

IN THE SUPERIOR COURT
WASHINGTON STATE COUNTY OF CLARK

Nathen Barton,
Plaintiff

Case No.: 24 2 02134 06

v.

RESPONSE TO ISI'S MOTION TO
SET ASIDE ORDER OF DEFAULT
AND ORDER ON ENTRY OF
JUDGMENT

EDM Leads LLC &
Insurance Supermarket, Inc.,
Defendants.

Introduction

Insurance Supermarket Inc (“ISI”) has been served a summons and complaint twice,¹ followed up by Requests for Admissions. They admit to receiving all of it, yet none of that brought them to court to defend the case until Judge Sheldrick held a bench trial on the merits (Sub Number 38), and awarded Mr. Barton \$109,400 in damages. Then they have done exactly what our state’s Supreme Court forbid in *Morin: ignore the summons and complaint . . . and wait for the notice of default judgment before deciding whether a defense is worth pursuing.*

ISI is well acquainted with litigation. In the year prior to this lawsuit, in federal court alone they were sued **nine times** in six different states:

Case Caption	Federal Court	Case #	Date Filed
<i>McCaulou-Bernatz et al v. Insurance Supermarket, Inc.</i>	N.D of CA	3:2023cv00005	1/3/2023

¹ See their motion page 1 lines 24-25: *ISI was served with the summons and complaint on March 7, 2024, and on August 6, 2024.*

1	<i>Dobronski v. Insurance Supermarket Inc. et al</i>	E.D of MI	2:2023cv10149	1/19/2023
	<i>Ulery v. Insurance Supermarket, Inc.</i>	CO	1:2023cv00490	2/22/2023
2	<i>Simmons v. Insurance Supermarket, Inc.</i>	E.D of MI	2:2023cv11647	7/12/2023
	<i>Charman v. Insurance Supermarket Inc.</i>	S.D. of CA	3:23-cv-01505	8/17/2023
3	<i>Escano v Insurance Supermarket Inc.</i>	E.D. of NM	2:2023cv00793	9/15/2023
	<i>Simmons v. Insurance Supermarket, Inc.</i>	N.D of CA	3:2023cv04992	9/28/2023
4	<i>Mcfadden v. Insurance Supermarket Inc</i>	S.D of FL	1:23-cv-23957	10/16/2023
5	<i>Hanson v. Insurance Supermarket Inc.</i>	W.D. of MO	4:2023cv00795	11/1/2023

6 This sophisticated litigant asks the Court to believe that in 2024 when they received each
7 of the two summonses and complaints, instead of consulting with one of their many lawyers or
8 hiring another one, they instead relied on co-defendant and non-lawyer EDM's assurances that
9 Mr. Barton's claims were "baseless and nonsensical". Rua dec. ¶2. Even though EDM's phone
10 calls on their behalf had previously pulled ISI into the *Ulery* litigation as a defendant on
11 6/8/2023, and into the *Charman* litigation as a defendant on 4/16/2024, and they'd hired lawyers.

12 ISI would have the Court believe that in June of 2025, instead of consulting with one of
13 their many lawyers or just calling or emailing the Court themselves, sophisticated litigant ISI
14 *again* relied on EDM's assurances that it was handling the matter. When one phone call or email
15 to the court would find EDM had never appeared in this case at all.

16 Notice Mr. Rua's careful words in ¶8. Despite repeated motions for default starting about
17 a year ago, and then a default judgment process spanning months, he says they were
18 *inadvertently* notified of Judge Sheldrick's Entry of Judgment, just six days after it became
19 public. A more logical explanation is ISI was watching the case the entire time and was
20 expecting Mr. Barton to be denied any relief at all, or perhaps a small judgment ISI could abide.
21 How could ISI go 18 months knowing nothing about the events in the case, but in six days they
22 know about Judge Sheldrick's Entry of Judgment? They were sitting back, *wait[ing] for the*
23 *notice of default judgment before deciding whether a defense is worth pursuing.*

24 **Argument**

1 Defaults are disfavored, but more so is sitting back waiting to see if the default judgment
2 process plays out adversely as ISI has done here and jumping into the case when it does. ISI is
3 correct that the first two *White* factors are of primary importance to the outcome of their motion.

