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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

ROBERT A. DOANE

Plaintiff

v.

XANADU MARKETING, INC. et al.

Defendants

RECEIVED

7/5/2023

Civil Action No. 23-CV-719

**AFFIDAVIT OF RICHARD B. REILING ESQ. IN SUPPORT OF OPPOSITION TO  
MOTION TO DISMISS AND PLAINTIFF'S CROSS-MOTION FOR SANCTIONS**

Now comes Affiant, **RICHARD B. REILING, ESQ.** after first being duly cautioned and sworn according to law, deposes and states as follows:

1. I am over 21 years of age and make this affidavit on the basis of my personal knowledge.
2. I am an attorney at law duly admitted to practice law in the Commonwealth of Massachusetts since 1995.
3. I am the attorney of record for Plaintiff Robert A. Doane in the above captioned matter.
4. A true copy of the transcript of the "Deserve to Win" Podcast ("Podcast") referenced in the Amended Complaint is attached herewith as Exhibit A. In his Complaint, Plaintiff alleged that he was called out by name and defamed by Defendant Delfgauw on the Podcast. Plaintiff therefore brought claims for defamation and for breach of the non-disparagement provision of a previous settlement agreement between the parties.
5. Plaintiff filed his Complaint in this matter on March 13, 2023. Defendants did not answer and served a motion to dismiss ("1st MTD") on June 7, 2023. By way of the 1st MTD,

the Defendants falsely claimed that Plaintiff was not so much as mentioned in the Podcast and thus could not have been defamed or disparaged as a matter of law.

6. Upon receipt of the 1st MTD, I contacted counsel for Defendants by letter of June 9, 2023 and advised counsel of the Defendants' misrepresentations and provided counsel a link to the Podcast. As Plaintiff was in fact clearly specifically referenced by name by Delfgauw-- which Delfgauw was obviously well aware--Plaintiff demanded that the false statements be withdrawn from the 1st MTD and that any future filings "make truthful references to statements made by Mr. Delfgauw concerning [Plaintiff]". I further noted that in the event that the Defendants persisted in falsely representing that Plaintiff was not mentioned in the Podcast that Plaintiff would seek appropriate sanctions. A true copy of my June 9, 2023 letter and transmission email (which contains the link to the Podcast) is attached herewith collectively as Exhibit B.

7. Despite the fact that Plaintiff was referenced by name in the Podcast, counsel for Defendants advised me on June 12, 2023 by email that the Defendants were refusing to correct the 1st MTD.

8. I met and conferred with counsel for Defendants concerning this matter by telephone on June 13, 2023. At that time, counsel indicated that he had been confused as Plaintiff's name had been edited out of the Podcast at a later time after publication and that he had listened to this later version. Based on this conversation it was my understanding that the issue had been resolved and that Defendants would refrain claiming that Plaintiff was not referenced by Delfgauw in future filings.

9. On June 15, 2023, Plaintiff filed his Amended Complaint rendering the 1st MTD moot.

10. On June 23, 2023, Defendants once again moved to dismiss this matter (“2nd MTD”). In the 2nd MTD, like the first, the Defendants persist in affirmatively representing to this Court that Plaintiff was not in fact mentioned in the Podcast. This is, as it has always been, a boldface lie.

11. In an attempt to resolve this issue once and for all, I again wrote to counsel for Defendants on June 30, 2023, demanding that 2nd MTD be withdrawn and indicating that Plaintiff would move for sanctions if it was not. A true copy of this letter is attached herewith as Exhibit C.

12. Despite the foregoing, the Defendants have refused to withdraw the 2nd MTD and elected to continue to falsely represent to this Court that Plaintiff was not mentioned in the Podcast. As a result, Plaintiff has been forced to unnecessarily incur fees and expenses and the integrity of these proceedings have been put at risk.

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

Executed on this 3rd day of July, 2023.

/s/RICHARD B. REILING  
RICHARD B. REILING, ESQ.

# **EXHIBIT A**

**In the Matter of:**

*Robert A. Doane vs*

*Xanadu Marketing, Inc. et.al.*

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*Audio Transcription*

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**Robert A. Doane vs  
Xanadu Marketing, Inc. et.al.**

1 COMMONWEALTH OF MASSACHUSETTS  
2 MIDDLESEX, ss. SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
3  
4 \_\_\_\_\_  
ROBERT A. DOANE, :  
Plaintiff, :  
5 :  
v. :  
6 : Civil Action No. 23-CV-719  
XANADU MARKETING, INC. :  
7 et al., :  
Defendants. :  
8 \_\_\_\_\_ :  
9  
10 AUDIO TRANSCRIPTION OF THE RECORDED PODCAST  
11 DESERVE TO WIN, EPISODE 10  
12 - - -  
13 TRANSCRIBED BY MAUREEN C. BRZYCKI, COURT REPORTER  
14 \_\_\_\_\_  
15 TRANSCRIPTIONIST DISCLAIMER: Speaker  
16 identifications contained herein have been done to  
17 the best of my ability. Misidentification of  
18 speakers may occur due to things beyond my control,  
19 e.g., similar voice tones, poor audio quality,  
20 overspeaking, overlapping room noises, etc.  
21  
22  
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1 case he is named personally. Really,  
2 really interesting story. You're going  
3 to love it when we get to that  
4 interview.  
5 But first, why don't we  
6 introduce ourselves. Let's start with  
7 the lovely lady sitting to my right.  
8 PUJA AMIN: Hi, folks. Queenie  
9 here. Good to be back, cofounder of the  
10 Troutman Firm.  
11 ERIC J. TROUTMAN: Cofounder of the  
12 Troutman Firm. Here it is; 2023,  
13 Queenie. Last time we got together with  
14 we were like wearing read pajamas --  
15 PUJA AMIN: I know.  
16 ERIC J. TROUTMAN: -- in Arizona,  
17 Scottsdale.  
18 PUJA AMIN: We should have worn pink  
19 pajamas today.  
20 ERIC J. TROUTMAN: That's right.  
21 Because it's like the day before  
22 Valentine's Day.  
23 PUJA AMIN: No. We're out of  
24 pajamas, guys. We're back to action.

1 ERIC J. TROUTMAN: And welcome  
2 everybody to the tenth edition of the  
3 Deserve to Winner Podcast. As always,  
4 I'm your host, Eric J. Troutman, the  
5 Czar of the TCPA coming to you from the  
6 beautiful art studio here in Santa Anna  
7 County. Really super excited about  
8 today's episode. Holy moly, do we have  
9 a bunch to cover. We try to take like  
10 what, one little month off to get real  
11 legal work done and TCPA word explodes  
12 with huge stories. We're going to break  
13 down the -- just everything you need to  
14 know right now in 30 minutes or less.  
15 Before we get there, of course,  
16 our guests today, fantastic guests.  
17 You're going to love this guy, Joe  
18 Delfgaw, a small business owner, who  
19 has been targeted by Nathaniel Barton.  
20 Yes, you know Barton, the famous repeat  
21 litigator, allegedly associated with  
22 TCPA University, potentially someone who  
23 is setting up lawsuits. He's being sued  
24 for fraud by Mr. Delfgaw, where in the

1 ERIC J. TROUTMAN: Yeah. No more --  
2 no more pajamas ever again. It is  
3 funny. Because you're not going to see  
4 this until after Valentine's Day, but  
5 just so everyone knows, it is literally  
6 the day before Valentine's Day, so that  
7 makes all of you listening my valentine.  
8 Thank you so much for being here.  
9 Okay. Enough of that schmaltzy  
10 nonsense. Over to you PJ. Welcome to  
11 the show, buddy.  
12 PJ THE WIZARD: Thank you. I am the  
13 Wizard. I run a direct marketing  
14 house -- direct marketing wizard. I  
15 also am in the call center space, and I  
16 also have a Medicare -- Medicare agency.  
17 ERIC J. TROUTMAN: Dude, you are  
18 also of man of many talents, a true  
19 Renaissance man here in TCPA world.  
20 We're going to have to change your name  
21 from the Wizard to the Renaissance Man.  
22 But if you need marketing, if  
23 you need mail -- mail shop, man. In  
24 facts, we're going to use you. We're

1 going to use his shop when the physical  
2 print TCPA World Magazine comes out,  
3 which is going to be coming out here in  
4 probably the next 60 days, so keeping  
5 looking out for that.  
6 How much stuff do we just come  
7 up with all the time? We're just  
8 constantly --  
9 BRITTNEY ANDRES: A lot of stuff.  
10 ERIC J. TROUTMAN: -- generating  
11 content, new ideas, new engagement. And  
12 everybody loves it all so much.  
13 But Direct Marketing Wizard,  
14 fantastic shop. PJ always great to have  
15 the Wizard on the show.  
16 We've got floating in the  
17 either, a very grainy, but very nice to  
18 look at paralegal. What's your name?  
19 ANGELIKA MUNGER: Hi, I am the  
20 Duchess, and I'm coming to you from  
21 Phoenix, Arizona, where we last were in  
22 our pajamas, but fast forward.  
23 ERIC J. TROUTMAN: That's right.  
24 The Duchess, you are fantastic. I

1 always love having you around. I'm  
2 sorry that you can't be here in person  
3 today, but you still -- you really --  
4 like you're transcendent, even through  
5 the screens. So it's wonderful to have  
6 you.  
7 Let's throw it over all the way  
8 down to my left, to the lovely redhead.  
9 Hi.  
10 TORI GUIDRY: Hi. My name is Tori  
11 Guidry. I'm an associate attorney and  
12 The Dame of TCPA World.  
13 ERIC J. TROUTMAN: The Dame. Oh,  
14 you're -- you've got a great story for  
15 us today too. And we're looking forward  
16 to The Dame segment.  
17 Last but not least --  
18 BRITTNEY ANDRES: Hi, guys. I'm  
19 Brittney Andres. I'm an attorney at the  
20 Troutman Firm, and I'm known as The  
21 Baroness of the TCPA World.  
22 ERIC J. TROUTMAN: The Baroness is  
23 fantastic, amazing. All of these  
24 wonderful words. She's so well regarded

1 right now. Like on fire. Last the time  
2 we saw you, she had just been named,  
3 right, the go-to thought leader in  
4 telecom law, The National Law Review  
5 issue. Not taken her foot off the gas  
6 since. Fantastic.  
7 What an amazing team. So  
8 excited to be here. All right. Let's  
9 start breaking down some news.  
10 I'm going to start with what  
11 was the single most read story in TCPA  
12 World history. Four years, we've been  
13 running this blog, thousands of  
14 articles. This is the number one story.  
15 Phone Burner was essentially crippled,  
16 wounded, put into the critical intensive  
17 care unit by the FCC when issued an  
18 order last month finding that a company  
19 called Envy Reality was using Phone  
20 Burner to send allegedly illegal calls.  
21 Here's the problem. There's a  
22 couple of problems here. First, the  
23 FCC's ruling, which was directed to  
24 carriers telling every single carrier in

