

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DANIEL HUMAN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

**FISHER INVESTMENTS, INC., AND
SMART ASSET ADVISORS, LLC,**

Defendants.

Case No. 4:24-cv-01177-MTS

JURY TRIAL DEMANDED

**DEFENDANT FISHER INVESTMENTS'S MEMORANDUM
IN SUPPORT OF MOTION TO COMPEL AND DISCOVERY SANCTIONS**

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I. INTRODUCTION

By filing this lawsuit against Fisher, Plaintiff Daniel Human voluntarily subjected himself to the discovery process. Yet he has done nothing but violate his discovery obligations—and this Court’s orders. Most recently, he violated the Court’s orders to comply with a device inspection. He has also violated his most basic obligations (and his own commitments) to produce documents and interrogatory responses despite waiving all objections to Fisher’s requests by not responding to them. And he has intentionally frustrated the progress of this case at every turn, including by filing a frivolous notice of appeal that the Eight Circuit promptly dismissed *sua sponte*.

Mr. Human has thus put Fisher in an impossible position where it cannot obtain crucial discovery relevant to its defenses and counterclaim, including discovery that will expose his long-running fraudulent scheme to manufacture dozens of lawsuits by intentionally consenting to calls and then denying it so he can falsely allege TCPA violations.

Fisher now moves to compel basic discovery relevant to Fisher’s defenses and counterclaims that Mr. Human has stonewalled many times over. And because Mr. Human has repeatedly violated this Court’s orders, intentionally abused judicial resources, and imposed massive unnecessary expenses on Fisher, Fisher also moves for sanctions, including monetary sanctions and the involuntary dismissal of Mr. Human’s complaint.

II. BACKGROUND

Mr. Human filed this lawsuit eight months ago in July 2024—nearly a year ago. As discussed in Fisher’s concurrently filed motion for sanctions, Mr. Human has violated the Court’s orders and discovery obligations since the outset. That forced Fisher to request a hearing even though Mr. Human would not comply with the Court’s orders to meet and confer about discovery disputes. At the hearing, Fisher effectively asked the Court to instruct Mr. Human and his counsel to comply with previous orders—an expense no litigant should need to incur.

In the interest of avoiding repeating material covered in Fisher’s sanctions motion, this motion to compel focuses on Mr. Human’s extensive misconduct since the January 22 hearing. The outcome of that hearing was a simple order instructing Mr. Human to do the following: (1) “sit for deposition by oral examination” by February 14, 2025; (2) “comply with” Fisher’s “device inspection request” by January 27, 2025; and (3) participate in “a meet and confer on the remaining discovery issues” by January 27, 2025. ECF No. 34 ¶ 3(c). The order warned, in **bold**, that the “failure to comply with any part of this Order may result in the imposition of sanctions,” including “contempt of court.” *Id.* at 4.

Mr. Human has violated either the letter or spirit of each of the Court’s orders and has deprived Fisher of crucial discovery it needs for its defenses and counterclaim.

A. Mr. Human Violated the Court’s Order to Comply with Fisher’s Device Inspection Request.

Perhaps most egregiously, Mr. Human violated the Court’s order to comply with Fisher’s device inspection request by no later than January 27, 2025. ECF No. 34 ¶ 3(c)(ii).

Fisher served a device inspection request to seek key discovery to show that Mr. Human manufactured this lawsuit against Fisher by inviting calls he could use to assert TCPA claims. For example, Mr. Human’s devices could contain evidence that he consented to calls on websites by completing webforms inviting calls. They could also show communications with people Mr. Human is working with to perpetrate his scheme. And they could show other evidence consistent with fraud, including evidence that he receives an extraordinary number of calls and texts addressed to many different people at a single number. That is not how normal people use their phones. But it would be exactly how someone trying to fraudulently manufacture and file over 70 TCPA lawsuits in a short period of time would use their phone. Fisher thus served a targeted device inspection request seeking devices Mr. Human used during certain times in 2024 that Fisher

believed were most likely to show evidence of Mr. Human's fraudulent scheme. Ex. A, Terepka Decl., Ex. 6.

Mr. Human did nothing but try to improperly evade the device inspection, even after the Court ordered that he "must comply" with it no later than "Monday, January 27, 2025." ECF No. 34 ¶ 3(c)(ii).¹ Mere minutes before the inspection was set to occur on January 27, Mr. Human attempted to unilaterally dismiss his case without prejudice to avoid the inspection. ECF No. 37. Plaintiff timed his dismissal attempt to impose the maximum expense on Fisher, waiting until the *very morning the device inspection was supposed to occur per the Court's order*. Mr. Human's timing was intentional. Fisher repeatedly emailed Mr. Human about the costly arrangements it was making for the device inspection that Mr. Human already knew he would attempt to evade. Terepka Decl., Exs. 17–19. In any event, when this Court struck his dismissal for violating Federal Rules that prohibit voluntary dismissal after an answer is filed, Mr. Human then attempted to dismiss *with prejudice* to avoid his discovery obligations. ECF Nos. 38–39. The Court denied that, too. ECF No. 40.

Mr. Human then realized he would need to do something last minute to make it look like he was complying with the Court's order. Unsurprisingly, Mr. Human's purported "compliance" was a farce. He not only attended the device inspection over *five hours late*—at significant additional expense to Fisher—but produced a laptop that either *wasn't his* or *had not been used for over two years*. Ex. B, Ruley Decl. ¶ 4; Ex. C, Herfordt Decl. ¶¶ 8–10. That is directly contrary to Fisher's device inspection request, which sought devices Mr. Human used in 2024 during times Fisher suspects he used the devices to manufacture TCPA lawsuits. Terepka Decl. ¶ Ex. 6.

¹ Fisher should not have needed to incur the expense of obtaining a court order to comply with this request to begin with. As the Court noted in its order, Mr. Human waived all objections to that request by failing to timely object to it. ECF No. 34 ¶ 3(c)(ii) n.1.

Unable to moot the device inspection at the eleventh hour by dismissing the case, Mr. Human produced a laptop that is a mere decoy intended to give the false appearance that he was complying with the Court's orders. He did this willfully and intentionally. As Mr. Human himself confirmed in a declaration he later filed, he knew exactly what he was doing—and that the laptop he produced was irrelevant: “I purchased a laptop from my former employer Square One Group, Inc. during silent auction, although I rarely turned it on and have no recollection of ever conducting an internet search on the laptop, a fact which I disclosed to a forensic examiner for Fisher.” ECF No. 49-1. Mr. Human tellingly did not say that this was his only computer or offer any excuse for failing to produce the devices that are actually responsive to Fisher's inspection request.

Nor could he. Mr. Human admitted in writing to Fisher's counsel that he has at least one other responsive device he did not produce by the device inspection deadline: His “old desktop” he uses to send emails about his cases.² Ruley Decl., Ex. 4. He further claimed that he “had some terrible meltdown of [his] geriatric computer this weekend and had to replace it.” *Id.* The timing of Mr. Human's sudden computer destruction is extremely suspicious. He claims his desktop had a “terrible meltdown” the “weekend” before January 29, 2025. *Id. That is the weekend before the court-ordered device inspection deadline of January 27.* ECF No. 34 ¶ 3(c). So, according to Mr. Human, a key device in his possession miraculously melted down one or two days before his deadline to produce it for inspection. Yet he did not produce that desktop in whatever form it continued to exist so Fisher's forensic expert could see what data might be recovered from it. Herfordt Decl., ¶ 12.

Mr. Human also produced one cell phone for inspection. As suspected, the device contains substantial evidence of fraud, including that Mr. Human's cell phone receives calls and texts

² Mr. Human was communicating directly with Fisher's counsel about another case, not this one.

addressed to at least a dozen different names, which may be aliases he uses to fraudulently complete lead forms inviting calls and texts. Herfordt Decl. ¶ 11. These results confirm what Fisher has contended from the start: Inspecting *all of* Mr. Human's responsive devices is crucial discovery. *See* Terepka Decl., Ex. 6. So far, Mr. Human has produced only one such device (his phone). He has attempted to deceive Fisher and the Court by producing an irrelevant laptop. Herfordt Decl. ¶¶ 8–10. And he appears to have destroyed a desktop computer with responsive information one or two days before the court-ordered inspection deadline. Ruley Decl., Ex. 4.

B. Mr. Human Has Failed to Comply with His Written Discovery Obligations.

Mr. Human similarly failed to comply with his most basic obligations with respect to written discovery. He failed to meaningfully respond to interrogatories and regurgitated the same objections over and over again, despite the fact that all objections were waived. Terepka Decl., Ex. 11. The only documents Mr. Human has voluntarily produced show his bad-faith attitude toward the discovery process. They include hundreds of pages of meaningless material, like copies of *Fisher's* own discovery responses and hundreds of pages from Fisher and Smart Asset's publicly available websites. All but 9 of 418 pages were publicly available materials or Fisher's own discovery responses. *Id.*, Ex. 12.

Per the Court's order, Fisher met and conferred with Mr. Human's counsel about that discovery on January 27. Ruley Decl. ¶ 5. Fisher's counsel reminded Mr. Human's counsel that his client waived all objections and referred to the Court's order so holding (ECF No. 34 ¶ 3 n.1). *Id.* ¶ 6. Fisher's counsel then asked for Mr. Human's full document production and complete interrogatory answers. *Id.* ¶ 7. Mr. Human's counsel tried to resist, but recognizing that he had no basis to do so, he ultimately agreed his client would produce these documents along with complete interrogatory responses by February 3, 2025. *Id.* ¶ 6, Ex. 1. Fisher agreed to this date in a showing of good faith even though it was the last day to raise discovery disputes under the Court's order

granting the parties leave to submit letter briefing on issues unresolved during the meet and confer. ECF No. 34 ¶ 3(c)(iii) n.2.

The discovery Mr. Human agreed to produce is crucial to Fisher's case—and should have been produced long ago. Here are some key examples:

- Documents showing whether Mr. Human even owns the phone number that received the alleged calls (a threshold requirement to pursue his claims). RFP Nos. 10, 36, 37.
- Documents that will expose Mr. Human's fraudulent scheme of consenting to calls and then falsely denying it, including hundreds of communications with other companies that informed Mr. Human that they only called his alleged phone number because they had consent to call. RFPs No. 49, 50, 51, 55.
- Documents that will expose Mr. Human's intentional impersonation of Veronica Moreno, the individual listed on the subject lead form containing Mr. Human's telephone number. RFP Nos. 52, 53, 54, 62, 66.
- Documents that will show Mr. Human's internet history and IP addresses for the date that a lead form containing Mr. Human's telephone number was submitted, including documents indicating Mr. Human's ISP and any use of a VPN or other technology to obscure IP addresses. RFP Nos. 44, 45.
- Interrogatory responses about the lead forms that Mr. Human has submitted online in the past four years (Interrogatory No. 4), including whether Mr. Human requested information regarding financial investment products or services within the last four years (Interrogatory No. 5).
- Interrogatory responses seeking basic details that will help Fisher identify important additional discovery, including all telephone numbers that Mr. Human used in the last four years (Interrogatory No. 9), every electronic device used on the date of the lead form submission and on the dates of the alleged calls (Interrogatory No. 12), and the total dollar amount received in TCPA settlements over the past four years (Interrogatory No. 20).

See Terepka Decl., Ex. 11.

Mr. Human breached his agreement to produce this discovery within a week. On February 3, the day his production was due, he falsely denied that he agreed to produce documents by that date. Ruley Decl., Ex. 3. He also attempted to evade his obligations by dismissing his own case, with prejudice, as discussed above. When that failed, Mr. Human filed a frivolous appeal that his counsel admitted he intended to divest "the Court of jurisdiction" in still another effort to do

anything possible to avoid the Court's orders and Mr. Human's discovery obligations. Terepka Decl., Ex. 26. Now, nearly two weeks after the mandate was docketed, Mr. Human has done nothing to fulfill his prior promises or to comply with this Court's orders.

In sum, Mr. Human has repeatedly violated this Court's orders and basic discovery obligations. And in all of this time since the Court's January 22 hearing, Mr. Human still has not done any of the following: (1) produce a single additional document; (2) provide further responses to a single interrogatory; (3) produce his real computer for an inspection the Court ordered 56 days ago, including what may be left of a desktop he tried to destroy; (4) sit for a deposition, which Fisher cannot take without a meaningful document production. Mr. Human's tactics have severely prejudiced Fisher by depriving it of crucial discovery and imposing massive unnecessary expenses.

III. LEGAL STANDARD

The Federal Rules of Civil Procedure require parties to comply with discovery obligations. Fed. R. Civ. P. 37. So do Court Orders and Local Rules. *See generally* ECF Nos. 19, 34. When parties don't comply, courts can compel production and impose other appropriate sanctions. *See generally Liley v. Mitek Corp.*, 2015 WL 13662175, at *1 (E.D. Mo. Jan. 29, 2015) (ordering plaintiffs to "serve complete responses and produce all documents responsive to the production requests on defendants within seven days"); *Ivy v. Saint Louis Cmty. Release Ctr.*, 2020 WL 13133413, at *1–2 (E.D. Mo. Oct. 15, 2020) (Schelp, J.) (where "Plaintiff, through counsel, has defied multiple orders of this Court related to Plaintiff's discovery obligations in this case," "numerous uncooperative and unacceptable practices" warranted exclusion of evidence).

And for a "willful, intentional decision to not meaningfully engage in discovery," district courts can impose a variety of sanctions, including fee awards and involuntary dismissal. *Tarvisium Holdings, LLC v. Dukat, LLC*, 2020 WL 130587, at *3 (W.D. Mo. Jan. 10, 2020); *see also Tolden v. City's Finest, LLC*, 2025 WL 252466, at *1–2 (E.D. Mo. Jan. 21, 2025) (Schelp, J.)

(holding that involuntary dismissal is appropriate upon a showing of a litigant's disregard for the Court's orders and for the Local Rules, especially when the nonmoving party also failed to provide responses to the movants' formal discovery requests).

District courts' sanction powers stem from three sources: (1) Fed. R. Civ. P. 37, governing discovery misconduct; (2) the Court's inherent authority, and (3) 28 U.S.C. § 1927, imposing attorneys' fees for litigants who unreasonably and vexatiously multiply proceedings. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44–45, 48 n.13 (1991). “A court dismissing under Rule 37, however, need not investigate lesser sanctions when a party's violation is deliberate.” *Comstock v. UPS Ground Freight, Inc.*, 775 F.3d 990, 992 (8th Cir. 2014).

IV. ARGUMENT

Fisher respectfully asks this Court to: (1) compel Mr. Human to provide full responses and productions to the discovery he has constantly evaded despite waiving all objections; (2) compel Mr. Human to sit for deposition within 7 days of producing documents; (3) compel Mr. Human, again, to comply with Fisher's device inspection, including by producing whatever is left of his desktop computer; (4) involuntarily dismiss Mr. Human's Amended Complaint as a sanction for Mr. Human repeatedly violating the Court's orders and basic discovery obligations; and (5) impose monetary sanctions. Fisher also requests that the Court extend the current discovery schedule by 60 days to account for the time Fisher lost from Mr. Human's misconduct and frivolous appeal.

A. Mr. Human Should be Compelled to Produce Documents and Complete Interrogatory Answers Relevant to Fisher's Defenses and Counterclaims.

The Court should compel Mr. Human to respond to Fisher's document requests and interrogatories without objection. Mr. Human's failure to do so is inexcusable, especially given that he waived all objections and previously committed to provide these responses before attempting to evade them, again, in bad faith.

As discussed above, Fisher served discovery seeking crucial information relevant to its defenses and counterclaim. That discovery sought, for instance, various categories of information to expose Mr. Human's fraudulent scheme of manufacturing TCPA lawsuits by consenting to calls with various aliases. *See* above at 2–3. The discovery Fisher served thus falls within the heart of what the Federal Rules permit: “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

Here, however, Mr. Human waived all objections to Fisher’s discovery. So Mr. Human must respond to Fisher’s requests and produce documents without objection, as the Court previously held. ECF No. 34. Because he still hasn’t, the Court should compel Mr. Human to respond and produce. *See Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992) (“It is well established that a failure to object to discovery requests within the time required constitutes a waiver of any objection.”) (quoted in ECF No. 34 ¶ 3(c)(ii) n.1); *In re United States*, 864 F.2d 1153, 1156 (5th Cir. 1989) (“We readily agree with the district court that as a general rule, when a party fails to object timely to interrogatories, production requests, or other discovery efforts, objections thereto are waived.”) (quoted in ECF No. 34 ¶ 3(c)(ii) n.1).

B. Mr. Human Should Be Compelled to Sit for Deposition, as the Court Already Ordered.

The Court should compel Mr. Human to sit for deposition after a full document production. Fisher has sought to depose Mr. Human since November 2024, when it first noticed his deposition. When he refused to comply, the Court ordered Mr. Human to “sit for a deposition by Friday, February 14, 2025.” ECF No. 34 ¶ 3(c)(i). To ensure Fisher would receive a meaningful document production before the deposition, it obtained Mr. Human’s agreement to fully respond to Fisher’s document requests no later than February 3. As discussed above, however, Mr. Human breached his own agreement. Then, he did anything he could think of to evade the Court’s orders and

discovery obligations (including his deposition), like filing improper notices of dismissal and a frivolous interlocutory appeal. *See* above at 6–7.

By continuing to refuse to produce the documents Fisher needs for the deposition, Mr. Human has again refused to meaningfully participate in a crucial aspect of discovery. Mr. Human is a critical witness for Fisher’s defenses and counterclaim. But Fisher cannot depose him—or even know all of the lines of questioning it may wish to pursue—without documents. That is especially true in this case where Mr. Human possesses *at least* hundreds of key responsive documents that will expose his fraudulent scheme. That includes communications from dozens of other defendants showing that he consented to calls he received (including at least one that sued him for fraud), settlement agreements with other defendants, and records showing what devices he uses. Fisher thus requests that the Court order Mr. Human, again, to sit for deposition within 7 days of completing a full document production.

C. Mr. Human Should be Compelled to Submit His Real Computer(s)—Instead of a Decoy—for the Device Inspection the Court Previously Ordered.

The Court should compel Mr. Human to comply with its previously ordered device inspection. As detailed above, Fisher served a device inspection request to obtain critical evidence of Mr. Human’s fraud. Mr. Human waived all objections by failing to respond to that request. His conduct with respect to the device inspection is peak bad faith. He tried to evade the device inspection at the last minute with improper notices of dismissal even though he knew Fisher was incurring substantial expenses to prepare for the inspection. When the Court forced him to proceed, he produced a decoy instead of his real device. And then he admitted he destroyed—and failed to produce—a desktop computer *a day or two before* the court-ordered deadline. *See* above at 5.

The Court should thus order Mr. Human, again, to fully comply with Fisher’s device inspection by submitting all responsive devices for inspection, including whatever is left of the

desktop computer Mr. Human destroyed right before the court-ordered inspection deadline.

D. The Court Should Involuntarily Dismiss Mr. Human's Claims as a Sanction for His Misconduct.

The Court should involuntarily dismiss Human's claims as a sanction for Mr. Human's repeated and willful violations of the Court's orders and discovery obligations.

Involuntary dismissal is an appropriate sanction for "willful, intentional decision[s] to not meaningfully engage in discovery," especially when combined with violations of court orders. *Tarvisium v. Dukat*, 2020 WL 130587, at *3 (W.D. Mo. Jan. 10, 2020); *see also* Fed. R. Civ. P. 37(b)(2)(A) (sanctions may include "dismissing the action or proceeding in whole or in part").

For example, this Court has involuntarily dismissed a case where the plaintiff repeatedly ignored court orders and failed to provide discovery responses, as here. *Tolden v. City's Finest, LLC*, 2025 WL 252466, at *1–2 (E.D. Mo. Jan. 21, 2025) (Schelp, J.). In *Tolden*, the "Plaintiff repeatedly ignored this Court's orders related to alternative dispute resolution" by failing, for example, to timely file a "designation of neutral form." *Id.* The plaintiff also missed deadlines without providing "any justification" and tried to "shift blame" to defendants. "Besides this disregard for the Court's orders and for the Local Rules, Plaintiff also failed to provide responses to Defendants' formal discovery requests." *Id.* This Court concluded that "Plaintiff's actions and inactions warrant dismissal of this case." *Id.*

Mr. Human's conduct in this case is far worse than the plaintiff's in *Tolden*. As discussed above, he has constantly obstructed the progress of this case, intentionally imposed unnecessary expense on Fisher and the Court every step of the way, and deprived Fisher of crucial discovery. He went so far as to file a frivolous appeal to purport to deprive the Court of jurisdiction in a transparent attempt to evade the Court's orders and Mr. Human's discovery obligations, as his counsel all but admitted. Terepka Decl., Ex. 26. Mr. Human broke his commitment to produce

documents by February 3. *Id.* And he produced for the court-ordered device inspection a laptop he knew was an irrelevant decoy and admitted in writing that he destroyed a key responsive desktop one or two days before the inspection deadline. ECF No. 49-1 ¶ 15; Ruley Decl. Ex. 4.

Mr. Human has also violated the Court's orders countless times, in at least the following ways: He refused to participate in a court-ordered joint report. He refused to participate in the court-ordered meet and confer process. He refused to comply with the court-ordered device inspection. He refused to comply with the Court's order holding that he cannot voluntarily dismiss his case. He failed to comply with the Court's order to follow the Local Rules for filing briefs. He violated the Court's orders about communications with chambers, including as recently as March 18, 2025. *Compare* Terepka Decl., Ex. 27 (Plaintiff counsel's improper email to the Court) *with* ECF No. 34 ¶ 3(d)(i)–(ii) (“Before raising any discovery dispute with the Court, counsel must speak (in person or by telephone) with opposing counsel in good faith or make reasonable efforts to do so” and any request to the Court for an informal conference “must convey the general issue in three or fewer sentences and include opposing counsel on the email communication.”).

Mr. Human violated all of these Court orders despite repeated warnings of the consequences, sometimes in bold text in the Court's orders. ECF Nos. 19 (“The failure to comply with any part of this Order may result in the imposition of sanctions”), 34 (“The failure to comply with any part of this Order may result in the imposition of sanctions” including “contempt of court.”) (in bold), 38 (violations “could result in sanctions as described in the First Amended Case Management Order.”), 40 (violations “could result in sanctions as described in the First Amended Case Management Order.”), 62 (denying Plaintiff's second motion for partial summary judgment and noting “these latest occurrences have been part of a troubling pattern of Plaintiff's careless disregard for Court Rules and directives even after they explicitly are called to his attention” and

warning that “Going forward, Plaintiff must pay careful attention that he complies with all applicable rules and the Court’s orders. His continued failure to do so will result in the dismissal of his claim.”). “The Court’s Local Rules” give a similar “warning of sanctions.” *Tolden*, 2025 WL 252466, at *1 (citations omitted); *see also* Local Rule 5.03; *Martinez v. Union Pac. R. Co.*, 82 F.3d 223, 227 (8th Cir. 1996) (noting the Court of Appeals for the Eighth Circuit “has upheld strict compliance by trial courts with their local rules”).

A wealth of additional case law confirms that involuntary dismissal is appropriate here. In another case in this District, for example, the court involuntarily dismissed claims because it “twice warned Plaintiff that his refusal to comply with this Court’s Orders could result in dismissal of his case, but Plaintiff has taken no affirmative steps to either prosecute his case or comply with this Court’s Orders,” leaving defendants “unable to defend this action without this necessary discovery that Plaintiff refuses to provide.” *Vaughn v. Vilsack*, 2014 WL 5255101, at *1–2 (E.D. Mo. Oct. 15, 2014); *see also Compton v. St. Louis Metro. Police Dep’t*, 2012 WL 6738493, at *3 (E.D. Mo. Dec. 31, 2012) (dismissing plaintiffs’ case with prejudice pursuant to Rule 37(b) and awarding attorneys’ fees to defendants where “Plaintiffs have wil[l]fully ignored two court orders to compel discovery, without explanation or excuse, to the prejudice of the defendants.”); *McMorris v. Decker Truck Line, Inc.*, 2024 WL 3836741, at *1 (W.D. Mo. Aug. 15, 2024) (dismissing the action after plaintiff failed to respond to discovery requests and defied court orders); *Reger v. Wilhite*, 2020 WL 3489356, at *1 (E.D. Mo. June 26, 2020) (similar); *Arnold v. ADT Sec. Servs., Inc.*, 627 F.3d 716, 722 (8th Cir. 2010) (affirming dismissal after plaintiffs’ failure to comply with the court’s discovery orders); *Rodgers v. Curators of Univ. of Missouri*, 135 F.3d 1216, 1218, 1221–22 (8th Cir. 1998) (affirming dismissal where plaintiff intentionally delayed discovery and produced financial documents at the “eleventh-hour [in] attempt to cure his violation of a discovery

order”); *Schubert v. Pfizer, Inc.*, 459 F. App’x 568, 572–73 (8th Cir. 2012) (collecting cases).

In sum, Mr. Human should be “all out of second chances.” *Pasch v. OnDoc*, 2023 WL 5528036, at *3 (E.D. Mo. Aug. 28, 2023) (Schelp, J.). He has had “ample opportunities to comply with the Federal Rules of Civil Procedure, the Local Rules, and Court orders.” *Id.* Yet he “intentionally frustrated every attempt to reach a determination in this action” despite repeated warnings. *Id.* And he has “continue[d] to exhibit willful and bad-faith behavior.” *Id.* Mr. Human has thus “perpetuat[ed] a pattern of conduct that is best described as a clear abuse of the judicial process.” *See id.* (citing *Chambers*, 501 U.S. at 44–45). The Court should involuntarily dismiss his claims. And because Fisher’s counterclaim will remain in the case, the Court should compel all the discovery Fisher seeks above.

E. The Court Should Award Monetary Sanctions to Fisher.

The Court should similarly impose monetary sanctions. Per Rule 37, “instead of or in addition” to dismissing Mr. Human’s claims, “the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney’s fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.” The Court can likewise order monetary sanctions under 28 U.S.C. § 1927 and the Court’s inherent authority. *Chambers*, 501 U.S. at 48 n.13 (citation omitted).

Monetary sanctions are especially appropriate because Mr. Human’s constant violations have imposed massive unnecessary expense on Fisher. *See, e.g., Trbovich v. Ritz-Carlton*, 166 F.R.D. 30, 32 (E.D. Mo. 1996) (awarding attorneys’ fees for nonmovant’s failure to produce applicable discovery). Indeed, the Eighth Circuit has upheld an attorneys’ fee award where the nonmovant “demonstrated a consistent pattern of failure to comply with [the movant]’s discovery requests and with the magistrate judge’s orders . . . amount[ing] to a near total dereliction of professional responsibility. Such abusive conduct should not, can not, and will not be cost-free.”

Comiskey v. JFTJ Corp., 989 F.2d 1007, 1012 (8th Cir. 1993) (affirming award of attorneys' fees as a Rule 37 sanction). That is precisely the case here.

Because Fisher is moving separately for sanctions related to the January 22 hearing in this matter, Fisher requests the following monetary sanctions for needless fees incurred since that hearing: The cost of preparing for and attending the January 27 meet and confer call where Mr. Human's counsel promised a full production on February 3, only to break that promise one week later; the expense of the device inspection on January 27 where Mr. Human intentionally produced an irrelevant decoy laptop hours after the scheduled time; the expense of the additional device inspection this motion seeks to compel; the expense of preparing this motion, any reply, and the hearing on this motion. *Trbovich*, 166 F.R.D. at 33.

V. CONCLUSION

For these reasons, the Court should (1) compel Mr. Human to provide full responses and responses to the discovery he continues to ignore, even after waiving all objections; (2) compel Mr. Human to sit for deposition within 7 days of producing completing a document production; (3) compel Mr. Human, again, to comply with Fisher's device inspection, including by producing whatever is left of his desktop computer; (4) involuntarily dismiss Mr. Human's Amended Complaint; and (5) impose monetary sanctions. Fisher also requests that the Court extend the current discovery schedule by 60 days to make up for the lost time from Mr. Human's frivolous appeal and refusal to comply with the Court's orders and discovery obligations.

[Signature Appears on Following Page]

Dated: March 19, 2025

Respectfully submitted,

/s/ Alexander D. Terepka

Alexander D. Terepka (*pro hac vice*)

James M. Ruley (*pro hac vice*)

Melanie G. Ng (*pro hac vice*)

WATSTEIN TEREPA LLP

1055 Howell Mill Rd. 8th Floor

Atlanta, Georgia 30318

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Matthew D. Guletz, #57410(MO)

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One US Bank Plaza

St. Louis, MO 63101

(314) 552-6311

Fax: 314-552-7000

mguletz@thompsoncoburn.com

Attorneys for Defendant Fisher Investments, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this March 19, 2025, I caused to be electronically filed the foregoing document in the United States District Court for the Eastern District of Missouri, with notice of same being electronically served via email to Plaintiff's counsel.

/s/ Alexander D. Terepka
Alexander D. Terepka

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DANIEL HUMAN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FISHER INVESTMENTS, INC., AND
SMART ASSET ADVISORS, LLC,

Defendants.

Case No. 4:24-cv-01177-MTS

JURY TRIAL DEMANDED

**DECLARATION OF ALEXANDER TEREPKA IN SUPPORT OF DEFENDANT
FISHER'S MOTION FOR SANCTIONS AND MOTION TO COMPEL**

1. My name is Alexander Terepka. I am over the age of 18 and a partner at Watstein Terepka, LLP. I make this declaration based on my personal knowledge.
2. My firm was retained to represent Fisher Investments, Inc. ("Fisher") in a putative class action alleging violations of the Telephone Consumer Protection Act and similar state law filed by Daniel Human.
3. Attached as **Exhibit 1** is a true and correct copy of an email exchange between my colleague, M. Ng, and E. Butler between October 30, 2024 and November 12, 2024 regarding the parties' joint scheduling plan, on which I was copied.
4. Attached as **Exhibit 2** is a true and correct copy of an email exchange between my colleague, M. Ng, and E. Butler between October 30, 2024 and November 12, 2024 regarding the parties' joint scheduling plan, on which I was copied.

5. Attached as **Exhibit 3** is a true and correct copy of an email exchange between my colleague, M. Ng, and E. Butler on November 12, 2024, regarding the parties' joint scheduling plan, on which I was copied.

6. The Court issued a Case Management Order on November 13, 2024, granting Fisher's requested for phased discovery. ECF No. 19.

7. Discovery opened on November 14, 2024. That day, Fisher served document requests, interrogatories, a device inspection request, and a deposition notice on Plaintiff.

8. Attached as **Exhibit 4** is a true and correct copy of Fisher's first set of written discovery to Plaintiff, which was served on Plaintiff's counsel on November 14, 2024.

9. Attached as **Exhibit 5** is a true and correct copy of Fisher's first notice of deposition to Plaintiff, scheduled for January 10, 2025, which was served on Plaintiff's counsel on November 14, 2024.

10. Attached as **Exhibit 6** is a true and correct copy of Fisher's notice of device inspection to Plaintiff, which was served on Plaintiff's counsel on November 14, 2024.

11. Attached as **Exhibit 7** is a true and correct copy of email correspondence between my colleague, M. Ng, to E. Butler on December 3, 2024 regarding the deadline to respond to written discovery, on which I was copied.

12. Attached as **Exhibit 8** is a true and correct copy of email correspondence between my colleague, M. Ng, to E. Butler on December 4, 2024 offering Plaintiff an extension on his discovery responses, on which I was copied.

13. Attached as **Exhibit 9** is a true and correct copy of email correspondence sent from my colleague, M. Ng, to E. Butler on December 23, 2024 regarding Plaintiff's waiver of discovery objections, on which I was copied.

14. Attached as **Exhibit 10** is a true and correct copy of email correspondence between my colleague, M. Ng, to E. Butler from December 24, 2024 through December 26, 2024.

15. Attached as **Exhibit 11** is a true and correct copy of Plaintiff's responses and objections to Fisher's written discovery requests. Plaintiff's counsel served this document on Fisher's counsel on December 27, 2024, which is weeks after Plaintiff's responses were due.

16. Plaintiff made a document production that totaled 153 pages on December 27. That included 89 pages reproducing Fisher's discovery responses (including a duplicate copy of Fisher's answers to Plaintiff's interrogatories) and 55 pages of publicly available documents from Fisher's and Smart Asset's websites. The remaining pages contained 7 pages of heavily redacted phone logs and 2 pages of advertisements emailed to his counsel.

17. Plaintiff's supplemental document production on January 2, 2025 likewise contained non-responsive documents. Although it totaled 418 pages, the production duplicated the original 153-page production and then contained another 256 pages of publicly available documents from Fisher's and Smart Asset's websites. Attached as **Exhibit 12** is a true and correct copy of Plaintiff's supplemental document production.

18. Attached as **Exhibit 13** is a true and correct copy of an email composite exhibit depicting chronological email correspondence between my colleague, M. Ng, and E. Butler from December 23, 2024 through January 7, 2025 about Plaintiff's deficient discovery responses, on which I was copied.

19. Attached as **Exhibit 14** is a true and correct copy of email correspondence between my colleague, M. Ng, and Christopher Prosser from January 13, 2025 about Plaintiff's counsel's alleged inability to meet and confer regarding Plaintiff's deficient discovery responses because of a previously undisclosed vacation.

20. Attached as **Exhibit 15** is a true and correct copy of email correspondence between my colleague, M. Ng, and E. Butler from January 2, 2025 through January 13, 2025 detailing Fisher's efforts to schedule a meet and confer with opposing counsel on Fisher's discovery disputes, on which I was copied.

21. Attached as **Exhibit 16** is a true and correct copy of ECF No. 26 as filed, Plaintiff's memorandum in support of his second motion to stay discovery.

22. Attached as **Exhibit 17** is a true and correct copy of email correspondence from my colleague, M. Ng, to E. Butler on January 23, 2025 requesting court-ordered compliance with Fisher's device inspection request, on which I was copied.

23. Attached as **Exhibit 18** is a true and correct copy of email correspondence between my colleague, M. Ng, and E. Butler from January 23, 2025 through January 25, 2025 requesting court-ordered compliance with Fisher's device inspection request, on which I was copied.

24. Attached as **Exhibit 19** is a true and correct copy of email correspondence between my colleague, M. Ng, and E. Butler dated January 27, 2025 relating to Fisher's scheduled device inspection, on which I was copied.

25. Attached as **Exhibit 20** is a true and correct copy of email correspondence between my colleague, M. Ng, and E. Butler from December 23, 2024 through January 7, 2025 regarding dates for Plaintiff's deposition, on which I was copied.

26. Attached as **Exhibit 21** is a true and correct copy of email correspondence from my colleague, M. Ng, to E. Butler on January 13, 2025 seeking to schedule a meet and confer on discovery issues.

27. Attached as **Exhibit 22** is a true and correct copy of email correspondence from my colleague, M. Ng, to the Court requesting a discovery conference on January 17, 2025, on which I was copied.

28. On January 22, 2025, I attended an informal discovery conference with the Court via Zoom. During the hearing, Plaintiff's counsel could not articulate any basis for Plaintiff's refusal to participate in discovery. He conceded that Plaintiff's responses to Fisher's discovery were untimely, and thus any objections were waived. He also argued that it was improper for Fisher to email the Court directly to ask for a hearing on a discovery dispute even though that is the procedure the Court instructed the parties to follow.

29. After the hearing, Fisher calculated its fees incurred in connection with the January 22 hearing, which totaled approximately \$7,000. Fisher then asked Plaintiff to pay its fees for the hearing. Attached as **Exhibit 23** is a true and correct copy of email correspondence from my colleague, M. Ng, to E. Butler between February 4, 2025 (seeking payment of the approximately \$7,000 sum) and February 6, 2025 (offering, in good faith, to reduce the amount owed to \$5,000 to avoid the additional and unnecessary costs of a sanctions motion). Fisher did not receive a response.

30. My team coordinated for Plaintiff's devices to be inspected at 10:00 AM CT on January 27, 2025. But mere minutes before the inspection was to occur, Plaintiff attempted to unilaterally dismiss his case without prejudice to avoid the device inspection and a scheduled meet and confer with Fisher's counsel. Attached as **Exhibit 24** is a true and correct copy of email correspondence on January 27, 2025 between my colleague, M. Ng, and E. Butler, indicating that Plaintiff would not appear for a device inspection or the scheduled meet and confer based on the filing of Plaintiff's notice of voluntary dismissal without prejudice, on which I was copied.

31. However, the Court struck Plaintiff's attempted dismissal. ECF No. 38. Following that, our team reached out to Plaintiff's counsel to see whether he would comply with the court-ordered device inspection and meet and confer. Attached as **Exhibit 25** is a true and correct copy of email correspondence on January 27, 2025 from my colleague, M. Ng, to E. Butler regarding the status of the inspection of Plaintiff's device and the previously scheduled meet and confer, on which I was copied.

32. Attached as **Exhibit 26** is a true and correct copy of email correspondence from E. Butler and my colleague, M. Ng, to the Court on February 5, 2025 regarding Plaintiff's notice of appeal.

33. Attached as **Exhibit 27** is a true and correct copy of email correspondence between E. Butler and myself to the Court on March 18, 2025.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 19th day of March in Atlanta, Georgia.

Signed by:

44B19B7E9CBF483...
Alexander Terepka

EXHIBIT 1

From: Melanie Ng mng@wtlaw.com
Subject: Re: Human V Fisher Investments
Date: November 12, 2024 at 3:16 PM
To: Edwin Butler edbutler@butlerlawstl.com, Alexander Terepka Alex@wtlaw.com, mguletz@thompsoncoburn.com
Cc: Edwin Butler edbutler@butlerlawstl.com



Hi Ed, we need to hear back ASAP given today's filing deadline. Otherwise, we'll file what we have with a note saying you haven't responded.

Best,
Melanie

Melanie G. Ng (bio)
WATSTEIN TEREPA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

From: Melanie Ng <mng@wtlaw.com>
Date: Tuesday, November 12, 2024 at 9:38 AM
To: Edwin Butler <edbutler@butlerlawstl.com>, Alexander Terepka <Alex@wtlaw.com>, mguletz@thompsoncoburn.com <mguletz@thompsoncoburn.com>
Cc: Edwin Butler <edbutler@butlerlawstl.com>
Subject: Re: Human V Fisher Investments

Hi Ed, following up on the below—please let us know what edits you have, if any, before we file the scheduling plan later today. Thanks!

Best,
Melanie

Melanie G. Ng (bio)
WATSTEIN TEREPA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

From: Melanie Ng <mng@wtlaw.com>
Date: Friday, November 8, 2024 at 2:27 PM
To: Edwin Butler <edbutler@butlerlawstl.com>, Alexander Terepka <Alex@wtlaw.com>, mguletz@thompsoncoburn.com <mguletz@thompsoncoburn.com>
Cc: Edwin Butler <edbutler@butlerlawstl.com>
Subject: Re: Human V Fisher Investments

Hi Ed, our proposed revisions to the scheduling plan are attached, along with a courtesy redline .pdf.

Best

Best,
Melanie

Melanie G. Ng (bio)

WATSTEIN TEREPA ^{LLP}

P: 404-600-1240

mng@wtlaw.com

www.wtlaw.com

From: Melanie Ng <mng@wtlaw.com>
Date: Friday, November 1, 2024 at 1:12 PM
To: Edwin Butler <edbutler@butlerlawstl.com>, Alexander Terepka <Alex@wtlaw.com>, mguletz@thompsoncoburn.com <mguletz@thompsoncoburn.com>
Cc: Edwin Butler <edbutler@butlerlawstl.com>
Subject: Re: Human V Fisher Investments

Hi Ed,

As you can see from the attached email, we responded to Mr. Human advising him that his discovery requests are improper for several reasons, including because the parties had yet to confer under Rule 26(f) and the operative scheduling order does not contemplate premature discovery requests. In that same email, we advised Mr. Human that Fisher is not interested in settling his meritless claims. That remains Fisher's position.

Lastly, we will circulate our portion of the scheduling plan next week.

Best,
Melanie

Melanie G. Ng (bio)

WATSTEIN TEREPA ^{LLP}

P: 404-600-1240

mng@wtlaw.com

www.wtlaw.com

From: Edwin Butler <edbutler@butlerlawstl.com>
Date: Wednesday, October 30, 2024 at 4:01 PM
To: Alexander Terepka <Alex@wtlaw.com>, mguletz@thompsoncoburn.com <mguletz@thompsoncoburn.com>, Melanie Ng <mng@wtlaw.com>
Cc: Edwin Butler <edbutler@butlerlawstl.com>
Subject: Human V Fisher Investments

[Warning – external]

Dear Counselors:

My client has advised that prior to our representation, he served you with both a proposed scheduling plan and first requests for discovery on October 7, 2024.

a proposed scheduling plan and first requests for discovery on October 7, 2024. At this time the scheduling plan is due on November 12, 2024.

Under Rule 408, my client advised that he proffered an offer to settle this case for \$20,000.00 and your client failed to respond. Is your client interested in settling this case, and if so, perhaps we should have that conversation instead of unnecessarily expending our resources on scheduling plans and discovery preparation. If your client has a counteroffer we would be happy to review it.

Please advise of your clients position on settlement negotiations.

Thanks,

Ed

Edwin V. Butler | Butler Law Group LLC

1650 Des Peres Road;. Ste 220 | Des Peres, MO 63131

Direct: # | Office: 314-504-0001 | Fax: 314-481-8479

edbutler@butlerlawstl.com | www.butlerlawstl.com

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EXHIBIT 2

From: Melanie Ng mng@wtlaw.com 
Subject: Re: Human V Fisher Investments
Date: November 12, 2024 at 4:17 PM
To: Edwin Butler edbutler@butlerlawstl.com, Alexander Terepka Alex@wtlaw.com, mguletz@thompsoncoburn.com
Cc: Edwin Butler edbutler@butlerlawstl.com



Hi Ed, as you can see from the attached email, I attached a redline copy. Those same attachments are included here for your convenience.

Best,
Melanie

Melanie G. Ng ([bio](#))
WATSTEIN TEREPA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

From: Edwin Butler <edbutler@butlerlawstl.com>
Date: Tuesday, November 12, 2024 at 4:13 PM
To: Melanie Ng <mng@wtlaw.com>, Alexander Terepka <Alex@wtlaw.com>, mguletz@thompsoncoburn.com <mguletz@thompsoncoburn.com>
Cc: Edwin Butler <edbutler@butlerlawstl.com>
Subject: RE: Human V Fisher Investments

[Warning – external]

Hi Melanie,

Your redline wasn't attached. I've checked all correspondence and haven't found it.

If you can resend the email with your response now, we'll address it immediately.

Thanks,

Ed

From: Melanie Ng <mng@wtlaw.com>
Sent: November 12, 2024 8:38 AM
To: Edwin Butler <edbutler@butlerlawstl.com>; Alexander Terepka <Alex@wtlaw.com>; mguletz@thompsoncoburn.com
Cc: Edwin Butler <edbutler@butlerlawstl.com>
Subject: Re: Human V Fisher Investments

Hi Ed, following up on the below—please let us know what edits you have, if any, before we file the scheduling plan later today. Thanks!

Best,
Melanie

Melanie G. Ng ([bio](#))
WATSTEIN TEREPA ^{LLP}

WATSTEIN TEREPA

P: 404-600-1240

mng@wtlaw.com

www.wtlaw.com

From: Melanie Ng <mng@wtlaw.com>
Date: Friday, November 8, 2024 at 2:27 PM
To: Edwin Butler <edbutler@butlerlawstl.com>, Alexander Terepka <Alex@wtlaw.com>, mguletz@thompsoncoburn.com <mguletz@thompsoncoburn.com>
Cc: Edwin Butler <edbutler@butlerlawstl.com>
Subject: Re: Human V Fisher Investments

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Best,
Melanie

Melanie G. Ng (bio)
WATSTEIN TEREPA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

From: Melanie Ng <mng@wtlaw.com>
Date: Friday, November 1, 2024 at 1:12 PM
To: Edwin Butler <edbutler@butlerlawstl.com>, Alexander Terepka <Alex@wtlaw.com>, mguletz@thompsoncoburn.com <mguletz@thompsoncoburn.com>
Cc: Edwin Butler <edbutler@butlerlawstl.com>
Subject: Re: Human V Fisher Investments

Hi Ed,

As you can see from the attached email, we responded to Mr. Human advising him that his discovery requests are improper for several reasons, including because the parties had yet to confer under Rule 26(f) and the operative scheduling order does not contemplate premature discovery requests. In that same email, we advised Mr. Human that Fisher is not interested in settling his meritless claims. That remains Fisher's position.

Lastly, we will circulate our portion of the scheduling plan next week.

Best,
Melanie

Melanie G. Ng (bio)
WATSTEIN TEREPA ^{LLP}
P: 404-600-1240

mng@wtlaw.com
www.wtlaw.com

From: Edwin Butler <edbutler@butlerlawstl.com>
Date: Wednesday, October 30, 2024 at 4:01 PM
To: Alexander Terepka <Alex@wtlaw.com>, mguletz@thompsoncoburn.com
<mguletz@thompsoncoburn.com>, Melanie Ng <mng@wtlaw.com>
Cc: Edwin Butler <edbutler@butlerlawstl.com>
Subject: Human V Fisher Investments

[Warning – external]

Dear Counselors:

My client has advised that prior to our representation, he served you with both a proposed scheduling plan and first requests for discovery on October 7, 2024. At this time the scheduling plan is due on November 12, 2024.

Under Rule 408, my client advised that he proffered an offer to settle this case for \$20,000.00 and your client failed to respond. Is your client interested in settling this case, and if so, perhaps we should have that conversation instead of unnecessarily expending our resources on scheduling plans and discovery preparation. If your client has a counteroffer we would be happy to review it.

Please advise of your clients position on settlement negotiations.

Thanks,

Ed

Edwin V. Butler | Butler Law Group LLC

1650 Des Peres Road;. Ste 220 | Des Peres, MO 63131

Direct: # | Office: 314-504-0001 | Fax: 314-481-8479

edbutler@butlerlawstl.com | www.butlerlawstl.com

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Re- Human V Fisher Investments
.eml
471 KB



Draft Case Management
Plan_Defendant's Proposed...



Draft Case Management
Plan_Defendant's Proposed...



EXHIBIT 3

From: Melanie Ng mng@wtlaw.com 
Subject: Re: Human V Fisher Investments
Date: November 12, 2024 at 8:30 PM
To: Edwin Butler edbutler@butlerlawstl.com
Cc: Edwin Butler edbutler@butlerlawstl.com, Alexander Terepka Alex@wtlaw.com, Guletz, Matthew D. MGuletz@thompsoncoburn.com



Hi Ed,

We're just following up on the below—please let us know whether you've signed off on this by 9PM ET. If you don't respond by then, we'll simply remove your signature and add a note to the Court about why we need to file this unilaterally.

Thank you.

Best,
Melanie

Melanie G. Ng ([bio](#))
WATSTEIN TEREPKA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

From: Melanie Ng <mng@wtlaw.com>
Date: Tuesday, November 12, 2024 at 6:40 PM
To: Edwin Butler <edbutler@butlerlawstl.com>
Cc: Edwin Butler <edbutler@butlerlawstl.com>, Alexander Terepka <Alex@wtlaw.com>, Guletz, Matthew D. <MGuletz@thompsoncoburn.com>
Subject: Re: Human V Fisher Investments

Hi Ed,

We disagree with your position for multiple reasons that we've laid out in detail in our report. We've made these similar arguments dozens of times in similar reports in federal courts across the country, including this one. And in the vast majority of cases we've handled in circumstances like these, the courts agree that phased discovery is appropriate. We're not deleting our position, and as you can see in the attached, we've restored our prior insertions. If you want to add anything to your position in the attached, you can.

Otherwise, we're going to go ahead and file this version. Please let us know if you have any additional edits by 9 PM ET or confirm that you've signed off. If we haven't heard from you by then, we'll go ahead and file.

Thank you.

Best,
Melanie

Melanie G. Ng ([bio](#))
WATSTEIN TEREPKA ^{LLP}
P: 404-600-1240
mng@wtlaw.com

mng@wtlaw.com

www.wtlaw.com

From: Edwin Butler <edbutler@butlerlawstl.com>

Date: Tuesday, November 12, 2024 at 5:36 PM

To: Melanie Ng <mng@wtlaw.com>

Cc: Edwin Butler <edbutler@butlerlawstl.com>

Subject: Human V Fisher Investments

[Warning – external]

Melanie,

Your edits are grossly inappropriate and not acceptable. Briefing legal arguments and character assassination have no place in a JSA.

Ed

Edwin V. Butler | Butler Law Group LLC

1650 Des Peres Road;. Ste 220 | Des Peres, MO 63131

Direct: # | Office: 314-504-0001 | Fax: 314-481-8479

edbutler@butlerlawstl.com | www.butlerlawstl.com

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**Draft Case Management
Plan_Defendant's Proposed...**
41 KB



EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DANIEL HUMAN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FISHER INVESTMENTS, INC.,

Defendant.

Case No. 4:24-cv-01177-MTS

JURY TRIAL DEMANDED

**DEFENDANT FISHER INVESTMENTS, INC.'S FIRST SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION TO PLAINTIFF**

Defendant Fisher Investments, Inc. ("Defendant"), pursuant to Rules 26, 33, and 34 of the Federal Rules of Civil Procedure, requests that Plaintiff Daniel Human ("Plaintiff") respond to the following Interrogatories and Requests for Production ("Request" or "Requests") within the time required by law.

DEFINITIONS

1. "Plaintiff," "you," and "your" shall mean or refer to Plaintiff Daniel Human and any persons acting on his behalf with respect to the subject matter of a specific question.

2. "Defendant" shall mean Fisher Investments, Inc.

3. "Complaint" means the Class Action Complaint filed by Plaintiff in this action.

ECF 1.

4. The term "TCPA" refers to the Telephone Consumer Protection Act (47 U.S.C. § 227, et al.).

5. The term "Missouri No Call List and Telemarketing provisions" refers to Mo. Rev. Stat. § 407.1070, *et seq.*

6. “Answer” means Answer and Affirmative Defenses to Plaintiff’s Class Action Complaint filed by Defendant in this action. ECF 10.

7. “Communicate” or “communication” means any contact or act by which information or knowledge is transmitted or conveyed between or among two or more persons, including, without limitation, written contact by such means: letters; e-mail; fax; memoranda; telegrams; telexes; text messages; blog posts or entries; social media messages, posts or entries; or any other documents, and/or all contact by such means as face-to-face meetings, oral conversations, and telephone conversations.

8. The terms “document” and “documents” are defined as broadly as possible to include anything stored in any medium, including but not limited to all written, recorded, transcribed, punched, taped, filmed, or graphic matter, however produced or reproduced, of every type and description that is in your possession, control, or custody, or of which you have knowledge, including but not limited to, correspondence, memoranda, transcripts of any conversation or testimony, tapes, stenographic or hand-written notes, studies, publications, books, diaries, logs, instant messaging, electronic mail (e-mail), including but not limited to, server-based email, web-based email, dial-up email, email attachments, deleted email, voicemail, information stored on social networking sites, information created with the use of PDAs or smartphones, tablets, information stored in a cloud environment, text messages, information stored on removable hard drives, thumb drives, flash drives, CDs, DVDs, disks, pamphlets, pictures (drawings and photographs), films, microfilms, recordings (including any analog, digital, electromagnetic, optical, phonographic, or other media of audio and/or visual recordings), maps, reports, recommendations, surveys, appraisals, minutes, statistical computations, telegrams, telex messages, listing of telephone calls, telephone and/or cell phone records, books of account,

ledgers, expense records, accounts payable, accounts receivable, analyses, and computer records (translated if necessary, by any person or entity that has control of such records through detection devices into reasonably usable form); every draft of each such document; every copy of each such document where the original is not in your possession, custody, or control; and every copy of each such document where such copy is not an identical copy of an original, or other copy, where such copy contains any commentary or notation whatsoever that does not appear on the original or other copy. The terms “document” or “documents” also include any and all electronically stored information (“ESI”), computer records, data and information of whatever kind whether printed out or stored on or retrievable from any floppy diskette, compact diskette, magnetic tape, optical or magnetic-optical disk, cloud storage, mobile storage, hard drive or rapid access memory, or other electronic storage medium, regardless of its location, including without limitation, all back-up copies, undeleted data, and dormant or remnant files.

9. “Person” or “persons” shall mean or refer to any natural person or legal entity, including, but not limited to, all individuals, associations, companies, partnerships, joint ventures, corporations, and governmental bodies.

10. The terms “identify” and “identity” mean the following:

- a. With regard to a natural person, these terms mean to state that person’s full name, any aliases, present residential address and home telephone number, present business address and business telephone number, or, if the above are not known, such information as was last known, including the person’s residential address, home telephone number, business title, business affiliation, business address, and business telephone number at that time;

- b. With regard to a corporation, partnership or any legal entity other than a natural person, these terms mean to state its full name and form of organization, any names under which it does business, address of principal place of business, state of incorporation or approval/licensure to do business and telephone number at present and, if different, address of principal place of business and telephone number at the time of all relevant incidents and/or time periods relevant to this action, officers, directors, managers, members, and partners, and the general business purpose of the entity;
- c. With regard to a document, these terms mean to state the title (if any), the type of document, the nature and substance of the document with sufficient particularity to enable the same to be precisely identified, the date, if any, which the document bears, the date the document was sent, the date the document was received, the person or persons executing and/or sending the document and the identity of all persons participating in the preparation thereof, if different from the persons executing it, the person to whom the document is addressed and by whom received, any identifying numbers used in connection with the documents or affixed thereto and an explanation thereof, the present location of the original or a true, complete and legible copy of the document, and the full name, present address and telephone number of the person or persons having possession, custody, or control of each such original or true, complete and legible copy;
- d. With regard to an act (including without limitation an occurrence, transaction, decision, statement, communication, conversation, conference, representation, assurance) or other conduct, these terms mean to state and describe in detail the

substance of the event or events constituting such act or conduct, what transpired, the place and date the act or conduct occurred, the persons present, the person involved and the documents referring or relating to the act or conduct, and with regard to a statement (including without limitation a communication, conversation, conference, representation, or assurance) the sum and substance of the statement, including which person made which statement.

11. The term “receive” or “received” means obtained in any way, including without limitation, hand delivery, mail, copy, carbon copy, blind copy, blind-carbon copy, fax, courier, picking up at a designated location, electronic transmission, blog post, online message board, post on website or intranet site, communication through website or intranet site, or any method by which information is communicated between one person or entity and another.

12. The term “sent” means transmitted in any way including without limitation, hand delivery, mail, fax, courier, dropping off at a designated location, electronic transmission, blog post, online message board, post on website or intranet site, communication through website or intranet, or any other method by which information is communicated between one Person or entity and another.

13. The terms “relate to” or “related to” or “relating to” mean having any relationship or connection to, concerning, being connected to, commenting on, responding to, containing, evidencing, showing, memorializing, describing, analyzing, reflecting, pertaining to, comprising, constituting, or otherwise establishing any reasonable, logical or causal connection.

14. The terms “refer to” or “referring to” mean in any way referring to, relating to, reporting on, with respect to, showing or indicating knowledge of, pertaining to, having to do with, having any relationship or connection to, containing, mentioning, describing, disclosing,

summarizing, rephrasing, memorializing, describing, analyzing, showing, or in any manner bearing on the stated matter, fact, or thing.

15. The terms “concern” or “concerning” mean relating to, referring to, describing, evidencing, or constituting.

16. The terms “evidencing” or “evidence” mean in any way supporting, demonstrating, embodying, representing, exemplifying, signifying, constituting, consisting of, comprising, being the equivalent or equal to, or establishing any reasonable, logical or causal connection to the stated matter, fact, or thing.

17. The term “support or refute” means in any way supporting, confirming, verifying, proving, refuting, negating, denying, rebutting, contradicting, or challenging the stated matter, fact, or thing.

18. The term “subject telephone number” or “subject number” means the telephone number at issue in your Complaint (208) 390-1355.

19. The phrase “calls at issue” or “alleged calls” means the calls that you allegedly received, as averred in the Complaint.

20. The term “lead form” means any form you submitted (online or physical) or communication you sent that included the subject telephone number, in order to obtain information about (or in connection with) a product, service, or business (*e.g.*, for financial advisement services).

21. The term “electronic device” includes cell phones, computers, tablets, smart watches, or any other similar electric device that has access to the internet.

INSTRUCTIONS

1. These instructions are subject to the definitions set forth in the preceding “Definitions” section.

2. You are to respond to all Requests with all information which you have or which is reasonably available to you, including information in the possession, custody or control of your attorneys, investigators, agents, associates, partners or representatives. If your response to any Request is that the information is not possessed or reasonably available to you, please describe in detail the efforts you made to locate or obtain the information, together with its likely source. If any portion of any Request refers to information or documents that you are aware of but are not within your possession, identify each person in possession of the information and each document in a manner sufficient to describe such documents for the purpose of preparing and serving a proper subpoena duces tecum and identify the name, telephone number, and address of the person last known by you to have been in possession, custody, or control of such documents.

3. If you assert the attorney-client privilege, work product immunity, or any other privilege or doctrine as to any information or document, either as to part or the entirety, provide the following information:

- a. the number of the Request calling for the production of such information, communication, or document;
- b. the specific ground(s) for not identifying the information, communication, or document or thing in full;
- c. the bases for any such claim of privilege or immunity;
- d. the full identity of the information, communication, document, thing, or material for which such privilege or immunity is asserted, including the name and title of any document or thing;
- e. the name, address and title of its author;
- f. each addressee;

g. the identity of each person to whom a copy of the document or thing has been sent or received; and

h. the date(s) appearing on the document.

4. To the extent that you assert the claim of privilege, immunity, or other doctrine as to only part of a communication, document, or thing, produce in redacted form that portion of the document or thing not covered by such claim.

5. Further, to the extent you withhold any documents on the basis of privilege, provide a privilege log compliant with the Federal Rules of Civil Procedure to be produced concurrently with your responses to these Requests.

6. If any document identified in your response to any Request has been destroyed, describe the contents of the document, the date of its destruction, and the name of the person who authorized its destruction.

7. These Requests shall be deemed continuing in nature so that Plaintiff or any person(s) acting on his behalf shall file amended, additional, or supplemental answers should different or more current information come to Plaintiff's attention, rendering the prior answers incomplete or inaccurate.

8. The use of the singular includes the plural, and the use of the plural includes the singular, so as to be inclusive of any information that otherwise may be excluded. Additionally, the use of any pronoun should be construed as singular or plural and is included in the masculine, feminine or neuter to the extent necessary or appropriate to render the Request as broad and inclusive as reasonably possible.

9. The use of the present tense includes the past tense, and the use of the past tense includes the present tense, so as to be inclusive of any information that may otherwise be excluded.

10. The connectives “or” and “and” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery Request all responses that might otherwise be construed to be outside of its scope.

11. The terms “all,” “any,” and “each” shall each be construed as encompassing any and all.

12. In these Requests, Defendant seeks discovery of your computer and/or cellular phone data. Accordingly, Defendant respectfully demands that you preserve all of your electronic data related to the subject matter of these Requests and maintain the layout and configuration of your computer and cellular phone systems until you and Defendant reach a complete agreement and understanding regarding the preservation of electronic data. You are prohibited from initiating or performing any activity that would or might result in the loss of electronic data, e.g., data compression rotation, destruction, erasure of data, either on-line or off-line, de-fragmenting any hard drives, or purging any directories related to the subject of this litigation. This notice applies to any computers or cellular phones within your custody or control and the custody and control of your employees, agents, and independent contractors and includes servers, personal computers, mini computers, laptop computers, notebook computers, palm computers, personal digital computers, main frames, cellular phones or other equipment. You are also directed to maintain your electronic data storage devices and media and all activity logs whether made by your, your employees, agents, independent contractors, vendors, or other person(s).

INTERROGATORIES

INTERROGATORY NO. 1

Identify each person who supplied information in connection with or otherwise participated in answering these Interrogatories, and for each person identified, describe the nature of the participation or the information provided.

INTERROGATORY NO. 2

Identify and describe the content of all communications you claim to have had with Defendant or anyone you allege was working on its behalf, including with any persons or entities you claim were involved in the alleged calls to the subject telephone number, and for each communication, state the persons with whom you communicated, the manner of communication, the date of communication, the approximate length of the conversation (if any), and the matters you communicated about.

INTERROGATORY NO. 3

Identify all persons you believe to have information that relates to, concerns, evidences, supports, or refutes your claims or Defendant's defenses in this case, as outlined in Defendant's Answer to Plaintiff's Complaint, and state generally the information you believe they possess. In your answer, identify all persons who witnessed, and with whom you have discussed, your receipt of the alleged calls.

INTERROGATORY NO. 4

Identify all lead forms you have filled out or submitted between January 1, 2021 and the present. The term "lead form" means any form or communication you submitted (online or physical) that included the subject telephone number for the stated purpose of providing contact information to receive information or marketing about a product, service, or business.

INTERROGATORY NO. 5

Identify whether you have requested information online regarding financial investment products or services within the last four years. If so, please provide a description of the circumstances and state the dates you submitted them.

INTERROGATORY NO. 6

Identify and describe in detail by case style, case number, and court or tribunal, any and all lawsuits, court proceedings, administrative proceedings, arbitrations, hearings, or other legal proceedings (“matters”) to which you have been a party or in which you have provided oral or written testimony.

INTERROGATORY NO. 7

For the matters (defined in Interrogatory Number 6) you identified in Interrogatory No. 6, (1) identify which matters involved alleged violations of the TCPA; (2) identify which matters involved alleged violations of the Missouri No Call List and Telemarketing provisions; and (3) identify the matters in which the defendant(s) asserted that Plaintiff consented to the communications, including by submitting an online opt-in form.

INTERROGATORY NO. 8

Identify any and all crimes for which you have been convicted by case style, case number, and court or tribunal, and indicate any sentence served in connection with the same.

INTERROGATORY NO. 9

Identify each and every telephone number assigned to you, owned by you, or regularly used by you since January 1, 2021, when you were using the number, all persons you believe have knowledge of such information, whether each such telephone number was cellular or landline, and which companies provided service to such numbers.

INTERROGATORY NO. 10

Identify any and all personal email addresses, social networking sites (with associated user name or identification), and/or personal blogs you have used, maintained, accessed, consulted, or posted from January 1, 2021 through the present, including, but not limited to, personal e-mail accounts (*e.g.*, AOL, G-Mail, Yahoo, Hotmail, or any other private or public e-mail account), Facebook, Twitter, LinkedIn, Myspace, Tumblr, Instagram, Snapchat, or other similar social networking, file- sharing, social media, or similar sites, chat-rooms, or blogs whereby individuals communicate with each other via digital means).

INTERROGATORY NO. 11

Identify all the websites you visited from any electronic device you used on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024. The term “electronic device” includes cell phones, computers, tablets, smart watches, or any other similar electric device that has access to the internet.

INTERROGATORY NO. 12

Identify every electronic device you used on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024. The term “electronic device” includes cell phones, computers, tablets, smart watches, or any other similar electric device that has access to the internet.

INTERROGATORY NO. 13

Identify where you were residing (full-time or part-time) between January 1, 2021 through the present. In your answer: (1) identify the city and state of each residence: and (2) state when and for how long you were residing at each residence.

INTERROGATORY NO. 14

For the residences and/or addresses identified in Interrogatory Number 13, identify all individuals who resided at those residences and/or addresses.

INTERROGATORY NO. 15

Identify where you were physically located on each of the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024. In your answer, identify the city, state, and physical address of each location, if available.

INTERROGATORY NO. 16

Identify your Internet Protocol addresses (IP address) for every electronic device you used on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024. The term “electronic device” includes cell phones, computers, tablets, smart watches, or any other similar electric device that has access to the internet.

INTERROGATORY NO. 17

Identify all counsel you have retained or engaged: (a) for the matters (defined in Interrogatory Number 6) you identified in your response to Interrogatory Numbers 6 through 8; and (b) to send pre-suit letters to, including demand letters alleging violations of the TCPA and the Missouri No Call List and Telemarketing provisions, on your behalf.

INTERROGATORY NO. 18

Identify all matters in which you purported to represent a putative class and your counsel filed a motion to certify the class.

INTERROGATORY NO. 19

Identify all persons with which you discussed (either orally or in writing) the matters you identified in response to Interrogatories 6-8.

INTERROGATORY NO. 20

State the total dollar amount you received in legal settlements involving alleged violations of the TCPA and/or any other telemarketing statutes in following years: 2021, 2022, 2023, and 2024 (to date), as well as the total number of payments in each year.

INTERROGATORY NO. 21

Separately itemize all damages or other relief you seek.

REQUESTS FOR PRODUCTION

REQUEST NO. 1

All documents evidencing, concerning, relating to, or referring to communications you have had with any person regarding any of the facts and allegations set forth in, or underlying, the Complaint and/or the defenses in the Answer, including without limitation, all non-privileged communications you sent to or received from any person.

REQUEST NO. 2

All documents evidencing, concerning, relating to, or referring to communications you have had with any person regarding the matters (defined above and in Interrogatory Number 6) you identified in response to Interrogatories 6 through 8, including without limitation, all non-privileged communications you sent to or received from any person.

REQUEST NO. 3

All documents evidencing, concerning, relating to, or referring to any relief, remedies, or damages you seek in this case, including, without limitation, the amounts of any relief, remedies, or damages you seek, the manner or method for calculation of such amounts, and any efforts by you to mitigate those damages.

REQUEST NO. 4

All recordings or contemporaneous notes of the alleged calls to the subject telephone number, and any other calls you claim relate to Defendant.

REQUEST NO. 5

All non-privileged recordings (written, video, audio, or otherwise) of any communications evidencing, concerning, relating to, or referring in any way to this lawsuit or the facts underlying it, including but not limited to all recordings of the alleged calls made to you by Defendant.

REQUEST NO. 6

All non-privileged documents reflecting any recordings, notes, or other information about the alleged calls to the subject telephone number, and any other calls you claim relate to Defendant.

REQUEST NO. 7

All records evidencing the alleged calls, including but not limited to call logs, screenshots, and telephone records.

REQUEST NO. 8

All non-privileged documents, including all written communications or confirmations, relating to or concerning Paragraph 29 of the Complaint, including that “[t]o generate leads,” Fisher “uses random, robocall and automated dialing system generated telemarketing calls/texts.”

REQUEST NO. 9

All non-privileged documents, including all written communications or confirmations, relating to or concerning Paragraph 30 of the Complaint, including that “Fisher also utilizes area code spoofing technology and computer systems to block or otherwise circumvent called numbers caller identification functions.”

REQUEST NO. 10

All documents, including all written communications or confirmations, relating to or concerning Paragraph 31 of the complaint, including that Plaintiff was allegedly a “subscriber” for the residential cellular telephone number at issue.

REQUEST NO. 11

All documents, including all written communications or confirmations, relating to or concerning Paragraph 32 of the Complaint, including that Plaintiff “personally registered his residential cellular telephone number . . . on the National and Missouri Do Not Call Registries in 2022.”

REQUEST NO. 12

All documents, including all written communications or confirmations, relating to or concerning Paragraph 33 of the Complaint, including that Defendant “approved, encouraged, enticed and ratified” the subject calls.

REQUEST NO. 13

All documents, including all written communications or confirmations, relating to or concerning Paragraph 34 of the Complaint, including that “all calls received by the Plaintiff had the caller identification functioned [sic] blocked or otherwise circumvented so the Plaintiff could not identify the caller.”

REQUEST NO. 14

All documents, including all written communications or confirmations, relating to or concerning Paragraph 35 of the Complaint—that “[j]ust prior to being connected to the telemarketer, Plaintiff Human heard a click, a pause, some dead air space, some various robotic and artificial sounds and squealing noises and then the call was then transferred and connected”

and even though “Plaintiff indicated that they were interrupting his family time and was extremely busy and could not take the call,” Defendant continued to call.

REQUEST NO. 15

All documents, including all written communications or confirmations, relating to or concerning Paragraph 36 of the Complaint.

REQUEST NO. 16

All documents, including all written communications or confirmations, relating to or concerning Paragraph 37 of the Complaint, including that Defendant placed “unsolicited marketing calls to his private, personal cell phone and the Plaintiff had no prior business relationship with the Defendant,” to a number on the federal and Missouri Do Not Call registries.

REQUEST NO. 17

All documents, including all written communications or confirmations, relating to or concerning Paragraph 39 of the Complaint—“Plaintiff never provided his prior express written consent to receive nor requested these calls and has no prior business relationship with the Defendant.”

REQUEST NO. 18

All non-privileged documents, including all written communications or confirmations, relating to or concerning Paragraph 40 of the Complaint, including that Plaintiff “incur[red] provider fees” as a result of the subject calls.

REQUEST NO. 19

All non-privileged documents, including all written communications or confirmations, relating to or concerning Paragraph 41 of the Complaint, including that Plaintiff suffered “severe physical injuries, including chest pain, anxiety” and “incurr[ed] telephone service provider fees,

wear and tear on phones, damage and disruption to the phone's battery life, and other injuries and costs.”

REQUEST NO. 20

All non-privileged documents, including all written communications or confirmations, relating to or concerning Paragraph 45 of the Complaint, including that “it was obvious that they [the subject calls] were made by automatic yet random equipment . . . as each prefaced by automated clicks, computer squeals, pauses, and dead air space.”

REQUEST NO. 21

All non-privileged documents, including all written communications or confirmations, relating to or concerning Paragraph 46 of the Complaint—“Defendant Fisher and their agents, employees, and/or vendors placed numerous calls alleged in this complaint with one or more ATDS and predictive dialers.”

REQUEST NO. 22

All non-privileged documents, including all written communications or confirmations, relating to or concerning Paragraph 47 of the Complaint, including that “no human manually entered Plaintiff[’s] . . . cellular telephone number.”

REQUEST NO. 23

All non-privileged documents, including all written communications or confirmations, relating to or concerning Paragraph 64 of the Complaint, including that “Defendants [sic] made and/or knowingly allowed the telephone calls/texts to Plaintiff . . . to be made utilizing an automated system for the selection or dialing of telephone numbers, used a robotic interface with the Plaintiff, disabled the Caller I.D. function so Plaintiff could not identify the caller prior to answering the call/text, spoofed the area codes to deceive Plaintiff to answer the unsolicited calls.”

REQUEST NO. 24

All non-privileged documents, including all written communications or confirmations, relating to or concerning Paragraph 85 of the Complaint and all subparts—“Defendant Fisher is vicariously liable for the calls/texts complained of by Plaintiff because they: authorized or caused telemarketers to initiate the phone calls/texts or initiated the calls and texts themselves; directly or indirectly controlled the persons who actually made or initiated the calls/texts; allowed the employees, telemarketers and independent agents access to information and operating systems within Defendant’s control for the purpose of selling goods and services, without which they would not be able to sell their services using robocalling and direct dialing; allowed the telemarketers and independent agents to enter or provide consumer information into Defendant’s sales or operational systems; approved, wrote, reviewed, or participated in developing the telemarketing sales scripts and automated text messages; Defendant reasonably should have known or consciously avoided knowing that the actual telemarketers were violating the law and Defendant failed to take effective steps within their power to require compliance; or Defendant Fisher gave substantial assistance or support to the telemarketers and each other while knowing, consciously avoid knowing, or being recklessly indifferent to the fact that the telemarketers were engaged in acts or practices that violated the TCPA and MDNC.”

REQUEST NO. 25

All non-privileged documents, including all written communications or confirmations, relating to or concerning Paragraph 86 of the Complaint, including that “Plaintiff patiently listened and read to the scripted sales pitch.”

REQUEST NO. 26

All non-privileged documents, including all written communications or confirmations,

relating to or concerning Paragraph 87 of the Complaint, including that Defendant Fisher supposedly “ratified the illegal robocalls, ATDS, and direct dialing DNC and MDNC violations.”

REQUEST NO. 27

All documents that relate in any way to any calls you placed to Defendant or third parties, including from the subject telephone number, insofar as they relate to the allegations in your Complaint.

REQUEST NO. 28

All documents that evidence, concern, or refer or relate to your communications with any person wherein you discussed the facts described in your Complaint, including but not limited to Defendants’ alleged calls to you and the alleged violations of the TCPA and Missouri No Call List and Telemarketing provisions.

REQUEST NO. 29

All documents that relate to, refer to, concern, evidence, or support or refute your allegation that Defendant authorized or authorizes calling telephone numbers listed on the National Do Not Call Registry.

REQUEST NO. 30

All documents you intend to present at or in any trial, deposition, written filing, hearing, or other proceeding in this matter insofar as they relate to Plaintiff’s individual claims and allegations in the Complaint, or Defendants’ defenses thereto, as outlined in Defendants’ Answer to Plaintiff’s Complaint.

REQUEST NO. 31

All documents identified or referenced in your responses to Defendants’ First Set of Interrogatories, served contemporaneously herewith.

REQUEST NO. 32

All documents referenced by you in preparing your responses to Defendants' First Set of Interrogatories, served contemporaneously herewith.

REQUEST NO. 33

All documents you identified, reviewed, or relied upon in preparing your initial disclosures.

REQUEST NO. 34

All lead forms (defined above) you have filled out or submitted between January 1, 2021 and the present.

REQUEST NO. 35

Documents sufficient to identify all TCPA and Missouri No Call List and Telemarketing provisions lawsuits, court proceedings, administrative proceedings, arbitrations, or other legal proceedings to which you have been a party or witness, or in which you provided oral or written testimony, including, without limitation, any and all civil actions, arbitrations, mediations, administrative actions, or any other similar proceedings or actions.

REQUEST NO. 36

Document sufficient to evidence and identify your phone plan, the persons on such plan, and billing statements for such plan.

REQUEST NO. 37

Documents sufficient to evidence, concern, or relate to when and/or how you acquired the subject telephone number, including from whom you acquired it, and/or when it was assigned to you.

REQUEST NO. 38

All documents evidencing, concerning or relating to any contracts between you and the

carrier(s) or provider(s) of telephone service for the subject telephone number, including terms of service applicable to your use of those numbers.

REQUEST NO. 39

The resume for each expert witness you reasonably expect to call at trial.

REQUEST NO. 40

For each expert witness you expect to call at trial, all documents, data or other materials provided to, shown to, or considered by the expert in arriving at his or her opinions.

REQUEST NO. 41

All documents evidencing, concerning, relating to, or referring to any subpoenas or informal requests for documents (e.g., emails requesting documents or relevant information from third parties) including any responses to subpoenas or informal requests from third parties in connection with Plaintiff's claims.

REQUEST NO. 42

All documents related to any responses you have made—including any responses that mention the subject phone number or any of your other phone numbers—to an advertisement for Defendant's services.

REQUEST NO. 43

All retention, retainer, or other agreements between Plaintiff and his counsel that memorialize counsel's representation of Plaintiff in this lawsuit.

REQUEST NO. 44

Documents showing or evidencing Plaintiff's internet search or website visit history—from any electronic devices (defined above) you used—on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024.

REQUEST NO. 45

Documents sufficient to identify your Internet Protocol addresses (IP address) for every electronic device (defined above) you used on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024.

REQUEST NO. 46

Documents sufficient to show all phone calls and emails you received at the subject telephone number on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024.

REQUEST NO. 47

All records of incoming calls to, or outgoing calls from the subject number between January 2022 and the present, including any and all calls that resulted in voice messages or voicemails.

REQUEST NO. 48

Documents sufficient to identify where you were physically located—including but not limited to calendar entries in Outlook, Apple Calendar, and/or the Samsung Calendar Application—on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024.

REQUEST NO. 49

All correspondence or pre-suit demand letters you sent (or were sent on your behalf) alleging purported violations of the TCPA or Missouri No Call List and Telemarketing provisions.

REQUEST NO. 50

All correspondence or communications you received in response to your correspondence or pre-suit demand letters alleging purported violations of the TCPA or Missouri No Call List and

Telemarketing provisions.

REQUEST NO. 51

All documents in which a defendant or opposing party asserted in response to pre-suit correspondence you sent or a complaint you filed that you consented or opted in to receive telephonic communications from them.

REQUEST NO. 52

All opt-ins or documents showing consent that concern, evidence, relate to, or refer to “Veronica” or “Veronica Moreno,” including those you have received from opposing parties or defendants in other matters (including in response to pre-suit correspondence).

REQUEST NO. 53

All lead certificates (including from Jornaya or TrustedForm) referencing or concerning “Veronica” or “Veronica Moreno,” including those you have received from opposing parties or defendants in other matters (including in response to pre-suit correspondence).

REQUEST NO. 54

All non-privileged documents mentioning or referencing “Veronica” or “Veronica Moreno” insofar as they relate to alleged violations of the TCPA or Missouri No Call List and Telemarketing provisions.

REQUEST NO. 55

All lead certificates (including from Jornaya or TrustedForm) referencing or concerning the subject telephone number, including those you have received from opposing parties or defendants in other matters (including in response to pre-suit correspondence).

REQUEST NO. 56

All non-privileged documents mentioning or referencing the subject phone number insofar

as they relate to alleged violations of the TCPA or Missouri No Call List and Telemarketing provisions.

REQUEST NO. 57

All opt-ins or documents showing consent that concern, evidence, relate to, or refer to “Melody” or Melody Human,” including those you have received from opposing parties or defendants in other matters (including in response to pre-suit correspondence).

REQUEST NO. 58

All lead certificates (including from Jornaya or TrustedForm) referencing or concerning “Melody” or “Melody Human,” including those you have received from opposing parties or defendants in other matters (including in response to pre-suit correspondence).

REQUEST NO. 59

All non-privileged documents mentioning or referencing “Melody” or “Melody Human,” insofar as they relate to alleged violations of the TCPA or Missouri No Call List and Telemarketing provisions.

REQUEST NO. 60

All non-privileged documents mentioning or referencing Fisher Investments and “Melody” or “Melody Human.”

REQUEST NO. 61

Documents sufficient to identify all matters (defined above and in Interrogatory Number 6 to which you have been a party or in which you have provided oral or written testimony.

REQUEST NO. 62

Documents sufficient to identify all matters (defined above and in Interrogatory Number 6) in which you allegedly received calls or text messages intended for “Veronica” or “Veronica

Moreno.”

REQUEST NO. 63

Documents sufficient to identify all matters (defined above and in Interrogatory Number 6) in which you allegedly received calls or text messages intended for “Melody” or “Melody Human.”

REQUEST NO. 64

Apart from counsel, identify all persons with which you discussed (either orally or in writing) the matters you identified in response to Interrogatories 6-8.