4 **(1) whether there is substantial evidence to support a prima facia defense**

5 ISI's prima facia defense theory has two parts. First, they say they have a hearsay
6 statement from EDM assuring them *Plaintiff's claims were "baseless and nonsensical" and that*
7 *an internal investigation confirmed EDM had "no records indicating any publisher associated*
8 *with EDM Leads LLC sent such calls to ISI."* That isn't a denial, and of course, this is the EDM
9 who assured ISI they were *handling the matter* and expected it to be dismissed. Rua dec. ¶6.

10 Their second argument is lack of an agency relationship with EDM, and taken together,
11 their two arguments amount to a prima facia defense. They overlook the Admissions: Mr. Rua in
12 his dec. ¶3 admitted they were served with them and 30 days after ISI blew them off they were
13 deemed admitted. *Any matter admitted under this rule is conclusively established unless the*
14 *court on motion permits withdrawal or amendment of the admission.* CR 36(b).

15 The Admissions (Sub Number 24 Exhibit B) have conclusively established:

- 16 ● [ISI was] served a summons and complaint in this Lawsuit on August 6, 2024
- 17 ● during all times relevant, Nathen Barton was the subscriber of telephone number (469)
18 347-2139.
- 19 ● during all times relevant, Nathen Barton was the customary user of telephone number
20 (469) 347-2139.
- 21 ● Nathen Barton registered telephone number (469) 347-2139 on the Federal Trade
22 Commission's National Do Not Call Registry on 2/10/2021.
- 23 ● [ISI] hired EDM Leads to telephone solicit (469) 347-2139.
- 24 ● [ISI] hired EDM Leads to telephone solicit (469) 347-2139 using artificial voice.
- [ISI] hired EDM Leads to telephone solicit (469) 347-2139 using prerecorded voice.

- 1 ● [ISI] hired EDM Leads to telephone solicit (469) 347-2139 from 12/1/2022 to 1/6/2023.
- 2 ● [ISI] hired EDM Leads to telephone solicit (469) 347-2139 34 times.
- 3 ● [ISI] hired EDM Leads to telephone solicit (469) 347-2139 34 times from 12/1/2022 to
- 4 1/6/2023.
- 5 ● [ISI] knew [ISI] [was] calling a resident of Washington State each time [ISI] hired EDM
- 6 Leads to telephone solicit (469) 347-2139.
- 7 ● [ISI] instructed EDM Leads not to identify themselves when they called (469) 347-2139
- 8 telephone soliciting for [ISI].
- 9 ● [ISI] instructed EDM Leads not to identify [ISI] when they called (469) 347-2139
- 10 telephone soliciting for [ISI].
- 11 ● [ISI] instructed EDM Leads to never state a telephone number that would allow Nathen
- 12 Barton to make a do-not-call request.
- 13 ● [ISI] instructed EDM Leads to never inform Nathen Barton to that the calls were
- 14 initiated to him on Insurance Supermarket's behalf.
- 15 ● during the telephone solicitation calls EDM Leads initiated to Nathen Barton on [ISI's]
- 16 behalf, EDM Leads never informed Nathen Barton the calls were initiated on [ISI's]
- 17 behalf.
- 18 ● during the telephone solicitation calls EDM Leads initiated to Nathen Barton on [ISI's]
- 19 behalf, EDM Leads never identified themselves.
- 20 ● the telephone solicitation calls EDM Leads initiated to Nathen Barton on [ISI's] behalf
- 21 all used inaccurate caller identification information for the purpose of defrauding Nathen
- 22 Barton.
- 23 ● [ISI] instructed EDM Leads to use inaccurate caller identification information on the
- 24 calls they initiated to Nathen Barton on [ISI's] behalf for the purpose of defrauding
- Nathen Barton.
- [ISI] instructed EDM Leads to use an automatic dialing and announcing device for all
- calls EDM Leads initiated to Nathen Barton on [ISI's] behalf.
- EDM Leads used an automatic dialing and announcing device for all calls EDM Leads
- initiated to Nathen Barton on [ISI's] behalf.

