Commission v. Lifewatch Inc., 176 F. Supp. 3d 757 (N.D. Ill. 2016)

Hossfeld v. Allstate Insurance Co., 726 F.Supp.3d 852 (N.D.Ill., 2024)

Lakeside Surfaces, Inc. v. Cambria Co., LLC, 16 F.4th 209 (6th Cir. 2021)

Lucas v. Telemarketer Calling From (407) 476-5680, 2013 WL 4536872 (S.D.Ohio, 2013)

Mey v. Venture Data, LLC, 245 F. Supp. 3d 771 (N.D. W. Va. 2017)

Perrong v. Victory Phones LLC, 2021 WL 3007258 (E.D.Pa., 2021)

Piper Aircraft Co. v. Reyno, 454 U.S. 235, 102 S. Ct. 252, 70 L. Ed. 2d 419 (1981)

Prevent USA Corp. v. Volkswagen AG, 17 F.4th 653 (6th Cir. 2021)

Shelton v. National Gas & Electric, LLC, 2019 WL 1506378 (E.D.Pa., 2019)

Sibaja v. Dow Chemical Co., 757 F.2d 1215 (11th Cir.1985)

Worsham v. LifeStation, Inc., No. 661, Sept. Term,2020, 2021 WL 5358876 (Md. Ct. Spec. App. Nov. 17, 2021)

Zions First Nat. Bank v. Moto Diesel Mexicana, S.A. de C.V., 629 F.3d 520 (6th Cir. 2010)

In the Matter of Rules and Regulations Implementing the TCPA, 30 FCC Rcd. 7961, 2015 WL 4387780 (FCC, 2015)

47 U.S.C. § 227

47 C.F.R. § 64.1200

47 C.F.R. § 64.1601(e)

I. INTRODUCTION

Plaintiff Mark W. Dobronski initiated this action against Defendants Joseph Earl Uppleger III ("Uppleger") and Advisorworld.Com, Inc. ("AWI") alleging violations arising under the federal Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, the Michigan Home Solicitation Sales Act ("MHSSA"), M.C.L. § 445.101, *et seq*., and the Michigan Telephone Companies as Common Carriers Act ("MTCCCA"), M.C.L. § 484.101, *et seq*.

Defendant Uppleger is an investment advisor who resides in Howell, Livingston County, Michigan, with an office located in Novi, Oakland County, Michigan. [ECF No. 20, PageID.229, ¶ 89].

Defendant AWI is a Canadian corporation, with offices in Toronto, Ontario, Canada. [ECF No. 1, PageID.211, ¶ 4]. AWI is responsible for initiating telephone calls *en masse* using automatic telephone dialing systems to solicit consumers in the United States who may need investment advisory services. [ECF No. 1, PageID.224-226, ¶¶ 60-65].

Plaintiff's residential telephone number, 734-***-2179, is a telephone number for which the service is charged on a per call and per minute basis. [ECF No. 1, PageID.217, ¶ 30]. At all times relevant hereto, Plaintiff's residential telephone number, 734-***-2179, was listed on the National Do Not Call Registry ("NDNC"). [ECF No. 20, PageID.217, ¶ 31]. At no time has Plaintiff provided "prior express

consent" or "prior express written consent" for any of the Defendants to initiate any telephone call that includes or introduces an advertisement or constitutes telemarketing, using an automatic telephone dialing system or an artificial or prerecorded voice to Plaintiff's residential telephone number. [ECF No. 1, PageID.219, ¶ 39]. At no time has Plaintiff had an "established business relationship" with either of the Defendants. [ECF No. 1, PageID.219, ¶ 40].

