

Honorable David G. Estudillo

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

NATHEN BARTON,

Plaintiff  
v.

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

Defendant(s).

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

MOTION TO DISMISS THE SAME  
COUNTERCLAIM JUST FILED IN  
WASHINGTON STATE SUPERIOR  
COURT

NOTED FOR 10/31/2024

Frivolous claims and defenses have been a frequent topic in this lawsuit of late because the defendants are bent on vexatiously litigating this case as far as they can go. The Amended Complaint in this lawsuit covered calls through December of 2021, but the Defendants continued calling Barton’s 1019 phone number.

On November 14, 2024, Delfgauw was served (Exhibit A) a **second lawsuit** (Exhibit B) for the continued calls from Starter Home Investing Inc. Barton also named a new Delfgauw entity (Education Assistance Inc), and Delfgauw personally.

Today, January 16, 2025, I received an answer and counterclaim (Exhibit C). It purports to be from Mr. Delfgauw acting pro se. Although no address for Mr. Delfgauw was given, it

1 does appear to be our Mr. Delfgauw. The counterclaims are from the same Defendants as this  
2 lawsuit, and they revive the fraud claims this Court dismissed in Dkt 416 (see Exhibit C ¶3.1-  
3 ¶5.3), including the frivolous fraud by non-disclosure claim.

4 This state court counterclaim is frivolous, filed in bad faith, and is intended to circumvent  
5 this Court’s order in Dkt. 416. Barton asks the Court to order that the Defendants dismiss with  
6 prejudice their counterclaims in Exhibit C, and that this Court consider this when deciding  
7 Barton’s motion in Dkt. 419.

8  
9 s/ Nathen Barton

(signed)

January 16, 2025

(Dated)

10  
11 Nathen Barton  
12 (469) 347 2139  
13 4618 NW 11<sup>th</sup> Cir  
14 Camas WA 98607  
15 [FarmersBranch2014@gmail.com](mailto:FarmersBranch2014@gmail.com)

16 **Declaration of Nathen Barton**

17 My name is Nathen Barton and I live at 4618 NW 11<sup>th</sup> Cir, Camas WA 98607. I am over the age  
18 of eighteen, and otherwise competent to be a witness in this matter. Except as expressly set forth  
19 herein, I make this declaration in my personal capacity and based on my personal knowledge.

- 20 1. Exhibit A is a true and accurate copy of a proof of service I received after serving Mr.  
21 Delfgauw the lawsuit in Exhibit B.  
22 2. Exhibit B is a true and accurate copy of a lawsuit I served on Mr. Delfgauw as  
23 evidenced in Exhibit A.  
24 3. Exhibit C is a true and accurate copy of a document served on my wife and I today.

1 I declare under the penalty of perjury under the laws of the State of Washington that the  
2 foregoing statements are true and correct.

3 

4 \_\_\_\_\_  
Signed by Nathen Barton

January 16, 2025

Date

Signed in Camas Washington

Clark County

5  
6  
7  
8 **I. CERTIFICATE OF SERVICE**

9 I hereby certify that on January 16, 2025, I electronically filed the foregoing with the  
10 Clerk of the Court using the Court's CM/ECF System, which will automatically generate a  
11 Notice of Electronic Filing to all parties in the case who are registered users of the CM/ECF  
12 System, which includes the Defendant. The said Notice of Electronic Filing specifically  
13 identifies recipients of electronic notice.

14 /s/ Nathen Barton

15 Nathen Barton

**VERIFIED RETURN OF SERVICE**

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

Case Number: \_\_\_\_\_

Plaintiff: **NATHAN BARTON**  
vs.  
Defendant: **JOSEPH ROBERT DELFGAUW et al**

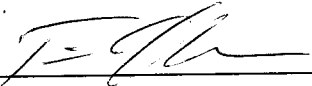
Service Documents:  
Summons and Complaint and Exhibits

For:  
NATHAN BARTON  
4618 NW 11th Cir  
Camas, WA 98607

Received by All Perfect Process on the 5th day of November, 2024 at 7:09 pm to be served on **JOSEPH ROBERT DELFGAUW, 3405 Sw 8th St, CAPE CORAL, FL 33991.**

I, **TIM HAHNE**, being duly sworn, depose and say that on the **14th day of November, 2024 at 7:45 am**, I substitute served the within named party by delivering a true copy of the **Summons and Complaint and Exhibits** with the date and hour of service endorsed thereon by me, to: **JENNIFER DELFGAUW as SPOUSE of JOSEPH ROBERT DELFGAUW** at the address of: **3405 Sw 8th St, CAPE CORAL, FL 33991**, the within named party's usual place of abode. **JENNIFER DELFGAUW** resides therein with the party, who is fifteen (15) years of age or older and informed said person of the contents therein, pursuant to F.S. 48.031 or other state statute as applicable

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served. Under penalty of perjury, I declare that I have read the foregoing Verified Return of Service and that the facts stated therein are true.