REQUEST NO. 65

All non-privileged documents produced or in any way related to *Policy Scout LLC v. Human*, 2:23-cv-00934-JNP (D. Utah.) and the underlying conduct, including but not limited to lead certificates (e.g., from Jornaya or TrustedForm), call logs, call recordings, other evidence of consent, demand letters, and correspondence from PolicyScout or its counsel related to that case. *See Policy Scout LLC v. Human*, 2:23-cv-00934-JNP, Doc. 1-1 (D. Utah. Dec. 29, 2023) (“Human willfully and voluntarily submitted his information to PolicyScout and opted-in to be called. He further represented to PolicyScout that he was interested in insurance and wanted to be connected to a broker. Human’s design was to convince PolicyScout that he was an interested consumer, induce PolicyScout to place phone calls to him, then threaten PolicyScout and its employees with legal action unless PolicyScout paid him an exorbitant sum.”); *Policy Scout LLC v. Human*, 2:23-cv-00934-JNP, Doc. 21 (D. Utah. Jan. 22, 2024) (“Mr. Human has a practice of engaging websites by visiting them and providing personal information with the purpose of deceiving companies into believing he is an interested consumer. He thereafter lays in wait for phone calls, and when

received, contacts the companies, claims he did not want to be called and threatens litigation, all with the ultimate plan to extort money from legitimate companies.”).

REQUEST NO. 66

All non-privileged documents concerning “Veronica” or “Veronica Moreno,” including any communications with Veronica Moreno or others about her and any internet search history regarding Veronica Moreno.

REQUEST NO. 67

All settlement agreements between Daniel Human and third parties involving TCPA or Missouri No Call List and Telemarketing provisions allegations.

REQUEST NO. 68

All transcripts of deposition testimony provided by Daniel Human in cases involving TCPA and Missouri No Call List and Telemarketing provisions allegations.

REQUEST NO. 69

All deposition transcripts in which Plaintiff provided testimony.

REQUEST NO. 70

All documents that relate in any way to Fisher Investments, including but not limited to all communications with or regarding Fisher Investments on any platform and browser history on any device relating to Fisher Investments.

REQUEST NO. 71

All documents relating to or concerning whether you provided the subject telephone number to Defendant.

REQUEST NO. 72

Documents sufficient to identify all criminal proceedings to which you have been a party or witness.

REQUEST NO. 73

All documents relating to whether the subject phone number is registered on the national Do Not Call registry, when any such registration occurred, and who registered the numbers.

REQUEST NO. 74

All class certification briefing (motions, responses, replies, etc., and any exhibits) for any case, including but not limited to TCPA cases, where Plaintiff was a purported class representative.

REQUEST NO. 75

To the extent not produced in response to any of the foregoing Requests, all documents that evidence, concern, support or refute, or refer to relate to your individual allegations set forth in the Complaint or the defenses set forth in the Defendant's Answer to your Complaint.

Dated: November 14, 2024

Respectfully submitted,

/s/ Alexander D. Terepka

Alexander D. Terepka (*pro hac vice*)
Melanie G. Ng (*pro hac vice*)
WATSTEIN TEREKPA LLP
1055 Howell Mill Rd. 8th Floor
Atlanta, Georgia 30318
Tel: (213) 839-3317
alex@wtlaw.com
mng@wtlaw.com

Matthew D. Guletz, #57410(MO)
THOMPSON COBURN LLP
One US Bank Plaza
St. Louis, MO 63101
(314) 552-6311
Fax: 314-552-7000
mguletz@thompsoncoburn.com

Attorneys for Defendant Fisher Investments, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of November 2024, I caused a true and correct copy of the foregoing to be served via email on the following:

Edwin V. Butler
edbutler@butlerlawstl.com
edwinvb@aol.com
BUTLER LAW GROUP LLP
1650 Des Peres Road, Suite
200 Des Peres, MO 63131

/s/ Alexander D. Terepka

Alexander D. Terepka

EXHIBIT 5

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DANIEL HUMAN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FISHER INVESTMENTS, INC.,

Defendant.

Case No. 4:24-cv-01177-MTS

JURY TRIAL DEMANDED

**DEFENDANT FISHER INVESTMENTS, INC.'S NOTICE OF DEPOSITION OF
PLAINTIFF DANIEL HUMAN**

PLEASE TAKE NOTICE that Defendant Fisher Investments, Inc., by and through its undersigned attorneys, will take the deposition of Plaintiff Daniel Human ("Mr. Human"). The deposition shall be in person and commence at 10:00 a.m. on January 10, 2025 at the law offices of Thompson Coburn LLP, One US Bank Plaza, St. Louis, MO 63101, and shall continue thereafter from time to time and day to day, until completed.

NOTICE IS FURTHER GIVEN that the deposition of Plaintiff will be taken before a duly certified court reporter and notary public or person authorized to administer oaths.

NOTICE IS FURTHER GIVEN that Defendant intends to record the testimony at the above-described deposition by stenographic method, by audiotape, videotape, and/or through the instant visual display of the testimony.

NOTICE IS FURTHER GIVEN that Defendant reserves the right to conduct this deposition utilizing the secure web-based deposition option afforded by Huseby or, in the alternative, other video conferencing (VTC) services to provide remote/virtual access for the parties and their counsel. Also take notice that Defendant reserves the right to record the deposition

either by stenographic means by a court reporter certified to record depositions or a digital reporter utilizing state-of-the-art digital recording equipment. Both the court reporter and digital reporter are authorized to administer the oath and serve as the deposition officer in the State of Missouri. Take note that the deposition officer may also be remote and out of the presence of the deponent via one of the options above (or via telephone) for the purposes of providing the oath/affirmation to the deponent and capturing the proceeding. Defendant further reserves the right to utilize the following: (1) record the deposition utilizing audio or video technology; (2) instant visual display such that the reporter's writing of the proceeding will be available to all who are a party to this proceeding to request and receive it in real-time; (3) Exhibit Capture (picture-in-picture) technology in which any exhibit reviewed by the deponent during the deposition can be captured visually; and (4) to conduct this deposition utilizing a paperless exhibit display process called Exhibit Share or a similar paperless virtual display platform. The parties are advised that in lieu of a paper set of exhibits they may be provided and displayed digitally to the deposition officer, deponent, parties, and counsel. The exhibits will be compiled by the deposition officer for the purposes of exhibit stamping, and ultimate production of the final certified transcript.

Please contact the noticing attorney at least three (3) calendar days prior to the deposition so that the necessary credentials, call-in numbers, firm name, email address, services, testing and information, if necessary, can be arranged and provided to you prior to the proceeding(s).

NOTICE IS FURTHER GIVEN that this deposition will be taken for the purposes of discovery, for use at trial, and for all other purposes permitted by the Federal Rules of Civil Procedure.

Dated: November 14, 2024

Respectfully submitted,

/s/ Alexander D. Terepka

Alexander D. Terepka (*pro hac vice*)

Melanie G. Ng (*pro hac vice*)

WATSTEIN TEREPAK LLP

1055 Howell Mill Rd. 8th Floor

Atlanta, Georgia 30318

Tel: (213) 839-3317

alex@wtlaw.com

mng@wtlaw.com

Matthew D. Guletz, #57410(MO)

THOMPSON COBURN LLP

One US Bank Plaza

St. Louis, MO 63101

(314) 552-6311

Fax: 314-552-7000

mguletz@thompsoncoburn.com

Attorneys for Defendant Fisher Investments, Inc.

CERTIFICATE OF SERVICE

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Edwin V. Butler

edbutler@butlerlawstl.com

edwinvb@aol.com

BUTLER LAW GROUP LLP

1650 Des Peres Road, Suite

200 Des Peres, MO 63131

/s/ Alexander D. Terepka

Alexander D. Terepka

EXHIBIT 6

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DANIEL HUMAN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FISHER INVESTMENTS, INC.,

Defendant.

Case No. 4:24-cv-01177-MTS

JURY TRIAL DEMANDED

**DEFENDANT FISHER INVESTMENTS, INC.'S REQUEST FOR INSPECTION TO
PLAINTIFF DANIEL HUMAN**

Defendant Fisher Investments, Inc. ("Defendant"), under Rule 34 of the Federal Rules of Civil Procedure, hereby requests Plaintiff Daniel Human to provide and permit Defendant to inspect, copy, test, or sample all electronic devices you used on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024. The term "electronic device" includes cell phones, computers, tablets, smart watches, or any other similar electric device that has access to the internet. Defendant will confer with Plaintiff on a date, time, and location to inspect such electronic devices.

[Signatures on Following Page]

Dated: November 14, 2024

Respectfully submitted,

/s/ Alexander D. Terepka

Alexander D. Terepka (*pro hac vice*)

Melanie G. Ng (*pro hac vice*)

WATSTEIN TEREPKA LLP

1055 Howell Mill Rd. 8th Floor

Atlanta, Georgia 30318

Tel: (213) 839-3317

alex@wtlaw.com

mng@wtlaw.com

Matthew D. Guletz, #57410(MO)

THOMPSON COBURN LLP

One US Bank Plaza

St. Louis, MO 63101

(314) 552-6311

Fax: 314-552-7000

mguletz@thompsoncoburn.com

Attorneys for Defendant Fisher Investments, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of November 2024, I caused a true and correct copy of the foregoing to be served via email on the following:

Edwin V. Butler
edbutler@butlerlawstl.com
edwinvb@aol.com
BUTLER LAW GROUP LLP
1650 Des Peres Road, Suite
200 Des Peres, MO 63131

/s/ Alexander D. Terepka

Alexander D. Terepka

EXHIBIT 7

From: Melanie Ng mng@wtlaw.com
Subject: Human v. Fisher - Brief Discovery Extension?
Date: December 3, 2024 at 2:52 PM
To: Edwin Butler edbutler@butlerlawstl.com
Cc: Alexander Terepka Alex@wtlaw.com



Hi Ed, it's our understanding that discovery responses are due on Friday. Given the Thanksgiving holiday, would you be amenable to a mutual seven-day extension? That way, both parties' discovery responses would be due on Friday, December 13th. Thank you!

Best,
Melanie

Melanie G. Ng (bio)
WATSTEIN TEREPKA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

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EXHIBIT 8

From: Melanie Ng mng@wtlaw.com
Subject: Human v. Fisher Inv. - Discovery Responses
Date: December 4, 2024 at 2:05 PM
To: Edwin Butler edbutler@butlerlawstl.com
Cc: Alexander Terepka Alex@wtlaw.com



Hi Ed,

We took another look at your discovery requests and note that Plaintiff's include a 30-day response deadline. We agree to that deadline as set forth in the requests, which makes Fisher's response deadline Saturday, December 14 (thus extended out to Monday, December 16). We will respond by that date.

Additionally, our requests state that responses are due in accordance with the time provided by law. Per the Court's order, Plaintiff has 21 days to respond to discovery unless otherwise agreed, so we expect to receive your discovery responses on Friday, December 6, though we'd consider a brief extension if you need one.

Best,
Melanie

Melanie G. Ng (bio)
WATSTEIN TEREPKA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

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EXHIBIT 9

From: Melanie Ng mng@wtlaw.com
Subject: Human v. Fisher Investments
Date: December 23, 2024 at 1:13 PM
To: Edwin Butler edbutler@butlerlawstl.com, edwinvb@aol.com
Cc: Alexander Terepka Alex@wtlaw.com, Matthew A. Lipman mlipman@mdmc-law.com



Hi Edwin,

In accordance with the Court's order, Plaintiff's responses to Defendant's written discovery were due on Friday, December 6, 2024. We still have not received Plaintiff's responses to date. We expect Plaintiff to produce the requested documents before December 31, 2024. See *Davis v. Fid. Info. Corp.*, 2019 WL 1643340, at *2 (E.D. Mo. Apr. 16, 2019) (noting that objections are waived if not timely raised). If you do not commit to production by December 27, 2024, we will have no choice but to begin preparing a motion to compel. We will seek our fees in doing so because a failure to respond to discovery, especially given the compressed timeline for individual discovery and that we timely served responses, is simply unacceptable.

Best,
Melanie

Melanie G. Ng (bio)
WATSTEIN TEREPKA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

The information contained in this message is intended only for the personal and confidential use of the recipient(s) named above. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this message and all contents in error and that any review, dissemination, distribution, or copying of this message or its contents is strictly prohibited. If you have received this message in error, please delete the original message, and notify me immediately.

EXHIBIT 10

From: Melanie Ng mng@wtlaw.com
Subject: Re: Human V Fisher Investments
Date: December 26, 2024 at 1:26 PM
To: Edwin Butler edbutler@butlerlawstl.com
Cc: Edwin Butler edbutler@butlerlawstl.com, Alexander Terepka Alex@wtlaw.com, Guletz, Matthew D. MGuletz@thompsoncoburn.com



Hi Ed,

Emails like the one you sent below are disappointing and inappropriate. Your client failed to respond to Fisher's discovery requests in a timely manner and, as a result, your client has waived all objections under well-settled authority. You appear to be attempting to distract from that with emails on holidays that fail to respond to the points we have raised—and make arguments that don't make sense.

In any event, you still haven't acknowledged your client's failure to respond to Fisher's discovery requests. That is especially problematic because we emailed you twice (on December 3d and 4th) before reminding you of your client's December 6th deadline. You simply ignored those emails—and your client's deadline to respond to Fisher's discovery requests.

You've compounded this improper conduct with several inappropriate emails, including an improper email that appeared to copy and paste what we sent you about your overdue discovery responses. That makes no sense because Fisher timely responded to the discovery requests, so the points in our email about your client's discovery responses don't apply to Fisher.

You are also sending inappropriate communications on holidays, such as late in the afternoon on Christmas Eve. Your email appears to demand that Fisher produce documents even though your client has failed to even respond to Fisher's discovery requests, much less produce documents. Fisher served discovery first and your client's discovery responses were due more than a week before Fisher's. Consequently, your client must fully respond to Fisher's discovery before Fisher produces documents. Your client can't simply violate the Court's and the Federal Rules' requirements for discovery responses and then demand an out-of-order document production from Fisher.

To make matters worse, your client hasn't provided a timeline for his (1) document production, (2) responses to interrogatories, or (3) the device inspection Fisher served. To be clear, we expect full responses without objections because your client waived all objections by failing to respond to Fisher's discovery requests. Your client's responses are now 20 days late, so we need complete responses as soon as possible, especially given the compressed timeline for individual discovery. Please confirm that you will provide complete responses and document production by December 31, 2024. Otherwise, Fisher reserves all rights to move to compel and seek sanctions when it does so.

Please confirm your client will fully respond to Fisher's discovery requests without objection as outlined above or let us know your availability for a meet and confer regarding Fisher's motion to compel in accordance with Local Rule 3.04(A).

Best,
Melanie

Melanie G. Ng (bio)
WATSTEIN TEREPKA ^{LLP}

P: 404-600-1240

mng@wtlaw.com

www.wtlaw.com

From: Edwin Butler <edbutler@butlerlawstl.com>

Date: Tuesday, December 24, 2024 at 5:11 PM

To: Melanie Ng <mng@wtlaw.com>

Cc: Edwin Butler <edbutler@butlerlawstl.com>

Subject: Human V Fisher Investments

[Warning – external]

Counselors:

Greetings. Enclosed, please find the Plaintiff's initial Rule 26 disclosures. Considering your admission that your client is utilizing the Third Party lead generator Smart Asset, we intend to file an amended complaint to include them in this suit. Please advise if you have any objection to their inclusion or we can hop on a call to discuss.

Furthermore, given your failure to provide a single document from our document requests and you have denied that you do not have express written consent in this case, please be advised that we are attempting to provide an opportunity for you to prove this alleged express written consent prior to moving to strike your affirmative defense. Please provide this information immediately, as well as all other document requests we have propounded.

Our responses to your discovery requests are forthcoming.

Thanks,

Ed

Edwin V. Butler | Butler Law Group LLC

1650 Des Peres Road; Ste 220 | Des Peres, MO 63131

Direct: # | Office: 314-504-0001 | Fax: 314-481-8479

edbutler@butlerlawstl.com | www.butlerlawstl.com

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immediately notify the sender by telephone at (314) 504-0001 and delete this message from your system. Thank you.

EXHIBIT 11

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DANIEL HUMAN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FISHER INVESTMENTS, INC.,

Defendant.

Case No. 4:24-cv-01177-MTS

JURY TRIAL DEMANDED

PLAINTIFFS RESPONSE TO
DEFENDANT FISHER INVESTMENTS, INC.'S FIRST SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION TO PLAINTIFF

Come now Plaintiff and in response to Defendant Fisher Investments, Inc. Rules 26, 33,
and 34 requests, responds as follows:

INTERROGATORY NO. 1

Identify each person who supplied information in connection with or otherwise participated
in answering these Interrogatories, and for each person identified, describe the nature of the
participation or the information provided.

RESPONSE: Plaintiff, I am a 68 year old man who lives on social security and receives a
wealth of illegal telemarketing calls on my private resident phone, such as the calls listed in the
complaint from Defendant Fisher. Any other information seeks evidence or responses outside the
scope of Phase One discovery. Plaintiff therefore reserves the right to supplement his answer when
Phase One discovery is completed and this case is certified as a class action.

INTERROGATORY NO. 2

Identify and describe the content of all communications you claim to have had with
Defendant or anyone you allege was working on its behalf, including with any persons or entities

you claim were involved in the alleged calls to the subject telephone number, and for each communication, state the persons with whom you communicated, the manner of communication, the date of communication, the approximate length of the conversation (if any), and the matters you communicated about.

RESPONSE: Plaintiff, I am a 68 year old man who lives on social security and receives a wealth of illegal telemarketing calls on my private resident phone, such as the calls listed in the complaint from Defendant Fisher. Any other information seeks evidence or responses outside the scope of Phase One discovery. Plaintiff therefore reserves the right to supplement his answer when Phase One discovery is completed and this case is certified as a class action. See also Bates pages 1 through 419; See also the Complaint. All communication with Defendant Fisher was by telephone when they called me illegally in deliberate disregard for the fact that I am on two no call lists.

INTERROGATORY NO. 3

Identify all persons you believe to have information that relates to, concerns, evidences, supports, or refutes your claims or Defendant's defenses in this case, as outlined in Defendant's Answer to Plaintiff's Complaint, and state generally the information you believe they possess. In your answer, identify all persons who witnessed, and with whom you have discussed, your receipt of the alleged calls.

RESPONSE: Plaintiff, I am a 68 year old man who lives on social security and receives a wealth of illegal telemarketing calls on my private resident phone, such as the calls listed in the complaint from Defendant Fisher. Any other information sought seeks evidence or responses outside the scope of Phase One discovery. Plaintiff therefore reserves the right to supplement his answer when Phase One discovery is completed and this case is certified as a class action. See also Bates pages 1 through 419; See also the Complaint; See Plaintiff's Rule 26 disclosures.

INTERROGATORY NO. 4

Identify all lead forms you have filled out or submitted between January 1, 2021 and the present. The term “lead form” means any form or communication you submitted (online or physical) that included the subject telephone number for the stated purpose of providing contact information to receive information or marketing about a product, service, or business.

RESPONSE: Plaintiff, I am a 68 year old man who lives on social security and receives a wealth of illegal telemarketing calls on my private resident phone, such as the calls listed in the complaint from Defendant Fisher. Any other information sought seeks evidence or responses outside the scope of Phase One discovery. Plaintiff therefore reserves the right to supplement his answer when Phase One discovery is completed and this case is certified as a class action. See also Bates pages 1 through 419; See also the Complaint; See Plaintiff’s Rule 26 disclosures.

In further response, Plaintiff has never visited fisher.com or smartassert.com.

INTERROGATORY NO. 5

Identify whether you have requested information online regarding financial investment products or services within the last four years. If so, please provide a description of the circumstances and state the dates you submitted them.

RESPONSE: I am a 68 year old man who lives on social security and receives a wealth of illegal telemarketing calls on my private resident phone, such as the calls listed in the complaint from Defendant Fisher. Any other information sought seeks evidence or responses outside the scope of Phase One discovery. Plaintiff therefore reserves the right to supplement his answer when Phase One discovery is completed and this case is certified as a class action. See also Bates pages 1 through 419; See also the Complaint; See Plaintiff’s Rule 26 disclosures. In further response, Plaintiff has never visited fisher.com or smartassert.com.

INTERROGATORY NO. 6

Identify and describe in detail by case style, case number, and court or tribunal, any and all lawsuits, court proceedings, administrative proceedings, arbitrations, hearings, or other legal proceedings (“matters”) to which you have been a party or in which you have provided oral or written testimony.

RESPONSE: I am a 68 year old man who lives on social security and receives a wealth of illegal telemarketing calls on my private resident phone, such as the calls listed in the complaint from Defendant Fisher. Any other information sought seeks evidence or responses outside the scope of Phase One discovery. Plaintiff therefore reserves the right to supplement his answer when Phase One discovery is completed and this case is certified as a class action. See also Bates pages 1 through 419 for a complete listing of all cases I have filed. To the best of my recollection, I have never provided live testimony in any of those cases; See also the Complaint; See Plaintiff’s Rule 26 disclosures. In further response, Plaintiff has never visited fisher.com or smartassert.com.

INTERROGATORY NO. 7

For the matters (defined in Interrogatory Number 6) you identified in Interrogatory No. 6, (1) identify which matters involved alleged violations of the TCPA; (2) identify which matters involved alleged violations of the Missouri No Call List and Telemarketing provisions; and (3) identify the matters in which the defendant(s) asserted that Plaintiff consented to the communications, including by submitting an online opt-in form.

RESPONSE: First, this Interrogatory consists of three subparts and is therefore being counted as three separate interrogatories. I am a 68 year old man who lives on social security and receives a wealth of illegal telemarketing calls on my private resident phone, such as the calls listed in the complaint from Defendant Fisher. Any other information sought seeks evidence or responses outside the scope of Phase One discovery. Plaintiff therefore reserves the right to supplement his

answer when Phase One discovery is completed and this case is certified as a class action. See also Bates pages 1 through 419 for a complete listing of all cases I have filed. To the best of my recollection, I have never provided live testimony in any of those cases; See also the Complaint; See Plaintiff's Rule 26 disclosures. Plaintiff has no specific recollection of the defenses of each of the Defendants in all of these TCPA case but defense counsel is free to research those defenses themselves, as the Plaintiff no longer possesses those files and does not have a pacer account to access those records. In further response, Plaintiff has never visited fisher.com or smartassert.com.

INTERROGATORY NO. 8

Identify any and all crimes for which you have been convicted by case style, case number, and court or tribunal, and indicate any sentence served in connection with the same.

RESPONSE: This is all public information, and I personally believe you are harassing me and attempting to humiliate me. The TCPA does not preclude protection for a felon, if that is what you are getting at with this abusive question, and this question seeks information which is too remote in time and is irrelevant.

INTERROGATORY NO. 9

Identify each and every telephone number assigned to you, owned by you, or regularly used by you since January 1, 2021, when you were using the number, all persons you believe have knowledge of such information, whether each such telephone number was cellular or landline, and which companies provided service to such numbers.

RESPONSE: I have two telephones which were purchased because of the abusive telemarketing practices of companies like Defendant Fisher Investments, whom I have no business relationship with. My private number is 208-390-1355. You have sent a subpoena to Verizon for the records already and I assume over my attorneys extensive objections. You have failed to disclose that subpoena response from Verizon but you are asking me a question about a subpoena you sent out? This is a cell phone.

INTERROGATORY NO. 10

Identify any and all personal email addresses, social networking sites (with associated user name or identification), and/or personal blogs you have used, maintained, accessed, consulted, or posted from January 1, 2021 through the present, including, but not limited to, (1) personal e-mail accounts (*e.g.*, (2) AOL, (3) G-Mail, (4) Yahoo, (5) Hotmail, or any other (6) private or public e-mail account), (7) Facebook, (8) Twitter, (9) LinkedIn, (10) Myspace, (11) Tumblr, (12) Instagram, (13) Snapchat, or (14) other similar social networking, file- sharing, social media, or similar sites, chat-rooms, or blogs whereby individuals communicate with each other via digital means).

RESPONSE: This is a fourteen (14) subpart interrogatory and exceeds the amount of interrogatories you are allowed to ask me. In good faith I will answer all fourteen questions: I do not have an AOL account, G-Mail – danh11polo, Yahoo – dan68litigation for court emails, Hotmail - none, or any other private or public e-mail account – danialhuman@icloud, Facebook - no, Twitter - no, LinkedIn - no, Myspace -no, Tumblr-no, Instagram-no, Snapchat-no, or other similar social networking, file- sharing, social media, or similar sites, chat-rooms, or blogs whereby individuals communicate with each other via digital means -no.

INTERROGATORY NO. 11

Identify all the websites you visited from any electronic device you used on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024. The term “electronic device” includes cell phones, computers, tablets, smart watches, or any other similar electric device that has access to the internet.

RESPONSES: This Interrogatory exceeds the amount of interrogatories you are allowed to ask me, in that, including your vast subparts, this is well over 25 questions. In good faith I will answer I have no personal recollection of visiting websites on those days. I have never visited

fisher.com or smartassert.com and did not on these days and neither did anyone I know.

INTERROGATORY NO. 12

Identify every electronic device you used on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024. The term “electronic device” includes cell phones, computers, tablets, smart watches, or any other similar electric device that has access to the internet.

RESPONSE: This Interrogatory exceeds the amount of interrogatories you are allowed to ask me, in that, including your vast subparts, this is well over 25 questions. I used my cell phone on the dates described in the complaint when I answered a number of illegal telemarketing calls from Defendant Fisher and had several other calls related to my residence. I have provided screenshots of the phone calls including the dates and times of each call have been provided in accord with your document requests. See Bates pp. 1-419.

INTERROGATORY NO. 13

Identify where you were residing (full-time or part-time) between January 1, 2021 through the present. In your answer: (1) identify the city and state of each residence: and (2) state when and for how long you were residing at each residence.

RESPONSE: This Interrogatory exceeds the amount of interrogatories you are allowed to ask me, in that, including your vast subparts, this is well over 25 questions. In good faith I will answer that at all times relevant to this complaint, I lived at the Conway Road address listed on the original pro se complaint.

INTERROGATORY NO. 14

For the residences and/or addresses identified in Interrogatory Number 13, identify all individuals who resided at those residences and/or addresses.

RESPONSE: This Interrogatory exceeds the amount of interrogatories you are allowed to

ask me, in that, including your vast subparts, this is well over 25 questions. In good faith I will answer that at all times relevant to this complaint, I lived at the Conway Road address listed on the original pro se complaint. No other person has personal knowledge of the illegal telemarketing calls I received from Defendant Fisher Investments, Inc.

INTERROGATORY NO. 15

Identify where you were physically located on each of the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024. In your answer, identify the city, state, and physical address of each location, if available.

RESPONSE: This Interrogatory exceeds the amount of interrogatories you are allowed to ask me, in that, including your vast subparts, this is well over 30 questions. In good faith I will answer that at all times relevant to this complaint, I lived at the Conway Road address listed on the original pro se complaint. My precise geolocation is not relevant, albeit I was somewhere in St. Louis when I received the illegal telemarketing calls from Defendant Fisher Investments, Inc. because I usually do not travel during the week and had no travel plans at that time which I can locate.

INTERROGATORY NO. 16

Identify your Internet Protocol addresses (IP address) for every electronic device you used on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024. The term “electronic device” includes cell phones, computers, tablets, smart watches, or any other similar electric device that has access to the internet.

RESPONSE: This Interrogatory exceeds the amount of interrogatories you are allowed to ask me, in that, including your vast subparts, this is well over 30 questions. In good faith I will answer that I have no idea. Albeit I was somewhere in St. Louis when I received the illegal telemarketing calls from Defendant Fisher Investments, Inc. My IP address for the private

residential phone which is the subject of this lawsuit is 174.210.7.231.

INTERROGATORY NO. 17

Identify all counsel you have retained or engaged: (a) for the matters (defined in Interrogatory Number 6) you identified in your response to Interrogatory Numbers 6 through 8; and (b) to send pre-suit letters to, including demand letters alleging violations of the TCPA and the Missouri No Call List and Telemarketing provisions, on your behalf.

RESPONSE: This Interrogatory contains multiple parts and exceeds the amount of interrogatories you are allowed to ask me, in that, including your vast subparts, this is well over 30 questions. This is public information and I have not waived my right to attorney/client privilege, regardless. See also Bates 1 through 419.

INTERROGATORY NO. 18

Identify all matters in which you purported to represent a putative class and your counsel filed a motion to certify the class.

RESPONSE: This Interrogatory contains multiple parts and exceeds the amount of interrogatories you are allowed to ask me, in that, including your vast subparts, this is well over 30 questions. This question is so vague and ambiguous that I have no idea what you mean by this question? I am not a lawyer, and you are asking me for legal advice and conclusions. See Bates 1 through 419.

INTERROGATORY NO. 19

Identify all persons with which you discussed (either orally or in writing) the matters you identified in response to Interrogatories 6-8.

RESPONSE: This Interrogatory contains multiple parts and exceeds the amount of interrogatories you are allowed to ask me, in that, including your vast subparts, this is well over 35 questions. This question is so vague and ambiguous that I have no idea what you mean by this

question? I am not a lawyer, and you are asking me for legal advice and conclusions. Also, I have no specific recollection about these matters and am bound by confidentiality agreements in many instances which I cannot violate. See Bates 1 through 419

INTERROGATORY NO. 20

State the total dollar amount you received in legal settlements involving alleged violations of the TCPA and/or any other telemarketing statutes in following years: 2021, 2022, 2023, and 2024 (to date), as well as the total number of payments in each year.

RESPONSE: This Interrogatory contains multiple parts and exceeds the amount of interrogatories you are allowed to ask me, in that, including your vast subparts, this is well over 35 questions. This question is so vague and ambiguous that I have no idea what you mean by this question? I am not a lawyer, and you are asking me for legal advice and conclusions. Also, I have no specific recollection about these matters and am bound by confidentiality agreements in many instances which I cannot violate. Finally, this is vastly outside the scope of phase one discovery order, so the Plaintiff reserves the right to supplement his response when information becomes available.

INTERROGATORY NO. 21

Separately itemize all damages or other relief you seek.

RESPONSE: This Interrogatory contains multiple parts and exceeds the amount of interrogatories you are allowed to ask me, in that this is well over 35 questions. This question is so vague and ambiguous that I have no idea what you mean by this question? I am not a lawyer, and you are asking me for legal advice and conclusions when the Complaint is the best evidence of the damages I am seeking. So I respectfully refer you to the Complaint which is already in your possession – See Counts I, II, III, and IV. Finally, this is vastly outside the scope of phase one discovery order, so the Plaintiff reserves the right to supplement his response when information

becomes available.

DECLARATION

As provided by 28 U.S.C. §1746, Daniel Human hereby attests under the penalties of perjury that the answers he has given heretofore, are true and correct to the best of his knowledge, information and belief this 26th day of December, 2024.

/s/Daniel Human
Daniel Human

REQUESTS FOR PRODUCTION

REQUEST NO. 1

All documents evidencing, concerning, relating to, or referring to communications you have had with any person regarding any of the facts and allegations set forth in, or underlying, the Complaint and/or the defenses in the Answer, including without limitation, all non-privileged communications you sent to or received from any person.

RESPONSE: See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on their lead generation and sales to Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery.

REQUEST NO. 2

All documents evidencing, concerning, relating to, or referring to communications you have had with any person regarding the matters (defined above and in Interrogatory Number 6)

you identified in response to Interrogatories 6 through 8, including without limitation, all non-privileged communications you sent to or received from any person.

RESPONSE: See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on their lead generation and sales to Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery.

REQUEST NO. 3

All documents evidencing, concerning, relating to, or referring to any relief, remedies, or damages you seek in this case, including, without limitation, the amounts of any relief, remedies, or damages you seek, the manner or method for calculation of such amounts, and any efforts by you to mitigate those damages.

RESPONSE: See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on their lead generation and sales to Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery.

REQUEST NO. 4

All recordings or contemporaneous notes of the alleged calls to the subject telephone number, and any other calls you claim relate to Defendant.

RESPONSE: See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on their lead generation and sales to Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery.

REQUEST NO. 5

All non-privileged recordings (written, video, audio, or otherwise) of any communications evidencing, concerning, relating to, or referring in any way to this lawsuit or the facts underlying it, including but not limited to all recordings of the alleged calls made to you by Defendant.

RESPONSE: See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on their lead generation and sales to Defendant Fisher. Finally, this request is vastly outside the

scope of Phase One Discovery.

REQUEST NO. 6

All non-privileged documents reflecting any recordings, notes, or other information about the alleged calls to the subject telephone number, and any other calls you claim relate to Defendant.

RESPONSE: See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on their lead generation and sales to Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery.

REQUEST NO. 7

All records evidencing the alleged calls, including but not limited to call logs, screenshots, and telephone records.

RESPONSE: See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on their lead generation and sales to Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery.

REQUEST NO. 8

All non-privileged documents, including all written communications or confirmations, relating to or concerning Paragraph 29 of the Complaint, including that “[t]o generate leads,” Fisher “uses random, robocall and automated dialing system generated telemarketing calls/texts.”

RESPONSE: See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery.

REQUEST NO. 9

All non-privileged documents, including all written communications or confirmations, relating to or concerning Paragraph 30 of the Complaint, including that “Fisher also utilizes area code spoofing technology and computer systems to block or otherwise circumvent called numbers caller identification functions.”

RESPONSE: See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial

Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery.

REQUEST NO. 10

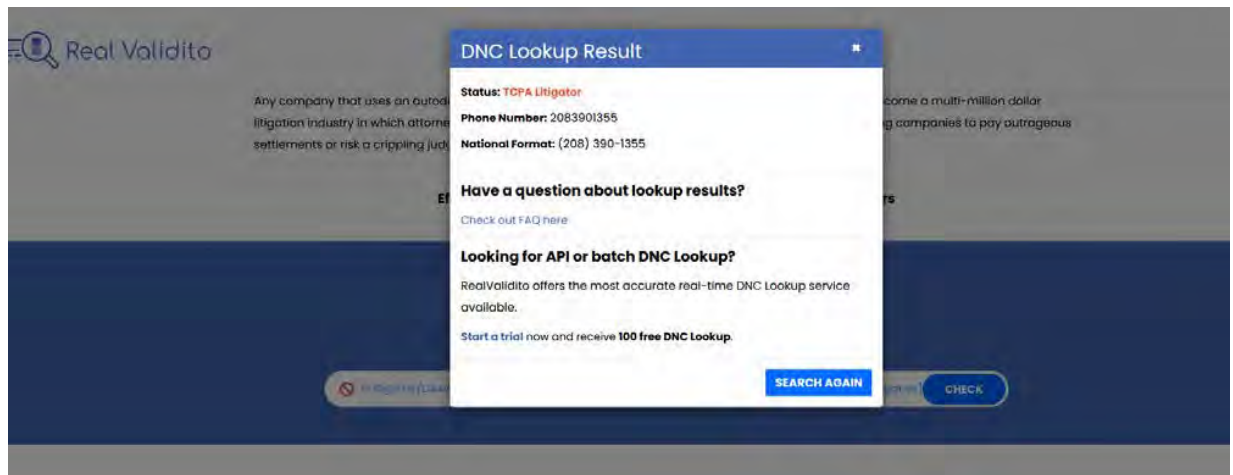
All documents, including all written communications or confirmations, relating to or concerning Paragraph 31 of the complaint, including that Plaintiff was allegedly a “subscriber” for the residential cellular telephone number at issue.

RESPONSE: See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Moreover, Defendant already subpoenaed Verizon and has substantial evidence that Plaintiff is the subscriber to the number in question. Finally, this request is vastly outside the scope of Phase One Discovery.

REQUEST NO. 11

All documents, including all written communications or confirmations, relating to or concerning Paragraph 32 of the Complaint, including that Plaintiff “personally registered his residential cellular telephone number . . . on the National and Missouri Do Not Call Registries in 2022.”

RESPONSE: See Bates 154-419. See also, National and Missouri Do Not Call Lists.



REQUEST NO. 12

All documents, including all written communications or confirmations, relating to or concerning Paragraph 33 of the Complaint, including that Defendant “approved, encouraged, enticed and ratified” the subject calls.

RESPONSE: See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery.

REQUEST NO. 13

All documents, including all written communications or confirmations, relating to or concerning Paragraph 34 of the Complaint, including that “all calls received by the Plaintiff had the caller identification functioned [sic] blocked or otherwise circumvented so the Plaintiff could not identify the caller.”

RESPONSE: See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery. Moreover, the Plaintiff witnessed this event which is clearly articulated in the Complaint.

REQUEST NO. 14

All documents, including all written communications or confirmations, relating to or concerning Paragraph 35 of the Complaint—that “[j]ust prior to being connected to the telemarketer, Plaintiff Human heard a click, a pause, some dead air space, some various robotic and artificial sounds and squealing noises and then the call was then transferred and connected” and even though “Plaintiff indicated that they were interrupting his family time and was extremely busy and could not take the call,” Defendant continued to call.

RESPONSE: See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery. Moreover, the Plaintiff witnessed this event

which is clearly articulated in the Complaint and he will provide an affidavit or testimony to this fact.

REQUEST NO. 15

All documents, including all written communications or confirmations, relating to or concerning Paragraph 36 of the Complaint.

RESPONSE: See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery. Moreover, the Plaintiff witnessed this event and suffered this trauma, harassment and invasion of his privacy and right to seclusion which is clearly articulated in the Complaint and he will provide an affidavit or testimony to this fact when relevant.

REQUEST NO. 16

All documents, including all written communications or confirmations, relating to or concerning Paragraph 37 of the Complaint, including that Defendant placed “unsolicited marketing calls to his private, personal cell phone and the Plaintiff had no prior business relationship with the Defendant,” to a number on the federal and Missouri Do Not Call registries.

RESPONSE: See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests.

Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery.

REQUEST NO. 17

All documents, including all written communications or confirmations, relating to or concerning Paragraph 39 of the Complaint—“Plaintiff never provided his prior express written consent to receive nor requested these calls and has no prior business relationship with the Defendant.”

RESPONSE: See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and this is the Defendants Affirmative defense, Not Plaintiff’s. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff’s express written consent prior to dialing his personal residential phone number and this defense should be stricken.

REQUEST NO. 18

All non-privileged documents, including all written communications or confirmations, relating to or concerning Paragraph 40 of the Complaint, including that Plaintiff “incur[red]

provider fees” as a result of the subject calls.

RESPONSE: Defendant is already in possession of this information through their subpoena to Verizon. See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and this is the Defendants Affirmative defense, Not Plaintiff’s. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff’s express written consent prior to dialing his personal residential phone number and this defense should be stricken. Moreover, Defendant has failed to produce any documents received from Verizon pursuant to the Subpoena issued over the Plaintiff’s extensive written objections.

REQUEST NO. 19

All non-privileged documents, including all written communications or confirmations, relating to or concerning Paragraph 41 of the Complaint, including that Plaintiff suffered “severe physical injuries, including chest pain, anxiety” and “incurr[ed] telephone service provider fees, wear and tear on phones, damage and disruption to the phone’s battery life, and other injuries and costs.”

RESPONSE: Asked and replied to in Request No. 18. Additionally, Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter. See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well

as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential medical information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 20

All non-privileged documents, including all written communications or confirmations, relating to or concerning Paragraph 45 of the Complaint, including that "it was obvious that they [the subject calls] were made by automatic yet random equipment . . . as each prefaced by automated clicks, computer squeals, pauses, and dead air space."

RESPONSE: Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter and what he heard. See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery. Defendant has

failed to produce any evidence, whatsoever, that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 21

All non-privileged documents, including all written communications or confirmations, relating to or concerning Paragraph 46 of the Complaint—"Defendant Fisher and their agents, employees, and/or vendors placed numerous calls alleged in this complaint with one or more ATDS and predictive dialers."

RESPONSE: Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter. See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential medical information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 22

All non-privileged documents, including all written communications or confirmations, relating to or concerning Paragraph 47 of the Complaint, including that "no human manually

entered Plaintiff[’s] . . . cellular telephone number.”

RESPONSE: See Westlaw and Lexis for your research. Seeks work product and privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential medical information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff’s express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 23

All non-privileged documents, including all written communications or confirmations, relating to or concerning Paragraph 64 of the Complaint, including that “Defendants [sic] made and/or knowingly allowed the telephone calls/texts to Plaintiff . . . to be made utilizing an automated system for the selection or dialing of telephone numbers, used a robotic interface with the Plaintiff, disabled the Caller I.D. function so Plaintiff could not identify the caller prior to answering the call/text, spoofed the area codes to deceive Plaintiff to answer the unsolicited calls.”

RESPONSE: Seeks work product and privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed.

See Complaint, Rule 26 disclosures, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 24

All non-privileged documents, including all written communications or confirmations, relating to or concerning Paragraph 85 of the Complaint and all subparts—"Defendant Fisher is vicariously liable for the calls/texts complained of by Plaintiff because they: authorized or caused telemarketers to initiate the phone calls/texts or initiated the calls and texts themselves; directly or indirectly controlled the persons who actually made or initiated the calls/texts; allowed the employees, telemarketers and independent agents access to information and operating systems within Defendant's control for the purpose of selling goods and services, without which they would not be able to sell their services using robocalling and direct dialing; allowed the telemarketers and independent agents to enter or provide consumer information into Defendant's sales or operational systems; approved, wrote, reviewed, or participated in developing the telemarketing sales scripts and automated text messages; Defendant reasonably should have known or consciously avoided

knowing that the actual telemarketers were violating the law and Defendant failed to take effective steps within their power to require compliance; or Defendant Fisher gave substantial assistance or support to the telemarketers and each other while knowing, consciously avoid knowing, or being recklessly indifferent to the fact that the telemarketers were engaged in acts or practices that violated the TCPA and MDNC.”

RESPONSE: Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff’s express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 25

All non-privileged documents, including all written communications or confirmations, relating to or concerning Paragraph 86 of the Complaint, including that “Plaintiff patiently listened and read to the scripted sales pitch.”

RESPONSE: Seeks work product and attorney/client privileged information. Plaintiff will

give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 26

All non-privileged documents, including all written communications or confirmations, relating to or concerning Paragraph 87 of the Complaint, including that Defendant Fisher supposedly "ratified the illegal robocalls, ATDS, and direct dialing DNC and MDNC violations."

RESPONSE: Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 418, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined

in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 27

All documents that relate in any way to any calls you placed to Defendant or third parties, including from the subject telephone number, insofar as they relate to the allegations in your Complaint.

RESPONSE: Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 28

All documents that evidence, concern, or refer or relate to your communications with any person wherein you discussed the facts described in your Complaint, including but not limited to Defendants' alleged calls to you and the alleged violations of the TCPA and Missouri No Call List and Telemarketing provisions.

RESPONSE: Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 29

All documents that relate to, refer to, concern, evidence, or support or refute your allegation that Defendant authorized or authorizes calling telephone numbers listed on the National Do Not Call Registry.

RESPONSE: Plaintiff will give extensive testimony or provide affidavits when necessary,

relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant and Plaintiff, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery. The illegal, unsolicited calls to Plaintiff's private phone are demonstrative evidence. See all screenshots in Bates disclosure.

REQUEST NO. 30

All documents you intend to present at or in any trial, deposition, written filing, hearing, or other proceeding in this matter insofar as they relate to Plaintiff's individual claims and allegations in the Complaint, or Defendants' defenses thereto, as outlined in Defendants' Answer to Plaintiff's Complaint.

RESPONSE: Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests.

Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

According to SmartAsset Advisors, LLC:

SmartAsset Advisors, LLC ("SmartAsset"), a wholly owned subsidiary of Financial Insight Technology, is registered with the U.S. Securities and Exchange Commission as an investment adviser. SmartAsset's services are limited to referring users to third party advisers registered or chartered as fiduciaries ("Adviser(s)") with a regulatory body in the United States that have elected to participate in our matching platform based on information gathered from users through our online questionnaire. SmartAsset receives compensation from Advisers for our services. SmartAsset does not review the ongoing performance of any Adviser, participate in the management of any user's account by an Adviser or provide advice regarding specific investments. We do not manage client funds or hold custody of assets, we help users connect with relevant financial advisors. This is not an offer to buy or sell any security or interest. All investing involves risk, including loss of principal. Working with an adviser may come with potential downsides such as payment of fees (which will reduce returns). There are no guarantees that working with an adviser will yield positive returns. The existence of a fiduciary duty does not prevent the rise of potential conflicts of interest.

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REQUEST NO. 31

All documents identified or referenced in your responses to Defendants' First Set of Interrogatories, served contemporaneously herewith.

RESPONSE: This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits

when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 418, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 32

All documents referenced by you in preparing your responses to Defendants' First Set of Interrogatories, served contemporaneously herewith.

RESPONSE: This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 418, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial

Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 33

All documents you identified, reviewed, or relied upon in preparing your initial disclosures.

RESPONSE: This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 418, initial disclosures for both parties, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 34

All lead forms (defined above) you have filled out or submitted between January 1, 2021 and the present.

RESPONSE: This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 418, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery. Furthermore, Plaintiff has never visited the SmartAsset.com or Fisher.com websites and has not filled out a lead form on either website.

REQUEST NO. 35

Documents sufficient to identify all TCPA and Missouri No Call List and Telemarketing provisions lawsuits, court proceedings, administrative proceedings, arbitrations, or other legal proceedings to which you have been a party or witness, or in which you provided oral or written testimony, including, without limitation, any and all civil actions, arbitrations, mediations,

administrative actions, or any other similar proceedings or actions.

RESPONSE: This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 418, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 36

Document sufficient to evidence and identify your phone plan, the persons on such plan, and billing statements for such plan.

RESPONSE: This evidence was previously secured by defendants counsel through a subpoena, over the Plaintiff's written objections.

REQUEST NO. 37

Documents sufficient to evidence, concern, or relate to when and/or how you acquired the subject telephone number, including from whom you acquired it, and/or when it was assigned to

you.

RESPONSE: See Response to 36.

REQUEST NO. 38

All documents evidencing, concerning or relating to any contracts between you and the carrier(s) or provider(s) of telephone service for the subject telephone number, including terms of service applicable to your use of those numbers.

RESPONSE: See Response to 36.

REQUEST NO. 39

The resume for each expert witness you reasonably expect to call at trial.

RESPONSE: This is outside the scope of Phase One Discovery and will be seasonably supplemented when Phase One discovery is complete and the Defendant begins to provide documents pursuant to Plaintiff's lawful requests.

REQUEST NO. 40

For each expert witness you expect to call at trial, all documents, data or other materials provided to, shown to, or considered by the expert in arriving at his or her opinions.

RESPONSE: This is outside the scope of Phase One Discovery and will be seasonably supplemented when Phase One discovery is complete and the Defendant begins to provide documents pursuant to Plaintiff's lawful requests.

REQUEST NO. 41

All documents evidencing, concerning, relating to, or referring to any subpoenas or informal requests for documents (e.g., emails requesting documents or relevant information from third parties) including any responses to subpoenas or informal requests from third parties in connection with Plaintiff's claims.

RESPONSE: Without Context, a time frame or subject matter, Plaintiff has no idea what the Defendant seeks with this harassing request. Moreover, this is outside the scope of Phase One Discovery and will be seasonably supplemented when Phase One discovery is complete and the Defendant begins to provide documents pursuant to Plaintiff's lawful requests.

REQUEST NO. 42

All documents related to any responses you have made—including any responses that

mention the subject phone number or any of your other phone numbers—to an advertisement for Defendant's services.

RESPONSE: Without Context, a time frame or subject matter, Plaintiff has no idea what the Defendant seeks with this harassing request. Moreover, this is outside the scope of Phase One Discovery and will be seasonably supplemented when Phase One discovery is complete and the Defendant begins to provide documents pursuant to Plaintiff's lawful requests.

REQUEST NO. 43

All retention, retainer, or other agreements between Plaintiff and his counsel that memorialize counsel's representation of Plaintiff in this lawsuit.

RESPONSE: Seeks attorney/client privilege information.

REQUEST NO. 44

Documents showing or evidencing Plaintiff's internet search or website visit history—from any electronic devices (defined above) you used—on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024.

RESPONSE: Plaintiff did not ever visit fisher.com or smartasset.com and there is no search history to provide for those dates.

REQUEST NO. 45

Documents sufficient to identify your Internet Protocol addresses (IP address) for every electronic device (defined above) you used on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024.

RESPONSE: See Binder 3, page 419

REQUEST NO. 46

Documents sufficient to show all phone calls and emails you received at the subject telephone number on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1,

2024, July 9, 2024, July 12, 2024, and July 17, 2024.

RESPONSE: This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 47

All records of incoming calls to, or outgoing calls from the subject number between January 2022 and the present, including any and all calls that resulted in voice messages or voicemails.

RESPONSE: This information is already in the Defendant possession as a result of the subpoena Defendant Sent to phone provider Verizon. This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he

witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 48

Documents sufficient to identify where you were physically located—including but not limited to calendar entries in Outlook, Apple Calendar, and/or the Samsung Calendar Application—on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024.

RESPONSE: Plaintiff does not possess any documents related to his geolocation, albeit he was in St. Louis, Missouri on each of the referenced dates. This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the

Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonably supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 49

All correspondence or pre-suit demand letters you sent (or were sent on your behalf) alleging purported violations of the TCPA or Missouri No Call List and Telemarketing provisions.

RESPONSE: Plaintiff sent a demand letter to Fisher which is already in its possession. This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonably supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client

privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 50

All correspondence or communications you received in response to your correspondence Telemarketing provisions.

RESPONSE: This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 51

All documents in which a defendant or opposing party asserted in response to pre-suit

correspondence you sent or a complaint you filed that you consented or opted in to receive telephonic communications from them.

RESPONSE: See Bates 1 through 419. The Plaintiff is providing a list of all TCPA cases he has filed and Defendant is free to conduct its own research in the Bates disclosure. This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 418, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonably supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 52

All opt-ins or documents showing consent that concern, evidence, relate to, or refer to "Veronica" or "Veronica Moreno," including those you have received from opposing parties or defendants in other matters (including in response to pre-suit correspondence).

RESPONSE: See Bates 1 through 419. The Plaintiff is providing a list of all TCPA cases

he has filed and Defendant is free to conduct its own research in the Bates disclosure. This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 418, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonably supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 53

All lead certificates (including from Jornaya or TrustedForm) referencing or concerning "Veronica" or "Veronica Moreno," including those you have received from opposing parties or defendants in other matters (including in response to pre-suit correspondence).

RESPONSE: Plaintiff is not in possession of any such documents. See Bates 1 through 419. The Plaintiff provided a list of all TCPA cases he has filed and Defendant is free to conduct its own research in the Bates disclosure. This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed.

See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 418, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonably supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery. If the Defendant would like Plaintiff to hire a research firm to conduct this research on Defendants behalf, there will be a substantial fee to the outside company, whom also requires a significant retainer deposit.

REQUEST NO. 54

All non-privileged documents mentioning or referencing "Veronica" or "Veronica Moreno" insofar as they relate to alleged violations of the TCPA or Missouri No Call List and Telemarketing provisions.

RESPONSE: Plaintiff is not in possession of any such documents. See Bates 1 through 419. The Plaintiff provided a list of all TCPA cases he has filed and Defendant is free to conduct its own research in the Bates disclosure. This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 418, initial

disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonably supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery. If the Defendant would like Plaintiff to hire a research firm to conduct this research on Defendants behalf, there will be a substantial fee to the outside company, whom also requires a significant retainer deposit.

REQUEST NO. 55

All lead certificates (including from Jornaya or TrustedForm) referencing or concerning the subject telephone number, including those you have received from opposing parties or defendants in other matters (including in response to pre-suit correspondence).

RESPONSE: THIS IS THE IDENTICAL REQUEST MADE IN #53 AND IS BEYOND THE SCOPE OF PHASE ONE DISCOVERY! See answer to 53!

REQUEST NO. 56

All non-privileged documents mentioning or referencing the subject phone number insofar

as they relate to alleged violations of the TCPA or Missouri No Call List and Telemarketing provisions.

RESPONSE: This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 57

All opt-ins or documents showing consent that concern, evidence, relate to, or refer to "Melody" or Melody Human," including those you have received from opposing parties or defendants in other matters (including in response to pre-suit correspondence).

RESPONSE: This is not a party to this suit and Plaintiff is not in possession of any such documents. This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits

when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 58

All lead certificates (including from Jornaya or TrustedForm) referencing or concerning "Melody" or "Melody Human," including those you have received from opposing parties or defendants in other matters (including in response to pre-suit correspondence).

RESPONSE: This is not a party to this suit and Plaintiff is not in possession of any such documents. This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff

specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 59

All non-privileged documents mentioning or referencing "Melody" or "Melody Human," insofar as they relate to alleged violations of the TCPA or Missouri No Call List and Telemarketing provisions.

RESPONSE: This is not a party to this suit and Plaintiff is not in possession of any such documents. This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher.

Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 60

All non-privileged documents mentioning or referencing Fisher Investments and "Melody" or "Melody Human."

RESPONSE: This is not a party to this suit and Plaintiff is not in possession of any such documents. This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 61

Documents sufficient to identify all matters (defined above and in Interrogatory Number 6 to which you have been a party or in which you have provided oral or written testimony.

RESPONSE: Plaintiff is not in possession of any such documents. This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 62

Documents sufficient to identify all matters (defined above and in Interrogatory Number 6) in which you allegedly received calls or text messages intended for "Veronica" or "Veronica

Moreno.”

RESPONSE: Plaintiff is not in possession of any such documents. This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff’s express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 63

Documents sufficient to identify all matters (defined above and in Interrogatory Number 6) in which you allegedly received calls or text messages intended for “Melody” or “Melody Human.”

RESPONSE: Melody Human is not a party to this Suit. Plaintiff is not in possession of any such documents. This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits

when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 64

Apart from counsel, identify all persons with which you discussed (either orally or in writing) the matters you identified in response to Interrogatories 6-8.

RESPONSE: This is a thinly veiled attempt to assert an interrogatory and is improper. This is not a document request. Plaintiff is not in possession of any such documents. This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to

seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 65

All non-privileged documents produced or in any way related to *Policy Scout LLC v. Human*, 2:23-cv-00934-JNP (D. Utah.) and the underlying conduct, including but not limited to lead certificates (e.g., from Jornaya or TrustedForm), call logs, call recordings, other evidence of consent, demand letters, and correspondence from PolicyScout or its counsel related to that case. *See Policy Scout LLC v. Human*, 2:23-cv-00934-JNP, Doc. 1-1 (D. Utah. Dec. 29, 2023) (“Human willfully and voluntarily submitted his information to PolicyScout and opted-in to be called. He further represented to PolicyScout that he was interested in insurance and wanted to be connected to a broker. Human’s design was to convince PolicyScout that he was an interested consumer, induce PolicyScout to place phone calls to him, then threaten PolicyScout and its employees with legal action unless PolicyScout paid him an exorbitant sum.”); *Policy Scout LLC v. Human*, 2:23-cv-00934-JNP, Doc. 21 (D. Utah. Jan. 22, 2024) (“Mr. Human has a practice of engaging websites by visiting them and providing personal information with the purpose of deceiving companies into believing he is an interested consumer. He thereafter lays in wait for phone calls, and when

received, contacts the companies, claims he did not want to be called and threatens litigation, all with the ultimate plan to extort money from legitimate companies.”).

RESPONSE: Counsel for the Defendant obviously has whatever documents they seek in their possession. Plaintiff is not in possession of any such documents. This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests – this is patent on the face of this ridiculous request. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff’s express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 66

All non-privileged documents concerning “Veronica” or “Veronica Moreno,” including any communications with Veronica Moreno or others about her and any internet search history regarding Veronica Moreno.

RESPONSE: Plaintiff is not in possession of any such documents. This has been

repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 67

All settlement agreements between Daniel Human and third parties involving TCPA or Missouri No Call List and Telemarketing provisions allegations.

RESPONSE: Seeks work product and attorney/client privileged information which is confidential and not discoverable. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and

when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 68

All transcripts of deposition testimony provided by Daniel Human in cases involving TCPA and Missouri No Call List and Telemarketing provisions allegations.

RESPONSE: Plaintiff possesses no such documents. This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express

written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 69

All deposition transcripts in which Plaintiff provided testimony.

RESPONSE; Plaintiff possesses no such documents. This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 70

All documents that relate in any way to Fisher Investments, including but not limited to all communications with or regarding Fisher Investments on any platform and browser history on any device relating to Fisher Investments.

RESPONSE: This has been repeatedly requested and is harassing. Seeks work product

and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 71

All documents relating to or concerning whether you provided the subject telephone number to Defendant.

RESPONSE: This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is

received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 72

Documents sufficient to identify all criminal proceedings to which you have been a party or witness.

RESPONSE: Plaintiff is not in possession of any such documents. This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever

that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 73

All documents relating to whether the subject phone number is registered on the national Do Not Call registry, when any such registration occurred, and who registered the numbers.

RESPONSE: This has been repeatedly requested and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 74

All class certification briefing (motions, responses, replies, etc., and any exhibits) for any case, including but not limited to TCPA cases, where Plaintiff was a purported class representative.

RESPONSE: This has been repeatedly requested and is harassing. Seeks work product

and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

REQUEST NO. 75

To the extent not produced in response to any of the foregoing Requests, all documents that evidence, concern, support or refute, or refer to relate to your individual allegations set forth in the Complaint or the defenses set forth in the Defendant's Answer to your Complaint.

RESPONSE: This has been repeatedly requested in one form or another and is harassing. Seeks work product and attorney/client privileged information. Plaintiff will give extensive testimony or provide affidavits when necessary, relating to this matter regarding what he witnessed. See Complaint, Rule 26 disclosures of Defendant, Bates Documents 1 through 419, initial disclosures, and answers to interrogatories above as well as all documents and recordings in Defendant Fishers possession which have not been produced in accord with the Plaintiffs lawful

document requests. Plaintiff specifically reserves the right to seasonable supplement this response when more evidence is received and when indispensable party SmartAsset Advisors, LLC, a wholly owned subsidiary of Financial Insight Technology is joined in an amended complaint and they provide all relevant information on lead generation and sales of their leads to their employer Defendant Fisher. Finally, this request is vastly outside the scope of Phase One Discovery and seeks matters which are attorney/client privileged, work product, and confidential information. Defendant has failed to produce any evidence, whatsoever that it obtained the Plaintiff's express written consent prior to dialing his personal residential phone number and this defense should be stricken, which is the subject of phase one discovery.

Respectfully submitted,

/s/Edwin V. Butler

Edwin V. Butler Mo. 32489
Attorney At Law
Butler Law Group, LLC
1650 Des Peres Rd., STE 220
St. Louis, MO 63131
edbutler@butlerlawstl.com
(314) 504-0001

Attorney for the Plaintiff

Plaintiff's Response to Defendants interrogatories and document requests were served on Defendants counsel together with a 419 page pdf document this 27th day of December 2024, via all known email addresses.

/s/Edwin Butler

Edwin Butler

EXHIBIT 12

Name Search Result

All Participating Courts

Displaying records returned for parties with a name of **HUMAN, dANIEL** for **All** case types in **ALL** court locations

HUMAN , DANIEL

Case Type: CC Pers Injury-Other
Circuit: Circuit 21
Case Number: 24SL-CC08176
Party Type: Plaintiff Acting Pro Se
Address On File: ST. LOUIS MO
Filing Date: 12/23/2024
County: St. Louis County
Style of Case: DANIEL HUMAN V COX AUTOMOTIVE INC
Location: St Louis County

HUMAN, DANIEL

Case Type: CC Pers Injury-Other
Circuit: Circuit 21
Case Number: 24SL-CC00215
Party Type: Plaintiff
Address On File: SAINT LOUIS MO
Filing Date: 01/12/2024
County: St. Louis County
Style of Case: DANIEL HUMAN V DENNIS DILLON AUTOMOTIVE GROU ET AL
Location: St Louis County

Case Type: CC Pers Injury-Other
Circuit: Circuit 21
Case Number: 24SL-CC00329
Party Type: Plaintiff
Address On File: SAINT LOUIS MO
Filing Date: 01/19/2024
County: St. Louis County
Style of Case: DANIEL HUMAN ET AL V EDGE FINANCIAL, INC. ET AL
Location: St Louis County

Case Type: CC Pers Injury-Other
Circuit: Circuit 21
Case Number: 24SL-CC00972
Party Type: Plaintiff Acting Pro Se
Address On File: SAINT LOUIS MO
Filing Date: 03/04/2024
County: St. Louis County
Style of Case: DANIEL HUMAN V ASSURANCE IQ SERVICES LLC
Location: St Louis County

Case Type: CC Pers Injury-Other
Circuit: Circuit 21
Case Number: 24SL-CC01286
Party Type: Plaintiff
Address On File: ST. LOUIS MO
Filing Date: 03/19/2024
County: St. Louis County
Style of Case: DANIEL HUMAN V INTERNATIONAL UNION OF POLICE ET AL
Location: St Louis County

Case Type: CC Pers Injury-Other

Circuit: Circuit 21

Case Number: 24SL-CC01355

Party Type: Plaintiff Acting Pro Se

Address On File: SAINT LOUIS MO

Filing Date: 03/22/2024

County: St. Louis County

Style of Case: DANIEL HUMAN V GENERAL MOTORS LLC

Location: St Louis County

Case Type: CC Pers Injury-Other

Circuit: Circuit 21

Case Number: 24SL-CC01657

Party Type: Plaintiff Acting Pro Se

Address On File: SAINT LOUIS MO

Filing Date: 04/11/2024

County: St. Louis County

Style of Case: DANIEL HUMAN V DAVID RAMIREZ & ASSOC, INC

Location: St Louis County

Case Type: CC Pers Injury-Other

Circuit: Circuit 21

Case Number: 24SL-CC02434

Party Type: Plaintiff Acting Pro Se

Address On File: BALLWIN MO

Filing Date: 05/23/2024

County: St. Louis County

Style of Case: DANIEL HUMAN V HOOVER VENTURE, LLC

Location: St Louis County

Case Type: CC Pers Injury-Other

Circuit: Circuit 21

Case Number: 24SL-CC02435

Party Type: Plaintiff Acting Pro Se

Address On File: BALLWIN MO

Filing Date: 05/23/2024

County: St. Louis County

Style of Case: DANIEL HUMAN V FLUENT, INC.

Location: St Louis County

Case Type: CC Pers Injury-Other

Circuit: Circuit 21

Case Number: 24SL-CC02679

Party Type: Plaintiff Acting Pro Se

Address On File: BALLWIN MO

Filing Date: 06/10/2024

County: St. Louis County

Style of Case: ALLEVATE TAX, LLC V ALLEVATE TAX, LLC

Location: St Louis County

Displaying records returned for parties with a name of **hUMAN, dANIEL** for **All** case types in **All** court locations

Name Search Result

All Participating Courts

Displaying records returned for parties with a name of **hUMAN, dANIEL** for **All** case types in **ALL** court locations

HUMAN, DANIEL

Case Type: CC Pers Injury-Other
Circuit: Circuit 21
Case Number: 23SL-CC02032
Party Type: Plaintiff
Address On File: BALLWIN MO
Filing Date: 05/16/2023
County: St. Louis County
Style of Case: DANIEL HUMAN V BENEPATH, INC. D/B/A) BENEPA ET AL
Location: St Louis County

Case Type: CC Pers Injury-Other
Circuit: Circuit 21
Case Number: 23SL-CC02138
Party Type: Plaintiff
Address On File: BALLWIN MO
Filing Date: 05/23/2023
County: St. Louis County
Style of Case: DANIEL HUMAN V SELECTQUOTE, INC, ET AL
Location: St Louis County

Case Type: CC Pers Injury-Other
Circuit: Circuit 21
Case Number: 23SL-CC02139
Party Type: Plaintiff
Address On File: BALLWIN MO
Filing Date: 05/23/2023
County: St. Louis County
Style of Case: DANIEL HUMAN V CALL TRADER LLC D/B/A THEHEAL ET AL
Location: St Louis County

Case Type: CC Other Tort
Circuit: Circuit 21
Case Number: 23SL-CC03724
Party Type: Plaintiff
Address On File: ST. LOUIS MO
Filing Date: 09/01/2023
County: St. Louis County
Style of Case: DANIEL HUMAN V BROKER SOLUTIONS INC
Location: St Louis County

Case Type: CC Pers Injury-Other
Circuit: Circuit 21
Case Number: 23SL-CC04682
Party Type: Plaintiff
Address On File: ST. LOUIS MO
Filing Date: 10/31/2023
County: St. Louis County
Style of Case: DANIEL HUMAN V AMERICAN FINANCIAL NETWORK, I ET AL
Location: St Louis County

Case Type: CC Pers Injury-Other

Circuit: Circuit 21

Case Number: 23SL-CC04824

Party Type: Plaintiff

Address On File: SAINT LOUIS MO

Filing Date: 11/08/2023

County: St. Louis County

Style of Case: DANIEL HUMAN V BMW (US) HOLDING CORP. ET AL

Location: St Louis County

Case Type: CC Pers Injury-Other

Circuit: Circuit 21

Case Number: 23SL-CC04822

Party Type: Plaintiff

Address On File: SAINT LOUIS MO

Filing Date: 11/08/2023

County: St. Louis County

Style of Case: DANIEL HUMAN V SUNRUN, INC. ET AL

Location: St Louis County

Case Type: CC Pers Injury-Other

Circuit: Circuit 21

Case Number: 23SL-CC04820

Party Type: Plaintiff

Address On File: SAINT LOUIS MO

Filing Date: 11/08/2023

County: St. Louis County

Style of Case: DANIEL HUMAN V USHEALTH ADVISORS LLC

Location: St Louis County

Case Type: CC Pers Injury-Other

Circuit: Circuit 21

Case Number: 23SL-CC04945

Party Type: Plaintiff

Address On File: SAINT LOUIS MO

Filing Date: 11/16/2023

County: St. Louis County

Style of Case: DANIEL HUMAN ET AL V TAYLOR CHEVROLET CO. ET AL

Location: St Louis County

Case Type: CC Pers Injury-Other

Circuit: Circuit 21

Case Number: 23SL-CC05097

Party Type: Plaintiff

Address On File: SAINT LOUIS MO

Filing Date: 11/28/2023

County: St. Louis County

Style of Case: DANIEL HUMAN V BOOST HEALTH, LLC ET AL

Location: St Louis County

Displaying records returned for parties with a name of **hUMAN, dANIEL** for **All** case types in **All** court locations



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Fisher Investments



BBB Accredited Business

A+ [Rated by BBB](#)

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Overview

Fisher Investments

5525 NW Fisher Creek Dr
Camas, WA 98607-9911

[Service Area](#)

[View Headquarters](#)

BBB Accredited Since: 3/24/2014

Years in Business: 46



[Business Licenses](#)

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BBB Rating

A+

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About This Business

Fisher Investments offers investment advising services.

Products and Services

Fisher Investments offers Annuity Conversion, Financial Planning, Retirement Planning, Portfolio Management, and Tailored Investment services.

Business Details

Local BBB: [BBB Great West + Pacific](#)

BBB File Opened: 2/5/2007

Business Started: 1/1/1979

Business Started Locally: 1/1/1979

Business Incorporated: 12/17/1986

Type of Entity: Corporation

Alternate Names:

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(Headquarters Contact): Mr. Jeffery L Silk, Director
Mr. Steven R Triplett, Principal
Mr. Kenneth L Fisher, Director
Mr. Naj Srinivas, Senior Vice President

(Headquarters Contact): Mr. Damian D Ornani, CEO

Additional Contact Information

Principal Contacts

(Headquarters Contact): Mr. Damian D Ornani, CEO

Customer Contacts

Mr. Naj Srinivas, Senior Vice President

Additional Phone Numbers

Other Phone: [\(360\) 335-3004](tel:(360)335-3004)

Other Phone: [\(888\) 823-9566](tel:(888)823-9566)

Social Media



Licensing information

This business is in an industry that may require professional licensing, bonding or registration. BBB encourages you to check with the appropriate agency to be certain any requirements are currently being met.

Additional Information

Referral Assistance

Washington Department of Financial Institutions
PO Box 41200
Olympia WA 98504
Phone Number: (360) 902-8700
<http://www.dfi.wa.gov>

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Complaint Type:

Service or Repair Issues

Status:

Answered



Initial Complaint

11/07/2023

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I opened my account with ***** back in 5/2021 and invested over ***** via my IRA ***** In the 2 years I have been with them I have had 3 account managers, 1 was great, 1 was a fill in and the most recent one was a lady by the name of ***** . In the year 2022 and 2023 (7/2023 onward) lost over 100K and not once during this time span was I ever contacted about my declining portfolio. Yes, I rec'd the typical statements and quarterly write up which you need to be a math major to understand. No personal service whatsoever about options to bring back my investment. Yet ever quarter the company continued to take their fee of 2000+ (800 a month) but for what. I have Only when I contacted them in November and told them I was pulling out my funds they offered me flexible ways to use my money. By then it was too late and my decision was made. I am seeking reimbursement or an itemization of what these fees entailed so I may review since I am disputing these fees for poor consumer money management and failure to discuss options with me on the loss of income during the time period of 2022 into 2023.



Business response
12/07/2023

Complaint Type:
Service or Repair Issues
Status:
Resolved



Initial Complaint
07/08/2023

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A transfer of funds request was initiated 4-4-23 to move my *** from Fisher - where it had been underperforming the ***** for a number of quarters- to a financial firm offering additional services, lower cost, etc. Fisher should have already deducted the prior quarters fee, and I reached out to my contact on April 6 to confirm that they would deduct the fee before the transfer took place, explaining that I did not have access to other funds to pay the fee once funds are transferred. By deducting the fee, it is a non-taxable transaction. Instead, I received an invoice for the fee that was dated 4/6/23. Meanwhile, the shares were not deposited from the Fisher custodial account into the new custodial account until 4/10/23. Presumably, then, the funds were still under Fishers control when they issued the invoice instead of deducting them. I am requesting that they cancel this invoice.



Business response

07/13/2023

Dear ***** ,

The Better Business Bureau has notified us of the complaint you posted on their website (#*****), and has asked us to respond.

In your review, you state that Fisher Investments should have deducted the prior quarters management fee from your account before you initiated a transfer out request on 4/4/2023. Thank you for speaking with us recently about why we were not able to deduct these fees directly from your account. We regret your disappointment

Complaint Type:

Service or Repair Issues

Status:

Answered



Initial Complaint

05/04/2023



Customer response

07/14/2023

Better Business Bureau:

I have reviewed the response made by the business in reference to complaint ID ***** , and find that this resolution is satisfactory to me.

Sincerely,

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Fisher investments fauled in their fiduciary responsibility and did not work in my best interest to secure my retirement funds even after many phone calls and emails. The attached "Confidential Client Profile" provided before ***** took my funds shows my retirement income of a \$19,000 pension and \$12,000 short-term rental room in my home. Putting much of my funds at risk with aggressive funds and a lack of ability to create the \$6,000 per month I stated I needed through dividend fund dispersal created a unnecessary loss to my funds. Without my written consent, Fisher "tax harvested" funds, I.E. they threw away gains "to save me IRS charges on my tax return" I had stated in writing any gains over \$250,000 would be something that would cause capital gains and tax liabilit concerns. An income UNDER \$30,000 says it all. The Fisher chain of vice presidents that I was funneled to missed My 2022 income has NO TAX liability and with teh tax harvesting carry over to future years. 1. The \$15,000 loss was a unnecessary device to employ, 2. I did not agree to this 3. The fact I pleaaded for help and a review with change in funds Fisher ignored my request. I have asked that they return ALL funds they charged for their "advisor fees" as well as the \$15,000 loss which totals right at \$23,000. They have declined to do this. I have attached some of the material submitted to Fisher I feel explains my position but have other emails if you feel they are needed. I see popsted online Fisher has had law suits due to this very reason of mismanagement.



Business response

05/11/2023

Dear Ms. ***** Better Business Bureau notified us of the complaint you posted on their website (#*****), and asked us to respond.

Contrary to your comments, Fisher Investments (FI) always placed your best interests firstconsistent with our fiduciary duty. Before we implemented our recommended strategy in your accounts, we had detailed discussions with you regarding your investment time horizon, income needs, and goals. Our recommended strategy for your assets was based on the goals and objectives you communicated to usto support your stated cash flow needs and grow the assets over your investment time horizon. We reviewed our recommended strategy with you in detail and you confirmed you agreed with it and were comfortable.

In your review, you state the tax loss harvesting trades placed in your account were unnecessary and done without your written consent.Tax loss harvesting is a standard industry practice and can be especially beneficial to help reduce clients tax burdens. Prior to conducting tax loss harvesting, we send a courtesy notice to all clients, which you did receive.

In your complaint, you claimed you lost money because of tax loss harvesting. This is wrong. During tax loss harvesting, positions were sold to realize existing losses in your account, which you can use to offset taxable gains, thus minimizing your future tax liability. The proceeds of these trades were re-invested in similar holdings, which

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You mentioned tax loss harvesting was not necessary due to your income. As we have explained to you in the past, tax loss harvesting can help offset a tax bill that *** result from selling positions at a gain in the future.

Ms. *****, we regret we did not meet your expectations; however, your portfolio was managed appropriately and we believe it was on track to meet your stated goals over your investment time horizon. We thank you for having been a client and wish you all the best.

Thank you,
Fisher Investments

Customer response
05/18/2023

Complaint: 20019357

I am rejecting this response because:
Complaint: 20019357

I am rejecting this response because:

Complaint: 20019357

I am rejecting this response because:

Fisher has submitted a canned response which falsely portrays the situtaion they created in placing my funds in a pool of many other accounts that did not attned to my individualized needs. Their system of a cahin of command with VP's that ***** you in and lead you into thinking they are your adviusor then never heard of again as the funds get eaten up witrth fees and poractices such as "tax harvesting" that they still suggest was the correct placement and use for my funds. The October 2021 Client Profile clearly shows my income, and my statemnet that gains over \$250,000 would start to create a taxable event I would watch.

Fisher NEVER discussed particular funds but a waste of some time was spent going over a 42 page booklet with ***** "A Complete Approach to Reaching Your Investment Goals" mostly a historical perspective of the market. ***** did not send me email to opt out of tax harvesting. They shoud have sent a signature request to OPT IN. Many phone cxalls to my "advisor" *****; and many emails which show there was a issue which eventually requiired my wuthdrawal of funds whern the time seemd right to cut the cord. My losses were huge, their fees undeserved and my funds artifically thrown away in the name of saving me taxes for 2022 were insane. I OWE NO IRS TAXES for 2022. My income, at the poverty level and my ability to get anyone to help driect my portfolio funds

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Initial Complaint

03/01/2023

and my account was set up to provide over that time line is insane, as I needed money NOW. Quite the contrary to securing my future, Fisher Investments has squandered my hard earned retirement funds and are in default of their fiduciary responsibility to me as their client.

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Fisher Investments mislead my wife by failing to notify her that her investments were not subject to the fluctuations of risk on price. Her understanding was that she was investing in bonds. Meaning the return would be the coupon value. Instead, without explaining the consequences, Fisher invested her in ETF-Bonds which vary in price and act as a stock. She suffered excessive losses in her retirement funds (she is over 70) in this breach of their fiduciary duties.



Business response
03/13/2023

Dear *****,

The Better Business Bureau has notified us of the complaint you posted on their website (#*****), and has asked us to respond.

In your review,you state that Fisher Investments misled your wife by failing to notify

Complaint Type:

Customer Service Issues

Status:

Resolved



Initial Complaint
11/29/2022

Contrary to your assertions we did review our continued use of fixed income ETFs relative to individual bonds in her portfolio with you and your wife in 2020. As we discussed then, fixed income ETFs are more liquid than individual bonds, which we believed was particularly beneficial to your wife, and you both agreed.Despite multiple conversations regarding fixed income ETFs, and holding them for a lengthy period in your wifes portfolio even prior to your involvement,no change was ever requested by you or your wife.

Please also consider that fixed income ETFs, like individual bonds, are not strongly correlated with the stock market. However, as we discussed with your wife when initially adding fixed income to the portfolio, prices for fixed income have an inverse relationship with interest rates, and in this way fixed income ETFs and individual bonds are subject to price fluctuation.

We were disappointed your wife chose to terminate our services last year as we enjoyed a very warm relationship with her for many years. We continue to wish you both all the best.

Thank you,
—

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Customer response

03/13/2023

Complaint: *****

I am rejecting this response because it is completely inaccurate as to how Fisher Investments mislead.

Sincerely,

I transferred an *** ***** fund from Fisher Investments to another financial company the

Complaint Type:

Billing Issues

Status:

Resolved



Initial Complaint

10/21/2022

to pay.



Business response

12/01/2022

Dear *****,

We received your Better Business Bureau complaint (#*****). We are pleased we have been able to resolve this matter to your satisfaction. We thank you for having been a client and wish you all the best.



Customer response

12/02/2022

Better Business Bureau:

I have reviewed the response made by the business in reference to complaint ID ***** , and find that this resolution is satisfactory to me.

Sincerely

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We chose to transfer our retirement funds from Fisher to another Financial Investment Company. The fund transfer occurred on July 8th of 2022. Fisher is now trying to collect advisory fees from us for a invoice date of July 7th, so Fisher cant say they didnt know about these prior to the transfer. These fees should have been taken care of by Fisher prior to transferring our funds. I would like a statement from Fisher stating that we owe \$0 and that our account is closed.

Complaint Type:

Service or Repair Issues

Status:

Resolved



Initial Complaint

05/12/2022

Best regards,
Fisher Investments



Customer response

11/03/2022

Better Business Bureau:

I have reviewed the response made by the business in reference to complaint ID *****, and find that this resolution is satisfactory to me.

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I am receiving phishing and spam emails and want it to stop, I am receiving emails from ***** Fisher Investments Private Client Group Phone: *****| Fax: ***** Email: ***** Sent to me at *****

Complaint Type:

Billing Issues

Status:

Resolved



Initial Complaint

05/09/2022

We chose to transfer our retirement funds from Fisher to another Financial Investment Company. This transfer occurred in December of 2021. Fisher finalized the transfer in December, but is now trying to collect advisory fees from us. These fees should have been taken care of by Fisher prior to transferring our funds. I would like a statement from Fisher stating that we owe \$0 and that our account is closed.



Business response

05/16/2022

Dear *****,

We received your Better Business Bureau complaint (#*****). Per our conversation with you on 5/11/22, and follow up letter dated 5/12/22, we now consider this issue fully resolved. Thank you and we wish you all the best.

-Fisher Investments



Customer response

05/17/2022

Better Business Bureau:

I have reviewed the response made by the business in reference to complaint ID ***** , and find that this resolution is satisfactory to me.

Sincerely,

Victoria McClellan

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Initial Complaint

04/20/2022

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The issue is that Fisher Investment concealed key information that cost me \$16,000 in unexpected tax liability. The only reason I know was through my CPA when filing for my 2021 Tax Return! Here's what happened: I got contacted by Fisher around Dec 2020. I was interested to see how Fisher could potentially perform better than what I had at the time, which was Personal ***** I had two accounts. One is an ***, and the other is a traditional investment account. During their aggressive sales, the salesperson said that Fisher Investment fee is higher but the performance is much better than ***** The initial agreement was to only start with my *** but leave the traditional investment in at ***** This is so I can see the performance. Later when I was transferred to the sales closer, Fisher said they need all my money from ***** because that creates the best result. I then specifically asked about Tax Harvesting since ***** does that. I also talked about how I take my taxes very seriously and confirmed with them that they wouldn't do anything that would create tax issues. They were very pushy and told me that I need to just sign and get my money across. Just a few days ago, I discovered through my CPA that Fisher did a series of transactions when transferring my ***** investment account that resulted in a massive tax ****. That was a huge shock. Fisher Investment as a fiduciary knew such transactions would create a massive tax **** but instead chose to conceal the information from me so that they can get all my investment money! Despite Fisher promising that they do Tax Harvesting, nothing like that was done. My CPA can verify that. As a result, I am liable for \$16,000 in taxes. On the call with a Fisher Investment enforcer called ***** on 4/18, he was even offering me false tax advice (without proper license) to deflect the issue. That falsehood was then disputed by my CPA.



