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Scott G. Weber, Clerk
Clark County

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IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

NATHEN BARTON,
Plaintiff,
v.
EDM LEADS, LLC; INSURANCE
SUPERMARKET, INC.,
Defendant.

CASE NO. 24-2-02134-06

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON
DEFAULT JUDGMENT AND
ORDER ON ENTRY OF
JUDGMENT**

THIS MATTER came on regularly for bench trial before the undersigned Judge on July 29, 2025 on Plaintiff Nathen Barton’s Motion for Default Judgment. Plaintiff appeared *pro se* and Defendant Insurance Supermarket Inc. did not appear.

The Court having reviewed Plaintiff’s Motion and other filed pleadings, heard testimony from Mr. Barton and arguments, and being fully apprised, the Court FINDS as follows:

Plaintiff initiated this action in Clark County Superior Court on July 5, 2024. Plaintiff moved for default against Defendant Insurance Supermarket Inc. (“Insurance Supermarket” or “ISI”) based on this Defendant not appearing or defending in the present action. This Court granted default pursuant to CR 55(a) on February 21, 2025.

The Court having considered the sworn testimony of Plaintiff, admitted exhibits and argument of Plaintiff, makes the following findings of fact and conclusions of law on Plaintiff’s

1 request for damages pursuant to CR 55(b)(2):

2 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

3 Plaintiff seeks statutory damages against Insurance Supermarket under the Telephone
4 Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, and its implementing regulations.

5 Plaintiff also alleges violations of Washington law under RCW 80.36.390 and RCW 80.36.400.

6 With respect to the specific provisions of these statutes that Plaintiff alleges ISI violated and the
7 damages he requests accordingly, the Court relies on the testimony and evidence presented at
8 trial, the pleadings on record, as well as the summary of violations and damages requested in
9 Plaintiff’s Trial Brief (Sub No. 33).

10 Plaintiff presented sworn testimony and other evidence that between December 1, 2022
11 and January 6, 2023, he received 34 unsolicited, pre-recorded, automated calls to a personal cell
12 phone number registered to his name (identified as (469) 347-2138)) from Defendant EDM
13 Leads, LLC (“EDM”). In his Complaint, Plaintiff identified the cell phone number as a
14 “residential telephone line”. Compl. at 6, ¶ 47. Plaintiff also testified his telephone number was
15 registered on the Federal Trade Commission’s national Do Not Call registry more than 31 days
16 before the calls at issue in this case. The pre-recorded telephone call used the name script with a
17 female voice identifying herself as “Sam with BIS”. Plaintiff testified that these calls were
18 unwanted and made without his consent.

19 Plaintiff presented circumstantial evidence that the calls he received matched calls
20 another party received from ISI (through contracting with EDM) and sued under similar facts in
21 a federal Colorado case (*Utery, et al. v. Insurance Supermarket, Inc., et al*, 1:23-cv-00490 (U.S.
22 Dist. Col.)). Compl. at 12-13, ¶¶ 100-126. In addition to the Colorado case assertions, Plaintiff
23 swore in his complaint that the “ISI was aware someone was initiating robocalls from ‘Sam’ and
24 transferring those calls to ISI prior to and during the time period Barton received the ‘Sam’
25 calls,” and “ISI contracted with EDM to place calls on its behalf. . .” *Id.* at 14, ¶¶ 127-128.

26 Based on the uncontroverted facts, Plaintiff has demonstrated that ISI is responsible for

1 the 34 unsolicited, pre-recorded calls made to Plaintiff's cell phone in violation of 47 U.S.C. §
2 227 and RCW 80.36.390 and RCW 36.400.

3 **Violations of 47 U.S.C. § 227**

4 Under 47 U.S.C. § 227(b)(1)(A), it is unlawful “to make any call (other than a call made
5 for emergency purposes or made with the prior express consent of the called party) using any
6 automatic telephone dialing system [ATDS] or an artificial or prerecorded voice,” under certain
7 conditions, such as when the call is made to a “cellular telephone service.” *Barton v. Real*
8 *Innovation, Inc. et al.*, No. 3:24-CV-05194-DGE, 2025 WL 1993193, at *4 (W.D. Wash. July
9 17, 2025). The elements of the ATDS claim are: “(1) the defendant called a cellular telephone
10 number; (2) using an automatic telephone dialing system; (3) without the recipient’s prior
11 express consent.” *Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036, 1043 (9th Cir.
12 2012). ATDS is defined in the statute as “equipment that has the capacity - (A) to store or
13 produce telephone numbers to be called, using a random or sequential number generator; and (B)
14 to dial such numbers.” 47 U.S.C. § 227(a)(1). Express consent means “[c]onsent that is clearly
15 and unmistakably stated.” *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 955 (9th Cir.
16 2009) (quoting Black’s Law Dictionary 323 (8th ed.2004)). Based on the uncontroverted
17 evidence, ISI violated 47 U.S.C. § 227(b) in the 34 calls identified by Plaintiff at trial.