Plaintiff alleges receiving a series of six (6) telemarketing calls initiated by the Defendants. [ECF No. 20, PageID.226-229, ¶¶ 72-85]. Four (4) of the calls were initiated using an prerecorded message. [ECF No. 20, PageID.227, ¶ 74; PageID.230, ¶ 94; PageID.231, ¶ 97; PageID.231-232, ¶ 100]. At no time during these four (4) calls was Plaintiff connected to a live representative. [ECF No. 20, PageID.227, ¶ 75; PageID.233, ¶ 108]. At no time during these four (4) calls was Plaintiff provided a prerecorded identification and opt-out message disclosing that the call was for "telemarketing purposes" and stating a telephone number that would permit the called person to make a do-not-call request. [ECF No. 20, PageID.227, ¶ 76; PageID.233-34, ¶ 112]. At no time during these four (4) calls was Plaintiff provided an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the called person to make a do-not-call request. [ECF No. 20, PageID.227-28, ¶ 77; PageID.234, ¶ 115]. On each of these four (4) calls, the caller identification number information failed to display caller identification name information, and displayed a telephone

number that, when dialed, would not permit the called party to make a do-not-call demand. [ECF No. 20, PageID.228, ¶ 79; PageID.235, ¶ 121].

In the instances of the fifth and sixth calls, each call displayed caller identification information that lacked the caller identification name. [ECF No. 20, PageID.228, ¶ 81; PageID.229, ¶ 84; PageID.235, ¶ 121]. Further, the fifth and sixth calls each merely rang once and terminated before Plaintiff could answer them. [ECF No. 20, PageID.228-29, ¶ 82; PageID.229, ¶ 85; PageID.232, ¶ 103].

In support of this response, attached hereto at **Exhibit 1** is the Declaration of Mark W. Dobronski.

II. LEGAL STANDARD

The legal standards recited by Defendant AWI are essentially correct and need not be repeated here.

III. ARGUMENT

A. Whether the Privacy Policy and Terms and Conditions Require This Suit to be Brought in Ontario, Canada

When assessing a forum-non-conveniens motion relying on a forum-selection clause, court must first ask several contract-specific questions, including whether the forum-selection clause is applicable, mandatory, valid, and enforceable. *Lakeside Surfaces, Inc. v. Cambria Co., LLC,* 16 F.4th 209, 216 (6th Cir. 2021)**.**

AWI focuses upon a web inquiry form purportedly filled out on January 8, 2025,

and that, somehow, that web inquiry form comprises a forum-selection clause. [ECF No. 21, PageID.254-255]. However, AWI's argument is belied by the Declaration of Galen Weston. Weston avers that the "[o]n the version of the web inquiry form in use as of January 8, 2025, the final step of the form specification prompted users with a notification that they will be called to verify the information entered on the form." [ECF No. 21-1, PageID.276, ¶ 8]. Weston goes on further to aver that, "[t]he web inquiry form has been updated along with our privacy policy since then . . . . [a]s part of the current web inquiry form, users of our websites are notified that by checking the box and continuing, they consent to our Privacy Policy, which appears on a single, scrollable web page and also contains a conspicuous link to our Terms and Conditions." [ECF No. 21-1, PageID.277, ¶¶ 10-11].

In short, Weston admits that at the time that the web inquiry form was purportedly filled out on January 8, 2025, the forum-selection clause was absent. What may appear on the web site today is irrelevant; what is relevant is what appeared on the web site on January 8, 2025.

AWI goes on to argue that"Dobronski had actual notice of Advsiorworld.com's terms and conditions *before he filed this lawsuit.*" (Emphasis as in original.) [ECF No. 21, PageID.264]. In support, AWI cites to the Weston Declaration, ¶ 26, but nothing appearing there explains or supports AWI's argument. The Complaint was filed on January 17, 2025. But, relevant here, and what AWI has not shown is, whether

Dobronski had actual notice of the terms and conditions on January 8, 2025. AWI admits that AWI must show that the "person unambiguously manifests assent." [ECF No. 21, PageID.263]. However, the "assent" contained in the web inquiry form supplied by AWI recites: "I acknowledge that a verification call will be made to confirm the provided details." [ECF No. 21, PageID.255]. Not one word is mentioned about a forum-selection clause. Also, it must be noted, that the web form appeared on the web site for AnnuityRatesHQ.com, not Advisorworld.com. Plaintiff expressly denies that he consented to or agreeed to the jurisdiction of the Courts of Ontario, Canada. [Exhibit 1, ¶ 6].