Business response
05/10/2022

Dear Mr. ***** respectfully disagree with your claims as they are simply not true. Nothing was concealed from you. At no time were you pressured to invest more than you wanted. Moreover, your *** was sufficient to meet our minimum investment requirements. It was entirely your decision to move your other account under our management.

We always consider the impact of capital gains taxes when implementing our portfolio strategies for all clients and certainly did so with you. During the time period between when you became a client in January ***** March 2021, we had a series of conversations with you to learn about your term investment objectives for your assets, including a dedicated discussion with you on the specific capital gains dollar amount that would be realized to implement our strategy. We didn't proceed until you confirmed you were comfortable and authorized us to move forward. You could certainly have requested we not proceed if you didn't want to do anything that would create near term tax liabilities as you claim now.

At no time did any of our representatives offer you false tax advice. We acted appropriately and in your best interests and we remain confident we could have

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Contact Information

📍 5525 NW Fisher Creek Dr
Camas, WA 98607-9911

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Complaints Summary

17 total complaints in the last 3 years.

7 complaints closed in the last 12 months.

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165,000

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**As of 9/30/2024*

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What are your investible assets?



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What Makes Fisher Investments Different?

For over 40 years, Fisher Investments has helped investors achieve their financial goals.[†] We work in our clients' best interests by thinking and acting independently rather than following outdated industry practices. Our personalized approach, our total commitment to serving our clients and our investing experience make us unique in our industry.

About Fisher Investments

Fisher Investments was founded in 1979 and has expanded to Canada and to the UK, France, Spain, Italy, the Netherlands, Belgium, Denmark, Norway, Sweden, Japan and Australia through its affiliates. Fisher Investments currently manages \$294 billion[†] for investors worldwide and helps over 165,000 clients[†] meet their financial goals.

[†]As of 9/30/2024, Fisher Investments and its subsidiaries manage over \$294 billion in assets—over \$249 billion for North American private investors, \$43 billion for institutional investors, \$17 billion for European private investors and \$43 billion for US small to mid-sized business retirement plans.

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Why Do Over 165,000 Clients Work With Fisher Investments—And Why Should You?

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Frequently Asked Questions

Who is Fisher Investments?	+
What services does Fisher Investments provide?	+
What makes Fisher Investments different from other money managers?	+
What is Fisher Investments' fee structure?	+
Who makes the investment decisions for clients' portfolios?	+
Who are Fisher Investments' clients?	+

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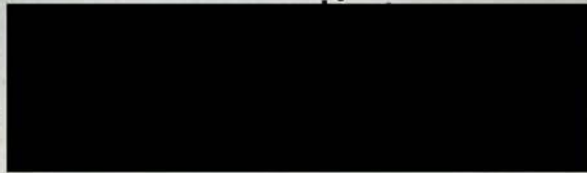
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Contacts

Groups

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Fisher Investments

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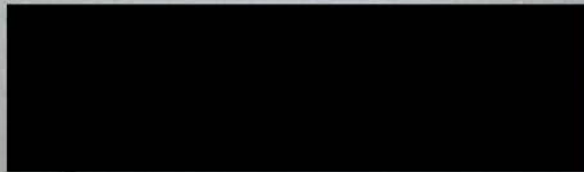


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JUN 22

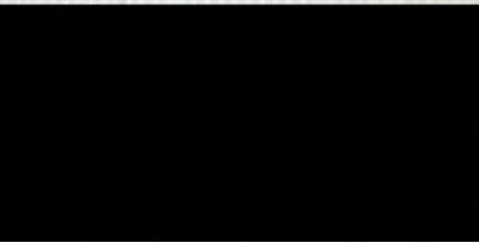
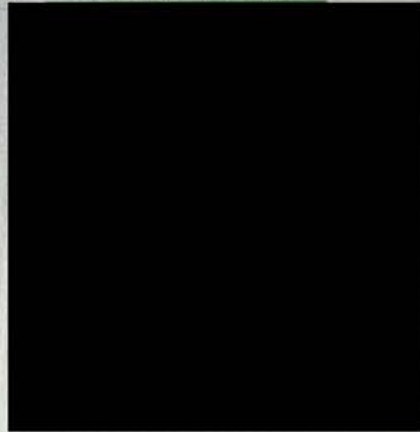
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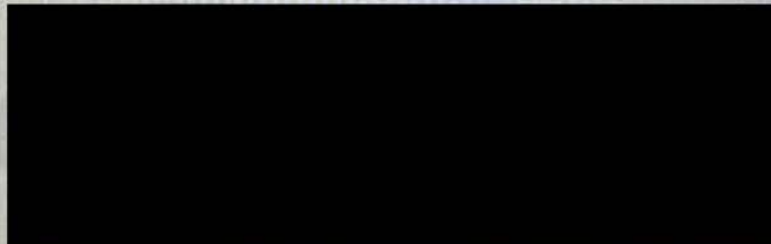
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JUN 27



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JUN 24



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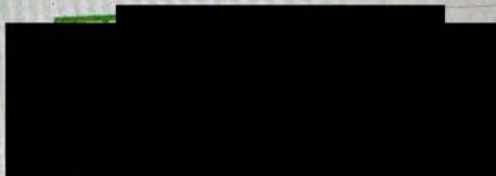
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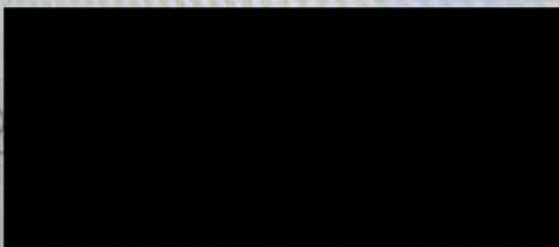
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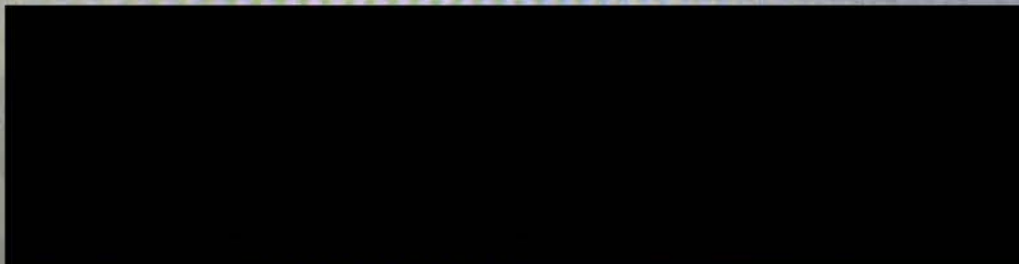
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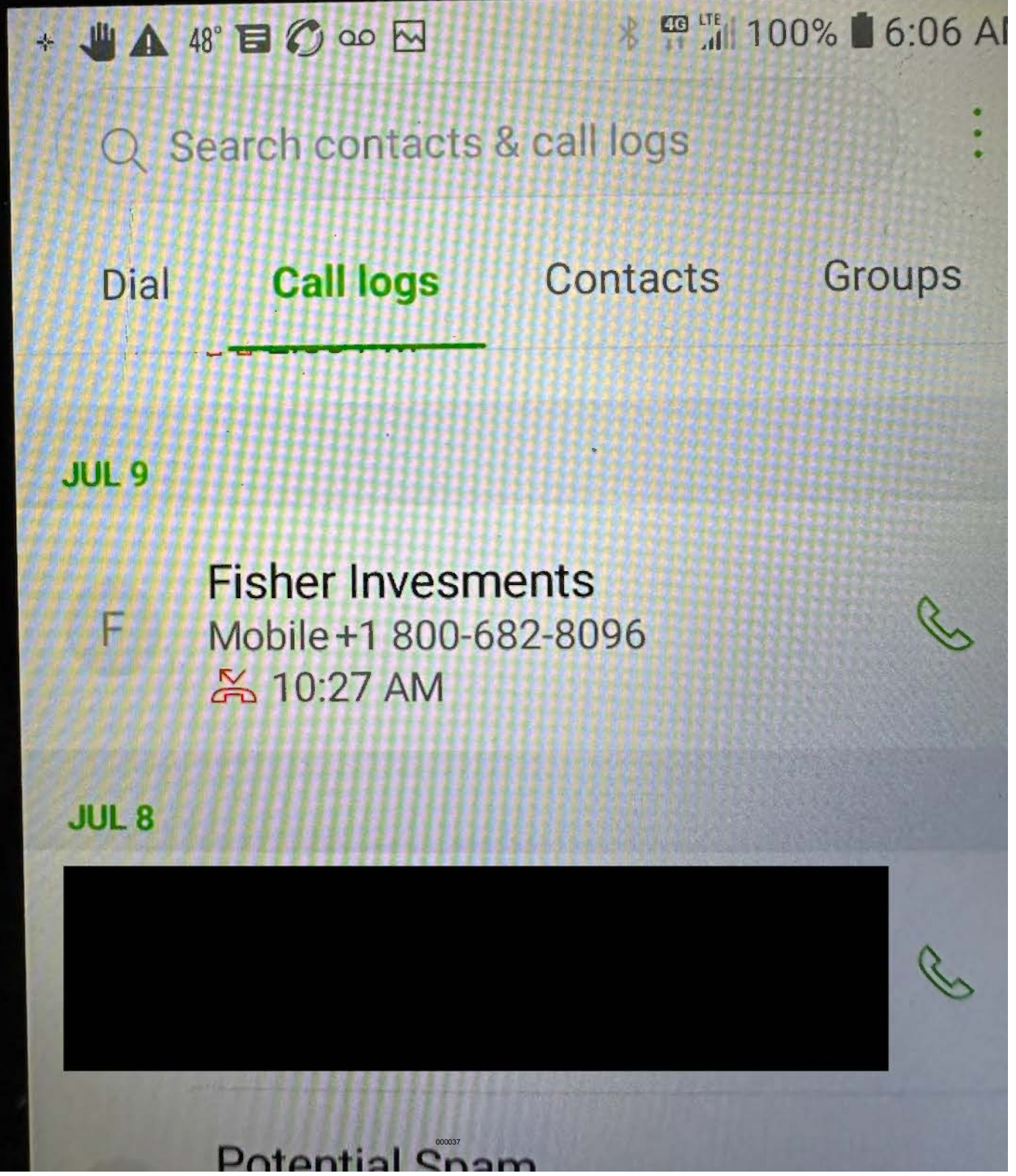
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Potential Spam



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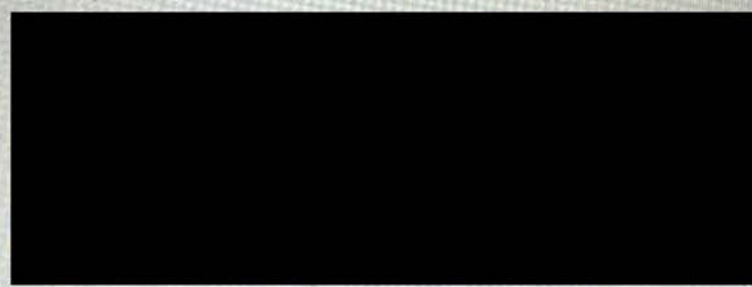
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JUL 15

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Fisher Investments

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JUL 9

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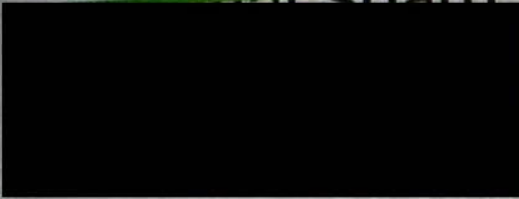


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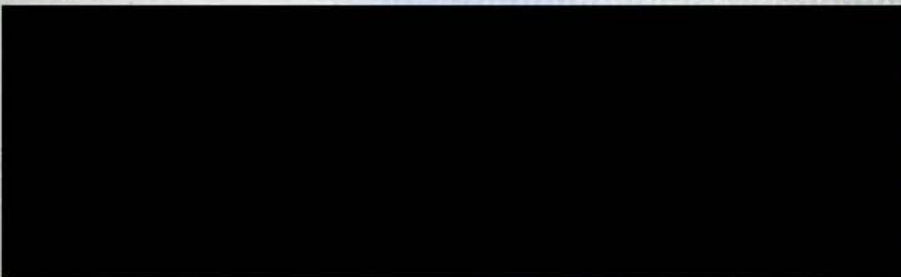
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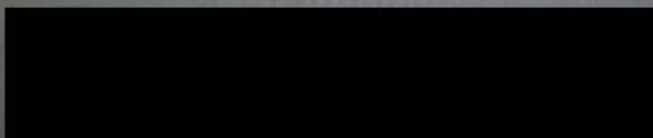
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Party Search Results

Search Criteria: Party Search; Jurisdiction Type: [Civil]; Last Name: [hUMAN]; First Name: [dANIEL]; Party Role: [PLA]

Result Count: 29 (1 page)

Current Page: 1

Party Name	Case Number	Case Title	Court
Human, Daniel (pla)	4:2024cv01634	Human v. Viking Steel Structures, LLC	Missc Court
Human, Daniel (pla)	4:2023cv00123	Human v. Rocket Mortgage Company, Inc. et al	Missc Court
Human, Daniel (pla)	4:2023cv00489	Human v. Window Nation St. Louis, MO. et al	Missc Court
Human, Daniel (pla)	4:2023cv00865	Human v. Benepath, Inc. et al	Missc Court
Human, Daniel (pla)	4:2023cv00684	Human v. STL Design and Build, LLC et al	Missc Court
Human, Daniel (pla)	4:2023cv00826	Human v. SelectQuote, Inc. et al	Missc Court
Human, Daniel (pla)	4:2023cv00843	Human v. Call Trader, LLC et al	Missc Court
Human, Daniel (pla)	4:2023cv01271	Human v. Broker Solutions, Inc. et al	Missc Court
Human, Daniel (pla)	4:2023cv01305	Human v. Insurance Supermarket International Inc. et al	Missc Court
Human, Daniel (pla)	4:2023cv01559	Human v. American Financial Network, Inc. et al	Missc Court
Human, Daniel (pla)	4:2023cv01577	Human v. Priority Automotive, Inc. et al	Missc Court
Human, Daniel (pla)	4:2023cv01586	Human v. USHealth Advisors, LLC et al	Missc Court

Party Name	Case Number	Case Title	Court
Human, Daniel (pla)	4:2024cv00050	Human v. Frubbel, LLC et al	Missc Court
Human, Daniel (pla)	4:2024cv00187	Human v. Healthmarkets Insurance Services, Inc. et al	Missc Court
Human, Daniel (pla)	4:2024cv00196	Human v. Anderson Corporation et al	Missc Court
Human, Daniel (pla)	4:2024cv00226	Human v. Dream Style Remodeling of Idaho, LLC	Missc Court
Human, Daniel (pla)	4:2024cv00309	Human v. Dennis Dillon Automotive Group, Inc. et al	Missc Court
Human, Daniel (pla)	4:2024cv00570	Human v. International Union of Police Associations AFL (CIO) et al	Missc Court
Human, Daniel (pla)	4:2024cv00625	Human v. EZ Insurance Solutions, LLC et al	Missc Court
Human, Daniel (pla)	4:2024cv00981	Human v. Alleviate Tax, LLC	Missc Court
Human, Daniel (pla)	4:2024cv01121	Human v. National Enrollment Center, LLC	Missc Court
Human, Daniel (pla)	4:2024cv01177	Human v. Fisher Investments, Inc.	Missc Court
Human, Daniel (pla)	4:2024cv01193	Human v. General Motors, LLC	Missc Court
Human, Daniel (pla)	4:2024cv01264	Human v. Groundworks FRS, LLC	Missc Court
Human, Daniel A. (pla)	2:2014cv00073	Human v. Hurley et al	Missc Court
Human, Daniel A. (pla)	2:2015cv00072	Human et al v. Lowrance et al	Missc Court
Human, Daniel A. (pla)	2:2017cv00008	Human v. Hurley et al	Missc Court
Human, Daniel A. (pla)	2:2001cv00007	Human v. Schriro, et al	Missc Court

Party Name	Case Number	Case Title	Court
Human, Daniel A. (pla)	<u>2:1998cv00069</u>	Human v. Rowley, et al	Missc Court

PACER Service Center		12/26/2024 10:19:22
User	evbutl57	
Client Code		
Description	Civil Party Search All Courts; Name hUMAN, dANIEL; Jurisdiction CV; Role pla; All Courts; Page: 1	
Billable Pages	1 (\$0.10)	

PACER FAQ

Privacy & Security

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PACER Service Center
(800) 676-6856
pacer@psc.uscourts.gov

[Home](#) / [Privacy](#) / Privacy & Cookie Policy - US

Fisher Investments Privacy & Cookie Policy – US

(This version of the privacy policy in effect as of September 2024)

To view the previous version click [here](#).

General

Fisher Investments is committed to respecting the privacy of consumers and its customers, including visitors to our US websites. This Privacy & Cookie Policy sets out how we collect, use, and share personal information. This Privacy & Cookie Policy also explains how we use cookies and similar technologies on our US websites and subsites.

Any changes to this privacy policy will be posted at <https://www.fisherinvestments.com/en-us/privacy/usa>. You can also access this Privacy & Cookie Policy via our homepage and from the bottom of every page by clicking on the appropriate link in the footer.

Fisher Investments is registered with the U.S. Securities and Exchange Commission (the “SEC”) as an investment adviser and is required to comply with SEC Regulation S-P (“Reg. S-P”), as well as the U.S. Gramm-Leach-Bliley Act of 1999 (the “GLB Act”). Reg. S-P and the GLB Act require Fisher Investments to have policies and procedures in place to protect the security and confidentiality of the non-public personal information of consumers and customers, and to provide a privacy notice to such persons describing our privacy policies and procedures. Please click here for a copy of our privacy notice: <https://www.fisherinvestments.com/-/media/Files/Privacy-Notice-2024.ashx>.

Use of Fisher Investments’ website constitutes acceptance of this Privacy Policy. The

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continued use of Fisher Investments' website following the posting of changes constitutes your acceptance of such changes.

Glossary

"Consumer" – an individual or an individual's legal representative that obtains or has obtained a financial product or service to be used primarily for personal, household or family purposes. A person becomes a consumer even if a questionnaire or application is withdrawn or denied or an advisory agreement does not become effective.

"Customer" – a consumer that has an ongoing relationship with Fisher Investments, whereby Fisher Investments is providing one or more financial products or services to the consumer (e.g., an advisory client of Fisher Investments).

"Nonpublic personal information" –

- All personally identifiable financial information.
- While the GLB Act excludes publicly available information (e.g., a list of persons and their publicly listed telephone numbers), nonpublic personal information does include any list, description or other grouping of consumers (and publicly available information pertaining to them) derived using any nonpublic personally identifiable financial information that is not publicly available information.

What information Fisher Investments collects

Fisher Investments collects the following information:

- Fisher Investments collects information from individuals who request informational materials, including name, address, telephone number, email address and investment-related questions.
- Fisher Investments may record and/or monitor phone calls and electronic communications for quality assurance and training purposes.

- Fisher Investments collects relevant information on applications and resumes from prospective employees via our careers website.
- Fisher Investments collects information provided orally and in writing via email, mail, online or in person from prospective clients, clients, prospective employees and employees.
- Our websites use cookies and other online tracking technologies to collect and share technical information, such as data reflecting IP address, browser used to view the website, operating system, resolution of screen, location, language settings in browser, the site directing to our site, keywords searched, clickstream data, the number of page views, inferences drawn from any personal information etc. Please see "Cookie Policy" below.

How Fisher Investments uses and shares information collected

Fisher Investments may combine personal information collected and use the information for the following reasons:

- Internal record keeping.
- To improve products and services.
- For quality assurance and training purposes.
- To follow up, either by email, phone or mail, with people who have requested information and/or materials.
- To periodically send promotional email or mail about services, recent developments or other information individuals may find interesting using the email address or mailing address provided when requesting information.
- To optimize and personalize marketing.
- To access certain special features or areas of this website.

- To evaluate prospective employees for positions, and to employ its personnel.
- To analyze the financial situation of prospective clients and to provide investment advisory and management services to clients.
- As otherwise permitted by law.

Fisher Investments discloses information externally as permitted or required by law to affiliates, vendors, and regulatory agencies, or where individuals have provided permission, including to Fisher Investments Costa Rica FICR S.R.L., a wholly owned subsidiary located in Costa Rica.

How to contact Fisher Investments

If you have any questions or concerns regarding this Privacy & Cookie Policy, Fisher Investments can be contacted as follows:

privacy@fi.com

Fisher Investments

ATTN: Data Privacy Office

6500 International Pkwy

Plano, TX 75093

USA

1 800 550 1071

Please ensure that full name and address are provided in exactly the form in which it was originally provided to Fisher Investments to avoid any possible confusion with a different individual.

To unsubscribe from Fisher Investments' email communications, send an email to optout@fi.com. Please put "UNSUBSCRIBE" in the subject field and include the email address where you received the content, along with any additional email addresses you would like suppressed. We will do our best to prevent you from receiving our email content in the future.

Security

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In order to prevent unauthorized access or disclosure, Fisher Investments has put in place suitable physical, electronic and managerial procedures to safeguard and secure information. Nevertheless, due to the nature of the Internet and Internet technologies, security and privacy risks cannot be eliminated and Fisher Investments cannot guarantee that information will not be disclosed in ways not otherwise described in this privacy policy.

Other Websites

The Fisher Investments website may contain links to enable users to visit other websites of interest easily. However, once users have used these links to leave this site, users should note that Fisher Investments does not have any control over that other website. Therefore, Fisher Investments cannot be responsible for the protection and privacy of any information which users provide while visiting such sites and such sites are not governed by this Privacy & Cookie Policy. Individuals should exercise caution and look at the privacy and cookie policies applicable to the website in question.

Cookie Policy

A cookie is a small text file downloaded to an individual's computer (or other device) when accessing webpages that use them. Cookies and other online tracking technologies, such as pixels, tags, or web beacons (collectively referred to in this policy as "**cookies**") allow a website to store and retrieve information about visitors' online activity. Cookies are, for example, how a website remembers what display language you chose or what items you put into your online shopping cart.

Cookies can be categorized by who places them:

- First-party cookies: These cookies are downloaded to an individual's computer from a server or domain managed by the publisher of the website whose service the individual is requesting.
- Third-party cookies: These cookies are downloaded to a computer from a server or domain that is not managed by the publisher, but by another entity that may be seeking data obtained through cookies.

Cookies can also be categorized by their duration:

- Session cookies: These cookies are designed to collect and store data while the individual accesses a web page. They are often used to store information for the duration of a visit to the site (e.g., what account you are logged into). Once an individual leaves the website, the session cookie is deleted.
- Persistent cookies: These cookies store data on a computer for the duration of the period set within the cookie's file, which is determined by the entity controlling the cookie, and can range from a few minutes to several years, or until manually deleted.

Lastly, cookies can be categorized by the function they serve. Fisher Investments uses the following types of first- and third-party cookies:

3. Functionality Cookies

These cookies allow the website to remember choices you make (such as your geographic region or preferred text size). Functionality cookies do not collect any personal information. Enabling functionality cookies may be necessary to access the full content of website material.

4. Personalization Cookies

Personalization cookies allow a website to remember information that changes the page's appearance or behavior, such as, for example, the language selected for viewing the page.

5. Analytics Cookies

Analytics cookies collect pseudonymized information to analyze how individuals browse a website and enable Fisher Investments to measure the number of visitors to its websites, as well as to measure and analyze how individuals interact with the site. We use this information to improve the websites and the products or services offered.

6. Behavioral Advertising Cookies

Fisher Investments serves advertisements on various websites using third party companies. If an individual visits a website or clicks on one of Fisher Investments' advertisements, behavioral cookies will be placed on the individual's computer. Behavioral cookies allow Fisher Investments to manage and optimize its digital marketing (e.g., banner ads, pages offering informational brochures, email campaigns, etc.). Behavioral cookies may be used to build a profile to provide content more relevant to an individual's interests. They adapt advertising and the content the individual sees on other websites based on browsing habits, including how the individual navigates websites, as well as how the individual interacts with internet advertising.

“Do Not Track” Signals

Some internet browsers send signals to each website visited, giving notice of the user's privacy preferences. Fisher Investments websites recognize signals sent through “Global Privacy Control” and will honor requests to limit information sharing. Please keep in mind that Global Privacy Control signals are limited to the device and browser. Users should enable Global Privacy Control on each device and browser. If users block or clear cookies, they may need to re-enable Global Privacy Control.

How to Manage Cookies

To learn more about behavioral advertising cookies and to opt in or out of multiple advertising networks at once, you can visit the website [YourAdChoices](#). Some advertising networks do not participate in the YourAdChoices service. To opt out of some of these networks, please visit the [consumer opt-out page](#) of the Network Advertising Initiative. As explained above, cookies help you to get the most out of the websites that make use of this technology. Disabling cookies may affect the functionality of many of the websites you visit. If you do disable cookies, performance and functionality will be affected. If you wish to delete, disable, or re-enable cookies, you may do so through your browser as follows:

- Microsoft Edge: <https://support.microsoft.com/en-us/microsoft-edge/view-cookies-in-microsoft-edge-a7d95376-f2cd-8e4a-25dc-1de753474879>
- Chrome: <https://support.google.com/chrome/answer/95647?hl=en>

- Firefox: <https://support.mozilla.org/en-US/kb/cookies-information-websites-store-on-your-computer>
- Safari: <http://www.apple.com/au/support/mac-apps/safari/>
- All other browsers: Please look for a ‘help’ function in the browser or contact the browser provider.

Changes to Privacy Policy

From time to time, Fisher Investments may use data for new uses not previously disclosed in its Privacy & Cookie Policy. If its information practices change at some time in the future, Fisher Investments will post the policy changes to <https://www.fisherinvestments.com/en-us/privacy/usa> to notify users of these changes and provide the ability to opt out or unsubscribe from these new uses. For the most up-to-date information on how Fisher Investments uses personal information, please visit the privacy policy on our website.

California & Oregon Residents Only

This privacy policy has been updated effective July 2024. To view the previous version click [here](#).

California and Oregon residents have rights relating to their personal information described in the chart below. A California or Oregon resident with questions about our privacy policies should contact us by email at privacy@fi.com. A California or Oregon resident with a disability seeking privacy information in an alternative format should contact us in the same manner. For other contact information, refer to “How to contact Fisher Investments” above.

Information Collected and How it is Used

Purposes of Collecting and Using Personal Information	
Categories of Personal Information	

Categories of Personal Information	Purposes of Collecting and Using Personal Information
Identifiers including name, address, telephone number, email address, investible assets, and other identifying information relating to individuals	Marketing purposes, including targeted advertising and delivering informational materials to prospective clients who request them and offering financial services
Commercial information limited to records of informational materials requested and other individual interactions with us	Marketing purposes, including tracking responses from prospective clients and research to improve offerings
Electronic network activity information including IP addresses, interaction with websites or advertisements and other information as described in “Cookie Policy” above	Marketing purposes, including direct marketing optimization, insight on performance of web based advertising, and targeted advertising
Employment-related information, including sensitive personal information	Promote employment opportunities; evaluate qualifications; perform background checks; verify right to work; and administer employment relationship, including payroll and expense reimbursement

Categories of Personal Information	Purposes of Collecting and Using Personal Information
Financial and other information obtained in the course of providing investment advice and other services	Provide investment advisory, investment management, other financial services, and non-financial services; enhance client service capabilities; and meet Fisher Investments’ regulatory obligations
Vendor contact information	To engage with vendors. This includes making payments and communicating with vendor contacts

Fisher Investments obtains information used for marketing purposes directly from individuals who request informational materials, through cookies and other online tracking technologies, from existing clients and other referral sources, and from list vendors that gather and sell identifying information. Employment-related information is obtained from third party recruiters, employee referrals, directly from individuals, and background check providers. Information relating to non-financial services is obtained directly from individuals.

Fisher Investments discloses personal information to service providers and/or data processors as defined under applicable law for the business purposes identified in the chart above. Fisher Investments discloses personal information to regulatory agencies, law enforcement authorities, and other third parties when required or authorized by law. Fisher Investments discloses email addresses and electronic network activity information to certain advertising and analytics partners, including social media platforms. These third parties use the information to show you ads targeted to your interests. This type of disclosure is defined as “selling” or “sharing” or “targeted advertising” under California and Oregon law. You may opt out of this disclosure by clicking [here](#). As described above under “Do Not Track Signals,” enabling the Global Privacy Control setting in your browser is another way to limit disclosure.

Information used in connection with investment advice, investment management, and other financial services is collected pursuant to the GLB Act and Reg. S-P, directly from prospective clients and clients and from other authorized sources, such as securities account custodians. The privacy notice required by the GLB Act (described above) explains how Fisher Investments shares this information.

Fisher Investments uses and discloses sensitive personal information only for the purposes allowed by California law.

Fisher Investments does not knowingly “sell” or “share” the personal information of California residents under 16 years of age, as those terms are defined in California law.

Fisher Investments retains personal information for internal use in accordance with applicable law and for as long as it is needed to establish, exercise, or defend any legal claims.

California and Oregon residents may exercise the following rights in relation the personal information that Fisher Investments holds about them. California and Oregon residents have the right to:

- Request **disclosure** of the categories of personal information collected, specific pieces of personal information collected, categories of sources, purposes for collecting and using, and categories of third parties to whom the information is disclosed, “sold” or “shared,” as those terms are defined in California and Oregon law.
- Request **deletion** of their personal information.
- Request **correction** of inaccurate personal information.
- **Not be discriminated** against for exercising their rights with respect to personal information.

To exercise these rights, California and Oregon residents or their authorized agents should visit the online web form (<http://www.fisherinvestments.com/en-us/privacy/dsr>) or call 1-877-786-6832. Requests must include sufficient information to verify the requester’s identity, including name, email, phone, and zip code. Deletion and correction requests will

require additional confirmation. For requests submitted by agents, proof of authority, such as a copy of a valid power of attorney, will generally be required. Fisher Investments will confirm receipt of a request within 10 days and respond within 45 days.

About Fisher Investments	✓
Personal Wealth Management	✓
Institutional Investing	✓
Business 401(k) Services	✓
Contact Us	✓
Insights	✓
Resource Library	✓
Legal Information	✓

Connect With Us

Call us at [\(888\) 823-9566](tel:(888)823-9566)

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Available for US customers only.



Investing in securities involves a risk of loss. Past performance is never a guarantee of future returns. Investing in foreign stock markets involves additional risks, such as the risk of currency fluctuations.

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Fisher Investments Communications Terms and Conditions as of October, 31 2023

1. General Communications Terms

These Communications Terms and Conditions (the “Terms”) apply to all communications sent by Fisher Investments (“Fisher”), including phone calls, emails, and webpage interactions. Specific terms and conditions for text messages (SMS) are detailed further below.

These Terms contain a binding arbitration provision, which includes a waiver of your right to bring claims as class actions.

The Fisher Investments Privacy Policy also applies to the Terms and is available at <https://www.fisherinvestments.com/en-us/privacy>.

What communications am I agreeing to?

By providing Fisher a phone number, you agree to receive calls, to any phone number(s) you provide, for informational or promotional purposes from or on behalf of Fisher, even if your number is on do-not-call lists. You also certify that the number(s) you provide are correct and that you are authorized to enroll the designated number(s) to receive such calls. You acknowledge and agree that calls may be sent using an automatic telephone dialing system or other automated equipment. Consent to receive calls for promotional purposes is not required as a condition to receive our services.

You further agree that all calls with Fisher may be recorded for quality assurance and other purposes. To the extent you provide an email address to Fisher, you also agree to receive emails from Fisher.

What if I no longer want to receive promotional calls?

To stop all promotional calls relating to Fisher's private client group, you may ask to be added to Fisher's internal do not call list by calling 800-587-5512 and speaking with a Fisher representative, emailing inquiry@fi.com, or sending a written request to the attention of the Marketing Department, 6500 International Pkwy, Ste 2050, Plano, TX 75093. Please allow up to 30 days for your request to be processed.

To stop all promotional calls relating to Fisher's 401(k) Solutions group, you may ask to be added to Fisher's internal do not call list by calling 888-402-3243 and speaking with a Fisher representative, emailing 401kmarketing@fi.com, or sending a written request to the attention of 401(k) Solutions, 6500 International Pkwy, Ste 2050, Plano, TX 75093. Please allow up to 30 days for your request to be processed.

To stop all calls relating to Fisher's employment opportunities, you may ask to be added to Fisher's internal do not call list by calling 800-550-1071 and speaking with a Fisher representative, emailing ~taops@fi.com, or sending a written request to the attention of Talent Acquisition, 6500 International Pkwy, Ste 2050, Plano, TX 75093. Please allow up to 30 days for your request to be processed.

What if I no longer want to receive emails?

You can unsubscribe from Fisher marketing emails at any time by clicking the unsubscribe link at the bottom of any such email. Please allow 10 days for your request to be processed.

What if I want more info?

You may contact Fisher at 800-587-5512.

2. Text Message (SMS) Terms

Fisher is pleased to provide an SMS message program that allows clients, prospective clients, retirement plan participants, and employment candidates to receive text messages from Fisher, including messages with links to webpages with additional

information about Fisher and its services, text messages to confirm appointments, text messages for authentication purposes, and text messages relating to employment opportunities. These Terms also apply to text messages sent for other purposes.

Clients and prospective clients with Fisher's Private Client Group agree to these Text Message (SMS) Terms when they provide their phone number to Fisher. Clients and prospective clients with Fisher's 401(k) Solutions group, participants of retirement plans receiving the 401(k) Solutions services, as well as employment candidates, agree to these Text Message (SMS) Terms when they opt-in to receiving text messages.

What communications am I agreeing to?

When you agree to receive text messages from or on behalf of Fisher, you agree to receive text messages at any phone number you provide, even if your number is on do-not-call lists. You also certify that any number you provide is correct and that you are authorized to enroll the designated number to receive such text messages. You acknowledge and agree that text messages may be sent using an automatic telephone dialing system or other automated equipment. Consent to receive text messages for promotional purposes is not required as a condition to receive our services. The text messages may not be compatible with all phone models and mobile services, and standard message and data rates may apply. Fisher is not liable for transmission delays or message failures.

You may unsubscribe from receiving messages about a program at any time by replying STOP to any text message you receive from or on behalf of Fisher about that program.

What are the programs?

Fisher has a number of programs that use text messages. They include the below, for example, and Fisher may add more programs in the future:

- **Fisher Online Fulfillment Program**– The online advertisement will lead to online forms that will contain information on receiving the offer and future communications via text. Message frequency varies.
- **Fisher Retirement GPS Microsite Program**– The online advertisement will contain links to the Retirement GPS signup page, which will require authentication via text.

Message frequency varies.

- **Fisher Print/TV Programs** – The print or TV advertisement will contain instructions on how to use text to request the offer. Single message.
- **Retirement Plan Participant Programs** – A participant in a retirement plan will receive information relating to the retirement plan.
- **Fisher Talent Acquisition Programs** – A candidate for employment will receive information relating to employment opportunities. Message frequency varies.

Are text messages from Fisher free?

Your carrier's message and data rates may apply.

Who are the participating carriers?

AT&T, T-Mobile®, Verizon Wireless, Sprint, Boost, U.S. Cellular, Google Voice, Cellular One, MetroPCS, Cellcom, Cellular South, Carolina West Wireless, Interop, ClearSky, nTelos, and Virgin Mobile.

3. Disputes and Arbitration

Except as expressly provided below, you agree that to the fullest extent permitted by applicable law any dispute arising out of or relating in any way to these Terms, communications between you and Fisher, your consent to receive communications, and your relationship with Fisher Investments (as well as affiliates and vendors acting on its behalf, all of which are intended beneficiaries of this agreement) prior to executing a client agreement or starting employment will be determined by arbitration, including the scope and applicability of the agreement to arbitrate contained in this section. After executing a client agreement, that agreement's terms (including its arbitration terms) shall control and likewise require arbitration of disputes with Fisher to the maximum extent permitted by law. After starting employment, the terms of your employment shall control.

Any arbitration will be before the Judicial Arbitration and Mediation Service ("JAMS") office located in San Francisco, California; San Diego, California; Chicago, Illinois; New

York, New York; Washington, D.C.; or Atlanta, Georgia, whichever location is closest to your last address of record on file with Fisher (or, in the event that you have not provided an address to Fisher, the location closest to your primary address at the time of the dispute) before one arbitrator who will be a retired judicial officer. Because the Terms memorialize a transaction in interstate commerce, the Federal Arbitration Act governs the interpretation and enforcement of these arbitration provisions.

Any claim for which applicable law (as determined by a final, binding court decision) or the applicable arbitration rules do not permit arbitration and require adjudication in a specific civil court will not be subject to arbitration but will instead be adjudicated in the appropriate court with jurisdiction over the claim. Any claim that is arbitrable, however, shall be severed from proceedings in court and separately arbitrated to the maximum extent permitted by law.

You also agree that any claim you assert will not be joined, for any purpose, with the claim or claims of any other person or entity, and the arbitrator shall have no jurisdiction to certify any class or proceed with any class action. The arbitration will be administered by JAMS pursuant to the Comprehensive Arbitration Rules and Procedures, and the proceedings and award shall be kept in strict confidence by both you and Fisher. The laws of the State of Delaware, including but not limited to any applicable Delaware statutes of limitation and Delaware common law construing those statutes, will govern the legal rights of the parties, except that the Federal Arbitration Act (FAA) applies to all issues regarding the enforceability and scope of the requirement to arbitrate, and any conflicts between the FAA and other law will be resolved in favor of the FAA and in favor of arbitration. The arbitration will be final and binding, and judgment on the award may be entered in any court having jurisdiction. **YOU UNDERSTAND THAT BY AGREEING TO ARBITRATION, YOU ARE WAIVING ALL RIGHTS TO SEEK REMEDIES IN COURT, INCLUDING BUT NOT LIMITED TO ANY RIGHT TO PROSECUTE ANY CLASS ACTION OR OTHER REPRESENTATIVE ACTION. YOU ALSO UNDERSTAND AND AGREE THAT TO THE FULLEST EXTENT PERMITTED BY LAW, YOU AND FISHER HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO HAVE A TRIAL IN FRONT OF A JURY, EVEN FOR DISPUTES NOT SUBJECT TO ARBITRATION.**

This arbitration provision will remain in force even if you opt-out of further communications with Fisher. If any provision of this arbitration agreement is found

unenforceable, the unenforceable provision shall be severed, and the remaining arbitration terms shall be enforced, except that if the class action waiver above is found unenforceable, the entire arbitration agreement is void, other than the jury waiver provision.

You can decline this arbitration agreement by timely writing via certified mail or a nationally recognized overnight delivery service to the General Counsel, 5525 NW Fisher Creek Drive, Camas, WA 98607 and providing the following information: (1) name; (2) address; (3) phone number; and (4) a clear statement that you wish to opt out of this arbitration agreement. To be effective, the opt-out notice must be mailed no later than 30 days after the date you become bound by the arbitration agreement. Please note that you will continue to be bound by any older arbitration provision that you did not out opt of and any other arbitration provision that governs the claims at issue.

About Fisher Investments	✓
Personal Wealth Management	✓
Institutional Investing	✓
Business 401(k) Services	✓
Contact Us	✓
Insights	✓
Resource Library	✓

Legal Information



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Investing in securities involves a risk of loss. Past performance is never a guarantee of future returns. Investing in foreign stock markets involves additional risks, such as the risk of currency fluctuations.

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[6500 International Parkway, Plano, Texas 75093](#)

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DANIEL HUMAN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FISHER INVESTMENTS, INC.,

Defendant.

Case No. 4:24-cv-01177-JMB

JURY TRIAL DEMANDED

**DEFENDANT FISHER INVESTMENTS, INC.'S RESPONSES TO
PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION TO DEFENDANT**

Under Rules 26 and 36 of the Federal Rules of Civil Procedure, Defendant Fisher Investments, Inc. hereby objects and otherwise responds to Plaintiff's First Set of Requests for Admission to Defendant as follows:

PREFATORY STATEMENT

1. In responding to the Requests, Defendant states that it has conducted a diligent search, reasonable in scope, of those files and records in Defendant's possession or control believed to be the most likely to contain documents responsive to the Requests and have solicited relevant documents from those individuals employed or otherwise affiliated with Defendant believed to be the most likely to have documents responsive to the Requests. Defendant has not, however, undertaken to search or review all of the files and records in Defendant's possession, custody, or control, nor has Defendant solicited documents from every individual employed by or otherwise affiliated with Defendant, because to do so would be unduly burdensome and expensive. In the event, therefore, that additional documents, records, or files responsive to any

of the Requests are identified or brought to Defendant's attention, Defendant reserves the right to amend or supplement these responses.

2. In responding, Defendant does not concede that any Request to which Defendant responds is relevant to the subject matter of this litigation or reasonably calculated to lead to the discovery of admissible evidence. Defendant expressly reserves both the right to object to further discovery into the subject matter of these Requests and the right to object to the introduction into evidence of their responses to these Requests. Defendant also reserves the right to question the authenticity, relevancy, materiality, privilege, and admissibility as evidence for any purpose of the information provided and the documents identified and/or produced in response to these Requests, which may arise in any subsequent proceeding in, or the trial of, this or any other action.

3. Defendant reserves the right to amend, supplement, or revise its responses as necessary up to and including the time of trial.

In accordance with these statements, Defendant hereby responds to the Requests as follows:

REQUESTS FOR ADMISSIONS

1. Admit that the systems used to contact the Plaintiff have the capacity to store telephone numbers to be called using a sequential number generator.

RESPONSE:

Denied.

2. Admit that the systems used to contact the Plaintiff have the capacity to produce telephone numbers to be called using a random number generator.

RESPONSE:

Denied.

3. Admit that the systems used to contact the Plaintiff and other dialed numbers, including those which they have either stored or produced using a random or sequential number generator.

RESPONSE:

Defendant objects to this Request as unintelligible and grammatically confusing, and thus unclear and vague, because it is not clear what specific information Plaintiff is seeking.

In accordance with these objections, and without waiving any of them, denied.

4. Admit to all allegations, factual and legal, in Plaintiff's complaint.

RESPONSE:

Defendant objects to this Request as overbroad and unduly burdensome because it is not limited to a particular allegation.

Defendant objects to this Request as an improper use of Requests for Admission.

In accordance with these objections, and without waiving any of them, denied.

5. Admit that you ratified the conduct of any agent, vendor, or third party you contend placed the calls at issue in this litigation.

RESPONSE:

Defendant objects to Plaintiff's use and definition of the term "you," because, as defined, it "means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives." Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the

case or to the claims or defenses in this case.

Defendant objects to Plaintiff's use and definition of the term "vendor," because, as defined, it "means any third party under contract with, hired by, employed by, paid by or working for you, directly or indirectly, for purposes of telemarketing or phone-based activities or services, including, but not limited to, generating leads, warm transfers, hot transfers or any other call transfers, making outbound telemarketing calls, or tracking or aggregating data related to any of those activities, including, but not limited to, any co-defendant." Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to this Request because it calls for legal interpretations or conclusions.

In accordance with these objections, and without waiving any of them, denied.

6. Admit that no Defendant agent or vendor had express written consent to contact Plaintiff's private residential telephone number.

RESPONSE:

Defendant objects to Plaintiff's use and definition of the term "Defendant," because, as defined, it "means" the named defendant corporate entity "includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives." Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the

case or to the claims or defenses in this case.

Defendant objects to Plaintiff's use and definition of the term "vendor," because, as defined, it "means any third party under contract with, hired by, employed by, paid by or working for you, directly or indirectly, for purposes of telemarketing or phone-based activities or services, including, but not limited to, generating leads, warm transfers, hot transfers or any other call transfers, making outbound telemarketing calls, or tracking or aggregating data related to any of those activities, including, but not limited to, any co-defendant." Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to this Request as unintelligible and grammatically confusing, and thus unclear and vague, because it is not clear what specific information Plaintiff is seeking. For example, Plaintiff's Request purports to reference the existence of multiple defendants, even though Fisher Investments, Inc. is the only named defendant.

Defendant objects to this Request because it calls for legal interpretations or conclusions.

In accordance with these objections, and without waiving any of them, denied.

7. Admit that no Defendant scrubbed Plaintiff's telephone number against any Do Not Call Registry prior to contacting his private residential phone.

RESPONSE:

Defendant objects to Plaintiff's use and definition of the term "Defendant," because, as defined, it "means" the named defendant corporate entity "includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors,

partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

In accordance with these objections, and without waiving any of them, denied.

8. Admit that any agent, vendor, or third party you contend placed the calls at issue in this litigation had the authority to act on your behalf.

RESPONSE:

Defendant objects to Plaintiff’s use and definition of the term “you,” because, as defined, it “means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to Plaintiff’s use of the undefined term “your.” Assuming Plaintiff means “your” to be a derivation of the problematically defined term “you,” then Defendant objects to the term as overbroad and unduly burdensome because it purports to “mean[] the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives,” as stated in Plaintiff’s

definition of “you.” Plaintiff’s definition also includes third parties with whom, or over which, Defendant has no common ownership or control, rendering the Request particularly problematic.

Defendant objects to Plaintiff’s use and definition of the term “vendor,” because, as defined, it “means any third party under contract with, hired by, employed by, paid by or working for you, directly or indirectly, for purposes of telemarketing or phone-based activities or services, including, but not limited to, generating leads, warm transfers, hot transfers or any other call transfers, making outbound telemarketing calls, or tracking or aggregating data related to any of those activities, including, but not limited to, any co-defendant.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case. Defendant further objects to Plaintiff’s use and definition of the term “telemarketing” because it varies from the applicable statutory provisions of the TCPA. Plaintiff’s definition “means a telecommunication that could have generated or was intended to generate leads, customers or sales for you or any franchisee of yours within the United States. A communication is telemarketing even though it (1) had other, additional purposes (e.g., fulfillment of a partially completed transaction or verification of information); (2) was to a person who had consented to receive it; (3) was to a person who had a prior existing business relationship with you; (4) was not made by you; and/or (5) was not made for your exclusive or direct benefit.” Plaintiff’s definition thus includes communications that are squarely exempt from TCPA regulation, including “call[s] made with the prior express written consent of the called party.” 47 C.F.R. § 227(a)(2). Defendant further objects to Plaintiff’s use of the problematically defined term “you” which is overbroad and unduly burdensome because it seeks to impose a burden to respond

on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant objects to this Request because it calls for legal interpretations or conclusions.

In accordance with these objections, and without waiving any of them, denied.

9. Admit that you placed the calls complained of, either directly or through the personal liability as described in the Communications Act of 1934, as amended.

RESPONSE:

Defendant objects to Plaintiff's use and definition of the term "you," because, as defined, it "means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives." Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to this Request as unintelligible and grammatically confusing, and thus unclear and vague, because it is not clear what specific information Plaintiff is seeking.

Defendant objects to this Request because it calls for legal interpretations or conclusions.

In accordance with these objections, and without waiving any of them, denied.

10. Admit that Defendants do not have a do not call list.

RESPONSE:

Defendant objects to Plaintiff's use and definition of the term "Defendants" in its plural form as confusing and unintelligible, as only one defendant, Fisher Investments, Inc., has been

named in this action. Assuming Plaintiff means “Defendants” to be a derivation of the problematically defined term “Defendant” in its plural form, then Defendant objects to the term as overbroad and unduly burdensome because as defined, it “means” the named defendant corporate entity “includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to this Request as overbroad and unduly burdensome because it does not specify a period of time and is therefore unreasonable in scope.

In accordance with these objections, and without waiving any of them, denied.

11. Admit that Defendants do not have a do not call policy.

RESPONSE:

Defendant objects to Plaintiff’s use and definition of the term “Defendants” in its plural form as confusing and unintelligible, as only one defendant, Fisher Investments, Inc., has been named in this action. Assuming Plaintiff means “Defendants” to be a derivation of the problematically defined term “Defendant” in its plural form, then Defendant objects to the term as overbroad and unduly burdensome because as defined, it “means” the named defendant corporate entity “includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with

whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to Plaintiff's use and definition of the term "policy," because, as defined, it "means any instruction, practice, procedure, directive, routine, guideline, rule, course of conduct or code of conduct that was or has been recognized, adopted, issued or followed by you— regardless of whether written or unwritten, formal or informal, recorded or unrecorded." Defendant further objects to Plaintiff's use of the term "you" as overbroad and unduly burdensome because it seeks to impose a burden to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant objects to this Request as overbroad and unduly burdensome because it does not specify a period of time and is therefore unreasonable in scope.

In accordance with these objections, and without waiving any of them, denied.

12. Admit that Defendants do not maintain an FTC Subscription Account Number (SAN).

RESPONSE:

Defendant objects to Plaintiff's use and definition of the term "Defendants" in its plural form as confusing and unintelligible, as Fisher Investments, Inc., is the only named defendant in this action. Assuming Plaintiff means "Defendants" to be a derivation of the problematically defined term "Defendant" in its plural form, then Defendant objects to the term as overbroad and unduly burdensome because as defined, it "means" the named defendant corporate entity "includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives." Plaintiff's definition is thus overbroad, unduly burdensome,

and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to this Request as overbroad and unduly burdensome because it does not specify a period of time and is therefore unreasonable in scope.

In accordance with these objections, and without waiving any of them, denied.

13. Admit that Defendants are not registered as a telemarketer with the Attorney General of Missouri.

RESPONSE:

Defendant objects to Plaintiff's use and definition of the term "Defendants" in its plural form as confusing and unintelligible, as Fisher Investments, Inc., is the only named defendant in this action. Assuming Plaintiff means "Defendants" to be a derivation of the problematically defined term "Defendant" in its plural form, then Defendant objects to the term as overbroad and unduly burdensome because as defined, it "means" the named defendant corporate entity "includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives." Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to this Request as overbroad and seeking information that is irrelevant, and immaterial, to the claims and defenses at issue in the pending litigation because Plaintiff's Complaint does not contain any allegations that Defendant was "not registered as a telemarketer

with the Attorney General of Missouri.”

Defendant objects to this Request as overbroad and unduly burdensome because it does not specify a period of time and is therefore unreasonable in scope.

In accordance with these objections, and without waiving any of them, denied.

14. Admit that Defendants paid for and were responsible for the calls complained of in Plaintiff’s Complaint.

RESPONSE:

Defendant objects to Plaintiff’s use and definition of the term “Defendants” in its plural form as confusing and unintelligible. Assuming Plaintiff means “Defendants” to be a derivation of the problematically defined term “Defendant” in its plural form, then Defendant objects to the term as overbroad and unduly burdensome because as defined, it “means” the named defendant corporate entity “includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to this Request as improperly compound because it asks Defendant to admit or deny two separate things. For example, it asks Defendant to admit or deny whether it paid for the calls at-issue, and it also asks Defendant to admit or deny whether it is “responsible” for the calls at-issue.

Defendant objects to this Request because it calls for legal interpretations or conclusions.

In accordance with these objections, and without waiving any of them, denied.

15. Admit that telemarketing and advertising fell within the scope of your duties at Fisher Investments, Inc.

RESPONSE:

Defendant objects to this Request as improperly compound because it asks Defendant to admit or deny two separate things. For example, it asks Defendant to admit or deny whether the problematically-defined telemarketing term “fell within the scope of your duties,” and it also asks Defendant to admit or deny whether “advertising fell within the scope of your duties.”

Defendant objects to Plaintiff’s use of the undefined term “your.” Assuming Plaintiff means “your” to be a derivation of the problematically defined term “you,” then Defendant objects to the term as overbroad and unduly burdensome because it purports to “mean[] the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives,” as stated in Plaintiff’s definition of “you.” Plaintiff’s definition also includes third parties with whom, or over which, Defendant has no common ownership or control, rendering the Request particularly problematic.

Defendant objects to Plaintiff’s use and definition of the term “telemarketing” because it varies from the applicable statutory provisions of the TCPA. Plaintiff’s definition “means a telecommunication that could have generated or was intended to generate leads, customers or sales for you or any franchisee of yours within the United States. A communication is telemarketing even though it (1) had other, additional purposes (e.g., fulfillment of a partially completed transaction or verification of information); (2) was to a person who had consented to receive it; (3) was to a person who had a prior existing business relationship with you; (4) was not made by you; and/or (5) was not made for your exclusive or direct benefit.” Plaintiff’s definition thus includes

communications that are squarely exempt from TCPA regulation, including “call[s] made with the prior express written consent of the called party.” 47 C.F.R. § 227(a)(2). Defendant further objects to Plaintiff’s use of the problematically defined term “you” which is overbroad and unduly burdensome because it seeks to impose a burden to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant objects to this Request as unintelligible and grammatically confusing, and thus unclear and vague, because it is not clear what specific information Plaintiff is seeking.

In accordance with these objections, and without waiving any of them, denied.

Dated: December 13, 2024

Respectfully submitted,

/s/ Alexander D. Terepka

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Attorneys for Defendant Fisher Investments, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of December 2024, I caused a true and correct copy of the foregoing to be served via email on the following:

Edwin V. Butler
BUTLER LAW GROUP LLP
1650 Des Peres Road, Suite 200
Des Peres, MO 63131
edbutler@butlerlawstl.com

/s/ Alexander D. Terepka
Alexander D. Terepka

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DANIEL HUMAN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FISHER INVESTMENTS, INC.,

Defendant.

Case No. 4:24-cv-01177-JMB

JURY TRIAL DEMANDED

**DEFENDANT FISHER INVESTMENTS, INC.'S RESPONSES TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT**

Under Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Fisher Investments, Inc. hereby objects and otherwise responds to Plaintiff's First Set of Interrogatories to Defendant as follows:

PREFATORY STATEMENT

1. In responding to the Requests, Defendant states that it has conducted a diligent search, reasonable in scope, of those files and records in Defendant's possession or control believed to be the most likely to contain documents responsive to the Requests and have solicited relevant documents from those individuals employed or otherwise affiliated with Defendant believed to be the most likely to have documents responsive to the Requests. Defendant has not, however, undertaken to search or review all of the files and records in Defendant's possession, custody, or control, nor has Defendant solicited documents from every individual employed by or otherwise affiliated with Defendant, because to do so would be unduly burdensome and expensive. In the event, therefore, that additional documents, records, or files responsive to any

of the Requests are identified or brought to Defendant's attention, Defendant reserves the right to amend or supplement these responses.

2. In responding, Defendant does not concede that any Request to which Defendant responds is relevant to the subject matter of this litigation or reasonably calculated to lead to the discovery of admissible evidence. Defendant expressly reserves both the right to object to further discovery into the subject matter of these Requests and the right to object to the introduction into evidence of their responses to these Requests. Defendant also reserves the right to question the authenticity, relevancy, materiality, privilege, and admissibility as evidence for any purpose of the information provided and the documents identified and/or produced in response to these Requests, which may arise in any subsequent proceeding in, or the trial of, this or any other action.

3. Defendant reserves the right to amend, supplement, or revise its responses as necessary up to and including the time of trial.

In accordance with these statements, Defendant hereby responds to the Requests as follows:

INTERROGATORIES

1. Identify each person who provided the information to answer interrogatories in this case and specify the interrogatories about which each such person provided information.

ANSWER:

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court's order phasing discovery, and disproportionate to the needs of the case because it is not "limited to the threshold issue of liability on Plaintiff's claim," *see* ECF 19, ¶ 3(a).

Defendant will not provide responsive information at this time because this Request seeks information that falls outside the scope of permissible discovery during phase 1. ECF 19, ¶ 3(a)

(“Phase one of discovery is limited to the threshold issue of liability on Plaintiff’s claim.”).

Defendant reserves the right to supplement its response following the end of phase 1 discovery.

2. Identify all agents, employees or vendors involved in making outbound calls promoting your services by direct dialing and/or utilizing a dialer that requires a computer. This includes, but is not limited to, (a) third parties that you contract with who make telemarketing calls to generate leads, (b) the dialing system platform or provider used to make those calls, (c) any calls made to acquire new customers.

ANSWER:

Defendant objects to Plaintiff’s use and definition of the term “you,” because, as defined, it “means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to Plaintiff’s use of the undefined term “your.” Assuming Plaintiff means “your” to be a derivation of the problematically defined term “you,” then Defendant objects to the term as overbroad and unduly burdensome because it purports to “mean[] the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives,” as stated in Plaintiff’s definition of “you.” Plaintiff’s definition also includes third parties with whom, or over which,

Defendant has no common ownership or control, rendering the Request particularly problematic.

Defendant objects to Plaintiff's use and definition of the term "vendor," because, as defined, it "means any third party under contract with, hired by, employed by, paid by or working for you, directly or indirectly, for purposes of telemarketing or phone-based activities or services, including, but not limited to, generating leads, warm transfers, hot transfers or any other call transfers, making outbound telemarketing calls, or tracking or aggregating data related to any of those activities, including, but not limited to, any co-defendant." Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to Plaintiff's use and definition of the term "telemarketing" because it varies from the applicable statutory provisions of the TCPA. Plaintiff's definition "means a telecommunication that could have generated or was intended to generate leads, customers or sales for you or any franchisee of yours within the United States. A communication is telemarketing even though it (1) had other, additional purposes (e.g., fulfillment of a partially completed transaction or verification of information); (2) was to a person who had consented to receive it; (3) was to a person who had a prior existing business relationship with you; (4) was not made by you; and/or (5) was not made for your exclusive or direct benefit." Plaintiff's definition thus includes communications that are squarely exempt from TCPA regulation, including "call[s] made with the prior express written consent of the called party." 47 C.F.R. § 227(a)(2). Defendant further objects to Plaintiff's use of the problematically defined term "you" which is overbroad and unduly burdensome because it seeks to impose a burden to respond on behalf of third parties with whom,

or over which, Defendant has no common ownership or control. Similarly, Defendant objects to Plaintiff's use of the undefined phrase "outbound calls promoting your services."

Defendant objects to this Request as vague, overbroad, and improper because it uses the terms "all" and "any," which encompass information not relevant to this litigation and presumably includes and encompasses information protected by the attorney-client privilege, work-product doctrine, or other applicable privileges, which information Defendant will not produce.

Defendant objects to this Request as unclear and vague, because it is not clear what specific information Plaintiff is seeking. For example, Plaintiff's use of the undefined phrase "utilizing a dialer that requires a computer" is vague and ambiguous. Defendant does not understand what specific information Plaintiff is seeking.

Defendant further objects to this Request as overbroad and seeking information that is irrelevant, and immaterial, to the subject matter of the pending litigation because calls made pursuant to an established business relationship or with express consent do not implicate the TCPA. The Request is also objectionable because it is unlimited as to scope and not proportionate to the claims or defenses at issue in this case.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court's order phasing discovery, and disproportionate to the needs of the case because it is not "limited to the threshold issue of liability on Plaintiff's claim," *see* ECF 19, ¶ 3(a).

Defendant objects to this Request as overbroad and unduly burdensome. For example, it asks Defendant to identify "all agents, employees, or vendors involved in making outbound calls promoting" the services of the problematically undefined "you" term, including those who do not make calls in response to online opt-ins for financial planning assistance, let alone the subject calls. Defendant further objects to this Request as overbroad and seeking information that is irrelevant

to the subject matter of the pending litigation because it seeks information regarding entities that are not authorized to place calls using either a pre-recorded voice or ATDS at all. The Request is also objectionable because it is unlimited as to scope and not proportionate to the claims or defenses at issue in this case.

Defendant also objects to this Request as overbroad and unduly burdensome because it seeks information beyond a reasonable time frame. Defendant further objects to this Request as disproportionate to the needs of the case because it seeks information from before the period of time during which Plaintiff alleges that he received the complained-of calls. The Request is also overbroad because it is not reasonably bounded in time or scope: Plaintiff defines the “relevant time period” as “starting four years before the filing of the original complaint in this case and continuing through the present and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received outside of that period,” even though Plaintiff complains of alleged calls that he says took place in June and July 2024. Thus, seeking discovery beyond that limited period is improper, overbroad, burdensome, and disproportionate to the needs of the case.

Defendant objects to this Request because it seeks trade secrets or other confidential or proprietary research, development, commercial, or business documents or information. Defendant will only produce such information, if specifically requested and not otherwise objectionable, subject to the entry of an appropriate protective order and in accordance with state and federal law.

In accordance with these objections, and without waiving any of them, Defendant responds as follows: Defendant will not provide responsive information at this time because this Request seeks information that falls outside the scope of permissible discovery during phase 1. ECF 19, ¶ 3(a) (“Phase one of discovery is limited to the threshold issue of liability on Plaintiff’s claim.”).

Defendant reserves the right to supplement its response following the end of phase 1 discovery.

3. Identify and describe the work of each agent, employee or vendor in detail.

ANSWER:

Defendant objects to Plaintiff's use and definition of the term "vendor" because, as defined, because, as defined, it "means any third party under contract with, hired by, employed by, paid by or working for you, directly or indirectly, for purposes of telemarketing or phone-based activities or services, including, but not limited to, generating leads, warm transfers, hot transfers or any other call transfers, making outbound telemarketing calls, or tracking or aggregating data related to any of those activities, including, but not limited to, any co-defendant." Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case. Defendant further objects to Plaintiff's use and definition of the term "telemarketing" because it varies from the applicable statutory provisions of the TCPA. Plaintiff's definition "means a telecommunication that could have generated or was intended to generate leads, customers or sales for you or any franchisee of yours within the United States. A communication is telemarketing even though it (1) had other, additional purposes (e.g., fulfillment of a partially completed transaction or verification of information); (2) was to a person who had consented to receive it; (3) was to a person who had a prior existing business relationship with you; (4) was not made by you; and/or (5) was not made for your exclusive or direct benefit." Plaintiff's definition thus includes communications that are squarely exempt from TCPA regulation, including "call[s] made with the prior express written consent of the called party." 47 C.F.R. § 227(a)(2). Defendant further objects to Plaintiff's use of the problematically defined term

“you” which is overbroad and unduly burdensome because it seeks to impose a burden to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court’s order phasing discovery, and disproportionate to the needs of the case because it is not “limited to the threshold issue of liability on Plaintiff’s claim,” *see* ECF 19, ¶ 3(a).

Defendant objects to this Request as overbroad and unduly burdensome. For example, it asks Defendant to identify and “describe the work of each agent, employee, or” problematically-defined “vendor,” including those with no connection to the subject calls. The Request is also objectionable because it is unlimited as to scope and not proportionate to the claims or defenses at issue in this case.

Defendant also objects to this Request as overbroad and unduly burdensome because it seeks information beyond a reasonable time frame. Defendant further objects to this Request as disproportionate to the needs of the case because it seeks information from before the period of time during which Plaintiff alleges that he received the complained-of calls. The Request is also overbroad because it is not reasonably bounded in time or scope: Plaintiff defines the “relevant time period” as “starting four years before the filing of the original complaint in this case and continuing through the present and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received outside of that period,” even though Plaintiff complains of alleged calls that he says took place in June and July 2024. Thus, seeking discovery beyond that limited period is improper, overbroad, burdensome, and disproportionate to the needs of the case.

Defendant objects to this Request because it seeks trade secrets or other confidential or

proprietary research, development, commercial, or business documents or information. Defendant will only produce such information, if specifically requested and not otherwise objectionable, subject to the entry of an appropriate protective order and in accordance with state and federal law.

In accordance with these objections, and without waiving any of them, Defendant responds as follows: Defendant will not provide responsive information at this time because this Request seeks information that falls outside the scope of permissible discovery during phase 1. ECF 19, ¶ 3(a) (“Phase one of discovery is limited to the threshold issue of liability on Plaintiff’s claim.”). Defendant reserves the right to supplement its response following the end of phase 1 discovery.

4. Identify all third parties or sub-vendors involved in making outbound calls promoting your goods or services utilizing a dialer that requires a computer. This includes, but is not limited to, any (a) companies that supply telephone numbers to you for calling (b) any third party companies you use to make the calls and (c) any dialing systems that are used to make the calls.

ANSWER:

Defendant objects to Plaintiff’s use and definition of the term “you,” because, as defined, it “means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to Plaintiff’s use and definition of the undefined term “sub-vendor.”

Assuming Plaintiff means “sub-vendor” to be a derivation of the problematically defined term “vendor,” then Defendant objects to the term as overbroad and unduly burdensome because it purports to include “any third party under contract with, hired by, employed by, paid by or working for you, directly or indirectly, for purposes of telemarketing or phone-based activities or services, including, but not limited to, generating leads, warm transfers, hot transfers or any other call transfers, making outbound telemarketing calls, or tracking or aggregating data related to any of those activities, including, but not limited to, any co-defendant,” as stated in Plaintiff’s definition of “vendor.” Defendant further objects to Plaintiff’s use and definition of the term “telemarketing” because it varies from the applicable statutory provisions of the TCPA. Plaintiff’s definition “means a telecommunication that could have generated or was intended to generate leads, customers or sales for you or any franchisee of yours within the United States. A communication is telemarketing even though it (1) had other, additional purposes (e.g., fulfillment of a partially completed transaction or verification of information); (2) was to a person who had consented to receive it; (3) was to a person who had a prior existing business relationship with you; (4) was not made by you; and/or (5) was not made for your exclusive or direct benefit.” Plaintiff’s definition thus includes communications that are squarely exempt from TCPA regulation, including “call[s] made with the prior express written consent of the called party.” 47 C.F.R. § 227(a)(2). Defendant further objects to Plaintiff’s use of the problematically defined term “you” which is overbroad and unduly burdensome because it seeks to impose a burden to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant objects to this Request as vague, overbroad, and improper because it uses the terms “all” and “any,” which encompass information not relevant to this litigation and presumably includes and encompasses information protected by the attorney-client privilege, work-product

doctrine, or other applicable privileges, which information Defendant will not produce.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court's order phasing discovery, and disproportionate to the needs of the case because it is not "limited to the threshold issue of liability on Plaintiff's claim," *see* ECF 19, ¶ 3(a).

Defendant objects to this Request as overbroad and unduly burdensome because it asks Defendant to ascertain whether calls were placed by "utilizing a dialer that requires a computer," including those which do not implicate the TCPA. Defendant further objects to this Request as overbroad and seeking information that is irrelevant, and immaterial, to the subject matter of the pending litigation because calls made pursuant to an established business relationship or with express consent do not implicate the TCPA. The Request is also objectionable because it is unlimited as to scope and not proportionate to the claims or defenses at issue in this case.

Defendant also objects to this Request as overbroad and unduly burdensome because it seeks information beyond a reasonable time frame. Defendant further objects to this Request as disproportionate to the needs of the case because it seeks information from before the period of time during which Plaintiff alleges that he received the complained-of calls. The Request is also overbroad because it is not reasonably bounded in time or scope: Plaintiff defines the "relevant time period" as "starting four years before the filing of the original complaint in this case and continuing through the present and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received outside of that period," even though Plaintiff complains of alleged calls that he says took place in June and July 2024. Thus, seeking discovery beyond that limited period is improper, overbroad, burdensome, and disproportionate to the needs of the case.

In accordance with these objections, and without waiving any of them, Defendant responds

as follows: Defendant will not provide responsive information at this time because this Request seeks information that falls outside the scope of permissible discovery during phase 1. ECF 19, ¶ 3(a) (“Phase one of discovery is limited to the threshold issue of liability on Plaintiff’s claim.”). Defendant reserves the right to supplement its response following the end of phase 1 discovery.

5. Identify and describe the work of each vendor.

ANSWER:

Defendant objects to Plaintiff’s use and definition of the term “vendor,” because, as defined, it “means any third party under contract with, hired by, employed by, paid by or working for you, directly or indirectly, for purposes of telemarketing or phone-based activities or services, including, but not limited to, generating leads, warm transfers, hot transfers or any other call transfers, making outbound telemarketing calls, or tracking or aggregating data related to any of those activities, including, but not limited to, any co-defendant.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case. Defendant further objects to Plaintiff’s use and definition of the term “telemarketing” because it varies from the applicable statutory provisions of the TCPA. Plaintiff’s definition “means a telecommunication that could have generated or was intended to generate leads, customers or sales for you or any franchisee of yours within the United States. A communication is telemarketing even though it (1) had other, additional purposes (e.g., fulfillment of a partially completed transaction or verification of information); (2) was to a person who had consented to receive it; (3) was to a person who had a prior existing business relationship with you; (4) was not made by you; and/or (5) was not made for your exclusive or direct benefit.”

Plaintiff's definition thus includes communications that are squarely exempt from TCPA regulation, including "call[s] made with the prior express written consent of the called party." 47 C.F.R. § 227(a)(2). Defendant further objects to Plaintiff's use of the problematically defined term "you" which is overbroad and unduly burdensome because it seeks to impose a burden to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court's order phasing discovery, and disproportionate to the needs of the case because it is not "limited to the threshold issue of liability on Plaintiff's claim," *see* ECF 19, ¶ 3(a).

Defendant objects to this Request because it is unlimited as to scope and not proportionate to the claims or defenses at issue in this case. For example, this Request is not limited to the work of the problematically defined "vendor" term who placed the subject calls. Nor is it limited to financial advisement calls that are substantially similar to the one(s) Plaintiff allegedly received. Similarly, Defendant objects to this Request as overbroad and unduly burdensome. Defendant objects to this Request as overbroad and seeking information that is irrelevant, and immaterial, to the subject matter of the pending litigation because calls made pursuant to an established business relationship or with express consent do not implicate the TCPA.

Defendant also objects to this Request as overbroad and unduly burdensome because it seeks information beyond a reasonable time frame. Defendant further objects to this Request as disproportionate to the needs of the case because it seeks information from before the period of time during which Plaintiff alleges that he received the complained-of calls. The Request is also overbroad because it is not reasonably bounded in time or scope: Plaintiff defines the "relevant time period" as "starting four years before the filing of the original complaint in this case and

continuing through the present and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received outside of that period,” even though Plaintiff complains of alleged calls that he says took place in June and July 2024. Thus, seeking discovery beyond that limited period is improper, overbroad, burdensome, and disproportionate to the needs of the case.

In accordance with these objections, and without waiving any of them, Defendant responds as follows: Defendant will not provide responsive information at this time because this Request seeks information that falls outside the scope of permissible discovery during phase 1. ECF 19, ¶ 3(a) (“Phase one of discovery is limited to the threshold issue of liability on Plaintiff’s claim.”). Defendant reserves the right to supplement its response following the end of phase 1 discovery.

6. Identify all third parties or sub-vendors used by your vendors for you.

ANSWER:

Defendant objects to Plaintiff’s use and definition of the term “you,” because, as defined, it “means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to Plaintiff’s use of the undefined term “your.” Assuming Plaintiff means “your” to be a derivation of the problematically defined term “you,” then Defendant objects to the term as overbroad and unduly burdensome because it purports to “mean[] the entity to which

these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives,” as stated in Plaintiff’s definition of “you.” Plaintiff’s definition also includes third parties with whom, or over which, Defendant has no common ownership or control, rendering the Request particularly problematic.

Defendant objects to Plaintiff’s use and definition of the term “vendor” in its plural form because, as defined, it “means any third party under contract with, hired by, employed by, paid by or working for you, directly or indirectly, for purposes of telemarketing or phone-based activities or services, including, but not limited to, generating leads, warm transfers, hot transfers or any other call transfers, making outbound telemarketing calls, or tracking or aggregating data related to any of those activities, including, but not limited to, any co-defendant.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case. Defendant further objects to Plaintiff’s use and definition of the term “telemarketing” because it varies from the applicable statutory provisions of the TCPA. Plaintiff’s definition “means a telecommunication that could have generated or was intended to generate leads, customers or sales for you or any franchisee of yours within the United States. A communication is telemarketing even though it (1) had other, additional purposes (e.g., fulfillment of a partially completed transaction or verification of information); (2) was to a person who had consented to receive it; (3) was to a person who had a prior existing business relationship with you; (4) was not made by you; and/or (5) was not made for your exclusive or direct benefit.” Plaintiff’s definition thus includes communications that are squarely exempt from TCPA

regulation, including “call[s] made with the prior express written consent of the called party.” 47 C.F.R. § 227(a)(2). Defendant further objects to Plaintiff’s use of the problematically defined term “you” which is overbroad and unduly burdensome because it seeks to impose a burden to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant objects to Plaintiff’s use and definition of the undefined term “sub-vendor.” Assuming Plaintiff means “sub-vendor” to be a derivation of the problematically defined term “vendor,” then Defendant objects to the term as overbroad and unduly burdensome because it purports to include “any third party under contract with, hired by, employed by, paid by or working for you, directly or indirectly, for purposes of telemarketing or phone-based activities or services, including, but not limited to, generating leads, warm transfers, hot transfers or any other call transfers, making outbound telemarketing calls, or tracking or aggregating data related to any of those activities, including, but not limited to, any co-defendant,” as stated in Plaintiff’s definition of “vendor.” Defendant further objects to Plaintiff’s use and definition of the term “telemarketing” because it varies from the applicable statutory provisions of the TCPA. Plaintiff’s definition “means a telecommunication that could have generated or was intended to generate leads, customers or sales for you or any franchisee of yours within the United States. A communication is telemarketing even though it (1) had other, additional purposes (e.g., fulfillment of a partially completed transaction or verification of information); (2) was to a person who had consented to receive it; (3) was to a person who had a prior existing business relationship with you; (4) was not made by you; and/or (5) was not made for your exclusive or direct benefit.” Plaintiff’s definition thus includes communications that are squarely exempt from TCPA regulation, including “call[s] made with the prior express written consent of the called party.” 47 C.F.R. § 227(a)(2). Defendant

further objects to Plaintiff's use of the problematically defined term "you" which is overbroad and unduly burdensome because it seeks to impose a burden to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant objects to this Request as vague, overbroad, and improper because it uses the term "all," which encompasses information not relevant to this litigation and presumably includes and encompasses information protected by the attorney-client privilege, work-product doctrine, or other applicable privileges, which information Defendant will not produce.

Defendant objects to this Request as unintelligible and grammatically confusing, and thus unclear and vague, because it is not clear what specific information Plaintiff is seeking. For example, Defendant does not comprehend the phrase "used by your vendors for you" and as such, Defendant does not understand what specific information Plaintiff is seeking.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court's order phasing discovery, and disproportionate to the needs of the case because it is not "limited to the threshold issue of liability on Plaintiff's claim," *see* ECF 19, ¶ 3(a).

Defendant objects to this Request because it is unlimited as to scope and not proportionate to the claims or defenses at issue in this case. For example, this Request is not limited to the work of the problematically defined "vendor" term (or problematically undefined "sub-vendor" term) who placed the subject calls. Similarly, Defendant objects to this Request as overbroad and unduly burdensome.

Defendant also objects to this Request as overbroad and unduly burdensome because it seeks information beyond a reasonable time frame. Defendant further objects to this Request as disproportionate to the needs of the case because it seeks information from before the period of time during which Plaintiff alleges that he received the complained-of calls. The Request is also

overbroad because it is not reasonably bounded in time or scope: Plaintiff defines the “relevant time period” as “starting four years before the filing of the original complaint in this case and continuing through the present and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received outside of that period,” even though Plaintiff complains of alleged calls that he says took place in June and July 2024. Thus, seeking discovery beyond that limited period is improper, overbroad, burdensome, and disproportionate to the needs of the case.

In accordance with these objections, and without waiving any of them, Defendant responds as follows: Defendant will not provide responsive information at this time because this Request seeks information that falls outside the scope of permissible discovery during phase 1. ECF 19, ¶ 3(a) (“Phase one of discovery is limited to the threshold issue of liability on Plaintiff’s claim.”). Defendant reserves the right to supplement its response following the end of phase 1 discovery.

7. Identify each employee or vendor of yours that called the Plaintiff.

ANSWER:

Defendant objects to Plaintiff’s use of the undefined term “yours.” Assuming Plaintiff means “yours” to be a derivation of the problematically defined term “you,” then Defendant objects to the term as overbroad and unduly burdensome because it purports to “mean[] the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives,” as stated in Plaintiff’s definition of “you.” Plaintiff’s definition also includes third parties with whom, or over which, Defendant has no common ownership or control, rendering the Request particularly problematic.

Defendant objects to Plaintiff's use and definition of the term "vendor," because, as defined, it "means any third party under contract with, hired by, employed by, paid by or working for you, directly or indirectly, for purposes of telemarketing or phone-based activities or services, including, but not limited to, generating leads, warm transfers, hot transfers or any other call transfers, making outbound telemarketing calls, or tracking or aggregating data related to any of those activities, including, but not limited to, any co-defendant." Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case. Defendant further objects to Plaintiff's use and definition of the term "telemarketing" because it varies from the applicable statutory provisions of the TCPA. Plaintiff's definition "means a telecommunication that could have generated or was intended to generate leads, customers or sales for you or any franchisee of yours within the United States. A communication is telemarketing even though it (1) had other, additional purposes (e.g., fulfillment of a partially completed transaction or verification of information); (2) was to a person who had consented to receive it; (3) was to a person who had a prior existing business relationship with you; (4) was not made by you; and/or (5) was not made for your exclusive or direct benefit." Plaintiff's definition thus includes communications that are squarely exempt from TCPA regulation, including "call[s] made with the prior express written consent of the called party." 47 C.F.R. § 227(a)(2). Defendant further objects to Plaintiff's use of the problematically defined term "you" which is overbroad and unduly burdensome because it seeks to impose a burden to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant also objects to this Request as overbroad and unduly burdensome because it seeks information beyond a reasonable time frame. Defendant further objects to this Request as disproportionate to the needs of the case because it seeks information from before the period of time during which Plaintiff alleges that he received the complained-of calls. The Request is also overbroad because it is not reasonably bounded in time or scope: Plaintiff defines the “relevant time period” as “starting four years before the filing of the original complaint in this case and continuing through the present and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received outside of that period,” even though Plaintiff complains of alleged calls that he says took place in June and July 2024. Thus, seeking discovery beyond that limited period is improper, overbroad, burdensome, and disproportionate to the needs of the case.

In accordance with these objections, and without waiving any of them, Defendant responds as follows: In accordance with Rule 33(d), Defendant will conduct a reasonably diligent search and produce business records sufficient to show which entity made the complained-of calls, if such records are within Defendant’s possession, custody, or control. .

8. If you contend that Plaintiff provided express written consent to receive solicitation telephone calls, state all facts in support of that contention and identify the date(s) on which and the means by which you contend express written consent was obtained.

ANSWER:

Defendant objects to Plaintiff’s use and definition of the term “you,” because, as defined, it “means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.”

Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to this Request as vague, overbroad, and improper because it uses the term "all," which encompasses information not relevant to this litigation and presumably includes and encompasses information protected by the attorney-client privilege, work-product doctrine, or other applicable privileges, which information Defendant will not produce.

