

Honorable David G. Estudillo

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

NATHEN BARTON,

Plaintiff

v.

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

Defendant(s).

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

RESPONSE TO DKT 426

Dkt. 426 is deceptive and inappropriate and should be denied. The Court should remember their bad faith when considering Barton’s Dkt. 419 motion for sanctions.

Delfgaw instructed Gibson to stipulate the data deletion

Introduction

Dkt. 427-2 contains an early draft that evolved into the Dkt. 378 stipulations. The first draft had 78 paragraphs, the final draft had 40. Intermediate drafts slowly reduced 78 paragraphs to 40.

Dkt. 427-1 contains Delfgaw’s feedback to Gibson about an early draft of the stipulations with 78 paragraphs. We know this because Dkt. 427-1 counts up to 78:

1
2 77. According to the records, yes.

3 78. We don't know, we only text opt-ins.

4 Gibson's deception is simple. She saw that ¶30 of Delfgauw's directives in Dkt. 427-1
5 said "Crossed out" and that ¶30 of Dkt. 378 is "The Dialer data was deleted to deprive Barton of
6 the evidence" and she wants to deceive the Court that ¶30 of Delfgauw's feedback in Dkt. 427-1
7 referenced ¶30 of Dkt. 378. It didn't.

8 **The deception**

9 Dkt. 426 says:

10 There was a statement on that, on the document that was ultimately filed
11 with an item 30 [in Dkt. 378] stating that items were deleted to keep
12 them from Mr. Barton. That was crossed off by Mr. Delfgauw and not to
13 be included in the situation. At some point Mr. Barton included that
statement or it was not removed and the document was filed with that
statement

14 Gibson's matching testimony is in Dkt. 427 ¶2-3. Starting in page 1, line 25

15 . . . We worked for several days and I sent his initial document to Mr.
16 Delfgauw and his in house counsel (who has since left) and his paralegal.
17 Attached hereto as Exhibit ¶3 A is a true and correct copy of one of the
Documents were exchanged between counsel and Mr. Delfgauw, where
18 a paragraph 30 was instructed to be stricken.

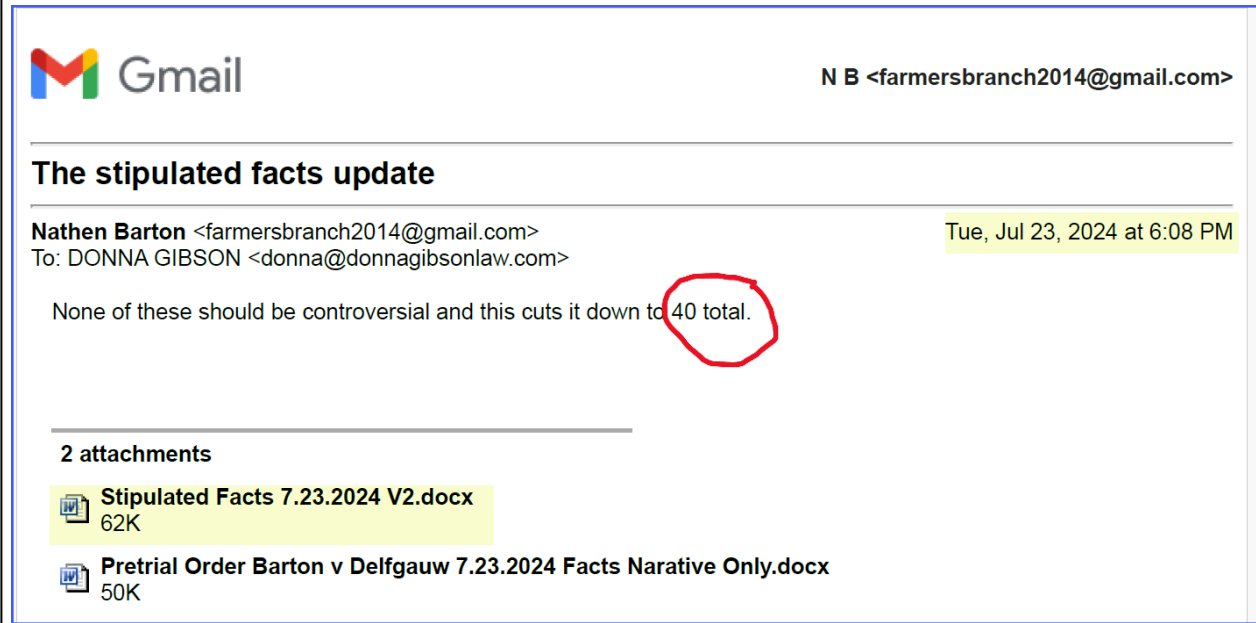
19 Did you see the slight of hand? No worries if you didn't. It was very clever. Gibson
20 passes off item #30 of an early draft containing 78 items as being the same as item #30 of 40 in
Dkt. 378. It's not.