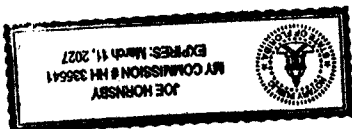
  
\_\_\_\_\_  
**TIM HAHNE**  
CPS 157112

Subscribed and Sworn to before me on the 14th day of November, 2024 by the affiant who is personally known to me.

**All Perfect Process**  
**Po Box 152493**  
**Cape Coral, FL 33915**  
**(239) 691-3256**

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NOTARY PUBLIC

Our Job Serial Number: ROX-2024001680



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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF CLARK**

Nathen Barton,

Plaintiff

v.

Joseph Robert Delfgauw, Starter Home  
Investing, Inc, Education Assistance, Inc, and  
John Doe 1-10

Case No.:

SUMMONS (60 DAYS)

TO THE DEFENDANT: A lawsuit has been started against you in the above entitled court by Nathen Barton, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 60 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what she or he asks for because you have not responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice before a default judgment may be entered.

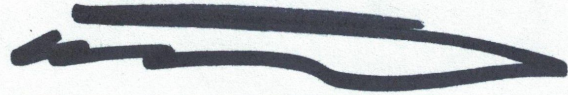
1 You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand  
2 must be in writing and must be served upon the person signing this summons. Within 14 days  
3 after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on  
4 you of this summons and complaint will be void.

5 If you wish to seek the advice of an attorney in this matter, you should do so promptly so  
6 that your written response, if any, may be served on time.

7 This summons is issued pursuant to rule 4 of the Superior Court Civil Rules of the State of  
8 Washington.

9  
10 11/3/2024

11  
12 (dated)

13  
14 

15  
16 (signed)

17  
18 Nathen Barton  
19 (469) 347-2139  
20 4618 NW 11<sup>th</sup> Cir  
21 Camas WA 98607

22  
23 **CLARK COUNTY SUPERIOR COURT**

24 <https://clark.wa.gov/superior-court>

25 (360) 397-2292

26 1200 Franklin Street

27 Vancouver WA 98660

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF CLARK**

Nathen Barton,

Plaintiff  
v.

Joseph Robert Delfgauw, Starter Home  
Investing, Inc, Education Assistance, Inc,  
and John Doe 1-10

Defendants.

Case No.:

ORIGINAL COMPLAINT FOR A  
CIVIL CASE AND INJUNCTIVE  
RELIEF

Jury Trial:  Yes  No

**I. THE NATURE OF THE ACTION**

1. Barton and Defendants Joe Delfgauw (“Delfgauw”) and Starter Home Investing Inc., are or were, depending on the date you read this, involved in a federal court lawsuit in the Western District of Washington in a case styled *Barton v. Delfgauw*, 3:21-cv-05610-DGE.<sup>1</sup>
2. It involved unwanted telephone calls to a (360) XXX-1019 phone number, known as the 1019 number or 1019 phone number.
3. In this second lawsuit, the first one is referred to as Delfgauw I.

<sup>1</sup> <https://dockets.justia.com/docket/washington/wawdce/3:2021cv05610/302688>

- 1 4. Delfgauw I was litigated extensively.
- 2 5. The “Delfgauw 1 Defendants” are Joseph Delfgauw, Xanadu Marketing Inc. (“Xanadu”),
- 3 and Starter Home Investing Inc. (“Starter Home”).
- 4 6. The Delfgauw 1 Defendants countersued Barton.
- 5 7. On 11/1/2024 their counterclaims were dismissed.
- 6 8. The Delfgauw I court granted Barton’s motion for summary judgement on their
- 7 counterclaims.
- 8 9. The docket of Delfgauw 1 is a public record and is quoted extensively in this complaint.
- 9 10. This lawsuit is “Delfgauw II”.
- 10 11. The Delfgauw 1 litigation arose because on April 1, 2021, Xanadu and/or Starter Home
- 11 texted the 1019 number seven times.
- 12 12. This was the first time Xanadu or Starter Home texted the 1019 phone number since Barton
- 13 became the subscriber of the 1019 phone number in August of 2020.
- 14 13. On 0/8/2022, Delfgauw filed or caused to be filed a declaration in Delfgauw I as docket 205.
- 15 14. It said in ¶2: On August 5, 2022, I personally searched the company data base for phone
- 16 number (360) 910-1019. A true and correct copy of the report is attached hereto as Ex. 1.
- 17 15. Ex. 1 included the following information:

18  
19 // Blank //

20  
21  
22 // Blank //

Case 3:21-cv-05610-JRC Document 205-1 Filed 07/08/22 Page 2 of 2

image3.cbcbkbackoffice.com/site/leadcheck/source/phone?source=phone&sourcevalue=3609101019

LinkedIn Site Logo CBC Manage - Adm... CBC Manage - Dal... CBC Manage - Dal... My Network 0 Notifications CBC Manage - Dal... CBC Manage - Dal...