- 1 ● on 12/1/2022 [ISI] knew Nathen Barton did not consent to receive telephone solicitation
2 from [ISI].
- 3 ● from 12/1/2022 to 1/6/2023 [ISI] knew Nathen Barton did not consent to receive
4 telephone solicitation from [ISI].
- 5 ● from 12/1/2022 to 1/6/2023 [ISI] knew Nathen Barton did not consent to receive calls
6 containing artificial voice from [ISI].
- 7 ● on 12/1/2022 [ISI] knew Nathen Barton did not consent to receive telephone solicitation
8 from you containing artificial voice.
- 9 ● from 12/1/2022 to 1/6/2023 you knew Nathen Barton did not consent to receive calls
10 containing prerecorded voice from [ISI].
- 11 ● on 12/1/2022 [ISI] knew Nathen Barton did not consent to receive telephone solicitation
12 from [ISI] containing prerecorded voice.
- 13 ● EDM Leads telephone solicited phone number (469) 347-2139 34 times on [ISI's] behalf.
- 14 ● EDM Leads telephone solicited phone number (469) 347-2139 34 times on [ISI's] behalf
15 from 12/1/2022 to 1/6/2023.

16 They've admitted EDM placed the calls to Mr. Barton on their behalf, Mr. Barton didn't
17 want their calls, and they hired EDM to initiate them anyway.

18 **(2) whether the moving party's failure to timely appear and answer was due to "mistake,
19 inadvertence, surprise, or excusable neglect"**

20 ISI's motion doesn't argue their failure to appear was due inadvertence or surprise, just
21 mistake and excusable neglect. Neither excuse squares with the facts. Mr. Rua says "[a]fter ISI
22 was served with the complaint" he began communicating with co-defendant EDM in January of
23 2025.² Rua dec. ¶2. If true, that conversation took place 313 days after service of process on
24 March 7, 2024 (Sub Number 13 Exhibit A), and 161 days after the August 6th 2024, service of
process (Sub Number 13 Exhibit B). His alleged January 2025 conversation seems prompted by

² ISI speaks of the emails' contents in conclusionary language but dares not show them.

1 the Requests for Admission (Rua dec. ¶3) mailed to ISI’s registered agent on December 18,
2 2024, (Sub Number 24 Exhibit B) rather than a sudden yearning to defend the case.

3 In any event, Mr. Rua’s declaration doesn’t say that prior to June 26, 2025, (474 days
4 after the March 7, 2024, service of process and 324 days after August 6th) EDM gave ISI any
5 reason at all not to appear in court. Rather it was ISI’s own decision to ignore two court
6 summonses and complaints because hundreds of days later after receiving them, their co-
7 defendant supposedly assured ISI the lawsuit was “baseless and nonsensical”. And on their own
8 initiative ISI told the plaintiff it would ignore the summonses [*assume the matter is closed*]
9 unless ISI *hear[s] back from [Mr. Barton]*. Rua dec. ¶4. If Mr. Rua thought EDM or anyone
10 else was going to defend ISI in court, why say he considered the matter closed unless he heard
11 from Mr. Barton again?

12 Nor does Rua’s declaration ¶6 save them. In ¶4 he claims that based on EDM’s initial
13 assurances and direct communication to Mr. Barton, ISI considered the matter closed and they
14 chose not to appear. If ISI thought the matter was closed, why reach out to EDM six months
15 later on June 26 for a status update? Who asks for a status update on a matter they think is
16 closed?

17 Prompted by his June 26, 2025, email, EDM’s CEO informed ISI that the lawsuit was
18 actively being litigated. While others might have been shocked to spend the prior six months
19 thinking the matter was closed and suddenly learning it was actively being litigated, Mr. Rua
20 testified that Mr. English’s email only served to confirm ISI’s belief that *the case was being*
21 *properly managed*, and Mr. Rua went on to testify this revelation from EDM’s part *prevented*
22 *[EDM] from discovering the earlier entry of default*. ¶7. Really? ISI thought the agent they
23 hired to telephone solicit for them was also a crack team of litigation attorneys on the side?

1 ISI is a sophisticated litigant, defending themselves against nine federal court
2 telemarketing lawsuits filed in 2023. Nowhere does Mr. Rua say EDM agreed to defend ISI, or
3 told ISI not to appear, or that ISI didn't need to appear, or in any way implied ISI reasonably
4 thought EDM represented them in this lawsuit. According to Mr. Rua, EDM said they were
5 *handling the matter . . . and expected the case to be dismissed*, but where did EDM claim, imply,
6 or represent they were handling the lawsuit *for ISI*? Or that the lawsuit would be dismissed *for*
7 *ISI*? A sophisticated litigant like ISI could not possibly be under the mistaken belief that EDM –
8 a telemarketer they hired to make solicitation phone calls – was also litigation attorneys going to
9 represent ISI in court and ISI didn't even need to appear.