18 Plaintiff also claims violations under 47 U.S.C. § 227(c). This section provides authority
19 for regulations to create the Do Not Call Registry (“DNCR”), and 47 U.S.C. § 227(c)(5) creates a
20 private right of action for a person receiving more than one telephone call within any 12-month
21 period by or on behalf of the same entity in violation of the regulations prescribed under §
22 227(c). TCPA 47 C.F.R. § 64.1200 prohibits telephone solicitations to residential telephone
23 numbers registered on the national DNCR without consent assuming the telephone number has
24 been registered for more than 31 days.

25 Based on the uncontroverted evidence, Plaintiff’s cell phone number identified above was
26 registered with the FTC DNCR for more than 31 days when he received commercial solicitation

1 telephone calls for which he did not consent from EDM. Again, based on the uncontroverted
2 evidence, ISI is liable for the EDM calls to Plaintiff's cell phone.

3 Plaintiff asserts that ISI violated multiple sections of § 64.1200 as detailed below:

4 **47 C.F.R. § 64.1200(c)(7)(i):**

5 Whenever a live sales representative is not available to speak with the person
6 answering the call, within two (2) seconds after the called person's completed
7 greeting, the telemarketer or the seller must provide:

8 (A) A prerecorded identification and opt-out message that is limited to disclosing
9 that the call was for "telemarketing purposes" and states the name of the
10 business, entity, or individual on whose behalf the call was placed, and a
11 telephone number for such business, entity, or individual that permits the
12 called person to make a do-not-call request during regular business hours for
13 the duration of the telemarketing campaign; provided, that, such telephone
14 number may not be a 900 number or any other number for which charges
15 exceed local or long distance transmission charges, and

16 (B) An automated, interactive voice- and/or key press-activated opt-out
17 mechanism that enables the called person to make a do-not-call request prior
18 to terminating the call, including brief explanatory instructions on how to use
19 such mechanism. When the called person elects to opt-out using such
20 mechanism, the mechanism must automatically record the called person's
21 number to the seller's do-not-call list and immediately terminate the call.

22 Plaintiff provided uncontroverted evidence that the call recordings never provided this
23 information as required under 47 C.F.R. § 64.1200(c)(7)(i).

24 **47 C.F.R. § 64.1200(c):** "No person or entity shall initiate any telephone solicitation to:
25 "(1) Any residential telephone subscriber before the hour of 8 a.m. or after 9 p.m. (local time at
26 the called party's location)". Plaintiff provided uncontroverted evidence that the call on
December 2, 2022 violated this subsection.

47 C.F.R. § 64.1200(c):

No person or entity shall initiate any telephone solicitation to: ... (2) A residential
telephone subscriber who has registered his or her telephone number on the
national do-not-call registry of persons who do not wish to receive telephone
solicitations that is maintained by the Federal Government. Such do-not-call
registrations must be honored indefinitely, or until the registration is cancelled by
the consumer or the telephone number is removed by the database administrator.

1 Plaintiff provided uncontroverted evidence that he registered his cell phone number with
2 the DNCR.

3 **47 C.F.R. § 64.1200(b):**

4 All artificial or prerecorded voice telephone messages shall:

5 (1) At the beginning of the message, state clearly the identity of the business,
6 individual, or other entity that is responsible for initiating the call. If a business is
7 responsible for initiating the call, the name under which the entity is registered to
8 conduct business with the State Corporation Commission (or comparable
9 regulatory authority) must be stated;

10 (2) During or after the message, state clearly the telephone number (other than
11 that of the autodialer or prerecorded message player that placed the call) of such
12 business, other entity, or individual. The telephone number provided may not be
13 a 900 number or any other number for which charges exceed local or long
14 distance transmission charges. For telemarketing messages and messages made
15 pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section
16 to residential telephone subscribers, such telephone number must permit any
17 individual to make a do-not-call request during regular business hours; and

18 (3) In every case where the artificial or prerecorded-voice telephone message is
19 made pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this
20 section or includes or introduces an advertisement or constitutes telemarketing
21 and is delivered to a residential telephone line or any of the lines or telephone
22 numbers described in paragraphs (a)(1)(i) through (iii) of this section, provide an
23 automated, interactive voice- and/or key press-activated opt-out mechanism for
24 the called person to make a do-not-call request, including brief explanatory
25 instructions on how to use such mechanism, within two (2) seconds of providing
26 the identification information required in paragraph (b)(1) of this section. When
the called person elects to opt out using such mechanism, the mechanism must
automatically record the called person's number to the caller's do-not-call list and
immediately terminate the call. When the artificial or prerecorded-voice
telephone message is left on an answering machine or a voice mail service, such
message must also provide a toll free number that enables the called person to
call back at a later time and connect directly to the automated, interactive voice-
and/or key press-activated opt-out mechanism and automatically record the
called person's number to the caller's do-not-call list.