21 **Exposing the deception**

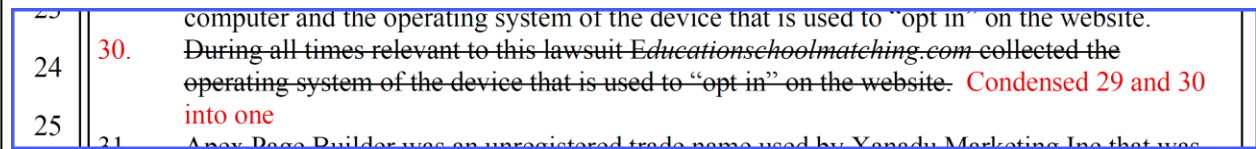
22 Dkt. 427-1 counts 78 items. *Id.*, page 4. It matches the 78 items on Dkt. 427-2. Dkt.
23 427-2 was a draft of what eventually became Dkt. 378, before the paragraphs were reduced 40.

1 The 78 stipulations reduced to 40 over many iterations of the draft documents. **The 78**
2 **directives in Dkt. 427-1 do not correspond with the 40 paragraphs in Dkt. 378** They
3 correspond with the early draft in Dkt. 427-2 that also has 78 items.

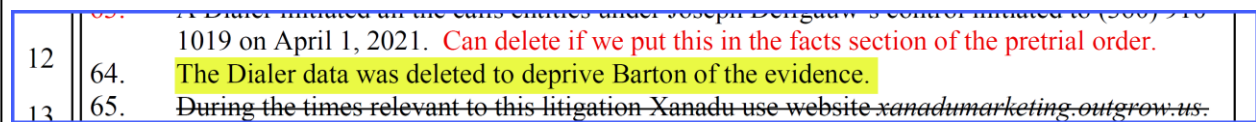
4 The first time Gibson saw a draft stipulation with 40 items was the 6:08 PM email in Dkt.
5 418, bottom of page 6 Two hours after seeing this draft of the document with 40 paragraphs,
6 Gibson filed it on the Court’s docket (378) with 40 paragraphs



16 The ¶30 in Dkt 426/427 is this paragraph in Dkt. 427-2 and it *was* stricken:



19 At the time Gibson and Delfgauw were communicating about the 78 items in Dkt 427-1,
20 the deleted dialer data stipulation was ¶64 of Dkt. 427-2:



23 **Delfgauw admits he deleted the dialer data to deprive Barton of the evidence**

1 Note Gibson’s wording in Dkt. 427 ¶3: *A is a true and correct copy of one of the*
2 *Documents were exchanged between counsel and Mr. Delfgauw, where a paragraph 30 was*
3 *instructed to be stricken.* Gibson admits Dkt. 427-1 are instructions from Delfgauw to Gibson.

4 What instruction did Delfgauw give Gibson regarding the stipulation *The Dialer data was*
5 *deleted to deprive Barton of the evidence?* Delfgauw’s response was “Yes”. Dkt 427-1, 3, ¶64.