In deciding whether to dismiss case on basis of forum non conveniens, court considers (1) whether there is adequate alternative forum, (2) whether chosen forum would be unduly burdensome to defendant or court given private and public considerations at play, and (3) whether there are legitimate reasons for denying plaintiff its choice of forum. *Prevent USA Corp. v. Volkswagen AG*, 17 F.4th 653, 658 (6th Cir. 2021). When a domestic plaintiff initiates a suit in his home forum, that choice is normally entitled great deference because it is presumptively convenient for the plaintiff. *Zions First Nat. Bank v. Moto Diesel Mexicana, S.A. de C.V.*, 629 F.3d 520, 523-24 (6th Cir. 2010). In contrast, a foreign plaintiff's forum choice is usually accorded less deference because the assumption of convenience is "much less reasonable." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 256, 102 S. Ct. 252, 70 L. Ed.

2d 419 (1981).

Here, we have a plaintiff who is a United States citizen, and has residence in Michigan. [ECF No. 20, PageID.210-211, ¶ 2]. The tortious or illegal telephone calls were directed to a telephone number with a Michigan area code, and were received by Plaintiff in Michigan. [ECF No. 20, PageID.212, ¶ 8]. We also have two (2) defendants. One defendant, Uppleger, is a resident of Michigan and operates a business in Michigan. [ECF No. 20, PageID.211, ¶ 3]. The second defendant, AWI, is a Canadian corporation. [ECF No. 20, PageID.211, ¶ 4]. But, AWI is less than candid with the Court by not clearly disclosing that the purported web form appeared on the web site for AnnuityRatesHQ.com, and that AnnuityRatesHQ operates from an office in the United States located at 1317 Edgewater Drive, #1686, Orlando, Florida. [ECF No. 21, PageID.255].

Even assuming, *arguendo*, that there was a valid and enforceable forum-selection clause – which Plaintiff denies – the fact remains that co-defendant Uppleger is not a party to same, and nowhere has AWI shown that co-defendant Uppleger consents to the jurisdiction or venue of the Canadian courts. As such, dismissal of the claims against AWI in this District would then create two parallel lawsuits: one in the Canadian courts against AWI, and another in this District against Uppleger. The court's interest in judicial economy trumps a forum selection clause. *See Cancer Step Outside the Box, LLC v. Dep't of State*, No. 3:24-CV-01465, 2025 WL 1932166, at *13 (M.D.

Tenn. July 14, 2025).

Lastly, AWI submits that the case should be dismissed with prejudice on the basis of *forum non conveniens.* [ECF No. 21, PageID.266]. The *forum non conveniens* doctrine is a rule of venue, not a rule of decision." *Sibaja v. Dow Chemical Co.*, 757 F.2d 1215, 1219 (11th Cir.1985). Dismissal with prejudice is inappropriate in the context of a *forum non conveniens* dismissal. *Chazen v. Deloitte & Touche, LLP*, No. 03-11472 EE, 2003 WL 24892029, at *3 (11th Cir. Dec. 12, 2003).

B. Whether Plaintiff Lacks Article III Standing to Bring His Claim

AWI argues that Dobronski lacks Article III standing to bring his claim. [ECF No. 21, PageID.266]. According to AWI, "Dobronski . . . submitted an inquiry to Advisorworld.com and consent to receive phone calls within the meaning of the TCPA and related state statutes." [ECF No. 21, PageID.267].

Giving benefit of all doubt to AWI, the "consent" which Dobronski purportedly gave expressly read: "I acknowledge that a verification call will be made to confirm the provided details." [ECF No. 21, PageID.255; ECF No. 21-1, PageID.276, ¶ 8]. However, it cannot be overlooked that the web form at issue appeared on AnnuityRateHQ's web site, not Advisorworld.com.