Defendant objects to this Request to the extent Plaintiff's intended definition of "express written consent" and "solicitation telephone calls" based on the Merriam-Webster dictionary varies from the applicable provisions of the TCPA.

Defendant objects to this Request as a premature contention interrogatory, as it seeks Defendant to state all the facts on which it bases its contentions. *See Coleman v. Dental Org. for Conscious Sedation, LLC*, 2011 WL 2600407, at *1 (E.D. Mo. June 29, 2011) (quoting cases and recognizing that "a number of district courts in this circuit have held that contention interrogatories need not be answered until discovery is complete or nearly complete"). Discovery has just begun, and as such, any contention interrogatory is improper. Indeed, a contention interrogatory is "overly broad and unduly burdensome if it seeks all facts supporting a claim or defense, such that the answering party is required to provide a narrative account of its case." *Bituminous Cas. Corp. v. Scottsdale Ins. Co.*, 2013 WL 1411544, at *1 (E.D. Mo. Apr. 8, 2013).

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court's order phasing discovery, and disproportionate to the needs of the case because it is not "limited to the threshold issue of liability on Plaintiff's claim," *see* ECF 19, ¶ 3(a).

In accordance with these objections, and without waiving any of them, Defendant responds as follows: In accordance with Rule 33(d), Defendant will conduct a reasonably diligent search and produce business records sufficient to show Plaintiff's consent to receive the complained-of calls.

9. Identify your company's relationship with any company that provided you with the Plaintiff's information or information related to the Plaintiff's telephone number, including all lead providing companies with whom you or your agents contract with or purchase leads from.

ANSWER:

Defendant objects to Plaintiff's use and definition of the term "you," because, as defined, it "means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives." Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to Plaintiff's use of the undefined term "your." Assuming Plaintiff means "your" to be a derivation of the problematically defined term "you," then Defendant objects to the term as overbroad and unduly burdensome because it purports to "mean[] the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives," as stated in Plaintiff's definition of "you." Plaintiff's definition also includes third parties with whom, or over which,

Defendant has no common ownership or control, rendering the Request particularly problematic.

Defendant objects to this Request as unintelligible and grammatically confusing, and thus unclear and vague, because it is not clear what information Plaintiff is seeking. For example, Defendant cannot ascertain what Plaintiff means by “with whom you or your agents contract with or purchase leads from” and thus does not understand what specific information Plaintiff is seeking.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court’s order phasing discovery, and disproportionate to the needs of the case because it is not “limited to the threshold issue of liability on Plaintiff’s claim,” *see* ECF 19, ¶ 3(a).

In accordance with these objections, and without waiving any of them, Defendant responds as follows: Defendant will not provide responsive information at this time because this Request seeks information that falls outside the scope of permissible discovery during phase 1. ECF 19, ¶ 3(a) (“Phase one of discovery is limited to the threshold issue of liability on Plaintiff’s claim.”). To the extent this Request seeks information related to Plaintiff’s consent, Defendant directs Plaintiff to the individuals and entities identified in its initial disclosures. Defendant reserves the right to supplement its response following the end of phase 1 discovery.

10. State all facts in support of each affirmative defense you have raised in chronological order as stated in your answer to the complaint.

ANSWER:

Defendant objects to Plaintiff’s use and definition of the term “you,” because, as defined, it “means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.”

Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to Plaintiff's use of the undefined term "your." Assuming Plaintiff means "your" to be a derivation of the problematically defined term "you," then Defendant objects to the term as overbroad and unduly burdensome because it purports to "mean[] the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives," as stated in Plaintiff's definition of "you." Plaintiff's definition also includes third parties with whom, or over which, Defendant has no common ownership or control, rendering the Request particularly problematic.

Defendant objects to this Request as vague, overbroad, and improper because it uses the term "all," which encompasses information not relevant to this litigation and presumably includes and encompasses information protected by the attorney-client privilege, work-product doctrine, or other applicable privileges, which information Defendant will not produce.

Defendant objects to this Request as a premature contention interrogatory, as it seeks Defendant to state all the facts on which it bases its contentions. *See Coleman v. Dental Org. for Conscious Sedation, LLC*, 2011 WL 2600407, at *1 (E.D. Mo. June 29, 2011) (quoting cases and recognizing that "a number of district courts in this circuit have held that contention interrogatories need not be answered until discovery is complete or nearly complete"). Discovery has just begun, and as such, any contention interrogatory is improper. Indeed, a contention interrogatory is "overly broad and unduly burdensome if it seeks all facts supporting a claim or defense, such that the

answering party is required to provide a narrative account of its case.” *Bituminous Cas. Corp. v. Scottsdale Ins. Co.*, 2013 WL 1411544, at *1 (E.D. Mo. Apr. 8, 2013).

In accordance with these objections, and without waiving any of them, Defendant responds as follows: Defendant will not provide responsive information at this time because the contention interrogatory is premature. Defendant reserves the right to supplement its response in due course.

11. In response to which (if any) requests for production in this case have you produced no responsive documents?

ANSWER:

Defendant objects to Plaintiff’s use and definition of the term “you,” because, as defined, it “means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court’s order phasing discovery, and disproportionate to the needs of the case because it is not “limited to the threshold issue of liability on Plaintiff’s claim,” *see* ECF 19, ¶ 3(a).

Defendant objects to this Request because it is cumulative and duplicative of Plaintiff’s Requests for Production and directs Plaintiff to its Responses. Defendant further objects to this Request to the extent this information is equally available to Plaintiff.

In accordance with these objections, and without waiving any of them, Defendant responds

as follows: Defendant will not provide responsive information at this time because this Request seeks information that falls outside the scope of permissible discovery during phase 1. ECF 19, ¶ 3(a) (“Phase one of discovery is limited to the threshold issue of liability on Plaintiff’s claim.”). Defendant reserves the right to supplement its response following the end of phase 1 discovery.

12. Identify each licensed or unlicensed agent you or your agents supplied Plaintiff’s residential cellular number to for them to call.

ANSWER:

Defendant objects to Plaintiff’s use and definition of the term “you,” because, as defined, it “means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to Plaintiff’s use of the undefined term “your.” Assuming Plaintiff means “your” to be a derivation of the problematically defined term “you,” then Defendant objects to the term as overbroad and unduly burdensome because it purports to “mean[] the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives,” as stated in Plaintiff’s definition of “you.” Plaintiff’s definition also includes third parties with whom, or over which, Defendant has no common ownership or control, rendering the Request particularly problematic.

Defendant objects to this Request as unclear and vague, because it is not clear what specific information Plaintiff is seeking. For example, Plaintiff's use of the undefined terms "licensed" and "unlicensed" is vague and ambiguous. Defendant does not understand what specific information Plaintiff is seeking.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court's order phasing discovery, and disproportionate to the needs of the case because it is not "limited to the threshold issue of liability on Plaintiff's claim," *see* ECF 19, ¶ 3(a).

Defendant further objects to this Request because it seeks to impose a burden on Defendant to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

In accordance with these objections, and without waiving any of them, Defendant responds as follows: In accordance with Rule 33(d), Defendant will conduct a reasonably diligent search and produce business records sufficient to show which entities Defendant supplied Plaintiff's cellular number to, if any such records are found within Defendant's possession, custody, or control.

13. Identify each Defendant or their agents or employees who vetted or scrubbed the Plaintiff's residential phone number against the National and Missouri State do not call registries prior to calling the number at issue in the Complaint.

ANSWER:

Defendant objects to Plaintiff's use and definition of the term "Defendant," because, as defined, it "means" the named defendant corporate entity "includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives."

Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to this Request as unintelligible and grammatically confusing, and thus unclear and vague, because it is not clear what specific information Plaintiff is seeking. For example, Plaintiff's Request purports to reference the existence of multiple defendants, even though Fisher Investments, Inc., is the only named defendant in this action.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court's order phasing discovery, and disproportionate to the needs of the case because it is not "limited to the threshold issue of liability on Plaintiff's claim," *see* ECF 19, ¶ 3(a).

Defendant objects to this Request because it seeks to impose a burden on Defendant to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

14. In accordance with these objections, and without waiving any of them, Defendant responds as follows: In accordance with Rule 33(d), Defendant will conduct a reasonably diligent search and produce business records sufficient to show which individuals scrubbed Plaintiff's cellular number against the national and Missouri do-not-call registries, if any such records are found within Defendant's possession, custody, or control. Identify each of the individuals that spoke with Plaintiff from your company or any of its vendors, and for each agent, employee or vendor, identify the phone number each person contacted the Plaintiff from, as well as the day, date, time, and duration of each call.

ANSWER:

Defendant objects to Plaintiff's use of the undefined term "your." Assuming Plaintiff means "your" to be a derivation of the problematically defined term "you," then Defendant objects to the term as overbroad and unduly burdensome because it purports to "mean[] the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives," as stated in Plaintiff's definition of "you." Plaintiff's definition also includes third parties with whom, or over which, Defendant has no common ownership or control, rendering the Request particularly problematic.

Defendant objects to Plaintiff's use and definition of the term "vendor" in its singular and plural form because, as defined, it "means any third party under contract with, hired by, employed by, paid by or working for you, directly or indirectly, for purposes of telemarketing or phone-based activities or services, including, but not limited to, generating leads, warm transfers, hot transfers or any other call transfers, making outbound telemarketing calls, or tracking or aggregating data related to any of those activities, including, but not limited to, any co-defendant." Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case. Defendant further objects to Plaintiff's use and definition of the term "telemarketing" because it varies from the applicable statutory provisions of the TCPA. Plaintiff's definition "means a telecommunication that could have generated or was intended to generate leads, customers or sales for you or any franchisee of yours within the United States. A communication is telemarketing even though it (1) had other, additional purposes (e.g., fulfillment

of a partially completed transaction or verification of information); (2) was to a person who had consented to receive it; (3) was to a person who had a prior existing business relationship with you; (4) was not made by you; and/or (5) was not made for your exclusive or direct benefit.” Plaintiff’s definition thus includes communications that are squarely exempt from TCPA regulation, including “call[s] made with the prior express written consent of the called party.” 47 C.F.R. § 227(a)(2). Defendant further objects to Plaintiff’s use of the problematically defined term “you” which is overbroad and unduly burdensome because it seeks to impose a burden to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court’s order phasing discovery, and disproportionate to the needs of the case because it is not “limited to the threshold issue of liability on Plaintiff’s claim,” *see* ECF 19, ¶ 3(a).

Defendant further objects to this Request because it seeks to impose a burden on Defendant to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant also objects to this Request as overbroad and unduly burdensome because it seeks information beyond a reasonable time frame. Defendant further objects to this Request as disproportionate to the needs of the case because it seeks information from before the period of time during which Plaintiff alleges that he received the complained-of calls. The Request is also overbroad because it is not reasonably bounded in time or scope: Plaintiff defines the “relevant time period” as “starting four years before the filing of the original complaint in this case and continuing through the present and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated,

prepared, generated or received outside of that period,” even though Plaintiff complains of alleged calls that he says took place in June and July 2024. Thus, seeking discovery beyond that limited period is improper, overbroad, burdensome, and disproportionate to the needs of the case.

In accordance with these objections, and without waiving any of them, Defendant responds as follows: In accordance with Rule 33(d), Defendant will conduct a reasonably diligent search and produce business records sufficient to identified the individuals who called Plaintiff’s cellular number, if any such records are found within Defendant’s possession, custody, or control.

15. Identify by make, model, structure and location the system(s), (platforms(s) [sic], and/or equipment used by you, or any vendor, to contact the Plaintiff’s private residential phone number.

ANSWER:

Defendant objects to Plaintiff’s use and definition of the term “you,” because, as defined, it “means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to Plaintiff’s use and definition of the term “vendor,” because, as defined, it “means any third party under contract with, hired by, employed by, paid by or working for you, directly or indirectly, for purposes of telemarketing or phone-based activities or services, including, but not limited to, generating leads, warm transfers, hot transfers or any other call

transfers, making outbound telemarketing calls, or tracking or aggregating data related to any of those activities, including, but not limited to, any co-defendant.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case. Defendant further objects to Plaintiff’s use and definition of the term “telemarketing” because it varies from the applicable statutory provisions of the TCPA. Plaintiff’s definition “means a telecommunication that could have generated or was intended to generate leads, customers or sales for you or any franchisee of yours within the United States. A communication is telemarketing even though it (1) had other, additional purposes (e.g., fulfillment of a partially completed transaction or verification of information); (2) was to a person who had consented to receive it; (3) was to a person who had a prior existing business relationship with you; (4) was not made by you; and/or (5) was not made for your exclusive or direct benefit.” Plaintiff’s definition thus includes communications that are squarely exempt from TCPA regulation, including “call[s] made with the prior express written consent of the called party.” 47 C.F.R. § 227(a)(2). Defendant further objects to Plaintiff’s use of the problematically defined term “you” which is overbroad and unduly burdensome because it seeks to impose a burden to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant objects to this Request because it seeks to impose a burden on Defendant to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant objects to this Request because it seeks trade secrets or other confidential or

proprietary research, development, commercial, or business documents or information. Defendant will only produce such information, if specifically requested and not otherwise objectionable, subject to the entry of an appropriate protective order and in accordance with state and federal law.

In accordance with these objections, and without waiving any of them, Defendant responds as follows: Defendant will not provide responsive information at this time because this Request seeks information that falls outside the scope of permissible discovery during phase 1. ECF 19, ¶ 3(a) (“Phase one of discovery is limited to the threshold issue of liability on Plaintiff’s claim.”). Defendant reserves the right to supplement its response following the end of phase 1 discovery.

16. Identify any person (whether employed by you or not) whom you have disciplined, reprimanded, or taken similar action against for engaging in, facilitating, or allowing allegedly unlawful or unauthorized outbound call(s) using a recorded message or text message to occur. In your answer, please identify all persons involved in any investigation, describe the reasons for your disciplinary action or reprimand, and describe the action taken against the person.

ANSWER:

Defendant objects to Plaintiff’s use and definition of the term “you,” because, as defined, it “means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to Plaintiff’s use of the undefined term “your.” Assuming Plaintiff

means “your” to be a derivation of the problematically defined term “you,” then Defendant objects to the term as overbroad and unduly burdensome because it purports to “mean[] the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives,” as stated in Plaintiff’s definition of “you.” Plaintiff’s definition also includes third parties with whom, or over which, Defendant has no common ownership or control, rendering the Request particularly problematic.

Defendant objects to this Request as vague, overbroad, and improper because it uses the terms “all” and “any,” which encompass information not relevant to this litigation and presumably includes and encompasses information protected by the attorney-client privilege, work-product doctrine, or other applicable privileges, which information Defendant will not produce.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court’s order phasing discovery, and disproportionate to the needs of the case because it is not “limited to the threshold issue of liability on Plaintiff’s claim,” *see* ECF 19, ¶ 3(a).

Defendant objects to this Request because it is an improper fishing expedition. Federal courts are clear that fishing expeditions are not allowed when premised on mere speculation of what may come up in the production. *See, e.g., Hickman v. Taylor*, 329 U.S. 495, 507 (1947).

Defendant objects to this Request as overbroad, irrelevant, and unduly burdensome. For example, it asks Defendant to identify “any person (whether employed by [the problematically-defined term] you or not whom [the problematically-defined term] you have disciplined, reprimanded, or taken similar action against for engaging in, facilitating, or allowing allegedly unlawful or unauthorized outbound call(s) using a recorded message or text message to occur,” including those with no connection to the subject calls. It also improperly seeks information

concerning text messages, even though the Complaint does not contain any allegations of improper text messaging techniques. The Request is also objectionable because it is unlimited as to scope and not proportionate to the claims or defenses at issue in this case.

Defendant also objects to this Request as overbroad and unduly burdensome because it seeks information beyond a reasonable time frame. Defendant further objects to this Request as disproportionate to the needs of the case because it seeks information from before the period of time during which Plaintiff alleges that he received the complained-of calls. The Request is also overbroad because it is not reasonably bounded in time or scope: Plaintiff defines the “relevant time period” as “starting four years before the filing of the original complaint in this case and continuing through the present and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received outside of that period,” even though Plaintiff complains of alleged calls that he says took place in June and July 2024. Thus, seeking discovery beyond that limited period is improper, overbroad, burdensome, and disproportionate to the needs of the case.

In accordance with these objections, and without waiving any of them, Defendant responds as follows: Defendant will not provide responsive information at this time because this Request seeks information that falls outside the scope of permissible discovery during phase 1. ECF 19, ¶ 3(a) (“Phase one of discovery is limited to the threshold issue of liability on Plaintiff’s claim.”). Defendant reserves the right to supplement its response following the end of phase 1 discovery.

(Signature on following page)

Dated: December 13, 2024

Respectfully submitted,

/s/ Alexander D. Terepka

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Melanie G. Ng (*pro hac vice*)

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Attorneys for Defendant Fisher Investments, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of December 2024, I caused a true and correct copy of the foregoing to be served via email on the following:

Edwin V. Butler
BUTLER LAW GROUP LLP
1650 Des Peres Road, Suite 200
Des Peres, MO 63131
edbutler@butlerlawstl.com

/s/ Alexander D. Terepka
Alexander D. Terepka

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DANIEL HUMAN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FISHER INVESTMENTS, INC.,

Defendant.

Case No. 4:24-cv-01177-JMB

JURY TRIAL DEMANDED

**DEFENDANT FISHER INVESTMENTS, INC.'S RESPONSES TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT**

Under Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Fisher Investments, Inc. hereby objects and otherwise responds to Plaintiff's First Set of Interrogatories to Defendant as follows:

PREFATORY STATEMENT

1. In responding to the Requests, Defendant states that it has conducted a diligent search, reasonable in scope, of those files and records in Defendant's possession or control believed to be the most likely to contain documents responsive to the Requests and have solicited relevant documents from those individuals employed or otherwise affiliated with Defendant believed to be the most likely to have documents responsive to the Requests. Defendant has not, however, undertaken to search or review all of the files and records in Defendant's possession, custody, or control, nor has Defendant solicited documents from every individual employed by or otherwise affiliated with Defendant, because to do so would be unduly burdensome and expensive. In the event, therefore, that additional documents, records, or files responsive to any

of the Requests are identified or brought to Defendant's attention, Defendant reserves the right to amend or supplement these responses.

2. In responding, Defendant does not concede that any Request to which Defendant responds is relevant to the subject matter of this litigation or reasonably calculated to lead to the discovery of admissible evidence. Defendant expressly reserves both the right to object to further discovery into the subject matter of these Requests and the right to object to the introduction into evidence of their responses to these Requests. Defendant also reserves the right to question the authenticity, relevancy, materiality, privilege, and admissibility as evidence for any purpose of the information provided and the documents identified and/or produced in response to these Requests, which may arise in any subsequent proceeding in, or the trial of, this or any other action.

3. Defendant reserves the right to amend, supplement, or revise its responses as necessary up to and including the time of trial.

In accordance with these statements, Defendant hereby responds to the Requests as follows:

INTERROGATORIES

1. Identify each person who provided the information to answer interrogatories in this case and specify the interrogatories about which each such person provided information.

ANSWER:

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court's order phasing discovery, and disproportionate to the needs of the case because it is not "limited to the threshold issue of liability on Plaintiff's claim," *see* ECF 19, ¶ 3(a).

Defendant will not provide responsive information at this time because this Request seeks information that falls outside the scope of permissible discovery during phase 1. ECF 19, ¶ 3(a)

(“Phase one of discovery is limited to the threshold issue of liability on Plaintiff’s claim.”).

Defendant reserves the right to supplement its response following the end of phase 1 discovery.

2. Identify all agents, employees or vendors involved in making outbound calls promoting your services by direct dialing and/or utilizing a dialer that requires a computer. This includes, but is not limited to, (a) third parties that you contract with who make telemarketing calls to generate leads, (b) the dialing system platform or provider used to make those calls, (c) any calls made to acquire new customers.

ANSWER:

Defendant objects to Plaintiff’s use and definition of the term “you,” because, as defined, it “means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to Plaintiff’s use of the undefined term “your.” Assuming Plaintiff means “your” to be a derivation of the problematically defined term “you,” then Defendant objects to the term as overbroad and unduly burdensome because it purports to “mean[] the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives,” as stated in Plaintiff’s definition of “you.” Plaintiff’s definition also includes third parties with whom, or over which,

Defendant has no common ownership or control, rendering the Request particularly problematic.

Defendant objects to Plaintiff's use and definition of the term "vendor," because, as defined, it "means any third party under contract with, hired by, employed by, paid by or working for you, directly or indirectly, for purposes of telemarketing or phone-based activities or services, including, but not limited to, generating leads, warm transfers, hot transfers or any other call transfers, making outbound telemarketing calls, or tracking or aggregating data related to any of those activities, including, but not limited to, any co-defendant." Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to Plaintiff's use and definition of the term "telemarketing" because it varies from the applicable statutory provisions of the TCPA. Plaintiff's definition "means a telecommunication that could have generated or was intended to generate leads, customers or sales for you or any franchisee of yours within the United States. A communication is telemarketing even though it (1) had other, additional purposes (e.g., fulfillment of a partially completed transaction or verification of information); (2) was to a person who had consented to receive it; (3) was to a person who had a prior existing business relationship with you; (4) was not made by you; and/or (5) was not made for your exclusive or direct benefit." Plaintiff's definition thus includes communications that are squarely exempt from TCPA regulation, including "call[s] made with the prior express written consent of the called party." 47 C.F.R. § 227(a)(2). Defendant further objects to Plaintiff's use of the problematically defined term "you" which is overbroad and unduly burdensome because it seeks to impose a burden to respond on behalf of third parties with whom,

or over which, Defendant has no common ownership or control. Similarly, Defendant objects to Plaintiff's use of the undefined phrase "outbound calls promoting your services."

Defendant objects to this Request as vague, overbroad, and improper because it uses the terms "all" and "any," which encompass information not relevant to this litigation and presumably includes and encompasses information protected by the attorney-client privilege, work-product doctrine, or other applicable privileges, which information Defendant will not produce.

Defendant objects to this Request as unclear and vague, because it is not clear what specific information Plaintiff is seeking. For example, Plaintiff's use of the undefined phrase "utilizing a dialer that requires a computer" is vague and ambiguous. Defendant does not understand what specific information Plaintiff is seeking.

Defendant further objects to this Request as overbroad and seeking information that is irrelevant, and immaterial, to the subject matter of the pending litigation because calls made pursuant to an established business relationship or with express consent do not implicate the TCPA. The Request is also objectionable because it is unlimited as to scope and not proportionate to the claims or defenses at issue in this case.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court's order phasing discovery, and disproportionate to the needs of the case because it is not "limited to the threshold issue of liability on Plaintiff's claim," *see* ECF 19, ¶ 3(a).

Defendant objects to this Request as overbroad and unduly burdensome. For example, it asks Defendant to identify "all agents, employees, or vendors involved in making outbound calls promoting" the services of the problematically undefined "you" term, including those who do not make calls in response to online opt-ins for financial planning assistance, let alone the subject calls. Defendant further objects to this Request as overbroad and seeking information that is irrelevant

to the subject matter of the pending litigation because it seeks information regarding entities that are not authorized to place calls using either a pre-recorded voice or ATDS at all. The Request is also objectionable because it is unlimited as to scope and not proportionate to the claims or defenses at issue in this case.

Defendant also objects to this Request as overbroad and unduly burdensome because it seeks information beyond a reasonable time frame. Defendant further objects to this Request as disproportionate to the needs of the case because it seeks information from before the period of time during which Plaintiff alleges that he received the complained-of calls. The Request is also overbroad because it is not reasonably bounded in time or scope: Plaintiff defines the “relevant time period” as “starting four years before the filing of the original complaint in this case and continuing through the present and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received outside of that period,” even though Plaintiff complains of alleged calls that he says took place in June and July 2024. Thus, seeking discovery beyond that limited period is improper, overbroad, burdensome, and disproportionate to the needs of the case.

Defendant objects to this Request because it seeks trade secrets or other confidential or proprietary research, development, commercial, or business documents or information. Defendant will only produce such information, if specifically requested and not otherwise objectionable, subject to the entry of an appropriate protective order and in accordance with state and federal law.

In accordance with these objections, and without waiving any of them, Defendant responds as follows: Defendant will not provide responsive information at this time because this Request seeks information that falls outside the scope of permissible discovery during phase 1. ECF 19, ¶ 3(a) (“Phase one of discovery is limited to the threshold issue of liability on Plaintiff’s claim.”).

Defendant reserves the right to supplement its response following the end of phase 1 discovery.

3. Identify and describe the work of each agent, employee or vendor in detail.

ANSWER:

Defendant objects to Plaintiff's use and definition of the term "vendor" because, as defined, because, as defined, it "means any third party under contract with, hired by, employed by, paid by or working for you, directly or indirectly, for purposes of telemarketing or phone-based activities or services, including, but not limited to, generating leads, warm transfers, hot transfers or any other call transfers, making outbound telemarketing calls, or tracking or aggregating data related to any of those activities, including, but not limited to, any co-defendant." Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case. Defendant further objects to Plaintiff's use and definition of the term "telemarketing" because it varies from the applicable statutory provisions of the TCPA. Plaintiff's definition "means a telecommunication that could have generated or was intended to generate leads, customers or sales for you or any franchisee of yours within the United States. A communication is telemarketing even though it (1) had other, additional purposes (e.g., fulfillment of a partially completed transaction or verification of information); (2) was to a person who had consented to receive it; (3) was to a person who had a prior existing business relationship with you; (4) was not made by you; and/or (5) was not made for your exclusive or direct benefit." Plaintiff's definition thus includes communications that are squarely exempt from TCPA regulation, including "call[s] made with the prior express written consent of the called party." 47 C.F.R. § 227(a)(2). Defendant further objects to Plaintiff's use of the problematically defined term

“you” which is overbroad and unduly burdensome because it seeks to impose a burden to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court’s order phasing discovery, and disproportionate to the needs of the case because it is not “limited to the threshold issue of liability on Plaintiff’s claim,” *see* ECF 19, ¶ 3(a).

Defendant objects to this Request as overbroad and unduly burdensome. For example, it asks Defendant to identify and “describe the work of each agent, employee, or” problematically-defined “vendor,” including those with no connection to the subject calls. The Request is also objectionable because it is unlimited as to scope and not proportionate to the claims or defenses at issue in this case.

Defendant also objects to this Request as overbroad and unduly burdensome because it seeks information beyond a reasonable time frame. Defendant further objects to this Request as disproportionate to the needs of the case because it seeks information from before the period of time during which Plaintiff alleges that he received the complained-of calls. The Request is also overbroad because it is not reasonably bounded in time or scope: Plaintiff defines the “relevant time period” as “starting four years before the filing of the original complaint in this case and continuing through the present and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received outside of that period,” even though Plaintiff complains of alleged calls that he says took place in June and July 2024. Thus, seeking discovery beyond that limited period is improper, overbroad, burdensome, and disproportionate to the needs of the case.

Defendant objects to this Request because it seeks trade secrets or other confidential or

proprietary research, development, commercial, or business documents or information. Defendant will only produce such information, if specifically requested and not otherwise objectionable, subject to the entry of an appropriate protective order and in accordance with state and federal law.

In accordance with these objections, and without waiving any of them, Defendant responds as follows: Defendant will not provide responsive information at this time because this Request seeks information that falls outside the scope of permissible discovery during phase 1. ECF 19, ¶ 3(a) (“Phase one of discovery is limited to the threshold issue of liability on Plaintiff’s claim.”). Defendant reserves the right to supplement its response following the end of phase 1 discovery.

4. Identify all third parties or sub-vendors involved in making outbound calls promoting your goods or services utilizing a dialer that requires a computer. This includes, but is not limited to, any (a) companies that supply telephone numbers to you for calling (b) any third party companies you use to make the calls and (c) any dialing systems that are used to make the calls.

ANSWER:

Defendant objects to Plaintiff’s use and definition of the term “you,” because, as defined, it “means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to Plaintiff’s use and definition of the undefined term “sub-vendor.”

Assuming Plaintiff means “sub-vendor” to be a derivation of the problematically defined term “vendor,” then Defendant objects to the term as overbroad and unduly burdensome because it purports to include “any third party under contract with, hired by, employed by, paid by or working for you, directly or indirectly, for purposes of telemarketing or phone-based activities or services, including, but not limited to, generating leads, warm transfers, hot transfers or any other call transfers, making outbound telemarketing calls, or tracking or aggregating data related to any of those activities, including, but not limited to, any co-defendant,” as stated in Plaintiff’s definition of “vendor.” Defendant further objects to Plaintiff’s use and definition of the term “telemarketing” because it varies from the applicable statutory provisions of the TCPA. Plaintiff’s definition “means a telecommunication that could have generated or was intended to generate leads, customers or sales for you or any franchisee of yours within the United States. A communication is telemarketing even though it (1) had other, additional purposes (e.g., fulfillment of a partially completed transaction or verification of information); (2) was to a person who had consented to receive it; (3) was to a person who had a prior existing business relationship with you; (4) was not made by you; and/or (5) was not made for your exclusive or direct benefit.” Plaintiff’s definition thus includes communications that are squarely exempt from TCPA regulation, including “call[s] made with the prior express written consent of the called party.” 47 C.F.R. § 227(a)(2). Defendant further objects to Plaintiff’s use of the problematically defined term “you” which is overbroad and unduly burdensome because it seeks to impose a burden to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant objects to this Request as vague, overbroad, and improper because it uses the terms “all” and “any,” which encompass information not relevant to this litigation and presumably includes and encompasses information protected by the attorney-client privilege, work-product

doctrine, or other applicable privileges, which information Defendant will not produce.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court's order phasing discovery, and disproportionate to the needs of the case because it is not "limited to the threshold issue of liability on Plaintiff's claim," *see* ECF 19, ¶ 3(a).

Defendant objects to this Request as overbroad and unduly burdensome because it asks Defendant to ascertain whether calls were placed by "utilizing a dialer that requires a computer," including those which do not implicate the TCPA. Defendant further objects to this Request as overbroad and seeking information that is irrelevant, and immaterial, to the subject matter of the pending litigation because calls made pursuant to an established business relationship or with express consent do not implicate the TCPA. The Request is also objectionable because it is unlimited as to scope and not proportionate to the claims or defenses at issue in this case.

Defendant also objects to this Request as overbroad and unduly burdensome because it seeks information beyond a reasonable time frame. Defendant further objects to this Request as disproportionate to the needs of the case because it seeks information from before the period of time during which Plaintiff alleges that he received the complained-of calls. The Request is also overbroad because it is not reasonably bounded in time or scope: Plaintiff defines the "relevant time period" as "starting four years before the filing of the original complaint in this case and continuing through the present and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received outside of that period," even though Plaintiff complains of alleged calls that he says took place in June and July 2024. Thus, seeking discovery beyond that limited period is improper, overbroad, burdensome, and disproportionate to the needs of the case.

In accordance with these objections, and without waiving any of them, Defendant responds

as follows: Defendant will not provide responsive information at this time because this Request seeks information that falls outside the scope of permissible discovery during phase 1. ECF 19, ¶ 3(a) (“Phase one of discovery is limited to the threshold issue of liability on Plaintiff’s claim.”). Defendant reserves the right to supplement its response following the end of phase 1 discovery.

5. Identify and describe the work of each vendor.

ANSWER:

Defendant objects to Plaintiff’s use and definition of the term “vendor,” because, as defined, it “means any third party under contract with, hired by, employed by, paid by or working for you, directly or indirectly, for purposes of telemarketing or phone-based activities or services, including, but not limited to, generating leads, warm transfers, hot transfers or any other call transfers, making outbound telemarketing calls, or tracking or aggregating data related to any of those activities, including, but not limited to, any co-defendant.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case. Defendant further objects to Plaintiff’s use and definition of the term “telemarketing” because it varies from the applicable statutory provisions of the TCPA. Plaintiff’s definition “means a telecommunication that could have generated or was intended to generate leads, customers or sales for you or any franchisee of yours within the United States. A communication is telemarketing even though it (1) had other, additional purposes (e.g., fulfillment of a partially completed transaction or verification of information); (2) was to a person who had consented to receive it; (3) was to a person who had a prior existing business relationship with you; (4) was not made by you; and/or (5) was not made for your exclusive or direct benefit.”

Plaintiff's definition thus includes communications that are squarely exempt from TCPA regulation, including "call[s] made with the prior express written consent of the called party." 47 C.F.R. § 227(a)(2). Defendant further objects to Plaintiff's use of the problematically defined term "you" which is overbroad and unduly burdensome because it seeks to impose a burden to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court's order phasing discovery, and disproportionate to the needs of the case because it is not "limited to the threshold issue of liability on Plaintiff's claim," *see* ECF 19, ¶ 3(a).

Defendant objects to this Request because it is unlimited as to scope and not proportionate to the claims or defenses at issue in this case. For example, this Request is not limited to the work of the problematically defined "vendor" term who placed the subject calls. Nor is it limited to financial advisement calls that are substantially similar to the one(s) Plaintiff allegedly received. Similarly, Defendant objects to this Request as overbroad and unduly burdensome. Defendant objects to this Request as overbroad and seeking information that is irrelevant, and immaterial, to the subject matter of the pending litigation because calls made pursuant to an established business relationship or with express consent do not implicate the TCPA.

Defendant also objects to this Request as overbroad and unduly burdensome because it seeks information beyond a reasonable time frame. Defendant further objects to this Request as disproportionate to the needs of the case because it seeks information from before the period of time during which Plaintiff alleges that he received the complained-of calls. The Request is also overbroad because it is not reasonably bounded in time or scope: Plaintiff defines the "relevant time period" as "starting four years before the filing of the original complaint in this case and

continuing through the present and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received outside of that period,” even though Plaintiff complains of alleged calls that he says took place in June and July 2024. Thus, seeking discovery beyond that limited period is improper, overbroad, burdensome, and disproportionate to the needs of the case.

In accordance with these objections, and without waiving any of them, Defendant responds as follows: Defendant will not provide responsive information at this time because this Request seeks information that falls outside the scope of permissible discovery during phase 1. ECF 19, ¶ 3(a) (“Phase one of discovery is limited to the threshold issue of liability on Plaintiff’s claim.”). Defendant reserves the right to supplement its response following the end of phase 1 discovery.

6. Identify all third parties or sub-vendors used by your vendors for you.

ANSWER:

Defendant objects to Plaintiff’s use and definition of the term “you,” because, as defined, it “means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to Plaintiff’s use of the undefined term “your.” Assuming Plaintiff means “your” to be a derivation of the problematically defined term “you,” then Defendant objects to the term as overbroad and unduly burdensome because it purports to “mean[] the entity to which

these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives,” as stated in Plaintiff’s definition of “you.” Plaintiff’s definition also includes third parties with whom, or over which, Defendant has no common ownership or control, rendering the Request particularly problematic.

Defendant objects to Plaintiff’s use and definition of the term “vendor” in its plural form because, as defined, it “means any third party under contract with, hired by, employed by, paid by or working for you, directly or indirectly, for purposes of telemarketing or phone-based activities or services, including, but not limited to, generating leads, warm transfers, hot transfers or any other call transfers, making outbound telemarketing calls, or tracking or aggregating data related to any of those activities, including, but not limited to, any co-defendant.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case. Defendant further objects to Plaintiff’s use and definition of the term “telemarketing” because it varies from the applicable statutory provisions of the TCPA. Plaintiff’s definition “means a telecommunication that could have generated or was intended to generate leads, customers or sales for you or any franchisee of yours within the United States. A communication is telemarketing even though it (1) had other, additional purposes (e.g., fulfillment of a partially completed transaction or verification of information); (2) was to a person who had consented to receive it; (3) was to a person who had a prior existing business relationship with you; (4) was not made by you; and/or (5) was not made for your exclusive or direct benefit.” Plaintiff’s definition thus includes communications that are squarely exempt from TCPA

regulation, including “call[s] made with the prior express written consent of the called party.” 47 C.F.R. § 227(a)(2). Defendant further objects to Plaintiff’s use of the problematically defined term “you” which is overbroad and unduly burdensome because it seeks to impose a burden to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant objects to Plaintiff’s use and definition of the undefined term “sub-vendor.” Assuming Plaintiff means “sub-vendor” to be a derivation of the problematically defined term “vendor,” then Defendant objects to the term as overbroad and unduly burdensome because it purports to include “any third party under contract with, hired by, employed by, paid by or working for you, directly or indirectly, for purposes of telemarketing or phone-based activities or services, including, but not limited to, generating leads, warm transfers, hot transfers or any other call transfers, making outbound telemarketing calls, or tracking or aggregating data related to any of those activities, including, but not limited to, any co-defendant,” as stated in Plaintiff’s definition of “vendor.” Defendant further objects to Plaintiff’s use and definition of the term “telemarketing” because it varies from the applicable statutory provisions of the TCPA. Plaintiff’s definition “means a telecommunication that could have generated or was intended to generate leads, customers or sales for you or any franchisee of yours within the United States. A communication is telemarketing even though it (1) had other, additional purposes (e.g., fulfillment of a partially completed transaction or verification of information); (2) was to a person who had consented to receive it; (3) was to a person who had a prior existing business relationship with you; (4) was not made by you; and/or (5) was not made for your exclusive or direct benefit.” Plaintiff’s definition thus includes communications that are squarely exempt from TCPA regulation, including “call[s] made with the prior express written consent of the called party.” 47 C.F.R. § 227(a)(2). Defendant

further objects to Plaintiff's use of the problematically defined term "you" which is overbroad and unduly burdensome because it seeks to impose a burden to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant objects to this Request as vague, overbroad, and improper because it uses the term "all," which encompasses information not relevant to this litigation and presumably includes and encompasses information protected by the attorney-client privilege, work-product doctrine, or other applicable privileges, which information Defendant will not produce.

Defendant objects to this Request as unintelligible and grammatically confusing, and thus unclear and vague, because it is not clear what specific information Plaintiff is seeking. For example, Defendant does not comprehend the phrase "used by your vendors for you" and as such, Defendant does not understand what specific information Plaintiff is seeking.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court's order phasing discovery, and disproportionate to the needs of the case because it is not "limited to the threshold issue of liability on Plaintiff's claim," *see* ECF 19, ¶ 3(a).

Defendant objects to this Request because it is unlimited as to scope and not proportionate to the claims or defenses at issue in this case. For example, this Request is not limited to the work of the problematically defined "vendor" term (or problematically undefined "sub-vendor" term) who placed the subject calls. Similarly, Defendant objects to this Request as overbroad and unduly burdensome.

Defendant also objects to this Request as overbroad and unduly burdensome because it seeks information beyond a reasonable time frame. Defendant further objects to this Request as disproportionate to the needs of the case because it seeks information from before the period of time during which Plaintiff alleges that he received the complained-of calls. The Request is also

overbroad because it is not reasonably bounded in time or scope: Plaintiff defines the “relevant time period” as “starting four years before the filing of the original complaint in this case and continuing through the present and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received outside of that period,” even though Plaintiff complains of alleged calls that he says took place in June and July 2024. Thus, seeking discovery beyond that limited period is improper, overbroad, burdensome, and disproportionate to the needs of the case.

In accordance with these objections, and without waiving any of them, Defendant responds as follows: Defendant will not provide responsive information at this time because this Request seeks information that falls outside the scope of permissible discovery during phase 1. ECF 19, ¶ 3(a) (“Phase one of discovery is limited to the threshold issue of liability on Plaintiff’s claim.”). Defendant reserves the right to supplement its response following the end of phase 1 discovery.

7. Identify each employee or vendor of yours that called the Plaintiff.

ANSWER:

Defendant objects to Plaintiff’s use of the undefined term “yours.” Assuming Plaintiff means “yours” to be a derivation of the problematically defined term “you,” then Defendant objects to the term as overbroad and unduly burdensome because it purports to “mean[] the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives,” as stated in Plaintiff’s definition of “you.” Plaintiff’s definition also includes third parties with whom, or over which, Defendant has no common ownership or control, rendering the Request particularly problematic.

Defendant objects to Plaintiff's use and definition of the term "vendor," because, as defined, it "means any third party under contract with, hired by, employed by, paid by or working for you, directly or indirectly, for purposes of telemarketing or phone-based activities or services, including, but not limited to, generating leads, warm transfers, hot transfers or any other call transfers, making outbound telemarketing calls, or tracking or aggregating data related to any of those activities, including, but not limited to, any co-defendant." Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case. Defendant further objects to Plaintiff's use and definition of the term "telemarketing" because it varies from the applicable statutory provisions of the TCPA. Plaintiff's definition "means a telecommunication that could have generated or was intended to generate leads, customers or sales for you or any franchisee of yours within the United States. A communication is telemarketing even though it (1) had other, additional purposes (e.g., fulfillment of a partially completed transaction or verification of information); (2) was to a person who had consented to receive it; (3) was to a person who had a prior existing business relationship with you; (4) was not made by you; and/or (5) was not made for your exclusive or direct benefit." Plaintiff's definition thus includes communications that are squarely exempt from TCPA regulation, including "call[s] made with the prior express written consent of the called party." 47 C.F.R. § 227(a)(2). Defendant further objects to Plaintiff's use of the problematically defined term "you" which is overbroad and unduly burdensome because it seeks to impose a burden to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant also objects to this Request as overbroad and unduly burdensome because it seeks information beyond a reasonable time frame. Defendant further objects to this Request as disproportionate to the needs of the case because it seeks information from before the period of time during which Plaintiff alleges that he received the complained-of calls. The Request is also overbroad because it is not reasonably bounded in time or scope: Plaintiff defines the “relevant time period” as “starting four years before the filing of the original complaint in this case and continuing through the present and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received outside of that period,” even though Plaintiff complains of alleged calls that he says took place in June and July 2024. Thus, seeking discovery beyond that limited period is improper, overbroad, burdensome, and disproportionate to the needs of the case.

In accordance with these objections, and without waiving any of them, Defendant responds as follows: In accordance with Rule 33(d), Defendant will conduct a reasonably diligent search and produce business records sufficient to show which entity made the complained-of calls, if such records are within Defendant’s possession, custody, or control. .

8. If you contend that Plaintiff provided express written consent to receive solicitation telephone calls, state all facts in support of that contention and identify the date(s) on which and the means by which you contend express written consent was obtained.

ANSWER:

Defendant objects to Plaintiff’s use and definition of the term “you,” because, as defined, it “means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.”

Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to this Request as vague, overbroad, and improper because it uses the term "all," which encompasses information not relevant to this litigation and presumably includes and encompasses information protected by the attorney-client privilege, work-product doctrine, or other applicable privileges, which information Defendant will not produce.

Defendant objects to this Request to the extent Plaintiff's intended definition of "express written consent" and "solicitation telephone calls" based on the Merriam-Webster dictionary varies from the applicable provisions of the TCPA.

Defendant objects to this Request as a premature contention interrogatory, as it seeks Defendant to state all the facts on which it bases its contentions. *See Coleman v. Dental Org. for Conscious Sedation, LLC*, 2011 WL 2600407, at *1 (E.D. Mo. June 29, 2011) (quoting cases and recognizing that "a number of district courts in this circuit have held that contention interrogatories need not be answered until discovery is complete or nearly complete"). Discovery has just begun, and as such, any contention interrogatory is improper. Indeed, a contention interrogatory is "overly broad and unduly burdensome if it seeks all facts supporting a claim or defense, such that the answering party is required to provide a narrative account of its case." *Bituminous Cas. Corp. v. Scottsdale Ins. Co.*, 2013 WL 1411544, at *1 (E.D. Mo. Apr. 8, 2013).

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court's order phasing discovery, and disproportionate to the needs of the case because it is not "limited to the threshold issue of liability on Plaintiff's claim," *see* ECF 19, ¶ 3(a).

In accordance with these objections, and without waiving any of them, Defendant responds as follows: In accordance with Rule 33(d), Defendant will conduct a reasonably diligent search and produce business records sufficient to show Plaintiff's consent to receive the complained-of calls.

9. Identify your company's relationship with any company that provided you with the Plaintiff's information or information related to the Plaintiff's telephone number, including all lead providing companies with whom you or your agents contract with or purchase leads from.

ANSWER:

Defendant objects to Plaintiff's use and definition of the term "you," because, as defined, it "means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives." Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to Plaintiff's use of the undefined term "your." Assuming Plaintiff means "your" to be a derivation of the problematically defined term "you," then Defendant objects to the term as overbroad and unduly burdensome because it purports to "mean[] the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives," as stated in Plaintiff's definition of "you." Plaintiff's definition also includes third parties with whom, or over which,

Defendant has no common ownership or control, rendering the Request particularly problematic.

Defendant objects to this Request as unintelligible and grammatically confusing, and thus unclear and vague, because it is not clear what information Plaintiff is seeking. For example, Defendant cannot ascertain what Plaintiff means by “with whom you or your agents contract with or purchase leads from” and thus does not understand what specific information Plaintiff is seeking.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court’s order phasing discovery, and disproportionate to the needs of the case because it is not “limited to the threshold issue of liability on Plaintiff’s claim,” *see* ECF 19, ¶ 3(a).

In accordance with these objections, and without waiving any of them, Defendant responds as follows: Defendant will not provide responsive information at this time because this Request seeks information that falls outside the scope of permissible discovery during phase 1. ECF 19, ¶ 3(a) (“Phase one of discovery is limited to the threshold issue of liability on Plaintiff’s claim.”). To the extent this Request seeks information related to Plaintiff’s consent, Defendant directs Plaintiff to the individuals and entities identified in its initial disclosures. Defendant reserves the right to supplement its response following the end of phase 1 discovery.

10. State all facts in support of each affirmative defense you have raised in chronological order as stated in your answer to the complaint.

ANSWER:

Defendant objects to Plaintiff’s use and definition of the term “you,” because, as defined, it “means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.”

Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to Plaintiff's use of the undefined term "your." Assuming Plaintiff means "your" to be a derivation of the problematically defined term "you," then Defendant objects to the term as overbroad and unduly burdensome because it purports to "mean[] the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives," as stated in Plaintiff's definition of "you." Plaintiff's definition also includes third parties with whom, or over which, Defendant has no common ownership or control, rendering the Request particularly problematic.

Defendant objects to this Request as vague, overbroad, and improper because it uses the term "all," which encompasses information not relevant to this litigation and presumably includes and encompasses information protected by the attorney-client privilege, work-product doctrine, or other applicable privileges, which information Defendant will not produce.

Defendant objects to this Request as a premature contention interrogatory, as it seeks Defendant to state all the facts on which it bases its contentions. *See Coleman v. Dental Org. for Conscious Sedation, LLC*, 2011 WL 2600407, at *1 (E.D. Mo. June 29, 2011) (quoting cases and recognizing that "a number of district courts in this circuit have held that contention interrogatories need not be answered until discovery is complete or nearly complete"). Discovery has just begun, and as such, any contention interrogatory is improper. Indeed, a contention interrogatory is "overly broad and unduly burdensome if it seeks all facts supporting a claim or defense, such that the

answering party is required to provide a narrative account of its case.” *Bituminous Cas. Corp. v. Scottsdale Ins. Co.*, 2013 WL 1411544, at *1 (E.D. Mo. Apr. 8, 2013).

In accordance with these objections, and without waiving any of them, Defendant responds as follows: Defendant will not provide responsive information at this time because the contention interrogatory is premature. Defendant reserves the right to supplement its response in due course.

11. In response to which (if any) requests for production in this case have you produced no responsive documents?

ANSWER:

Defendant objects to Plaintiff’s use and definition of the term “you,” because, as defined, it “means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court’s order phasing discovery, and disproportionate to the needs of the case because it is not “limited to the threshold issue of liability on Plaintiff’s claim,” *see* ECF 19, ¶ 3(a).

Defendant objects to this Request because it is cumulative and duplicative of Plaintiff’s Requests for Production and directs Plaintiff to its Responses. Defendant further objects to this Request to the extent this information is equally available to Plaintiff.

In accordance with these objections, and without waiving any of them, Defendant responds

as follows: Defendant will not provide responsive information at this time because this Request seeks information that falls outside the scope of permissible discovery during phase 1. ECF 19, ¶ 3(a) (“Phase one of discovery is limited to the threshold issue of liability on Plaintiff’s claim.”). Defendant reserves the right to supplement its response following the end of phase 1 discovery.

12. Identify each licensed or unlicensed agent you or your agents supplied Plaintiff’s residential cellular number to for them to call.

ANSWER:

Defendant objects to Plaintiff’s use and definition of the term “you,” because, as defined, it “means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to Plaintiff’s use of the undefined term “your.” Assuming Plaintiff means “your” to be a derivation of the problematically defined term “you,” then Defendant objects to the term as overbroad and unduly burdensome because it purports to “mean[] the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives,” as stated in Plaintiff’s definition of “you.” Plaintiff’s definition also includes third parties with whom, or over which, Defendant has no common ownership or control, rendering the Request particularly problematic.

Defendant objects to this Request as unclear and vague, because it is not clear what specific information Plaintiff is seeking. For example, Plaintiff's use of the undefined terms "licensed" and "unlicensed" is vague and ambiguous. Defendant does not understand what specific information Plaintiff is seeking.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court's order phasing discovery, and disproportionate to the needs of the case because it is not "limited to the threshold issue of liability on Plaintiff's claim," *see* ECF 19, ¶ 3(a).

Defendant further objects to this Request because it seeks to impose a burden on Defendant to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

In accordance with these objections, and without waiving any of them, Defendant responds as follows: In accordance with Rule 33(d), Defendant will conduct a reasonably diligent search and produce business records sufficient to show which entities Defendant supplied Plaintiff's cellular number to, if any such records are found within Defendant's possession, custody, or control.

13. Identify each Defendant or their agents or employees who vetted or scrubbed the Plaintiff's residential phone number against the National and Missouri State do not call registries prior to calling the number at issue in the Complaint.

ANSWER:

Defendant objects to Plaintiff's use and definition of the term "Defendant," because, as defined, it "means" the named defendant corporate entity "includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives."

Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to this Request as unintelligible and grammatically confusing, and thus unclear and vague, because it is not clear what specific information Plaintiff is seeking. For example, Plaintiff's Request purports to reference the existence of multiple defendants, even though Fisher Investments, Inc., is the only named defendant in this action.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court's order phasing discovery, and disproportionate to the needs of the case because it is not "limited to the threshold issue of liability on Plaintiff's claim," *see* ECF 19, ¶ 3(a).

Defendant objects to this Request because it seeks to impose a burden on Defendant to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

14. In accordance with these objections, and without waiving any of them, Defendant responds as follows: In accordance with Rule 33(d), Defendant will conduct a reasonably diligent search and produce business records sufficient to show which individuals scrubbed Plaintiff's cellular number against the national and Missouri do-not-call registries, if any such records are found within Defendant's possession, custody, or control. Identify each of the individuals that spoke with Plaintiff from your company or any of its vendors, and for each agent, employee or vendor, identify the phone number each person contacted the Plaintiff from, as well as the day, date, time, and duration of each call.

ANSWER:

Defendant objects to Plaintiff's use of the undefined term "your." Assuming Plaintiff means "your" to be a derivation of the problematically defined term "you," then Defendant objects to the term as overbroad and unduly burdensome because it purports to "mean[] the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives," as stated in Plaintiff's definition of "you." Plaintiff's definition also includes third parties with whom, or over which, Defendant has no common ownership or control, rendering the Request particularly problematic.

Defendant objects to Plaintiff's use and definition of the term "vendor" in its singular and plural form because, as defined, it "means any third party under contract with, hired by, employed by, paid by or working for you, directly or indirectly, for purposes of telemarketing or phone-based activities or services, including, but not limited to, generating leads, warm transfers, hot transfers or any other call transfers, making outbound telemarketing calls, or tracking or aggregating data related to any of those activities, including, but not limited to, any co-defendant." Plaintiff's definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case. Defendant further objects to Plaintiff's use and definition of the term "telemarketing" because it varies from the applicable statutory provisions of the TCPA. Plaintiff's definition "means a telecommunication that could have generated or was intended to generate leads, customers or sales for you or any franchisee of yours within the United States. A communication is telemarketing even though it (1) had other, additional purposes (e.g., fulfillment

of a partially completed transaction or verification of information); (2) was to a person who had consented to receive it; (3) was to a person who had a prior existing business relationship with you; (4) was not made by you; and/or (5) was not made for your exclusive or direct benefit.” Plaintiff’s definition thus includes communications that are squarely exempt from TCPA regulation, including “call[s] made with the prior express written consent of the called party.” 47 C.F.R. § 227(a)(2). Defendant further objects to Plaintiff’s use of the problematically defined term “you” which is overbroad and unduly burdensome because it seeks to impose a burden to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court’s order phasing discovery, and disproportionate to the needs of the case because it is not “limited to the threshold issue of liability on Plaintiff’s claim,” *see* ECF 19, ¶ 3(a).

Defendant further objects to this Request because it seeks to impose a burden on Defendant to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant also objects to this Request as overbroad and unduly burdensome because it seeks information beyond a reasonable time frame. Defendant further objects to this Request as disproportionate to the needs of the case because it seeks information from before the period of time during which Plaintiff alleges that he received the complained-of calls. The Request is also overbroad because it is not reasonably bounded in time or scope: Plaintiff defines the “relevant time period” as “starting four years before the filing of the original complaint in this case and continuing through the present and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated,

prepared, generated or received outside of that period,” even though Plaintiff complains of alleged calls that he says took place in June and July 2024. Thus, seeking discovery beyond that limited period is improper, overbroad, burdensome, and disproportionate to the needs of the case.

In accordance with these objections, and without waiving any of them, Defendant responds as follows: In accordance with Rule 33(d), Defendant will conduct a reasonably diligent search and produce business records sufficient to identified the individuals who called Plaintiff’s cellular number, if any such records are found within Defendant’s possession, custody, or control.

15. Identify by make, model, structure and location the system(s), (platforms(s) [sic], and/or equipment used by you, or any vendor, to contact the Plaintiff’s private residential phone number.

ANSWER:

Defendant objects to Plaintiff’s use and definition of the term “you,” because, as defined, it “means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to Plaintiff’s use and definition of the term “vendor,” because, as defined, it “means any third party under contract with, hired by, employed by, paid by or working for you, directly or indirectly, for purposes of telemarketing or phone-based activities or services, including, but not limited to, generating leads, warm transfers, hot transfers or any other call

transfers, making outbound telemarketing calls, or tracking or aggregating data related to any of those activities, including, but not limited to, any co-defendant.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case. Defendant further objects to Plaintiff’s use and definition of the term “telemarketing” because it varies from the applicable statutory provisions of the TCPA. Plaintiff’s definition “means a telecommunication that could have generated or was intended to generate leads, customers or sales for you or any franchisee of yours within the United States. A communication is telemarketing even though it (1) had other, additional purposes (e.g., fulfillment of a partially completed transaction or verification of information); (2) was to a person who had consented to receive it; (3) was to a person who had a prior existing business relationship with you; (4) was not made by you; and/or (5) was not made for your exclusive or direct benefit.” Plaintiff’s definition thus includes communications that are squarely exempt from TCPA regulation, including “call[s] made with the prior express written consent of the called party.” 47 C.F.R. § 227(a)(2). Defendant further objects to Plaintiff’s use of the problematically defined term “you” which is overbroad and unduly burdensome because it seeks to impose a burden to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant objects to this Request because it seeks to impose a burden on Defendant to respond on behalf of third parties with whom, or over which, Defendant has no common ownership or control.

Defendant objects to this Request because it seeks trade secrets or other confidential or

proprietary research, development, commercial, or business documents or information. Defendant will only produce such information, if specifically requested and not otherwise objectionable, subject to the entry of an appropriate protective order and in accordance with state and federal law.

In accordance with these objections, and without waiving any of them, Defendant responds as follows: Defendant will not provide responsive information at this time because this Request seeks information that falls outside the scope of permissible discovery during phase 1. ECF 19, ¶ 3(a) (“Phase one of discovery is limited to the threshold issue of liability on Plaintiff’s claim.”). Defendant reserves the right to supplement its response following the end of phase 1 discovery.

16. Identify any person (whether employed by you or not) whom you have disciplined, reprimanded, or taken similar action against for engaging in, facilitating, or allowing allegedly unlawful or unauthorized outbound call(s) using a recorded message or text message to occur. In your answer, please identify all persons involved in any investigation, describe the reasons for your disciplinary action or reprimand, and describe the action taken against the person.

ANSWER:

Defendant objects to Plaintiff’s use and definition of the term “you,” because, as defined, it “means the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives.” Plaintiff’s definition is thus overbroad, unduly burdensome, and disproportionate to the needs of the case, because, for example, it includes third parties with whom, or over which, Defendant has no common ownership or control and because it includes third parties with no connection to the case or to the claims or defenses in this case.

Defendant objects to Plaintiff’s use of the undefined term “your.” Assuming Plaintiff

means “your” to be a derivation of the problematically defined term “you,” then Defendant objects to the term as overbroad and unduly burdensome because it purports to “mean[] the entity to which these requests are propounded and includes, without limitation, any of its past or present offices, locations, divisions, affiliates, subsidiaries, successors, predecessors, partners, joint venturers, officers, directors, employees, agents, attorneys or representatives,” as stated in Plaintiff’s definition of “you.” Plaintiff’s definition also includes third parties with whom, or over which, Defendant has no common ownership or control, rendering the Request particularly problematic.

Defendant objects to this Request as vague, overbroad, and improper because it uses the terms “all” and “any,” which encompass information not relevant to this litigation and presumably includes and encompasses information protected by the attorney-client privilege, work-product doctrine, or other applicable privileges, which information Defendant will not produce.

Defendant objects to this Request as overbroad, unduly burdensome, improper given the Court’s order phasing discovery, and disproportionate to the needs of the case because it is not “limited to the threshold issue of liability on Plaintiff’s claim,” *see* ECF 19, ¶ 3(a).

Defendant objects to this Request because it is an improper fishing expedition. Federal courts are clear that fishing expeditions are not allowed when premised on mere speculation of what may come up in the production. *See, e.g., Hickman v. Taylor*, 329 U.S. 495, 507 (1947).

Defendant objects to this Request as overbroad, irrelevant, and unduly burdensome. For example, it asks Defendant to identify “any person (whether employed by [the problematically-defined term] you or not whom [the problematically-defined term] you have disciplined, reprimanded, or taken similar action against for engaging in, facilitating, or allowing allegedly unlawful or unauthorized outbound call(s) using a recorded message or text message to occur,” including those with no connection to the subject calls. It also improperly seeks information

concerning text messages, even though the Complaint does not contain any allegations of improper text messaging techniques. The Request is also objectionable because it is unlimited as to scope and not proportionate to the claims or defenses at issue in this case.

Defendant also objects to this Request as overbroad and unduly burdensome because it seeks information beyond a reasonable time frame. Defendant further objects to this Request as disproportionate to the needs of the case because it seeks information from before the period of time during which Plaintiff alleges that he received the complained-of calls. The Request is also overbroad because it is not reasonably bounded in time or scope: Plaintiff defines the “relevant time period” as “starting four years before the filing of the original complaint in this case and continuing through the present and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received outside of that period,” even though Plaintiff complains of alleged calls that he says took place in June and July 2024. Thus, seeking discovery beyond that limited period is improper, overbroad, burdensome, and disproportionate to the needs of the case.

In accordance with these objections, and without waiving any of them, Defendant responds as follows: Defendant will not provide responsive information at this time because this Request seeks information that falls outside the scope of permissible discovery during phase 1. ECF 19, ¶ 3(a) (“Phase one of discovery is limited to the threshold issue of liability on Plaintiff’s claim.”). Defendant reserves the right to supplement its response following the end of phase 1 discovery.

(Signature on following page)

Dated: December 13, 2024

Respectfully submitted,

/s/ Alexander D. Terepka

Alexander D. Terepka (*pro hac vice*)

Melanie G. Ng (*pro hac vice*)

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mguletz@thompsoncoburn.com

Attorneys for Defendant Fisher Investments, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of December 2024, I caused a true and correct copy of the foregoing to be served via email on the following:

Edwin V. Butler
BUTLER LAW GROUP LLP
1650 Des Peres Road, Suite 200
Des Peres, MO 63131
edbutler@butlerlawstl.com

/s/ Alexander D. Terepka
Alexander D. Terepka

Dial Outlook

Call logs

Contacts

Groups

Human v Fisher Investments

From Dan Human <danielahuman@icloud.com>

Date Tue 12/10/2024 11:28 AM

To edbutter@butterinvest.com <edbutter@butterinvest.com>

K



Fisher Investments
to me

JUL 17



13 Retirement Tips

Fisher Investments shares these 7
income strategies to help you retire
comfortably.

F

Fisher Investments (2)

Mobile +1 800-682-8096

11:12 AM

JUL 15

Sent from my iPhone

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Another Fisher ad!

From Dan Human <danielahuman@icloud.com>

Date Thu 12/12/2024 9:34 AM

To edbutler@butlerlawstl.com <edbutler@butlerlawstl.com>

9:33



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DNC Lookup Result

DNC Lookup

Status: TCPA Violator

Phone Number: 2083901355

National Format: (208) 390-1355

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SEARCH AGAIN

Effective Data Scrubbing DNC Lookup Tool for Mobile Phone Numbers

Free DNC Lookup

Try our dnc lookup tool

y 10 digits, no plus sign (+), no leading '1', no (), -, or spaces]

CHECK



Class Action Lawyers

Class-action lawyers make a fortune by extorting exorbitant settlements from well-meaning businesses.



Professional Plaintiffs

Professional plaintiffs are in the business of filing abusive TCPA lawsuits for profit and will stop at nothing to trick companies into contacting them.



Regulatory Enforcement

The FTC, the FCC, and state attorneys general are more aggressive than ever in seeking out TCPA violators and collecting fines.

DNC Lookup Result

Status: TCPA Litigator

Phone Number: 2083901355

National Format: (208) 390-1355

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Phone Number

2131231234

Phone Number

2131231234

How DNC Lookup Works

- 1 Determine a phone number to check

Your application can ask users to enter a phone number in your web forms, or you can identify existing numbers in your customer database.
- 2 Query to the RealValidito DNC Lookup API (<https://www.realvalidito.com/api/#dnc-validation>)

Your application passes the phone number to the RealValidito DNC Lookup API to be checked.
- 3 Check and gather information

The RealValidito DNC Lookup API checks and gathers predatory litigation (TCPA litigation) information about the phone number from multiple sources.
- 4 Return Information That Has Been Validated

The RealValidito DNC Lookup API returns phone number information to your application, allowing you to remove TCPA lawsuit numbers and identify cleaned numbers.

DNC Lookup Features

- Validate

Instantly find out if a phone number is associated with a known TCPA litigator or not.
- Number Formatting

Phone number correction and re-formatting according to national and international standards.
- Litigation Protection Wall

Use our robust DNC Lookup Service to seamlessly scrub predatory plaintiff and attorney numbers from your outbound campaigns and inbound calls, or adjust your suppression settings to fit your individual requirements and appetite for risk.
- Real-Time API (<https://www.realvalidito.com/api/#dnc-validation>)

Use our real-time and secure DNC Lookup API to easily integrate into website forms or mobile apps and make sure only cleaned numbers are accepted in your contact list, improving the overall user experience at the time of capture.
- Bulk Validation

Bulk validation (also known as "batch validation" or "phone number list cleaning") enables you to upload the contact phone database and clean up your list with just a single click. Support batch files in CSV format, and the result can be downloaded along with the original file or by appending only the required fields at the time of download.

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DNC Lookup Result

Status: TCPA Litigator

Phone Number: 2083901355

National Format: (208) 390-1355

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status (https://www.saashub.com/realvalidito-status)

SERVICES

- PHONE LOOKUP
- DNC LOOKUP
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National Do Not Call Registry - Your Registration Is Confirmed

Verify@DonotCall.gov <Verify@DonotCall.gov>

Fri 10/27/2023 2:09 PM

To:dh68litigation@yahoo.com <dh68litigation@yahoo.com>

Thank you for registering your phone number with the National Do Not Call Registry. You successfully registered your phone number ending in 1355 on February 02, 2023. Most telemarketers will be required to stop calling you 31 days from your registration date.

Visit <http-s://www.donotcall.gov> to register another number or file a complaint against someone violating the Registry.

Please do not reply to this message as it is from an unattended mailbox. Any replies to this email will not be responded to or forwarded. This service is used for outgoing emails only and cannot respond to inquiries.

Free DNC List - CSV/XLSX Checker

DNC list last updated: 12/26/2024

Drag & Drop CSV/XLS/XLSX Here

or

Browse...

No file selected.

Select File

Check Single Phone Number

2083901355

Check Number

The number 2083901355 is on the DNC list.

Add your number to Federal DNC list

*The application process may take up to 30 days to reflect on Federal DNC List System.

Register Number Now - \$9.99/Yr

Instructions:

Must be CSV or Excel file! No other file types are accepted!

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No-Call Registration Lookup

The following registration information has been found on the No-Call List:

Original Registration Date	Number	Registered By (initials)
1/25/2023	(208) 390-1355	DAH

This number is registered and has been been active on the No-Call List since 4/1/2023.

For more information about the No-Call List Read the No-Call FAQs. (/divisions/consumer/no-call/no-call-faqs)

[Lookup Another Number \(/app/NoCallRegistration/Lookup\)](/app/NoCallRegistration/Lookup)



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**As of September 2021.*

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We Empower Users

Our financial insight empowers our users.



We Trust Each Other

We have trust in what we do and in one another.



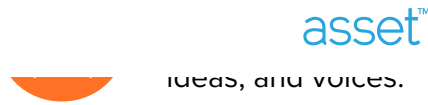
We Rise & Adapt

We rise and adapt to deliver.



Data Fuels Our Decisions

Data shapes our goals and drives our actions.



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Our Leadership Team



Michael Carvin

Chief Executive Officer & Co-Founder

Michael's expertise is in financial decision making. In the pre-SmartAsset days, Michael worked in private equity. He spent his time using financial models to help companies understand how to make better decisions. Michael believed the same models could help people improve their personal finance decision making, so he developed the patent-pending system that serves as the foundation for SmartAsset. Michael is a graduate of Princeton University.



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Dave Jones

Chief Financial Officer

As CFO, Dave oversees all aspects of finance and accounting. He brings deep expertise and competence in scaling dynamic organizations and driving operational improvements to fuel profitable revenue growth. With more than 30+ years of combined public accounting and private industry experience, Dave most recently served as CFO at Vroom. A graduate of Seton Hall University and a CPA, Dave resides in New Jersey with his wife and two daughters.



Meghan Lapides

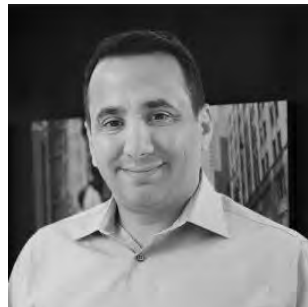
Chief People Officer



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aspects of human resources, including talent acquisition and management, onboarding, leadership development, compensation and benefits, culture and engagement, diversity and inclusion, and employee relations. Meghan brings more than 20 years of professional experience in HR and operational management for well-regarded organizations. She lives in Manhattan with her husband and twin boys.



Peter Silvio

Chief Technology Officer

Peter brings more than 20 years of industry experience to SmartAsset, most recently serving as Chief Technology Officer at Shutterstock. Peter first joined Shutterstock in 2017 as VP of Engineering and Architecture, where he led the engineering organization. In 2019, he

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the company’s key technology initiatives and vision. Before Shutterstock, Peter was the Global Head of Application Development and Platform Technology at Thomson Reuters. In his free time, Silvio enjoys doing DIY projects and spending time online gaming with his kids. He currently resides in Staten Island with his 3 children.

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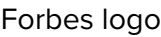
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Consumer

Marketing

Director of Growth, Newsletters

Remote, Contiguous United States

Senior Marketing Analyst, Paid Acquisition

Remote

Product

Senior Product Manager (AI focus with LLM)

Remote, Contiguous United States

Sales

Account Executive

Remote, Contiguous United States

Sales Manager

Remote, Contiguous United States

Technology

Core Engineering

Software Engineer (Content Management)

Remote, Colombia

Software Engineer (Java 14+, React)

Remote, Contiguous United States

Software Engineer (Java, React)

Remote, Colombia



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Senior Data Analyst

Remote, Contiguous United States

Senior Data Scientist (Marketing)

remote

Sr. Salesforce Developer/Admin

Remote

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Overview of Advisory Firm Reviews in the United States

At SmartAsset, we're committed to helping you find a financial advisor who meets your needs. There are a lot of options to consider when choosing a financial advisor firm. To ensure you have all of the information you need to make the right choice for you, we've profiled over a hundred of the top financial advisor firms across the country. Each profile contains detailed information about the firm's services, typical clientele, fees, investment philosophy and more so you can narrow your search for a financial advisor firm in a shorter amount of time.

Fisher Investments



[Read Review](#)

Assets Under Management

\$276,890,013,440

Number of Advisors

1,613

Fee Structure

Fee-only

Merrill Lynch Wealth Management



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Assets Under Management

\$1,271,593,679,276

Number of Advisors

26,251

Fee Structure

Fee-based

MFS Investment Management



000191



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Assets Under Management

\$ 417,408,071,971

Number of Advisors

322

Fee Structure

See Review

Edward Jones



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Assets Under Management

\$692,248,248,508

Number of Advisors

21,219

Fee Structure

Fee-based

LaSalle Investment Management



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Assets Under Management

\$28,498,400,305

Number of Advisors

217

Fee Structure

Fee-based

Voya Investment Management Co. LLC



[Read Review](#)



Find an Ad

\$230,709,852,507

Number of Advisors

304

Fee Structure

Fee-based

First Eagle Investment Management



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Assets Under Management

\$90,115,001,654

Number of Advisors

29

Fee Structure

Fee-based

Generation Investment Management

generation__

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Assets Under Management

\$ 12,137,521,269

Number of Advisors

8

Fee Structure

Fee-only

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SmartAsset’s interactive map highlights the counties across the U.S. that are most affordable for retirement. It shows areas ranked for both early and average retirement age. Zoom between states and the national map to see data points for each region, or look specifically at one of four factors driving our analysis: property taxes, cost of living, pension metrics, 401(k) metrics and Social Security income.

Affordable Retirement

Affordable Early Retirement



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Rank	County	Full Social Security Income	Early Social Security Income	Estimated Property Tax	Cost of Living	Pension Index	401(k) Index

Methodology

Our study considers five factors: property tax, cost of living, pension, 401(k) and Social Security income to find the most affordable places to retire.

First, we looked at the average Social Security income for each county in the United States. We then calculated Social Security income for each age group by measuring the average Social Security income and age distribution of people collecting Social Security in each county.

Next, we looked at 401(k) and pension plan statistics for each county, as these plans are designed to help people meet financial goals for retirement. The metrics included for 401(k) performance were employer contributions, fees and fund performance. For pensions we looked at government contribution, fund returns and funding percentage.

To assess costs that will affect the affordability of an individual's retirement, we analyzed data on the median annual property taxes paid in each county and their respective cost of living, which includes items like food, medical care and transportation.

We then determined a weighted score for each county's retirement affordability by evaluating each of the factors above. We indexed the affordability scores so that the values reflect the most affordable places to retire.

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What is your current age?

☐ Over 65

☒ 61 - 65

☐ 56 - 60

☐ 46 - 55

☐ 35 - 45

☐ Under 35

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What Makes Fisher Investments Different?

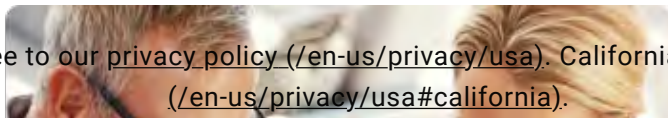
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About Fisher Investments

Fisher Investments was founded in 1979 and has expanded to Canada and to the UK, France, Spain, Italy, the Netherlands, Belgium, Denmark, Norway, Sweden, Japan and Australia through its affiliates. Fisher Investments currently manages \$294 billion[†] for investors worldwide and helps over 165,000 clients[†] meet their financial goals.

[†]As of 9/30/2024, Fisher Investments and its subsidiaries manage over \$294 billion in assets—over \$249 billion for North American private investors, \$43 billion for institutional investors, \$17 billion for European private investors and \$43 billion for US small to mid-sized business retirement plans.

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What is Fisher Investments' fee structure?	+
Who makes the investment decisions for clients' portfolios?	+
Who are Fisher Investments' clients?	+

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Fisher Investments Review

by [Becca Stanek](#) | Updated August 09, 2024

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Assets Under Management

\$276,890,013,440

Number of Advisors

1,613

Time in Business

Founded in 1979

Fee Structure

Fee-only

Office Location

6500 International Parkway

Suite 2050

Plano, TX 75093

Website

<https://www.fisherinvestments...>



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Fisher Investments is a global money management firm headquartered in Plano, Texas, and holds a place on SmartAsset's list of the [top financial advisor firms in the US](#). This fee-only [financial advisor](#) is divided into four main businesses: Fisher Investments Institutional Group, Fisher Investments Private Client Group, Fisher Investments 401(k) Solutions Group and Fisher Investments International Group.

Fisher Investments has clients across the U.S., Europe, Canada, Asia and the Middle East. Though it generally calls for a \$500,000 account minimum for individual clients, the firm may selectively accept a lower minimum of \$200,000 for its WealthBuilder accounts, allowing lower-level investors to work with the firm's advisors. [High-net-worth clients](#) comprise the largest percentage of its client base, though it also works with many institutional clients.

Fisher Investments Background

Fisher Investments was founded in 1979 by Ken Fisher, a consistent figure in the investment world. Fisher penned his "Portfolio Strategy" column for Forbes magazine for over 30 years and has written 11 books. Investment Advisor Magazine has named Fisher one of the 30 most influential figures in the investment advisory business for the last three decades. Fisher currently serves as the firm's executive chairman and co-chief investment officer.

Since its founding almost 50 years ago, Fisher Investments has grown to serve clients across the globe. It is a privately held, [fee-only](#) firm.



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Fisher Investments Client Types and Minimum Account Sizes

As mentioned previously, Fisher Investments' private client base is mostly high-net-worth individuals. It also works with less affluent individual investors — plus corporations, retirement plans, public and multi-employer pension funds, foundations, endowments, governments and investment companies.

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\$200,000. Additionally, the firm accepts smaller account sizes at its discretion, though these accounts - as well as all WealthBuilder accounts - will be subject to a higher fee rate of 1.50%.

Services Offered by Fisher Investments

Fisher Investments' services for private clients include portfolio management, annuity conversion, financial planning and [retirement planning](#). Its portfolio management services are divided into three categories, each of which is aimed at maximizing returns within risk parameters:

- **Equity accounts:** mainly use common stock and cash equivalents
- **Fixed-income accounts:** mainly use various fixed-income instruments and cash
- **Blended accounts:** use a combination of stocks, fixed-income instruments and cash

Fisher Investments' institutional services include institutional investing and [401\(k\)](#) solutions for businesses.

Investment Philosophy

Fisher Investments believes in having a flexible investment strategy, as the firm thinks that no one investment strategy is always superior. Thus, the firm takes an active approach to investing so it can respond to the markets and make changes to client portfolios as necessary. The firm will also determine appropriate investment strategies based on projected market conditions, using a framework called The Four Market Conditions.

Fisher Investments adheres to four fundamental principles when building and managing its client portfolios in order to meet clients' long-term objectives. It selects a benchmark, which then serves as the framework for constructing the portfolio, managing risk and monitoring performance. The firm then analyzes the benchmark's components and assigns expected risk and return. The firm's third principle is to use a combination of dissimilar securities to balance risk versus reward. Lastly, the firm vows to always remember it could be wrong, so it sticks to the three aforementioned principles.

The firm's Investment Policy Committee is responsible for making investment decisions. The team takes a top-down approach, focusing first on [asset allocation](#). The firm believes that asset allocation is the primary driver of portfolio performance. Asset allocations are customized according to various



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market-sectors are likely to outperform. From there, the firm selects specific securities.

Fees Under Fisher Investments

Fisher Investments typically bills its private clients based on a percentage of assets under management. WealthBuilder accounts, as well as any accounts that are below the \$500,000 threshold, will be billed at an annual rate of 1.50%. Otherwise, clients are charged on a tiered schedule based the amount of assets under management and the type of account:

Amount of Assets
Annual Management Fee
First \$1 million
1.25%
Next \$4 million
1.125%
Additional amounts over \$5 million
1.00%

Here is the fee structure specifically for Income-Only Accounts:

Amount of Assets
Annual Management Fee
First \$5 million
0.75%



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0.50%

Next \$10 million

0.43%

Next \$10 million

0.38%

Next \$10 million

0.33%

Next \$45 million

0.28%

In addition to these fees, clients may also pay brokerage commissions, other custodian fees and expenses associated with investing in ETFs or [structured notes](#).

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Select an answer

Fisher Investments Awards and Recognition

Fisher Investments has been recognized by a number of industry publications in recent years. In



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- [Top Financial Advisor Firms in Texas](#)
- [Top Financial Advisor Firms in Plano, Texas](#)

Additionally, the firm made CNN Underscored's list of the Best Financial Advisors in 2024, as well as Kiplinger's 2024 Readers' Choice Awards Wealth Managers list.

What to Watch Out For

Fisher Investments has no disclosures on its SEC-filed Form ADV.

Opening an Account With Fisher Investments

On its website, Fisher Investments provides two ways for prospective clients to get in touch: a dedicated phone number for new clients and a contact form. On the form, prospective clients have the option to send a message or request an appointment with an investment advisor. Prospective clients can also search Fisher Investments locations on the firm's website to find out if there is an office nearby.

Every private client is assigned a dedicated investment counselor. The firm provides clients with quarterly statements and written reviews from the Investment Policy Committee. Twice a year, the firm releases videos in which the committee details the firm's outlook.

All information is accurate as of the writing of this article.

Investing Tips for Beginners

- [Finding a financial advisor](#) doesn't have to be hard. [SmartAsset's free tool](#) matches you with up to three vetted financial advisors who serve your area, and you can have a free introductory call with your advisor matches to decide which one you feel is right for you. If you're ready to find an advisor who can help you achieve your financial goals, [get started now](#).
- Consider how much risk you're willing to take. Your risk tolerance will be key to determining your [asset allocation](#). For instance, if you're a cautious investor or you're new to investing, a very conservative portfolio that consists primarily of [investments](#) like bonds may be best.



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How Long \$1mm Lasts in Retirement

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SmartAsset's interactive map highlights places where \$1 million will last the longest in retirement. Zoom between states and the national map to see the top spots in each region. Also, scroll over any city to learn about the cost of living in retirement for that location.

LEAST			MOST			
Rank	City	Housing Expenses	Food Expenses	Healthcare Expenses	Utilities Expenses	Transportation Expenses
000237						



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Methodology

We analyzed data on average expenditures for seniors, cost of living and investment returns to determine how many years of retirement a \$1 million nest egg would cover in cities across America.

First, we looked at data from the Bureau of Labor Statistics (BLS) on the average annual expenditures of seniors. We then applied cost of living data from the Council for Community and Economic Research to adjust those national average spending levels based on the costs of each expense category (housing, food, healthcare, utilities, transportation and other) in each city. Using this data, SmartAsset calculated the average cost of living for retirees in the largest U.S. cities.