1 the United States of America, it could  
2 no longer carry the traffic of Phone  
3 Burner respecting the Envy Realty  
4 messages was very confusing. The  
5 carriers, as I saw this coming a mile  
6 away, the carriers thought that what the  
7 FCC was saying is you have to cut off  
8 all Phone Burner traffic. And guess  
9 what happened? Phone Burner, an  
10 extremely popular, and as far as I know,  
11 fairly compliant despite its stupid  
12 name, company was shut down. The  
13 carriers just stopped carrying its  
14 traffic. And for two days, they were  
15 unable to provide any services to any  
16 of their customers -- kind of reminds me  
17 of Troutman Pepper -- we'll get to  
18 that -- and it was a complete disaster  
19 for Phone Burner. And it was really, as  
20 far as I can tell, it wasn't even their  
21 fault.  
22 Now, look, let my pause. I  
23 don't know, right? It might have  
24 been -- Phone Burner might have been

1 completely aware that Envy Realty was  
2 sending illegal messages and just went  
3 ahead and carried them anyway. But the  
4 findings of the FCC don't go that far.  
5 In fact, according to the ruling, there  
6 was no effort to speak with Phone Burner  
7 whatsoever to determine whether or not  
8 it even knew that the messages of Envy  
9 Realty that were being sent out were  
10 illegal, if they were. And I keep  
11 saying if they were, because there  
12 wasn't even a sufficient finding in the  
13 order to conclude that Envy Realty was  
14 doing anything illegal.  
15       There was a notation that about  
16 26 consumers, a couple of dozen  
17 consumers, had complained about messages  
18 that they had received from Envy Realty.  
19 I mean, that's something. It's not  
20 conclusive proof, but it is something.  
21 On the other hand, the F -- the FCC  
22 apparently interviewed former employees  
23 of Envy Realty, but not their current  
24 employees, and asked them, hey, do you

1 guys call people on the DNC list without  
2 permission? And what was weird was that  
3 although they set up the -- the  
4 investigation, and they set up the  
5 action, the FCC did, by suggesting that  
6 they were calling numbers on the  
7 national DNC list without any consent,  
8 all they heard from the former employees  
9 was not that. They heard that there was  
10 some do not call requests that weren't  
11 heated.  
12       So people were saying, hey,  
13 don't call me anymore. But they still  
14 received calls. So these were two kind  
15 of different narratives, neither of them  
16 were -- were predicated on anything that  
17 would be admissible in court. And really  
18 the FCC never even drew a final  
19 conclusion that there was anything  
20 illegal that took place even by Envy  
21 Realty. And yet it issued an order  
22 essentially to every single carrier in  
23 the country to either stop carrying this  
24 traffic. Or alternatively, you carriers,

1 go off and conduct your own  
2 investigation. And let us, the FCC, know  
3 if you conclude that maybe these weren't  
4 illegal to begin with. Hmm. What do you  
5 think is going to happen?  
6       Well, we know what happened.  
7 Phone Burner essentially got shut off for  
8 a couple days. It's a complete disaster.  
9 And look, I'm not faulting the commission  
10 necessarily because I understand what  
11 they're after, right? They want to stop  
12 illegal scam robocalls. So do we.  
13 Everybody is in agreement with that. But  
14 what the commission, I think, in my  
15 opinion at this moment needs to recognize  
16 is that when it fires off one of these  
17 orders, dude, it's got massive massive  
18 impact on the industry.  
19       I mean, again, Phone Burner has  
20 a very significant footprint. And to see  
21 that entire platform get shut down  
22 because of something that it may or may  
23 not have even known it was doing wrong,  
24 (inaudible). Man, that is -- that is

1 very strong medicine. So anyway, it just  
2 a remarkable story. And of course again,  
3 the most read story on TCPA World ever.  
4 This really, really resonated with  
5 people. I don't know if you guys have  
6 any thoughts, but I mean, it just  
7 really -- it struck a cord with so many  
8 folks, lots of engagement. People were  
9 really scared.?  
10       PUJA AMIN: Is that what pushed us  
11 to get a million views?  
12       ERIC J. TROUTMAN: No, actually we  
13 had a million views before that. That  
14 is a good point. TCPA World now well  
15 over a million views. We actually hit  
16 the million view mark before that story  
17 came out. But yeah. It was -- it was  
18 definitely a remarkable thing. So okay.  
19 So that's my story.  
20       I'm going to have another story  
21 for you guys. We have so much going on.  
22 Should we talk about Troutman Pepper  
23 real quick? Or should we just let that  
24 go, TP -- TP?

1 PJ THE WIZARD: We should talk about  
2 it.

3 ERIC J. TROUTMAN: We should talk  
4 about it.

5 So -- so look. It's a --  
6 it's -- it's a fine firm, I suppose.  
7 The problem is that they used my name.  
8 That's the problem, right? If it were  
9 any other firm, I don't pick on any  
10 other firm like them because TP has my  
11 name Troutman in it. And it confuses  
12 people. People think I work there. And  
13 like I'm willing, like I -- right now --  
14 I'm telling you right now, I'll go  
15 through my entire client list, and I  
16 will send them an email and say, did you  
17 hire me because you thought I was  
18 Troutman Pepper? And every single  
19 person would say no.

20 If you go to Troutman Pepper's  
21 client list right now, and you ask every  
22 client that they have, did we -- did you  
23 hire Troutman Pepper because you thought  
24 Eric Troutman worked here, I guarantee

1 you the answer is more than zero people  
2 will say yes. Because they get  
3 confused.

4 And so when this horrible news  
5 came out, and I don't even know what  
6 happened, right? Just to frame this  
7 out. There's -- there's a story on TCPA  
8 World that came from Above The Law,  
9 apparently Troutman Pepper lawyers came  
10 to work -- check this out -- they come  
11 to work one day, and they get this  
12 message that says, all network resources  
13 down. Everything. They don't have  
14 access to any of their documents that  
15 are stored in their document management  
16 system. They have no access to -- to  
17 their email. They can't email people --  
18 they can't get to their client records,  
19 they can't get to their calendars. This  
20 is insanity.

21 Is there anything scarier in  
22 the world? Like are there scarier words  
23 in the English language today,  
24 especially in the practice of law, than

1 all network resources down? I mean,  
2 this is like (inaudible). It's -- it's  
3 a train wreck. So but apparently -- and  
4 look, I don't have all the details here,  
5 right? But just what I'm seeing on  
6 Above The Law, apparently they come in  
7 is the next day -- this thing is like  
8 over an entire day. This thing is not  
9 working, right? And like eventually the  
10 firm is like, hey, guys, look, you got  
11 to communicate, right? So if it's okay  
12 with the clients -- this is literally  
13 the guidance, if it's okay with the  
14 clients, you know, like you can use  
15 Gmail or Hotmail --

16 PUJA AMIN: Oh, no.

17 ERIC J. TROUTMAN: Whatever.  
18 Like this a national law firm  
19 saying use personal emails, but you  
20 know, but try to protect the customer --  
21 the client's, you know, confidentiality  
22 while you're at this.

23 So this is like one horrible  
24 problem, right? Some kind of cyber

1 attack. And then it leads to oh, hell.  
2 Just go use your laptops at the coffee  
3 shop wifi on Hotmail. It's cool. Don't  
4 worry about it. Like what the hell is  
5 going on? This is madness. And of  
6 course they got my name on their dumb  
7 firm.

8 So people were very confused,  
9 and I talked to some editors at over at  
10 Above the Law. Anyway, but not our  
11 firm. Okay? Troutman Firm safe,  
12 secure, ultra powerful. Nothing you  
13 need to worry about here. We -- look,  
14 I'm going to jinx myself saying this,  
15 but like we can't be hacked because  
16 we're small, right? We're smart. We're  
17 stealthy. There's very few past  
18 infiltration. You can't hack us unless  
19 you hack me or Puja or Tori or Brittney.  
20 And if any of them get hacked, I'm going  
21 to fire them, so they know they can't  
22 let that happen.

23 But in seriousness, it's just a  
24 bazaar wacky situation. Big loss. Just

1 a messy situation. They're laying off  
2 people left and right. It's just --  
3 it's chaos over there right. But not  
4 here. Here at Troutman Firm, everything  
5 is peaches and cream.  
6 Speaking of peaches and cream,  
7 I'm not sure how this works, Angelika,  
8 the Duchess. What do you have for us  
9 today? What's your story?  
10 ANGELIKA MUNGER: So I wanted to  
11 talk about really quick about the  
12 CFBP -- CFPB coming out with their  
13 adversary opinion last week.  
14 ERIC J. TROUTMAN: But hang on.  
15 Hang on, Angelika? How can they come  
16 out with an advisory opinion when  
17 they're dead?  
18 ANGELIKA MUNGER: Apparently, they  
19 think, you know they're -- you know, I'm  
20 not quite sure. But they obviously feel  
21 like they have a leg to stand on here.  
22 Because they're coming out, you know,  
23 hard hitting with RESPA and they're  
24 talking about essentially like digital

1 marketers that are listing on compared  
2 type -- comparison platforms are  
3 steering clients to a specific lender,  
4 and therefore, there's some sort of  
5 kickback in the background that's  
6 happening with these, you know, these  
7 comparison lists, I guess.  
8 And I can -- I can kind of  
9 understand where they're angling, but  
10 also at the same time, I'm having a hard  
11 time understanding.  
12 ERIC J. TROUTMAN: Well, so look. A  
13 couple of things. First, I'm having a  
14 hard time understanding because the  
15 fifth circuit has said the entire  
16 funding scheme under which the CFPB  
17 exists is unconstitutional. So the CFPB  
18 is dead. It's like lying there. Like  
19 dead. But apparently it just refuses to  
20 die. It's like a zombie. It's like --  
21 PUJA AMIN: Like Troutman Pepper.  
22 ERIC J. TROUTMAN: Oh. Whoa.  
23 Nicely done.  
24 So it pops back up, and now

1 it's like a sock puppet or something and  
2 it's like this -- okay.  
3 But in seriousness let's assume  
4 the CFP -- CFPB is still alive right  
5 now. Because, you know, the -- the  
6 regulative institutions will, and they  
7 should. I, you know, like to poke fun  
8 at them because in fact they are  
9 unconstitutionally funded, and  
10 therefore, they are in fact dead. But,  
11 you know, people are going to take this  
12 ruling seriously, and it's actually  
13 really, really important ruling. The  
14 CFPB has done a couple of things in this  
15 ruling. First, its looked at when you  
16 talk about a digital market place,  
17 right, a website where there's a whole  
18 bunch of lenders with different terms  
19 and conditions that are being offered.  
20 If that digital website, right this  
21 marketplace operator, is ranking these  
22 companies, right? They can do it  
23 directly, they can do it indirectly.  
24 Sometimes maybe they will have like