Additionally, Calls 1 through 4 all were initiated to Plaintiff's residential telephone number using an automated telephone dialing system and an artificial or prerecorded voice. As such, the caller (in this instance, AWI) was required to have

"prior express written consent" before initiating any of the calls to Plaintiff's residential telephone number. *See* 47 U.S.C. §§ 227(b)(1)(A)(iii), (b)(2), 47 C.F.R. §§ 64.1200(a)(1)(iii), (a)(2), and (a)(3). 47 C.F.R. § 64.1200(f)(9) promulgates:

> "The term prior express written consent means an agreement, in writing, that bears the signature of the person called . . . that clearly and conspicuously authorizes no more than one identified seller to deliver or cause to be delivered to the person called . . . advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice . . .
>
> (i) The written agreement shall include a clear and conspicuous disclosure informing the person signing that:
>
> (A) By executing the agreement, such person authorizes the seller to deliver or cause to be delivered to the signatory telemarketing calls . . . using an automatic telephone dialing system or an artificial or prerecorded voice; and
>
> (B) The person is not required to sign the agreement (directly or indirectly) or agree to enter into such an agreement as a condition of purchasing any property, goods, or services. The term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable Federal law or State contract law."

The "consent" form which appears on AnnuityRateHQ's web site fails to comply with the mandatory disclosure requirements set forth at 47 C.F.R. § 64.1200(f)(9)(i). AWI argues that Plaintiff consented to contact by purportedly providing his phone number to AWI. [ECF No. 21, PageID.267]. However, the FCC has declared that "persons who knowingly release their phone numbers have in effect given their invitation or

permission to be called at the number which they have given, if the caller is making the calls within the scope of the consent given, and absent instructions to the contrary." *In the Matter of Rules and Regulations Implementing the TCPA*, 30 FCC Rcd. 7961, 8028, 2015 WL 4387780, at *47, ¶ 141 (FCC, 2015). At best, the web form appearing on AnnuityRateHQ's web site provided consent to AnnuityRateHQ – not AWI – to contact Plaintiff, but not using an automatic telephone dialing system or an artificial or prerecorded voice. Nowhere is there any evidence that Plaintiff consented to receiving telemarketing calls from AWI using an automatic telephone dialing system or an artificial or prerecorded voice, and to do so multiple times. In fact, within AWI's Motion, there is evidence that Plaintiff made express demand to AWI to "do not call" again. [ECF No. 21-1, PageID.302]. Further, Plaintiff denies that he provided consent to AWI to initiate any telephone call that includes an advertisement or constitutes telemarketing, using an automatic telephone dialing system or prerecorded to his residential telephone number of any of his telephone numbers. [Exhibit 1, ¶ 5].

C. Whether Dobronski Asked Advisorworld.com for Information, Which Is a Complete Bar to His Claims

AWI appears to rehash the same "consent" argument in a different way. As already discussed, AWI was required to have *prior express written consent* to call Plaintiff, but it did not. Now, AWI argues that it had an "established business relationship" with Plaintiff. [ECF No. 21, PageID.270]. However, the "established

business relationship" exception as to telephone solicitations only applies to violations arising under 47 C.F.R. § 64.1200(c)(2)[1], and then only if the caller can demonstrate compliance with the safe harbor requirements set forth at 47 C.F.R. § 64.1200(c)(2), which promulgates as follows:

> "Any person or entity making telephone solicitations (or on whose behalf telephone solicitations are made) will not be liable for violating this requirement if:
>
> (i) It can demonstrate that the violation is the result of error and that as part of its routine business practice, it meets the following standards:
>
> (A) Written procedures. It has established and implemented written procedures to comply with the national do-not-call rules;
>
> (B) Training of personnel. It has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;
>
> (C) Recording. It has maintained and recorded a list of telephone numbers that the seller may not contact;
>
> (D) Accessing the national do-not-call database. It uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the

[1] The "established business relationship" also applies to unsolicited advertisements sent via facsimile under 47 C.F.R. § 64.1200(a)(4). *See* 47 C.F.R. § 64.1200(f)(6). However, unsolicited advertisements sent via facsimile is not at issue in this case.

> administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.
>
> (E) Purchasing the national do-not-call database. It uses a process to ensure that it does not sell, rent, lease, purchase or use the national do-not-call database, or any part thereof, for any purpose except compliance with this section and any such state or federal law to prevent telephone solicitations to telephone numbers registered on the national database. It purchases access to the relevant do-not-call data from the administrator of the national database and does not participate in any arrangement to share the cost of accessing the national database, including any arrangement with telemarketers who may not divide the costs to access the national database among various client sellers; or
>
> (ii) It has obtained the subscriber's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement between the consumer and seller which states that the consumer agrees to be contacted by this seller and includes the telephone number to which the calls may be placed; or
>
> (iii) The telemarketer making the call has a personal relationship with the recipient of the call."

The documentation submitted by AWI evidences that on January 9, 2025 at 9:00 A.M., Plaintiff made an express "do not call" demand to AWI and a demand for a copy of AWI's written do not call policy. *See* ECF No. 21-1, PageID.302 (". . . Please don't call me again. Put me on your do not call list. Please send me a copy of your written do not call policy. I've asked you not to call me. I've asked you to send me a copy of

your written do not call policy . . . ."). *See*, also, Exhibit 1, ¶ 7. Indeed, the TCPA implementing regulations require that AWI "must have a written policy, available upon demand, for maintaining a do-not-call list." 47 C.F.R. § 64.1200(d)(1). However, despite the clear and unambiguous demand made by Plaintiff, AWI has never provided a copy of its written do not call policy to Plaintiff. This failure to produce the written policy evidences that AWI does not have such a policy. As such, AWI cannot comply with the safe harbor exception of 47 C.F.R. § 64.1200(c)(2).

Further, it cannot be overlooked that the purported web site inquiry or application for products or services was made to AnnuityRatesHQ and not to AWI. [ECF No. 21, PageID.255]. But, the automated, prerecorded voice telephone call that was initiated to Plaintiff expressly identified that it was from AWI. [ECF No. 20, PageID.227, ¶ 74].

D. Whether Dobronski Comes to this Court with Unclean Hands

AWI asserts that Dobronski filled out inquiry forms under false names intending to entrap Advisorworld.com into TCPA violations. [ECF No. 21, PageID.271]. However, AWI only tells part of the story.

AWI fails to mention that the website was AnnityRatesHQ.com, and not AdvisorWorld.com. AWI fails to mention that it engages in robocalling without having obtained prior express written consent. [ECF No. 20, PageID.230, ¶ 94;PageID.231, ¶ 97; ECF No. 231-232, ¶ 100]. AWI fails to mention that its pre-recorded message

fails to state a telephone number so that called persons may make a do not call demand. [ECF No. 20, pageID.233-234, ¶ 112]. AWI fails to mention that its automatic telephone dialing system fails to allow called parties the ability to make an automated do-not-call request. [ECF No. 20, PageID.234, ¶ 115]. AWI fails to mention that it uses manipulated caller identification number and name information to disguise its identity and prevent called parties from being able to make do-not-call demands. [ECF No. 20, PageID.235, ¶ 121]. There are no "consent" exceptions to the latter three violations. Even if AWI had prior express written consent – which it did not – each and every telemarketing call initiated by AWI was required to comply with the latter three TCPA regulations.

To the extend that Plaintiff may have, subsequent to January 8, 2025, visited the AnnuityRatesHQ.com web site again, this was part of Plaintiff investigating the facts of the situation and attempting to make the logical connection between the AnnuityRatesHQ.com web site and the Advisorworld.com robocalls.

"A violation occurs upon the *initiation* of the call." *Lucas v. Telemarketer Calling From (407) 476-5680*, 2013 WL 4536872, at *3 (S.D.Ohio, 2013) (Emphasis as in original.) Individual litigants such as Plaintiff are expressly authorized to act as "private attorneys general" enforcing the TCPA. *Mey v. Venture Data, LLC*, 245 F. Supp. 3d 771, 784 (N.D. W. Va. 2017) (quoting *Universal Underwriters Ins. Co. v. Lou Fusz Auto. Network, Inc.*, 401 F.3d 876, 881 (8th Cir. 2005)). In this context, the