We assumed the \$1 million would grow at a real return (interest minus inflation) of 2%. Then, we divided \$1 million by the sum of each of those annual numbers to determine how long \$1 million would cover retirement expenses in each of the cities in our study. Cities where \$1 million lasted the longest ranked the highest in the study.

Sources: [Bureau of Labor Statistics \(BLS\)](#), [Council for Community and Economic Research](#)

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PERSONAL FINANCE

Investor Ken Fisher loses \$600 million contract after making sexist comments at summit

PUBLISHED SAT, OCT 12 2019 4:03 PM EDT UPDATED SUN, OCT 13 2019 10:43 AM EDT



Emma Newburger
@EMMA_NEWBURGER

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KEY POINTS

The state of Michigan has pulled \$600 million of its pension fund from wealth management company Fisher Investments after the company's founder and CEO Ken Fisher made sexist comments at a summit in San Francisco this week.

At the Tiburon conference, Fisher talked about his wealth management strategy to picking up women for sex, made explicit remarks about genitalia and mentioned Jeffrey Epstein, the financier who was charged with trafficking girls.

Fisher was initially defiant amid the backlash in an interview with Bloomberg, in which he said he had "given a lot of talks, a lot of times, in a lot of places and said stuff like this and never gotten that type of response."

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VIDEO 05:46

Investing guru Ken Fisher under fire after offensive comments at private event

The state of Michigan has pulled \$600 million of its pension fund from wealth management company Fisher Investments after the company's founder and CEO Ken Fisher made sexist comments at a summit in San Francisco this week.

At the Tiburon conference, Fisher compared his wealth management strategy to picking up women for sex, made explicit remarks about genitalia and mentioned Jeffrey Epstein, the financier who was charged with trafficking girls this year before hanging himself in prison.

Michigan Chief Investment Officer Jon Braeutigam told the state's investment board that its bureau of investments has fired Fisher Investments due to the chairman's "completely unacceptable comments," according to a letter obtained by CNBC.

Fisher was initially defiant amid the backlash in an [interview with Bloomberg](#), in which he said that attendees had mischaracterized his comments, and that he had "given a lot of talks, a lot of times, in a lot of places and said stuff like this and never gotten that type of response."

Fisher, whose Washington-based firm manages over \$100 billion in assets, eventually apologized for his comments on Thursday in a statement from his representative.

"Some of the words and phrases I used during a recent conference to make certain points were



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place in our company or industry. I sincerely apologize.”

In the audio obtained by CNBC, [Fisher said at the Tiburon conference](#): “Money, sex, those are the two most private things for most people,” so when trying to win new clients you need to be careful.

“It’s like going up to a girl in a bar ... (inaudible) ...going up to a woman in a bar and saying, hey I want to talk about what’s in your pants,” he said.

Braeutigam in the letter said that Michigan’s Bureau of Investment decided to fire Fisher Investments after seeing news reports of his remarks.

“...All were in unanimous agreement that prompt termination is the correct course of action,” the letter said. “There is no excuse to not treat everyone with dignity and respect. We have high expectations of our managers (and staff), not just with regards to returns but also in how they exhibit integrity and respect to all individuals.”

Michigan Chief Investment Officer John Braeutigam’s full letter to board members, Oct. 10, 2019

Board Members,

This morning, the Michigan Department of Treasury’s Bureau of Investments (BOI) terminated Fisher Investments as their founder Ken Fisher made completely unacceptable comments to a conference group where he was a featured speaker. BOI became aware of this situation last night after reading an industry news article and, after leadership discussions this morning (and more verification), all were in unanimous agreement that prompt termination is the correct course of action. There is no excuse to not treat everyone with dignity and respect. We have high expectations of our managers (and staff), not just with regards to returns but also in how they exhibit integrity and respect to all individuals.

Fisher Investments was one of our long-time active domestic equities (managed funds for approximately 15 years) managers and they were responsible for managing over \$600 million of State of Michigan Retirement Systems (SMRS) funds. Over the years, their performance has been good (beating the S&P 1500) and in staff’s interactions we have not previously witnessed or been aware of any type of similar comments along the lines of the founder’s recent statements. In our opinion, this history does not out-weigh the inappropriateness of the comments made by the founder.



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retirement systems' custodial bank (State Street). These funds, will now be managed internally and over time will be liquidated and moved to cash in order to pay retirement benefits.

Sincerely, Jon M. Braeutigam

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F PROFILE

Ken Fisher

\$11.2B Real Time Net Worth
as of 12/27/24
#205 in the world today



F | From the Editor

- Ken Fisher is executive chairman and co-chief investment officer of Fisher Investments, which he founded in 1979 with \$250.
- The firm currently has more than \$270 billion in assets under management.
- In June 2024, Fisher agreed to sell a

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minority stake in his firm at a \$12.75 billion valuation to buyout firm Advent and the Abu Dhabi Investment Authority.

- In the summer of 1964, a 13-year-old Fisher earned \$1.20 an hour picking fruit, sawing and fertilizing in his native San Mateo County, California.
- Fisher dropped out of high school "because it was a waste of time" and headed to college where he could "take better classes."

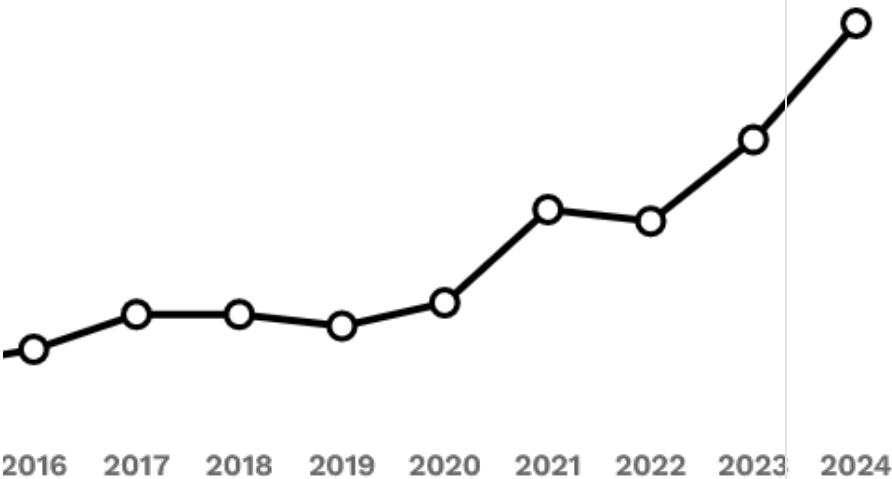
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Wealth History

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Forbes Lists

#86 Forbes 400 (2024)

#292 Billionaires (2024)

Personal Stats

Age 74

Source of Wealth Money management, Self Made

Self-Made Score 8

Philanthropy Score 1

Residence Dallas, Texas

Citizenship United States

Marital Status Married

Children 3

Education Bachelor of Arts/Science, Humboldt State University

Did you know

Fisher wrote an investing column in Forbes magazine more than 32 years, penning his last one in late 2022

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Ken Fisher: Everything You Need to Know

Updated on August 21, 2019

Written by [Becca Stanek](#)

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Ken Fisher, an [investment](#) analyst and self-made billionaire, is perhaps best known for founding Fisher Investments. The [financial advisor](#) firm based in Camas, Washington manages more than \$96 billion for more than 40,000 clients, mostly high-net-worth

individuals and institutional investors. Fisher currently serves as the firm's executive chairman and co-chief investment officer. However, he has also made a name for himself as an author, financial columnist and industry leader.

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Ken Fisher: Early Life and Education

Born in San Francisco in 1950, Fisher is the son of a stock investor. His father, Phil Fisher, was the founder of the money management firm Fisher & Co. and the author of the investing book, "Common Stocks and Common Profits," which is still in print decades after it was published in 1958.

Despite his many ties to the investing world, the younger Fisher did not immediately get into the industry. He dropped out of high school, deeming it "a waste of time." Instead, he enrolled in a community college where he said he could "take better classes." From there, Fisher headed to Humboldt State University in Arcata, California, where he began to study forestry. He ended up switching tracks, however, and graduated in 1972 with a degree in economics.



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at his father's firm. He later worked as a merger and acquisitions consultant and a research analyst in portfolio management. During this period, Fisher also devoted time to studying investment theory and forming his own views on investing.

Ken Fisher: Founding Fisher Investments

In 1979, just seven years after graduating from college, Fisher founded [Fisher Investments](#). He started the company with just \$250. By 1993, the firm hit the milestone of exceeding \$1 billion in assets under management (AUM). The global money management firm now has more than \$96 billion in AUM, more than 3,000 employees on staff and clients across the U.S., Europe, Canada, Asia and the Middle East.

Initially, the firm focused on serving institutional investors. In 1995, the firm launched its Private Client Group, which serves high-net-worth individuals. In 2000, Fisher Investments expanded globally, moving into the U.K. and Canada. It opened a wholly owned subsidiary to serve the European market in 2012. Today, the firm works with more than 40,000 individual investors and approximately 175 institutions.

Ken Fisher's Investing Philosophy

Fisher is a firm believer in both capitalism and free markets. He believes in behavioral finance, which relies on psychology to explain why investors make irrational financial decisions, and he is also a proponent of using data to challenge widely accepted investing beliefs.

Fisher is famed for popularizing the investment analysis tool of price-to-sales ratio through his theoretical work. The tool compares the total price of a company's [stock](#) to the total sales it generates, and it has become widely used to identify undervalued stocks.



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Retirement Advice

Through his firm, Fisher offers a whole booklet of [retirement](#) advice aimed at the typical Fisher Investments client, investors with at least \$500,000 in investable assets.

Among the pieces of guidance

included in his book of 99 retirement tips, Fisher specifically advises against [annuities](#), which he says are "complicated, difficult-to-understand contracts [that] favor the companies that write them, not you." He believes there are less costly way to ensure a reliable retirement income.

Other tips include "Be diversified, but not too diversified," and "Review your asset allocation regularly." Fisher also recommends understanding and managing [Social Security](#) benefits and suggests that retirees consider living abroad.

Ken Fisher: Financial Columnist and Author

In addition to his work as an investment analyst, Fisher is also an author and a regular financial columnist. He has written 11 books on various financial topics, and four of his books are New York Times best-sellers. He has also authored several academic research papers for journals including the Financial Analysts Journal, the Journal of Investing and the Journal of Behavioral Finance.

From 1984 until 2016, Fisher wrote a Portfolio Strategy column for Forbes, which was its longest continuously running column ever. He now writes a weekly column for USA Today; a bi-weekly column for Italy's Il Sole 24 Ore and monthly columns for the UK's Financial Times, Denmark's Børsen and the Netherlands' De Telegraaf.

Ken Fisher: Passions and Philanthropic Work



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Though Fisher ended up majoring



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forgot his love of forestry. The redwood logging camps near Fisher's childhood hometown of San Mateo, California likely sparked his passion. In his adult life, he has documented more than 35

abandoned logging camps in the Santa Cruz Mountains and has collected various 19th century artifacts from those logging camps. In 2006, Fisher presented his alma mater, Humboldt State University, with a \$3.50 million endowment for the Kenneth L. Fisher Chair in Redwood Forest Ecology, which supports ecological research and provides support for graduate students, labs and field equipment.

Fisher and his wife Sherrilyn have made generous donations in areas beyond forestry. The couple donated \$500,000 to the San Mateo Public Library Foundation for the Kenneth and Sherrilyn Fisher Journalism Center. They gave \$7.50 million for the Sherrilyn and Ken Fisher Center for Environmental Infectious Diseases at Johns Hopkins.

Ken Fisher: Awards and Recognition

Ken Fisher has appeared on a number of notable lists and received several prestigious awards. In 2010, ThinkAdvisor named Fisher to its Thirty for Thirty list, which recognized the industry's 30 most influential individuals over the last 30 years. Tiburon Strategic Advisors gave Fisher its 2009 CEO Summit Award for Challenging Conventional Wisdom.

With a current net worth of around \$3.60 billion, Fisher has also been recognized by Forbes as a self-made billionaire. As of 2018, Fisher ranked No. 200 on the Forbes 400. He is No. 606 on Forbes' list of The World's Billionaires 2018.

Investing Tips

- As you build your portfolio, it may be worth getting a financial advisor's help. [Finding the](#)



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matches you with financial advisors in your area in 5 minutes. If you're ready to be matched with local advisors that will help you achieve your financial goals, [get started now](#).

- One of Ken Fisher's tips for retirement is for investors to regularly review their asset allocations. Finding the appropriate asset allocation based on your risk tolerance and investing goals can effectively balance risk and return in your portfolio. SmartAsset's [asset allocation calculator](#) can help you figure it out.

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BECCA STANEK

Becca Stanek is a graduate of DePauw University. Becca is an experienced writer/editor who serves as a retirement expert for SmartAsset. She's passionate about helping people understand the sometimes daunting ins and outs of personal finance. Becca is a member of the Society for Advancing Business Editing and Writing, and her work has appeared in Time, The Week, Lending Tree and the Mic. Becca grew up in the Midwest and now lives in New York.

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Fisher Investments Privacy & Cookie Policy – US

(This version of the privacy policy in effect as of September 2024)

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Categories of Personal Information	

Categories of Personal Information	Purposes of Collecting and Using Personal Information
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Employment-related information, including sensitive personal information	Promote employment opportunities; evaluate qualifications; perform background checks; verify right to work; and administer employment relationship, including payroll and expense reimbursement

Categories of Personal Information	Purposes of Collecting and Using Personal Information
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Fisher Investments does not knowingly “sell” or “share” the personal information of California residents under 16 years of age, as those terms are defined in California law.

Fisher Investments retains personal information for internal use in accordance with applicable law and for as long as it is needed to establish, exercise, or defend any legal claims.

California and Oregon residents may exercise the following rights in relation the personal information that Fisher Investments holds about them. California and Oregon residents have the right to:

- Request **disclosure** of the categories of personal information collected, specific pieces of personal information collected, categories of sources, purposes for collecting and using, and categories of third parties to whom the information is disclosed, “sold” or “shared,” as those terms are defined in California and Oregon law.
- Request **deletion** of their personal information.
- Request **correction** of inaccurate personal information.
- **Not be discriminated** against for exercising their rights with respect to personal information.

To exercise these rights, California and Oregon residents or their authorized agents should visit the online web form (<http://www.fisherinvestments.com/en-us/privacy/dsr>) or call 1-877-786-6832. Requests must include sufficient information to verify the requester’s identity, including name, email, phone, and zip code. Deletion and correction requests will

require additional confirmation. For requests submitted by agents, proof of authority, such as a copy of a valid power of attorney, will generally be required. Fisher Investments will confirm receipt of a request within 10 days and respond within 45 days.

- About Fisher Investments ✓
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- Institutional Investing ✓
- Business 401(k) Services ✓
- Contact Us ✓
- Insights ✓
- Resource Library ✓
- Legal Information ✓

Connect With Us

Call us at [\(888\) 823-9566](tel:(888)823-9566)

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Available for US customers only.



Investing in securities involves a risk of loss. Past performance is never a guarantee of future returns. Investing in foreign stock markets involves additional risks, such as the risk of currency fluctuations.

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6500 International Parkway, Plano, Texas 75093



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Privacy Policy

[GLB Financial Notice](#)

Effective date: December 31, 2019

FINANCIAL INSIGHT TECHNOLOGY, INC ("Company") is committed to protecting your privacy. We have prepared this Privacy Policy to describe to you our practices regarding the personal data (as defined below) we collect from users of our website, located at www.SmartAsset.com (the "**Site**") and related services (collectively, "**Services**").

1. USER CONSENT. By submitting personal data through our Site and Services, you agree to the terms of this Privacy Policy and you expressly consent to the processing of your personal data in accordance with this Privacy Policy.

2. A NOTE ABOUT CHILDREN. We do not intentionally gather personal data about visitors who are under the age of 13.

3. A NOTE TO USERS OUTSIDE OF THE UNITED STATES. Your personal data may be processed in the country in which it was collected and in other countries, including the United States, where laws regarding processing of personal data may be less stringent than the laws in your country. **BY USING OUR SITE OR SUBMITTING PERSONAL DATA THROUGH OUR SITE OR SERVICES, YOU EXPRESSLY CONSENT TO THE PROCESSING OF YOUR PERSONAL DATA ACCORDING TO THIS PRIVACY POLICY.**

4. TYPES OF DATA WE COLLECT.
Personal Data You Provide to Us. We

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may provide your name, phone number, email address, zip code, marital status, financial goals, household income, home ownership status, details about your family, Twitter handle, Facebook profile and other details you may submit to us. You may also provide information in response to our surveys,

Personal Data Collected via Technology.

To make our Site and Services more useful to you, our servers (which may be hosted by a third party service provider) collect personal data from you, including **your IP address or HTTP referrer**. We also use Cookies (as defined below) and navigational data like Uniform Resource Locators (URL) to gather information regarding the date and time of your visit and the solutions and information for which you searched and which you viewed. Like most Internet services, we automatically gather this personal data and store it in log files each time you visit our website or access your account on our network.

We may use both session Cookies (which expire once you close your web browser) and persistent Cookies (which stay on your computer until you delete them) to provide you with a more personal and interactive experience on our website. Persistent Cookies can be removed by following Internet browser help file directions. If you choose to disable Cookies, some areas of our website may not work properly. We have also enabled Google Analytics features, including Demographics and Interest Reporting to gather demographic information provided by these features. You can opt-out of Google Analytics for Display Advertising and customize Google Display Network ads by changing your Google Ads Settings.

SmartAsset is a member of the Digital Advertising Alliance (DAA) self-regulatory program and adheres to the DAA self-regulatory Principles for Online

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analytics companies ("Ad Partners") that collect information about your use of our services. You can opt out of the use of interest-based advertising at any time by visiting the [Digital Advertising Alliance consumer choice page](#).

Our Relationship with Social

Networking Sites. We have created, and may offer you, interfaces that allow you to connect with social networking websites such as Facebook and Twitter ("SN Sites") through our Site. We will work with the SN Site's application protocol interface (better known as their developer API) in a way that allows you to authorize us to access your account on that SN Site on your behalf. In order to provide this authorization, you will not provide us with your user name or password to the SN Site, but you will need to log-in to that SN Site directly through our Site. Once authorized by you, the SN Site will provide us a token that allows the SN Site to recognize us when we ask, on your behalf, for access to your account information or to post information. You will be able to revoke our access to any SN Site at any time by amending the appropriate settings from within your account settings on the applicable SN Site, though such revocation may limit the Services we are able to provide you.

5. USE OF YOUR DATA.

General Use. In general, personal data you submit to us is used either to respond to requests that you make, or to aid us in serving you better. Company uses your personal data in the following ways:

- Provide you with the Services and customer support;
- Respond to your requests, resolve disputes and/or troubleshoot



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- verify your compliance with your obligations in our Terms of Use or other policies;
- Improve the quality of the Site and the Services;
- Communicate with you about the Site and the Services;
- Market our Services (and those of third parties) to you that we believe may be of interest to you. If you prefer that we do not send you these messages, please see the section below on **YOUR CHOICES REGARDING YOUR PERSONAL DATA** to learn how to opt-out.

Compliance and Protection. We may use your personal information to:

- Comply with applicable laws, lawful requests, and legal process, such as to respond to subpoenas or requests from government authorities;
- Protect our, your or others' rights, privacy, safety or property (including by making and defending legal claims);
- Audit our internal processes for compliance with legal and contractual requirements and internal policies;
- Enforce the terms and conditions that govern the Site and the Services; and
- Prevent, identify, investigate and deter fraudulent, harmful, unauthorized, unethical or illegal activity, including cyberattacks and identity theft.

Creation of Anonymous Data. We may create Anonymous Data records from personal data by excluding information (such as your name) that make the data personally identifiable to you. We use this Anonymous Data to analyze request



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services and improve site navigation. Company reserves the right to use and disclose Anonymous Data to Third Party Companies in its discretion.

Feedback. If you provide feedback on the Site or Services to us, we may use such feedback for any purpose, provided we will not associate such feedback with your personal data. Company will collect any information contained in such communication and will treat the personal data in such communication in accordance with this Privacy Policy.

6. DISCLOSURE OF YOUR PERSONAL DATA.

Affiliates. . Although we currently do not have a parent company, any subsidiaries, joint ventures, or other companies under a common control (collectively, "**Affiliates**"), we may in the future. We may share some or all of your personal data with these Affiliates, in which case we will require our Affiliates to honor this Privacy Policy. If another company acquires Company or our assets, that company will possess the personal data collected by it and us and will assume the rights and obligations regarding your personal data as described in this Privacy Policy.

Disclosure to Third Party Service

Providers. We may share your personal data with third party service providers to facilitate creation of accounts or to provide services to us that enable us to make the Site or the Services available to you.

Disclosure to SmartAsset AMP

Marketplace and Marketing

Participants. We may share your advisor matching form intake data with relevant financial advisor matches that meet participation criteria and actively participate in the SmartAsset AMP platform. The terms and conditions



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Other Disclosures. Regardless of any choices you make regarding your personal data (as described below), Company may disclose personal data if it believes in good faith that such disclosure is necessary to: (a) comply with relevant laws or to respond to subpoenas or warrants served on Company; or (b) protect or defend the rights or property of Company or users of the Products or related services.

7. THIRD PARTIES.

Personal and/or Anonymous Data Collected by Third Parties. We may receive Personal and/or Anonymous Data about you from other sources like telephone or fax, or from companies that provide our Services by way of a co-branded or private-labeled website or companies that offer their products and/or services on our website ("Third Party Companies"). Our Third Party Companies may supply us with personal data, such as your email address, in order to help us establish the account. We may add this information to the information we have already collected from you via our website in order to improve the Services we provide.

Our provision of a link to any other website or location, such as the payment processing websites, is for your convenience and does not signify our endorsement of such other website or location or its contents. When you click on such a link, you will leave our site and go to another site. During this process, another entity may collect personal data or Anonymous Data from you.

We have no control over, do not review, and cannot be responsible for, these outside websites or their content. Please be aware that the terms of this Privacy Policy do not apply to these outside websites or content, or to any collection



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**NOTICE TO CALIFORNIA RESIDENTS -
YOUR CALIFORNIA PRIVACY RIGHTS
(AS PROVIDED BY CALIFORNIA CIVIL
CODE SECTION 1798.83).**

A CALIFORNIA RESIDENT WHO HAS PROVIDED PERSONAL DATA TO A BUSINESS WITH WHOM HE/SHE HAS ESTABLISHED A BUSINESS RELATIONSHIP FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES (A "CALIFORNIA CUSTOMER"), MAY REQUEST INFORMATION ABOUT WHETHER THE BUSINESS HAS DISCLOSED PERSONAL INFORMATION TO ANY THIRD PARTIES FOR THE THIRD PARTIES' DIRECT MARKETING PURPOSES. IN GENERAL, IF THE BUSINESS HAS MADE SUCH A DISCLOSURE OF PERSONAL DATA, UPON RECEIPT OF A REQUEST BY A CALIFORNIA CUSTOMER, THE BUSINESS IS REQUIRED TO PROVIDE A LIST OF ALL THIRD PARTIES TO WHOM PERSONAL DATA WAS DISCLOSED IN THE PRECEDING CALENDAR YEAR, AS WELL AS A LIST OF THE CATEGORIES OF PERSONAL DATA THAT WERE DISCLOSED. CALIFORNIA CUSTOMERS MAY REQUEST FURTHER INFORMATION ABOUT OUR COMPLIANCE WITH THIS LAW BY E-MAILING INFO@SMARTASSET.COM. PLEASE NOTE THAT WE ARE REQUIRED TO RESPOND TO ONE REQUEST PER CALIFORNIA CUSTOMER EACH YEAR, AND WE ARE NOT REQUIRED TO RESPOND TO REQUESTS MADE BY MEANS OTHER THAN THROUGH THIS E-MAIL ADDRESS.

**8. YOUR CHOICES REGARDING YOUR
PERSONAL DATA.**

Choices. . We offer you choices regarding the collection, use, and sharing of your personal data. We will periodically send you free newsletters

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Services and may contain advertisements for Third Party Companies. When you receive newsletters or promotional communications from us, you may indicate a preference to stop receiving further communications from us and you will have the opportunity to "opt-out" by following the unsubscribe instructions provided in the e-mail you receive or by contacting us directly (please see contact information below). Should you decide to opt- out of receiving future mailings, we may share your e-mail address with third parties to ensure that you do not receive further communications from third parties. Despite your indicated e-mail preferences, we may send you notices of any updates to our Terms of Use or Privacy Policy.

Changes to Personal Data. You may request deletion of your personal data by us, but please note that we may be required (by law or otherwise) to keep this information and not delete it (or to keep this information for a certain time, in which case we will comply with your deletion request only after we have fulfilled such requirements). When we delete any information, it will be deleted from the active database, but may remain in our archives.

9. JOB APPLICANTS. When visit the careers portion of our Sites, we collect the information that you provide to us in connection with your job application. This includes business and personal contact information, professional credentials and skills, educational and work history, and other information of the type that may be included in a resume. This may also include diversity information that you voluntarily provide. We use this information to facilitate our recruitment activities and process employment applications, such as by evaluating a job candidate for an employment activity, and monitoring recruitment statistics. We



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otherwise necessary for compliance,
fraud prevention, and safety purposes.

10. SECURITY OF YOUR PERSONAL

DATA. Company is committed to protecting the security of your personal data. We use a variety of security technologies and procedures to help protect your personal data from unauthorized access, use, or disclosure. Despite these measures, you should know that Company cannot fully eliminate security risks associated with personal data and mistakes may happen.

11. CONTACT INFORMATION.

The company welcomes your comments or questions regarding this Privacy Policy. Please e-mail us at info@smartasset.com or contact us at the following address:

Financial Insight Technology, Inc
Attn: Michael Carvin
122 East 42nd Street, Suite 4300, New
York, NY 10168, USA

12. DISPUTE RESOLUTION.

If you believe that Company has not adhered to this Statement, please contact Company by email at info@smartasset.com. We will do our best to address your concerns. If you feel that your complaint has been addressed incompletely, we invite you to let us know for further investigation.

13. CHANGES TO THIS PRIVACY

POLICY. This Privacy Policy is subject to occasional revision, and if we make any substantial changes in the way we use your personal data, we will notify you by sending you an e-mail to the last e-mail address you provided to us and/or by prominently posting notice of the changes on our website. Any material changes to this Privacy Policy will be effective upon the earlier of thirty (30) calendar days following our dispatch of an e-mail notice to you or thirty (30)



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changes will be effective immediately for new users of our website, Products or related services. Please note that at all times you are responsible for updating your personal data to provide us with your most current e-mail address. In the event that the last e-mail address that you have provided us is not valid, or for any reason is not capable of delivering to you the notice described above, our dispatch of the e-mail containing such notice will nonetheless constitute effective notice of the changes described in the notice. In any event, changes to this Privacy Policy may affect our use of personal data that you provided us prior to our notification to you of the changes. If you do not wish to permit changes in our use of your personal data, you must notify us prior to the effective date of the changes that you wish to deactivate your account with us. Continued use of our website, Products, or related services, following notice of such changes shall indicate your acknowledgement of such changes and agreement to be bound by the terms and conditions of such changes.

14. NOTICE TO CALIFORNIA

RESIDENTS

We are required by the California Consumer Privacy Act of 2018 ("**CCPA**") to provide to California residents an explanation of how we collect, use and share their personal Information, and of the rights and choices we offer California residents regarding our handling of their personal information. CCPA Scope and Exclusions. The description of our [Privacy Practices](#) and [Privacy Rights](#) in this Notice apply only to California residents whose interactions with SmartAsset are limited to:

- Visiting our website,
- Signing up for email alerts,
- Commenting on or contributing to our forums, or

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not extend [Privacy Rights](#) to job applicants).

The description of our [Privacy Practices](#) and CCPA Privacy Rights do not apply to the personal information we collect, use or disclose about:

- Consumers who initiate or complete the process of applying for financial products or services. This is because this information is subject to the federal Gramm-Leach-Bliley Act (“GLBA”), and implementing regulations, or the California Financial Information Privacy Act (“FIPA”), and
- Representatives of businesses that seek to obtain our Services, or to provide their products or services to us.

Privacy Practices. We do not sell personal information. As we explain in our [Privacy Policy](#):

- We use cookies and other tracking technologies to analyze website traffic and facilitate advertising. If you would like to learn how you may opt out of our (and our third party advertising partners’) use of cookies and other tracking technologies, please review the instructions provided in the [Online Tracking Opt-out Guide](#).
- Through our services – for example, by inquiring about retaining a financial advisor – you direct us to disclose your information to companies that provide the services in which you are interested.

Here is a description of our relevant privacy practices:

How you interact with us	Personal information collection	CCPA-defined categories	Sources of personal information	Purposes for which we may collect and use the personal information
• Sign up	• Name or	• Identifiers	• You	• Operations

asset™				Find an Advisor
• Interact with our blogs and forums • Establish an account	• Email address			• Research and development • Marketing
• Visit our websites • Receive and Respond to marketing emails	• Device data • Online activity data • Information derived from device data and online activity data	• Identifiers • Inferences • Internet or Network Information • Online Identifiers	• Automatic collection	• Operations • Communication: • Marketing • Advertising • Research and development
• Apply for our open positions on our website	• Contact information • Professional credentials and skills • Educational and work history • Other resume data you provide • Diversity information you voluntarily provide • Disability information where necessary	• Identifiers • Online identifiers • Education information • Professional or employment information • Protected classification characteristics	• You • References • Background check and/ or drug testing companies • Employment agencies or recruiters	• Facilitate recruitment activities • Process employment applications • Monitoring recruitment statistics

Please note that we may also disclose personal information to comply with law, and for compliance, fraud prevention, and safety purposes; in the event of business transfers; and to our

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The CCPA grants individuals the following rights:

- **Information.** You can request information about how we have collected, used and shared your Personal Information during the past 12 months.
- **Access.** You can request a copy of the personal information that we maintain about you.
- **Deletion.** You can ask us to delete the personal information that we collected or maintain about you.

Please note that the CCPA limits these rights by, for example, prohibiting us from providing certain sensitive information in response to an access request and limiting the circumstances in which we must comply with a deletion request. We will also respond to requests for information and access only to the extent we are able to associate with a reasonable effort the information we maintain with the identifying details you provide in your request. If we deny your request, we will communicate our decision to you. You are entitled to exercise the rights described above free from discrimination.

How to Submit a Request. To request access to or deletion of personal information:

- email: info@smartasset.com

Identity verification. The CCPA requires us to verify the identity of the individual submitting a request to access or delete personal information before providing a substantive response to the request.

Authorized agents. California residents can empower an “authorized agent” to submit requests on their behalf. We will require the authorized agent to have a written authorization confirming that authority.

Online Tracking Opt-Out Guide

Like many companies online, we use services provided by Google, Facebook and others companies that use tracking technology. These services rely on tracking technologies – such as cookies and web beacons – to collect directly



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websites, and the device you are using to connect to the Internet. There are a number of ways to opt out of having your online activity and device data collected through these services, which we have summarized below:

- **Blocking cookies in your browser.**

Most browsers let you remove or reject cookies, including cookies used for interest-based advertising. To do this, follow the instructions in your browser settings. Many browsers accept cookies by default until you change your settings. For more information about cookies, including how to see what cookies have been set on your device and how to manage and delete them, visit www.allaboutcookies.org.

- **Blocking advertising ID use in your mobile settings.** Your mobile device settings may provide functionality to limit use of the advertising ID associated with your mobile device for interest-based advertising purposes.

- **Using privacy plug-ins or browsers.** You can block our websites from setting cookies used for interest-based ads by using a browser with privacy features, like [Brave](#), or installing browser plugins like [Privacy Badger](#), [Ghostery](#) or [uBlock Origin](#), and configuring them to block third party cookies/trackers.

- **Platform opt-outs.** The following advertising partners offer opt-out features that let you opt-out of use of your information for interest-based advertising:

- Google: <https://adssettings.google.com>
- Facebook: <https://www.facebook.com/about/ads>
- Twitter: <https://twitter.com/personalization>

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options to limit use of your information for interest-based advertising by participating companies:

- Digital Advertising Alliance:
<http://optout.aboutads.info>
- Network Advertising Initiative:
<http://optout.networkadvertising.org/?c=1>

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Online Tracking Opt-Out Guide

SmartAsset Advisors, LLC ("SmartAsset"), a wholly owned subsidiary of Financial Insight Technology, is registered with the U.S. Securities and Exchange Commission as an investment adviser. SmartAsset's services are limited to referring users to third party advisers registered or chartered as fiduciaries ("Adviser(s)") with a regulatory body in the United States that have elected to participate in our matching platform based on information gathered from users through our online questionnaire. SmartAsset receives compensation from Advisers for our services. SmartAsset does not review the ongoing performance of any Adviser, participate in the management of any user's account by an Adviser or provide advice regarding specific investments.

We do not manage client funds or hold custody of assets, we help users connect with relevant financial advisors.

This is not an offer to buy or sell any security or interest. All investing involves risk, including loss of principal. Working with an adviser may come with potential downsides such as payment of fees (which will reduce returns). There are no guarantees that working with an adviser will yield positive returns. The existence of a fiduciary duty does not prevent the rise of potential conflicts of interest.



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Are You Struggling to Meet Affluent Prospects?

Automated lead generation and nurturing with one subscription.

- SmartAsset helped advisors close an estimated \$34 billion in 2023¹
- A typical investor has \$996k in investable assets
- Automatic, compliant nurture campaigns so you can focus on closing

[Schedule a Demo](#)

FEATURED IN:

The New York Times

Forbes

THE WALL STREET JOURNAL

SmartAsset Advisor Marketing Platform (AMP)

A leading end-to-end marketing solution for fiduciary advisors looking to grow their practice. We offer referrals, automated outreach, and dedicated account management to help attract AUM to your firm.

- ✓ **Referrals.** SmartAsset is the nation's largest marketplace connecting consumers to advisors. We'll match you with high-intent investors that you can target based on geography and investable assets.
- ✓ **Live Connections.** Our Concierge team makes live, over-the-phone, introductions of referrals to you to help maximize your ability to close new clients.
- ✓ **Compliant automated calling & texting outreach.** Automated, personalized mobile and SMS outreach helps handle the grind of prospecting, so you can focus on closing the deal.
- ✓ **Nurture campaigns.** Send automated email nurture campaigns to keep up with prospects who need a longer sales cycle.
- ✓ **CRM Integration.** Integrates with common CRMs like Salesforce and Redtail if you already use one to manage your prospects.
- ✓ **Dedicated Account Management.** A dedicated resource to provide ongoing consultative support and answer any questions that come up along the way.

Less time prospecting, more time closing.

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Schedule a Demo

Why should I have confidence in the expected results of using SmartAsset AMP? ✓

How does the subscription work? ✓

Who owns SmartAsset? ✓

Boost your AUM starting now.

SmartAsset AMP is estimated to have an average payback period of 6.6 months.²



Discover

Target 3+ clients per year

- Up to 120 referrals each year
- Real-time Live Connections included
- Dedicated Account Manager

Schedule a Demo



Accelerate

Target 7+ clients per year

- Up to 276 referrals each year
- Real-time Live Connections included
- Dedicated Account Manager

Schedule a Demo



Scale

Target 15+ clients per year

- Up to 540 referrals each year
- Real-time Live Connections included
- Dedicated Account Manager

Schedule a Demo

Enterprise packages available for multi-office firms



Schedule a Demo

Estimated ROI on an Accelerate Package

SUBSCRIPTION TIER	TARGET CLIENTS PER YEAR	LEADS PER MONTH	COST PER NEW CLIENT	PAYBACK PERIOD	REVENUE PER CLIENT	YEAR 1 ROI	3 YEAR RETURN
Accelerate	7+	20-26	\$4,226	7.8 months	\$6,529	54%	\$49,023

Assumptions: Lead conversion rate: 3%. Leads' average assets: \$593K. Advisor fee: 1.1% on AUM. ROI = (Advisor Fee-Annual Cost) / (Annual Cost).

A Marketing Machine Built for Advisors

Automate your outreach to save time while you grow your AUM

Outreach Automation Tool

As an advisor with

Schedule a free demo

First Name *



Schedule a Demo



Reviewed referrals & Live Connections

We not only have an in-house team for validating investors by phone, but we'll directly connect you in real-time to facilitate your first conversation.



Automated follow-ups to convert prospects

Leverage call, text, and email campaigns that are automated, personalized, and compliant to help build trust and convert prospects.



A reporting dashboard

Automated reporting for your emails, campaigns, and user data designed to help you refine your individual follow-up process.



No CRM data entry

Automatically populate prospect information into your CRM so you can spend your time advising clients.

Work Email *

Company *

Broker-Dealer Affiliation *

If RIA affiliation, please write RIA.

Phone *

I am a registered fiduciary. *

☐ True

Schedule a Demo Today

Over 50,000 investor-advisor

SmartAsset is the largest advisor marketplace on the web, matching over 50,000

\$996K

in average investable assets

66%

do not currently have advisors

82%

are retired or near retirement

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000301

4 of 7

12/27/2024, 9:32 AM



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Michael Collins has grown his AUM by \$50 million with SmartAsset

Hear from Successful Advisors

"For every \$1 I put in, I earn \$2 in recurring revenue. The most important client acquisition strategy for us has been SmartAsset. The quality and ROI of SmartAsset leads has been much higher than other services we have tried."



Michael C., CFA®
Financial Advisor

Michael Collins, CFA®, is a client of SmartAsset and was not compensated for his participation in this interview. However, he has since become a paid consultant. Michael's experience and metrics regarding SmartAsset are his own

We work with firms



FAQs

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How quickly can I scale my business with SmartAsset AMP?



Get Started



¹The estimated AUM closed by advisors from SmartAsset referrals is based on the number of matches made between validated investors reporting



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ROTH & TRADITIONAL IRAS

[Peter Thiel Made \\$5 Billion in a Roth IRA: How the Tech Entrepreneur Made a Tax-Free Fortune](#)

DECEMBER 27, 2024

A Roth IRA, under the right conditions, is the best retirement vehicle you can have. Just ask Peter Thiel. According to ProPublica reporting sourced from IRS records, between 1999 and 2021 Thiel grew his Roth IRA from \$2,000 to more than \$5 billion. This is significantly more than the average household’s IRA balance, reported by Fidelity... [read more...](#)



ESTATE TAX

[My Mom Wants to Add Me to Her \\$40k Savings Account So I Won’t Owe Taxes When She Passes.](#)



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Unfortunately, this scenario may not play out as intended, but it does have some potential benefits. Taxes on gifts and estates are governed by the same section of the tax code, a joint tax known as the gifts and estate tax. This tax applies to any unilateral transfer, which is defined as giving someone assets without... [read more...](#)



ASK AN ADVISOR

[Ask an Advisor: I Inherited \\$80k in Roth Accounts and \\$80k in an IRA. How Much Will My RMDs Be?](#)

DECEMBER 20, 2024

I have two inherited Roth accounts that total around \$80,000, and an inherited IRA account with around \$80,000 from my partner's 401(k) account. My partner sadly passed away this year at age 45. I am 70 years old. What are my RMD requirements for this year and the next few years? – Jose
First of all,... [read more...](#)



SOCIAL SECURITY



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The trend of states eliminating income taxes on Social Security benefits continued in 2024, with three more states joining the more than 40 that already exempt the monthly government retirement payments from state income taxes. Social Security retirement recipients in Kansas, Missouri and Nebraska won't have to pay their states' income taxes on their benefits... [read more...](#)

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Editor's Picks



CERTIFICATIONS & LICENSES

[CFA vs. CFP®: Which Do You Need?](#)

DECEMBER 11, 2024

Chartered financial analyst (CFA) and certified financial planner (CFP) are common certifications for individuals working in finance, namely financial advisors. These are designed to tell a client (or employer) that the holder has received education in certain types of financial... [read more...](#)



BROKERAGE

[5 Tips for Choosing a Wealth Management Firm](#)

MAY 15, 2023

Wealth management firms are all different, with their own specializations and services. As a result, the process for choosing a wealth manager is a very personal one. Wealth managers work closely together with their clients to identify financial goals and... [read more...](#)



ADVISOR FEES & COSTS

[What Is a Fee-Only Financial Planner?](#)

DECEMBER 18, 2024

If a financial planner, financial advisor or another type of financial professional is fee-only, that means they receive compensation solely from the fees clients pay for their services. They do not earn commissions for recommending certain products. A fee-only structure... [read more...](#)



REAL ESTATE INVESTING

[Why First Homes Could Be Investment Properties](#)

JULY 31, 2023

If you're young and looking to purchase a new home to live in, you may

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Data Articles and Studies



QUALITY OF LIFE

Places With the Most and Least Health Insurance Coverage – 2025 Study

DECEMBER 18, 2024

While health insurance can prevent emergencies and catastrophic conditions from decimating your financial plans, the premiums and out-of-pocket expenses can also take a toll on your wallet. In 2024, the average annual premium for a single individual was nearly \$9,000 – and an estimated \$25,500 for a family of four. While many workplaces subsidize these... [read more...](#)



DEMOGRAPHICS & MIGRATION

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DECEMBER 12, 2024

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(d) You and we must abide by the following rules: (1) ANY CLAIMS BROUGHT BY YOU OR US MUST BE BROUGHT IN THE PARTYS' INDIVIDUAL



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PURPORTED CLASS OR REPRESENTATIVE PROCEEDING; (2) THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING, AND MAY NOT AWARD CLASS-WIDE RELIEF, (3) in the event that you are able to demonstrate that the costs of arbitration will be prohibitive as compared to costs of litigation, we will pay as much of your filing and hearing fees in connection with the arbitration as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive as compared to the cost of litigation, (4) we also reserve the right in our sole and exclusive discretion to assume responsibility for all of the costs of the arbitration; (5) the arbitrator shall honor claims of privilege and privacy recognized at law; (6) the arbitrator's award shall be final and may be enforced in any court of competent jurisdiction; (7) the arbitrator may award any individual relief or individual remedies that are permitted by applicable law; and (8) each side pays its own attorneys' fees and expenses unless there is a statutory provision that requires the prevailing party to be paid its fees' and litigation expenses, and then in such instance, the fees and costs awarded shall be determined by the



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you or we may bring an individual action in small claims court provided such action remains in such court. Further, claims of infringement or misappropriation of the other party's patent, copyright, trademark, or trade secret shall not be subject to this arbitration agreement. Such claims shall be exclusively brought in the state or federal courts located in New York, New York. Additionally, notwithstanding our agreement to arbitrate, either party may seek emergency equitable relief before the state or federal courts located in New York, New York in order to maintain the status quo pending arbitration, and the parties hereby agree to submit to the exclusive personal jurisdiction of the courts located within New York, New York for such purpose. A request for interim measures shall not be deemed a waiver of the right to arbitrate.

(f) With the exception of the second paragraph of this Arbitration Agreement and subparts (1) and (2) of subsection 18. (d) above (prohibiting arbitration on a class, representative or collective basis), if any part of this Arbitration Agreement is deemed to be invalid or unenforceable, then the balance of this Arbitration Agreement shall remain in effect and shall be construed in accordance with its terms as if the invalid, unenforceable, illegal or



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of this Arbitration Agreement and/or subparts (1) or (2) of subsection 18(d) above (prohibiting arbitration on a class, representative or collective basis) is found to be invalid or unenforceable with respect to a particular claim for relief, then that claim for relief and only that claim for relief shall be severed from the arbitration and brought exclusively in the state or federal courts located in New York, New York. All other claims shall be arbitrated.

(g) Notwithstanding any provision in these Terms to the contrary, if we seek to terminate this Arbitration Agreement, any such termination shall not be effective until 30 days after the version of the Terms not containing the Arbitration Agreement is posted to the Site or App, and shall not be effective as to any claim of which you provided us with written notice prior to the date of termination. For more information on JAMS, its Rules and Procedures, and how to file an arbitration claim, you may call JAMS at 800-352-5267 or visit the JAMS website at <http://www.jamsadr.com>.

(h) Thirty-Day Right to Opt-Out. You have the right to opt-out of the provisions of this Arbitration Agreement by sending written notice of your decision to opt out to Financial Insight Technology, Inc., 122 East 42nd Street, Suite 4300, New York, NY 10168 or ATTN: email



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Arbitration Agreement. Your notice must include your full name, postal address, and e-mail address (if you have one), and an unequivocal statement that you want to opt out of this Arbitration Agreement. If you opt out of this Arbitration Agreement, all other provisions of the Agreement will continue to apply to you. Opting out of this Arbitration Agreement has no effect on any other arbitration agreements that you may currently have, or may enter in the future, with us.

19. GENERAL TERMS. You are responsible for compliance with all applicable laws. The Terms of Service and the relationship between you and SmartAsset will be governed by the laws of the Commonwealth of Massachusetts, without giving effect to any choice of laws or principles that would require the application of the laws of a different country or state. Any legal action, suit or proceeding arising out of or relating to the Terms of Service, or your use of the Site, Apps, or Services not subject to arbitration under Section 18 must be instituted exclusively in the federal or state courts located in New York, New York and in no other jurisdiction. You further consent to exclusive personal jurisdiction and venue in, and agree to service of process issued or authorized by, any such court. You may not transfer,



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anyone else and any attempted assignment or delegation is void. We have the rights to freely assign our rights under this Agreement. You acknowledge that we have the right hereunder to seek an injunction, if necessary, to stop or prevent a breach of your obligations hereunder. The paragraph headings in the Agreement, shown in boldface type, are included only to help make the Agreement easier to read and have no binding effect. Any delay or failure by us to exercise or enforce any right or provision of the Agreement will not constitute a waiver of such right or provision. No waiver by us will have effect unless such waiver is set forth in writing, signed by us; nor will any such waiver of any breach or default constitute a waiver of any subsequent breach or default. The Agreement constitutes the complete and exclusive agreement between you and us with respect to the subject matter hereof, and supersedes all prior oral or written understandings, communications or agreements. Subject to subsection 18(f) above, if for any reason a court of competent jurisdiction finds any provision of the Agreement, or portion thereof, to be unenforceable, that provision of the Terms of Service will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of the



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20. SURVIVAL. Sections 1, 2, 4, 5, 9, and 11 through 21, as well as any other limitations on liability explicitly set forth herein and our proprietary rights in and to the Site, Apps, Content, Our Technology and the Services, will survive the expiration or termination of the Agreement for any reason.

21. NOTICE; VIOLATIONS. We may give notice to you by email, a posting on the Site, or other reasonable means. You must give notice to us in writing via email to info@Smartasset.com or as otherwise expressly provided. Please report any violations of the Agreement to info@smartasset.com.

22. SMARTASSET 360. As a convenience to our customers, we provide virtual space at the Site for a company called Identity IQ ("IDIQ") to sell directly to consumers one of its services called SmartAsset 360, which features credit reporting information from Experian, Equifax and Transunion, each, a national credit repository (the "Credit Services"). The Credit Services are provided directly to users by Identity IQ ("IDIQ"), (in association with CoreLogic Credco, LLC and CoreLogic Consumer Services, Inc.) and not by SmartAsset; SmartAsset 360 is provided by IDIQ



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event that we provide IDIQ with the functionality to sell Credit Services via any App, additional terms related to such Credit Services, including any legally required opt-ins, will be published at the applicable App and made available prior to any Credit Services being provided.

23. ACKNOWLEDGEMENT. SmartAsset and you acknowledge that this Agreement is concluded between SmartAsset and you only, and not with Apple, Inc., or Google, Inc. SmartAsset, not Apple or Google, is solely responsible for App and the content thereof. To the extent this Agreement provides for usage rules that are less restrictive than or otherwise is in conflict with the usage rules provided by the applicable App Store, the more restrictive term applies.

24. MAINTENANCE AND SUPPORT. SmartAsset is solely responsible for providing any maintenance and support services with respect to App, as specified in this Agreement (if any), or as required under applicable law. SmartAsset and you acknowledge that neither Google nor Apple have no obligation whatsoever to furnish any maintenance and support services with respect to App.

25. WARRANTY. SmartAsset is solely



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extent not effectively disclaimed. In the event of any failure of App to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for App to you; and to the maximum extent permitted by applicable law, neither Apple nor Google will have any other warranty obligation whatsoever with respect to App, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be SmartAsset's sole responsibility.

26. PRODUCT CLAIMS. SmartAsset and you acknowledge that SmartAsset, not Apple or Google, is responsible for addressing any claims of you or any third party relating to App or your possession and/or use of App, including, but not limited to: (a) product liability claims; (b) any claim that App fails to conform to any applicable legal or regulatory requirement; and (c) claims arising under consumer protection or similar legislation. This Agreement does not limit SmartAsset's liability to you beyond what is permitted by applicable law. You acknowledge and agree that the applicable Partner and not SmartAsset, is responsible for addressing any claims of you or any third party relating to any Partner Content, including, but not limited to: (a) product liability claims; (b)



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requirement; and (c) claims arising under consumer protection or similar legislation.

27. INTELLECTUAL PROPERTY RIGHTS.

SmartAsset and you each acknowledge that, in the event of any third party claim that App or your possession and use of App infringes that third party's intellectual property rights, SmartAsset, not Apple or Google, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim. You acknowledge that, in the event of any third party claim that any Partner Content or your possession and use of any Partner Content infringes that third party's intellectual property rights, privacy, rights, publicity rights, or is otherwise fraudulent, deceptive, or unfair, the applicable partner, and not SmartAsset, will be solely responsible for the investigation, defense, settlement and discharge of any such complaint or claim.

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This is not an offer to buy or sell any security or interest. All investing involves risk, including loss of principal. Working with an adviser may come with potential downsides such as payment of fees (which will reduce returns). There are no guarantees that working with an adviser will yield positive returns. The existence of a fiduciary duty does not prevent the rise of potential conflicts of interest.

Smartly made in NYC

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Fisher Investments Communications Terms and Conditions as of October, 31 2023

1. General Communications Terms

These Communications Terms and Conditions (the “Terms”) apply to all communications sent by Fisher Investments (“Fisher”), including phone calls, emails, and webpage interactions. Specific terms and conditions for text messages (SMS) are detailed further below.

These Terms contain a binding arbitration provision, which includes a waiver of your right to bring claims as class actions.

The Fisher Investments Privacy Policy also applies to the Terms and is available at <https://www.fisherinvestments.com/en-us/privacy>.

What communications am I agreeing to?

By providing Fisher a phone number, you agree to receive calls, to any phone number(s) you provide, for informational or promotional purposes from or on behalf of Fisher, even if your number is on do-not-call lists. You also certify that the number(s) you provide are correct and that you are authorized to enroll the designated number(s) to receive such calls. You acknowledge and agree that calls may be sent using an automatic telephone dialing system or other automated equipment. Consent to receive calls for promotional purposes is not required as a condition to receive our services.

You further agree that all calls with Fisher may be recorded for quality assurance and other purposes. To the extent you provide an email address to Fisher, you also agree to receive emails from Fisher.

What if I no longer want to receive promotional calls?

To stop all promotional calls relating to Fisher's private client group, you may ask to be added to Fisher's internal do not call list by calling 800-587-5512 and speaking with a Fisher representative, emailing inquiry@fi.com, or sending a written request to the attention of the Marketing Department, 6500 International Pkwy, Ste 2050, Plano, TX 75093. Please allow up to 30 days for your request to be processed.

To stop all promotional calls relating to Fisher's 401(k) Solutions group, you may ask to be added to Fisher's internal do not call list by calling 888-402-3243 and speaking with a Fisher representative, emailing 401kmarketing@fi.com, or sending a written request to the attention of 401(k) Solutions, 6500 International Pkwy, Ste 2050, Plano, TX 75093. Please allow up to 30 days for your request to be processed.

To stop all calls relating to Fisher's employment opportunities, you may ask to be added to Fisher's internal do not call list by calling 800-550-1071 and speaking with a Fisher representative, emailing ~taops@fi.com, or sending a written request to the attention of Talent Acquisition, 6500 International Pkwy, Ste 2050, Plano, TX 75093. Please allow up to 30 days for your request to be processed.

What if I no longer want to receive emails?

You can unsubscribe from Fisher marketing emails at any time by clicking the unsubscribe link at the bottom of any such email. Please allow 10 days for your request to be processed.

What if I want more info?

You may contact Fisher at 800-587-5512.

2. Text Message (SMS) Terms

Fisher is pleased to provide an SMS message program that allows clients, prospective clients, retirement plan participants, and employment candidates to receive text messages from Fisher, including messages with links to webpages with additional

information about Fisher and its services, text messages to confirm appointments, text messages for authentication purposes, and text messages relating to employment opportunities. These Terms also apply to text messages sent for other purposes.

Clients and prospective clients with Fisher's Private Client Group agree to these Text Message (SMS) Terms when they provide their phone number to Fisher. Clients and prospective clients with Fisher's 401(k) Solutions group, participants of retirement plans receiving the 401(k) Solutions services, as well as employment candidates, agree to these Text Message (SMS) Terms when they opt-in to receiving text messages.

What communications am I agreeing to?

When you agree to receive text messages from or on behalf of Fisher, you agree to receive text messages at any phone number you provide, even if your number is on do-not-call lists. You also certify that any number you provide is correct and that you are authorized to enroll the designated number to receive such text messages. You acknowledge and agree that text messages may be sent using an automatic telephone dialing system or other automated equipment. Consent to receive text messages for promotional purposes is not required as a condition to receive our services. The text messages may not be compatible with all phone models and mobile services, and standard message and data rates may apply. Fisher is not liable for transmission delays or message failures.

You may unsubscribe from receiving messages about a program at any time by replying STOP to any text message you receive from or on behalf of Fisher about that program.

What are the programs?

Fisher has a number of programs that use text messages. They include the below, for example, and Fisher may add more programs in the future:

- **Fisher Online Fulfillment Program**– The online advertisement will lead to online forms that will contain information on receiving the offer and future communications via text. Message frequency varies.
- **Fisher Retirement GPS Microsite Program**– The online advertisement will contain links to the Retirement GPS signup page, which will require authentication via text.

Message frequency varies.

- **Fisher Print/TV Programs** – The print or TV advertisement will contain instructions on how to use text to request the offer. Single message.
- **Retirement Plan Participant Programs** – A participant in a retirement plan will receive information relating to the retirement plan.
- **Fisher Talent Acquisition Programs** – A candidate for employment will receive information relating to employment opportunities. Message frequency varies.

Are text messages from Fisher free?

Your carrier's message and data rates may apply.

Who are the participating carriers?

AT&T, T-Mobile®, Verizon Wireless, Sprint, Boost, U.S. Cellular, Google Voice, Cellular One, MetroPCS, Cellcom, Cellular South, Carolina West Wireless, Interop, ClearSky, nTelos, and Virgin Mobile.

3. Disputes and Arbitration

Except as expressly provided below, you agree that to the fullest extent permitted by applicable law any dispute arising out of or relating in any way to these Terms, communications between you and Fisher, your consent to receive communications, and your relationship with Fisher Investments (as well as affiliates and vendors acting on its behalf, all of which are intended beneficiaries of this agreement) prior to executing a client agreement or starting employment will be determined by arbitration, including the scope and applicability of the agreement to arbitrate contained in this section. After executing a client agreement, that agreement's terms (including its arbitration terms) shall control and likewise require arbitration of disputes with Fisher to the maximum extent permitted by law. After starting employment, the terms of your employment shall control.

Any arbitration will be before the Judicial Arbitration and Mediation Service ("JAMS") office located in San Francisco, California; San Diego, California; Chicago, Illinois; New

York, New York; Washington, D.C.; or Atlanta, Georgia, whichever location is closest to your last address of record on file with Fisher (or, in the event that you have not provided an address to Fisher, the location closest to your primary address at the time of the dispute) before one arbitrator who will be a retired judicial officer. Because the Terms memorialize a transaction in interstate commerce, the Federal Arbitration Act governs the interpretation and enforcement of these arbitration provisions.

Any claim for which applicable law (as determined by a final, binding court decision) or the applicable arbitration rules do not permit arbitration and require adjudication in a specific civil court will not be subject to arbitration but will instead be adjudicated in the appropriate court with jurisdiction over the claim. Any claim that is arbitrable, however, shall be severed from proceedings in court and separately arbitrated to the maximum extent permitted by law.

You also agree that any claim you assert will not be joined, for any purpose, with the claim or claims of any other person or entity, and the arbitrator shall have no jurisdiction to certify any class or proceed with any class action. The arbitration will be administered by JAMS pursuant to the Comprehensive Arbitration Rules and Procedures, and the proceedings and award shall be kept in strict confidence by both you and Fisher. The laws of the State of Delaware, including but not limited to any applicable Delaware statutes of limitation and Delaware common law construing those statutes, will govern the legal rights of the parties, except that the Federal Arbitration Act (FAA) applies to all issues regarding the enforceability and scope of the requirement to arbitrate, and any conflicts between the FAA and other law will be resolved in favor of the FAA and in favor of arbitration. The arbitration will be final and binding, and judgment on the award may be entered in any court having jurisdiction. **YOU UNDERSTAND THAT BY AGREEING TO ARBITRATION, YOU ARE WAIVING ALL RIGHTS TO SEEK REMEDIES IN COURT, INCLUDING BUT NOT LIMITED TO ANY RIGHT TO PROSECUTE ANY CLASS ACTION OR OTHER REPRESENTATIVE ACTION. YOU ALSO UNDERSTAND AND AGREE THAT TO THE FULLEST EXTENT PERMITTED BY LAW, YOU AND FISHER HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO HAVE A TRIAL IN FRONT OF A JURY, EVEN FOR DISPUTES NOT SUBJECT TO ARBITRATION.**

This arbitration provision will remain in force even if you opt-out of further communications with Fisher. If any provision of this arbitration agreement is found

unenforceable, the unenforceable provision shall be severed, and the remaining arbitration terms shall be enforced, except that if the class action waiver above is found unenforceable, the entire arbitration agreement is void, other than the jury waiver provision.

You can decline this arbitration agreement by timely writing via certified mail or a nationally recognized overnight delivery service to the General Counsel, 5525 NW Fisher Creek Drive, Camas, WA 98607 and providing the following information: (1) name; (2) address; (3) phone number; and (4) a clear statement that you wish to opt out of this arbitration agreement. To be effective, the opt-out notice must be mailed no later than 30 days after the date you become bound by the arbitration agreement. Please note that you will continue to be bound by any older arbitration provision that you did not opt out of and any other arbitration provision that governs the claims at issue.

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Investing in securities involves a risk of loss. Past performance is never a guarantee of future returns. Investing in foreign stock markets involves additional risks, such as the risk of currency fluctuations.

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6500 International Parkway, Plano, Texas 75093



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The Top Financial Advisors in the U.S.

by [Chris Thompson](#) | Updated September 27, 2024

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SmartAsset put together this list of the top financial advisors in America, throughout which you'll find a description of each of the top 10 financial advisor firms in the country. This includes information about each firm's services, fees, advisory certifications, office locations, minimum investment amounts and more.

[Finding a financial advisor](#) doesn’t have to be hard. [SmartAsset’s free tool](#) matches you with up to three vetted financial advisors who serve your area, and you can have a free introductory call with your advisor matches to decide which one you feel is right for you. If you’re ready to find an advisor who can help you achieve your financial goals, [get started now](#).

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Get Started

Free initial consultations. All advisors are fiduciaries.

Rank	Financial Advisor	Assets Managed
1	CAPTRUST	\$852,173,054,617

000357



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2

Fisher Investments

\$276,890,013,440

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Cerity Partners, LLC

\$80,573,112,032

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5

GW&K Investment Management, LLC

\$50,695,320,951

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Investment
Management,
LLC logo

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6

Hall Capital Partners, LLC

\$50,302,951,631

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9	Mercer Global Advisors, Inc.	\$45,350,198,548	
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10	CWM, LLC	\$26,774,389,503	
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To find the top financial advisors in the U.S., we first identified all firms registered with the SEC in the country. Next, we filtered out firms that don't offer financial planning services, those that don't serve primarily individual clients and those that have disclosures on their record. The qualifying firms were then ranked according to the following criteria:

AUM
Firms with more total assets under management are ranked higher.

Individual Client Count
Firms who serve more individual clients (as opposed to institutional clients) are ranked higher.



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Age of Firm

Firms that have been in business longer are ranked higher.



Fee Structure

Firms with a fee-only (as opposed to fee-based) compensation structure are ranked higher.

All information is obtained through public records and is updated once per year following the firms' filing of their amendment to Form ADV at the end of March. This list may include firms that have a business relationship with SmartAsset, in which SmartAsset is compensated for lead referrals. Such relationships have no impact on our rankings, and firms are included and ranked based strictly on the above criteria. SmartAsset is not a client of the aforementioned firms, and did not receive compensation for including any of the firms on the aforementioned list.

CAPTRUST

CAPTRUST

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Assets Under Management

\$852,173,054,617

Number of Advisors

718

Time in Business

Founded in 2003

Fee Structure

Fee-based

Office Location

4208 Six Forks Road
Suite 1700
Raleigh, NC 27609

000360



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CAPTRUST has far and away the highest AUM of any firm on our list. This fee-based firm is headquartered in Raleigh, North Carolina and serves both non-high-net-worth and high-net-worth, as well as banks, investment companies, retirement plans, charitable organizations, government entities, insurance companies and corporations.

In general, the firm does not require an overarching minimum account size. However, some programs may have their own minimums, though the firm can also waive these fees based on discretion. Services available through the firm's individual-centric programs include wealth planning, investment management, retirement planning and advice, risk management, tax review, estate planning, charitable gift planning, cash flow planning and other services.

Certain on-staff advisors at CAPTRUST can earn commissions from insurance sales. Despite the potential conflict of interest this creates, the firm is bound by fiduciary duty to act in clients' best interests.

CAPTRUST Background

CAPTRUST was established in 2003. Today, the firm's leadership team is under the control of co-founder and CEO James Fielding Miller. The firm's shares are owned by a holding company called The CapFinancial Group, LLC.

The advisory team at CAPTRUST holds multiple certifications, including certified public accountants (CPAs), accredited investment fiduciaries (AIFs), chartered financial analysts (CFAs), certified fund specialists (CFSs), certified investment management analysts (CIMAs), Certified Financial Planners™ (CFPs®) and chartered financial consultants (ChFCs), among other designations.

CAPTRUST has a number of branches nationwide.

CAPTRUST Investing Strategy

CAPTRUST utilizes an investment philosophy that features the customization of a portfolio for each individual client. While clients are allowed to set some restrictions to how their money is managed, portfolios will generally be based on their personal risk tolerance, financial goals, time horizon,



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portfolio entirely.

The firm may utilize long- or short-term purchases within your portfolio, depending on your needs and goals. CAPTRUST tends to invest in stocks, mutual funds, fixed-income securities and options. Additionally, the firm offers a [wrap fee program](#), which bundles all transactional and advisory fees into a single rate.

Fisher Investments

Fisher Investments

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Assets Under Management

\$276,890,013,440

Number of Advisors

1,613

Time in Business

Founded in 1979

Fee Structure

Fee-only

Office Location

6500 International Parkway
Suite 2050
Plano, TX 75093

Website

<https://www.fisherinvestments...>

Fisher Investments is a [fee-only](#) financial advisor firm based in [Texas](#) that has hundreds of thousands of non-high-net-worth and high-net-worth clients. The firm also works with investment



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accounts.

If you're an individual interested in working with Fisher, you'll generally need at least \$500,000 in investable assets, though this minimum is waivable. Clients who use the firm's WealthBuilder program are only required to have \$200,000 in investable assets. The firm may accept clients with less than those amounts, at their discretion.

Fisher offers a vast range of services to its individual clients, including working with clients to create and manage investment portfolios. The firm also has an extensive set of retirement planning services, as well as other financial planning services like goal planning, income tax planning and more. Fisher also has an [annuity](#) conversion service, which is a fairly unique offering among advisor firms.

Fisher Investments Background

Fisher Investments was founded in 1979 by Ken Fisher. Fisher still principally owns the firm. He also had a hand in creating the theory behind the "Price-to-Sales Ratio," and he was a Forbes investment columnist from 1984 until 2016. Fisher has also been ranked on Forbes' list of the Richest Americans, as well as its list of Global Billionaires.

The firm operates many branches in other U.S. states outside of its headquarters in Plano, as well as in other countries globally.

Fisher Investments Investing Strategy

According to its SEC-filed Form ADV, Fisher Investments principal goal is "maximizing returns relative to risk compared to particular benchmarks."

Depending on your long- or short-term goals, [risk tolerance](#) and time horizon, the firm will recommend a distinct set of investments. For example, riskier investors will have portfolios centered around common stock and cash equivalents. Risk-averse investors will have their assets invested more in fixed-income securities, such as bonds and cash. For those in between those two extremes, Fisher recommends a blended portfolio that features some proportionate allocation of stocks, fixed-income and cash.



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Cerity Partners, LLC

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Assets Under Management

\$80,573,112,032

Number of Advisors

704

Time in Business

Founded in 2009

Fee Structure

Fee-based

Office Location

99 Park Avenue

16th Floor

New York, NY 10016

Website

<https://ceritypartners.com/>

Cerity Partners is a fee-based firm that is based in New York. It works with both non-high-net-worth and [high-net-worth](#) individuals. Institutional clients include pooled investment vehicles, pension and profit-sharing plans, charitable organizations, state or municipal governments and corporations.

As a fee-based firm, Cerity Partners can receive compensation for the sale of certain insurance and annuity products through an affiliated entity. This creates a potential conflict of interest, though the firm still holds a fiduciary duty.

Cerity Partners Background

Cerity Partners has been in business since 2009. According to its brochure, the firm is controlled by Cerity Partners Equity Holding LLC. This LLC, in turn, is controlled by Cerity Partners EOE LLC, which

000364



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Cerity Partners provides a variety of services, including:

- Financial planning
- Wealth planning
- Retirement planning
- Portfolio management
- Tax planning
- Estate planning

Cerity Partners Investment Strategy

Cerity Partners uses [asset allocation](#) to reduce risk for each client’s investment portfolio. Asset classes include cash and cash equivalents, global [fixed-income](#), global equity, real return, hedge funds and [private equity](#).

According to the firm's Form ADV, it takes into account a number of investor characteristics when building portfolios. In fact, it states the following: "Cerity Partners customizes all services to the individual needs of its clients by determining each client’s specific goals, objectives, risk tolerance, time horizon, investment restrictions and other factors that shape the appropriate services."

Corient

Corient

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Assets Under Management

\$118,191,936,095

Number of Advisors

476



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Fee Structure

Fee-only

Office Location

2 South Biscayne Blvd.
Suite 3200
Miami, FL 33131

Website

<https://corient.com/>

Corient is a Miami-based financial advisor firm that caters to wealthy clients. In fact, some of its investment strategies call for a minimum investment of at least \$100 million. However, the firm doesn't have a strict, overarching minimum. As a result, its client base consists of individuals both with and without a high net worth. Its institutional client base also includes retirement plans, charitable organizations, businesses, trusts, insurance companies and more.

As a fee-only firm, Corient's advisors do not receive compensation for the sale of products like insurance or specific securities. On the flip side, a [fee-based firm](#) would employ advisors that can earn this type of compensation.

Corient Background

Corient was founded in just 2022. The firm has branch locations across the U.S., including in over 30 cities such as Chicago, Atlanta, Denver, Phoenix, Dallas and more. Its under the ownership of a handful of holding companies, and no one person owns more than 25% of its shares.

Corient Investing Strategy

Generally speaking, Corient prefers to invest client assets using a discretionary relationship. This means clients will sign over control of their investments to the firm, ensuring clients won't need to be involved in minute investing decisions. However, advisors will still keep in contact with clients as developments occur. The firm does this typically through its [financial planning services](#), via which it builds "an appropriate strategy suitable to your stated objectives," according to its SEC-filed Form ADV.



Find an Advisor

GW&K Investment
Management, LLC

Find an Advisor

Assets Under Management

\$50,695,320,951

Number of Advisors

54

Time in Business

Founded in 1974

Fee Structure

Fee-only

Office Location

222 Berkeley Street

15th Floor

Boston, MA 02116

Website

<http://www.gwkinvest.com/>

In business for a half-century, GW&K Investment Management is a fee-only firm headquartered in Boston. The firm offers investment advisory services to high-net-worth individuals, banks, investment companies, pooled investment vehicles, retirement plans, government entities and corporations.

GW&K specializes in active [equity](#) and fixed-income investment solutions, and it incorporates equity, municipal bond and taxable bond strategies in its investment process. The firm additionally receives [performance-based fees](#) for its investment management. The fees are based on a percentage of the net profits being managed. The firm's standard fee schedules are negotiable, and its fees are usually billed quarterly in advance or in arrears.



Find an Advisor

GW&K was founded in 1974 and it is a partner of Affiliated Managers Group, Inc., a publicly-traded global asset management company.

In addition to its municipal bond strategies, the firm employs small cap and small/mid cap and core fixed-income investment approaches. GW&K manages [wrap accounts](#), and it also participates in certain sub-advisory agreements.

GW&K offers a variety of services, including [portfolio management](#), investment strategies, equity, taxable [bonds](#) and municipal bonds.

GW&K Investment Management Investing Strategy

GW&K says that it believes in rigorous research, disciplined management and a client-driven culture. It seeks to find unexpected investment opportunities and provides personalized management services.

The firm describes its management approach as one that places clients’ interests first and strives to meet investment objectives in the midst of market fluctuations.

Hall Capital Partners

Hall Capital Partners, LLC

Find an Advisor

Assets Under Management

\$50,302,951,631

Number of Advisors

29

Time in Business

Founded in 1994

Fee Structure

Fee-only



Find an Advisor

ONE Market Plaza
Suite 650
San Francisco, CA 94111

Website

<http://www.hallcapital.com/>

Hall Capital Partners is a large fee-only investment advisor firm that's based in **San Francisco**. While the firm technically does not have a minimum asset requirement for new clients, it does not work with any individuals below the high-net-worth threshold. Institutional clients of the firm include pooled investment vehicles, charitable organizations, retirement plans and other investment advisors.

The main service that Hall Capital Partners provides is investment management of global, multi-asset class portfolios. To help satisfy the needs of its affluent individual and family clients though, the firm also offers generational wealth planning, financial education for children and grandchildren, tax optimization, philanthropic planning and budgeting.

Hall Capital Partners Background

Founder and co-chair Kathryn A. Hall originally created Hall Capital Partners in 1994 as a small asset management firm. Today, the firm has grown substantially, and it now has a second office on Third Avenue in New York City. The firm is employee-owned and independent.

The staff of advisors at this firm includes a few chartered financial analysts (CFAs).

Hall Capital Partners Investing Strategy

As we state above, Hall Capital Partners manages its clients' custom portfolios through global, multi-asset class **diversification**. The heart of the firm's investment operation is its in-house research team. This group conducts due diligence on a number of underlying fund managers to determine which are worth investing in. Then, they will review the performance of the market and choose fund managers that align with their market findings.

In total, the firm has a spectrum of investment strategies that focus on different asset classes and market sectors. These include absolute return/credit strategies, public equity strategies, private



Find an Advisor

clients' assets.

NFP Retirement

NFP Retirement, Inc.

Find an Advisor

Assets Under Management

\$96,454,495,427

Number of Advisors

131

Time in Business

Founded in 1980

Fee Structure

Fee-based

Office Location

120 Vantis Drive
Suite 400
Aliso Viejo, CA 92656

Website

<https://www.nfp.com/wealth-an...>

NFP Retirement's advisory services are heavily focused around helping clients with retirement planning and the management of their retirement assets. In terms of [assets under management](#), the firm's client base is dominated by retirement plan sponsors, though it technically works with a majority of individuals with and without a high net worth. The firm's investment minimum is \$25,000, though this is waivable at the firm's discretion.

Certain on-staff advisors at NFP can sell insurance products and securities on a commission basis.



Find an Advisor

This isn't the only SmartAsset top financial advisor list NFP Retirement holds a spot on. In fact, it is also featured on our [Aliso Viejo](#) and [California](#) lists.

NFP Retirement Background

Founded in 1980, NFP Retirement is under the ownership of its parent entity, NFP Corp. The firm's leadership team is headed by chairman and CEO Doug Hammond and president/chief operating officer (COO) Mike Goldman.

NFP Retirement also has offices in New York City; Austin, Texas; Palm Beach Gardens, Florida; Toronto, Canada; Birmingham, United Kingdom; Dublin, Ireland; San Juan; Puerto Rico and many more areas.

NFP Retirement Investing Strategy

NFP Retirement's individual investing and financial planning services are based on the needs each individual client has. For instance, your advisor will discuss with you your risk tolerance, income needs and financial goals before making any decisions on your behalf.

Generally speaking, NFP's advisors tend to invest in some combination of [mutual funds and ETFs](#). However, the firm also sometimes utilizes a Schwab-created automated asset allocation service. This uses model portfolios that are chosen based on the client's goals.

Summit Rock Advisors

Summit Rock Advisors, LP

Find an Advisor

Assets Under Management

\$21,482,491,277

Number of Advisors

42

000371



Find an Advisor

Fee Structure

Fee-only

Office Location

9 West 57th Street

18th Floor

New York, NY 10019

Website

<http://www.summit-rock.com/>

New York City-based Summit Rock Advisors is the quintessential exclusive [family office](#), as the firm works with less than 50 high-net-worth individual clients. This becomes even more clear when you look at its [Form ADV](#) brochure, which states that the average client size is approximately \$435 million. In short, only those with at least \$100 million in investable assets have a chance at becoming a client of Summit Rock Advisors.

This is a fee-only firm, which means that none of the advisors at Summit Rock, nor the firm itself, earn compensation from any source other than client-paid fees. A fee-based firm, on the other hand, may have advisors who sell insurance products or securities on a commission basis.

Summit Rock Advisors also holds the top spots on SmartAsset's lists of the [top financial advisors in New York City](#) and the [top financial advisors in New York State](#).

Summit Rock Advisors Background

Summit Rock Advisors' headquarters is in Manhattan. The firm is independently owned by its co-founders: CEO David Dechman and chief investment strategist Nancy Donohue. The firm has been in business since 2007.

Clients of Summit Rock will receive intensely close attention on their investment portfolios and long-term financial plans. The firm works with clients in a holistic manner, attempting to account for all of their financial specifics and goals when making decisions.

Summit Rock Advisors Investing Strategy

000372



Find an Advisor

what you're looking for in the short and long term. The firm often looks to incorporate multiple investment managers within clients' portfolios. According to its Form ADV, it chooses managers that it "believes are the most talented across a wide universe of choices, encompassing various sectors of the market, geographies, and liquidity spectrums."

As you can tell from the above, diversification is incredibly important to Summit Rock's overarching investment philosophy. Strategic asset allocation planning is also a focus point, as the firm will use your [risk tolerance](#) and time horizon to select investment allocations in a manner that aligns with those factors.

Mercer Global Advisors

Mercer Global Advisors,
Inc.

[Find an Advisor](#)



Find an Advisor

Number of Advisors

727

Time in Business

Founded in 1985

Fee Structure

Fee-based

Office Location

1200 17th St.

Suite 500

Denver, CO 80202

Website

<https://www.merceradvisors.co...>

Mercer Global Advisors is a fee-based firm headquartered in Denver, but serves clients nationwide. It works with both non-high-net-worth and high-net-worth individuals, as well as retirement plans, charities and corporations. The firm's minimum annual fee requirements can range from \$800 to \$150,000, depending on the type of service and account.

Some of Mercer's on-staff advisors have the opportunity to sell insurance products on a commission basis. Although this represents a potential conflict of interest, the firm's fiduciary duty means it must act in clients' best interests.

You can also find Mercer Global Advisors on two other SmartAsset lists: the [top financial advisors in Denver](#) and the [top financial advisors in Colorado](#).

Mercer Global Advisors Background

Mercer Global Advisors has been in business for nearly 40 years, as it was founded in 1985. The firm's team of advisors holds multiple certifications, including Certified Financial Planners™ (CFPs®), chartered financial analysts (CFAs) and [certified public accountants \(CPAs\)](#), among other designations.



Find an Advisor

range of topics.

Mercer Global Advisors Investing Strategy

Mercer Global Advisors focuses on investing for the long term. In concert with this approach, the firm believes ample planning is necessary to achieve success over time. Advisors therefore stress this planning specifically around clients' personal financial situations and goals.

Unsurprisingly, Mercer works to diversify clients' assets throughout various securities and market sectors. This is done to protect portfolios from heavily earning returns from very specific areas of the market, which can create higher-than-intended volatility. As your portfolio ages, the firm may decide to rebalance your investments back to their intended allocations.

CWM

CWM, LLC

Find an Advisor

Assets Under Management

\$26,774,389,503

Number of Advisors

354

Time in Business

Founded in 2010

Fee Structure

Fee-based

Office Location

14600 Branch Street
Omaha, NE 68154

Website

000375



Find an Advisor

CWM, otherwise known as [Carson Wealth](#), was founded in 2010. The firm is an affiliate of Carson Group Holdings. CWM provides a range of wealth management services as well as tax preparation offerings through Carson Wealth Tax Planning. The firm has accumulated a significant number of clients and assets under management (AUM) in its decade and a half in business.

Most of this firm's clients are non-high-net-worth individuals, though it also works with thousands of high-net-worth individuals. However, it extends its services to pension and profit-sharing plans and businesses. Investment minimums vary depending on what kind of investment strategy you enroll in.

This is a fee-based firm, which means some on-staff advisors can earn commissions when they sell certain insurance products or securities. While this creates a potential conflict of interest, the firm is bound by [fiduciary duty](#) to act in clients' best interests.

CWM Background

CWM, LLC was formed in 2010 by Ron Carson. The firm is not independently owned, as it is under the ownership of a holding company called Carson Group Holdings. However, Caron Group Holdings is owned by Ron Carson.

CWM Investment Strategy

CWM utilizes various model portfolios and separately managed accounts based on certain strategies. These include long-term purchases, short-term purchases, frequent trading and more. Therefore, the firm can [build a portfolio](#) around your goals and needs rather than pairing you with predetermined investment strategies.

Financial Advisors Near You

Looking for a financial advisor in your city? SmartAsset has also ranked the top advisors in more than 400 cities and states, including:

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- > [The Top Financial Advisors in Chicago, IL](#)



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- > [The Top Financial Advisors in Houston, TX](#)
- > [The Top Financial Advisors by City and State](#)

Or check out our in-depth reviews of some of the financial advisors on this list:

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How Long \$1mm Lasts in Retirement

Show...

SmartAsset's interactive map highlights places where \$1 million will last the longest in retirement. Zoom between states and the national map to see the top spots in each region. Also, scroll over any city to learn about the cost of living in retirement for that location.



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LEAST		MOST				
Rank	City	Housing Expenses	Food Expenses	Healthcare Expenses	Utilities Expenses	Transportation Expenses

Methodology

We analyzed data on average expenditures for seniors, cost of living and investment returns to determine how many years of retirement a \$1 million nest egg would cover in cities across America.