23 Plaintiff provided uncontroverted evidence that the call recordings never provided this
24 information as required under 47 C.F.R. § 64.1200(b).

1 **47 C.F.R. § 64.1200:**

2 (d) No person or entity shall initiate any artificial or prerecorded-voice telephone
3 call pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this
4 section or any call for telemarketing purposes to a residential telephone
5 subscriber unless such person or entity has instituted procedures for maintaining
6 a list of persons who request not to receive such calls made by or on behalf of
7 that person or entity. The procedures instituted must meet the following
8 minimum standards:

9 (4) Identification of callers and telemarketers. A person or entity making an
10 artificial or prerecorded-voice telephone call pursuant to an exemption under
11 paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing
12 purposes must provide the called party with the name of the individual caller, the
13 name of the person or entity on whose behalf the call is being made, and a
14 telephone number or address at which the person or entity may be contacted. The
15 telephone number provided may not be a 900 number or any other number for
16 which charges exceed local or long distance transmission charges.

17 Plaintiff provided uncontroverted evidence that the call recordings never provided this
18 information as required under 47 C.F.R. § 64.1200(d(4)).

19 **Violations of RCW 80.36.390.**

20 Plaintiff's Complaint alleges multiple violations of RCW 80.36.390. However, he
21 references the current version of the statute. The current version of the statute was enacted
22 effective July 23, 2023. The calls at issue in this case occurred between December 1, 2022 and
23 January 6, 2023. Therefore, when referencing violations of Washington law, this Court will refer
24 to the version of the statute that was in effect at that time.¹

25 RCW 80.36.390(2): "A person making a telephone solicitation must identify him or
26 herself and the company or organization on whose behalf the solicitation is being made and the

¹ Plaintiff's claim for a violation of RCW 80.36.390(9) and (10) (current version of statute) concerns telephone solicitations to a telephone number registered with the FTC DNCR and violations of 47 U.S.C. § 227. The Court will only apply statutory changes prospectively. "It is a fundamental rule of statutory construction that a statute is presumed to operate prospectively and ought not to be construed to operate retrospectively in the absence of language clearly indicating such a legislative intent." *Earle v. Froedtert Grain & Malting Co.*, 197 Wash. 341, 344 (1938). Thus, courts in Washington " 'presume that a statute applies prospectively, unless the legislature intends otherwise,' or unless the amendment is remedial in nature." *Loeffelholz v. Univ. of Washington*, 175 Wn.2d 264, 271 (2012). Since these provisions of the statute only went into effect on July 23, 2023, Plaintiff is not entitled to damages under these statutory provisions.

1 purpose of the call within the first 30 seconds of the telephone call.” Plaintiff’s uncontroverted
2 evidence demonstrates that EDM did not identify themselves as the company or organization
3 initiating the call.

4 RCW 80.36.390(6):

5 If, at any time during the telephone contact, the called party states or indicates that
6 he or she does not want to be called again by the telephone solicitor or wants to
7 have his or her name, individual telephone number, or other contact information
8 removed from the telephone lists used by the telephone solicitor:

9 (a) The telephone solicitor shall inform the called party that his or her contact
10 information will be removed from the telephone solicitor's telephone lists for
11 at least one year;

12 (b) The telephone solicitor shall end the call within 10 seconds;

13 (c) The telephone solicitor shall not make any additional telephone solicitation
14 of the called party at any telephone number associated with that party within a
15 period of at least one year; and

16 (d) The telephone solicitor shall not sell or give the called party's name,
17 telephone number, and other contact information to another company or
18 organization: PROVIDED, That the telephone solicitor may return the list,
19 including the called party's name, telephone number, and other contact
20 information to the company or organization from which it received the list.

21 Plaintiff’s uncontroverted evidence demonstrates that EDM did not comply with this
22 statutory provision.

23 RCW 80.36.390(7): “A telephone solicitor shall not place calls to any person which will
24 be received before 8:00 a.m. or after 8:00 p.m. at the call recipient's local time.” Plaintiff’s
25 uncontroverted evidence demonstrates that Plaintiff received one call in violation of this
26 statutory provision.