Federal Trade Commission and numerous courts have endorsed plaintiffs posing as interested consumers in order to identify the source of a call. *See*, *e.g.*, *Federal Trade Commission v. Lifewatch Inc.*, 176 F. Supp. 3d 757, 771 (N.D. Ill. 2016) ("[T]elemarketers' admissions are not rendered invalid just because [consumer] (successfully) tricked them into (truthfully) revealing that they sold products for Lifewatch."); see also *Hossfeld v. Allstate Insurance Co.*, 726 F.Supp.3d 852, 874 (N.D.Ill., 2024) (holding that where plaintiff feigned interest in insurance quotes and gave false names in an effort to gather information to cause the calls to stop, this conduct did not evince plaintiff's consent to further calls or transform plaintiff's injury into a self-inflicted one; the injury to plaintiff was completed when defendant placed each call to plaintiff's phone number, thereby intruding upon his peace and attention and, as the regulation states, failing to honor his request not to be called by defendant.).

AWI highlights that Plaintiff poses as an interested consumer in order to learn the identity of the offending caller. The fact that Plaintiff plays along with telemarketers to find out who they really are in not as devious as suggested. *Shelton v. National Gas & Electric, LLC*, 2019 WL 1506378, at *5 (E.D.Pa., 2019). But these additional communications follow Plaintiff first suffering an injury cognizable under the TCPA. For TCPA purposes, the point is that the caller initiated the offending call robocalls without the obligatory prior express written consent in the first place. Courts, both within this Circuit and outside, have rejected the argument that a plaintiff who

poses as an interested consumer negates standing under the TCPA. See, *e.g.*, *Abramson v. Oasis Power LLC*, No. 2:18-CV-00479, 2018 WL 4101857, at *6 (W.D. Pa. July 31, 2018), report and recommendation adopted, No. CV 18-479, 2018 WL 4095538 (W.D. Pa. Aug. 28, 2018); *Cunningham v. Rapid Response Monitoring Servs., Inc.*, 251 F. Supp. 3d 1187, 1195 (M.D. Tenn. 2017). Assuming that Plaintiff has previously sought additional information from a telemarketer in order to identify it, such conduct is merely part of *enforcing* the TCPA. *See*, *e.g.*, *Perrong v. Victory Phones LLC*, 2021 WL 3007258, at *5 (E.D.Pa., 2021). The following language is compelling from a district court analyzing a similar motion to dismiss to the extent that the defendants argued that the plaintiff was a "professional TCPA plaintiff" who filed numerous suits under the TCPA and suffered no real injury because he essentially welcomed the communications:

> "The calls show that Cunningham appears to have been very good at eliciting information from the callers that he could later use in this lawsuit, which the RRMS Defendants suggest demonstrates that he was cultivating a TCPA claim. Cunningham's Second Amended Complaint, though, openly admits that the reason he eventually accepted one of the calls was "to ascertain the identity of the party placing" them, and Cunningham has explained his sleuthing in significant detail himself... His later pleadings are entirely straightforward that he was in fact cultivating a claim... ("The only reason why the Plaintiff faked interest in the calls was to identify the seller of goods/services that was behind the calls.")... [i]t is safe to say that, when the telemarketers in this case called a phone belonging to Cunningham, they -- presumably unwittingly – found

> themselves in the sights not of an ordinary hapless consumer, but a seasoned plaintiff, likely primed and ready to take them to court if their actions violated the TCPA. Nothing in the Constitution, though, requires a plaintiff to be a naïf. Litigation is not college athletics: there is no "amateurs only rule."

Cunningham v. Rapid Response Monitoring Servs., 251 F. Supp. 3d 1187, 1194-95 (M.D. Tenn. 2017); see also *Mey v. Venture Data, LLC*, 245 F. Supp. 3d 771, 783 (N.D.W. Va. 2017) ("It is true that the plaintiff has brought a number of TCPA cases. It is further true that she has telephone answering and recording equipment which is more sophisticated than that of the average consumer. It is not true that she seeks to receive such calls. She does nothing to attract the calls; in fact, her telephone number is listed on the National Do Not Call Registry. Rather, she uses her equipment to record and document TCPA calls when they do occur. This does not deprive the plaintiff of standing any more than the purchase of a burglar alarm would indicate that the homeowner wanted her house to be broken into.").