First, we looked at data from the Bureau of Labor Statistics (BLS) on the average annual expenditures of seniors. We then applied cost of living data from the Council for Community and Economic Research to adjust those national average spending levels based on the costs of each expense category (housing, food, healthcare, utilities, transportation and other) in each city. Using this data, SmartAsset calculated the average cost of living for retirees in the largest U.S. cities.

We assumed the \$1 million would grow at a real return (interest minus inflation) of 2%. Then, we divided \$1 million by the sum of each of those annual numbers to determine how long \$1 million



Find an Advisor

Sources: [Bureau of Labor Statistics \(BLS\)](#), [Council for Community and Economic Research](#)

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Smartly made in NYC

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The Trial of Ken Fisher for Crimes Against Annuities

by David Macchia, 2/9/22

Advisor Perspectives *welcomes guest contributions.*

The views presented here do not necessarily represent those of Advisor Perspectives.

Mr. Fisher, please accept my thanks for your appearance today in my imagination for the purposes of conducting this trial. And congratulations on building a large and successful RIA firm. Through your firm's ubiquitous, multimodal advertising, and your frequent appearances on television, you've become a well-known public figure. This is truly noteworthy.



I have charged you with crimes against annuities. I will begin this proceeding by expressing my gratitude for your anti-annuity advertising campaign including its famous tagline, *"I hate annuities and you should too!"*

Mr. Fisher, I am going to try to make you less of an annuity hater. I certainly do not want to see you risk eternal damnation in light of your passionate declaration, *"I would die and go to hell before I would sell an annuity."* That is a stiffer penalty than any annuity surrender charge. But I'll take you at your word that you'd prefer to throw away your own life rather than ever see one of your clients acquire an annuity.

For the purposes of this article, Mr. Fisher, I am putting you on trial for your advertising which I judge to be truly disgusting and not aligned with the financial well-being of your clients. I charge you with the following offenses:



1. Misleading the public in a manner that causes incomplete or inaccurate understanding of annuities;
2. Issuing a blanket condemnation that misrepresents the features and benefits of many annuities; and
3. Depriving at least some of your clients the continuing income they will need to meet their essential expenses in retirement.

Mr. Fisher, you do a great disservice to consumers when you stigmatize a trillion-dollar industry, trivialize the social and financial benefits of an inordinately valuable retirement vehicle, assert that “most” annuities have “nosebleed-level fees” and “tremendous tax problems,” and “are hard to get out of once you’re in them,” and, finally, that annuities “are extremely confusing with a contract that’s about that thick.” When you say “thick” to describe the heft of annuity contracts, I assume that you mean that annuity contracts are roughly three-inches thick. As you hold your hand up in your video, three inches looks like the distance between your thumb and forefinger. Based upon my intimate knowledge of annuity contracts, you have exaggerated by approximately 93% the “annuity thickness issue.” This is no small infraction, especially since you apply this and all your other criticisms to “most” annuities.

Merriam-Webster dictionary defines “most” as “to the greatest or highest degree.” Your advertising leaves no room for consumers to discern the implied tiny segment of the annuity product population that isn’t deserving of your condemnation.

Mr. Fisher, now that I’ve charged you with these offenses, it’s time to hear the verdict. I ask you to remain in the courtroom until the verdict is rendered and today’s proceeding is completed in its entirety. After the verdict, I will demonstrate why it is in your self-interest to shift your position on annuities to one of acceptance, even if that acceptance is under a limited set of conditions.



Mr. Fisher, I find you innocent of all charges

To be clear, I believe your advertising is appalling and very likely doesn't meet fiduciary standards, but rather than lay blame at your feet, I am placing most of the onus on the annuity industry that by implication you so unfairly castigate. I assign blame to the annuity industry because it is at least indirectly responsible for your annuity perspective.

Allow me to explain.

For decades, Mr. Fisher, I've been frustrated by the regrettable reality that the annuity industry has never successfully communicated the value of its own products. It is a failing of gigantic proportions. It is also a failing that has personally benefited me by providing the opportunity for a successful 20-year career in marketing consulting.

I have been blessed with a gift. I can conjure the words and assemble them in an order that serves to de-complicate complex products and concepts. Until 2007, I helped several large insurers successfully launch their new annuity products.

Mr. Fisher, to ensure that annuity purchasers acquired an accurate understanding of annuity products' provisions and benefits, I led a team that created multimedia educational presentations that were introduced at launch with the annuities. Your statement that annuities, "don't do what the customer thinks they do" is unambiguously false, based upon my professional experience. The annuities I supported with needs-based communications tools were some of the most popular in the annuity industry. Buyers understood the annuities in question. Your assertion that they didn't contradicts my work. But I forgive you. I forgive you because my agenda today is to accomplish a greater good.

I am not going to attempt to change how you feel about the "product." Rather, I'm going to try to change how you think about the "client." If I succeed, your view of



annuities will necessarily change. My object is to be so persuasive that you will embrace annuities to such an extent that you will be comfortable in making the statement, “I would rather die and go to hell than fail to provide an annuity to a constrained investor.” Further, I hope to persuade you that failing to provide an annuity to a constrained investor is often a breach of your fiduciary duty.

But first, I acknowledge that there have been times when criticisms of annuities have been justified. Some annuity contracts incorporated complex provisions and had withdrawal penalties that went on for prolonged periods of time, or imposed strict limitations on liquidity, or had a very high-cost structure, or even incorporated all of these inferior dimensions. I have referred to this as the “bad apple” type of annuity. Fortunately, they have been mostly thrust out of existence. The truth is it’s easy to find annuities with consumer-friendly features.

In past years, several high-profile regulatory actions, as well as class-action litigation, served to damage the reputation of the annuity industry. Those developments related to market conduct issues, primarily the solicitation of seniors. But those problems involved only a tiny percentage of insurance companies and an even smaller share of the insurance-agent population. Happily, the insurance company offenders cleaned-up their poor marketing practices. Do annuities with relatively high commissions still exist? Not to the extent as in the past, but some do. What you will find among the many positive changes in the annuity industry is the availability of a spectrum of low-load or no-load annuities.

Mr. Fisher, certain investment advisors have been the most vociferous critics of annuities. Their views are often compromised by a competing financial agenda. From many years of personal experience in annuity wholesale distribution, I know that some investment advisors view annuities as competition for an investor’s savings. Mr. Fisher, I’ve personally met more than a few investment advisors who steadfastly declined to embrace annuities for all clients and in all circumstances out of their

refusal to commit “annuicide.” Those advisors were not putting their clients’ interests’ first. Their behavior was unconscionable and a breach of fiduciary duty.

In 2007, I left the annuity business to devote my efforts exclusively to the business of retirement income planning. Over the past 15 years, I’ve helped start a not-for-profit think tank (The Retirement Income Industry Association, later acquired by Investments & Wealth Institute), served on its board of directors for eight years, earned the Retirement Management Advisor professional designation, worked closely with many of the leading academics whose research focuses on retirement income, implemented enterprise retirement income solutions at banks and broker-dealers, developed commercially successful retirement income offerings, spoken at dozens of retirement income conferences, written a consumer finance book (*Lucky Retiree*) on retirement income planning, and helped thousands of financial advisors become better income planners.

But for all that I have learned about retirement income, in terms of importance, there’s one piece of knowledge that stands above everything else: Clients with the same amount of investment assets may need dramatically different income-generation strategies.

Properly serving the constrained investor retiree

Mr. Fisher, I ask you to consider that there are three categories of retiree clients:

- Underfunded clients;
- Overfunded clients; and
- Constrained clients.

Underfunded clients typically have small investment account balances. For retirement income they will rely primarily on Social Security. Underfunded clients do not fit the investor profile your firm targets.



On the opposite end of the spectrum are overfunded clients. I imagine that a segment of your clients are overfunded. Overfunded means that client's investment assets are more than sufficient to generate their targeted annual retirement income. Overfunded clients may have little or no reliance upon their investments to produce income.

Mr. Fisher, I'm going to assume that a large segment of your clients – perhaps a majority of them – are constrained investors. This is particularly important.

Let me define “constrained investor.” These are the clients who reach retirement with savings that isn't high compared to the level of income they wish it to generate. This does not mean that constrained investors have low balances. On the contrary, they may have a great deal of investable assets. I've seen cases of constrained investors with \$10 million or more.

The factors that categorize a retiree investor as “constrained” are twofold:

1. Despite other lifetime income sources including Social Security, there is absolute reliance upon investments to produce income at a level sufficient to meet their minimum lifestyle objectives, and,
2. When dividing the targeted amount of annual income by the total amount of investment assets, the result is greater than 3%. This percentage result I call the investor's “income-to-assets ratio.”

For example, Mr. Fisher, imagine a 65-year-old female retiree, we'll call Susan. Susan is a widow who has accumulated investment assets totaling \$1.5 million. Susan needs to generate an annual income of \$7,500 per month, or, \$90,000 annually. Is Susan a constrained investor? To answer the question, divide her targeted annual income by the amount of her investment assets to calculate her income-to-assets ratio.

$\$90,000 \div \$1,500,000 = 6\%$. (6% is > 3.0%). With an income-to-assets ratio of 6%, Susan is indeed a constrained investor.



Mr. Fisher, considering that Susan's \$1,500,000 is a full 3X your minimum client investment of \$500,000, I imagine that you would consider Susan to be a very desirable client to acquire. But how would you deploy Susan's money to create her needed monthly income? There's little mention of the subject of retirement income at your website.

Now, while I can't be certain, I think I know. You may recommend a withdrawal strategy. In a moment, I will share an example that will help you understand why recommending a withdrawal strategy is typically a reckless suggestion for a constrained investor client like Susan.

Once they've begun income distribution, constrained investors have little or no margin for error. They understand this because they recognize the reliance they have placed upon their savings. Any number of risk factors can derail the constrained investor's financial security in retirement. Therefore risk mitigation must be the advisors' first and foremost responsibility when working with constrained investor retirees.

Emotionally-based decision making is a huge risk for constrained investors. Gripped by fear in the face of plunging markets or periods volatility, constrained investors often sell out. The result of course, assuming they cannot fight against the urge to sell, is financially tragic: a permanent reduction of their retirement income. In the worst cases, a complete loss of their retirement income, eventually leading to portfolio ruin.

Mr. Fisher, keep this in mind: *an individual's standard-of-living in retirement is a function of income, not of wealth*. I wish I had originated that sentence. I heard it emerge from the mouth of Nobel Laureate, Robert C. Merton. You see, Mr. Fisher, in retirement it's all about income. In part, this is because the income-producing capacity of money changes all the time.

In 2000, Mr. Fisher, a client with \$500,000, let's call him Paul, could have purchased CDs paying 6.91%, generating a gross monthly income of \$2,878.



By 2014, interest rates had plunged to 0.28%, driving Paul's monthly income all the way down to \$116.

Today, the interest rate is barely visible. At 0.09%, Paul's monthly income is now a tiny \$38. Here's the point, Mr. Fisher. Throughout this period, Paul's wealth never changed. But its capacity to generate income declined to virtually nothing.

I bet that you are going to tell me that Paul did not remain invested in CDs. And that he moved into equities in pursuit of better returns. And that it is has worked out for Paul. I agree with you. It has. But as I've written, we have lived through more than a decade when asset prices have been propped up by growth in credit. The Fed is signaling its concerns over inflation, ending its program of quantitative easing (QE), and perhaps reversing its money expansion program in favor of a shift to quantitative tightening. That was before Jeremy Grantham predicted \$35 trillion in market losses as a result of an upcoming busting of the "superbubble." I have been deeply worried about the financial carnage that will surely befall constrained investors who are nakedly exposed to timing risk. You should be equally concerned.

I've written several articles about the peril timing risk poses for retirees who are relying upon systematic withdrawal strategies to generate their retirement income. It's an extreme threat that can permanently impair an investor's capacity to generate income.

Why you should protect constrained investors against timing risk

Mr. Fisher, imagine 10 financially identical people who have reached retirement age. Each has the same amount of savings (\$500,000) as well as the exact same investment portfolio. Each will enter retirement and withdraw the same amount from their portfolios. What's different? Only this: the timing of their retirements.

By separating each of their retirement dates by one calendar quarter, beginning on January 1, we see how destructive timing risk can be. Right away, you see why an



investment advisor can't ignore timing risk. The individual who retired first on January 1 ends up with about \$1,000,000 more than the individual who retired second, on April 1. That's right! Based upon only a 90-day difference in the dates of retirement, one unlucky soul loses out on \$1,000,000 in income.

Among the 10 retirees, the disparity in results is sharp. One runs out of money entirely,

while the luckiest among them received income for 30 years, plus an ending balance of \$2,600,000. Check-out how dramatic the financial results are for the other individuals. These images are from Wealth2k's proprietary Women and Income Educational Seminar:

The portfolio has an asset allocation of 42.5% large-company stocks, 17.5% small-company stocks, and 40% intermediate-term government bonds and is rebalanced annually. The initial withdrawal amount was \$1,686 per month, or for the first year \$20,235 or 4.00% of beginning assets. The individual retiree withdrew the same dollar amount within each calendar year and adjusted annually for the prior calendar year's inflation rate. The cost of funds in the portfolio is 100 basis points annually. Fund returns are from Ibbotson, Morningstar.

Why, I ask, would any investment advisor leave a constrained investor unprotected against timing risk?

Mr. Fisher, an advisor makes a grievous planning error when he or she recommends an income strategy that does not protect constrained investors against timing risk. Is it difficult for an investment advisor to mitigate timing risk? Not at all. It's effortless. Remembering that the first 10 years of income distribution is the acute-risk period, all the advisor has to do is arrange the client's assets in a manner that income over the first 10 years of retirement is generated from vehicles which are not subject to market risk

Mr. Fisher, no investment advisor can prudently ignore timing risk. Truth is, one of the easiest ways to protect clients is to include an annuity in the income strategy. Of course, advisors can easily access low-load or no-load annuities as well as options for trail-based compensation The critical issue is that, when it comes to constrained investors, neglecting timing risk is a professional failing of monumental proportions.

Women live longer



Mr. Fisher, I'd like to share another risk that is of great concern to me: longevity risk. For context, you have made statements about annuities that I vehemently disagree with. But then you made a statement so inaccurate and misleading that, were it not for the fact that I heard it with my own ears, I would not have believed you could have said what you said:

Anything you want to do with annuities, there's a better way to do.

Mr. Fisher, in light of that statement, please describe a better way to provide a lifetime, guaranteed income to a client who wants a lifetime, guaranteed income.

I will give you the benefit of the doubt here. For the purposes of this article, I will assume that you did not know that only an annuity can guarantee a lifetime income.

I suggest that you read Kerry Pechter's excellent book, *Annuities for Dummies*.

In a recent article I stated:

If it's an overfunded client, an annuity is generally unnecessary. On the other hand, if the client is "constrained," I don't know how the advisor bypasses recommending an annuity. It's an issue of morals as much as economics. If the client can't tolerate the risk of not being able to meet his or her essential expenses, then there is no moral justification for you to deny your retiree client an annuity. If your client is a healthy female who is concerned about preserving her wealth, and who needs to rely upon savings to produce income, it is virtually malpractice to forego recommending an annuity in her income strategy.

This statement should not be controversial.

Mr. Fisher, I have made my case. It is in your firm's self-interest to broaden its

perspective on annuities. Specifically, I make these recommendations:



- Institute a training program that teaches employees how to recognize a constrained investor on the basis of the income-to-assets ratio.
- Explore the many available options for accessing low-load and no-load annuities.
- Mitigate timing risk for all of your constrained investor clients who are entering retirement or recently retired.
- Consider the use of cost-effective annuities, such as single-premium immediate annuities (SPIAs) and deferred-income annuities (DIAs), to help assure your clients that their incomes will be protected.
- Add a longevity (lifetime income) annuity to the portfolios of your constrained investor retirees, especially those who are female.
- Learn about the lifetime income annuities which have been created specifically for advisory accounts. These eliminate the deficiencies that you associate with annuities.

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Mr. Fisher, most importantly, I implore you to awaken to a new perception of your retiree clients' needs. Your firm and other advisory firms would be reckless and in many cases fail to meet their fiduciary responsibilities to constrained investor clients by failing to recommend an annuity to address longevity risk, and failing to mitigate timing risk.

Now that I have explained the constrained investor construct using the three-part client segmentation – overfunded, underfunded and constrained investors – are you more

sensitive to their divergent needs? Do you have a better understanding of how annuities help them?

Mr. Fisher, nothing I have stated in this proceeding should be interpreted as an indication that all clients need annuities. They don't.

But some clients do. And only annuities can deliver the certainty of continuing income. As I said before, It's all about the income.

Thank you, Mr. Fisher, for appearing today.

I think I'm waking up.

Wealth2k® founder, David Macchia, is an entrepreneur, author, and public speaker whose work involves improving the processes used in retirement income planning. David is the developer of the widely used The Income for Life Model®, and the recently introduced, Women And Income®. David has authored many articles on the subjects of retirement income planning and financial communications. He also wrote the consumer finance book, Lucky Retiree: How to Create and Keep Your Retirement Income with The Income for Life Model®. Constrained Investor is a registered trademark of David Macchia.



Find an Advisor

Top Financial Advisors in Plano, TX

by [Becca Stanek](#) | Updated September 06, 2024

This review was produced by SmartAsset based on publicly available information. The named firm and its financial professionals have not reviewed, approved, or endorsed this review and are not responsible for its accuracy. Review content is produced by SmartAsset independently of any business relationships that might exist between SmartAsset and the named firm and its financial professionals, and firms and financial professionals having business relationships with SmartAsset receive no special treatment or consideration in SmartAsset’s reviews. This page contains links to SmartAsset’s financial advisor matching tool, which may or may not match you with the firm mentioned in this review or its financial professionals.

You might end up considering dozens of financial advisor firms before finding the right advisor for you. To narrow the field for Plano residents, SmartAsset determined the top firms in the city. Below, in a table and in reviews, we lay out what you need to know about the firms to determine which one suits your needs. If you want a different way to search, try SmartAsset’s [financial advisor matching tool](#) to get connected with advisors who serve your area.

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We match more than 50,000 people with financial advisors per month. Get connected to an advisor that serves your area today.

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Get Started

Free initial consultations. All advisors are fiduciaries.

Rank	Financial Advisor	Assets Managed
1	Fisher Investments FISHER INVESTMENTS® Find an Advisor Read Review	\$276,890,013,440



Find an Advisor

2

Retirement Planners of America

\$3,557,314,906



Find an Advisor

[Read Review](#)

3

SFMG Wealth Advisors

\$2,248,716,764



Find an Advisor

[Read Review](#)



Let us help match you with up to three
vetted fiduciary financial advisors.
Answer a few questions to get matched.

Get started

4

Astra Wealth Management Group

\$1,149,403,343



Find an Advisor

[Read Review](#)

5

Insight Wealth Partners

\$789,957,931



Find an Advisor

[Read Review](#)

6

WealthStar Advisors, LLC

\$671,459,524



Find an Advisor

[Read Review](#)

asset TM			Find an Advisor
/	MOSS, Luse & Womble, LLC	\$435,602,000	
	Moss, Luse & Womble, LLC logo		
	Find an Advisor		
	Read Review		
8	The Watchman Group, Inc.	\$533,081,617	
	The Watchman Group, Inc. logo		
	Find an Advisor		
	Read Review		
9	Strategic Financial Planning, Inc.	\$165,859,420	
	Strategic Financial Planning, Inc. logo		
	Find an Advisor		
	Read Review		
10	Lifeway Financial Corporation	\$296,785,878	
	Lifeway Financial Corporation logo		
	Find an Advisor		
	Read Review		

To find the top financial advisors in Plano, we first identified all firms registered with the SEC in the city. Next, we filtered out firms that don't offer financial planning services, those that don't serve primarily individual clients and those that have disclosures on their record. The qualifying firms were then ranked according to the following criteria:

AUM
Firms with more total assets under management are ranked higher.



Find an Advisor

_____ higher.



Clients Per Advisor
Firms with a lower ratio of clients per financial advisor are ranked higher.



Age of Firm
Firms that have been in business longer are ranked higher.



Fee Structure
Firms with a **fee-only** (as opposed to **fee-based**) compensation structure are ranked higher.

All information is obtained through public records and is updated once per year following the firms' filing of their amendment to Form ADV at the end of March. This list may include firms that have a business relationship with SmartAsset, in which SmartAsset is compensated for lead referrals. Such relationships have no impact on our rankings, and firms are included and ranked based strictly on the above criteria. SmartAsset is not a client of the aforementioned firms, and did not receive compensation for including any of the firms on the aforementioned list.

Fisher Investments

Fisher Investments

Find an Advisor

Assets Under Management
\$276,890,013,440

Number of Advisors
1,613

Time in Business
Founded in 1979

Fee Structure
Fee-only

Office Location

000397



Find an Advisor

Plano, TX 75093

Website

<https://www.fisherinvestments...>

Let SmartAsset match you with up to 3 [financial advisors](#) that serve your

Fisher Investments is a massive, fee-only financial advisory firm based in Washington that has over 150,000 individual clients to its name – more than half of whom have a high net worth. Fisher is somewhat of a gold standard in the financial advisory industry and ranks No. 2 on SmartAsset's list of the top financial advisors in the U.S.

If you're an individual interested in working with Fisher, you'll generally need at least \$500,000 in investable assets, though this minimum is waivable. Clients who use the firm's WealthBuilder program are only required to have \$200,000 in investable assets.

As a fee-only firm, Fisher advisors do not sell securities or insurance products. Instead, the firm's compensation comes from client-paid fees. Those fees are charged as a percentage of assets under management (AUM), ranging from \$1.25% to 0.28%. Accounts that fall below \$475,000 are charged an annual management fee of 1.50%.

Fisher Investments Background

Fisher Investments was founded in 1979 by Ken Fisher and is a national firm operating in many states. Fisher still principally owns the firm. He also had a hand in creating the theory behind the "price-to-sales ratio," and he was a Forbes investment columnist from 1984 until 2017. Fisher has also been ranked on Forbes' list of the Richest Americans, as well as its list of Global Billionaires.

The firm primarily focuses on investment management, but may provide some clients with a separate no-cost financial plan.

Fisher Investments Investment Strategy

According to its SEC-filed Form ADV, Fisher Investments' principal goal is "maximizing returns



Find an Advisor

Depending on your long- or short-term goals, risk tolerance and time horizon, the firm will recommend a distinct set of investments. For example, riskier investors will have portfolios centered around common stock and cash equivalents. Risk-averse investors will have their assets invested more in fixed-income securities, such as bonds and cash. For those in between those two extremes, Fisher recommends a blended portfolio that features some proportionate allocation of stocks, fixed-income and cash.

Retirement Planners of America

Retirement Planners of
America

Find an Advisor

Assets Under Management

\$3,557,314,906

Number of Advisors

33

Time in Business

Founded in 2011

Fee Structure

Fee-based

Office Location

2820 Dallas Parkway

Suite 300

Plano, TX 75093

Website

<https://retirementplannersofa...>

Retirement Planners of America, formerly known as Money Matters With Ken Moraif, is next on our



Find an Advisor

are also advisors with the chartered financial consultant (ChFC) and chartered retirement planning counselor (CRPC) designations, among others.

Retirement Planners of America, which is fee based, does not require a set account minimum. Its clients include individuals, [high-net-worth individuals](#) and retirement plans. The firm charges an asset-based fee for portfolio management, which may be higher for clients with less than \$250,000 in assets under management (AUM).

All of Retirement Planners of America's investment advisor representatives are required to be licensed insurance agents and will earn commissions from sales. While this may present a potential conflict of interest, the firm is a fiduciary, which means it must act in clients' best interests at all times.

Retirement Planners of America Background

Retirement Planners of America was founded in 2011 as Money Matters with Ken Moraif. The firm rebranded to Retirement Planners of America in 2019. Today, the firm is owned by a family trust that Moraif controls.

Retirement Planners of America says its goal is to guide its clients and provide "peace of mind," and can help with retirement planning, Social Security benefits, tax planning, estate planning and other areas of need.

Retirement Planners of America also offers educational events hosted by industry professionals, client appreciation events and a podcast. The firm's founder has hosted the radio show "Money Matters With Ken Moraif" since 1996.

Retirement Planners of America Investment Strategy

Moraif has published a book titled "Buy, Hold and Sell!" In this book, Moraif argues that the "buy and hold investment philosophy" is incomplete. Instead, Moraif advocates for investors having a "proactive plan that includes a sell strategy" so their retirement plans aren't devastated during a bear market. These beliefs largely inform the firm's investing strategy.

However, the firm works with individual clients to determine an appropriate investment strategy and



Find an Advisor

recommends mutual funds, variable annuities and fixed annuities.

Once a client's portfolio has been created, the firm will monitor the portfolio and rebalance it at least quarterly.

SFMG Wealth Advisors

SFMG Wealth Advisors

Find an Advisor

Assets Under Management

\$2,248,716,764

Number of Advisors

18

Time in Business

Founded in 1992

Fee Structure

Fee-only

Office Location

7800 Dallas Parkway

Suite 350

Plano, TX 75024

Website

<https://sfmg.com/>

SFMG Wealth Advisors, a large firm with billions in assets under manager, is next on our list of the top financial advisory firms in Plano. SFMG provides a range of financial advisory services to a client base composed almost exclusively of non-high-net-worth and high-net-worth individuals. They also work with a very small number of charitable organizations and businesses. They impose a \$1 million



Find an Advisor

SFMG recently transitioned from a fee-based fee structure to a fee-only one. That means all of its compensation comes from client-paid fees and not third-party product sales.

The SFMG team features a number of advisors with specialized credentials, including the Certified Financial Planner™ (CFP®), certified private wealth advisor (CPWA), certified public accountant/personal financial specialist (CPA/PFS), retirement income planning professional (RICP) designations, among others.

SFMG Wealth Advisors Background

SFMG Wealth Advisors is the produce of several mergers between companies. Strategic Financial Management was founded by Greg Morgan in 1992. He joined forces with David White and Craig Greenway and created Strategic Financial Management Group in 2002. Kevin Margolis joined in 2004, and the firm was changed to SFMG in 2005.

Today, the firm is owned by managing directors Ryan Blair, J. Taylor Nipp, Shashin Shah and Margolis. Executive committee members Crystal Billing, Garrett Cayet and Melissa Hawkins have become equity stakeholder, while employees Devin DeLapp, Tyler Floyd, Nick Gaumer and Shannon Popes own minority stakes as well.

SFMG provides its clients with financial planning, wealth management and investment advisory services. Financial planning services span a variety of topics and may include [estate planning](#), retirement and other needs.

SFMG Wealth Advisors Investment Strategy

SFMG, like many other financial advisory firms that offer investment management services, tailors its investment strategies to the individuals needs of clients. Clients are permitted to place restrictions on the management of their money. Advisors also work with clients to determine their specific goals and objectives when it comes to investing. A large element of this process is determining risk tolerance.

SFMG looks to centralize their investment decision making process among its advisors and its investment team. Advisors do not look to time the market, instead focusing on long-term investing. Specific investment include stocks, bonds, cash, mutual funds, exchange-traded funds (ETFs),



Find an Advisor

Astra Wealth Management
Group

Find an Advisor

Assets Under Management

\$1,149,403,343

Number of Advisors

10

Time in Business

Founded in 2019

Fee Structure

Fee-based

Office Location

5700 Granite Parkway

Suite 330

Plano, Texas 75024

Website

<https://www.astrawmg.com/>

Astra Wealth Management Group is a fee-based firm that works with individuals, high-net-worth individuals, trusts, estates and businesses. The firm, which requires a minimum account balance of \$100,000, charges an asset-based fee for wealth management and hourly fees for financial planning services.

Advisors on staff can earn sales commissions for selling securities or insurance policies, in addition to the client-paid fees for advisory services. While this is a conflict of interest because advisors have a financial incentive to recommend certain products and services over others, the firm has a fiduciary duty to act in its clients' best interests.



Find an Advisor

management analyst (CIMA) designations.

Astra Wealth Management Group Background

Founded in 2019, the firm's legal name is Tyche Wealth Partners LLC but it conducts business as Astra Wealth Management Group. The firm is owned equally amongst six partners: Bradley Vineyard, Charles Evans, Candy Hawkins, Gail Carrion, Mark Filardi and Robert Holland.

The firm offers a comprehensive suite of services tailored to individual financial needs, including investment planning, retirement planning, personal savings and education savings. Additionally, they provide assessments of insurance needs, support for charitable giving programs, as well as referrals to accountants, attorneys or other specialists as needed.

Astra Wealth Management Group Investment Strategy

Astra Wealth Management Group uses a multifaceted approach to investing, incorporating fundamental, technical, cyclical and charting analysis, with a strong emphasis on long-term investment strategies. The firm tailors its investment strategies to align with each client's unique set of circumstances, including their investment goals, financial situation, time horizon and risk tolerance.

Their typical investment vehicles include low-cost, diversified mutual funds, exchange-traded funds (ETFs), options, selected alternative investments, individual stocks, bonds and options contracts.



Find an Advisor

Insight Wealth Partners

Find an Advisor

Assets Under Management

\$789,957,931

Number of Advisors

14

Time in Business

Founded in 2010

Fee Structure

Fee-based

Office Location

3333 Premier Drive

Suite 800

Plano, TX 75023

Website

<http://www.insightwp.com/>

Insight Wealth Partners primarily works with individuals clients – about two-thirds of whom do not have a high net worth. In addition, the firm has charitable organizations, corporations and businesses as clients. Insight Wealth Partners does not require a minimum account balance for its asset management services, but it does require a minimum annual fee of \$1,000. For its financial planning services, the firm usually charges a minimum first-year fee of \$2,500.

The Insight Wealth Partners team includes several Certified Financial Planners™ (CFPs®) and certified public accountants (CPAs). Notably, David Dryden, one of the firm's managing partners, has been named "Best Financial Planner in Dallas" for multiple years by D Magazine.

This is a fee-based firm, so a few of its advisors may earn commissions from the sale of insurance



Find an Advisor

Insight Wealth Partners Background

Insight Wealth Partners is an employee-owned firm founded in 2010. The firm's five owners are its managing partners: Dryden, Travis Carter, Wayne Smith III, M. Chad Lowe and Ryan Ferguson. Each owns a 20% share of the firm.

Insight Wealth Partners takes a team approach to financial management and says it collaborates closely with its clients and their other advisors. The firm's services include asset management and comprehensive financial advice. The latter may encompass retirement planning, education planning, estate planning, tax planning, real estate analysis, insurance analysis, charitable planning and employer stock option planning. For certain clients, the firm may review their 401(k), 403(b) or 457 plans.

Insight Wealth Partners Portfolio Management

Insight Wealth Partners offers two different types of portfolio management: traditional portfolio management and synthetic portfolio management. Its investment strategy for its traditional portfolios is based on modern portfolio theory, with an emphasis on strategic and tactical asset allocation. The firm says that its synthetic equity strategy attempts to "mirror the upside momentum of the major market indices while preserving the downside risk exposure by using a heavily weighted fixed-income portfolio combined with advanced options strategies such as puts, calls and leaps."

Both portfolio types will be tailored according to clients' investing goals. Insight Wealth Partners relies on its exploratory financial planning process to identify its clients' goals and needs. The firm regularly reviews its clients' portfolios once they've been implemented and rebalances as necessary.

WealthStar Advisors, LLC



Find an Advisor

FIND AN ADVISOR

Assets Under Management

\$671,459,524

Number of Advisors

10

Time in Business

Founded in 2010

Fee Structure

Fee-based

Office Location

305B West Spring Creek Parkway

Suite 400

Plano, TX 75023

Website

<http://www.wealthstaradvisors...>

Like many of the firms on this list, WealthStar Advisors does not require a set account minimum. However, about 60% of the firm's current client base comprises high-net-worth individuals. WealthStar also notes that it specializes in serving small business owners.

The team of advisors at WealthStar include Certified Financial Planners™ (CFPs®) and [chartered retirement planning counselors \(CRPCs\)](#), among others.

WealthStar Advisors is a fee-based firm. Certain employees are licensed insurance agents, and they may earn commissions from recommending insurance products as part of the firm's financial planning services. However, the firm is bound by fiduciary duty to put its clients' best interests before its own.

WealthStar Advisors Background



[Find an Advisor](#)

WealthStar offers portfolio management, financial planning and 401(k) plan participant advisory services. Notably, the firm offers portfolio management on a wrap fee basis. This means you'll pay a consolidated fee that covers advisory and brokerage services. Its financial planning and 401(k) plan participant services are offered on a standalone basis or as part of a wrap program.

WealthStar Advisors Investment Strategy

WealthStar Advisors' portfolio management services, offered through a wrap program that it sponsors, are based on each client's goals, objectives, time horizon and risk tolerance. The firm's investment strategies are tailored to these factors and it may include equity substitution strategy, margin transactions, short-term trading, short sales and options writing.

Clients have the option of imposing any reasonable restrictions on their portfolios. The firm sends reports to clients on a quarterly basis and contacts clients at least once a year to determine if there have been any changes in their financial circumstances, objectives or risk tolerance.

Moss, Luse & Womble

Moss, Luse & Womble, LLC

[Find an Advisor](#)

Assets Under Management

\$435,602,000

Number of Advisors

18

Time in Business

Founded in 2010

Fee Structure

Fee-only



Find an Advisor

3100 Jimmyson Parkway
Suite 2000W
Plano, TX 75024

Website

<http://www.mlwfinancial.com/>

Moss, Luse & Womble is up next on our list. The firm doesn't require a minimum account size for investment advisory services. It works only with individuals, most of whom do not have a high net worth.

Advisors with the firm work on a fee-only basis. This means their only compensation comes from fees charged to clients. It also indicates that they don't earn commissions from third-party financial institutions for selling their products or services.

The Moss, Luse & Womble team includes advisors with the Certified Financial Planner™ (CFP®) and certified public accountant (CPA) designations.

Moss, Luse & Womble Background

Though registered with the SEC in 2019, Moss, Luse & Womble has been around since 2010. Its owners are Jeffrey Moss, Jason Luse and Michael Womble through their respective limited liability companies.

Working primarily with non-high-net-worth individuals, advisors provide the following services:

- [Financial planning](#)
- Portfolio management
- Pension consulting services

Moss, Luse & Womble Investment Strategy

Moss, Luse & Womble emphasizes diversification. They believe that investing in various, non-correlating asset classes can help the client take advantage of upmarkets while mitigating risk during down markets. The firm has eight model portfolios that it recommends to clients:



Find an Advisor

- Conservative
- Balanced
- Moderate Growth
- Growth
- Moderate Aggressive
- Aggressive
- Ultra Aggressive

As a client, you can expect your portfolio generally to contain ETFs and mutual funds.

The Watchman Group

The Watchman Group, Inc.

Find an Advisor

Assets Under Management

\$533,081,617

Number of Advisors

4

Time in Business

Founded in 2004

Fee Structure

Fee-only

Office Location

5045 Lorimar Drive
Suite 200
Plano, TX 75093



Find an Advisor

The Watchman Group is a fee-only firm that serves individuals and high-net-worth individuals, as well as charitable organizations and corporations. Unlike many of the firms on this list, The Watchman Group does require an account minimum. To be a client of this firm, you'll need a minimum of \$1 million in investable assets and pay \$5,000 a year in annual fees.

The Watchman Group has a small advisory team that includes the [Certified Financial Planner](#)[™] (CFP[®]), chartered financial analyst (CFA), chartered alternative investment analyst (CAIA) and certified public accountant (CPA) designations.

The Watchman Group Background

The Watchman Group has been in business since 2004. The firm is principally owned by Mark Robinson, president and chief investment officer (CIO).

The Watchman Group's offers investment management, financial planning, tax analysis and strategy, as well as family office services. The firm manages portfolios on a discretionary basis, and its portfolios are customized to meet each client's needs, objectives and risk tolerance.

The Watchman Group Investment Strategy

In its customized portfolios, The Watchman Group says it strives to tie a client's goals and risk/reward framework to his or her financial plan and investments. The firm's investment philosophy is built upon the belief that public equities offer the best long-term returns, while valuations, profitability and company size are the best predictors of outperformance.

Meanwhile, the firm also holds that market timing does not work. Instead, it focuses on diversification, as well as reducing fees and limiting taxes.

Strategic Financial Planning

Strategic Financial
Planning, Inc.



Find an Advisor

Assets Under Management

\$165,859,420

Number of Advisors

4

Time in Business

Founded in 1999

Fee Structure

Fee-only

Office Location

6513 Preston Road

Suite 100

Plano, TX 75024

Website

<https://strategicfp.com/>

Strategic Financial Planning takes the ninth spot on our Plano list. The firm has no set account minimum, which means technically anyone can become a client. The firm's actual client base is dominated by high-net-worth individuals, though it also works with non-high-net-worth individuals and charities. This is a fee-only firm.

The small advisory staff at this firm holds a number of certifications. These include four Certified Financial Planners™ (CFPs®) and one certified public accountant/personal financial specialist (CPA/PFS).

Strategic Financial Planning Background

Strategic Financial Planning has been in business for a little over two decades, as it first opened in 1999. Firm president and chief compliance officer (CCO) Bryan Keith Lee owns the firm in its entirety.

The services at this firm cover areas like retirement planning, investing, insurance planning, employee benefits, taxes, estate planning, education fund planning, cash flow planning, business



Find an Advisor

Strategic Financial Planning Investment Strategy

When you become a client of Strategic Financial Planning, you and your advisor will meet to discuss where you are in your financial journey and where you want to end up. To do this, the firm will go over your goals, [risk tolerance](#), tax situation and time horizon.

Based on your goals and what you currently have, the firm will develop a financial and investment plan to fit your needs. Once your assets are invested, the firm will monitor how your portfolio is doing and make adjustments as necessary. The firm primarily relies on mutual funds and ETFs.

Lifeway Financial Corporation

Lifeway Financial
Corporation

Find an Advisor

Assets Under Management

\$296,785,878

Number of Advisors

3

Time in Business

Founded in 1999

Fee Structure

Fee-only

Office Location

7160 Dallas Parkway
Suite 520
Plano, TX 75024

Website

<http://www.lifewayfinancial.c...>



Find an Advisor

a useful certification for those looking for help navigating the financial complexities of divorce.

The fee-only firm's clients include individuals both with and without a high net worth, although the vast majority of the firm's assets under management (AUM) belong to high-net-worth clients. Lifeway does not have a specific account minimum.

As a fee-only practice, Lifeway's revenue comes solely from client-paid fees. Its advisors do not recommend third-party products and services for commissions, which would constitute a conflict of interest.

Lifeway Financial Corporation Background

Lifeway Financial Corporation was founded in 1999 by David Brunson, who remains on staff. Today, the firm is principally owned by president Trey Touchstone and vice president Dallas McKee.

The firm provides financial planning to most of its clients. Elements of its financial plans may include financial goals and objectives, financial statement analysis, cash flow and tax reports, education and retirement planning, estate and survivor planning, investment strategy and portfolio management. In addition to financial planning, the firm offers investment management and consultations.

Lifeway Financial Corporation Investment Strategy

Lifeway Financial Corporation holds that the investment management process should be guided by client objectives, preferences and constraints. It believes this information is best obtained through a recurring, comprehensive financial planning process, one of the firm's fundamental services.

Like many financial advisor firms, Lifeway Financial Corporation espouses a [long-term investment](#) approach and asset diversification within interdependent asset classes. The firm strives to achieve a balance between risk and return while staying true to clients' objectives. Clients' objectives dictate the balance between income and growth assets in their portfolios.

Financial Advisors Near You

Looking for a financial advisor in a nearby city? Here are some other lists of top financial advisors who serve the area:



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How Long \$1mm Lasts in Retirement

Show...

SmartAsset's interactive map highlights places where \$1 million will last the longest in retirement. Zoom between states and the national map to see the top spots in each region. Also, scroll over any city to learn about the cost of living in retirement for that location.



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LEAST				MOST		
Rank	City	Housing Expenses	Food Expenses	Healthcare Expenses	Utilities Expenses	Transportation Expenses

Methodology

We analyzed data on average expenditures for seniors, cost of living and investment returns to determine how many years of retirement a \$1 million nest egg would cover in cities across America.

First, we looked at data from the Bureau of Labor Statistics (BLS) on the average annual expenditures of seniors. We then applied cost of living data from the Council for Community and Economic Research to adjust those national average spending levels based on the costs of each expense category (housing, food, healthcare, utilities, transportation and other) in each city. Using this data, SmartAsset calculated the average cost of living for retirees in the largest U.S. cities.

We assumed the \$1 million would grow at a real return (interest minus inflation) of 2%. Then, we



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longest ranked the highest in the study.

Sources: [Bureau of Labor Statistics \(BLS\)](#), [Council for Community and Economic Research](#)

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- AdChoices
- GLB Notice
- Online Tracking Opt-Out Guide



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We do not manage client funds or hold custody of assets, we help users connect with relevant financial advisors.

This is not an offer to buy or sell any security or interest. All investing involves risk, including loss of principal. Working with an adviser may come with potential downsides such as payment of fees (which will reduce returns). There are no guarantees that working with an adviser will yield positive returns. The existence of a fiduciary duty does not prevent the rise of potential conflicts of interest.

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EXHIBIT 13

EXHIBIT A

Subject: Human v. Fisher Investments
Date: Monday, December 23, 2024 at 1:13:23 PM Eastern Standard Time
From: Melanie Ng <mng@wtlaw.com>
To: Edwin Butler <edbutler@butlerlawstl.com>, edwinvb@aol.com <edwinvb@aol.com>
CC: Alexander Terepka <Alex@wtlaw.com>, Matthew A. Lipman <mlipman@mdmc-law.com>

Hi Edwin,

In accordance with the Court's order, Plaintiff's responses to Defendant's written discovery were due on Friday, December 6, 2024. We still have not received Plaintiff's responses to date. We expect Plaintiff to produce the requested documents before December 31, 2024. *See Davis v. Fid. Info. Corp.*, 2019 WL 1643340, at *2 (E.D. Mo. Apr. 16, 2019) (noting that objections are waived if not timely raised). If you do not commit to production by December 27, 2024, we will have no choice but to begin preparing a motion to compel. We will seek our fees in doing so because a failure to respond to discovery, especially given the compressed timeline for individual discovery and that we timely served responses, is simply unacceptable.

Best,
Melanie

Melanie G. Ng (bio)
WATSTEIN TEREPKA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

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From: Edwin Butler <edbutler@butlerlawstl.com>
Date: Monday, December 23, 2024 at 4:20 PM
To: Melanie Ng <mng@wtlaw.com>
Cc: Edwin Butler <edbutler@butlerlawstl.com>
Subject: Human v. Fisher Investments

[Warning – external]

Hi Melanie,

In accordance with the Court's order, Plaintiff's responses to Defendant's written discovery were due on December 13, 2024. We still have not received a single document to our Production Requests. We will produce our discovery answers before 12/31. We expect Defendant to produce the requested documents before December 31, 2024, as well. *See Davis v. Fid. Info. Corp.*, 2019 WL 1643340, at

*2 (E.D. Mo. Apr. 16, 2019). Please commit to production by December 27, 2024, so we will not have to begin preparing a motion to compel. We will seek our fees in doing so because of your failure to respond to discovery.

We need the additional time due to your non-compliance with our production requests.

Additionally, I have a personal conflict with the deposition date you have proposed, medical in nature related to a spinal surgery I had. We need to reschedule that for at least three (3) weeks later. Please provide me with proposed dates so I can clear conflicts.

Thanks.

Ed

Edwin V. Butler | Butler Law Group LLC
1650 Des Peres Road, Ste 220 | Des Peres, MO 63131
Direct # | Office: 314-504-0001 | Fax: 314-481-8479
edbutler@butlerlawstl.com | www.butlerlawstl.com

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From: Edwin Butler <edbutler@butlerlawstl.com>
Date: Tuesday, December 24, 2024 at 5:11 PM
To: Melanie Ng <mng@wtlaw.com>
Cc: Edwin Butler <edbutler@butlerlawstl.com>
Subject: Human V Fisher Investments

[Warning – external]

Counselors:

Greetings. Enclosed, please find the Plaintiff's initial Rule 26 disclosures. Considering your admission that your client is utilizing the Third Party lead generator Smart Asset, we intend to file an amended complaint to include them in this suit. Please advise if you have any objection to their inclusion or we can hop on a call to discuss.

Furthermore, given your failure to provide a single document from our document requests and you have denied that you do not have express written consent in this case, please be advised that we are attempting to provide an opportunity for you to prove this alleged express written consent prior to moving to strike your affirmative defense. Please provide this information immediately, as well as all other document requests we have propounded.

Our responses to your discovery requests are forthcoming.

Thanks,

Ed

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Subject: Re: Human V Fisher Investments

Date: Thursday, December 26, 2024 at 1:26:02 PM Eastern Standard Time

From: Melanie Ng <mng@wtlaw.com>

To: Edwin Butler <edbutler@butlerlawstl.com>

CC: Edwin Butler <edbutler@butlerlawstl.com>, Alexander Terepka <Alex@wtlaw.com>, Guletz, Matthew D. <MGuletz@thompsoncoburn.com>

Hi Ed,

Emails like the one you sent below are disappointing and inappropriate. Your client failed to respond to Fisher's discovery requests in a timely manner and, as a result, your client has waived all objections under well-settled authority. You appear to be attempting to distract from that with emails on holidays that fail to respond to the points we have raised—and make arguments that don't make sense.

In any event, you still haven't acknowledged your client's failure to respond to Fisher's discovery requests. That is especially problematic because we emailed you twice (on December 3d and 4th) before reminding you of your client's December 6th deadline. You simply ignored those emails—and your client's deadline to respond to Fisher's discovery requests.

You've compounded this improper conduct with several inappropriate emails, including an improper email that appeared to copy and paste what we sent you about your overdue discovery responses. That makes no sense because Fisher timely responded to the discovery requests, so the points in our email about your client's discovery responses don't apply to Fisher.

You are also sending inappropriate communications on holidays, such as late in the afternoon on Christmas Eve. Your email appears to demand that Fisher produce documents even though your client has failed to even respond to Fisher's discovery requests, much less produce documents. Fisher served discovery first and your client's discovery responses were due more than a week before Fisher's. Consequently, your client must fully respond to Fisher's discovery before Fisher produces documents. Your client can't simply violate the Court's and the Federal Rules' requirements for discovery responses and then demand an out-of-order document production from Fisher.

To make matters worse, your client hasn't provided a timeline for his (1) document production, (2) responses to interrogatories, or (3) the device inspection Fisher served. To be clear, we expect full responses without objections because your client waived all objections by failing to respond to Fisher's discovery requests. Your client's responses are now 20 days late, so we need complete responses as soon as possible, especially given the compressed timeline for individual discovery. Please confirm that you will provide complete responses and document production by December 31, 2024. Otherwise, Fisher reserves all rights to move to compel and seek sanctions when it does so.

Please confirm your client will fully respond to Fisher's discovery requests without objection as outlined above or let us know your availability for a meet and confer regarding Fisher's motion to compel in accordance with Local Rule 3.04(A).

Best,
Melanie

Melanie G. Ng ([bio](#))
WATSTEIN TEREPKA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

From: Edwin Butler <edbutler@butlerlawstl.com>
Date: Friday, December 27, 2024 at 1:49 PM
To: Melanie Ng <mng@wtlaw.com>
Cc: Edwin Butler <edbutler@butlerlawstl.com>

Subject: Human V Fisher

[Warning – external]

Hi Melanie - we are working on our phase one obligations to disclose as this is being written. I encourage you to reread my last email. You will have our production responses pursuant to phase one discovery prior to the 31st, as you requested.

Will you be providing even a single document in response to our extensive discovery requests. We particularly want your client's phone records, any express written consent, as well as the phone records from your admitted vendor and any lead material they possess. We are adding them to this suit and will be moving to stay discovery while that is being determined by the Court.

Please advise whether your client will cooperate in our discovery requests or if you intend to stand on your lengthy and meritless objections.

Thanks,

Ed

Edwin V. Butler | Butler Law Group LLC
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edbutler@butlerlawstl.com | www.butlerlawstl.com

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Subject: Re: Human V Fisher

Date: Thursday, January 2, 2025 at 9:37:41 AM Eastern Standard Time

From: Melanie Ng <mng@wtlaw.com>

To: Edwin Butler <edbutler@butlerlawstl.com>

CC: Edwin Butler <edbutler@butlerlawstl.com>, Alexander Terepka <Alex@wtlaw.com>, Guletz, Matthew D. <MGuletz@thompsoncoburn.com>

Hi Ed, as we've already told you, we will make a document production in the new year. However, before doing so, your client needs to first make a meaningful document production because Fisher served its discovery first. We also need a protective order in place. As we mentioned in our objections, the requested documents involve confidential information as well as commercially sensitive data. Would you like to propose a protective order or should we?

This is the first that we've heard that you'll produce any documents; however, we've reviewed your initial production and they're woefully deficient. You produced 153 pages—89 pages reproducing Fisher's discovery responses (including a duplicate copy of Fisher's responses to interrogatories), 55 pages of publicly available documents, 7 pages of heavily redacted phone logs, and 2 pages of advertisements emailed to counsel. All but 9 pages are publicly available materials or Fisher's own discovery responses. It appears as if you've put together a production to make it look like you've produced something but in fact you've hardly produced any substantive information whatsoever that wasn't already accessible by Fisher.

In terms of additional documents, for example Fisher's outstanding discovery requests, your client still has not produced the following to date despite multiple requests:

- Substantive responses to interrogatories without objections, as those have been waived;
- Response to device inspection request without objections, as those too have been waived;
- Recordings or contemporaneous notes of alleged calls;
- All records concerning the alleged calls;
- All documents showing that Mr. Human was allegedly a "subscriber" for the phone number at issue, including the bills for the phone number;
- Evidence that Mr. Human "personally registered his residential cellular telephone number . . . on the National and Missouri Do Not Call Registries in 2022";
- All non-privileged documents to support your allegation that Mr. Human incurred "provider fees" as a result of the subject calls;
- Documents sufficient to evidence Mr. Human's phone plan, including persons on such plan and billing statements;
- All non-privileged documents, if any, to support your alleged damages, including evidence demonstrating whether Mr. Human suffered "severe physical injuries, including chest pain, anxiety";
- All lead forms Mr. Human filled out or submitted between January 1, 2021 and the present;
- Documents sufficient to identify all legal proceedings brought by Mr. Human for alleged violations of the TCPA and Missouri No Call List and Telemarketing provisions;
- Documents sufficient to evidence your acquisition of the subject number;
- All agreements with counsel, including but not limited to retention and/or retainer agreements;
- Documents showing Mr. Human's internet history and IP addresses for the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024;
- Documents sufficient to show all calls received on the subject phone number on the following

dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024;

- All records of incoming and outgoing calls from the subject number between January 2022 and the present;
- Documents sufficient to identify Mr. Human's physical location on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024;
- All correspondence or pre-suit demand letters Mr. Human sent (or were sent on his behalf) alleging purported violations of the TCPA or Missouri No Call List and Telemarketing provisions and responses received to same;
- All documents where a defendant or opposing party asserted that Mr. Human consented or opted-in to receive communications from them;
- All documents relating to "Veronica" or "Veronica Moreno" concerning TCPA violations, Missouri No Call List and Telemarketing provisions violations, lead certificates, opt-ins, or internet search history;
- All lead certificates referencing or concerning the subject phone number;
- All non-privileged documents relating to "Melody" or "Melody Human" concerning TCPA violations, Missouri No Call List and Telemarketing provisions violations, lead certificates, or opt-ins;
- All non-privileged documents related to *PolicyScout LLC v. Human*, 2:23-cv-00934-JNP (D. Utah);
- All settlement agreements between Mr. Human and third parties involving TCPA or Missouri No Call List and telemarketing provisions allegations;
- All transcripts of deposition testimony provided by Mr. Human;
- All documents relating to Fisher, including communications and browser history;
- All documents relating to or concerning prior express consent to receive communications from Fisher; and
- Documents sufficient to identify all criminal proceedings to which Mr. Human has been a party or witness.

Again, as you failed to object to Fisher's device inspection request, you've waived all objections. Please confirm no later than next Monday (January 6th) that your client will comply with the device inspection request and the date by which you will do so. Otherwise, as we've said before, Fisher will be moving to compel.

Best,
Melanie

Melanie G. Ng (bio)
WATSTEIN TEREPA ^{LLP}
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www.wtlaw.com

From: Edwin Butler <edbutler@butlerlawstl.com>
Date: Thursday, January 2, 2025 at 4:35 PM
To: Melanie Ng <mng@wtlaw.com>
Cc: Edwin Butler <edbutler@butlerlawstl.com>, Christopher Prosser (Work) <attorneysacquisitions@outlook.com>
Subject: Human V Fisher

[Warning – external]

Hi Mel, as we've already told you, we are seeking leave to file an amended complaint and to stay discovery. We will make a new document production also when the Court rules on the motions we are filing today. Your client needs to first make a meaningful document production. YOUR CLIENT HAS NOT PRODUCED A SINGLE DOCUMENT IN THIS CASE! We both served discovery requests on the same day, so your complaint that you served first is of little consequence. Additionally, my client served you with discovery requests prior to my engagement. If you want to draft a proposed protective order, please feel to draft one. We also need a protective order in place because your discovery requests are grossly beyond the scope of phase one.

We have now produced in excess of 400 pages of documents, and you have still failed to provide a single document. Most of your discovery requests seek public

information not in my client's possession. It is not incumbent upon my office or my client to research public documents for your client. If you would like to make a significant cost deposit for the documents you seek, I have a research company that charges \$300.00 per hour and \$1.00 per page of any downloaded or discovered document. When I discussed this matter and your list, they advised they would require a \$5,000.00 deposit before beginning any work on your clients behalf. Let me know.

You have sent out a subpoena over my objection and possess many documents you seek below. I will give you a response to this list you claim:

- Substantive responses to interrogatories without objections, as those have been waived;
 - We sent you our responses previously and will resend the 62 page document now and another copy of the 419 pages of discovery in Bates 3.
- Response to device inspection request without objections, as those too have been waived;
 - Mr. Human will happily comply with this request but this phone contains attorney/client communications and we will seek a protective order from copying anything beyond in the incoming call log from your client. I noted these objections extensively when you sent a broad and sweeping subpoena on this topic to Verizon in November.
- Recordings or contemporaneous notes of alleged calls;
 - Mr. Human says he has no documents or recordings of this nature. I do note that you have not turned over your documents and recordings for our similar request, though we believe you possess both recordings and documents.
- All records concerning the alleged calls;
 - See answer above.
- All documents showing that Mr. Human was allegedly a "subscriber" for the phone number at-issue, including the bills for the phone number;
 - his bills are paid by credit and we have included all relevant documents in his possession in Bates 3 - which include the TCPA and MDNC registrations.

- Evidence that Mr. Human “personally registered his residential cellular telephone number . . . on the National and Missouri Do Not Call Registries in 2022”;
 - This is in the Bates 3 document production
- All non-privileged documents to support your allegation that Mr. Human incurred “provider fees” as a result of the subject calls;
 - See Amended Complaint - this has been amended today.
- Documents sufficient to evidence Mr. Human’s phone plan, including persons on such plan and billing statements;
 - Mr. Human has requested this information. You also already have it in your possession from a subpoena sent out over our written objections.
- All non-privileged documents, if any, to support your alleged damages, including evidence demonstrating whether Mr. Human suffered “severe physical injuries, including chest pain, anxiety”;
 - Mr. Human will present live testimony on this matter and is not in possession of the requested documents.
- All lead forms Mr. Human filled out or submitted between January 1, 2021 and the present;
 - Mr. Human is not in possession of any such documents and this information is vastly outside the scope of Phase One Discovery.
- Documents sufficient to identify all legal proceedings brought by Mr. Human for alleged violations of the TCPA and Missouri No Call List and Telemarketing provisions;
 - This is public information and you are already in possession of these documents. Mr. Human has no documents in his possession relative to these proceedings beyond the disclosure of Bates 3.
- Documents sufficient to evidence your acquisition of the subject number;
 - Mr. Human has no idea what this request means and is duplicating other requests which you have already secured through your subpoena. Mr. Human will also supplement this answer when he receives a response from the credit card which he pays the bill through.

- All agreements with counsel, including but not limited to retention and/or retainer agreements;
 - These documents are attorney/client privileged.
- Documents showing Mr. Human's internet history and IP addresses for the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024;
 - See interrogatory responses
- Documents sufficient to show all calls received on the subject phone number on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024;
 - see interrogatory answers and bates 3.
- All records of incoming and outgoing calls from the subject number between January 2022 and the present;
 - Your office subpoenaed this information and it duplicates multiple other requests. See also Bates 3.
- Documents sufficient to identify Mr. Human's physical location on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024;
 - Mr. Human is no in possession of this information, but was in St. Louis, Missouri on those dates.
- All correspondence or pre-suit demand letters Mr. Human sent (or were sent on his behalf) alleging purported violations of the TCPA or Missouri No Call List and Telemarketing provisions and responses received to same;
 - This request seeks attorney/client privileged information and Mr. Human is not in possession of any such documents.
- All documents where a defendant or opposing party asserted that Mr. Human consented or opted-in to receive communications from them;
 - See bates 3 for a listing of all cases filed by Mr. Human. This is public information and Mr. Human is not in possession of any relevant documents.
-
- All documents relating to "Veronica" or "Veronica Moreno" concerning

TCPA violations, Missouri No Call List and Telemarketing provisions violations, lead certificates, opt-ins, or internet search history;

- Mr. Human has no idea who this is, is not affiliated with this person, and has no documents in his possession which are responsive to this request.
- All lead certificates referencing or concerning the subject phone number;
 - Mr. Human has no idea what you are requesting in this request and is no in possession of any "lead certificate."
- All non-privileged documents relating to "Melody" or "Melody Human" concerning TCPA violations, Missouri No Call List and Telemarketing provisions violations, lead certificates, or opt-ins;
 - Mr. Human is not in possession of any such documents and to his knowledge, Melody Human is not a member of the class at this time, nor has she ever filed a TCPA case.
- All non-privileged documents related to *PolicyScout LLC v. Human*, 2:23-cv-00934-JNP (D. Utah);
 - This seeks attorney/client privileged information and any documents requested which are not privileged are either in your possession or can be obtained by your office on PACER. Mr. Human does not possess a PACER account and has no access to these documents.
- All settlement agreements between Mr. Human and third parties involving TCPA or Missouri No Call List and telemarketing provisions allegations;
 - These are all attorney/client privileged documents. Any such documents, if in existence, would contain confidentiality agreements which prohibit disclosure and/or subject the Plaintiff to severe penalties if disclosed and are beyond the scope of Phase One discovery.
- All transcripts of deposition testimony provided by Mr. Human;
 - Mr. Human does not possess any such transcripts or documents.
- All documents relating to Fisher, including communications and browser history;
 - See Bates 3 - production package.
- All documents relating to or concerning prior express consent to receive communications from Fisher; and

- Plaintiff has never given Defendant Fisher prior express written consent for the subject phone calls. Moreover this is Fishers stated defense and not the subject of this suit. Moreover, Fisher has not provided any form of express written consent alleged to have originated from the Plaintiff upon Plaintiff's repeated request for production and this is a fishing expedition.
- Documents sufficient to identify all criminal proceedings to which Mr. Human has been a party or witness.
 - Mr. Human is not in possession of any such documents and this is obviously beyond the scope of Phase One discovery.

Plaintiff has repeatedly sought a wealth of relevant documents from your client, and you have not produced a single document. Mr. Human has produced in excess of 400 documents, answered your interrogatories, and acted in good faith. Again, we are seeking to stay this harassing fishing expedition your office is engaging in and filing an Amended Complaint to include your client's lead provider, SmartAsset Advisors, LLC. You have failed to offer any objection to this filing and we intend to notify the Court of your lack of objection thereto upon filing today.

I also have a personal conflict with your scheduled deposition in that I had an invasive C-spine operation recently and I have a neurology appointment that day and am unavailable. I need this rescheduled or I will seek the Courts intervention.

Thanks,

Ed

Edwin V. Butler | Butler Law Group LLC
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Subject: Re: Human v. Fisher Investments
Date: Tuesday, January 7, 2025 at 4:37:01 PM Eastern Standard Time
From: Melanie Ng <mng@wtlaw.com>
To: Edwin Butler <edbutler@butlerlawstl.com>
CC: Edwin Butler <edbutler@butlerlawstl.com>, Alex Terepka <Alex@wtlaw.com>

Hi Ed,

Mr. Human's deposition is currently noticed for January 10th. You've previously stated that you're not available for several weeks because of medical issues. Our schedules are flexible, so please send us proposed dates ASAP so that we can re-notice Mr. Human's deposition for a mutually acceptable day and time. Given that we need to push out this deposition for several weeks, Fisher intends to seek a 45-day extension of the phase one discovery period.

We think there is good cause for this request for a variety of reasons, including deposition scheduling issues, the fact that you're seeking leave to add Smart Asset (in which case Smart Asset is entitled to a discovery period), and the fact that the parties have discovery issues that they will likely have to raise with the Court. So please let us know if you'll agree to this extension of the phase one discovery period without waiving your request to stay all discovery, which Fisher intends to oppose. Thank you.

Best,
Melanie

Melanie G. Ng ([bio](#))
WATSTEIN TEREPKA ^{LLP}
P: 404-600-1240
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www.wtlaw.com

From: Melanie Ng <mng@wtlaw.com>
Date: Tuesday, January 7, 2025 at 9:28 PM
To: Edwin Butler <edbutler@butlerlawstl.com>
Cc: Alex Terepka <Alex@wtlaw.com>, Guletz, Matthew D.
<MGuletz@thompsoncoburn.com>
Subject: Re: Human V Fisher

Hi Ed,

First, your statement that Mr. Human will not make a document production until the Court rules on your requests to stay discovery and for leave to amend the complaint is inappropriate and inconsistent with your demands that Fisher make a document production (which it will do after we work out a protective order, which we will send soon). Mr. Human cannot move for a stay that the Court has already denied once and then act as if the stay has already been granted. That is especially so because Mr. Human's discovery responses were due a month ago, and he failed to respond or object, thus waiving all objections. On top of that, Mr. Human's production to date is woefully inadequate. As we have raised several times before, most of your 400 pages of discovery are publicly available webpages and copies of Fisher's discovery responses. Please confirm that you will supplement your document production ASAP to address the below issues.

Second, with respect to the requests for information about Mr. Human's prior cases and demand letter, our understanding is that most of those documents are also within your possession, as you've been Mr. Human's TCPA attorney for several years. In any event, Mr. Human undoubtedly has copies of the TCPA demand letters he's sent, like the letter he sent to Fisher in this case and must produce them.

Third, your answers to interrogatories are woefully inadequate and regurgitate the same non-answers

over and over. For example, in response to Interrogatory No. 6, which asks Mr. Human to identify other cases where he was a party or provided testimony, he provided the non-response "I am a 68 year old man who lives on social security and receives a wealth of illegal telemarketing calls on my private resident phone, such as the calls listed in the complaint from Defendant Fisher. Any other information sought seeks evidence or responses outside the scope of Phase One discovery. Plaintiff therefore reserves the right to supplement his answer when Phase One discovery is completed and this case is certified as a class action. See also Bates pages 1 through 419 for a complete listing of all cases I have filed. To the best of my recollection, I have never provided live testimony in any of those cases; See also the Complaint; See Plaintiff's Rule 26 disclosures. In further response, Plaintiff has never visited fisher.com or smartassert.com." Not only is this response irrelevant, Bates001-04 only lists state court cases filed in 2023 or 2024, and Bates040-42 only lists federal cases where Mr. Human was the named plaintiff. Furthermore, whether Mr. Human visited fisher.com is completely irrelevant to this case, as Fisher's website is fisherinvestments.com.

Fourth, settlement agreements aren't privileged. See, e.g., *Wagner v. Circle W Mastiffs*, 2013 WL 2096655, at *6 (S.D. Ohio May 14, 2013) (collecting cases) ("settlement agreements frequently are found to be discoverable in order to allow the requesting party to explore these issues with respect to witnesses."); see also *State Farm Mut. Auto. Ins. Co. v. Universal Health Grp.*, 325 F.R.D. 602, 606 (E.D. Mich. 2016), adopted, 2016 WL 6822014 (E.D. Mich. Nov. 18, 2016) (finding that prior settlement agreements with testifying witnesses were relevant to potential bias and were thus discoverable); *DIRECTV, Inc. v. Puccinelli*, 224 F.R.D. 677, 684 (D. Kan. 2004) ("the settlement agreements and information regarding their terms are relevant because they may establish the bias or prejudice"). Courts also order plaintiffs to produce settlement agreements in TCPA cases. See, e.g., *Reimer v. Medigap Life LLC*, Case 1:2023-cv-00683, Doc. 44 (E.D. Va. Sept. 20, 2023). As such, please confirm that Mr. Human will supplement his production to include settlement agreements.

Fifth, regarding the Verizon subpoena, Mr. Human's call history is not privileged information. For example, whatever you may have discussed on the phone with him is privileged, but not the existence of the phone call itself. Regardless, Verizon couldn't have produced any privileged information in response to the subpoena, as Verizon doesn't maintain records of the content of phone calls or voicemails and has never produced privileged information in response to one of our subpoenas—all they send us are limited call logs for the requested period. To that end, we received a response, but we cannot open it because Verizon sent the incorrect password to access the materials. Once we are able to open it, we will send a copy to Plaintiff.

On a similar note, your proposed restrictions to the device inspection are inappropriate and untimely. As we've stated before, any objections you may have are waived due to Mr. Human's failure to timely respond. To alleviate your concerns, the device inspection will be handled by a third-party forensic examiner, who will be bound by a protective order, and to the extent the examiner has direct or indirect access to privileged information, there shall be no waiver of privilege or dissemination of privileged information. This is standard and we can outline it further in a device inspection and/or ESI protocol. Please confirm that Mr. Human will make his device available for inspection no later than January 10.

Sixth, as to the proposed protective order, we are working on one and will circulate it for your review sometime this week. Once a suitable protective order is in effect, Fisher will make a document production, as your requests seek confidential commercial information.

Lastly, I'm not sure who Christopher Prosser is, let alone his connection to this case, so could you please

explain why he was copied on routine correspondence between counsel? On that note, please be sure to include Alex Terepka (alex@wtlaw.com) and Matt Guletz (mguletz@thompsoncoburn.com) on all future correspondence, as they are also attorneys of record. We'd also appreciate it if you could respond to email threads instead of creating a new email so that we have a clear record for the Court.

We've gone back and forth several times in an attempt to get Mr. Human to comply with his discovery obligations. From our perspective, it seems like it's clear that won't happen. Per paragraph 3(c)(i) of the Court's case management order, we need to meet and confer via telephone. **Please let us know your availability this week or early next week for a call**, as we understand that you may be unavailable on Friday for a medical appointment. We can then walk through our remaining discovery disputes and see if we can resolve them. Thank you.

Best,
Melanie

Melanie G. Ng ([bio](#))
WATSTEIN TEREPKA LLP
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

EXHIBIT 14

EXHIBIT B

Subject: Re: Human v. Fisher

Date: Thursday, January 16, 2025 at 12:57:02 PM Eastern Standard Time

From: Melanie Ng <mng@wtlaw.com>

To: Christopher Prosser <attorneysacquisitions@outlook.com>

CC: Edwin Butler <edbutler@butlerlawstl.com>, Alex Terepka <Alex@wtlaw.com>, Matthew D." <MGuletz@thompsoncoburn.com>

Hi Christopher,

Thanks for your email. This is the first we heard that Ed will be unavailable until Jan. 20 because of a "vacation," and we would have expected him to share that much sooner in response to our many requests over the past few weeks for a short phone call on our discovery disputes per the Court's order and for dates for Plaintiff's deposition. In any event, we think the record speaks for itself that Plaintiff is seeking to delay the case and Phase 1 discovery. Fisher has more than exhausted all reasonable efforts to meet and confer and sees no need to further exchange lengthy emails. Fisher will be raising these issues with the Court.

Best,
Melanie

Melanie G. Ng (bio)

WATSTEIN TEREPKA ^{LLP}

P: 404-600-1240

mng@wtlaw.com

www.wtlaw.com

From: Christopher Prosser <attorneysacquisitions@outlook.com>

Date: Monday, January 13, 2025 at 4:50 PM

To: Melanie Ng <mng@wtlaw.com>

Cc: Edwin Butler <edbutler@butlerlawstl.com>, Alex Terepka <Alex@wtlaw.com>, Matthew D." <MGuletz@thompsoncoburn.com>

Subject: Human v. Fisher

[Warning – external]

Counselors:

As indicated in a recent email to Melanie, I am Ed Butlers litigation paralegal.

Mr. Butler is on vacation until January 20, 2024, and has limited access to email and files. I noticed in your recent email that you had a problem with the Rule 26 disclosures Ed sent on December 24th, or that they did not appear attached to the email. This is the first we have heard of this problem, and I have attached another copy at his direction.

It appears that Mr. Butler advised Melanie in a recent email that he would not be available until after the 20th of this month for a phone conversation regarding discovery disputes, etc. If there are any other documents referenced which did not appear with an email, please advise and I will try to send them immediately.

Cordially,

Christopher Prosser, BA, AA, CLA
Litigation Paralegal

EXHIBIT 15

EXHIBIT C

Subject: Re: Human V Fisher

Date: Monday, January 13, 2025 at 11:40:12 AM Eastern Standard Time

From: Melanie Ng <mng@wtlaw.com>

To: Edwin Butler <edbutler@butlerlawstl.com>

CC: Alex Terepka <Alex@wtlaw.com>, Guletz, Matthew D. <MGuletz@thompsoncoburn.com>

Hi Ed,

Following up on our request to meet and confer by phone on Fisher's issues with your client's discovery responses per the Court's order requiring a call. This is our fourth request over the past week. Please provide times for a call this afternoon or tomorrow. If you refuse to provide a time on one of those days, we will email the Court per its procedure for raising discovery disputes and note that you have again refused to comply with the Court's order.

Also following up to get your client's position on Fisher's motion to extend the Phase 1 discovery period. Please let us know by EOD tomorrow. Otherwise, we will file the motion as opposed.

Best,
Melanie

Melanie G. Ng (bio)

WATSTEIN TEREPKA ^{LLP}

P: 404-600-1240

mng@wtlaw.com

www.wtlaw.com

From: Melanie Ng <mng@wtlaw.com>

Date: Thursday, January 9, 2025 at 5:36 PM

To: Edwin Butler <edbutler@butlerlawstl.com>

Cc: Alex Terepka <Alex@wtlaw.com>, Guletz, Matthew D. <MGuletz@thompsoncoburn.com>

Subject: Re: Human V Fisher

Hi Ed, earlier this afternoon, we circulated the response to the Verizon subpoena under separate cover. Please let us know if you have any issues accessing the documents through Dropbox. Additionally, please let us know when you are available for a call. Thank you!

Best,
Melanie

Melanie G. Ng (bio)

WATSTEIN TEREPKA ^{LLP}

P: 404-600-1240

mng@wtlaw.com

www.wtlaw.com

From: Melanie Ng <mng@wtlaw.com>
Date: Thursday, January 9, 2025 at 8:05 AM
To: Edwin Butler <edbutler@butlerlawstl.com>
Cc: Alex Terepka <Alex@wtlaw.com>, Guletz, Matthew D.
<MGuletz@thompsoncoburn.com>
Subject: Re: Human V Fisher

Hi Ed, following up on the below request for a call, thank you!

Best,
Melanie

Melanie G. Ng (bio)
WATSTEIN TEREPA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

From: Melanie Ng <mng@wtlaw.com>
Date: Tuesday, January 7, 2025 at 9:28 PM
To: Edwin Butler <edbutler@butlerlawstl.com>
Cc: Alex Terepka <Alex@wtlaw.com>, Guletz, Matthew D.
<MGuletz@thompsoncoburn.com>
Subject: Re: Human V Fisher

Hi Ed,

First, your statement that Mr. Human will not make a document production until the Court rules on your requests to stay discovery and for leave to amend the complaint is inappropriate and inconsistent with your demands that Fisher make a document production (which it will do after we work out a protective order, which we will send soon). Mr. Human cannot move for a stay that the Court has already denied once and then act as if the stay has already been granted. That is especially so because Mr. Human's discovery responses were due a month ago, and he failed to respond or object, thus waiving all objections. On top of that, Mr. Human's production to date is woefully inadequate. As we have raised several times before, most of your 400 pages of discovery are publicly available webpages and copies of Fisher's discovery responses. Please confirm that you will supplement your document production ASAP to address the below issues.

Second, with respect to the requests for information about Mr. Human's prior cases and demand letter, our understanding is that most of those documents are also within your possession, as you've been Mr. Human's TCPA attorney for several years. In any event, Mr. Human undoubtedly has copies of the TCPA demand letters he's sent, like the letter he sent to Fisher in this case and must produce them.

Third, your answers to interrogatories are woefully inadequate and regurgitate the same non-answers

over and over. For example, in response to Interrogatory No. 6, which asks Mr. Human to identify other cases where he was a party or provided testimony, he provided the non-response “I am a 68 year old man who lives on social security and receives a wealth of illegal telemarketing calls on my private resident phone, such as the calls listed in the complaint from Defendant Fisher. Any other information sought seeks evidence or responses outside the scope of Phase One discovery. Plaintiff therefore reserves the right to supplement his answer when Phase One discovery is completed and this case is certified as a class action. See also Bates pages 1 through 419 for a complete listing of all cases I have filed. To the best of my recollection, I have never provided live testimony in any of those cases; See also the Complaint; See Plaintiff’s Rule 26 disclosures. In further response, Plaintiff has never visited fisher.com or smartassert.com.” Not only is this response irrelevant, Bates001-04 only lists state court cases filed in 2023 or 2024, and Bates040-42 only lists federal cases where Mr. Human was the named plaintiff. Furthermore, whether Mr. Human visited fisher.com is completely irrelevant to this case, as Fisher’s website is fisherinvestments.com.

Fourth, settlement agreements aren’t privileged. *See, e.g., Wagner v. Circle W Mastiffs*, 2013 WL 2096655, at *6 (S.D. Ohio May 14, 2013) (collecting cases) (“settlement agreements frequently are found to be discoverable in order to allow the requesting party to explore these issues with respect to witnesses.”); *see also State Farm Mut. Auto. Ins. Co. v. Universal Health Grp.*, 325 F.R.D. 602, 606 (E.D. Mich. 2016), *adopted*, 2016 WL 6822014 (E.D. Mich. Nov. 18, 2016) (finding that prior settlement agreements with testifying witnesses were relevant to potential bias and were thus discoverable); *DIRECTV, Inc. v. Puccinelli*, 224 F.R.D. 677, 684 (D. Kan. 2004) (“the settlement agreements and information regarding their terms are relevant because they may establish the bias or prejudice”). Courts also order plaintiffs to produce settlement agreements in TCPA cases. *See, e.g., Reimer v. Medigap Life LLC*, Case 1:2023-cv-00683, Doc. 44 (E.D. Va. Sept. 20, 2023). As such, please confirm that Mr. Human will supplement his production to include settlement agreements.

Fifth, regarding the Verizon subpoena, Mr. Human’s call history is not privileged information. For example, whatever you may have discussed on the phone with him is privileged, but not the existence of the phone call itself. Regardless, Verizon couldn’t have produced any privileged information in response to the subpoena, as Verizon doesn’t maintain records of the content of phone calls or voicemails and has never produced privileged information in response to one of our subpoenas—all they send us are limited call logs for the requested period. To that end, we received a response, but we cannot open it because Verizon sent the incorrect password to access the materials. Once we are able to open it, we will send a copy to Plaintiff.

On a similar note, your proposed restrictions to the device inspection are inappropriate and untimely. As we’ve stated before, any objections you may have are waived due to Mr. Human’s failure to timely respond. To alleviate your concerns, the device inspection will be handled by a third-party forensic examiner, who will be bound by a protective order, and to the extent the examiner has direct or indirect access to privileged information, there shall be no waiver of privilege or dissemination of privileged information. This is standard and we can outline it further in a device inspection and/or ESI protocol. Please confirm that Mr. Human will make his device available for inspection no later than January 10.

Sixth, as to the proposed protective order, we are working on one and will circulate it for your review sometime this week. Once a suitable protective order is in effect, Fisher will make a document production, as your requests seek confidential commercial information.

Lastly, I’m not sure who Christopher Prosser is, let alone his connection to this case, so could you please

explain why he was copied on routine correspondence between counsel? On that note, please be sure to include Alex Terepka (alex@wtlaw.com) and Matt Guletz (mguletz@thompsoncoburn.com) on all future correspondence, as they are also attorneys of record. We'd also appreciate it if you could respond to email threads instead of creating a new email so that we have a clear record for the Court.

We've gone back and forth several times in an attempt to get Mr. Human to comply with his discovery obligations. From our perspective, it seems like it's clear that won't happen. Per paragraph 3(c)(i) of the Court's case management order, we need to meet and confer via telephone. **Please let us know your availability this week or early next week for a call**, as we understand that you may be unavailable on Friday for a medical appointment. We can then walk through our remaining discovery disputes and see if we can resolve them. Thank you.

Best,
Melanie

Melanie G. Ng ([bio](#))
WATSTEIN TEREPKA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

From: Edwin Butler <edbutler@butlerlawstl.com>
Date: Thursday, January 2, 2025 at 4:35 PM
To: Melanie Ng <mng@wtlaw.com>
Cc: Edwin Butler <edbutler@butlerlawstl.com>, Christopher Prosser (Work) <attorneysacquisitions@outlook.com>
Subject: Human V Fisher

[Warning – external]

Hi Mel, as we've already told you, we are seeking leave to file an amended complaint and to stay discovery. We will make a new document production also when the Court rules on the motions we are filing today. Your client needs to first make a meaningful document production. YOUR CLIENT HAS NOT PRODUCED A SINGLE DOCUMENT IN THIS CASE! We both served discovery requests on the same day, so your complaint that you served first is of little consequence. Additionally, my client served you with discovery requests prior to my engagement. If you want to draft a proposed protective order, please feel to draft one. We also need a protective order in place because your discovery requests are grossly beyond the scope of phase one.

We have now produced in excess of 400 pages of documents, and you have still failed to provide a single document. Most of your discovery requests seek public

information not in my client's possession. It is not incumbent upon my office or my client to research public documents for your client. If you would like to make a significant cost deposit for the documents you seek, I have a research company that charges \$300.00 per hour and \$1.00 per page of any downloaded or discovered document. When I discussed this matter and your list, they advised they would require a \$5,000.00 deposit before beginning any work on your clients behalf. Let me know.

You have sent out a subpoena over my objection and possess many documents you seek below. I will give you a response to this list you claim:

- Substantive responses to interrogatories without objections, as those have been waived;
 - We sent you our responses previously and will resend the 62 page document now and another copy of the 419 pages of discovery in Bates 3.
- Response to device inspection request without objections, as those too have been waived;
 - Mr. Human will happily comply with this request but this phone contains attorney/client communications and we will seek a protective order from copying anything beyond in the incoming call log from your client. I noted these objections extensively when you sent a broad and sweeping subpoena on this topic to Verizon in November.
- Recordings or contemporaneous notes of alleged calls;
 - Mr. Human says he has no documents or recordings of this nature. I do note that you have not turned over your documents and recordings for our similar request, though we believe you possess both recordings and documents.
- All records concerning the alleged calls;
 - See answer above.
- All documents showing that Mr. Human was allegedly a “subscriber” for the phone number at-issue, including the bills for the phone number;
 - his bills are paid by credit and we have included all relevant documents in his possession in Bates 3 - which include the TCPA and MDNC registrations.