1 hyperlinks for some, no hyperlinks for  
2 others. There's going to be  
3 positionings, right, one through ten,  
4 etc. If they are ranking them based  
5 upon the amount of money that those  
6 lenders are paying that website, right,  
7 to be promoted, that is a kickback.  
8 That is an unlawful referral under the  
9 CFPB's reg RESPA -- what is it RESPA  
10 Section 8, right? And reg Z or is it  
11 reg X? I thought it was reg X.  
12 BRITTNEY ANDRES: I feel like it's  
13 X.  
14 ERIC J. TROUTMAN: Right? I feel  
15 like it's X as well.  
16 So this will be an illegal kick  
17 back under reg X of RESPA, according to  
18 this rule. This is an example of what  
19 they're calling steering. And you know,  
20 I can live with that. I don't like  
21 that, but you know what, if you're going  
22 surreptitious rankings based upon money  
23 that you're being paid, and you're  
24 trying to pretend as if you're being

1 objective, well, then you suck. Okay?  
2 Because that's fraud. All right?  
3 There.  
4 All right. And if anyone is  
5 listening to this thinking Troutman, I  
6 thought you were on my team, look, I am  
7 on your team, when you're on the path of  
8 righteousness. But if you're going to  
9 be doing goofy stuff like pretending  
10 like you're giving an objective ranking  
11 but really you're just ranking based  
12 upon how much someone is paying you, to  
13 me, that's a problem.  
14 But there's a different piece  
15 of the CFPB ruling that I have a real  
16 big issue with, and it's something that  
17 everyone needs to keep in mind, which is  
18 it essentially kills ping post traffic.  
19 So backing up, you know, 90 percent of  
20 you are like, yeah, I know what that is.  
21 And ten percent of you are like ping  
22 post? What the hell are you saying,  
23 Troutman? It's not ping pong. It's  
24 ping post.

1 So the way lead generators are  
2 selling in the market is generally  
3 through something that -- called the  
4 ping post process or ping tree. And  
5 what that says essentially -- what that  
6 means is that there is a realtime  
7 process where buyers for that lead,  
8 who -- who are looking for that  
9 qualification that lead has, will do a  
10 bid process. And it's not like, you  
11 know, going once, going twice,  
12 (inaudible).  
13 Everyone submits their best bid  
14 for that specific lead based upon the  
15 attributes and boom. Whatever one gets  
16 picked up by, that's where the lead  
17 goes. This is a decent process, right?  
18 Because essentially in the lead gen  
19 space, the consumer doesn't necessarily  
20 care. At least they say they do not  
21 articulated a preference in terms of  
22 which five lenders their lead goes to  
23 necessarily. They just want to make  
24 sure that the lender meets the various

1 criteria. So long as it does, the  
2 consumer essentially said, I don't care,  
3 so I'll go to Wells Fargo, Bank of  
4 America, Loan Depot, whoever, I don't  
5 care. Just assign me to somebody and  
6 I'll go.  
7 So the company that does the  
8 loan transfer feels as if it is okay for  
9 them to just, you know, sell enough to  
10 the highest bidder and then direct it to  
11 the highest bidder. Let's say here it's  
12 Bank of America. So the way the process  
13 works is you're on the phone, hey, Tori;  
14 it's good to talk to you. Yeah, I've  
15 got a great licensed agent over at Bank  
16 of America. They're going to take good  
17 care of you, all right? Very good.  
18 Click. Off you go.  
19 Not a bad process, right?  
20 Doesn't seem like that's illegal.  
21 Doesn't seem like there's anything  
22 unpleasant about that. It's not like  
23 the -- in the scenario where somebody  
24 might be pretending to give you an

1 objective set of rankings, but really  
2 they're just ranking based off who paid  
3 them the most. This is much more like,  
4 hey, I got somebody that I'm going to  
5 connect you with. Here we go. Right?  
6 There's no more representations being  
7 made implicit or otherwise. But the  
8 CFPB disagrees. The CFPB is essentially  
9 saying, look, when you say to that --  
10 that borrower, hey, they're going to  
11 take good care of you, that is  
12 essentially a referral. You're  
13 essentially saying this is a qualified  
14 mortgage loan broker, and of all the  
15 people that we work with, of all the  
16 names of our website, this is the one  
17 for you.  
18 Which is weird to me because  
19 that's literally not at all what that  
20 lead generator is doing. They're not  
21 making any promises; they're not making  
22 any representations; they're not serving  
23 as a broker. And that's the key  
24 distinction that people need to keep in

1 mind. In our society, in the mortgage  
2 context and in the insurance context and  
3 other context as well, there is  
4 something called a broker. And a broker  
5 actually works for the consumer; not for  
6 the insurance company or for the lending  
7 company. The broker's job is to make  
8 sure that consumer gets the right  
9 product for them. The broker makes a  
10 lot of money, all right? Because the  
11 broker has duties. They have to have  
12 education. And they have to have  
13 expertise in order to do their job. So  
14 a mortgage broker, might make what,  
15 couple of thousand bucks on a deal?  
16 Maybe more. Right? A lead generator is  
17 going to make what, best case scenario  
18 50 bucks? And the reason is that a lead  
19 generator is not a broker. They're not  
20 utilizing any kind of expertise.  
21 They're not analyzing what's a great  
22 product for this specific kind of  
23 consumer in this specific circumstances.  
24 That's what a broker does. And that's

1 why they're connected with ultimately a  
2 licensed loan officer who is capable of  
3 meeting those needs for that specific  
4 consumer.  
5 So why in the world the CFPB  
6 would take a lead generator and try to  
7 turn them into a de facto broker it  
8 makes no sense to me. It's -- like it's  
9 stunning to me. That's not what a lead  
10 generator does, and it doesn't make any  
11 sense. So I'm okay with the  
12 anti-steering rules. I hate the lead  
13 generators are now broker rules. I  
14 don't think that makes any sense and I'm  
15 really curious to see how it's going to  
16 play out in the litigation and in  
17 practice.  
18 Angelika, as always, you are a  
19 fantastic resource I think I kind of  
20 just railroaded you and kind of took  
21 that one over. Do you have any other  
22 thoughts on that because I talked like  
23 three times longer than you?  
24 ANGELIKA MUNGER: No, no. I think

1 you covered it. You got it covered.  
2 ERIC J. TROUTMAN: Okay.  
3 Well, thank you very much,  
4 Angelika, Duchess, always great to have  
5 you here. We're going to throw it over  
6 to the red head just because I kind of  
7 caught you out of the corner of my eye,  
8 my peripheral vision.  
9 Dame, what do you got?  
10 TORI GUIDRY: I have Bryers v. Good  
11 Year Tires and Rubber Company suit.  
12 ERIC J. TROUTMAN: Big one. Another  
13 big one.  
14 TORI GUIDRY: Yeah.  
15 So essentially the court here  
16 decided that Chat Box is wiretapping.  
17 ERIC J. TROUTMAN: Yeah. Well said.  
18 TORI GUIDRY: And, I mean, they  
19 caught them under two different -- two  
20 different statutes in the California  
21 penal code; one for intentional  
22 wiretapping; one for having it without  
23 their consent through a wireless phone.  
24 And the Defense tried to, you know, say

1 that this was plead insufficiently, but  
2 what carried the Plaintiff through on  
3 both was the use of the phrase highly  
4 sensitive information.  
5 And because of that, they said  
6 this brought it past just record  
7 information, which is allowable, and now  
8 we get to see how this plays out.  
9 ERIC J. TROUTMAN: Yeah.  
10 You know, it's funny. So these  
11 cases are brought of course with the  
12 California Invasion Of Privacy Act.  
13 This is the anti-wiretapping, anti-eyes  
14 dropping statute in California. We've  
15 talked about this before. We had a  
16 whole episode on CIPA. If you missed  
17 it, just to reorient people, the  
18 penalties for violations are between  
19 2500 and 5000 per illegal wiretap. Now  
20 this has been brought primarily in these  
21 cases in the context of web session  
22 recording, like (inaudible) or active  
23 prospect. We've talked about those  
24 before. Really bad fit in that

1 scenario. I don't think these cases  
2 have legs, even though they've actually  
3 been moderately successful, at least  
4 Plaintiff's bar has been surviving in  
5 the pleadings stage. The Chat Box  
6 cases, now they're a horse of different  
7 color. Huge volume of these cases have  
8 been brought. The Plaintiff's bar is  
9 really on top of these. And I'm going  
10 to tell you, maybe for good reason. And  
11 this Good Year case shows you why,  
12 right?

13 The core to a wiretapping claim  
14 is that a communication is being read,  
15 interrupted or listened to, right, not  
16 recorded, read or interpreted in real  
17 time during transmission, or at the  
18 point of transmission or at the point of  
19 reception of transmission, okay?

20 So either as it leaves, as it's  
21 going, or as it's received, somebody is  
22 listening in and actively learning the  
23 content of the communication. Now,  
24 that's a bad fit in the context of

1 is between the consumer and the website  
2 operator, right? The brand, not the  
3 user, or the, you know, the displayer,  
4 if you will, the provider of the widget  
5 that is the communication mechanism is  
6 the chat box.

7 Really interesting stuff.

8 PUJA AMIN: More interesting, easy  
9 fix compared to the other cases that  
10 we've been seeing, right? You see, hi,  
11 my name is Mary. Hi, Eric. How are you  
12 doing? You're going to be recorded. Do  
13 you consent? Yes. No. If you say no,  
14 Chat Box ends.

15 ERIC J. TROUTMAN: Yeah.

16 PUJA AMIN: It's simple fix.

17 ERIC J. TROUTMAN: Pretty straight  
18 forward.

19 PUJA AMIN: It's no different than  
20 giving the call recording disclosure on  
21 the phone.

22 ERIC J. TROUTMAN: I don't know why  
23 that didn't dawn on me before. Yeah,  
24 that's fantastic. The AI -- the AI can

1 (inaudible) where they're just recording  
2 the communication, right? That's very  
3 different. But in the Chat Box, my  
4 goodness, they're reading it; aren't  
5 they? They're listening in; aren't  
6 they?