10 ISI's "mistake" was in thinking that it could ignore the summons and complaint for 313
11 days after the first service, and 161 days after the second. While they blame EDM for not
12 appearing, they already had not appeared for hundreds of days prior to January of 2025 when
13 they claim they first talked to EDM. For all ISI knew, EDM was busy in the lawsuit pinning the
14 liability on ISI. A reasonable defendant would have looked for themselves, and it was
15 unreasonable for ISI – defending itself against nine federal telemarketing lawsuits filed in 2023 –
16 to think that EDM *would* get the lawsuit against ISI dismissed without ISI's appearance.

17 None of this rises to mistake, or excusable neglect under *White*. Even if ISI genuinely
18 believed EDM was somehow going to advocate on ISI's behalf in court, it didn't excuse failing
19 to appear. See *Estate of Stevens* 1999 Wash. App. LEXIS 20, 94 Wn. App. 20, 971 P.2d 58
20 (Served a summons, Ms. Curtis didn't appear and was defaulted – *Curtis believed that Knight, as*
21 *a cotrustee and co-personal representative, would be obligated to act in her best interests* –
22 Curtis moved to vacate the default arguing excusable neglect. The trial court denied the motion.
23 Affirmed on appeal.). See also *Brooks v. Univ. City, Inc.*, 154 Wn. App. 474, 225 P.3d 489, 2010
24 Wash. App. LEXIS 298 (registered agent failing to forward summons not excusable neglect),

1 *Prest v. American Bankers Life* , 79 Wn. App. 93, 900 P.2d 595, 1995 Wash. App. LEXIS 374
2 (summons mislaid not excusable neglect), *MDB Landmark LLC v. Washington*, 2024 Wash.
3 App. LEXIS 1414 (Defendant’s belief that the parties were in negotiations not excusable
4 neglect), *Rivas v. Russell*, 2022 Wash. App. LEXIS 1759 (mistaking a summons as related to
5 another lawsuit not excusable neglect), *In re Dependency of C.M.L.*, 28 Wn. App. 2d 40, 537
6 P.3d 1044, 2023 Wash. App. LEXIS 1647, 2023 WL 5528038 (getting the dates mixed up not
7 excusable neglect) and *re Welfare of S.I.*, 184 Wn. App. 531, 337 P.3d 1114, 2014 Wash. App.
8 LEXIS 2694 (disregard of summons is not excusable neglect).

9 **(3) whether the defendant “acted with due diligence after notice of entry of the default
10 judgment”**

11 ISI did what the Washington State Supreme Court in *Morin* warned against: *ignore the*
12 *summons and complaint . . . and wait for the notice of default judgment before deciding whether*
13 *a defense is worth pursuing*. Yes, as soon as the case went against them for \$109,400 they
14 suddenly wanted to defend on the merits. Would they be here now had Judge Sheldrick awarded
15 Mr. Barton \$500? No, they wanted to have their cake and eat it too.

16 **(4) whether the plaintiff will suffer substantial hardship if the default judgment is vacated.**

17 Sending this case to trial now would be a hardship on Mr. Barton because on 7/1/2025,
18 EDM Leads filed Articles of Termination with the Arizona State government, attesting under
19 oath that *all of its known properties and assets have been applied and distributed*. The main
20 witness in the case has ceased to exist, records and witnesses scattered or lost, and at this late
21 date, quite possibly phone records were deleted according to retention policies.

22 **Conclusion**

23 As their own motion acknowledges, they don’t even get to the White factors because
24 their failure to appear was willful. *White*. Even without this, ISI would have to show both a

1 prima facia meritorious defense and excusable neglect. The defense they tried to muster – EDM
2 didn't telephone solicit Mr. Barton and EDM wasn't our agent – is at odds with their admissions
3 in the case.

4 Nor can they show excusable neglect. ISI was served a summons and complaint not just
5 once, but twice. If they still weren't sure they were being sued, they acknowledged receiving a
6 Request for Admissions which they also blew off. ISI failed to appear in court hundreds of days
7 before Mr. Rua says he communicated with EDM for the first time in January of 2025. And
8 nothing Mr. Rua claims EDM told ISI would have caused any reasonable litigant to skip
9 appearing in court. Let alone ISI who had been sued nine times for illegal telemarketing in the
10 year prior to this lawsuit and was well versed in how to respond to a summons and complaint.

11
12 

13 _____
14 (signed)

October 9, 2025
(Dated)

15
16 Nathen Barton
17 (360) 241 7255
4618 NW 11th Cir
Camas WA 98607