- Evidence that Mr. Human “personally registered his residential cellular telephone number . . . on the National and Missouri Do Not Call Registries in 2022”;
 - This is in the Bates 3 document production
- All non-privileged documents to support your allegation that Mr. Human incurred “provider fees” as a result of the subject calls;
 - See Amended Complaint - this has been amended today.
- Documents sufficient to evidence Mr. Human’s phone plan, including persons on such plan and billing statements;
 - Mr. Human has requested this information. You also already have it in your possession from a subpoena sent out over our written objections.
- All non-privileged documents, if any, to support your alleged damages, including evidence demonstrating whether Mr. Human suffered “severe physical injuries, including chest pain, anxiety”;
 - Mr. Human will present live testimony on this matter and is not in possession of the requested documents.
- All lead forms Mr. Human filled out or submitted between January 1, 2021 and the present;
 - Mr. Human is not in possession of any such documents and this information is vastly outside the scope of Phase One Discovery.
- Documents sufficient to identify all legal proceedings brought by Mr. Human for alleged violations of the TCPA and Missouri No Call List and Telemarketing provisions;
 - This is public information and you are already in possession of these documents. Mr. Human has no documents in his possession relative to these proceedings beyond the disclosure of Bates 3.
- Documents sufficient to evidence your acquisition of the subject number;
 - Mr. Human has no idea what this request means and is duplicating other requests which you have already secured through your subpoena. Mr. Human will also supplement this answer when he receives a response from the credit card which he pays the bill through.

- All agreements with counsel, including but not limited to retention and/or retainer agreements;
 - These documents are attorney/client privileged.
- Documents showing Mr. Human's internet history and IP addresses for the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024;
 - See interrogatory responses
- Documents sufficient to show all calls received on the subject phone number on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024;
 - see interrogatory answers and bates 3.
- All records of incoming and outgoing calls from the subject number between January 2022 and the present;
 - Your office subpoenaed this information and it duplicates multiple other requests. See also Bates 3.
- Documents sufficient to identify Mr. Human's physical location on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024;
 - Mr. Human is no in possession of this information, but was in St. Louis, Missouri on those dates.
- All correspondence or pre-suit demand letters Mr. Human sent (or were sent on his behalf) alleging purported violations of the TCPA or Missouri No Call List and Telemarketing provisions and responses received to same;
 - This request seeks attorney/client privileged information and Mr. Human is not in possession of any such documents.
- All documents where a defendant or opposing party asserted that Mr. Human consented or opted-in to receive communications from them;
 - See bates 3 for a listing of all cases filed by Mr. Human. This is public information and Mr. Human is not in possession of any relevant documents.
-
- All documents relating to "Veronica" or "Veronica Moreno" concerning

TCPA violations, Missouri No Call List and Telemarketing provisions violations, lead certificates, opt-ins, or internet search history;

- Mr. Human has no idea who this is, is not affiliated with this person, and has no documents in his possession which are responsive to this request.
- All lead certificates referencing or concerning the subject phone number;
 - Mr. Human has no idea what you are requesting in this request and is no in possession of any "lead certificate."
- All non-privileged documents relating to "Melody" or "Melody Human" concerning TCPA violations, Missouri No Call List and Telemarketing provisions violations, lead certificates, or opt-ins;
 - Mr. Human is not in possession of any such documents and to his knowledge, Melody Human is not a member of the class at this time, nor has she ever filed a TCPA case.
- All non-privileged documents related to *PolicyScout LLC v. Human*, 2:23-cv-00934-JNP (D. Utah);
 - This seeks attorney/client privileged information and any documents requested which are not privileged are either in your possession or can be obtained by your office on PACER. Mr. Human does not possess a PACER account and has no access to these documents.
- All settlement agreements between Mr. Human and third parties involving TCPA or Missouri No Call List and telemarketing provisions allegations;
 - These are all attorney/client privileged documents. Any such documents, if in existence, would contain confidentiality agreements which prohibit disclosure and/or subject the Plaintiff to severe penalties if disclosed and are beyond the scope of Phase One discovery.
- All transcripts of deposition testimony provided by Mr. Human;
 - Mr. Human does not possess any such transcripts or documents.
- All documents relating to Fisher, including communications and browser history;
 - See Bates 3 - production package.
- All documents relating to or concerning prior express consent to receive communications from Fisher; and

- Plaintiff has never given Defendant Fisher prior express written consent for the subject phone calls. Moreover this is Fishers stated defense and not the subject of this suit. Moreover, Fisher has not provided any form of express written consent alleged to have originated from the Plaintiff upon Plaintiff's repeated request for production and this is a fishing expedition.
- Documents sufficient to identify all criminal proceedings to which Mr. Human has been a party or witness.
 - Mr. Human is not in possession of any such documents and this is obviously beyond the scope of Phase One discovery.

Plaintiff has repeatedly sought a wealth of relevant documents from your client, and you have not produced a single document. Mr. Human has produced in excess of 400 documents, answered your interrogatories, and acted in good faith. Again, we are seeking to stay this harassing fishing expedition your office is engaging in and filing an Amended Complaint to include your client's lead provider, SmartAsset Advisors, LLC. You have failed to offer any objection to this filing and we intend to notify the Court of your lack of objection thereto upon filing today.

I also have a personal conflict with your scheduled deposition in that I had an invasive C-spine operation recently and I have a neurology appointment that day and am unavailable. I need this rescheduled or I will seek the Courts intervention.

Thanks,

Ed

Edwin V. Butler | Butler Law Group LLC

1650 Des Peres Road, Ste 220 | Des Peres, MO 63131

Direct: # | Office: 314-504-0001 | Fax: 314-481-8479

edbutler@butlerlawstl.com | www.butlerlawstl.com

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EXHIBIT 16

(4) the conservation of judicial resources.

Physicians Home Health Infusion, P.C. v. UnitedHealthcare of the Midwest, Inc., No., 2019 WL 4644021, at *3 (E.D. Mo. Sept. 24, 2019). The decision to stay discovery is “generally practical and ... left largely to the court's discretion.” *Id.* (quoting *Dufrene v. ConAgra Foods, Inc.*, 2016 WL 10651947, at *2 (D. Minn. Apr. 7, 2016)). *Raimo v. Washington Univ. in St. Louis*, No. 4:20-CV-00634-SEP, 2021 WL 243559, at *1 (E.D. Mo. Jan. 25, 2021).

In our case, the Court Ordered Phase One discovery to be limited to the threshold issue of liability on the Plaintiff's claim. See Order at pp. 1. The Defendant was served with Plaintiff's first set of interrogatories, admissions and document requests on November 14, 2024, and refused to provide a single document, offered extensive and mind-numbing, frivolous objections to every request, and failed to timely serve the Plaintiff with their initial disclosures until December 20, 2024 – a month prior to the close of phase one discovery. See Exhibit A – Plaintiff's First Requests for Document Production, Interrogatories, and Admissions to Defendant Fisher; Exhibit B, C, and D – Fisher's objections to every discovery request; Exhibit E – Fisher's untimely initial disclosures of December 20, 2024.¹

Defendant Fisher withheld the existence of its' vendor and lead generator, SmartAsset Advisors, LLC, until it provided its untimely initial disclosures. See Exhibit E. This was a purely tactical maneuver in that Defendant SmartAsset Advisors, LCC is a lead generator, vendor, major marketing company for Defendant Fisher, and an essential party in this case whom the Defendant knew or reasonably should have known would be added as an indispensable party in

¹ In contrast, Plaintiff lodged virtually no objections to Defendant Fishers discovery requests and provided more than 400 documents as requested.

this case. SmartAsset Advisors, LLC has now been added to this suit in a First Amended Complaint filed contemporaneously herewith.

Considering the Defendant's failure to meaningfully participate in phase one discovery beyond 106 pages of objections relating to every discovery request timely served by Plaintiff, and the revelation of a new and complicit party who has yet to be served process, staying all discovery in this case is the only means by which to preserve the integrity of the judicial process and conserve judicial resources in that it will avoid duplicative discovery requests, motions and rulings on various topics, including phase one discovery. See Exhibits B, C, and D.

Equally as compelling, Plaintiff will be severely prejudiced both procedurally and substantively if all discovery is not stayed in this case pending the resolution of these as the inclusion of the additional complicit party, who clearly possesses relevant and material evidence in this case, must be afforded due process through both perfection of process or waiver thereof, and an opportunity to respond to the First Amended Complaint prior to engaging it in discovery. This is a time-consuming process which could take up to sixty (60) days, well beyond the expiration of phase one discovery.

Defendant Fisher cannot be prejudiced by the Court staying all discovery, in that the delay in filing a First Amended Complaint and identifying this additional complicit party is directly attributable to Defendant Fisher's tactical maneuver of refusing to participate in discovery and serving their initial disclosures thirty days out of time. See Exhibit E.

Equally as important, discovery is now based on an inoperative pro se Complaint, in that the filing of the First Amended Complaint renders moot all prior motions and complaints. See *Harris v. University of Missouri*, 2024 WL 1636703 (April 16, 2024); *Standridge v. Faulkner County, Arkansas*, 2024 WL 1346516 (U.S. Dist. E.D. Arkansas March 29, 2024) (a motion to

amend complaint renders moot a motion to dismiss the previously filed complaint).

As a matter of law, there is strong likelihood of success herein, where the lead generator and vendor of Fisher has now been identified as a complicit party – thus illustrating the vicarious liability of the principal, Defendant Fisher.

WHEREFORE, for the foregoing reasons, Plaintiff prays this Court to stay all discovery in this case, including a recently scheduled deposition of the Plaintiff, pending service of process and answers being filed to the First Amended Complaint, and for such further relief deemed just and equitable in the circumstances.

Respectfully submitted,

/s/Edwin V. Butler
Edwin V. Butler Mo. 32489
Attorney At Law
Butler Law Group, LLC
1650 Des Peres Rd., STE 220
St. Louis, MO 63131
edbutler@butlerlawstl.com
(314) 504-0001

Attorney for the Plaintiff

Certificate of Service

I hereby certify that the above and foregoing was served electronically this 2nd day of January 2025, on the Attorneys of record for the Defendants through the Courts ECF/CM filing and notification system.

/s/Edwin V. Butler
Edwin V. Butler

EXHIBIT 17

From: Melanie Ng mng@wtlaw.com
Subject: Human v. Fisher - Device Inspection
Date: January 23, 2025 at 12:17 PM
To: Edwin Butler edbutler@butlerlawstl.com
Cc: Alex Terepka Alex@wtlaw.com, Guletz, Matthew D. MGuletz@thompsoncoburn.com
Bcc: James Ruley jruley@wtlaw.com



Hi Ed,

Per the Court's order, Plaintiff's full compliance with Fisher's device inspection request is due Monday, January 27. The device inspection "requests Plaintiff Daniel Human to provide and permit Defendant to inspect, copy, test, or sample all electronic devices you used on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024," and the term "electronic device" includes cell phones, computers, tablets, smart watches, or any other similar electric device that has access to the internet." The device inspection is attached for your reference. As noted, any and all objections are waived. First Amended Case Management Order, ECF No. 34, ¶ 3(c)(ii) n.1 (E.D. Mo. Jan. 22, 2025).

We see two reasonable ways to comply with this request: either (1) your client can simply send us all responsive devices (which, at minimum, includes the telephone identified in written discovery but likely encompasses other devices such as a laptop) and give us a reasonable time for a forensic professional to create images of the data on the device(s). Once complete, we will return the devices to you. Alternatively, (2) the other way is for your client to retain a forensic professional to create images of the data on the responsive device(s) and send us the images by January 27. Please let us know how you wish to proceed. If your client decides to send us the responsive device(s) for inspection, please ensure that delivery is scheduled to arrive at our Atlanta office by January 27 and include a tracking number so that the package does not get lost. For your convenience, our mailing address is as follows:

Attn: Melanie Ng
Watstein Terepka LLP
1055 Howell Mill Road, 8th Floor
Atlanta, GA 30318

Thank you.

Best,
Melanie

Melanie G. Ng (bio)
WATSTEIN TEREPKA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

The information contained in this message is intended only for the personal and confidential use of the recipient(s) named above. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this message and all contents in error and that any review, dissemination, distribution, or copying of this message or its contents is strictly prohibited. If you have received this message in error, please delete the original message, and notify me immediately.

2024-11-14 Defendant's Request
for Inspection of Device.pdf



EXHIBIT 18

From: Melanie Ng mng@wtlaw.com

Subject: Re: Human V Fisher

Date: January 25, 2025 at 2:18 PM

To: Edwin Butler edbutler@butlerlawstl.com

Cc: Edwin Butler edbutler@butlerlawstl.com, Guletz, Matthew D. MGuletz@thompsoncoburn.com, Alex Terepka Alex@wtlaw.com, Christopher Prosser (Work) attorneysacquisitions@outlook.com



Hi Ed,

Following up on the below. Please confirm that Mr. Human will produce his laptop and cell phone for inspection at 10 a.m. on Monday at Semke Forensic, 154 Hughes Lane, St. Charles, MO 63301 without the limitations you improperly inserted. Fisher is incurring significant expense to prepare for Monday, including by retaining a professional to copy the data on the devices. In the event Plaintiff does not appear or imposes improper limitations on Fisher's device inspection, Fisher will seek to recoup the fees it is incurring for Monday. Thank you.

Best,
Melanie

Melanie G. Ng ([bio](#))

WATSTEIN TEREPA ^{LLP}

P: 404-600-1240

mng@wtlaw.com

www.wtlaw.com

From: Melanie Ng <mng@wtlaw.com>

Date: Friday, January 24, 2025 at 4:29 PM

To: Edwin Butler <edbutler@butlerlawstl.com>

Cc: Edwin Butler <edbutler@butlerlawstl.com>, Guletz, Matthew D. <MGuletz@thompsoncoburn.com>, Alex Terepka <Alex@wtlaw.com>, Christopher Prosser (Work) <attorneysacquisitions@outlook.com>

Subject: Re: Human V Fisher

Hi Ed, following up on the below. Please confirm that Mr. Human will appear on Monday and bring his laptop and cell phone for inspection without the limitations you inserted.

Additionally, we will perform the device inspection at the offices of our computer professional: Semke Forensic, 154 Hughes Lane, St. Charles, MO 63301. Please appear at their office instead of Thompson Coburn. Thank you.

Best,
Melanie

Melanie G. Ng ([bio](#))

WATSTEIN TEREPA ^{LLP}

P: 404-600-1240

mng@wtlaw.com

www.wtlaw.com

From: Melanie Ng <mng@wtlaw.com>

From: Melanie Ng <mng@wtlaw.com>

Date: Thursday, January 23, 2025 at 7:31 PM

To: Edwin Butler <edbutler@butlerlawstl.com>

Cc: Edwin Butler <edbutler@butlerlawstl.com>, Guletz, Matthew D. <MGuletz@thompsoncoburn.com>, Alex Terepka <Alex@wtlaw.com>, Christopher Prosser (Work) <attorneysacquisitions@outlook.com>

Subject: Re: Human V Fisher

Hi Ed,

Thank you for the email. We'll see you on Monday. However, you've inserted improper limiting language that isn't in our device inspection request. We are not going to limit the inspection to "activities usage" on certain dates. Instead, as stated in our device inspection request, we're going to copy the data stored on these devices by taking an image of them. That is the only way Fisher can analyze the data on the devices to determine if Mr. Human used them to consent to calls for the purpose of manufacturing TCPA claims. If your client is not willing to comply with this basic requirement for a device inspection request, we will consider it a violation of a Court order and bring this to the Court's attention.

We look forward to speaking with you on Monday at 1:30 pm CT and will circulate a Zoom link. We'll get back to you on deposition dates.

Best,
Melanie

Melanie G. Ng ([bio](#))

WATSTEIN TEREPKA ^{LLP}

P: 404-600-1240

mng@wtlaw.com

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From: Edwin Butler <edbutler@butlerlawstl.com>

Date: Thursday, January 23, 2025 at 6:52 PM

To: Melanie Ng <mng@wtlaw.com>, Alex Terepka <Alex@wtlaw.com>

Cc: Edwin Butler <edbutler@butlerlawstl.com>, Guletz, Matthew D.

<MGuletz@thompsoncoburn.com>, Christopher Prosser (Work)

<attorneysacquisitions@outlook.com>

Subject: Human V Fisher

[Warning – external]

Hi Mel. Mr. Human is happy to comply with your inspection request limited to activities usage on June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024. Plaintiff will produce his phone and laptop at the offices of your local counsel on January 27, 2025 at 10:00 a.m. for inspection:

Matthew D. Guletz #57410(MO)

THOMPSON COBURN LLP
One US Bank Plaza
St. Louis, MO 63101

Plaintiff will remain present and witness the inspection, as will one of my staff members.

We can set up a call on Monday, January 27, 2025 at 1:30 to discuss discovery disputes. Please provide a list of your open dates for Mr. Human's deposition. He has always been willing to be deposed.

Thanks,

Ed

Edwin V. Butler | Butler Law Group LLC
1650 Des Peres Road; Ste 220 | Des Peres, MO 63131
Direct: # | Office: 314-504-0001 | Fax: 314-481-8479
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EXHIBIT 19

From: Melanie Ng mng@wtlaw.com
Subject: Re: Human v. Fisher - Meet & Confer on Discovery Issues
Date: January 27, 2025 at 12:49 PM
To: Edwin Butler edbutler@butlerlawstl.com, Alex Terepka Alex@wtlaw.com, Guletz, Matthew D. MGuletz@thompsoncoburn.com
Cc: Edwin Butler edbutler@butlerlawstl.com, Christopher Prosser (Work) attorneysacquisitions@outlook.com



Hi Ed, your email is misreading Fisher's notice of device inspection, where it clearly asked to inspect—including copying—the devices that Mr. Human used on certain dates. It did not limit the scope of the inspection to activities usage on the devices on those dates.

Please see the attached notice of device inspection. As Judge Schelp ordered all objections waived due to your prior failure to object, we expect full compliance with the device inspection today. Anything less is a violation of a Court order that we'll bring to the Court's attention.

Your concern about privileged and irrelevant materials can be addressed by an aside protocol that isolates these materials to avoid their improper disclosure. This is standard practice for a device inspection that the expert we've retained is familiar with. We first invited your input on an ESI and/or device inspection protocol on January 7, which you ignored as well as my multiple follow up attempts.

With respect to the balance of your email, you appear to be referencing discovery requests that Mr. Human served before he was represented by counsel. There are several issues with these discovery requests, most glaringly that Mr. Human served those requests before discovery was open under the Federal Rules of Civil Procedure. First, Rule 26(d)(1) clearly states that "A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempt from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order." Second, the then-operative scheduling order did not contemplate premature discovery requests. And lastly, the parties did not stipulate to early discovery. *See Futrell v. Lowe's*, 2021 WL 4593367, at *2 (E.D. Mo. Oct. 6, 2021) (finding plaintiff's discovery requests "premature" where the "parties have not yet engaged in a Rule 26(f) conference nor have they stipulated to early discovery in this matter"). Furthermore, Fisher informed Mr. Human of its position on October 7, 2024—the day that Mr. Human served his improper and premature discovery requests. As such, these requests are invalid. *See id.*; *see also Futrell v. Lowe's*, 2021 WL 3566646, at *2 (E.D. Mo. Aug. 12, 2021) ("a party may not seek discovery prior to a Rule 26(f) conference" where the "parties have not stipulated to early discovery in this matter and the Court has not authorized such discovery.").

It is clear that your long email is attempting to belatedly raise issues with Fisher's discovery responses to distract from your client's discovery misconduct. We will of course meet and confer with you per the Court's order on these issues. However, the Court ordered you to make yourself available to discuss our discovery deficiencies today. ECF No. 34 ¶ 3(c)(iii). We can discuss yours as soon as Wednesday.

As I mentioned before, we're available on February 10, 11, or 12th for Mr. Human's deposition. By the way, the Court's order requires you to disclose at least three dates for Mr. Human's deposition by today. ECF No. 34 ¶ 3(c)(i) ("No later than Monday, January 27, 2025, Plaintiff must provide Defendant Fisher Investments, Inc. with at least three available dates for such deposition.").

And please respond to our request concerning the device inspection. Mr. Human needs to appear for his device inspection by 3 pm CT so that our forensic professional can complete his work by close of business today.

Thank you

Thank you.

Best,
Melanie

Melanie G. Ng ([bio](#))

WATSTEIN TEREPKA ^{LLP}

P: 404-600-1240

mng@wtlaw.com

www.wtlaw.com

From: Edwin Butler <edbutler@butlerlawstl.com>

Date: Monday, January 27, 2025 at 7:50 AM

To: Melanie Ng <mng@wtlaw.com>, Alex Terepka <Alex@wtlaw.com>, Guletz, Matthew D. <MGuletz@thompsoncoburn.com>

Cc: Edwin Butler <edbutler@butlerlawstl.com>, Christopher Prosser (Work) <attorneysacquisitions@outlook.com>

Subject: Human v. Fisher - Meet & Confer on Discovery Issues

[Warning – external]

Hi Mel.

Yes, Mr. Human will appear at your newly disclosed location. Apparently, I am missing something here. Your specific request sets forth precise dates for the usage inspection. It didn't ask for a global copy of the devices, nor did it contain any mention of a forensic analysis. That said, my client's phone contains information which is personal, private, attorney/client privileged, and doctor/patient privileged. We never agreed nor have we waived those privileges. Moreover, you are not suing Mr. Human for allegedly manufacturing TCPA claims and the only true defense in TCPA is prior express written consent, which you still have not provided – though I believe it was misrepresented to Judge Schelp that you did provide that information to us (30 minutes before the hearing last week).

Moving forward, there are a number of discovery disputes that we have with your client's lack of production which we also will be discussing on Monday. Specifically, we believe you previously waved your objections to Mr. Human's production requests by failing to respond within 21 or even 30 days. The chronology I have regarding these events, which is based on the emails between Mr. Human and your office are:

7/17/24 Demand Letter and copy of filed Complaint

8/9/24 Summons and Affidavit of service

8/30 Response by email from M. Guletz to demand and Removal

9/3/24 email to M. Guletz re settlement

9/4/24 Fisher response to Complaint

9/4/24 Follow up letter for settlement to include Melanie NG

9/9/24 Email to Melanie NG to send all future correspondence to me by email

10/7/24 email from Melanie NG responding to my settlement proposal and including

a November 12, 2024 scheduling plan (obviously a "conference")

a NOVEMBER 12, 2024, scheduling plan (obviously a conference)

10/7/24 Discovery – Interrogatories, Admissions and Document Requests served at 9:56 am

10/7/24 email from Melanie NG that we have NOT conferenced. At 3:24 pm

10/7/24 at 3:29 pm... email to Melanie NG addressing the "confer" issue we already had!

10/11/24 Ed enters his appearance

Mr. Human advised that he called and emailed your office multiple times and exhausted all reasonable efforts to communicate with your office and it was only upon threat of a taking your lack of communication to the Judge and Bar Association, that you finally responded with “we’ll get back to you when we can.” See Human email of October 7, 2024, at 9:56 a.m. And see also your email of October 7, 2024, at 3:22 p.m. which lacked any discovery objections, whatsoever.

Your office had already been served with a proposed discovery scheduling order and then Plaintiff’s first request for discovery and your responses were due on October 28, 2024. All your untimely objections are therefore waived. *See Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992) (“It is well established that a failure to object to discovery requests within the time required constitutes a waiver of any objection.”); *In re United States*, 864 F.2d 1153, 1156 (5th Cir. 1989) (“We readily agree with the district court that as a general rule, when a party fails to object timely to interrogatories, production requests, or other discovery efforts, objections thereto are waived.”).

Considering your lack of timely objections to Plaintiff’s first request for discovery, and your production which was grossly inadequate, Plaintiff has the following discovery disputes:

I. INTERROGATORIES

1. Identify each person who provided the information to answer interrogatories in this case and specify the interrogatories about which each such person provided information.

Your response is that you refuse to answer the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client’s liability on plaintiff’s claim. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff’s ability to discover indispensable parties which have shared liability.

2. Identify all agents, employees or vendors involved in making outbound calls promoting your services by direct dialing and/or utilizing a dialer that requires a computer. This includes, but is not limited to, (a) third parties that you contract with who make telemarketing calls to generate leads, (b) the dialing system platform or provider used to make those calls, (c) any calls made to acquire new customers.

Your response is that you refuse to answer the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client’s liability on plaintiff’s claim. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff’s ability to discover indispensable parties which have shared liability.

3. Identify and describe the work of each agent, employee or vendor in detail.

Your response is that you refuse to answer the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's liability Plaintiffs vicarious liability count IV. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability.

4. Identify all third parties or sub-vendors involved in making outbound calls promoting your goods or services utilizing a dialer that requires a computer. This includes, but is not limited to, any (a) companies that supply telephone numbers to you for calling (b) any third party companies you use to make the calls and (c) any dialing systems that are used to make the calls.

Your response is that you refuse to answer the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's liability and Plaintiffs vicarious liability count IV. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability.

5. Identify and describe the work of each vendor.

Your response is that you refuse to answer the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's liability and Plaintiffs vicarious liability count IV. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability.

6. Identify all third parties or sub-vendors used by your vendors for you.

Your response is that you refuse to answer the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's liability and Plaintiffs vicarious liability count IV. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability.

7. Identify each employee or vendor of yours that called the Plaintiff.

Your response is that "Defendant will conduct a reasonably diligent search and produce business records sufficient to show which entity made the complained-of calls, if such records are within Defendant's possession, custody, or control." Your response is woefully inadequate and you have failed to supplement this interrogatory with any further relevant documents, to include phone records for the numbers utilized to contact the Plaintiff's private residential phone, as well as other relevant information on "Kingsway Service" – the marketing company identified as being involved in the illegal calls. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which

Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which may or have shared liability.

8. If you contend that Plaintiff provided express written consent to receive solicitation telephone calls, state all facts in support of that contention and identify the date(s) on which and the means by which you contend express written consent was obtained.

Your response is that "Defendant will conduct a reasonably diligent search and produce business records sufficient to show Plaintiff's consent to receive the complained of calls." You have not produced a scintilla of evidence responsive to this request and it is clearly one of your affirmative defense. Your response is woefully inadequate and you have failed to supplement this interrogatory with relevant documents, to include the prior express written consent of the Plaintiff to receive these calls. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and vex this cause of action by hindering Plaintiff's ability to discover indispensable parties which may or have shared liability.

9. Identify your company's relationship with any company that provided you with the Plaintiff's information or information related to the Plaintiff's telephone number, including all lead providing companies with whom you or your agents contract with or purchase leads from.

Your response is that you refuse to answer the interrogatory, and you refer Plaintiff to your untimely Rule 26 disclosures. This is nonresponsive to the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's liability and Plaintiffs vicarious liability count IV. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. Simply referring Plaintiff to your initial disclosures is an evasive tactic calculated to multiple the Plaintiff's costs in this matter.

10. State all facts in support of each affirmative defense you have raised in chronological order as stated in your answer to the complaint.

Your response is that you refuse to answer the interrogatory. This is nonresponsive to the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's liability and Plaintiffs vicarious liability count IV. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. These are your clients stated affirmative defenses, and if you fail to answer this question we will move to strike all stated affirmative defenses in this case for lack of legal merit and factual support.

11. In response to which (if any) requests for production in this case have you produced no responsive documents?

Your response is that you refuse to answer the interrogatory. This is nonresponsive to the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's

liability and Plaintiffs vicarious liability count IV and the existence of non-compliance with our stated document production requests. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability.

12. Identify each licensed or unlicensed agent you or your agents supplied Plaintiff's residential cellular number to for them to call.

Your response is that "Defendant will conduct a reasonably diligent search and produce business records sufficient to show which entities Defendant supplied Plaintiff's cellular number to, if such records are found within Defendant's possession, custody, or control." Your response is woefully inadequate and you have failed to supplement this interrogatory with any relevant documents, to include phone records for the numbers utilized to contact the Plaintiff's private residential phone, as well as other relevant information on "Kingsway Service" and Defendant "Smart Asset Advisors" – the marketing company identified as being involved in the illegal calls. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which may or have shared liability.

13. Identify each Defendant or their agents or employees who vetted or scrubbed the Plaintiff's residential phone number against the National and Missouri State do not call registries prior to calling the number at issue in the Complaint.

Your response is that you refuse to answer the interrogatory. This is nonresponsive to the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's direct liability and vicarious liability count IV. We are entitled to this information and your non-response is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. This is a simple question which is not confusing – identify any Fisher employee that scrubbed the called number against the Missouri and Federal Do not call lists? Teddy Parks is identified as one of the callers, did he scrub the number prior to making any of his calls in this case? You need to supplement this answer immediately with not only the names, but also the phone numbers called from.

14. Identify each of the individuals that spoke with Plaintiff from your company or any of its vendors, and for each agent, employee or vendor, identify the phone number each person contacted the Plaintiff from, as well as the day, date, time, and duration of each call.

Your answer is nonresponsive to this question. This question asks to fully identify these people within the structure and definitions provided. These interrogatories and definitions have withstood scrutiny. Please answer this question forthwith as it is specific and goes directly to your client's direct liability and vicarious liability count IV. We are entitled to this information and your non-response is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability.

15. Identify by make, model, structure and location the system(s), (platforms(s) [sic], and/or equipment used by you, or any vendor, to contact the Plaintiff's private residential phone

and/or equipment used by you, or any vendor, to contact the Plaintiff's private residential phone number.

Your response is that you refuse to answer the interrogatory. This is nonresponsive to the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's direct liability and vicarious liability count IV. We are entitled to this information and your non-response is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. This is a simple question which is not confusing – identify the equipment used to make the calls. The equipment is not privileged or some trade secret unless Fisher holds the patent on the equipment – and even then, it isn't a trade secret.

16. Identify any person (whether employed by you or not) whom you have disciplined, reprimanded, or taken similar action against for engaging in, facilitating, or allowing allegedly unlawful or unauthorized outbound call(s) using a recorded message or text message to occur. In your answer, please identify all persons involved in any investigation, describe the reasons for your disciplinary action or reprimand, and describe the action taken against the person.

Your response is that you refuse to answer the interrogatory. This is nonresponsive to the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's direct liability and vicarious liability count IV. We are entitled to this information and your non-response is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability.

II. DOCUMENT REQUESTS

1. Please produce all non-attorney-client-privileged documents identified in or used to research or draft responses to interrogatories in this case.

Your response is that "Defendant identified certain interrogatories for which Defendant would search for and produce business records in accordance with Rule 33(d), if such records are found to be within Defendant's possession, custody, or control." Your responses were due on October 28, 2024. Your objections are therefore waived. *See Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992) ("It is well established that a failure to object to discovery requests within the time required constitutes a waiver of any objection."); *In re United States*, 864 F.2d 1153, 1156 (5th Cir. 1989) ("We readily agree with the district court that as a general rule, when a party fails to object timely to interrogatories, production requests, or other discovery efforts, objections thereto are waived."). Additionally, your response is woefully inadequate and nonresponsive to this request and you have failed to supplement this your response with any relevant documents, to include phone records for the numbers utilized to contact the Plaintiff's private residential phone, signed prior express written consent, which you have repeatedly claim you possess, as well as other relevant information on "Kingsway Service" and Defendant "Smart Asset Advisors" – the marketing company identified as being involved in the illegal calls, and Fishers professional liability business insurance policy, etc. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which may or have shared liability.

2. Please produce all documents supporting or contradicting any affirmative defense made in any answer by you to any complaint in this case.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to your client's liability. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. If you fail to supplement this production request we will move to strike all affirmative defenses as factually unsupported and absent legal merit. *Powell v. W. Asset Mgmt., Inc.*, 773 F. Supp. 2d 761, 764 (N.D. Ill. 2011) (listing cases finding no duty to mitigate under § 227 of the TCPA); *Holtzman v. Turza*, No. 08 C 2014, 2010 WL 4177150, at *5 (N.D. Ill. Oct. 19, 2010), *aff'd sub nom. Ira Holtzman, C.P.A. v. Turza*, 728 F.3d 682 (7th Cir. 2013); *Onsite Computer Consulting Servs., Inc. v. Dartek Computer Supply Corp.*, No. 05AC-000108 I CV, 2006 WL 2771640, at *4 (Mo. Cir. Ct. May 17, 2006).

3. Please produce all documents related to Plaintiff, including, but not limited to, all documents evidencing your relationship with Plaintiff and your investigation into outbound calls made to Plaintiff's private residential cell phone.

Your response is non-responsive to the request, and you have failed to supplement with actual production beyond call notes. You have failed to produce the prior express written consent you repeatedly claim to possess. Immediately provide responsive documents as it is specific and goes directly to your client's direct liability. We are entitled to this information, and your non-response is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability.

4. Please produce all documents relating to any failure by an employee or a vendor to abide by your policies relating to the sending of outbound calls to subscribers of both the Missouri and National do not call registries.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification and liability. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. If you fail to supplement this production request we will move to strike all affirmative defenses as factually unsupported and absent legal merit. *Powell v. W. Asset Mgmt., Inc.*, 773 F. Supp. 2d 761, 764 (N.D. Ill. 2011) (listing cases finding no duty to mitigate under § 227 of the TCPA); *Holtzman v. Turza*, No. 08 C 2014, 2010 WL 4177150, at *5 (N.D. Ill.

Oct. 19, 2010), *aff'd sub nom. Ira Holtzman, C.P.A. v. Turza*, 728 F.3d 682 (7th Cir. 2013); *Onsite Computer Consulting Servs., Inc. v. Dartek Computer Supply Corp.*, No. 05AC-000108 I CV, 2006 WL 2771640, at *4 (Mo. Cir. Ct. May 17, 2006).

5. Please produce all documents relating to complaints or do-not-call requests concerning outbound calls, including, but not limited to, lists or databases containing complaints about them, and information identifying the complainants. This Request includes any complaints to you by mail, email, live call, IVR, SMS, web form, social media, FCC, FTC, CFPB, state attorney generals, BBB or any other source.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability.

6. All contracts and documents representing agreements with any vendors that provided you the phone numbers of putative class members or the Plaintiff and/or who contacted the Plaintiff and putative class members.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) *Grant v. Regal Auto. Grp., Inc.*, No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020)

7. All communications with any vendors that provided you with or you provided them with the phone number of putative class members or the Plaintiff as they relate to telephone number acquisition.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of

the doctrine of ratification is knowledge of the material facts”); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020)

8. All communications with any third parties that you have a relationship with that makes calls for you regarding outbound calls or customer origination and/or acquisition.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to your client’s, knowledge, intent, ratification of illegal calls and its direct and vicarious liability. We are entitled to this information and your non-response claiming you’ll supplement is vexing the Plaintiff’s ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff’s ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that “[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts”); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020)

9. All communications with any vendor that physically dialed calls to the Plaintiff regarding outbound calls or customer origination.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to your client’s, knowledge, intent, ratification of illegal calls and its direct and vicarious liability. We are entitled to this information and your non-response claiming you’ll supplement is vexing the Plaintiff’s ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff’s ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that “[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts”); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020).

10. Please produce all documents relating to insurance coverage of the acts alleged by Plaintiff, including, but not limited to, all potentially applicable policies issued by any insurer and all communications with any such insurers, including, but not limited to, reservation-of-rights letters, regardless of whether or not such coverage purports to exclude the acts alleged in this matter and regardless of whether or not such insurers have declined coverage in this matter.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to your client’s, knowledge, intent, ratification of illegal calls and its direct and vicarious liability, as well as a potential indispensable party’s indemnification duty as well as their duty to defend. We are entitled to this information and your non-response claiming you’ll supplement is vexing the Plaintiff’s ability to prosecute the liability claims for which Phase I discovery is dedicated.

Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020); In the Matter of the Joint Petition Filed by Dish Network, LLC, 28 F.C.C.R. at 6586–87; Gould v. Farmers Ins. Exch., 288 F. Supp. 3d 963, 970 (E.D. Mo. 2018); *Norwalk Ready Mixed Concrete, Inc. v. Travelers Ins. Cos.*, 246 F.3d 1132, 1136 (8th Cir. 2001). "Insurance policies are contracts between the insurer and the insured and must be interpreted like other contracts, the object being to ascertain the intent of the parties." *Talen v. Emps. Mut. Cas. Co.*, 703 N.W.2d 395, 407 (Iowa 2005). "When the words of an insurance contract are unambiguous, the intent of the parties is determined by the language of the policy itself." *Mod. Equip. Co. v. Cont'l W. Ins. Co.*, 355 F.3d 1125, 1128 (8th Cir. 2004); Rohlf v. Cont'l Cas. Co., No. 4:20-CV-00173, 2021 WL 6622191, at *4 (S.D. Iowa Jan. 19, 2021).

11. Please produce all indemnification agreements under which a third party may be responsible for satisfying all or part of a judgment that may be entered against you in this action, and all communications with those third parties.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability, as well as a potential indispensable party's indemnification duty as well as their duty to defend. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020); In the Matter of the Joint Petition Filed by Dish Network, LLC, 28 F.C.C.R. at 6586–87; Gould v. Farmers Ins. Exch., 288 F. Supp. 3d 963, 970 (E.D. Mo. 2018); *Norwalk Ready Mixed Concrete, Inc. v. Travelers Ins. Cos.*, 246 F.3d 1132, 1136 (8th Cir. 2001). "Insurance policies are contracts between the insurer and the insured and must be interpreted like other contracts, the object being to ascertain the intent of the parties." *Talen v. Emps. Mut. Cas. Co.*, 703 N.W.2d 395, 407 (Iowa 2005). "When the words of an insurance contract are unambiguous, the intent of the parties is determined by the language of the policy itself." *Mod. Equip. Co. v. Cont'l W. Ins. Co.*, 355 F.3d 1125, 1128 (8th Cir. 2004); Rohlf v. Cont'l Cas. Co., No. 4:20-CV-00173, 2021 WL 6622191, at *4 (S.D. Iowa Jan. 19, 2021).

12. Please produce all documents related to policies for compliance with the TCPA, MDNC and the FCC's regulations thereunder and all documents necessary to construct a timeline

MDNC and the FCC's regulations thereunder and all documents necessary to construct a timeline when each policy was promulgated and placed in force and effect. This Request specifically includes, but is not limited to, policies related to the following:

- a) compliance with the TCPA and MDNC, including, but not limited to the rules, regulations, opinions, advisories, comments or filings of the Federal Communications Commission that relate to the TCPA or 47 C.F.R. § 64.1200;
- b) obtaining or verifying prior express consent;
- c) complying with E-SIGN Act, 15 U.S.C. §§ 7001 *et seq.*

Your response is nonresponsive and you have failed to respond or supplement this request with even a single document. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability, as well as a potential indispensable party's indemnification duty as well as their duty to defend. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020); In the Matter of the Joint Petition Filed by Dish Network, LLC, 28 F.C.C.R. at 6586–87; Gould v. Farmers Ins. Exch., 288 F. Supp. 3d 963, 970 (E.D. Mo. 2018); *Norwalk Ready Mixed Concrete, Inc. v. Travelers Ins. Cos.*, 246 F.3d 1132, 1136 (8th Cir. 2001). "Insurance policies are contracts between the insurer and the insured and must be interpreted like other contracts, the object being to ascertain the intent of the parties." *Talen v. Emps. Mut. Cas. Co.*, 703 N.W.2d 395, 407 (Iowa 2005). *Mod. Equip. Co. v. Cont'l W. Ins. Co.*, 355 F.3d 1125, 1128 (8th Cir. 2004); Rohlf v. Cont'l Cas. Co., No. 4:20-CV-00173, 2021 WL 6622191, at *4 (S.D. Iowa Jan. 19, 2021).

13. Please produce a copy of your Do Not Call list, including the date(s) each telephone number was added to the Do Not Call list and any other identifying party set forth on that list.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability, as well as a potential indispensable party's indemnification duty as well as their duty to defend. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-

CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020); In the Matter of the Joint Petition Filed by Dish Network, LLC, 28 F.C.C.R. at 6586–87; Gould v. Farmers Ins. Exch., 288 F. Supp. 3d 963, 970 (E.D. Mo. 2018); *Norwalk Ready Mixed Concrete, Inc. v. Travelers Ins. Cos.*, 246 F.3d 1132, 1136 (8th Cir. 2001). *Talen v. Emps. Mut. Cas. Co.*, 703 N.W.2d 395, 407 (Iowa 2005). *Mod. Equip. Co. v. Cont'l W. Ins. Co.*, 355 F.3d 1125, 1128 (8th Cir. 2004); Rohlf v. Cont'l Cas. Co., No. 4:20-CV-00173, 2021 WL 6622191, at *4 (S.D. Iowa Jan. 19, 2021). Moreover, Fisher's internal do not call list is relevant as it is requested to examine the issue of Defendant's affirmative defense of consent, and its failure to secure first party direct written consent from Plaintiff prior to dialing his private residential phone number. See 47 C.F.R. § 64.1200(d)(4). As the Seventh Circuit has explained, the TCPA responds to the "pestilence of robocalls, scam calls, and texts pinging our attention away." *Craftwood II, Inc. v. Generac Power Sys., Inc.*, 63 F.4th 1121 (7th Cir. 2023); see also *Barr v. Am. Ass'n of Political Consultants, Inc.*, 591 U.S. 610, 140 S. Ct. 2335, 2344–45, 207 L.Ed.2d 784 (2020) (opinion of Kavanaugh, J.); *Patriotic Veterans, Inc. v. Zoeller*, 845 F.3d 303, 305–06 (7th Cir. 2017).

The consent or invitation required by the TCPA must, as a matter of statute, be express. 47 U.S.C. § 227(a)(4), the express consent requirement means that "the scope of a consumer's consent depends on its context and the purpose for which it is given. Consent for one purpose does not equate to consent for all purposes." *Toney v. Quality Res., Inc.*, 75 F. Supp. 3d 727, 737 (N.D. Ill. 2014) (deriving this rule from the FCC's decisions in *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Report and Order, 27 FCC Rcd. 1830, 1840 ¶ 25 (Feb. 15, 2012) and *In re GroupMe, Inc./Skype Comm'n S.A.R.L Petition for Expedited Declaratory Ruling, Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Declaratory Ruling, 29 FCC Rcd. 3442 (Mar. 27, 2014). Hossfeld v. Allstate Ins. Co., 726 F. Supp. 3d 852, 874–75 (N.D. Ill. 2024)

14. Please produce all documents containing any of the following information for each outbound call made using a computer sent by you or your vendors:

- a. the date and time;
- b. the caller ID;
- c. any recorded message or
- d. dialing system used;
- e. the result;
- f. identifying information for the recipient; and
- g. any other information stored by the call detail records.

Your response fails to provide a single document relative to the dialing system used to make the calls to the Plaintiff's private residential phone. Please supplement this information forthwith.

15. Provide copies of all nonprivileged communications with any third party concerning this litigation.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability, as well as a potential indispensable party's indemnification duty as well as their duty to defend. We are

well as a potential indispensable party's identification duty as well as their duty to defend. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020); In the Matter of the Joint Petition Filed by Dish Network, LLC, 28 F.C.C.R. at 6586–87; Gould v. Farmers Ins. Exch., 288 F. Supp. 3d 963, 970 (E.D. Mo. 2018); *Norwalk Ready Mixed Concrete, Inc. v. Travelers Ins. Cos.*, 246 F.3d 1132, 1136 (8th Cir. 2001). "Insurance policies are contracts between the insurer and the insured and must be interpreted like other contracts, the object being to ascertain the intent of the parties." *Talen v. Emps. Mut. Cas. Co.*, 703 N.W.2d 395, 407 (Iowa 2005). *Mod. Equip. Co. v. Cont'l W. Ins. Co.*, 355 F.3d 1125, 1128 (8th Cir. 2004); Rohlf v. Cont'l Cas. Co., No. 4:20-CV-00173, 2021 WL 6622191, at *4 (S.D. Iowa Jan. 19, 2021). Moreover, Fisher's internal do not call list is relevant as it is requested to examine the issue of Defendant's affirmative defense of consent, and its failure to secure first party direct written consent from Plaintiff prior to dialing his private residential phone number. *See* 47 C.F.R. § 64.1200(d)(4). As the Seventh Circuit has explained, the TCPA responds to the "pestilence of robocalls, scam calls, and texts ping[ing] our attention away." *Craftwood II, Inc. v. Generac Power Sys., Inc.*, 63 F.4th 1121 (7th Cir. 2023); *see also Barr v. Am. Ass'n of Political Consultants, Inc.*, 591 U.S. 610, 140 S. Ct. 2335, 2344–45, 207 L.Ed.2d 784 (2020) (opinion of Kavanaugh, J.); *Patriotic Veterans, Inc. v. Zoeller*, 845 F.3d 303, 305–06 (7th Cir. 2017). The consent or invitation required by the TCPA must, as a matter of statute, be express. 47 U.S.C. § 227(a)(4), the express consent requirement means that "the scope of a consumer's consent depends on its context and the purpose for which it is given. Consent for one purpose does not equate to consent for all purposes." *Toney v. Quality Res., Inc.*, 75 F. Supp. 3d 727, 737 (N.D. Ill. 2014) (deriving this rule from the FCC's decisions in *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Report and Order, 27 FCC Rcd. 1830, 1840 ¶ 25 (Feb. 15, 2012) and *In re GroupMe, Inc./Skype Comm'n S.A.R.L Petition for Expedited Declaratory Ruling, Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Declaratory Ruling, 29 FCC Rcd. 3442 (Mar. 27, 2014). Hossfeld v. Allstate Ins. Co., 726 F. Supp. 3d 852, 874–75 (N.D. Ill. 2024). Moreover, this would be inclusive of all communications Fisher has had with Defendant Smart Asset Advisors.

16. To the extent Defendant asserts that Defendant obtained consent or permission to contact Plaintiff or putative class members based on a visit to a website, produce documents that identify those website(s) and the specific page(s) on those website(s) that you claim constitute consent or permission and the detail log and all IP addresses evincing Plaintiff's interaction and express written consent.

Again, you have failed to provide a single responsive document to this request and it is

specifically within the umbrella of Phase I discovery. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability, as well as a potential indispensable party's indemnification duty as well as their duty to defend. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) *Grant v. Regal Auto. Grp., Inc.*, No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020); *In the Matter of the Joint Petition Filed by Dish Network, LLC*, 28 F.C.C.R. at 6586–87; *Gould v. Farmers Ins. Exch.*, 288 F. Supp. 3d 963, 970 (E.D. Mo. 2018); *Norwalk Ready Mixed Concrete, Inc. v. Travelers Ins. Cos.*, 246 F.3d 1132, 1136 (8th Cir. 2001). "Insurance policies are contracts between the insurer and the insured and must be interpreted like other contracts, the object being to ascertain the intent of the parties." *Talen v. Emps. Mut. Cas. Co.*, 703 N.W.2d 395, 407 (Iowa 2005). *Mod. Equip. Co. v. Cont'l W. Ins. Co.*, 355 F.3d 1125, 1128 (8th Cir. 2004); *Rohlf v. Cont'l Cas. Co.*, No. 4:20-CV-00173, 2021 WL 6622191, at *4 (S.D. Iowa Jan. 19, 2021). Moreover, Fisher's internal do not call list is relevant as it is requested to examine the issue of Defendant's affirmative defense of consent, and its failure to secure first party direct written consent from Plaintiff prior to dialing his private residential phone number. *See* 47 C.F.R. § 64.1200(d)(4). As the Seventh Circuit has explained, the TCPA responds to the "pestilence of robocalls, scam calls, and texts pinging our attention away." *Craftwood II, Inc. v. Generac Power Sys., Inc.*, 63 F.4th 1121 (7th Cir. 2023); *see also Barr v. Am. Ass'n of Political Consultants, Inc.*, 591 U.S. 610, 140 S. Ct. 2335, 2344–45, 207 L.Ed.2d 784 (2020) (opinion of Kavanaugh, J.); *Patriotic Veterans, Inc. v. Zoeller*, 845 F.3d 303, 305–06 (7th Cir. 2017). The consent or invitation required by the TCPA must, as a matter of statute, be express. 47 U.S.C. § 227(a)(4), the express consent requirement means that "the scope of a consumer's consent depends on its context and the purpose for which it is given. Consent for one purpose does not equate to consent for all purposes." *Toney v. Quality Res., Inc.*, 75 F. Supp. 3d 727, 737 (N.D. Ill. 2014) (deriving this rule from the FCC's decisions in *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Report and Order, 27 FCC Rcd. 1830, 1840 ¶ 25 (Feb. 15, 2012) and *In re GroupMe, Inc./Skype Comm'n S.A.R.L Petition for Expedited Declaratory Ruling, Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Declaratory Ruling, 29 FCC Rcd. 3442 (Mar. 27, 2014). *Hossfeld v. Allstate Ins. Co.*, 726 F. Supp. 3d 852, 874–75 (N.D. Ill. 2024). Moreover, this would be inclusive of all communications Fisher has had with Defendant Smart Asset Advisors. If you fail to provide these documents we are inclined to file a motion to compel given your insistence that you possess these relevant and material documents.

17. For any website identified in response to the prior request, produce all access logs and error logs during the day you assert that Plaintiff or putative class members visited that website.

website.

Again, you have failed to provide a single responsive document to this request and it is specifically within the umbrella of Phase I discovery. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability, as well as a potential indispensable party's indemnification duty as well as their duty to defend. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020); In the Matter of the Joint Petition Filed by Dish Network, LLC, 28 F.C.C.R. at 6586–87; Gould v. Farmers Ins. Exch., 288 F. Supp. 3d 963, 970 (E.D. Mo. 2018); *Norwalk Ready Mixed Concrete, Inc. v. Travelers Ins. Cos.*, 246 F.3d 1132, 1136 (8th Cir. 2001). "Insurance policies are contracts between the insurer and the insured and must be interpreted like other contracts, the object being to ascertain the intent of the parties." *Talen v. Emps. Mut. Cas. Co.*, 703 N.W.2d 395, 407 (Iowa 2005). *Mod. Equip. Co. v. Cont'l W. Ins. Co.*, 355 F.3d 1125, 1128 (8th Cir. 2004); Rohlf v. Cont'l Cas. Co., No. 4:20-CV-00173, 2021 WL 6622191, at *4 (S.D. Iowa Jan. 19, 2021). Moreover, Fisher's internal do not call list is relevant as it is requested to examine the issue of Defendant's affirmative defense of consent, and its failure to secure first party direct written consent from Plaintiff prior to dialing his private residential phone number. *See* 47 C.F.R. § 64.1200(d)(4). As the Seventh Circuit has explained, the TCPA responds to the "pestilence of robocalls, scam calls, and texts pinging our attention away." *Craftwood II, Inc. v. Generac Power Sys., Inc.*, 63 F.4th 1121 (7th Cir. 2023); *see also Barr v. Am. Ass'n of Political Consultants, Inc.*, 591 U.S. 610, 140 S. Ct. 2335, 2344–45, 207 L.Ed.2d 784 (2020) (opinion of Kavanaugh, J.); *Patriotic Veterans, Inc. v. Zoeller*, 845 F.3d 303, 305–06 (7th Cir. 2017). The consent or invitation required by the TCPA must, as a matter of statute, be express. 47 U.S.C. § 227(a)(4), the express consent requirement means that "the scope of a consumer's consent depends on its context and the purpose for which it is given. Consent for one purpose does not equate to consent for all purposes." *Toney v. Quality Res., Inc.*, 75 F. Supp. 3d 727, 737 (N.D. Ill. 2014) (deriving this rule from the FCC's decisions in *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Report and Order, 27 FCC Rcd. 1830, 1840 ¶ 25 (Feb. 15, 2012) and *In re GroupMe, Inc./Skype Comm'n S.A.R.L Petition for Expedited Declaratory Ruling, Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Declaratory Ruling, 29 FCC Rcd. 3442 (Mar. 27, 2014). Hossfeld v. Allstate Ins. Co., 726 F. Supp. 3d 852, 874–75 (N.D. Ill. 2024). Moreover, this would be inclusive of all communications Fisher has had with Defendant Smart Asset Advisors. If you fail to provide these documents we are inclined to file a motion to compel given your insistence that you possess these relevant and material documents.

18. Please produce a copy of all outbound phone records from each of the defendant's business locations, as well as each of its vendors' locations, for the past four (4) years.

Again, you have failed to provide a single responsive document to this request and it is specifically within the umbrella of Phase I discovery. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability, as well as a potential indispensable party's indemnification duty as well as their duty to defend. We are entitled to this information and your non-response is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020); In the Matter of the Joint Petition Filed by Dish Network, LLC, 28 F.C.C.R. at 6586–87; Gould v. Farmers Ins. Exch., 288 F. Supp. 3d 963, 970 (E.D. Mo. 2018); *Norwalk Ready Mixed Concrete, Inc. v. Travelers Ins. Cos.*, 246 F.3d 1132, 1136 (8th Cir. 2001). "Insurance policies are contracts between the insurer and the insured and must be interpreted like other contracts, the object being to ascertain the intent of the parties." *Talen v. Emps. Mut. Cas. Co.*, 703 N.W.2d 395, 407 (Iowa 2005). *Mod. Equip. Co. v. Cont'l W. Ins. Co.*, 355 F.3d 1125, 1128 (8th Cir. 2004); Rohlf v. Cont'l Cas. Co., No. 4:20-CV-00173, 2021 WL 6622191, at *4 (S.D. Iowa Jan. 19, 2021). *See* 47 C.F.R. § 64.1200(d)(4). As the Seventh Circuit has explained, the TCPA responds to the "pestilence of robocalls, scam calls, and texts ping[ing] our attention away." *Craftwood II, Inc. v. Generac Power Sys., Inc.*, 63 F.4th 1121 (7th Cir. 2023); *see also Barr v. Am. Ass'n of Political Consultants, Inc.*, 591 U.S. 610, 140 S. Ct. 2335, 2344–45, 207 L.Ed.2d 784 (2020) (opinion of Kavanaugh, J.); *Patriotic Veterans, Inc. v. Zoeller*, 845 F.3d 303, 305–06 (7th Cir. 2017).

The consent or invitation required by the TCPA must, as a matter of statute, be express. 47 U.S.C. § 227(a)(4), the express consent requirement means that "the scope of a consumer's consent depends on its context and the purpose for which it is given. Consent for one purpose does not equate to consent for all purposes." *Toney v. Quality Res., Inc.*, 75 F. Supp. 3d 727, 737 (N.D. Ill. 2014) (deriving this rule from the FCC's decisions in *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Report and Order, 27 FCC Rcd. 1830, 1840 ¶ 25 (Feb. 15, 2012) and *In re GroupMe, Inc./Skype Comm'n S.A.R.L Petition for Expedited Declaratory Ruling, Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Declaratory Ruling, 29 FCC Rcd. 3442 (Mar. 27, 2014). Hossfeld v. Allstate Ins. Co., 726 F. Supp. 3d 852, 874–75 (N.D. Ill. 2024). Moreover, this would be inclusive of all communications Fisher has had with Defendant Smart Asset Advisors. If you fail to provide these documents, we are inclined to file a motion to compel given your insistence that you possess these relevant and material documents.

19 and 20. Please produce a copy of your internal do not call policy.

19 and 20. Please produce a copy of your internal do not - call policy.

Again, you have refused and failed to provide a single responsive document to this request, and it is specifically within the umbrella of Phase I discovery. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability, as well as a potential indispensable party's indemnification duty as well as their duty to defend. We are entitled to this information, and your non-response is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020); In the Matter of the Joint Petition Filed by Dish Network, LLC, 28 F.C.C.R. at 6586–87; Gould v. Farmers Ins. Exch., 288 F. Supp. 3d 963, 970 (E.D. Mo. 2018); *Norwalk Ready Mixed Concrete, Inc. v. Travelers Ins. Cos.*, 246 F.3d 1132, 1136 (8th Cir. 2001).

21. Please produce a copy of your Missouri telemarketer's registration and the registration for each of your vendors.

Again, you have refused and failed to provide a single responsive document to this request, and it is specifically within the umbrella of Phase I discovery. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability, as well as a potential indispensable party's indemnification duty as well as their duty to defend. We are entitled to this information in that Fisher is required to register with the State of Missouri as a matter of law and your non-response is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020); In the Matter of the Joint Petition Filed by Dish Network, LLC, 28 F.C.C.R. at 6586–87; Gould v. Farmers Ins. Exch., 288 F. Supp. 3d 963, 970 (E.D. Mo. 2018); *Norwalk Ready Mixed Concrete, Inc. v. Travelers Ins. Cos.*, 246 F.3d 1132, 1136 (8th Cir. 2001).

In light of your waiver of all objections and failure to timely respond to the first discovery requests you were served with in early October, 2024 by Plaintiff, we will also be seeking to certify all requests for admissions Admitted. I'm happy to discuss these matters in our meet and confer phone call on January 27, 2025. Absent an immediate supplement to these disputes, we will be preparing motions to strike affirmative defenses and a motion to compel production.

Ed

1650 Des Peres Road;. Ste 220 | Des Peres, MO 63131

Direct: # | Office: 314-504-0001 | Fax: 314-481-8479

edbutler@butlerlawstl.com | www.butlerlawstl.com

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**2024-11-14 Defendant's Request
for Inspection of Device.pdf**
163 KB



EXHIBIT 20

From: Melanie Ng mng@wtlaw.com
Subject: Re: Human v. Fisher Investments
Date: January 7, 2025 at 4:37 PM
To: Edwin Butler edbutler@butlerlawstl.com
Cc: Edwin Butler edbutler@butlerlawstl.com, Alex Terepka Alex@wtlaw.com



Hi Ed,

Mr. Human's deposition is currently noticed for January 10th. You've previously stated that you're not available for several weeks because of medical issues. Our schedules are flexible, so please send us proposed dates ASAP so that we can re-notice Mr. Human's deposition for a mutually acceptable day and time. Given that we need to push out this deposition for several weeks, Fisher intends to seek a 45-day extension of the phase one discovery period.

We think there is good cause for this request for a variety of reasons, including deposition scheduling issues, the fact that you're seeking leave to add Smart Asset (in which case Smart Asset is entitled to a discovery period), and the fact that the parties have discovery issues that they will likely have to raise with the Court. So please let us know if you'll agree to this extension of the phase one discovery period without waiving your request to stay all discovery, which Fisher intends to oppose. Thank you.

Best,
Melanie

Melanie G. Ng ([bio](#))
WATSTEIN TEREPA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

From: Edwin Butler <edbutler@butlerlawstl.com>
Date: Monday, December 23, 2024 at 4:20 PM
To: Melanie Ng <mng@wtlaw.com>
Cc: Edwin Butler <edbutler@butlerlawstl.com>
Subject: Human v. Fisher Investments

[Warning – external]

Hi Melanie;

In accordance with the Court's order, Plaintiff's responses to Defendant's written discovery were due on December 13, 2024. We still have not received a single document to our Production Requests. We will produce our discovery answers before 12/31. We expect Defendant to produce the requested documents before December 31, 2024, as well. *See Davis v. Fid. Info. Corp.*, 2019 WL 1643340, at *2 (E.D. Mo. Apr. 16, 2019). Please commit to production by December 27, 2024, so we will not have to begin preparing a motion to compel. We will seek our fees in doing so because of your failure to

respond to discovery.

We need the additional time due to your non-compliance with our production requests.

Additionally, I have a personal conflict with the deposition date you have proposed, medical in nature related to a spinal surgery I had. We need to reschedule that for at least three (3) weeks later. Please provide me with proposed dates so I can clear conflicts.

Thanks.

Ed

Edwin V. Butler | Butler Law Group LLC

1650 Des Peres Road;. Ste 220 | Des Peres, MO 63131

Direct: # | Office: 314-504-0001 | Fax: 314-481-8479

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EXHIBIT 21

From: Melanie Ng mng@wtlaw.com
Subject: Re: Human V Fisher
Date: January 13, 2025 at 11:40 AM
To: Edwin Butler edbutler@butlerlawstl.com
Cc: Alex Terepka Alex@wtlaw.com, Guletz, Matthew D. MGuletz@thompsoncoburn.com



Hi Ed,

Following up on our request to meet and confer by phone on Fisher's issues with your client's discovery responses per the Court's order requiring a call. This is our fourth request over the past week. Please provide times for a call this afternoon or tomorrow. If you refuse to provide a time on one of those days, we will email the Court per its procedure for raising discovery disputes and note that you have again refused to comply with the Court's order.

Also following up to get your client's position on Fisher's motion to extend the Phase 1 discovery period. Please let us know by EOD tomorrow. Otherwise, we will file the motion as opposed.

Best,
Melanie

Melanie G. Ng (bio)
WATSTEIN TEREPA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

From: Melanie Ng <mng@wtlaw.com>
Date: Thursday, January 9, 2025 at 5:36 PM
To: Edwin Butler <edbutler@butlerlawstl.com>
Cc: Alex Terepka <Alex@wtlaw.com>, Guletz, Matthew D. <MGuletz@thompsoncoburn.com>
Subject: Re: Human V Fisher

Hi Ed, earlier this afternoon, we circulated the response to the Verizon subpoena under separate cover. Please let us know if you have any issues accessing the documents through Dropbox. Additionally, please let us know when you are available for a call. Thank you!

Best,
Melanie

Melanie G. Ng (bio)
WATSTEIN TEREPA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

From: Melanie Ng <mng@wtlaw.com>
Date: Thursday, January 9, 2025 at 8:05 AM

Date: Thursday, January 9, 2025 at 8:05 AM
To: Edwin Butler <edbutler@butlerlawstl.com>
Cc: Alex Terepka <Alex@wtlaw.com>, Guletz, Matthew D.
<MGuletz@thompsoncoburn.com>
Subject: Re: Human V Fisher

Hi Ed, following up on the below request for a call, thank you!

Best,
Melanie

Melanie G. Ng (bio)
WATSTEIN TEREPA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

From: Melanie Ng <mng@wtlaw.com>
Date: Tuesday, January 7, 2025 at 9:28 PM
To: Edwin Butler <edbutler@butlerlawstl.com>
Cc: Alex Terepka <Alex@wtlaw.com>, Guletz, Matthew D.
<MGuletz@thompsoncoburn.com>
Subject: Re: Human V Fisher

Hi Ed,

First, your statement that Mr. Human will not make a document production until the Court rules on your requests to stay discovery and for leave to amend the complaint is inappropriate and inconsistent with your demands that Fisher make a document production (which it will do after we work out a protective order, which we will send soon). Mr. Human cannot move for a stay that the Court has already denied once and then act as if the stay has already been granted. That is especially so because Mr. Human's discovery responses were due a month ago, and he failed to respond or object, thus waiving all objections. On top of that, Mr. Human's production to date is woefully inadequate. As we have raised several times before, most of your 400 pages of discovery are publicly available webpages and copies of Fisher's discovery responses. Please confirm that you will supplement your document production ASAP to address the below issues.

Second, with respect to the requests for information about Mr. Human's prior cases and demand letter, our understanding is that most of those documents are also within your possession, as you've been Mr. Human's TCPA attorney for several years. In any event, Mr. Human undoubtedly has copies of the TCPA demand letters he's sent, like the letter he sent to Fisher in this case and must produce them.

Third, your answers to interrogatories are woefully inadequate and regurgitate the same non-answers over and over. For example, in response to Interrogatory No. 6, which asks Mr. Human to identify other cases where he was a party or provided testimony, he provided the non-response "I am a 68 year old man who lives on social security and receives a wealth of illegal telemarketing calls on my private resident phone, such as the calls listed in the complaint from Defendant Fisher. Any other information sought seeks evidence or responses outside the scope of Phase One discovery. Plaintiff therefore reserves the right

to supplement his answer when Phase One discovery is completed and this case is certified as a class action. See also Bates pages 1 through 419 for a complete listing of all cases I have filed. To the best of my recollection, I have never provided live testimony in any of those cases; See also the Complaint; See Plaintiff's Rule 26 disclosures. In further response, Plaintiff has never visited fisher.com or smartassert.com." Not only is this response irrelevant, Bates001-04 only lists state court cases filed in 2023 or 2024, and Bates040-42 only lists federal cases where Mr. Human was the named plaintiff. Furthermore, whether Mr. Human visited fisher.com is completely irrelevant to this case, as Fisher's website is fisherinvestments.com.

Fourth, settlement agreements aren't privileged. *See, e.g., Wagner v. Circle W Mastiffs*, 2013 WL 2096655, at *6 (S.D. Ohio May 14, 2013) (collecting cases) ("settlement agreements frequently are found to be discoverable in order to allow the requesting party to explore these issues with respect to witnesses."); *see also State Farm Mut. Auto. Ins. Co. v. Universal Health Grp.*, 325 F.R.D. 602, 606 (E.D. Mich. 2016), *adopted*, 2016 WL 6822014 (E.D. Mich. Nov. 18, 2016) (finding that prior settlement agreements with testifying witnesses were relevant to potential bias and were thus discoverable); *DIRECTV, Inc. v. Puccinelli*, 224 F.R.D. 677, 684 (D. Kan. 2004) ("the settlement agreements and information regarding their terms are relevant because they may establish the bias or prejudice"). Courts also order plaintiffs to produce settlement agreements in TCPA cases. *See, e.g., Reimer v. Medigap Life LLC*, Case 1:2023-cv-00683, Doc. 44 (E.D. Va. Sept. 20, 2023). As such, please confirm that Mr. Human will supplement his production to include settlement agreements.

Fifth, regarding the Verizon subpoena, Mr. Human's call history is not privileged information. For example, whatever you may have discussed on the phone with him is privileged, but not the existence of the phone call itself. Regardless, Verizon couldn't have produced any privileged information in response to the subpoena, as Verizon doesn't maintain records of the content of phone calls or voicemails and has never produced privileged information in response to one of our subpoenas—all they send us are limited call logs for the requested period. To that end, we received a response, but we cannot open it because Verizon sent the incorrect password to access the materials. Once we are able to open it, we will send a copy to Plaintiff.

On a similar note, your proposed restrictions to the device inspection are inappropriate and untimely. As we've stated before, any objections you may have are waived due to Mr. Human's failure to timely respond. To alleviate your concerns, the device inspection will be handled by a third-party forensic examiner, who will be bound by a protective order, and to the extent the examiner has direct or indirect access to privileged information, there shall be no waiver of privilege or dissemination of privileged information. This is standard and we can outline it further in a device inspection and/or ESI protocol. Please confirm that Mr. Human will make his device available for inspection no later than January 10.

Sixth, as to the proposed protective order, we are working on one and will circulate it for your review sometime this week. Once a suitable protective order is in effect, Fisher will make a document production, as your requests seek confidential commercial information.

Lastly, I'm not sure who Christopher Prosser is, let alone his connection to this case, so could you please explain why he was copied on routine correspondence between counsel? On that note, please be sure to include Alex Terepka (alex@wtlaw.com) and Matt Guletz (mguletz@thompsoncoburn.com) on all future correspondence, as they are also attorneys of record. We'd also appreciate it if you could respond to email threads instead of creating a new email so that we have a clear record for the Court.

We've gone back and forth several times in an attempt to get Mr. Human to comply with his discovery obligations. From our perspective, it seems like it's clear that won't happen. Per paragraph 3(c)(i) of the Court's case management order, we need to meet and confer via telephone. **Please let us know your availability this week or early next week for a call**, as we understand that you may be unavailable on Friday for a medical appointment. We can then walk through our remaining discovery disputes and see if we can resolve them.

Thank you.

Best,
Melanie

Melanie G. Ng (bio)

WATSTEIN TEREPKA ^{LLP}

P: 404-600-1240

mng@wtlaw.com

www.wtlaw.com

From: Edwin Butler <edbutler@butlerlawstl.com>

Date: Thursday, January 2, 2025 at 4:35 PM

To: Melanie Ng <mng@wtlaw.com>

Cc: Edwin Butler <edbutler@butlerlawstl.com>, Christopher Prosser (Work) <attorneysacquisitions@outlook.com>

Subject: Human V Fisher

[Warning – external]

Hi Mel, as we've already told you, we are seeking leave to file an amended complaint and to stay discovery. We will make a new document production also when the Court rules on the motions we are filing today. Your client needs to first make a meaningful document production. YOUR CLIENT HAS NOT PRODUCED A SINGLE DOCUMENT IN THIS CASE! We both served discovery requests on the same day, so your complaint that you served first is of little consequence. Additionally, my client served you with discovery requests prior to my engagement. If you want to draft a proposed protective order, please feel to draft one. We also need a protective order in place because your discovery requests are grossly beyond the scope of phase one.

We have now produced in excess of 400 pages of documents, and you have still failed to provide a single document. Most of your discovery requests seek public information not in my client's possession. It is not incumbent upon my office or my client to research public documents for your client. If you would like to make a significant cost deposit for the documents you seek, I have a research company that charges \$300.00 per hour and \$1.00 per page of any downloaded or discovered document. When I discussed this matter and your

list, they advised they would require a \$5,000.00 deposit before beginning any work on your clients behalf. Let me know.

You have sent out a subpoena over my objection and possess many documents you seek below. I will give you a response to this list you claim:

- Substantive responses to interrogatories without objections, as those have been waived;
 - We sent you our responses previously and will resend the 62 page document now and another copy of the 419 pages of discovery in Bates 3.
- Response to device inspection request without objections, as those too have been waived;
 - Mr. Human will happily comply with this request but this phone contains attorney/client communications and we will seek a protective order from copying anything beyond in the incoming call log from your client. I noted these objections extensively when you sent a broad and sweeping subpoena on this topic to Verizon in November.
- Recordings or contemporaneous notes of alleged calls;
 - Mr. Human says he has no documents or recordings of this nature. I do note that you have not turned over your documents and recordings for our similar request, though we believe you possess both recordings and documents.
- All records concerning the alleged calls;
 - See answer above.
- All documents showing that Mr. Human was allegedly a “subscriber” for the phone number at-issue, including the bills for the phone number;
 - his bills are paid by credit and we have included all relevant documents in his possession in Bates 3 - which include the TCPA and MDNC registrations.
- Evidence that Mr. Human “personally registered his residential cellular telephone number . . . on the National and Missouri Do Not Call Registries in 2022”;

- This is in the Bates 3 document production
- All non-privileged documents to support your allegation that Mr. Human incurred “provider fees” as a result of the subject calls;
 - See Amended Complaint - this has been amended today.
- Documents sufficient to evidence Mr. Human’s phone plan, including persons on such plan and billing statements;
 - Mr. Human has requested this information. You also already have it in your possession from a subpoena sent out over our written objections.
- All non-privileged documents, if any, to support your alleged damages, including evidence demonstrating whether Mr. Human suffered “severe physical injuries, including chest pain, anxiety”;
 - Mr. Human will present live testimony on this matter and is not in possession of the requested documents.
- All lead forms Mr. Human filled out or submitted between January 1, 2021 and the present;
 - Mr. Human is not in possession of any such documents and this information is vastly outside the scope of Phase One Discovery.
- Documents sufficient to identify all legal proceedings brought by Mr. Human for alleged violations of the TCPA and Missouri No Call List and Telemarketing provisions;
 - This is public information and you are already in possession of these documents. Mr. Human has no documents in his possession relative to these proceedings beyond the disclosure of Bates 3.
- Documents sufficient to evidence your acquisition of the subject number;
 - Mr. Human has no idea what this request means and is duplicating other requests which you have already secured through your subpoena. Mr. Human will also supplement this answer when he receives a response from the credit card which he pays the bill through.
- All agreements with counsel, including but not limited to retention and/or

retainer agreements;

- These documents are attorney/client privileged.
- Documents showing Mr. Human's internet history and IP addresses for the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024;
 - See interrogatory responses
- Documents sufficient to show all calls received on the subject phone number on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024;
 - see interrogatory answers and bates 3.
- All records of incoming and outgoing calls from the subject number between January 2022 and the present;
 - Your office subpoenaed this information and it duplicates multiple other requests. See also Bates 3.
- Documents sufficient to identify Mr. Human's physical location on the following dates: June 18, 2024, June 24, 2024, June 27, 2024, July 1, 2024, July 9, 2024, July 12, 2024, and July 17, 2024;
 - Mr. Human is no in possession of this information, but was in St. Louis, Missouri on those dates.
- All correspondence or pre-suit demand letters Mr. Human sent (or were sent on his behalf) alleging purported violations of the TCPA or Missouri No Call List and Telemarketing provisions and responses received to same;
 - This request seeks attorney/client privileged information and Mr. Human is not in possession of any such documents.
- All documents where a defendant or opposing party asserted that Mr. Human consented or opted-in to receive communications from them;
 - See bates 3 for a listing of all cases filed by Mr. Human. This is public information and Mr. Human is not in possession of any relevant documents.
-
- All documents relating to "Veronica" or "Veronica Moreno" concerning TCPA violations. Missouri No Call List and Telemarketing provisions

- violations, lead certificates, opt-ins, or internet search history;
- Mr. Human has no idea who this is, is not affiliated with this person, and has no documents in his possession which are responsive to this request.
- All lead certificates referencing or concerning the subject phone number;
 - Mr. Human has no idea what you are requesting in this request and is no in possession of any "lead certificate."
 - All non-privileged documents relating to "Melody" or "Melody Human" concerning TCPA violations, Missouri No Call List and Telemarketing provisions violations, lead certificates, or opt-ins;
 - Mr. Human is not in possession of any such documents and to his knowledge, Melody Human is not a member of the class at this time, nor has she ever filed a TCPA case.
 - All non-privileged documents related to *PolicyScout LLC v. Human*, 2:23-cv-00934-JNP (D. Utah);
 - This seeks attorney/client privileged information and any documents requested which are not privileged are either in your possession or can be obtained by your office on PACER. Mr. Human does not possess a PACER account and has no access to these documents.
 - All settlement agreements between Mr. Human and third parties involving TCPA or Missouri No Call List and telemarketing provisions allegations;
 - These are all attorney/client privileged documents. Any such documents, if in existence, would contain confidentiality agreements which prohibit disclosure and/or subject the Plaintiff to severe penalties if disclosed and are beyond the scope of Phase One discovery.
 - All transcripts of deposition testimony provided by Mr. Human;
 - Mr. Human does not possess any such transcripts or documents.
 - All documents relating to Fisher, including communications and browser history;
 - See Bates 3 - production package.

- All documents relating to or concerning prior express consent to receive communications from Fisher; and
 - Plaintiff has never given Defendant Fisher prior express written consent for the subject phone calls. Moreover this is Fishers stated defense and not the subject of this suit. Moreover, Fisher has not provided any form of express written consent alleged to have originated from the Plaintiff upon Plaintiff's repeated request for production and this is a fishing expedition.
- Documents sufficient to identify all criminal proceedings to which Mr. Human has been a party or witness.
 - Mr. Human is not in possession of any such documents and this is obviously beyond the scope of Phase One discovery.

Plaintiff has repeatedly sought a wealth of relevant documents from your client, and you have not produced a single document. Mr. Human has produced in excess of 400 documents, answered your interrogatories, and acted in good faith. Again, we are seeking to stay this harassing fishing expedition your office is engaging in and filing an Amended Complaint to include your client's lead provider, SmartAsset Advisors, LLC. You have failed to offer any objection to this filing and we intend to notify the Court of your lack of objection thereto upon filing today.

I also have a personal conflict with your scheduled deposition in that I had an invasive C-spine operation recently and I have a neurology appointment that day and am unavailable. I need this rescheduled or I will seek the Courts intervention.

Thanks,

Ed

Edwin V. Butler | Butler Law Group LLC

1650 Des Peres Road;. Ste 220 | Des Peres, MO 63131

Direct: # | Office: 314-504-0001 | Fax: 314-481-8479

edbutler@butlerlawstl.com | www.butlerlawstl.com

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EXHIBIT 22

From: Melanie Ng mng@wtlaw.com
Subject: Human v. Fisher Investments, Case 4:24-cv-01177-MTS - Fisher's Request for Informal Discovery Conference
Date: January 17, 2025 at 2:17 PM
To: MOEDml_Schelp_Law_Clerks@moed.uscourts.gov
Cc: Alex Terepka Alex@wtlaw.com, Guletz, Matthew D. MGuletz@thompsoncoburn.com, Edwin Butler edbutler@butlerlawstl.com, edwinvb@aol.com, kwalker@thompsoncoburn.com, Jennipher Borey jborey@wtlaw.com



Judge Schelp:

Pursuant to Paragraph 3(c)(i) of the Case Management Order (Dkt. 19), Fisher respectfully requests an informal discovery conference at the Court's convenience because, despite more than five requests to schedule the requisite meet-and-confer call, Plaintiff's counsel refuses to make himself available to discuss whether the parties can informally resolve pending discovery disputes. As background, Plaintiff waived all objections by failing to timely respond to Fisher's discovery requests and has since failed to provide adequate written discovery (both document productions and interrogatory responses), produce a device for inspection, or sit for deposition. Fisher has exhausted all reasonable efforts to resolve discovery disputes between the parties, so it is now reaching out to the Court because it wishes to compel further responses to written discovery and Plaintiff's deposition.

Best,
Melanie

Melanie G. Ng (bio)
WATSTEIN TEREPKA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

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EXHIBIT 23

From: Melanie Ng mng@wtlaw.com
Subject: Re: Human v. Fisher
Date: February 6, 2025 at 3:56 PM
To: Edwin Butler edbutler@butlerlawstl.com
Cc: edwinvb@aol.com, Alex Terepka Alex@wtlaw.com, James Ruley jruley@wtlaw.com, Guletz, Matthew D. MGuletz@thompsoncoburn.com



Hi Ed,

Just following up on the below. In the interest of compromise and avoiding unnecessary disputes, Fisher is willing to accept \$5,000 to resolve its right to sanctions for the needless fees and expenses your client imposed on Fisher related to the January 22 hearing. That is significantly less than Fisher actually incurred.

Please let us know your client's position by close of business tomorrow (Friday, February 7, 2025). As mentioned before, if your client doesn't respond, Fisher will begin incurring the expense of preparing a sanctions motion at that time.

Note also that Fisher reserves all rights with respect to other unnecessary fees and expenses your client has imposed on it, including for other violations of the Court's orders. The above offer pertains only to the fees Fisher incurred from the January 22 hearing.

Best,
Melanie

Melanie G. Ng (bio)
WATSTEIN TEREPKA ^{LLP}
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From: Melanie Ng <mng@wtlaw.com>
Date: Tuesday, February 4, 2025 at 4:41 PM
To: Edwin Butler <edbutler@butlerlawstl.com>
Cc: edwinvb@aol.com <edwinvb@aol.com>, Alex Terepka <Alex@wtlaw.com>, James Ruley <jruley@wtlaw.com>, Guletz, Matthew D. <MGuletz@thompsoncoburn.com>
Subject: Human v. Fisher

Ed—as we mentioned at the January 22, 2025 hearing, your client has imposed significant and unnecessary expenses on Fisher by failing to comply with Court orders. As a conservative estimate, the fees Fisher incurred from the unnecessary January 22d hearing is \$7,000. In the interest of avoiding unnecessary disputes and having to raise this with the Court, will your client agree to pay \$7,000 so Fisher doesn't have to bring a sanctions motion?