7 PUJA AMIN: They're responding.

8 ERIC J. TROUTMAN: And they're  
9 responding.

10 PUJA AMIN: How is it any different  
11 than a phonecall?

12 ERIC J. TROUTMAN: Yeah.

13 PUJA AMIN: Two party -- the two  
14 party states --

15 ERIC J. TROUTMAN: That's the  
16 problem.

17 So obviously where the Chat Box  
18 is actually being operated by the  
19 website operator, you're okay. But the  
20 problem is that these Chat Boxes are  
21 oftentimes being used by a third party.  
22 The argument goes that the third party,  
23 not the website operator, not a party to  
24 the communication -- the communication

1 be easy programmed. They've got the --

2 PUJA AMIN: Easily.

3 ERIC J. TROUTMAN: -- to do this and  
4 get that consent. Yeah. So it's a  
5 remarkable that kind of we are where we  
6 are because I think a lot of folks were  
7 caught unawares. It is an easy enough  
8 fix, but as you know, you look backward  
9 in time, right, liability is already  
10 affixed. It's amazing how many of these  
11 cases are being filed. I mean, it was  
12 like the new gold rush, so you got just  
13 so many cases. Plaintiffs are just  
14 coming in, staking their territory.  
15 It's remarkable.

16 Anything else, Dame?

17 TORI GUIDRY: That's it for me.

18 ERIC J. TROUTMAN: All right.

19 Well, I appreciate it. Thanks  
20 so much for being here. Always love  
21 seeing you.

22 Why don't we throw it over to  
23 you, Brit, since I'm looking at you?

24 BRITTNEY ANDRES: Yeah.

1 So I'm exited to hear from our  
2 guest today because he's going to be  
3 talking about Nathaniel Barton, who is a  
4 known serial litigator. But I have some  
5 news on another serial litigator, and  
6 his name is Mark Dombrowski.  
7 ERIC J. TROUTMAN: Everybody's  
8 favorite guy.  
9 BRITTNEY ANDRES: So he attempted to  
10 obtain a default judgment against a  
11 company called Family First Life.  
12 He served a copy of this  
13 summons and complaint on an individual  
14 at Family First Life, but the signature  
15 was eligible -- and no one could  
16 ascertain who exactly was served at  
17 Family First Life. So Family First  
18 Life's counsel sent a letter to  
19 Dombrowski saying that service was  
20 improper, and we will move for sanctions  
21 if you try to claim otherwise.  
22 Nevertheless, Dombrowski, being  
23 him, requested and was granted a clerk's  
24 entry of default judgment. Of course,

1 Family First Life was like this cannot  
2 stand. They moved to set aside the  
3 default judgment. The court found that  
4 Dombrowski under FRCP 4 should have at  
5 least served Family First Life's  
6 registered agent for service of process  
7 or at least shown that he attempted to  
8 serve the registered agent with  
9 reasonable diligence, but he failed to  
10 do so, so the court found in favor of  
11 Family First Life and the judgment was  
12 set aside.  
13 ERIC J. TROUTMAN: Was the finding  
14 actually made that service was invalid  
15 or just that he should have done  
16 something else --  
17 BRITTNEY ANDRES: Yes. The service  
18 was found invalid as well.  
19 ERIC J. TROUTMAN: Wow.  
20 So Dombrowski was found to have  
21 improperly served the Defendant. The  
22 Defendant's lawyer is like, yo,  
23 Dombrowski, this is not valid service.  
24 And yet he just moves forward anyway.

1 What a goofball. But notice how much  
2 effort and time it took the Defendant,  
3 right, to set aside this default. And  
4 this is why these guys do it. This is  
5 why someone like Dombrowski, right, just  
6 disregards you know, the letter,  
7 disregards apparently the rules of court  
8 and just does what he wants to do.  
9 Because it puts so much pressure and  
10 expense on the Defendant. And who  
11 knows, right? Maybe he's got a valid  
12 claim. Maybe the Defendant really did  
13 violate his rights. I'd be surprised.  
14 But maybe -- maybe he did.  
15 But like there's a way to  
16 litigate a case, right, we always try to  
17 litigate respectfully, according to the  
18 rules. We always try to be reasonable.  
19 I know you guys sometimes think, you  
20 know, Troutman, why are you such a big  
21 weenie. You're always so nice to  
22 everybody. But no, that's the way you  
23 should litigate, right? You don't have  
24 to be contentious with people. You

1 don't have to hit a gong button  
2 underneath the table. You can follow  
3 the rules and be -- be a proper  
4 upstanding advocate and still be very  
5 effective and win. And that's how we  
6 try to tread. Not everybody does that  
7 though. And obviously, the pro pers, I  
8 mean, they're not lawyers, right? So  
9 from a certain perspective you kind of  
10 get it. But from another perspective,  
11 it's like, read the rules, man. Come  
12 on.  
13 All right. Anything else,  
14 Brit?  
15 BRITTNEY ANDRES: That's it.  
16 ERIC J. TROUTMAN: Well, I  
17 appreciate it.  
18 I was going to make some  
19 Valentine's Day joke, but I decided I  
20 wasn't going to. You deserve better  
21 than that.  
22 Okay. Puja, what do you got?  
23 PUJA AMIN: So I used to say I live  
24 and breathe the TCPA. And as of late --

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1 ERIC J. TROUTMAN: And now you  
2 really live and breathe the TCPA.  
3 PUJA AMIN: No, as of late, I live  
4 and breathe state mini TCPAs.  
5 ERIC J. TROUTMAN: Oh my lord, yes.  
6 PUJA AMIN: And state laws.  
7 So y'all know we have New York,  
8 we have Florida, we have Michigan, we  
9 have Oklahoma. Now I'm going to throw  
10 the dart and now we have -- right at  
11 Maryland.  
12 ERIC J. TROUTMAN: Oh, geeze.  
13 Maryland. Oh, God. I forgot about  
14 that. Can't keep these things in my  
15 head.  
16 PUJA AMIN: So Maryland proposed a  
17 new bill, a mini state TCPA bill, and a  
18 few important things if you're -- for  
19 you folks who are tracking state laws,  
20 2500 bucks per violation under the  
21 Maryland for violating their mini TCPA.  
22 ERIC J. TROUTMAN: Wow.  
23 PUJA AMIN: So I'll start with that.  
24 I'll lead with that.

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1 Second, it tracks the same as  
2 prior express written consent  
3 requirements as the federal statute. So  
4 you know, easy enough to understand.  
5 Then it tracks Florida's broad  
6 interpretation of an ATDS trying to  
7 eliminate, you know, the click to dial  
8 systems and whatnot.  
9 ERIC J. TROUTMAN: Oh, geeze.  
10 PUJA AMIN: Yeah. So they tried --  
11 it tracks Florida. So for you folks who  
12 are already complying with Florida  
13 should be an easy enough way to  
14 operationalize Maryland, and then lastly  
15 it has the three call per 24 hours rule,  
16 even with consent.  
17 ERIC J. TROUTMAN: Oh, geeze.  
18 PUJA AMIN: So Eric and I disagree  
19 about one thing only in life and that  
20 maybe the Florida mini TCPA in that the  
21 Florida is to me unclear as to whether  
22 the three call attempt limit applies to  
23 un-consented calls or consented calls.  
24 Now, Maryland interesting

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1 enough, since they're tracking Florida,  
2 opens my eyes up again to the Florida  
3 statute because the way I see Maryland  
4 tracking Florida is consistent with the  
5 three call attempt limit applying to  
6 consented calls as (inaudible).  
7 ERIC J. TROUTMAN: Yeah.  
8 So one thing in life I dare to  
9 disagree with you on because I feel  
10 pretty good about it in Florida I'm  
11 pretty sure, although, look, reasonable  
12 minds can differ, if you have consent  
13 you can evade and exceed that three call  
14 per 24 hour limit. But I agree with  
15 your read in Maryland.  
16 PUJA AMIN: Mm-hm.  
17 ERIC J. TROUTMAN: To orient, this  
18 law has yet passed.  
19 PUJA AMIN: No.  
20 ERIC J. TROUTMAN: Okay.  
21 You got to -- you got to lead  
22 with that. You got to make sure they  
23 understand that.  
24 PUJA AMIN: No. I said it was

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1 proposed. I said --  
2 ERIC J. TROUTMAN: Okay.  
3 It's not yet the law.  
4 PUJA AMIN: -- proposed. Not yet,  
5 but as we've seen as we've been breaking  
6 down the new proposed rules, they're  
7 slowly becoming law. So it won't  
8 surprise me. Just like Florida --  
9 Florida flirted with amending the  
10 statute with auto dial --  
11 ERIC J. TROUTMAN: Florida is pretty  
12 flirty.  
13 PUJA AMIN: And it did not.  
14 So we'll keep track of this.  
15 But it's definitely -- I have a lot of  
16 clients asking me even about the  
17 proposed bills. Because they want to  
18 stay ahead of the claims.  
19 ERIC J. TROUTMAN: Absolutely.  
20 It's the only way to be. It's  
21 the only way to play is if you're ahead.  
22 No, I completely agree.  
23 Well, I appreciate that  
24 Queenie. Anything else?

1 PUJA AMIN: That's it.  
2 ERIC J. TROUTMAN: I mean, it's  
3 wonderful that we've got such great  
4 statewide resources and adding you and  
5 Angelika --  
6 PUJA AMIN: The Duchess.  
7 ERIC J. TROUTMAN: I mean, you guys  
8 have just been monsters conquering all  
9 when it comes to that. And we've got  
10 just a huge now stockpile of information  
11 about each state. You know, we really  
12 have become not just a federal  
13 powerhouse from a compliance standpoint,  
14 but a state specific powerhouse as well.  
15 And you guys have really done a  
16 fantastic job. So thank you.  
17 Last but not least, my buddy,  
18 PJ, the Wizard, man. It's so good to be  
19 here, dude. I feel like I just haven't  
20 seen you. This is the problem. I get  
21 to see these ladies with some regularity  
22 but you, and, I just get to see you  
23 basically during the podcast. So it's  
24 been a while.

1 PJ THE WIZARD: Yup.  
2 It's been a busy first quarter  
3 so far. And what I have today is a bill  
4 has been introduced to potentially hand  
5 down prison sentences.  
6 ERIC J. TROUTMAN: Oh, geeze.  
7 That's right. Yeah, I forgot about  
8 that.  
9 PUJA AMIN: For?  
10 PJ THE WIZARD: For TCPA violations.  
11 PUJA AMIN: Oh, boy.  
12 ERIC J. TROUTMAN: I forgot about  
13 this. Yeah.  
14 PJ THE WIZARD: They're calling  
15 it -- what is it deterring obnoxious  
16 nefarious and obnoxious -- it's got like  
17 four or five things to it. Also known  
18 as the do not call active 2023, which I  
19 like a little bit better.  
20 ERIC J. TROUTMAN: Is odious in  
21 there too? Is it like deterring  
22 obnoxious, nefarious, odious -- like  
23 they just like -- come on. What are we  
24 doing, guys? I think that's right.