Violations of RCW 80.36.400

RCW 30.36.400 provides as follows:

(1) As used in this section:

(a) An automatic dialing and announcing device is a device which
automatically dials telephone numbers and plays a recorded message once a
connection is made.

1 (b) Commercial solicitation means the unsolicited initiation of a telephone
2 conversation for the purpose of encouraging a person to purchase property,
goods, or services.

3 (2) No person may use an automatic dialing and announcing device for purposes
4 of commercial solicitation. This section applies to all commercial solicitation
intended to be received by telephone customers within the state.

5 (3) A violation of this section is a violation of chapter 19.86 RCW. It shall be
6 presumed that damages to the recipient of commercial solicitations made using an
automatic dialing and announcing device are five hundred dollars.

7 Plaintiff's uncontroverted evidence demonstrates that the unsolicited calls received by
8 Plaintiff violated this statute.

9 **Award of Damages**

10 Damages for violations of 47 U.S.C. § 227(b) provides for actual monetary loss or \$500
11 in damages for each such violation, whichever is greater. Similarly, 47 U.S.C. § 227(c) provides
12 for actual monetary loss or \$500 in damages for each such violation, whichever is greater.
13 Treble damages are available under TCPA if the court finds that a defendant willfully or
14 knowingly violated the TCPA.

15 The Court finds that Plaintiff can recover separately for violations of both § 227(b) and §
16 227(c) in the same call. *See Barton v. Real Innovation Inc.*, No. 3:24-CV-05194-DGE, 2025 WL
17 1993193, at *7 (W.D. Wash. July 17, 2025); *Mey v. Phillips*, 71 F.4th 203, 225 (4th Cir. 2023);
18 *Charvat v. GVN Michigan, Inc.*, 561 F.3d 623, 630–631 (6th Cir. 2009). However, the Court
19 finds that it will not award treble damages based on the evidence presented at trial. The evidence
20 is insufficient for the Court to find that ISI willfully or knowingly violated the TCPA in the calls
21 made by EDM to Plaintiff. According, the Court awards damages for violations of 47 U.S.C. §§
22 227(b), 227(c) as follows:

23

Statute/Regulation Violated	Number of Calls	Statutory Damages (\$500 per violation)
47 U.S.C. § 227(b)	34 calls	\$17,000

24
25
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47 C.F.R. § 64.1200(c)(2)	34 calls	\$17,000
47 C.F.R. § 64.1200(a)(7)(i)	34 calls	\$17,000
47 C.F.R. § 64.1200(c)(1)	1 call	\$500
47 C.F.R. § 64.1200(b)	34 calls	\$17,000
47 C.F.R. § 64.1200(d)(4)	34 calls	\$17,000
TOTAL		\$85,500.00

With respect to violations of Washington law, Plaintiff requests damages of \$1,000 for each violation of RCW 80.36.390 and RCW 80.36.400. The Court finds that under both statutes, each violation is entitled to statutory award of damages. *See Barton v. J.M.S. Assoc. Mktg., LLC*, No. 3:21-CV-05509-RJB, 2023 WL 5277682, at *3 (W.D. Wash. Aug. 16, 2023). However, the statutory damages amounts were revised in 2023. In the prior versions of the statutes in effect during the calls at issue in this case, the amount of statutory damages were \$100 per violation of RCW 80.36.390 and \$500 per violation of RCW 80.36.400. Therefore, the Court will use the prior version of the statute to calculate damages in this case.

Statute/Regulation Violated	Number of Calls	Statutory Damages (\$100 per violation)
RCW 80.36.390(2)	34	\$3,400
RCW 80.36.390(6)	34	\$3,400
RCW 80.36.390(7)	1	\$100
RCW 80.36.400	34	\$17,000
TOTAL		\$23,900.00

1 **ORDER ON ENTRY OF JUDGMENT**

2 NOW, THEREFORE, pursuant to the Findings of Fact and Conclusions of Law as stated above, it
3 is hereby ORDERED:

- 4 1. Plaintiff is awarded damages against Insurance Supermarket, Inc. in the amount of
5 \$109,400.00.
- 6 2. Plaintiff shall prepare a proposed judgment for entry in accordance with CR 54(e) and
7 provide notice to Insurance Supermarket, Inc. as required by CR 55(f).
- 8 3. This Court grants leave to Plaintiff to cite entry of judgment on Department 11's Family
9 Law Docket.

10
11 DATED this 2nd day of September, 2025.

**Hon. Emily
A. Sheldrick**

Digitally signed by Hon.
Emily A. Sheldrick
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The Honorable Emily A. Sheldrick
Superior Court Judge, Department 11