Otherwise, per the Court's order, we will be required to bring a sanctions motion instead. We will, of course, seek our fees for the expense of having to prepare a sanctions motion, which are recoverable. *See, e.g., Trbovich v. Ritz-Carlton Hotel Co.*, 166 F.R.D. 30, 33 (E.D. Mo. 1996) (awarding attorneys' fees incurred in preparation for a hearing on sanctions sought for failure to comply with discovery obligations).

The fees incurred in preparing a sanctions motion may very well be higher than the fees Fisher incurred for the unnecessary hearing. As such, we strongly urge your client to consider paying those fees for the unnecessary hearing instead of imposing more unnecessary expense on Fisher through the preparation of a sanctions motion.

Please let us know your position by end of day on Friday, February 7th. After that, our client will begin incurring fees from preparing a sanctions motion. Fisher reserves all rights to seek its fees for other unnecessary expenses your client has imposed by violating that Court's orders, including his decision to breach the parties' agreement that he would supplement his document production by February 3.

Best,
Melanie

Melanie G. Ng (bio)

WATSTEIN TEREPKA ^{LLP}

P: 404-600-1240

mng@wtlaw.com

www.wtlaw.com

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EXHIBIT 24

From: Edwin Butler edbutler@butlerlawstl.com
Subject: RE: Activity in Case 4:24-cv-01177-MTS Human v. Fisher Investments, Inc. Notice of Voluntary Dismissal
Date: January 27, 2025 at 10:58 AM
To: Melanie Ng mng@wtlaw.com
Cc: Alex Terepka Alex@wtlaw.com, Guletz, Matthew D. MGuletz@thompsoncoburn.com

EB

[Warning – external]

Melanie,

Your email is correct, based on the instructed filing of dismissal.

Ed

From: Melanie Ng <mng@wtlaw.com>
Sent: January 27, 2025 9:02 AM
To: Edwin Butler <edbutler@butlerlawstl.com>
Cc: Alex Terepka <Alex@wtlaw.com>; Guletz, Matthew D. <MGuletz@thompsoncoburn.com>
Subject: RE: Activity in Case 4:24-cv-01177-MTS Human v. Fisher Investments, Inc. Notice of Voluntary Dismissal

Hi Ed, we just saw this notice of voluntary dismissal. We assume that your client won't appear for the device inspection today and that you won't appear for our meet and confer at 1:30pm CT, but please let us know if that is not correct.

Best,
Melanie

Melanie G. Ng (bio)
WATSTEIN TEREPKA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

From: Moed_AutoSend@moed.uscourts.gov
<Moed_AutoSend@moed.uscourts.gov>
Date: Monday, January 27, 2025 at 9:50 AM
To: MOED_ECF_Notification@moed.uscourts.gov
<MOED_ECF_Notification@moed.uscourts.gov>
Subject: Activity in Case 4:24-cv-01177-MTS Human v. Fisher Investments, Inc. Notice of Voluntary Dismissal

[Warning – external]

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U.S. District Court
Eastern District of Missouri

NOTICE OF ELECTRONIC FILING

The following transaction was entered by Butler, Edwin on 1/27/2025 at 8:48 AM CST and filed on 1/27/2025

Case Name: Human v. Fisher Investments, Inc.

Case Number: [4:24-cv-01177-MTS](#)

Filer: Daniel Human

Document Number: [37](#)

Docket Text:

[NOTICE of Voluntary Dismissal by Daniel Human \(Butler, Edwin\)](#)

4:24-cv-01177-MTS Notice has been electronically mailed to:

Alexander Donald Terepka alex@wtlaw.com

Edwin V. Butler , II edbutler@butlerlawstl.com, edwinvb@aol.com

Matthew D. Guletz mguletz@thompsoncoburn.com,
kwalker@thompsoncoburn.com

Melanie Ng mng@wtlaw.com, 2057818420@filings.docketbird.com,
Jborey@wtlaw.com

4:24-cv-01177-MTS Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1037221849 [Date=1/27/2025] [FileNumber=11221510-0] [447cc83cbfd86f72e32c93118caca7bd614d02085f73f75f76bac174ecac649fb8aa52d8b5a96e48b78fe4e8bde1e1a8b09812f027cb6626f8b9c733d5a50c7a]]

EXHIBIT 25

From: Melanie Ng mng@wtlaw.com
Subject: RE: Activity in Case 4:24-cv-01177-MTS Human v. Fisher Investments, Inc.
Date: January 27, 2025 at 12:18 PM
To: Edwin Butler edbutler@butlerlawstl.com
Cc: Alex Terepka Alex@wtlaw.com, Guletz, Matthew D. MGuletz@thompsoncoburn.com
Bcc: James Ruley jruley@wtlaw.com



Hi Ed, in light of the Court's order, we're prepared to proceed with 1:30 pm call. Please confirm you'll be attending. Fisher is available on February 10, 11, or 12th for Mr. Human's deposition. Please also confirm that your client will be complying with the device inspection today. The professional we hired to perform device inspection went into the office this morning, so please let us know a time that Mr. Human is going to show up with his devices ready for inspection, even though the inspection was scheduled for 10 am and you didn't show. As we mentioned before, Fisher incurred expenses from that and reserves all rights to seek them from your client.

Best,
Melanie

Melanie G. Ng ([bio](#))
WATSTEIN TEREPKA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

From: Moed_AutoSend@moed.uscourts.gov
<Moed_AutoSend@moed.uscourts.gov>
Date: Monday, January 27, 2025 at 12:08 PM
To: MOED_ECF_Notification@moed.uscourts.gov
<MOED_ECF_Notification@moed.uscourts.gov>
Subject: Activity in Case 4:24-cv-01177-MTS Human v. Fisher Investments, Inc.

[Warning – external]

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U.S. District Court
Eastern District of Missouri

Notice of Electronic Filing

The following transaction was entered on 1/27/2025 at 11:07 AM CST and filed on 1/27/2025

Case Name: Human v. Fisher Investments, Inc.
Case Number: [4:24-cv-01177-MTS](#)
Filer:
Document Number: [38](#)

Docket Text:
MEMORANDUM AND ORDER : IT IS HEREBY ORDERED that the Clerk of Court is directed to STRIKE Plaintiff's Notice of Voluntary Dismissal. Doc. [37]. IT IS FURTHER ORDERED that Plaintiff must abide by the previously ordered deadlines. The failure to do so could result in sanctions as described in the First Amended Case Management Order. See Doc. [34]. Signed by District Judge Matthew T. Schelp on 01/27/2025. (KCD)

4:24-cv-01177-MTS Notice has been electronically mailed to:

Edwin V. Butler, II edbutler@butlerlawstl.com, edwinvb@aol.com

Matthew D. Guletz mguletz@thompsoncoburn.com,
kwalker@thompsoncoburn.com

Alexander Donald Terepka alex@wtlaw.com

Melanie Ng mng@wtlaw.com, 2057818420@filings.docketbird.com,
Jborey@wtlaw.com

4:24-cv-01177-MTS Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1037221849 [Date=1/27/2025] [FileNumber=11221926-0]

[a2623618b603155d6ca0ab4a03521b77cf42fb5f39eee42aeaae4b32201171dd99e4e48c3bdf13fab94611cbaf8ec4bb55c3da572712cb2d9e99aa5fa6fee1bf]]

EXHIBIT 26

From: Melanie Ng mng@wtlaw.com
Subject: Re: 4:24-cv-01177-MTS Human V Fisher Investments, Inc.
Date: February 5, 2025 at 5:28 PM
To: MOEDml_Schelp_Law_Clerks@moed.uscourts.gov
Cc: Edwin Butler edbutler@butlerlawstl.com, Christopher Prosser (Work) attorneysacquisitions@outlook.com, Alex Terepka Alex@wtlaw.com, James Ruley jruley@wtlaw.com, Guletz, Matthew D. MGuletz@thompsoncoburn.com



Judge Schelp:

The communication below from Mr. Butler violates the Court's orders for at least the following reasons: (1) Mr. Butler has not complied with the requirement to have a meet and confer by phone about any discovery issues despite Fisher making itself available; (2) setting that aside, his email is longer than three sentences; (3) the only request in Mr. Butler's email appears to be to order the parties not to email the Court, which is contrary to this Court's repeated instructions on the process for raising disputes. ECF Nos. 19 ¶ 3(c)(ii), 34 ¶ 3(d)(ii).

In addition, Mr. Human's premature notice of appeal meant to delay these proceedings did not divest the Court of jurisdiction. *See, e.g., State v. Coeur d'Alene Tribe*, 164 F.3d 1102, 1106 (8th Cir. 1999) ("To prevent parties from using frivolous appeals to delay or interrupt proceedings in the district court, that court does not normally lose jurisdiction to proceed with the case when one party appeals a non-appealable order."); *Coonradt v. Krichbaum*, 2024 WL 4494168, at *1 n.1 (D. Minn. Oct. 15, 2024) ("premature" appeal means "the Court retains jurisdiction over this matter"); *Vogt v. State Farm Life Ins. Co.*, 2021 WL 12310915, at *3 (W.D. Mo. July 7, 2021) ("[A]n appeal that is clearly defective will not deprive the district court of jurisdiction" and "the district court may proceed as if no appeal had been filed."); *White v. Missouri*, 2007 WL 689745, at *1 n.2 (E.D. Mo. Mar. 2, 2007) (improper "interlocutory appeal" of "non-appealable order" did not deprive court of jurisdiction).

Best,
Melanie

Melanie G. Ng ([bio](#))
WATSTEIN TEREPKA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

From: Edwin Butler <edbutler@butlerlawstl.com>
Date: Wednesday, February 5, 2025 at 3:31 PM
To: MOEDml_Schelp_Law_Clerks@moed.uscourts.gov
<MOEDml_Schelp_Law_Clerks@moed.uscourts.gov>
Cc: Edwin Butler <edbutler@butlerlawstl.com>, Christopher Prosser (Work) <attorneysacquisitions@outlook.com>, Melanie Ng <mng@wtlaw.com>
Subject: 4:24-cv-01177-MTS Human V Fisher Investments, Inc.

[Warning – external]

Judge Schelp:

Pursuant to the Court's order requiring the parties to meet and confer on January 27, 2025, Defendant Fisher declined to discuss any of the Plaintiff's discovery disputes at the meeting, which necessitated our preparation of a motion to compel discovery responses.

Specifically, Fisher asserted during the meeting that the Court's order did not obligate them to address our disputes regarding their non-production. Please see the attached email to Fisher outlining our extensive discovery disputes for consideration. The Plaintiff has provided more than 400 documents to Defendant Fisher as of this email.

To date, Fisher has disclosed only twenty (20) pages of documents, despite the comprehensive nature of our discovery requests. Notably, Fisher has claimed to possess prior express written consent to place calls to the Plaintiff's private residential phone but has yet to produce such evidence—an essential aspect of their liability and affirmative defenses in Phase One discovery. They are engaging in dilatory tactics and are conducting an overly broad and evasive fishing expedition that falls well outside the scope of discoverable evidence.

Regarding Fisher's discovery concerns, my notes reflect that despite Fisher's refusal to entertain a two way discussion of all discovery disputes, we agreed to reexamine our records and produce any additional documents in our possession by February 7, 2025, contrary to the February 3, 2025, date mentioned, and we would have honored this commitment had we not filed a notice of appeal on February 3, 2025, divesting the Court of jurisdiction in this matter. Additionally, Mr. Human is not attempting to delay his deposition, and any assertions to the contrary are baseless.

We respectfully request that the Court instruct the parties to refrain from further email communication directly with the Court requesting discovery or any other orders, and mandate that the parties engage in motion practice according to the Rules of Court.

Thank you,

Ed Butler

Edwin V. Butler | Butler Law Group LLC

1650 Des Peres Road, Ste 220 | Des Peres, MO 63131

Direct: # | Office: 314-504-0001 | Fax: 314-481-8479

edbutler@butlerlawstl.com | www.butlerlawstl.com

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EXHIBIT 27

From: Alex Terepka Alex@wtlaw.com
Subject: Re: Fisher's Request for Informal Discovery Conference
Date: March 18, 2025 at 3:44 PM
To: Edwin Butler edbutler@butlerlawstl.com, MOEDml_Schelp_Law_Clerks@moed.uscourts.gov
Cc: Edwin Butler edbutler@butlerlawstl.com, Guletz, Matthew D. MGuletz@thompsoncoburn.com, kwalker@thompsoncoburn.com, Jennipher Borey jborey@wtlaw.com, James Ruley jruley@wtlaw.com, Christopher Prosser (Work) attorneysacquisitions@outlook.com, Melanie Ng mng@wtlaw.com

AT

Dear Judge Schelp:

The below email from Mr. Human's counsel violates the Court's orders regarding communications with chambers. Fisher respectfully requests that the Court disregard it.

Best,

Alex

Alex Terepka (bio)
WATSTEIN TEREPKA ^{LLP}
P: 213-839-3317
alex@wtlaw.com
www.wtlaw.com

From: Edwin Butler <edbutler@butlerlawstl.com>
Date: Tuesday, March 18, 2025 at 2:52 PM
To: MOEDml_Schelp_Law_Clerks@moed.uscourts.gov
<MOEDml_Schelp_Law_Clerks@moed.uscourts.gov>
Cc: Edwin Butler <edbutler@butlerlawstl.com>, Alex Terepka <Alex@wtlaw.com>, Guletz, Matthew D. <MGuletz@thompsoncoburn.com>, kwalker@thompsoncoburn.com <kwalker@thompsoncoburn.com>, Jennipher Borey <jborey@wtlaw.com>, James Ruley <jruley@wtlaw.com>, Christopher Prosser (Work) <attorneysacquisitions@outlook.com>
Subject: Fisher's Request for Informal Discovery Conference

[Warning – external]

Dear Judge Schelp:

Considering the Courts estimated 40-page protective order regarding confidential document production, labeling, etc, Plaintiff is reviewing approximately 458 documents to be submitted to the defendant. Defense Counsel is being disingenuous regarding Mr. Human sitting for a deposition. Plaintiff was prepared for the deposition, and had every intention to appear at the appointed time with counsel. Ms. Ng cancelled the deposition stating she would renote Plaintiff by email.

Plaintiff is also reviewing the Court's most recent two orders to resubmit his motion for partial summary judgment as to the defendant's liability in that

Fisher misled this Court by stating they have express written consent by Mr. Human to dial his private residential phone number which is **categorically false**. The Defendants have not provided this evidence but have been requested more than a handful of times, including formal discovery requests. Defendants have only produced approximately 20 pages of discovery thus far but have failed and refused to provide the documents requested.

Plaintiff intends to provide additional document production to Fisher by the end of next week. Defendant Fisher has failed to provide any additional discovery since the Court granted its extensive protective order, which was the fundamental basis of objections to many discovery requests and the subject of an upcoming motion to compel by Plaintiff.

Ed Butler

Edwin V. Butler | Butler Law Group LLC

1650 Des Peres Road;. Ste 220 | Des Peres, MO 63131

Direct: # | Office: 314-504-0001 | Fax: 314-481-8479

edbutler@butlerlawstl.com | www.butlerlawstl.com

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EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DANIEL HUMAN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

**FISHER INVESTMENTS, INC., AND
SMART ASSET ADVISORS, LLC,**

Defendants.

Case No. 4:24-cv-01177-MTS

JURY TRIAL DEMANDED

**DECLARATION OF JAMES M. RULEY IN SUPPORT OF
DEFENDANT FISHER’S MOTION FOR SANCTIONS AND MOTION TO COMPEL**

1. My name is James M. Ruley. I am over the age of 18 and an attorney at Watstein Terepka, LLP. I make this declaration based on my personal knowledge.

2. I am counsel of record for Fisher Investments, Inc. (“Fisher”) in a putative class action alleging violations of the Telephone Consumer Protection Act and similar state law filed by Daniel Human.

3. Per the Court’s order, I arranged to meet and confer with Plaintiff’s counsel on the afternoon of January 27, 2025 about Fisher’s issues with Mr. Human’s discovery responses and document productions. Plaintiff’s counsel did not confirm he would be attending the conference, which occurred over Zoom, until three minutes before it started.

4. During the call, I reminded Plaintiff’s counsel of the Court’s order concluding that Plaintiff waived all objections to Fisher’s written discovery. ECF No. 34 ¶ 3 n.1. After this reminder, Plaintiff’s counsel agreed to respond without objection to Fisher’s requests for production and produce documents, as well as to supplement his interrogatory responses.

5. During the conference, I walked Plaintiff's counsel through numerous specific discovery requests and interrogatories, explaining the specific information that was responsive to the requests Plaintiff was obligated to provide. Plaintiff agreed that he would produce the requested documents by February 3, 2025. The only documents Plaintiff did not agree to search for and provide at that time was Fisher's request that Plaintiff produce prior settlement agreements for similar TCPA and state law claims. However, Plaintiff's counsel promised to provide his position on that issue within the next two days, which he did not do.

6. Fisher confirmed the contents of the call in an email that same day. Attached as **Exhibit 1** is a true and correct copy of an email from my colleague, M. Ng, to E. Butler on January 27, 2025 memorializing our conversation, on which I was copied.

7. During the meet and confer, Plaintiff's counsel agreed that Plaintiff would sit for his deposition on February 12, 2025. Fisher subsequently issued a notice of deposition. Attached as **Exhibit 2** is a true and correct copy of Fisher's second notice of deposition to Plaintiff.

8. Plaintiff did not provide the documents that he agreed to produce by February 3, 2025. Instead, he sent a lengthy email that did not address his failure to produce the agreed documents. Attached as **Exhibit 3** is a true and correct copy of an email exchange between E. Butler and my colleague, M. Ng, on which I was copied.

9. In connection with another matter involving Daniel Human, I received an email from him advising that he "had some terrible meltdown of [his] geriatric computer this weekend and had to replace it." That email is dated Wednesday, January 29, 2025. Attached as **Exhibit 4** is a true and correct copy of email correspondence that Daniel Human (danlovestopolo@gmail.com) sent to me from January 29, 2025, through February 4, 2025.

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

Executed this 19th day of March in Smyrna, Georgia.

DocuSigned by:



52A93DEF659E47D

James M. Ruley

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DANIEL HUMAN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FISHER INVESTMENTS, INC.,

Defendant.

Case No. 4:24-cv-01177-MTS

JURY TRIAL DEMANDED

**DEFENDANT FISHER INVESTMENTS, INC.'S NOTICE OF DEPOSITION OF
PLAINTIFF DANIEL HUMAN**

PLEASE TAKE NOTICE that Defendant Fisher Investments, Inc., by and through its undersigned attorneys, will take the deposition of Plaintiff Daniel Human ("Mr. Human"). The deposition shall be in person and commence at 10:00 a.m. on February 11, 2025 at the offices of Thompson Coburn LLP, One US Bank Plaza, St. Louis, MO 63101, and shall continue thereafter from time to time and day to day, until completed.

NOTICE IS FURTHER GIVEN that the deposition of Plaintiff will be taken before a duly certified court reporter and notary public or person authorized to administer oaths.

NOTICE IS FURTHER GIVEN that Defendant intends to record the testimony at the above-described deposition by stenographic method, by audiotape, videotape, and/or through the instant visual display of the testimony.

NOTICE IS FURTHER GIVEN that Defendant reserves the right to conduct this deposition utilizing the secure web-based deposition option afforded by Huseby or, in the alternative, other video teleconferencing (VTC) services to provide remote/virtual access for the parties and their counsel. Also take notice that Defendant reserves the right to record the deposition

either by stenographic means by a court reporter certified to record depositions or a digital reporter utilizing state-of-the-art digital recording equipment. Both the court reporter and digital reporter are authorized to administer the oath and serve as the deposition officer in the State of Missouri. Take note that the deposition officer may also be remote and out of the presence of the deponent via one of the options above (or via telephone) for the purposes of providing the oath/affirmation to the deponent and capturing the proceeding. Defendant further reserves the right to utilize the following: (1) record the deposition utilizing audio or video technology; (2) instant visual display such that the reporter's writing of the proceeding will be available to all who are a party to this proceeding to request and receive it in real-time; (3) Exhibit Capture (picture-in-picture) technology in which any exhibit reviewed by the deponent during the deposition can be captured visually; and (4) to conduct this deposition utilizing a paperless exhibit display process called Exhibit Share or a similar paperless virtual display platform. The parties are advised that in lieu of a paper set of exhibits they may be provided and displayed digitally to the deposition officer, deponent, parties, and counsel. The exhibits will be compiled by the deposition officer for the purposes of exhibit stamping, and ultimate production of the final certified transcript.

Please contact the noticing attorney at least three (3) calendar days prior to the deposition so that the necessary credentials, call-in numbers, firm name, email address, services, testing and information, if necessary, can be arranged and provided to you prior to the proceeding(s).

NOTICE IS FURTHER GIVEN that this deposition will be taken for the purposes of discovery, for use at trial, and for all other purposes permitted by the Federal Rules of Civil Procedure.

Dated: February 3, 2025

Respectfully submitted,

/s/ Alexander D. Terepka

Alexander D. Terepka (*pro hac vice*)

James M. Ruley (*pro hac vice*)

Melanie G. Ng (*pro hac vice*)

WATSTEIN TEREPA LLP

1055 Howell Mill Rd. 8th Floor

Atlanta, Georgia 30318

Tel: (213) 839-3317

alex@wtlaw.com

mng@wtlaw.com

Matthew D. Guletz, #57410(MO)

THOMPSON COBURN LLP

One US Bank Plaza

St. Louis, MO 63101

(314) 552-6311

Fax: 314-552-7000

mguletz@thompsoncoburn.com

Attorneys for Defendant Fisher Investments, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3d day of February 2025, I caused a true and correct copy of the foregoing to be served via email on the following:

Edwin V. Butler

edbutler@butlerlawstl.com

BUTLER LAW GROUP LLP

1650 Des Peres Road, Suite 200

Des Peres, MO 63131

/s/ Alexander D. Terepka

Alexander D. Terepka

EXHIBIT 2

From: Melanie Ng mng@wtlaw.com 
Subject: Re: Human v. Fisher - Meet & Confer on Discovery Issues
Date: January 27, 2025 at 3:54 PM
To: edbutler@butlerlawstl.com
Cc: Alex Terepka Alex@wtlaw.com, James Ruley jruley@wtlaw.com, Guletz, Matthew D. MGuletz@thompsoncoburn.com, Christopher Prosser attorneysacquisitions@outlook.com

Hi Ed, thanks for speaking with us this afternoon. This email memorializes our conversation.

First, Plaintiff agreed that he is available for deposition on either February 10 or 11th. We will circle back shortly with a date certain and a deposition notice.

Second, it is our understanding that Plaintiff is on his way to the device inspection.

Third, we stated that we would provide authority to support our position that Plaintiff's prior settlement agreements are discoverable. That authority is copy and pasted from my January 7th email, below

[S]ettlement agreements aren't privileged. *See, e.g., Wagner v. Circle W Mastiffs*, 2013 WL 2096655, at *6 (S.D. Ohio May 14, 2013) (collecting cases) ("settlement agreements frequently are found to be discoverable in order to allow the requesting party to explore these issues with respect to witnesses."); *see also State Farm Mut. Auto. Ins. Co. v. Universal Health Grp.*, 325 F.R.D. 602, 606 (E.D. Mich. 2016), *adopted*, 2016 WL 6822014 (E.D. Mich. Nov. 18, 2016) (finding that prior settlement agreements with testifying witnesses were relevant to potential bias and were thus discoverable); *DIRECTV, Inc. v. Puccinelli*, 224 F.R.D. 677, 684 (D. Kan. 2004) ("the settlement agreements and information regarding their terms are relevant because they may establish the bias or prejudice"). Courts also order plaintiffs to produce settlement agreements in TCPA cases. *See, e.g., Reimer v. Medigap Life LLC*, Case 1:2023-cv-00683, Doc. 44 (E.D. Va. Sept. 20, 2023). As such, please confirm that Mr. Human will supplement his production to include settlement agreements.

And with respect to the remaining discovery responses, you agreed to supplement Plaintiff's discovery responses, including all the materials we discussed are missing from his document production, by Monday.

Fourth, we also agreed to recirculate our proposed protective order, a copy of which is attached hereto.

Fifth, we will circulate our availability to touch base about the Plaintiff's perceived issues with Fisher's document production. We should be available on Wednesday or Thursday of this week but will circle back with more specifics.

Sixth, the Court struck Plaintiff's second notice of voluntary dismissal per the attached.

Best,
Melanie

Melanie G. Ng ([bio](#))
WATSTEIN TEREPKA ^{LLP}
P: 404-600-1240
mng@wtlaw.com

www.wtlaw.com

From: Melanie Ng <mng@wtlaw.com>
Date: Monday, January 27, 2025 at 1:54 PM
To: Christopher Prosser <attorneysacquisitions@outlook.com>, Alex Terepka <Alex@wtlaw.com>, 'Guletz, Matthew D.' <MGuletz@thompsoncoburn.com>
Cc: edbutler@butlerlawstl.com <edbutler@butlerlawstl.com>
Subject: Re: Human v. Fisher - Meet & Confer on Discovery Issues

Hi Ed and Chris, we spoke with our client and Fisher is not willing to stipulate to dismissal, whether with or without prejudice. It is clear that your client intended to impose on Fisher substantial unnecessary expenses even though he intended to dismiss. We informed you repeatedly about the expenses Fisher was incurring, including to retain a professional to complete the device inspection. Fisher reserves all rights to seek recovery of these expenses.

Fisher believes that the notice of dismissal with prejudice your client just filed violates the Court's orders, especially because the Court ordered today that such a unilateral dismissal is not permitted. Finally, as I said in a prior email, Fisher expects full compliance with the Court's orders.

Best,
Melanie

Melanie G. Ng ([bio](#))
WATSTEIN TEREPKA ^{LLP}
P: 404-600-1240
mng@wtlaw.com
www.wtlaw.com

From: Christopher Prosser <attorneysacquisitions@outlook.com>
Date: Monday, January 27, 2025 at 1:28 PM
To: Melanie Ng <mng@wtlaw.com>, Alex Terepka <Alex@wtlaw.com>, 'Guletz, Matthew D.' <MGuletz@thompsoncoburn.com>
Cc: edbutler@butlerlawstl.com <edbutler@butlerlawstl.com>
Subject: Re: Human v. Fisher - Meet & Confer on Discovery Issues

[Warning – external]

Mel - Ed just texted. Dan called Ed after the order and said will you stipulate to a dismissal with prejudice if that makes Fisher more comfortable about it?

Cordially,

Christopher Prosser BA, AA, CLA

From: Christopher Prosser <attorneysacquisitions@outlook.com>
Sent: Monday, January 27, 2025 12:11 PM
To: Melanie Ng <mng@wtlaw.com>
Subject: Re: Human v. Fisher - Meet & Confer on Discovery Issues

Hi Mel - I can't get ahold of Ed, and I am not attempting to act on his behalf or practice law. But I'm pretty sure the next step is to contact you and ask if Fisher will stipulate to the dismissal?

Cordially,

Christopher Prosser BA, AA, CLA

From: Melanie Ng <mng@wtlaw.com>
Sent: Monday, January 27, 2025 11:57 AM
To: Christopher Prosser <attorneysacquisitions@outlook.com>
Subject: Re: Human v. Fisher - Meet & Confer on Discovery Issues

Christopher, the reason I sent this email is because of the Court's order, see attached.

Best,
Melanie

Melanie G. Ng ([bio](#))
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From: Christopher Prosser <attorneysacquisitions@outlook.com>
Date: Monday, January 27, 2025 at 12:54 PM
To: Melanie Ng <mng@wtlaw.com>
Subject: Re: Human v. Fisher - Meet & Confer on Discovery Issues

[Warning – external]

she must not has seen the dismissal

Cordially,

Christopher Prosser BA, AA, CLA

From: Melanie Ng <mng@wtlaw.com>

Sent: Monday, January 27, 2025 11:49 AM

To: Edwin Butler <edbutler@butlerlawstl.com>; Alex Terepka <Alex@wtlaw.com>; Guletz, Matthew D. <MGuletz@thompsoncoburn.com>

Cc: Edwin Butler <edbutler@butlerlawstl.com>; Christopher Prosser (Work) <attorneysacquisitions@outlook.com>

Subject: Re: Human v. Fisher - Meet & Confer on Discovery Issues

Hi Ed, your email is misreading Fisher's notice of device inspection, where it clearly asked to inspect—including copying—the devices that Mr. Human used on certain dates. It did not limit the scope of the inspection to activities usage on the devices on those dates.

Please see the attached notice of device inspection. As Judge Schelp ordered all objections waived due to your prior failure to object, we expect full compliance with the device inspection today. Anything less is a violation of a Court order that we'll bring to the Court's attention.

Your concern about privileged and irrelevant materials can be addressed by an aside protocol that isolates these materials to avoid their improper disclosure. This is standard practice for a device inspection that the expert we've retained is familiar with. We first invited your input on an ESI and/or device inspection protocol on January 7, which you ignored as well as my multiple follow up attempts.

With respect to the balance of your email, you appear to be referencing discovery requests that Mr. Human served before he was represented by counsel. There are several issues with these discovery requests, most glaringly that Mr. Human served those requests before discovery was open under the Federal Rules of Civil Procedure. First, Rule 26(d)(1) clearly states that "A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempt from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order." Second, the then-operative scheduling order did not contemplate premature discovery requests. And lastly, the parties did not stipulate to early discovery. *See Futrell v. Lowe's*, 2021 WL 4593367, at *2 (E.D. Mo. Oct. 6, 2021) (finding plaintiff's discovery requests "premature" where the "parties have not yet engaged in a Rule 26(f) conference nor have they stipulated to early discovery in this matter"). Furthermore, Fisher informed Mr. Human of its position on October 7, 2024—the day that Mr. Human served his improper and premature discovery requests. As such, these requests are invalid. *See id.*; *see also Futrell v. Lowe's*, 2021 WL 3566646, at *2 (E.D. Mo. Aug. 12, 2021) ("a party may not seek discovery prior to a Rule 26(f) conference" where the "parties have not stipulated to early discovery in this matter and the Court has not authorized such discovery.").

It is clear that your long email is attempting to belatedly raise issues with Fisher's discovery responses to distract from your client's discovery misconduct. We will of course meet and confer with you per the Court's order on these issues. However, the Court ordered you to make yourself available to discuss our discovery deficiencies today. ECF No. 34 ¶ 3(c)(iii). We can discuss yours as soon as Wednesday.

As I mentioned before, we're available on February 10, 11, or 12th for Mr. Human's deposition. By the way, the Court's order requires you to disclose at least three dates for Mr. Human's deposition by today. ECF No. 34 ¶ 3(c)(i) ("No later than Monday, January 27, 2025, Plaintiff must provide Defendant Fisher Investments, Inc. with at least three available dates for such deposition.").

And please respond to our request concerning the device inspection. Mr. Human needs to appear for his device inspection by 3 pm CT so that our forensic professional can complete his work by close of business today.

Thank you.

Best,
Melanie

Melanie G. Ng ([bio](#))

WATSTEIN TEREPA ^{LLP}

P: 404-600-1240

mng@wtlaw.com

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From: Edwin Butler <edbutler@butlerlawstl.com>

Date: Monday, January 27, 2025 at 7:50 AM

To: Melanie Ng <mng@wtlaw.com>, Alex Terepka <Alex@wtlaw.com>, Guletz, Matthew D. <MGuletz@thompsoncoburn.com>

Cc: Edwin Butler <edbutler@butlerlawstl.com>, Christopher Prosser (Work) <attorneysacquisitions@outlook.com>

Subject: Human v. Fisher - Meet & Confer on Discovery Issues

[Warning – external]

Hi Mel.

Yes, Mr. Human will appear at your newly disclosed location. Apparently, I am missing something here. Your specific request sets forth precise dates for the usage inspection. It didn't ask for a global copy of the devices, nor did it contain any mention of a forensic analysis. That said, my client's phone contains information which is personal, private, attorney/client privileged, and doctor/patient privileged. We never agreed nor have we waived those privileges. Moreover, you are not suing Mr. Human for allegedly manufacturing TCPA claims and the only true defense in TCPA is prior express written consent, which you still have not provided – though I believe it was misrepresented to Judge Schelp that you did provide that information to us (30 minutes before the hearing last week).

Moving forward, there are a number of discovery disputes that we have with your client's lack of production which we also will be discussing on Monday. Specifically, we believe you previously waved your objections to Mr. Human's production requests by failing to respond within 21 or even 30 days. The chronology I have regarding these events, which is based on the emails between Mr. Human and your office are:

7/17/24 Demand Letter and copy of filed Complaint

8/9/24 Summons and Affidavit of service

8/30 Response by email from M. Guletz to demand and Removal

9/3/24 email to M. Guletz re settlement

9/4/24 Fisher response to Complaint
9/4/24 Follow up letter for settlement to include Melanie NG
9/9/24 Email to Melanie NG to send all future correspondence to me by email
10/7/24 email from Melanie NG responding to my settlement proposal and including a November 12, 2024, scheduling plan (obviously a "conference")
10/7/24 Discovery – Interrogatories, Admissions and Document Requests served at 9:56 am
10/7/24 email from Melanie NG that we have NOT conferenced. At 3:24 pm

10/7/24 at 3:29 pm... email to Melanie NG addressing the "confer" issue we already had!

10/11/24 Ed enters his appearance

Mr. Human advised that he called and emailed your office multiple times and exhausted all reasonable efforts to communicate with your office and it was only upon threat of a taking your lack of communication to the Judge and Bar Association, that you finally responded with "we'll get back to you when we can." See Human email of October 7, 2024, at 9:56 a.m. And see also your email of October 7, 2024, at 3:22 p.m. which lacked any discovery objections, whatsoever.

Your office had already been served with a proposed discovery scheduling order and then Plaintiff's first request for discovery and your responses were due on October 28, 2024. All your untimely objections are therefore waived. *See Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992) ("It is well established that a failure to object to discovery requests within the time required constitutes a waiver of any objection."); *In re United States*, 864 F.2d 1153, 1156 (5th Cir. 1989) ("We readily agree with the district court that as a general rule, when a party fails to object timely to interrogatories, production requests, or other discovery efforts, objections thereto are waived.").

Considering your lack of timely objections to Plaintiff's first request for discovery, and your production which was grossly inadequate, Plaintiff has the following discovery disputes:

I. INTERROGATORIES

1. Identify each person who provided the information to answer interrogatories in this case and specify the interrogatories about which each such person provided information.

Your response is that you refuse to answer the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's liability on plaintiff's claim. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability.

2. Identify all agents, employees or vendors involved in making outbound calls promoting your services by direct dialing and/or utilizing a dialer that requires a computer. This includes, but is not limited to, (a) third parties that you contract with who make telemarketing calls to generate leads, (b) the dialing system platform or provider used to make those calls, (c) any calls made to acquire new customers

made to acquire new customers.

Your response is that you refuse to answer the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's liability on plaintiff's claim. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability.

3. Identify and describe the work of each agent, employee or vendor in detail.

Your response is that you refuse to answer the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's liability Plaintiffs vicarious liability count IV. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability.

4. Identify all third parties or sub-vendors involved in making outbound calls promoting your goods or services utilizing a dialer that requires a computer. This includes, but is not limited to, any (a) companies that supply telephone numbers to you for calling (b) any third party companies you use to make the calls and (c) any dialing systems that are used to make the calls.

Your response is that you refuse to answer the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's liability and Plaintiffs vicarious liability count IV. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability.

5. Identify and describe the work of each vendor.

Your response is that you refuse to answer the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's liability and Plaintiffs vicarious liability count IV. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability.

6. Identify all third parties or sub-vendors used by your vendors for you.

Your response is that you refuse to answer the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's liability and Plaintiffs vicarious liability count IV. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability.

7. Identify each employee or vendor of yours that called the Plaintiff.

Your response is that "Defendant will conduct a reasonably diligent search and produce business records sufficient to show which entity made the complained-of calls, if such records are within Defendant's possession, custody, or control." Your response is woefully

inadequate and you have failed to supplement this interrogatory with any further relevant documents, to include phone records for the numbers utilized to contact the Plaintiff's private residential phone, as well as other relevant information on "Kingsway Service" – the marketing company identified as being involved in the illegal calls. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which may or have shared liability.

8. If you contend that Plaintiff provided express written consent to receive solicitation telephone calls, state all facts in support of that contention and identify the date(s) on which and the means by which you contend express written consent was obtained.

Your response is that "Defendant will conduct a reasonably diligent search and produce business records sufficient to show Plaintiff's consent to receive the complained of calls." You have not produced a scintilla of evidence responsive to this request and it is clearly one of your affirmative defense. Your response is woefully inadequate and you have failed to supplement this interrogatory with relevant documents, to include the prior express written consent of the Plaintiff to receive these calls. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and vex this cause of action by hindering Plaintiff's ability to discover indispensable parties which may or have shared liability.

9. Identify your company's relationship with any company that provided you with the Plaintiff's information or information related to the Plaintiff's telephone number, including all lead providing companies with whom you or your agents contract with or purchase leads from.

Your response is that you refuse to answer the interrogatory, and you refer Plaintiff to your untimely Rule 26 disclosures. This is nonresponsive to the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's liability and Plaintiffs vicarious liability count IV. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. Simply referring Plaintiff to your initial disclosures is an evasive tactic calculated to multiple the Plaintiff's costs in this matter.

10. State all facts in support of each affirmative defense you have raised in chronological order as stated in your answer to the complaint.

Your response is that you refuse to answer the interrogatory. This is nonresponsive to the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's liability and Plaintiffs vicarious liability count IV. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. These are your clients stated affirmative defenses, and if you fail to answer this question we will move to strike all stated affirmative defenses in this case for lack of legal merit and factual support.

11. In response to which (if any) requests for production in this case have you produced no responsive documents?

Your response is that you refuse to answer the interrogatory. This is nonresponsive to the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's liability and Plaintiffs vicarious liability count IV and the existence of non-compliance with our stated document production requests. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability.

12. Identify each licensed or unlicensed agent you or your agents supplied Plaintiff's residential cellular number to for them to call.

Your response is that "Defendant will conduct a reasonably diligent search and produce business records sufficient to show which entities Defendant supplied Plaintiff's cellular number to, if such records are found within Defendant's possession, custody, or control." Your response is woefully inadequate and you have failed to supplement this interrogatory with any relevant documents, to include phone records for the numbers utilized to contact the Plaintiff's private residential phone, as well as other relevant information on "Kingsway Service" and Defendant "Smart Asset Advisors" – the marketing company identified as being involved in the illegal calls. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which may or have shared liability.

13. Identify each Defendant or their agents or employees who vetted or scrubbed the Plaintiff's residential phone number against the National and Missouri State do not call registries prior to calling the number at issue in the Complaint.

Your response is that you refuse to answer the interrogatory. This is nonresponsive to the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's direct liability and vicarious liability count IV. We are entitled to this information and your non-response is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. This is a simple question which is not confusing – identify any Fisher employee that scrubbed the called number against the Missouri and Federal Do not call lists? Teddy Parks is identified as one of the callers, did he scrub the number prior to making any of his calls in this case? You need to supplement this answer immediately with not only the names, but also the phone numbers called from.

14. Identify each of the individuals that spoke with Plaintiff from your company or any of its vendors, and for each agent, employee or vendor, identify the phone number each person contacted the Plaintiff from, as well as the day, date, time, and duration of each call.

Your answer is nonresponsive to this question. This question asks to fully identify these people within the structure and definitions provided. These interrogatories and definitions have withstood scrutiny. Please answer this question forthwith as it is specific and goes directly to your client's direct liability and vicarious liability count IV. We are entitled to this information and your

non-response is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability.

15. Identify by make, model, structure and location the system(s), (platforms(s) [sic], and/or equipment used by you, or any vendor, to contact the Plaintiff's private residential phone number.

Your response is that you refuse to answer the interrogatory. This is nonresponsive to the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's direct liability and vicarious liability count IV. We are entitled to this information and your non-response is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. This is a simple question which is not confusing – identify the equipment used to make the calls. The equipment is not privileged or some trade secret unless Fisher holds the patent on the equipment – and even then, it isn't a trade secret.

16. Identify any person (whether employed by you or not) whom you have disciplined, reprimanded, or taken similar action against for engaging in, facilitating, or allowing allegedly unlawful or unauthorized outbound call(s) using a recorded message or text message to occur. In your answer, please identify all persons involved in any investigation, describe the reasons for your disciplinary action or reprimand, and describe the action taken against the person.

Your response is that you refuse to answer the interrogatory. This is nonresponsive to the interrogatory. Please answer this question forthwith as it is specific and goes directly to your client's direct liability and vicarious liability count IV. We are entitled to this information and your non-response is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability.

II. DOCUMENT REQUESTS

1. Please produce all non-attorney-client-privileged documents identified in or used to research or draft responses to interrogatories in this case.

Your response is that "Defendant identified certain interrogatories for which Defendant would search for and produce business records in accordance with Rule 33(d), if such records are found to be within Defendant's possession, custody, or control.." Your responses were due on October 28, 2024. Your objections are therefore waived. *See Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992) ("It is well established that a failure to object to discovery requests within the time required constitutes a waiver of any objection."); *In re United States*, 864 F.2d 1153, 1156 (5th Cir. 1989) ("We readily agree with the district court that as a general rule, when a party fails to object timely to interrogatories, production requests, or other discovery efforts, objections thereto are waived."). Additionally, your response is woefully inadequate and nonresponsive to this request and you have failed to supplement this your response with any relevant documents, to include phone records for the numbers utilized to contact the Plaintiff's private residential phone, signed prior express written consent, which you have repeatedly claim you possess, as well as other relevant information on "Kingsway Service" and Defendant "Smart Asset Advisors" – the marketing company identified as being involved in the illegal calls, and Fishers professional liability business insurance policy, etc. We are entitled to this information

and FISHERS professional liability business insurance policy, etc. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which may or have shared liability.

2. Please produce all documents supporting or contradicting any affirmative defense made in any answer by you to any complaint in this case.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to your client's liability. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. If you fail to supplement this production request we will move to strike all affirmative defenses as factually unsupported and absent legal merit. *Powell v. W. Asset Mgmt., Inc.*, 773 F. Supp. 2d 761, 764 (N.D. Ill. 2011) (listing cases finding no duty to mitigate under § 227 of the TCPA); *Holtzman v. Turza*, No. 08 C 2014, 2010 WL 4177150, at *5 (N.D. Ill. Oct. 19, 2010), *aff'd sub nom. Ira Holtzman, C.P.A. v. Turza*, 728 F.3d 682 (7th Cir. 2013); *Onsite Computer Consulting Servs., Inc. v. Dartek Computer Supply Corp.*, No. 05AC-000108 I CV, 2006 WL 2771640, at *4 (Mo. Cir. Ct. May 17, 2006).

3. Please produce all documents related to Plaintiff, including, but not limited to, all documents evidencing your relationship with Plaintiff and your investigation into outbound calls made to Plaintiff's private residential cell phone.

Your response is non-responsive to the request, and you have failed to supplement with actual production beyond call notes. You have failed to produce the prior express written consent you repeatedly claim to possess. Immediately provide responsive documents as it is specific and goes directly to your client's direct liability. We are entitled to this information, and your non-response is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability.

4. Please produce all documents relating to any failure by an employee or a vendor to abide by your policies relating to the sending of outbound calls to subscribers of both the Missouri and National do not call registries.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification and liability. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable

parties which have shared liability. If you fail to supplement this production request we will move to strike all affirmative defenses as factually unsupported and absent legal merit. *Powell v. W. Asset Mgmt., Inc.*, 773 F. Supp. 2d 761, 764 (N.D. Ill. 2011) (listing cases finding no duty to mitigate under § 227 of the TCPA); *Holtzman v. Turza*, No. 08 C 2014, 2010 WL 4177150, at *5 (N.D. Ill. Oct. 19, 2010), *aff'd sub nom. Ira Holtzman, C.P.A. v. Turza*, 728 F.3d 682 (7th Cir. 2013); *Onsite Computer Consulting Servs., Inc. v. Dartek Computer Supply Corp.*, No. 05AC-000108 I CV, 2006 WL 2771640, at *4 (Mo. Cir. Ct. May 17, 2006).

5. Please produce all documents relating to complaints or do-not-call requests concerning outbound calls, including, but not limited to, lists or databases containing complaints about them, and information identifying the complainants. This Request includes any complaints to you by mail, email, live call, IVR, SMS, web form, social media, FCC, FTC, CFPB, state attorney generals, BBB or any other source.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability.

6. All contracts and documents representing agreements with any vendors that provided you the phone numbers of putative class members or the Plaintiff and/or who contacted the Plaintiff and putative class members.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) *Grant v. Regal Auto. Grp., Inc.*, No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020)

7. All communications with any vendors that provided you with or you provided them with the phone number of putative class members or the Plaintiff as they relate to telephone number acquisition.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability. We are entitled to this information and your non-response claiming you'll supplement is vexing the

Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020)

8. All communications with any third parties that you have a relationship with that makes calls for you regarding outbound calls or customer origination and/or acquisition.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020)

9. All communications with any vendor that physically dialed calls to the Plaintiff regarding outbound calls or customer origination.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020).

10. Please produce all documents relating to insurance coverage of the acts alleged by Plaintiff, including, but not limited to, all potentially applicable policies issued by any insurer and all communications with any such insurers, including, but not limited to, reservation-of-rights letters, regardless of whether or not such coverage purports to exclude the acts alleged in this matter and regardless of whether or not such insurers have declined coverage in this matter.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to

your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability, as well as a potential indispensable party's indemnification duty as well as their duty to defend. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020); In the Matter of the Joint Petition Filed by Dish Network, LLC, 28 F.C.C.R. at 6586–87; Gould v. Farmers Ins. Exch., 288 F. Supp. 3d 963, 970 (E.D. Mo. 2018); *Norwalk Ready Mixed Concrete, Inc. v. Travelers Ins. Cos.*, 246 F.3d 1132, 1136 (8th Cir. 2001). "Insurance policies are contracts between the insurer and the insured and must be interpreted like other contracts, the object being to ascertain the intent of the parties." *Talen v. Emps. Mut. Cas. Co.*, 703 N.W.2d 395, 407 (Iowa 2005). "When the words of an insurance contract are unambiguous, the intent of the parties is determined by the language of the policy itself." *Mod. Equip. Co. v. Cont'l W. Ins. Co.*, 355 F.3d 1125, 1128 (8th Cir. 2004); Rohlf v. Cont'l Cas. Co., No. 4:20-CV-00173, 2021 WL 6622191, at *4 (S.D. Iowa Jan. 19, 2021).

11. Please produce all indemnification agreements under which a third party may be responsible for satisfying all or part of a judgment that may be entered against you in this action, and all communications with those third parties.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability, as well as a potential indispensable party's indemnification duty as well as their duty to defend. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020); In the Matter of the Joint Petition Filed by Dish Network, LLC, 28 F.C.C.R. at 6586–87; Gould v. Farmers Ins. Exch., 288 F. Supp. 3d 963, 970 (E.D. Mo. 2018); *Norwalk Ready Mixed Concrete, Inc. v. Travelers Ins. Cos.*, 246 F.3d 1132, 1136 (8th Cir. 2001). "Insurance policies are contracts between the insurer and the insured and must be interpreted like other contracts, the object being to ascertain the intent of the parties." *Talen v. Emps. Mut. Cas. Co.*, 703 N.W.2d 395, 407 (Iowa 2005). "When the words of an insurance contract are unambiguous, the intent of the parties is determined by the language of the

policy itself.” *Mod. Equip. Co. v. Cont'l W. Ins. Co.*, 355 F.3d 1125, 1128 (8th Cir. 2004); Rohlf v. Cont'l Cas. Co., No. 4:20-CV-00173, 2021 WL 6622191, at *4 (S.D. Iowa Jan. 19, 2021).

12. Please produce all documents related to policies for compliance with the TCPA, MDNC and the FCC's regulations thereunder and all documents necessary to construct a timeline when each policy was promulgated and placed in force and effect. This Request specifically includes, but is not limited to, policies related to the following:

a) compliance with the TCPA and MDNC, including, but not limited to the rules, regulations, opinions, advisories, comments or filings of the Federal Communications Commission that relate to the TCPA or 47 C.F.R. § 64.1200;

b) obtaining or verifying prior express consent;

c) complying with E-SIGN Act, 15 U.S.C. §§ 7001 *et seq.*

Your response is nonresponsive and you have failed to respond or supplement this request with even a single document. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability, as well as a potential indispensable party's indemnification duty as well as their duty to defend. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that “[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts”); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020); In the Matter of the Joint Petition Filed by Dish Network, LLC, 28 F.C.C.R. at 6586–87; Gould v. Farmers Ins. Exch., 288 F. Supp. 3d 963, 970 (E.D. Mo. 2018); *Norwalk Ready Mixed Concrete, Inc. v. Travelers Ins. Cos.*, 246 F.3d 1132, 1136 (8th Cir. 2001). “Insurance policies are contracts between the insurer and the insured and must be interpreted like other contracts, the object being to ascertain the intent of the parties.” *Talen v. Emps. Mut. Cas. Co.*, 703 N.W.2d 395, 407 (Iowa 2005). *Mod. Equip. Co. v. Cont'l W. Ins. Co.*, 355 F.3d 1125, 1128 (8th Cir. 2004); Rohlf v. Cont'l Cas. Co., No. 4:20-CV-00173, 2021 WL 6622191, at *4 (S.D. Iowa Jan. 19, 2021).

13. Please produce a copy of your Do Not Call list, including the date(s) each telephone number was added to the Do Not Call list and any other identifying party set forth on that list.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability, as well as a potential indispensable party's indemnification duty as well as their duty to defend. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally your non-response is calculated to impede the judicial process and hinder Plaintiff's

Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020); In the Matter of the Joint Petition Filed by Dish Network, LLC, 28 F.C.C.R. at 6586–87; Gould v. Farmers Ins. Exch., 288 F. Supp. 3d 963, 970 (E.D. Mo. 2018); *Norwalk Ready Mixed Concrete, Inc. v. Travelers Ins. Cos.*, 246 F.3d 1132, 1136 (8th Cir. 2001). *Talen v. Emps. Mut. Cas. Co.*, 703 N.W.2d 395, 407 (Iowa 2005). *Mod. Equip. Co. v. Cont'l W. Ins. Co.*, 355 F.3d 1125, 1128 (8th Cir. 2004); Rohlf v. Cont'l Cas. Co., No. 4:20-CV-00173, 2021 WL 6622191, at *4 (S.D. Iowa Jan. 19, 2021). Moreover, Fisher's internal do not call list is relevant as it is requested to examine the issue of Defendant's affirmative defense of consent, and its failure to secure first party direct written consent from Plaintiff prior to dialing his private residential phone number. *See* 47 C.F.R. § 64.1200(d)(4). As the Seventh Circuit has explained, the TCPA responds to the "pestilence of robocalls, scam calls, and texts ping[ing] our attention away." *Craftwood II, Inc. v. Generac Power Sys., Inc.*, 63 F.4th 1121 (7th Cir. 2023); *see also Barr v. Am. Ass'n of Political Consultants, Inc.*, 591 U.S. 610, 140 S. Ct. 2335, 2344–45, 207 L.Ed.2d 784 (2020) (opinion of Kavanaugh, J.); *Patriotic Veterans, Inc. v. Zoeller*, 845 F.3d 303, 305–06 (7th Cir. 2017).

The consent or invitation required by the TCPA must, as a matter of statute, be express. 47 U.S.C. § 227(a)(4), the express consent requirement means that "the scope of a consumer's consent depends on its context and the purpose for which it is given. Consent for one purpose does not equate to consent for all purposes." *Toney v. Quality Res., Inc.*, 75 F. Supp. 3d 727, 737 (N.D. Ill. 2014) (deriving this rule from the FCC's decisions in *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Report and Order, 27 FCC Rcd. 1830, 1840 ¶ 25 (Feb. 15, 2012) and *In re GroupMe, Inc./Skype Comm'n S.A.R.L Petition for Expedited Declaratory Ruling, Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Declaratory Ruling, 29 FCC Rcd. 3442 (Mar. 27, 2014). Hossfeld v. Allstate Ins. Co., 726 F. Supp. 3d 852, 874–75 (N.D. Ill. 2024)

14. Please produce all documents containing any of the following information for each outbound call made using a computer sent by you or your vendors:

- a. the date and time;
- b. the caller ID;
- c. any recorded message or
- d. dialing system used;
- e. the result;
- f. identifying information for the recipient; and
- g. any other information stored by the call detail records.

Your response fails to provide a single document relative to the dialing system used to make the calls to the Plaintiff's private residential phone. Please supplement this information forthwith.

15. Provide copies of all nonprivileged communications with any third party concerning this litigation.

Your response is that you refuse to provide any documents relevant to the production request. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability, as well as a potential indispensable party's indemnification duty as well as their duty to defend. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020); In the Matter of the Joint Petition Filed by Dish Network, LLC, 28 F.C.C.R. at 6586–87; Gould v. Farmers Ins. Exch., 288 F. Supp. 3d 963, 970 (E.D. Mo. 2018); *Norwalk Ready Mixed Concrete, Inc. v. Travelers Ins. Cos.*, 246 F.3d 1132, 1136 (8th Cir. 2001). "Insurance policies are contracts between the insurer and the insured and must be interpreted like other contracts, the object being to ascertain the intent of the parties." *Talen v. Emps. Mut. Cas. Co.*, 703 N.W.2d 395, 407 (Iowa 2005). *Mod. Equip. Co. v. Cont'l W. Ins. Co.*, 355 F.3d 1125, 1128 (8th Cir. 2004); Rohlf v. Cont'l Cas. Co., No. 4:20-CV-00173, 2021 WL 6622191, at *4 (S.D. Iowa Jan. 19, 2021). Moreover, Fisher's internal do not call list is relevant as it is requested to examine the issue of Defendant's affirmative defense of consent, and its failure to secure first party direct written consent from Plaintiff prior to dialing his private residential phone number. *See* 47 C.F.R. § 64.1200(d)(4). As the Seventh Circuit has explained, the TCPA responds to the "pestilence of robocalls, scam calls, and texts pinging our attention away." *Craftwood II, Inc. v. Generac Power Sys., Inc.*, 63 F.4th 1121 (7th Cir. 2023); *see also Barr v. Am. Ass'n of Political Consultants, Inc.*, 591 U.S. 610, 140 S. Ct. 2335, 2344–45, 207 L.Ed.2d 784 (2020) (opinion of Kavanaugh, J.); *Patriotic Veterans, Inc. v. Zoeller*, 845 F.3d 303, 305–06 (7th Cir. 2017). The consent or invitation required by the TCPA must, as a matter of statute, be express. 47 U.S.C. § 227(a)(4), the express consent requirement means that "the scope of a consumer's consent depends on its context and the purpose for which it is given. Consent for one purpose does not equate to consent for all purposes." *Toney v. Quality Res., Inc.*, 75 F. Supp. 3d 727, 737 (N.D. Ill. 2014) (deriving this rule from the FCC's decisions in *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Report and Order, 27 FCC Rcd. 1830, 1840 ¶ 25 (Feb. 15, 2012) and *In re GroupMe, Inc./Skype Comm'n S.A.R.L Petition for Expedited Declaratory Ruling, Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Declaratory Ruling, 29 FCC Rcd. 3442 (Mar. 27, 2014). Hossfeld v. Allstate Ins. Co., 726 F. Supp. 3d 852, 874–75 (N.D. Ill. 2024). Moreover, this would be inclusive of all communications Fisher has had with Defendant Smart Asset Advisors.

16. To the extent Defendant asserts that Defendant obtained consent or permission to contact Plaintiff or putative class members based on a visit to a website, produce documents that identify those website(s) and the specific page(s) on those website(s) that you claim constitute

identify those website(s) and the specific page(s) on those website(s) that you claim constitute consent or permission and the detail log and all IP addresses evincing Plaintiff's interaction and express written consent.

Again, you have failed to provide a single responsive document to this request and it is specifically within the umbrella of Phase I discovery. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability, as well as a potential indispensable party's indemnification duty as well as their duty to defend. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020); In the Matter of the Joint Petition Filed by Dish Network, LLC, 28 F.C.C.R. at 6586–87; Gould v. Farmers Ins. Exch., 288 F. Supp. 3d 963, 970 (E.D. Mo. 2018); *Norwalk Ready Mixed Concrete, Inc. v. Travelers Ins. Cos.*, 246 F.3d 1132, 1136 (8th Cir. 2001). "Insurance policies are contracts between the insurer and the insured and must be interpreted like other contracts, the object being to ascertain the intent of the parties." *Talen v. Emps. Mut. Cas. Co.*, 703 N.W.2d 395, 407 (Iowa 2005). *Mod. Equip. Co. v. Cont'l W. Ins. Co.*, 355 F.3d 1125, 1128 (8th Cir. 2004); Rohlf v. Cont'l Cas. Co., No. 4:20-CV-00173, 2021 WL 6622191, at *4 (S.D. Iowa Jan. 19, 2021). Moreover, Fisher's internal do not call list is relevant as it is requested to examine the issue of Defendant's affirmative defense of consent, and its failure to secure first party direct written consent from Plaintiff prior to dialing his private residential phone number. *See* 47 C.F.R. § 64.1200(d)(4). As the Seventh Circuit has explained, the TCPA responds to the "pestilence of robocalls, scam calls, and texts ping[ing] our attention away." *Craftwood II, Inc. v. Generac Power Sys., Inc.*, 63 F.4th 1121 (7th Cir. 2023); *see also Barr v. Am. Ass'n of Political Consultants, Inc.*, 591 U.S. 610, 140 S. Ct. 2335, 2344–45, 207 L.Ed.2d 784 (2020) (opinion of Kavanaugh, J.); *Patriotic Veterans, Inc. v. Zoeller*, 845 F.3d 303, 305–06 (7th Cir. 2017). The consent or invitation required by the TCPA must, as a matter of statute, be express. 47 U.S.C. § 227(a)(4), the express consent requirement means that "the scope of a consumer's consent depends on its context and the purpose for which it is given. Consent for one purpose does not equate to consent for all purposes." *Toney v. Quality Res., Inc.*, 75 F. Supp. 3d 727, 737 (N.D. Ill. 2014) (deriving this rule from the FCC's decisions in *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Report and Order, 27 FCC Rcd. 1830, 1840 ¶ 25 (Feb. 15, 2012) and *In re GroupMe, Inc./Skype Comm'n S.A.R.L Petition for Expedited Declaratory Ruling, Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Declaratory Ruling, 29 FCC Rcd. 3442 (Mar. 27, 2014). Hossfeld v. Allstate Ins. Co., 726 F. Supp. 3d 852, 874–75 (N.D. Ill. 2024). Moreover, this would be inclusive of all communications Fisher has had with Defendant Smart Asset Advisors. If you fail to provide these documents we are inclined to file a motion to compel given

your insistence that you possess these relevant and material documents.

17. For any website identified in response to the prior request, produce all access logs and error logs during the day you assert that Plaintiff or putative class members visited that website.

Again, you have failed to provide a single responsive document to this request and it is specifically within the umbrella of Phase I discovery. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability, as well as a potential indispensable party's indemnification duty as well as their duty to defend. We are entitled to this information and your non-response claiming you'll supplement is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) *Grant v. Regal Auto. Grp., Inc.*, No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020); *In the Matter of the Joint Petition Filed by Dish Network, LLC*, 28 F.C.C.R. at 6586–87; *Gould v. Farmers Ins. Exch.*, 288 F. Supp. 3d 963, 970 (E.D. Mo. 2018); *Norwalk Ready Mixed Concrete, Inc. v. Travelers Ins. Cos.*, 246 F.3d 1132, 1136 (8th Cir. 2001). "Insurance policies are contracts between the insurer and the insured and must be interpreted like other contracts, the object being to ascertain the intent of the parties." *Talen v. Emps. Mut. Cas. Co.*, 703 N.W.2d 395, 407 (Iowa 2005). *Mod. Equip. Co. v. Cont'l W. Ins. Co.*, 355 F.3d 1125, 1128 (8th Cir. 2004); *Rohlf v. Cont'l Cas. Co.*, No. 4:20-CV-00173, 2021 WL 6622191, at *4 (S.D. Iowa Jan. 19, 2021). Moreover, Fisher's internal do not call list is relevant as it is requested to examine the issue of Defendant's affirmative defense of consent, and its failure to secure first party direct written consent from Plaintiff prior to dialing his private residential phone number. *See* 47 C.F.R. § 64.1200(d)(4). As the Seventh Circuit has explained, the TCPA responds to the "pestilence of robocalls, scam calls, and texts pinging our attention away." *Craftwood II, Inc. v. Generac Power Sys., Inc.*, 63 F.4th 1121 (7th Cir. 2023); *see also Barr v. Am. Ass'n of Political Consultants, Inc.*, 591 U.S. 610, 140 S. Ct. 2335, 2344–45, 207 L.Ed.2d 784 (2020) (opinion of Kavanaugh, J.); *Patriotic Veterans, Inc. v. Zoeller*, 845 F.3d 303, 305–06 (7th Cir. 2017). The consent or invitation required by the TCPA must, as a matter of statute, be express. 47 U.S.C. § 227(a)(4), the express consent requirement means that "the scope of a consumer's consent depends on its context and the purpose for which it is given. Consent for one purpose does not equate to consent for all purposes." *Toney v. Quality Res., Inc.*, 75 F. Supp. 3d 727, 737 (N.D. Ill. 2014) (deriving this rule from the FCC's decisions in *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Report and Order, 27 FCC Rcd. 1830, 1840 ¶ 25 (Feb. 15, 2012) and *In re GroupMe, Inc./Skype Comm'n S.A.R.L Petition for Expedited Declaratory Ruling, Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Declaratory Ruling, 29 FCC Rcd.

3442 (Mar. 27, 2014). Hossfeld v. Allstate Ins. Co., 726 F. Supp. 3d 852, 874–75 (N.D. Ill. 2024). Moreover, this would be inclusive of all communications Fisher has had with Defendant Smart Asset Advisors. If you fail to provide these documents we are inclined to file a motion to compel given your insistence that you possess these relevant and material documents.

18. Please produce a copy of all outbound phone records from each of the defendant's business locations, as well as each of its vendors' locations, for the past four (4) years.

Again, you have failed to provide a single responsive document to this request and it is specifically within the umbrella of Phase I discovery. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability, as well as a potential indispensable party's indemnification duty as well as their duty to defend. We are entitled to this information and your non-response is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020); In the Matter of the Joint Petition Filed by Dish Network, LLC, 28 F.C.C.R. at 6586–87; Gould v. Farmers Ins. Exch., 288 F. Supp. 3d 963, 970 (E.D. Mo. 2018); *Norwalk Ready Mixed Concrete, Inc. v. Travelers Ins. Cos.*, 246 F.3d 1132, 1136 (8th Cir. 2001). "Insurance policies are contracts between the insurer and the insured and must be interpreted like other contracts, the object being to ascertain the intent of the parties." *Talen v. Emps. Mut. Cas. Co.*, 703 N.W.2d 395, 407 (Iowa 2005). *Mod. Equip. Co. v. Cont'l W. Ins. Co.*, 355 F.3d 1125, 1128 (8th Cir. 2004); Rohlf v. Cont'l Cas. Co., No. 4:20-CV-00173, 2021 WL 6622191, at *4 (S.D. Iowa Jan. 19, 2021). *See* 47 C.F.R. § 64.1200(d)(4). As the Seventh Circuit has explained, the TCPA responds to the "pestilence of robocalls, scam calls, and texts pinging our attention away." *Craftwood II, Inc. v. Generac Power Sys., Inc.*, 63 F.4th 1121 (7th Cir. 2023); *see also Barr v. Am. Ass'n of Political Consultants, Inc.*, 591 U.S. 610, 140 S. Ct. 2335, 2344–45, 207 L.Ed.2d 784 (2020) (opinion of Kavanaugh, J.); *Patriotic Veterans, Inc. v. Zoeller*, 845 F.3d 303, 305–06 (7th Cir. 2017). The consent or invitation required by the TCPA must, as a matter of statute, be express. 47 U.S.C. § 227(a)(4), the express consent requirement means that "the scope of a consumer's consent depends on its context and the purpose for which it is given. Consent for one purpose does not equate to consent for all purposes." *Toney v. Quality Res., Inc.*, 75 F. Supp. 3d 727, 737 (N.D. Ill. 2014) (deriving this rule from the FCC's decisions in *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Report and Order, 27 FCC Rcd. 1830, 1840 ¶ 25 (Feb. 15, 2012) and *In re GroupMe, Inc./Skype Comm'n S.A.R.L. Petition for Expedited Declaratory Ruling, Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Declaratory Ruling, 29 FCC Rcd. 3442 (Mar. 27, 2014). Hossfeld v. Allstate Ins. Co., 726 F. Supp. 3d 852, 874–75 (N.D. Ill. 2024).

Moreover, this would be inclusive of all communications Fisher has had with Defendant Smart Asset Advisors. If you fail to provide these documents, we are inclined to file a motion to compel given your insistence that you possess these relevant and material documents.

19 and 20. Please produce a copy of your internal do not - call policy.

Again, you have refused and failed to provide a single responsive document to this request, and it is specifically within the umbrella of Phase I discovery. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability, as well as a potential indispensable party's indemnification duty as well as their duty to defend. We are entitled to this information, and your non-response is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020); In the Matter of the Joint Petition Filed by Dish Network, LLC, 28 F.C.C.R. at 6586-87; Gould v. Farmers Ins. Exch., 288 F. Supp. 3d 963, 970 (E.D. Mo. 2018); *Norwalk Ready Mixed Concrete, Inc. v. Travelers Ins. Cos.*, 246 F.3d 1132, 1136 (8th Cir. 2001).

21. Please produce a copy of your Missouri telemarketer's registration and the registration for each of your vendors.

Again, you have refused and failed to provide a single responsive document to this request, and it is specifically within the umbrella of Phase I discovery. Please supplement this response with all relevant documents as it is specific and goes directly to your client's, knowledge, intent, ratification of illegal calls and its direct and vicarious liability, as well as a potential indispensable party's indemnification duty as well as their duty to defend. We are entitled to this information in that Fisher is required to register with the State of Missouri as a matter of law and your non-response is vexing the Plaintiff's ability to prosecute the liability claims for which Phase I discovery is dedicated. Additionally, your non-response is calculated to impede the judicial process and hinder Plaintiff's ability to discover indispensable parties which have shared liability. *See Computel, Inc. v. Emery Air Freight Corp.*, 919 F.2d 678, 683 (11th Cir. 1990) (explaining that "[o]ne of the primary elements of the doctrine of ratification is knowledge of the material facts"); *see also United Parcel Service v. Buchwald Jewelers*, 476 So.2d 772 (Fla. 3d DCA 1985) Grant v. Regal Auto. Grp., Inc., No. 8:19-CV-363-T-23JSS, 2020 WL 3250075, at *2 (M.D. Fla. Mar. 12, 2020); In the Matter of the Joint Petition Filed by Dish Network, LLC, 28 F.C.C.R. at 6586-87; Gould v. Farmers Ins. Exch., 288 F. Supp. 3d 963, 970 (E.D. Mo. 2018); *Norwalk Ready Mixed Concrete, Inc. v. Travelers Ins. Cos.*, 246 F.3d 1132, 1136 (8th Cir. 2001).

In light of your waiver of all objections and failure to timely respond to the first discovery requests you were served with in early October, 2024 by Plaintiff, we will also be seeking to certify all requests for admissions Admitted. I'm happy to discuss these matters in our meet and confer phone call on January 27, 2025. Absent an immediate supplement to these disputes, we will be preparing motions to strike affirmative defenses and a motion to compel production.

Ed

Edwin V. Butler | Butler Law Group LLC

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**Human v. Fisher - Protective
Order [Draft].eml**
57 KB



**Fisher adv. Human - Draft
Protective Order 1.10.25.docx**
36 KB



**2025-01-27 (0040) ORDER- The
Court already explained why...**
144 KB



EXHIBIT 3

From: Melanie Ng mng@wtlaw.com
Subject: Re: Human v. Fisher - Meet & Confer on Discovery Issues
Date: February 4, 2025 at 12:20 PM
To: Edwin Butler edbutler@butlerlawstl.com
Cc: Alex Terepka Alex@wtlaw.com, James Ruley jruley@wtlaw.com, Guletz, Matthew D. MGuletz@thompsoncoburn.com, Edwin Butler edbutler@butlerlawstl.com, Christopher Prosser attorneysacquisitions@outlook.com



Ed,

Your email is yet another attempt to delay discovery despite the Court's clear orders that it must proceed. We sent you last week memorializing our conversation (attached for reference), and you waited until the last possible moment to reply. And you did so on a new email thread in an attempt to avoid creating an email chain showing that numerous representations in your email are false. We have asked you to stop doing that before, and ask again now. Please also include Matt Guletz on all correspondence, as he is an attorney of record.

During our conferral call last Monday, you unequivocally committed to provide Mr. Human's supplemental production no later than February 3. This timing gave your client a full week to produce readily available documents he should have produced long ago, including because he waived all objections by failing to respond to Fisher's discovery requests.

Complying with the deadline you agreed to is crucial to the progress of the case. Fisher cannot depose Mr. Human until his production is complete. Your client's failure to provide the supplemental production by the promised date is plainly an attempt to once again delay his deposition, currently scheduled for February 11. Per the Court's procedure, we will raise your client's breach of his agreement to produce documents. That breach is a violation of the Court's order and Fisher intends to seek its fees accordingly.

Your client's attempts to distract from his own discovery failures are meritless. During our conferral call last Monday (which we scheduled and had to send multiple emails to confirm your attendance at), you attempted to shift the focus from Mr. Human's deficient discovery responses to claimed deficiencies with Fisher's discovery responses. During that call we stated we were willing to discuss those purported deficiencies later in the week, specifically on Wednesday or Thursday, but weren't prepared to do so then given that the first time you'd raised them was in a long email that same day. We again let you know we were available to confer later that week in our email memorializing the call. You didn't respond to that email until last night.

We also responded to the substance of your email explaining that the concerns were meritless. Please review that email again, as you are raising issues we've already responded to. For example, we have provided evidence of consent, including the SmartAsset lead data showing consent to call your client's phone number.

If you still have issues to raise, we are available for a phone call tomorrow afternoon or Thursday afternoon, per the Court's order requiring the parties to confer on discovery disputes by phone. Please let us know what works for you.

We await your comments on our proposed protective order, which you've had since January 10. If you do not provide feedback on that soon, we reserve the right to simply file it and ask the Court to enter it in the interest of avoiding still further delay.

Finally, your client's complaints about the device inspection are unfounded. Your client only appeared for the device inspection and meet and confer on the 27th because the Court would not let your client dismiss the case without Fisher's consent. Your client's attempts

Human not let your client examine the case without Human's consent. Your client's attempt to evade the device inspection the Court ordered imposed considerable unnecessary expense on Fisher. For example, Fisher's forensic professional was forced to fly in from out-of-state on short notice to be available for the 10am device inspection. But Mr. Human no-showed. Our expert then rearranged his schedule to conduct an afternoon inspection of Mr. Human's devices, which you only confirmed he was attending an hour and a half before it occurred. And the device inspection suffered from technical difficulties because Mr. Human's computer was inexplicably configured to a date two years and two days from the present. Fisher reserves all rights to seek its fees for the unnecessary expenses your client imposed.

Best,
Melanie

Melanie G. Ng (bio)

WATSTEIN TEREPKA ^{LLP}

P: 404-600-1240

mng@wtlaw.com

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From: Edwin Butler <edbutler@butlerlawstl.com>

Date: Monday, February 3, 2025 at 7:04 PM

To: Melanie Ng <mng@wtlaw.com>, Alex Terepka <Alex@wtlaw.com>, James Ruley <jruley@wtlaw.com>

Cc: Edwin Butler <edbutler@butlerlawstl.com>, Christopher Prosser <attorneysacquisitions@outlook.com>

Subject: Human v. Fisher - Meet & Confer on Discovery Issues

[Warning – external]

Counselors,

We have received several emails that appear unnecessary. Before addressing them, I wish to document an issue that was deliberately omitted in your email dated January 27, 2025, at 2:59 pm., which you claim memorializes our conversation.

You have ignored the significant fact that Fisher refused to discuss any of Plaintiff's discovery disputes related to Fisher's non-disclosure and failure to supplement the estimated 20 total pages of discovery provided. Considering there has been no follow-up, we have exhausted our efforts and fulfilled our meet and confer obligations as outlined in the scheduling order. The Judge's order on January 27, 2025, did not exclude our discovery disputes, contrary to your representation. We were entitled to have that discussion at that time, and your office refused to comply with the Judge's order in this regard.

As discussed on January 27, 2025, we are reviewing our files and will provide the requested information next week, as agreed.

The Plaintiff attended the device inspection, which entailed approximately 70 miles of travel and lasted about three hours due to technical issues with your inspector's equipment and software. Consequently, we spent a considerable amount of time and resources on this matter, totaling five hours including travel time.

Additionally, I want to bring to your attention that you have not provided the Plaintiff's prior express written consent for the calls, nor have you provided any documentation from your vendor SmartAsset that meets this requirement. Express written consent is Fisher's affirmative defense, and you have not supplied any relevant documents or information pertinent to this defense, which is central to Phase I discovery.

We are currently reviewing your proposed protective order and will provide our additions and edits by early next week.

Thank you,

Ed

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EXHIBIT 4

From: James Ruley jruley@wtlaw.com
Subject: Fw: Human v Cox Automotive
Date: March 16, 2025 at 7:07 PM
To: Melanie Ng mng@wtlaw.com

JR

James M. Ruley

WATSTEIN TEREPKA ^{LLP}

(404) 991-2684

jruley@wtlaw.com

www.wtlaw.com

From: Dan Human <danlovestopolo@gmail.com>
Sent: Tuesday, February 4, 2025 8:32:37 AM
To: James Ruley <jruley@wtlaw.com>
Subject: Re: Human v Cox Automotive

[Warning – external]

Negotiations under FRE 408 or local rule

Mr. Ruley-

I'm hoping that my former email made it your way regarding the loss of my old desktop. If not, then hopefully this one reaches you. Since you haven't responded, I assume it did not.

As for the Cox Automotive, Inc case is concerned, I have traced the calls to the Cox Automotive dealer and would be happy to dismiss the case and refile against the Cox Automotive dealership if your client would prefer. Please advise?

As for Assured Health Group, LLC....I have the telemarketer, agent, the corporate phone number and the corporate headquarters all giving me the corporate name/address. Still waiting to hear a response to my offer to settle. If I do not hear from you by COB today, I will assume we are going forward with the legal matter.

Cordially,

Dan

From: Dan Human <danlovestopolo@gmail.com>
Sent: Wednesday, January 29, 2025 1:52 AM
To: jruley@wtlaw.com <jruley@wtlaw.com>
Subject: Human v Cox Automotive

Mr. Ruley-

I apologize for this inconvenience....I had some terrible meltdown of my geriatric

computer this weekend and had to replace it. Please address any new emails to this address.

Thank you,

Dan

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DANIEL HUMAN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

**FISHER INVESTMENTS, INC., AND
SMART ASSET ADVISORS, LLC,**

Defendants.

Case No. 4:24-cv-01177-MTS

JURY TRIAL DEMANDED

**DECLARATION OF NICHOLAS S. HERFORDT IN SUPPORT OF
DEFENDANT FISHER INVESTMENTS, INC.'S MOTION FOR SANCTIONS
AND MOTION TO COMPEL**

1. My name is Nicholas Herfordt. I am over the age of 18, and I work as a Senior Forensic Consultant at Semke Forensic. I have a Master of Science in Forensic Computing and Cyber Crime Investigation from University College Dublin in Ireland and a bachelor's degree in Justice Systems from Truman State University in Missouri.

2. I was a digital forensics investigator with the Omaha Police Department from January 2004 to February 2020. I then moved to the private sector, where I work in responding to cybersecurity threats. I also consult with Semke Forensic, where I analyze electronic data and conduct computer forensic investigations for various clients.

3. I have numerous professional certifications in the field of forensic data analytics and examination, which include: International Association of Computer Investigative Specialists-Certified Forensic Computer Examiner (CFCE), Global Information Assurance Certification-Certified Forensic Analyst (GCFA), Global Information Assurance Certification Certified

Forensic Examiner (GCFE), and Global Information Assurance Certification Certified Incident Handler (GCIH).

4. Unless otherwise indicated below, I make this Declaration based on my personal knowledge.

5. I was retained by Fisher Investments, Inc. to conduct a forensic device inspection of Plaintiff Daniel Human's devices.

6. On the morning of January 27, 2025, I flew to St. Louis for the device inspection, which was to occur at 10:00 AM CT. Mr. Human did not show up at the scheduled time. He did not arrive until late afternoon.

7. Mr. Human brought two devices with him to the inspection, a cell phone and a laptop. I created copies of the data on each. The only data I was not able to capture (for technical reasons) was data stored in applications like TextNow, a phone application used for text messaging that stores data on the cloud and not on the device itself.

8. After reviewing the contents of the laptop, I do not believe it was ever used by Mr. Human for several reasons. The only user accounts on the laptop are for individuals named Sheryl Granger and Mike Krueger. The only references to "Dan[iel] Human" on the laptop are emails from years ago between danh@squareonehelp.com and Ms. Granger.

9. The laptop doesn't appear to have been used since 2022 for several reasons. There is no activity on the laptop consistent with recent use, like files dated in 2024 or 2025. For another, numerous software applications on the device like Adobe Acrobat, Firefox, and Microsoft Edge hadn't been updated since 2022. And at the time of the inspection on the afternoon of January 27, 2025, the laptop's time and date were configured for January 25, 2023 at 9:30 PM (so it was off by two years, two days, and 7 hours).

10. All this leads me to believe this laptop was an extra computer that was used infrequently, if at all, since 2022. None of the information on the laptop was from 2024, even though the device inspection request sought information stored on devices that were used in 2024.

11. I also reviewed the contents of the cell phone. The device contained text messages from a wide array of senders addressed to over a dozen different individuals with different names, none of whom are Mr. Human. Indeed, the device contained hardly any text messages addressed to Mr. Human. I have analyzed data from thousands of cell phones over the course of my career, and I have never seen a phone like this one receiving communications addressed to more than a dozen different people.

12. I understand Mr. Human indicated that a desktop computer he used had a “terrible meltdown” the weekend before the Court-ordered device inspection deadline. Mr. Human did not produce any desktop computer for inspection on January 27, 2025. If he had produced the desktop, in whatever condition it was, I may have been able to obtain data from it. Over the course of my career, I have successfully recovered data from dozens of devices that were damaged or otherwise not useable to their owners.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 19th day of March in Omaha, Nebraska.



Nicholas S. Herfordt