1 Telephone solicitations; is that right.  
2 It's ridiculous. Sorry, go ahead.  
3 PJ THE WIZARD: It is ridiculous,  
4 and I don't think it is a solution. I  
5 think Reach will be the solution.  
6 ERIC J. TROUTMAN: Oh, my goodness.  
7 Thank you for teeing up Reach.  
8 But keep going. And I'm going  
9 to jump all over that. Thanks, man.  
10 PJ THE WIZARD: That's all I have.  
11 ERIC J. TROUTMAN: That's all you  
12 have?  
13 PJ THE WIZARD: All I got.  
14 BRITTNEY ANDRES: You're welcome.  
15 ERIC J. TROUTMAN: Checks --  
16 check -- check's in the mail, buddy.  
17 So -- so yeah, just to kind of  
18 glum on there, so the do not call act of  
19 2023, this is a rehash of a bill that  
20 was introduced in 2021. It didn't go  
21 anywhere. You guys know I got some  
22 intel, you, know, I speak with some  
23 congressional staffers with some  
24 regularity.

1 This one, you know, no one is  
2 too sure about yet. It came pretty  
3 early. I think it's a surprise to many  
4 of the folks. It was earlier in the  
5 session than the last iteration. I'm  
6 not hearing anything yay or nay yet,  
7 right? So that's not necessarily a good  
8 thing. Because usually I know pretty  
9 quick if something is going to die. And  
10 I'm not going hearing it's going to die.  
11 That doesn't mean it's going to run.  
12 But it's interesting. Right now this is  
13 out there. You got to keep an eye on  
14 it. It's kind of a dumb bill though.  
15 There, I said it.  
16 PUJA AMIN: Yeah.  
17 ERIC J. TROUTMAN: The reason is  
18 essentially, one, so you all know, you  
19 can already go to jail for violating the  
20 TCPA. It's part of the broader  
21 Communications Act and a violation of  
22 the Communications Act carries penalties  
23 that are both misdemeanor and on a  
24 repeat offense, potentiality a felony.

1 But the TCPA -- the do not call  
2 bill would add a cause of action -- not  
3 a cause of action, but it would criminal  
4 penalties in the case of a knowing or  
5 willful violation. So essentially it  
6 will track the trouble damages provision  
7 of the civil suit, but allowing a  
8 prosecutor to sue -- put you in jail  
9 just for a knowing violation.  
10 Now understand that a knowing  
11 violation, at least as interpreted in  
12 the civil context is not a high  
13 standard. You don't have to know you're  
14 violating the law. You just have to  
15 know you're making a call without  
16 consent. So you can imagine somebody  
17 that had no idea that TCPA existed  
18 thought it was okay to cold call  
19 someone, right, you can think about like  
20 your local real estate agent. I mean,  
21 these guys are knuckleheads, and they  
22 make, you know, a few text messages or  
23 phonecalls, trying to drum up interest  
24 in their new little shop. They don't

1 know any better. Maybe they should and  
2 they don't. And they go to jail for  
3 that. I don't know. I'm not in love  
4 with that. I mean, maybe it's the right  
5 answer. What do I know? I don't make  
6 policy. But that just feels kind of  
7 heavy handed to me. I like the way it  
8 currently works where basically, you  
9 know, the DOJ goes after the really,  
10 really bad guys only when there's fraud,  
11 right? I mean, you don't see it very  
12 often. When you see it, they get  
13 hammered, and they deserve it. You  
14 don't hear about the innocent guy that  
15 sent some stupid text going to jail.  
16 But if this thing passes, you might  
17 start hearing about that. I don't like  
18 that. You teed up Reach. Thank you  
19 very much.  
20 Of course, Responsible  
21 Enterprises Against Consumer Harassment,  
22 a California mutual benefit corporation.  
23 People are just leaping to join this  
24 thing. I'm so happy. I could not be

1 prouder. We got our standards finalized  
2 just today -- just today. Thanks for  
3 the hard work of Queenie and the  
4 Countess, who is not with us today.  
5 We filed our comment to the CMS  
6 guidelines. We're going to talk about  
7 that more -- not guidelines, CMS  
8 proposed rules for 2024. We're going to  
9 talk about that in our next episode.  
10 But it was -- was a big day for us.  
11 Reach is a fantastic organization. And  
12 again, for those of you who don't know  
13 it, I think you all do, right, we're  
14 trying to stop unwanted calls in a way  
15 that neither the FCC not carriers, nor  
16 congress never attempted -- could never  
17 even get close. We're going to stop at  
18 least half a billion robocalls a month  
19 up to a billion robocalls a month.  
20 That's my stated goal. We're going to  
21 get there. We're going to do it through  
22 clear standards. We're going to do it  
23 through finding the good players that  
24 are lead buyers, and having them aligned

1 in terms of what the standards need to  
2 be in setting good practices for those  
3 direct consumer marketers to make sure  
4 that consumers are treated with respect.  
5 Which is what everybody wants, right?  
6 But you can't regulate that. You  
7 can't -- you can't call block that,  
8 right? You have to get with the  
9 companies, get them to align, and they  
10 have to self regulate. They have to  
11 self impose restrictions that are  
12 necessary so that none of them feel like  
13 they have to race to the bottom and try  
14 to cheat each other, right? And break  
15 the rules in order to maintain market  
16 share.  
17 If we all follow the same  
18 rules, right, now we're all competing on  
19 an equal playing field, and we will  
20 follow the rules together. And we can  
21 self police, right? The regulators.  
22 They don't know. But we know. We can  
23 work, you know, shoulder to shoulder,  
24 and we've got a public shaming provision

1 built into the Reach standards. So if  
2 anyone steps out of line, boom, the Czar  
3 can hammer them and Czar will hammer  
4 them. Because you shouldn't be a  
5 cheater. There's no cheating allowed.

6 But thanks for teeing that up,  
7 PJ. And now through the power of the  
8 Troutman Firm, we're proud to bring you  
9 the story of Joe Delfgauw. He's a small  
10 business owner, whose been targeted by  
11 repeat litigator, Nathaniel Barton.

12 Joe, welcome to the show, man.

13 JOE DELFGAUW: Thanks for having me.

14 ERIC J. TROUTMAN: Before we get  
15 into your story, tell us a little bit  
16 about your background. I understand  
17 you're a small business owner. Help us  
18 to kind of understand what business  
19 you're in and how long you been doing  
20 it.

21 JOE DELFGAUW: Sure.

22 So we're in the lead gen space.  
23 We own a few online brands. We generate  
24 leads. We email them. We text them.

1 We call them. You know, we -- we help  
2 people get personal loans, we help  
3 people fix their credit, we help people  
4 find rent to home homes, we help first  
5 time home buyers, we help people go back  
6 to school, we help people find a job.

7 ERIC J. TROUTMAN: And you know, you  
8 were telling me before -- and before  
9 this lawsuit, I mean, you guys try to be  
10 compliant, you try to do things the  
11 right way? You follow the law?

12 JOE DELFGAUW: Absolutely.

13 So we have -- I don't know how  
14 much you want to hear about this right  
15 now, buy over the course of the past  
16 seven years, our software sends out  
17 somewhere around 20 million text  
18 messages a month, and we've had four  
19 what I would call professional scammers  
20 try to sue us, four out of a billion, I  
21 think, makes us pretty darn good.

22 ERIC J. TROUTMAN: Yeah. That's not  
23 a bad percentage there.

24 Now, we're really interested

1 when you contacted me and you told me  
2 you had some stuff on Barton. I was  
3 really interested in that. My listeners  
4 know Barton and the story of Barton,  
5 right? He already owes, you know,  
6 40,000 dollars for apparently setting up  
7 a lawsuit. He's the guy apparently  
8 behind the TCPA University, although he  
9 denies that.

10 But yet despite the fact he  
11 seems to be setting up these lawsuits  
12 over and over and over again, you know,  
13 outfits like the NPRs of the world, view  
14 him as a hero, like a folklore hero.  
15 And I really just think they don't see  
16 the other side of the story with the  
17 small businesses get hurt when a guy  
18 like him, you know, comes knocking on  
19 the door. It's really why I'm  
20 interested, Joe, to kind of have you on.

21 Why don't you tell us a little  
22 about your story? What happened in your  
23 specific lawsuit, and why do you think  
24 what Barton has done wasn't fair?

1 JOE DELFGAUW: Sure.

2 So we all get unwanted text  
3 messages. I don't think that's -- I  
4 don't think anybody doesn't receive a  
5 text message they didn't want because  
6 their name went on some list somewhere  
7 and someone sold it to someone and you  
8 know, that's really not a good way to do  
9 business.

10 But Barton in my opinion and in  
11 the -- in the information that we  
12 gathered so far, and we're going to go  
13 to trial against him in a countersuit is  
14 that we feel he induced the exact same  
15 way he did with lead point. We believe  
16 that he absolutely either created or had  
17 absolute knowledge of TCPA University.  
18 As a matter of fact in my deposition  
19 against him -- he actually deposed me.  
20 He goes, well, let's just say I did  
21 create this website. What do you think  
22 is wrong with it? And I said, how much  
23 time do you have? Like I literally was  
24 like, dude, are you kidding? There's so

1 many things wrong with this. Like they  
2 said -- he actually put right on TCPA  
3 University or supposedly, and he  
4 admitted by the way, that his friend,  
5 the web developer, created the site. I  
6 don't know if you know that or not. I  
7 can send you my deposition if you want  
8 to.

9 But in the deposition, it  
10 actually says that we -- we've  
11 actually -- we actually got him to admit  
12 it was someone who was quote, unquote  
13 trying to learn how to create websites  
14 and did it without his knowledge. Yet  
15 we know all the information that's on  
16 the site has to be with his knowledge.  
17 There's copies of checks. Like how do  
18 you actually say -- how did that person  
19 get copies of your checks?

20 So it's kind of comical how  
21 this whole thing -- and he's going to  
22 have to admit in court, by the way.  
23 It's going to be pretty brutal for him  
24 because the truth is going to come out,

1 your assets, you've been sued. And your  
2 lawyers, I think, have done a pretty  
3 good job of gathering some information.  
4 They've gone to court. They have told  
5 the judge, hey, summary judgment should  
6 be entered against Barton. And the  
7 judge made a pretty remarkable finding,  
8 I think. The judge said, yeah, there's  
9 enough evidence here to find that Barton  
10 intentionally bought these phones to set  
11 up this lawsuit. But still, he's going  
12 to send the case to the jury. And I  
13 wanted to hear from you Joe in terms of  
14 the like what evidence has your lawyers  
15 dug up? Kind of what do you know about  
16 how Barton so setting up these lawsuits  
17 if he is?