6 63. Possibly.

6 64. Yes

7 65. Not True

8 Delfgauw instructed Gibson to stipulate that *The Dialer data was deleted to deprive*
9 *Barton of the evidence.* She did that as the as the number of stipulations reduced from 78 to 40,
10 and ¶64 in the early drafts became ¶30 in Dkt. 378.

11 **Gibson’s request for a stay is inappropriate**

12 It is true that the Court has encouraged a settlement for some time. It wasn’t an order.
13 They only pretend their newly found desire for settlement talks is in good faith. If it was, they
14 would have asked Barton if he wanted to stay the case for settlement talks. They didn’t. No,
15 they went to Court ex-parte to force settlement talks on him without even asking if he would
16 participate. They tell the Court they want to negotiate but they only gave Barton a take-it-or-
17 leave-it offer . On November 12 Gibson called Barton. After a little warm up she asked for
18 Barton’s \$\$\$ settlement number and he gave one. She said that was not in the realm of
19 possibilities and that they were thinking “low four figures”. When Barton declined “low four
20 figures”, she said there was no point in talking further about settlement, and she got off the
21 phone. The call lasted 3 minutes and 16 seconds.

22 She didn’t ask about staying the case. She communicated that “low four figures” was a
23 take it or leave it deal. Barton had no inkling their asking for a stay was coming before Dkt. 426.
24 He certainly isn’t interested in staying the case to listen to “low four figures” offers.

1 Lastly, this issue with the deleted data has been around for months. Dkt. 378 was filed in
2 July 23, 2024. Barton referred to the deleted data stipulation in Dkt. 397 on September 4, 2024.
3 He referred to it again in Dkt. 406 filed September 26, 2024. And again in Dkt. 412 filed on
4 October 10, 2024, and again in Dkt. 415 filed on October 23, 2024. Prior to this they said the
5 same in Dkt 362 page 15 ¶271, and in Dkt. 373 page 6 ¶61. None of these previous filings
6 triggered them into “trying to determine what happened and how best to handle this”. Only now
7 are they “trying to determine what happened and how best to handle this”. What part of this is
8 good faith?

9 Conclusion

10 This motion is a textbook example of the wild goose chases the Defendants put on the
11 Court. They hoped the Court would fixate on the “30” and not realize that item 30 of 78 isn’t the
12 same as item 30 of 40. They wanted to ram this motion through ex-parte before anyone figured
13 it out.

14 All they did was prove what we already knew: Delfgaww instructed Gibson to stipulate
15 that the dialer data was deleted to deprive Barton of the evidence. They wanted the world to
16 know *[t]he Dialer data was deleted to deprive Barton of the evidence* because they thought they
17 were immune from consequences after the close of discovery.

18 Defendants object to this motion as it appears to be a complaint that he did
19 not receive discovery – which would be better presented to the court as a
20 motion to compel—and the date for such has long passed. Dkt 414 at 2:7-9.

21 Now they fear the consequences and they want to change their story. How much time
22 and energy will the Court and Barton waste on the latest wild goose chase? After reading this
23 response, will it end? Or will they have another go? The Court should remember all of this
24 when considering Barton’s Dkt. 419 motion for sanctions.

1 s/ Nathen Barton

2 (signed)

November 16, 2024

(Dated)

3 Nathen Barton
4 (469) 347 2139
5 4618 NW 11th Cir
6 Camas WA 98607
7 FarmersBranch2014@gmail.com

8 **I. CERTIFICATE OF SERVICE**

9 I hereby certify that on November 16, 2024, I electronically filed the foregoing with the
10 Clerk of the Court using the Court's CM/ECF System, which will automatically generate a
11 Notice of Electronic Filing to all parties in the case who are registered users of the CM/ECF
12 System, which includes the Defendant. The said Notice of Electronic Filing specifically
13 identifies recipients of electronic notice.

14 /s/ Nathen Barton

15 Nathen Barton