E. Whether Dobronski's FAC Suffers from Additional Defects

AWI claims that the FAC also suffers from an additional flaw: that Count IX fails to state a claim for an independent reason – 47 C.F.R. § 64.1601(e) does not create a private cause of action. [ECF No. 21, PageID.271]. AWI further avers that "Dobronski has presented no change in law that could persuade this Court to hold differently." [ECF No. 21, PageID.272].

AWI's counsel is clearly behind the times on this issue. Courts both within and

outside of this District have concluded that a private right of action arises from a violation of 47 C.F.R. § 64.1601(e). *See Dobronski v. CHW Group, Inc.*, No. 24-cv-11649, 2025 WL 2426370, at *8 (E.D. Mich. Aug. 21, 2025) (Parker, J.) ("§ 64.1601(e)(1), through § 227(c)(5)(B), provides a private right of action"); *Newell v. JR Capital, LLC*, No. CV 25-1419, 2025 WL 2004706, at *8 (E.D. Pa. July 16, 2025) ("A violation of § 64.1601(e) is clearly a violation of regulations prescribed under § 227(c)"); *Dobronski v. Selectquote Ins. Servs.*, 773 F. Supp. 3d 373, 380 (E.D. Mich. Mar. 25, 2025) (Murphy, J.) ("47 C.F.R. § 64.1601(e) was promulgated to enforce 47 C.F.R. § 227(c); the private right of action in § 227(c)(5) is, therefore, available for violations of § 64.1601(e)"); *Worsham v. LifeStation, Inc.*, No. 661, Sept. Term,2020, 2021 WL 5358876, at *17 (Md. Ct. Spec. App. Nov. 17, 2021) (concluding that § 64.1601(e)(1) was promulgated pursuant to § 227(c) and, therefore, that a private right of action exists to enforce its provisions).

IV. CONCLUSION

For the foregoing reasons, Plaintiff Mark W. Dobronski respectfully requests that this Court issue its order that Defendant Advisorworld.com Inc.'s Motion to Dismiss [ECF No. 21] be denied.

Respectfully submitted,

Date: September 2, 2025

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Plaintiff *In Propria Persona*

CERTIFICATE OF SERVICE

I hereby certify that on **September 2, 2025**, I electronically filed the foregoing *Plaintiff's Response in Opposition to Defendant Advisorworld.com Inc.'s Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), Fed. R. Civ. P. 12(b)(6), and the Doctrine of Forum Non Cenveniens* with the Clerk of the Court via the Court's Pro Se Document Upload utility, which will send notification of such filing to all counsel of record via the CM/ECF system.

Mark W. Dobronski

EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK W. DOBRONSKI,

Plaintiff,

v.

JOSEPH EARL UPPLEGER, III, *et al.*,

Defendants.

Case No. 2:25-cv-10168

Honorable Judith E. Levy
United States District Judge

Honorable Elizabeth A. Stafford
United States Magistrate Judge

DECLARATION OF MARK W. DOBRONSKI

I, MARK W. DOBRONSKI, under penalty of perjury, do declare as follows:

1. I am the *pro se* Plaintiff in the above-captioned matter.

2. I am of the age of majority and not mentally incompetent.

3. If called as a witness, I can testify competently to the facts set forth herein of my own personal knowledge.

4. I have read the First Amended Complaint, and the facts set forth therein are true, except as to those facts stated upon information and belief, and as to those facts I believe them to be true.

5. At no time have I provided consent to Advisorworld.com Inc. to initiate any telephone call that includes or introduces an advertisement or constitutes telemarketing, using an automatic telephone dialing system or prerecorded voice to my residential telephone number or any telephone number of mine.

6. At no time, on the AnnuityRatesHQ.com web site, did I consent or agree to the jurisdiction of the Courts of Ontario, Canada.

7. On January 9, 2025, I received a telemarketing call using a pre-recorded voice message identifying as being from AWI, during which call I responded to the robotic voice by making an express "do not call" demand, and made demand to be provided a copy of AWI's written do not call policy.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this 2nd day of September, 2025.

Mark W. Dobronski