18 JOE DELFGAUW: Well, to be kind of  
19 blunt with you, I don't know anything  
20 more than my lawsuit. So what happened  
21 is we have -- every time though that he  
22 is announced in a suit, we find out who  
23 he is suing, and we send every piece of  
24 information that we have to the new

1 and what's going to happen is -- and  
2 here's is the best part is when I  
3 actually -- I said -- he said to me,  
4 what's wrong with the site? I said the  
5 site is nothing but an extortion site.  
6 It says on here, that we're going to  
7 offer you five hundred dollars. But  
8 we're going to help you get the money  
9 you deeply deserve. I'm like the law  
10 says you're only allowed five hundred,  
11 so how much more do they deserve if the  
12 law says five hundred? That's -- that's  
13 blatant extortion. I'd be more than  
14 happy to send you my entire deposition.

15 ERIC J. TROUTMAN: So Joe, just to  
16 kind of bring the listeners up to speed  
17 here, you've been sued in a case by  
18 barton; not just your company, but you  
19 personally in the suit.

20 JOE DELFGAUW: Yes. I personally  
21 have been --

22 ERIC J. TROUTMAN: You personally  
23 for your personal fortune, your personal  
24 bank accounts, your home, your cars,

1 lawsuit defendant, whoever it's going to  
2 be. Like right now, again, he's suing  
3 Walmart. He's also suing a few other  
4 people. He is suing Digital Thrive,  
5 which is a great medicare call center,  
6 so I don't understand, you know, what --  
7 how -- how he may have induced them.  
8 But what I believe he's doing is I  
9 believe he is taking phone numbers of  
10 people that have opted in -- either he  
11 has opted in, or have -- like for  
12 example, we have his IP address, so we  
13 know he opted into our site.

14 Let me back up. We believe he  
15 opted into our site. He actually said,  
16 well, how do you know? And I said well,  
17 I wasn't sitting next to you, so I mean,  
18 like I can't say that it was, you know,  
19 I was sitting right next to you and  
20 actually saw it. If that's the case,  
21 how do we know anything happened?  
22 Because if I'm not sitting next to you,  
23 how could I actually say that, except  
24 for I have your IP address that was

1 within two miles of your house in  
2 Seattle, Washington with a phone number,  
3 and it coincides with the clicks. And  
4 all the different -- I mean, you're  
5 suing me. So it's obvious that you  
6 opted in to get it. I didn't randomly  
7 find your phone number. How am I going  
8 to randomly find the phone number that  
9 matches the IP address?

10 So we believe, you know, that  
11 he's setting up -- we believe he is  
12 trying to use many, many loopholes  
13 including like he actually put on there  
14 that that was his kid's phone number.  
15 So what ended up having -- we actually  
16 said, okay, let's talk to your ex-wife.  
17 And of course, when we subpoenaed his  
18 ex-wife, he freaked out, got super  
19 upset. He got really mad at my  
20 attorney. And I'm look, okay, now we  
21 know we're onto something. And of  
22 course, his argument was, well, that's  
23 his cellphone when he's with me. And  
24 we're like, oh, dear God. Okay, well --

1 be in school and the mom -- ex-wife  
2 verified it.  
3 So it's like, okay, how are  
4 you -- what are you doing? And every  
5 time my attorney Donald would create  
6 some kind of affidavit, he would answer  
7 it within minutes. So in other words,  
8 he's just sitting around waiting to  
9 manufacture more of these cases. And  
10 that's what it looks like to us and  
11 that's what we're going to get him on  
12 the stand to actually admit.

13 ERIC J. TROUTMAN: And it's  
14 fascinating, one other quick piece, you  
15 know, we did notice that your lawyers  
16 went out and deposed -- it looks like  
17 the owner of the phone number that owned  
18 the phone before Barton, which I thought  
19 was a pretty interesting maneuver. I  
20 actually thought that was pretty good.  
21 And apparently that individual testified  
22 they have not supplied the phone number  
23 any forms since the date that they  
24 stopped using that number, I think

1 so he's got an answer for everything.  
2 And you know, it's just going to take,  
3 unfortunately, it's just going to  
4 take -- he doesn't -- you know, we asked  
5 him, do you have a job? Well, no.  
6 Where do you get your income, and his  
7 answer in the deposition is well, I  
8 write a check out of my bank account.  
9 And we were like, okay, well, do you  
10 have any other like income? And he's  
11 like -- well, so basically it looks  
12 like, and we're going to ask him on the  
13 stand, is all of your income from  
14 lawsuits?

15 You know, in other words, it's  
16 going to be shown that he didn't have  
17 any other income. Because one of things  
18 that we thought was funny that we  
19 thought -- we believe that he caught him  
20 was there was a day that he -- like his  
21 kid got the text message at one o'clock  
22 in the afternoon, and the kid said, dad,  
23 look at my phone. Well, it's o'clock in  
24 the afternoon. The kid is supposed to

1 strengthening the inference that Barton  
2 himself provided the number. So I  
3 thought that was pretty clever.

4 Let's talk about your upcoming  
5 trial. I mean, this is a pretty  
6 remarkable thing, you know. Very few  
7 people -- this is one of the reasons I  
8 want to talk to you. Very few people  
9 push these cases all the way to trial.

10 When is your trial date set?

11 JOE DELFGAUW: It actually hasn't  
12 been set yet.

13 ERIC J. TROUTMAN: Oh, okay. I know  
14 you've got your summary judgment you  
15 just got passed. But you don't yet know  
16 when you're going to be headed to trial?

17 JOE DELFGAUW: So I'm not an  
18 attorney, but I'm about to use a term  
19 that my attorney told me. They have to  
20 go to some type of conference that's  
21 going to -- has to be done by the end of  
22 February to set the trial date. There's  
23 some kind of summary conference -- I  
24 don't know -- again, I don't know the

1 term of it. I apologize.  
2 ERIC J. TROUTMAN: Yeah. No.  
3 That's probably a scheduling conference.  
4 Not a problem at all, and that is the  
5 way litigation goes, right? You go in  
6 at certain stages of litigation. You go  
7 talk to the court. You set various  
8 dates and timelines. Now, I mean, look,  
9 obviously a case can always settle and  
10 you know, strategies change, and  
11 thoughts change, but is it your -- are  
12 you kind of as you sit here today  
13 talking to us is your plan to go try  
14 this case? It sounds like it is.  
15 JOE DELFGAUW: Absolutely.  
16 ERIC J. TROUTMAN: And what's  
17 motivating you? I'm just curious. Why  
18 not just -- I'm sure you can write the  
19 guy a check and be done with this. Why  
20 push on?  
21 JOE DELFGAUW: Well, I guess I don't  
22 really know how else to say this than  
23 just be blunt with you. I just -- I  
24 can't stand getting scammed. And

1 honestly, I would rather pay 50,000  
2 dollars for my attorney than 5,000 to  
3 him. That's the answer.  
4 ERIC J. TROUTMAN: Well, I respect  
5 that.  
6 Now, you know, obviously for  
7 some folks are going to hear that and  
8 say, well, that's just silly. You  
9 should pay 5,000 than 50,000, and a  
10 bunch of other folks are going to hear  
11 that and say, Joe, you're my hero we've  
12 been looking for, right? And I think we  
13 fall closer to that camp. You know, at  
14 the end of the day, I think, if folks  
15 don't push back against the litigators,  
16 obviously they're just going to get  
17 eaten alive. We're of course, famous  
18 for pushing extremely hard on these  
19 guys. And frankly, we enjoy doing so.  
20 But Joe, I just wanted to give  
21 one other piece to this, which is, you  
22 know, you're a small business owner. I  
23 mean, look, I don't think -- I don't  
24 think you're -- you know, indigent.

1 You're not poor, but you know, you're  
2 not extraordinarily wealthy. So you  
3 know, fighting this fight on your own.  
4 I think it could be quite the challenge.  
5 Can you give our listeners a sense of  
6 the impact the case has had on your  
7 personally since you're personally sued  
8 in this thing, right? It's not just  
9 your business. It's you.  
10 JOE DELFGAUW: Sure.  
11 Well, you know, so let me --  
12 let me be I guess as blunt as I can be.  
13 If I actually had any -- any inkling at  
14 all this was an accident, he got texted  
15 on accident, maybe I would have settled  
16 for a few thousand dollars, or to what  
17 the law says. But because I absolutely  
18 one hundred percent and convictionally  
19 believing that he's doing this,  
20 including the Lead Point -- I mean the  
21 Lead Point thing just fell into our lap,  
22 so he sued us and then the lead point  
23 decision came down. And I thought that  
24 must -- there must be a God. Because

1 honestly, I literally thought to myself,  
2 you know, how on earth -- how absolutely  
3 wonderful that this happened to him.  
4 And I know that it's actually  
5 technically still in appeals or  
6 something like that, but it just seemed  
7 so poetic justice. And I don't know. I  
8 guess at some particular point, you got  
9 to kind of take a stand. And you know,  
10 if the Bartons of the world -- because  
11 he actually said to my attorney, word  
12 for word, quote -- at least -- this is  
13 hearsay, supposedly. But she said he  
14 actually said, why doesn't your client  
15 just write a check like everyone else  
16 does?  
17 ERIC J. TROUTMAN: Oh, God.  
18 JOE DELFGAUW: You know, we know  
19 your client is going to write a check,  
20 you know, what's he waiting for? And I  
21 was like, I'm just going to be really  
22 honest with you, Eric, and this is the  
23 honest to God truth. I'm 52 years old.  
24 I'm married. I have grandkids. I have

1 kind of a boring life here in West  
2 Michigan. I'm looking forward to this.  
3 Like this is like I'm happy this is --  
4 you know, I'm like you know what? I'm  
5 rolling up the sleeves. And I just -- I  
6 hope that -- my biggest fear is that a  
7 jury will actually go, I don't want to  
8 get text messages, so he must be guilty.  
9 But you know what? We all want  
10 to get the text messages we want. We  
11 all want to know that my credit card was  
12 used, my credit card was stolen, my --  
13 someone just used a charge, two factor  
14 authentication, password reset, your  
15 reservation is ready, you went out to,  
16 you know, you're sitting in your car  
17 waiting for your food, and your order is  
18 ready. We all want to get text messages  
19 we want. So text messaging isn't the  
20 enemy here. It's just like anything  
21 else. People using the law to enrich  
22 themselves. This is just -- it's --  
23 it's such a -- to me, it's such an  
24 obvious thing. How can you have 15

1 phone numbers? He no longer puts the  
2 phone numbers in his lawsuit anymore, by  
3 the way. I don't know if you noticed  
4 that. Because we caught him. We traced  
5 down all the phone numbers he's using.  
6 How do you have 8 phone numbers? Or 5  
7 phone numbers? You know what I mean?  
8 It's just -- it's so -- and I -- I mean,  
9 I know this is probably going to be read  
10 by him before the case, and I actually  
11 hope it is. And I hope the jury sees  
12 this. Because I want to say, the guy  
13 just won't go away. He won't even  
14 see -- won't even admit he's wrong. I  
15 actually said this, Eric, true story. I  
16 said, Mr. Barton, I'll make you a deal.  
17 If you go away now I'll stop my  
18 countersuit because I originally said  
19 that I'm going to -- I will walk away  
20 for a 50,000 dollar settlement, meaning  
21 you pay me 50,000, and I'll walk away.  
22 And he said, well, no. And I said,  
23 well, I'll tell you what? If you -- he  
24 actually said -- you have no proof that

1 I opted in and because of that, we're  
2 going -- we're just going to keep going  
3 through with this. I was like I have  
4 got your IP. How do you -- I mean, I  
5 got your server session. It's literally  
6 undeniable.  
7 ERIC J. TROUTMAN: Joe, Joe. Remind  
8 me and our listeners, what is the  
9 countersuit for fraud? You're suing him  
10 for fraud for what? Like what did he do  
11 that is fraud?  
12 JOE DELFGAUW: Fraudulent  
13 inducement. So in other words, what he  
14 did was fraud. He's bringing a case  
15 that he knowingly knows that he  
16 committed fraud in our opinion to  
17 actually obtain a monetary judgment.  
18 It's the definition of fraud. I don't  
19 even know if there's a better  
20 definition.  
21 ERIC J. TROUTMAN: Interesting.  
22 Okay.  
23 So -- so the theory is he  
24 himself personally, or you know, used

1 somebody to insert the phone number  
2 specifically to get the call,  
3 specifically to create the lawsuit that  
4 he is now bringing against you. That's  
5 the kind of the theory?  
6 JOE DELFGAUW: That is the theory  
7 and the proof that we believe we  
8 gathered.  
9 ERIC J. TROUTMAN: All right.  
10 Well, Joe, look, man. It's  
11 been a pleasure talking with you.  
12 Obviously, we're rooting for you. I  
13 don't have any first-hand knowledge  
14 obviously anything that you relayed here  
15 today. I don't know if it's true or not  
16 true. But I do know that Barton sues a  
17 heck of a lot of people. I know what  
18 happened in Lead Point. I know his  
19 affiliation with TCPA University, and he  
20 is one of many repeat litigators in this  
21 space that there's just a swarm of  
22 suspicious around the guy, right?  
23 I mean, you know, where there's  
24 smoke, there's a very likely fire. And

1 this guy's got smoke coming out of his  
2 ears and head. It's very frustrating to  
3 me, you know, again that the NPR did a  
4 piece and others do a piece looking at  
5 this guy like he's some kind of a folk  
6 hero. When it appears he's literally --  
7 it looks like, and you got a suit  
8 alleging, literally inserting his phone  
9 number on websites, begging for calls,  
10 and then suing when they're made. And  
11 that's just grotesque. It's a complete  
12 misuse of the law.

13 Joe, look, you've been a great  
14 guest. We always let our guests here at  
15 the end of the pod cast speak a little  
16 bit on the critical question, like, our  
17 pod cast is of course called deserve to  
18 win. And I just was really curious on  
19 your thoughts, or on what you know what  
20 you can do or what others can do in the  
21 space when, you know, they're facing a  
22 litigator like Barton, what can they do  
23 to deserve to win in your opinion?

24 JOE DELFGAUW: Well, the number one

1 is, right?  
2 ERIC J. TROUTMAN: Mm-hm.  
3 JOE DELFGAUW: So we have so much  
4 information on him now that he actually  
5 will not sue us, so we've got all the  
6 phone numbers, all the inducements, we  
7 got all the stuff -- we actually were  
8 going to approach the attorney general  
9 in Massachusetts and actually say, hey,  
10 by the way, this guy is doing this, but  
11 we actually had an attorney from  
12 Boston -- I don't know if I can talk  
13 this long, but an attorney from Boston  
14 told us in court they actually throw out  
15 of the court now. They're like, dude,  
16 you again? The judges are like you  
17 again? Like get out of here. Like  
18 they're mad at him because he's bringing  
19 up all these federalist court cases and  
20 he's using Massachusetts law, an extra  
21 law above and beyond the TCPA to  
22 actually basically say it's going to  
23 cost you 50 grand to defend yourself or  
24 20 to settle. And that's when I started

1 thing is to make sure that you're doing  
2 the right thing. Make sure that you  
3 actually have either Valid a Form or  
4 Trusted Form or (inaudible) on your  
5 site. You know, we developed a software  
6 specifically for this, to make sure that  
7 you -- you have your stop and your opt  
8 out and your help and all that stuff  
9 working, that you use -- you know --  
10 there's just best practices. If you do  
11 the best practices, you're going to  
12 limit at lot of stuff. And you know,  
13 again, to me, if I go into a courtroom  
14 and say, listen, in the past seven years  
15 I have sent over a billion text messages  
16 and the four lawsuits that I have had  
17 are all from people that I believe are  
18 professional litigators, and here's the  
19 proof, they filed multiple suits, and we  
20 have proof against every single one of  
21 them.

22 Robert Doane was our first one,  
23 by the way. And Robert Doane, I don't  
24 know -- I'm sure you guys know who he

1 to say, you know what? Never -- he was  
2 the one that made me say never again.  
3 Because he induced a call from a company  
4 called News Care Plus, which is now  
5 owned by Motor Trend that they actually  
6 said, we're going to settle with him  
7 because we don't want this case. I'm  
8 like I'll defend it. I'll pay for it.  
9 I'm never settling again. That was the  
10 first one that made me say, I'm never  
11 doing this again. And you know what?  
12 I'm not rich, but I would rather -- I'm  
13 sorry. This is going to sound really  
14 stupid to a lot of people. But I would  
15 rather try and do the right thing --  
16 because I've done the wrong thing in my  
17 life before. I'm tired of it. People  
18 that are doing this stuff, they need to  
19 get a job, they need to get a career.  
20 They need to not try to use this law,  
21 and I want to make it where when they  
22 Google Nathan Barton's name, all they're  
23 going to see is all the different  
24 documented stuff that he's done, and I'd

1 be more than happy to share it with you.  
2 When you Google his name, TCPA World is  
3 now one of the stop five things on  
4 there, and it's beautiful. And I  
5 actually have so much documented  
6 information -- this isn't opinion. This  
7 is -- I have documents of -- of the  
8 deposition. I've got documents of  
9 testimony. I've got documents of his  
10 ex-wife. We've got so much -- if you  
11 want to have my attorney Ed Winkler, who  
12 is my staff attorney and Donna Gibson on  
13 your next call, they'd love to join.

14 ERIC J. TROUTMAN: All right.

15 Well, Joe, you've been a heck  
16 of the guest, man. I think Barton got a  
17 little more than he bargained for when  
18 he tangled with you. We wish you best  
19 of luck out there, and thanks so much  
20 for being on the show, man. You've been  
21 a great guest.

22 JOE DELFGAUW: All right, guys.

23 Appreciate it. Thanks for having me.

24 ERIC J. TROUTMAN: Well, let me

1 is -- he -- this is a guy who is  
2 hurting, right? And so I think people  
3 need to kind of hear from him.

4 But anyway, let's go around and  
5 kind of share our thoughts. PJ, the  
6 Wizard, really kind of interested in  
7 starting with you today. I really felt  
8 like this guy -- maybe you were the  
9 closest, right, to his situation. We're  
10 all lawyers. We live in ivory towers.  
11 You're really down there, right, like  
12 day-to-day in the call center really  
13 kind of feeling the impact of some of  
14 these suits.

15 What did you think?

16 PJ THE WIZARD: I definitely felt  
17 his pain. I definitely been there. And  
18 I think people like him are needed. We  
19 need them because we don't have that  
20 kind of funding behind us. There aren't  
21 much of us that have, you know, that 50  
22 grand to fight that good fight, but I  
23 think as -- as more time goes on,  
24 there's going to be more litigators that

1 start by reminding everybody that, you  
2 know, we just had a guest on. You can  
3 tell he was -- he was trying to contain  
4 his emotions, but a lot of energy, a lot  
5 of energy, shall we say. Some anger,  
6 some frustration. You could tell that  
7 he felt he was being very unfairly  
8 treated by Barton. You can see this.  
9 You can see this in the guy. He made a  
10 lot of assertions, and I got to come out  
11 and say, look, I'm just a humble pod  
12 cast host. I don't know if anything he  
13 said is true, factually, right? Now he  
14 said there is a lot of documents,  
15 there's deposition testimony.  
16 Ultimately there's going to be a trial.  
17 But you know, we brought him on, not so  
18 much to say that what he is saying is  
19 factually true, but really to highlight  
20 the detrimental effect that these  
21 repeated litigators have on small  
22 business owners. You can just kind of  
23 see it in the guy's psyche, just how he  
24 talked, his body language, he's -- this

1 are sadly -- they're abusing the TCPA  
2 and they are manufacturing lawsuits for  
3 their own gain. And I think people like  
4 him will hopefully put a stop to that.

5 ERIC J. TROUTMAN: Yeah.

6 No. That's really well said.  
7 Did he resonate with you? Did he seem  
8 like an honest, sincere guy? Did you  
9 get any heebie jeebies from him?

10 PJ THE WIZARD: You know, for the  
11 most part, I would say he seemed like a  
12 good guy. The part that I have a  
13 problem with, I mean, anyone who is  
14 sending that many texts, I think four --  
15 he's only dealt with four TCPAs, that  
16 part didn't seem the most honest. I  
17 think even if you're doing everything  
18 correct, you're following the law,  
19 you're going to have more than four  
20 TCPAs.

21 ERIC J. TROUTMAN: It was  
22 interesting that he wore that, you know,  
23 I sent a billion text messages as a  
24 shield, where I think most people want

1 to shy away from that when you're  
2 talking to a jury. I sent a billion  
3 text messages. That's not necessarily,  
4 you know, a great story unless you got  
5 really pure, you know, anecdotal, really  
6 pure narrative as to why those texts  
7 were all in the consumers best interest.  
8 I didn't necessarily hear that from him,  
9 so I thought that was interesting.  
10 Well, thanks Wizard. Good to  
11 have you on the show, man. Miss hanging  
12 out with you.  
13 While we're here, Puja, what do  
14 you think?  
15 PUJA AMIN: Yeah.  
16 So I took it kind of similar to  
17 how PJ took it, that's from my  
18 experience being in house taking it like  
19 a personal attack when your business  
20 owners are sued, being in house is  
21 largely a lot different than being  
22 outside. Because you take stock in your  
23 company. You really, really care about  
24 doing it right when you're head of

1 compliance, head of TCPA compliance and  
2 you know things are butting up, it  
3 frustrates you when serial litigators  
4 come through, and one thing I found that  
5 was interesting, his take on what it  
6 takes to deserve to win in this industry  
7 was to be complaint. It wasn't  
8 necessarily go after Barton, go after  
9 the Dombrowski of the world, go after  
10 the serial litigators. His advice was  
11 to be compliant and you should largely  
12 get rid of most folks, except, however,  
13 we can't get rid of these knuckleheads.  
14 ERIC J. TROUTMAN: Wonderful  
15 thoughts, as always.  
16 I'm going to throw it to my  
17 disembodied head, Angelika, the Duchess  
18 out there in Phoenix.  
19 What did you think?  
20 ANGELIKA MUNGER: I kind of -- same,  
21 along the lines of Puja is you can have  
22 good actors in business, but you're  
23 going to still have these bad actors in  
24 the litigators, so the best that you can

1 do is be as compliant as possible and  
2 hope to weed out the bad actors, these  
3 serial litigators.  
4 ERIC J. TROUTMAN: Okay.  
5 Tori, what did you think, my  
6 redhead Dame? What's on your mind?  
7 TORI GUIDRY: Well, I always really  
8 like to see someone willing to go to  
9 trial over this kind of stuff, so I was  
10 happy to see there was a true believer  
11 on our side of things.  
12 ERIC J. TROUTMAN: Yeah. It was  
13 pretty impressive. The guy seemed  
14 pretty fearless of trial. I mean, most  
15 people, they get those cold feet pretty  
16 quick. And he was seemed like a hundred  
17 percent committed. That was pretty  
18 cool.  
19 TORI GUIDRY: It was almost like a  
20 new hobby to him that he found.  
21 ERIC J. TROUTMAN: I -- and that was  
22 actually fairly remarkable. I was  
23 thinking that when fire meets fire, you  
24 know, like Barton enjoys doing this. He

1 likes to have the upper hand. He likes  
2 to feel powerful. Then you run into a  
3 guy like Joe and he's like, bring it on.  
4 Sounds fun to me too.  
5 What did you think, Britt?  
6 BRITTNEY ANDRES: I have to give it  
7 to the guy. He was really exuding  
8 passion to me. He felt strongly in what  
9 he believed, so I have to give it to him  
10 for believing that. And what stood out  
11 to me when he was like I'd rather spend  
12 50,000 -- he'd rather give 50,000 to my  
13 attorney, then 5,000 to him, and I  
14 just -- I feel that, you know?  
15 PUJA AMIN: Yeah.  
16 ERIC J. TROUTMAN: Yeah.  
17 No. Great take. You guys were  
18 all wonderful today on our Valentine's  
19 Day episode.  
20 BRITTNEY ANDRES: Oh, yeah.  
21 ERIC J. TROUTMAN: Yeah. You folks  
22 are fantastic. And always love having  
23 you. Of course, you my listener, you're  
24 my valentine. I appreciate ya.

1 But so let me just close with  
2 these thoughts. That thing that stood  
3 out the most to me was when he was  
4 relayed what his lawyer said. And  
5 again, this is all second hand. I don't  
6 know if this really happened or not. If  
7 it did, I mean, it's extremely telling  
8 that Barton apparently said, why can't  
9 your guy just write a check like  
10 everybody else? Why can't your guy just  
11 write a check like everybody else? Like  
12 what does that tell you about the  
13 mindset of a guy like Barton. Again,  
14 assuming this took place, but it  
15 sounded, you know, this sounds very  
16 realistic to me. If Barton says those  
17 words, and based on what I heard, I  
18 think that he did.  
19 What does that tell you, right?  
20 It tells you that these guys don't want  
21 to fight. In fact, it's boring to them.  
22 It's burdensome to them. Right? They  
23 want that check. And beyond what they  
24 want, they expect that you're going to

1 write them that check. That's what  
2 everybody else does, right? And look,  
3 you know, Troutman Firm, sure. We've  
4 settled some cases. I'm not going to  
5 say we haven't. But we push hard to  
6 make sure these settlements are where  
7 they belong, so these guys don't come  
8 back again, right? And where necessary,  
9 we'll push as hard as absolutely  
10 necessary to make sure that there is no  
11 settlement and that our clients win.  
12 Because that's where we're here for,  
13 right? We're not here to write checks  
14 or help you write checks. Now, again  
15 there's going to be cases where the  
16 right thing to do is settle. I'm not  
17 telling you otherwise. But to me that  
18 really, really jumped out at me, right?  
19 Like why doesn't your guy write a check  
20 like everybody else. That's just such a  
21 stunning, stunning thing so say.  
22 Anyway, I hope you enjoyed  
23 this, our tenth episode. I know we  
24 haven't been together here for a little

1 while since the holidays when we were  
2 all together in those red pajamas, but  
3 it was great to get back. We're going  
4 to be doing these more frequently.  
5 There's so many things to talk about  
6 right now in the TCPA World, as you all  
7 know. But thank you so much for joining  
8 us in this, our tenth edition. We'll  
9 see you soon.

10 - - -  
11 (Whereupon, the file ended.)  
12 - - -

1 CERTIFICATE  
2 I HEREBY CERTIFY that this transcript is a  
3 true record of the content on the file provided to  
4 me to the best of my ability.

5  
6  
7  
8  
9 Maureen Cunningham Brzycki

10 Maureen Cunningham Brzycki,  
11 Dated: June 28, 2023

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# **EXHIBIT B**



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June 9, 2023

**Via E-Mail [jbombard@bombardlaw.com](mailto:jbombard@bombardlaw.com)**

Jeremy Bombard, Esq.  
Bombard Law Office, P.C.  
2 Summer St., Ste. 307  
Natick, MA 01760

**RE: Doane v. Xanadu Marketing, Inc. et al.**  
**Case No. 2381CV00719**

Dear Attorney Bombard:

It appears that your clients have given you some misinformation. Incredibly, in the motion to dismiss ("MTD") that you have served, Defendants represent that the Defendants did not so much as *mention* Plaintiff in the Podcast. This, as your clients are well aware, is a boldfaced lie. As evidenced from the recording of the Podcast that I am providing with this letter, Mr. Delfgauw specifically called Mr. Doane out by name and made each of the defamatory statements referenced in the Complaint.

I am assuming that your clients reviewed and approved the MTD prior to service. It is Plaintiff's position that by falsely representing that Mr. Delfgauw did not mention Plaintiff on the podcast and attempting to obtain dismissal on that basis, the Defendants are attempting to commit a fraud on the court. See *Matter of Neitlich*, 413 Mass. 416, 423, 597 N.E.2d 425 (1992). Given the seriousness of this matter, I must request at this juncture that the Defendants withdraw their motion to dismiss and either answer the complaint or serve an amended motion. If an amended motion is served, the Plaintiff is insistent that the motion make truthful references to the statements made by Mr. Delfgauw concerning Mr. Doane.

Mr. Doane will require a response to this letter by close of business on **Monday, June 12, 2023**. In the event that the MTD is not withdrawn by that time, Plaintiff will move for sanctions.

Page 2 of 2  
June 9, 2023

Very Truly Yours,

/s/RICHARD B. REILING  
RICHARD B. REILING  
Attorney at Law

Attachment (Via Link)

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Richard Reiling

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### Letter Re: Doane v. Xanadu

From: "Angie Carter" <angie@bottonereiling.com>

To: "Jeremy Bombard" <jbombard@bombardlaw.com>

Cc: "Richard Reiling" <richard@bottonereiling.com>

OC\_reMTD\_060923.pdf (204.2 KB) [Preview](#) | [Download](#) | [Briefcase](#) | [Remove](#) | [Save into Drive](#)

Attorney Bombard,

Please find attached a letter addressed to you from Attorney Reiling in connection with the above capti

<https://ln5.sync.com/dl/f94255ab0/j9z7bsnq-w3q775ca-ntdme2ws-5npfmpgg>

Thank you,

**Angela M. Carter**  
**Legal Assistant / Paralegal**

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This message and any included attachments are from the law offices of Bottone I Reiling and are intenc review, forwarding, printing, copying, distributing, or using this information is strictly prohibited and unlav the sender by e-mail. Thank you.

---

**From:** "Jeremy Bombard" <jbombard@bombardlaw.com>

**To:** "Richard Reiling" <richard@bottonereiling.com>

**Cc:** "Angie Carter" <angie@bottonereiling.com>

**Sent:** Wednesday, June 7, 2023 9:04:25 AM

**Subject:** Re: Doane v. Xanadu

Richard - please find my clients' Motion to Dismiss under Rule 9a. Please provide a response and I will  
Thanks,

Jeremy R. Bombard, Esq.  
**BOMBARD LAW OFFICE, P.C.**  
2 Summer St., Ste. 307, Natick, MA 01760

# **EXHIBIT C**



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June 30, 2023

**Via E-Mail [jbombard@bombardlaw.com](mailto:jbombard@bombardlaw.com)**

Jeremy Bombard, Esq.  
Bombard Law Office, P.C.  
2 Summer St., Ste. 307  
Natick, MA 01760

**RE: Doane v. Xanadu Marketing, Inc. et al.**  
**Case No. 2381CV00719**

Dear Attorney Bombard:

I have reviewed the Defendants' motion to dismiss and I am highly disappointed to see that the Defendants continue to take the undefendable position that Mr. Doane was not so much as mentioned by Mr. Delfgaw during his rant on the "Deserve to Win" Podcast. As you will recall, I have previously conferenced this matter with you and provided you a copy of the unedited version of the Podcast which clearly demonstrates that Mr. Doane was in fact called out by name and defamed in the manner set forth in the Amended Complaint. Under these circumstances, I am frankly confounded that the Defendants have continued to claim that Mr. Doane was not referred to in the Podcast.

So that there can be no doubt, I have attached a copy of the audio transcription of the Podcast. Pages 70-72 unequivocally demonstrate that the Defendants denials are, as I indicated previously, boldface lies and constitute an attempt to perpetrate a fraud on the Court.

In light of the foregoing, I have been instructed to demand that the current motion to dismiss be withdrawn by noon on July 3, 2023. If it is not, the Plaintiff will serve his response to the present motion that afternoon and will move for sanctions.

Please contact this office with your clients' position.

Thank you.

Page 2 of 2  
June 30, 2023

Very Truly Yours,

/s/RICHARD B. REILING  
RICHARD B. REILING  
Attorney at Law

Attachment