CBC Manage Dashboard Leads Profile Uploads Manage Reports Users Logout (101)

ID	Campaign	Day/Time	First	Last	Phone	Email	Actions
449888701	11473	2022-06-12 14:06:01	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	View
408161203	12130	2021-12-08 15:00:39	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	View
408161197	12130	2021-12-08 15:00:37	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	View
367588486	12130	2021-04-30 15:50:09	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	View
367588483	12130	2021-04-30 15:50:08	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	View
362407192	12130	2021-04-13 17:58:07	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	View
362407183	12130	2021-04-13 17:58:02	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	View
361284364	13690	2021-04-09 18:29:38	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	View
358819495	3824	2021-04-01 14:04:11	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	View

- 16.
17. Ex. 1 contained a line of data dated April 1, 2021.
18. The earliest date of data in Ex. 1 is April 1, 2021.
19. In Ex. 1 the campaign associated with the April 1, 2021, line of data is 3824.
20. Ex. 1 is similar to another Delfgauw I Defendant-generated document in Delfgauw I docket 188-7:

Case 3:21-cv-05610-JRC Document 188-7 Filed 07/18/22 Page 2 of 2

id	campaign_id	first	last	phone	email	ip	datetime
358819495	3824	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	71.238.123.34	4/1/2021 14:04
361284364	13690	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	71.238.123.34	4/9/2021 18:29
362407183	12130	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	8.8.8.8	4/13/2021 17:58
362407192	12130	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	8.8.8.8	4/13/2021 17:58
367588483	12130	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	8.8.8.8	4/30/2021 15:50
367588486	12130	Ivette	Jimenez	3609101019	ivettealfredomartinez@gmail.com	8.8.8.8	4/30/2021 15:50

- 21.
22. On October 17, 2022, Joe Delfgauw was deposed as part of lawsuit *McCrae-Coley v. Starter Home Programs Inc. et al.*<sup>2</sup>
23. Campaign 3824 was a prominent topic in the *McCrae-Coley* case as most of the alleged “opt ins” were from 3824.

<sup>2</sup> <https://dockets.justia.com/docket/north-carolina/ncmcdce/1:2021cv00666/90079>

24. Starter Home was a defendant in *McCrae-Coley* case and those defendants turned over Bates stamped document SHD000003.

25. The following image contains a portion of the Bates stamped document SHD000003.

Starter Homes Defendants SHD000003 ~5

clicker_track_id	lead_id	campaign_id	original_campa	first	last	phone
44647384	369674395	3824	3886	Tammy	Coley	3364913163
44647459	369674395	3824	3824	Tammy	Coley	3364913163
44648221	369674395	3824	3824	Tammy	Coley	3364913163
44649019	369674395	3824	3824	Tammy	Coley	3364913163
44660242	369674395	3824	3824	Tammy	Coley	3364913163
44880919	369674395	3824	3824	Tammy	Coley	3364913163
44881054	369674395	3824	3824	Tammy	Coley	3364913163
45791191	369674395	3824	3824	Tammy	Coley	3364913163

26. The dates of the line items in the image directly above are 5/11/2021.

28. During Delfgauw’s deposition in the *McCrae-Coley* case he was asked about campaign id 3824.

29. Delfgauw testified:

6 A So on the left-hand side, clicker ID  
 7 tracking talks -- basically explains that you  
 8 clicked -- you clicked it and every time a -- system  
 9 shows a click, it tracks a different clicker ID. The  
 10 lead ID was assigned to your phone number and the  
 11 campaign ID is Rent to Own. The original first

31. Later in the Delfgauw’s deposition in the *McCrae-Coley* case Delfgauw was asked: “Okay. So campaign ID, so you said that is -- did you say Rent to Own?”

32. After hearing the question, Delfgauw testified: “Yes, 3824 and 3826 -- I’m sorry -- 3824 is Rent to Own, yes.

1 16 Q Okay. So campaign ID, so you said that  
2 17 is -- did you say Rent to Own?

3 18 A Yes, 3824 and 3826 -- I'm sorry -- 3824 is  
4 19 Rent to Own, yes.

33. 34. Later in the Delfgauw's deposition in the *McCrae-Coley* case Delfgauw was asked: "Okay. Where does it say the Rent to Own Home Finder site? I see the mommiessavingclub.com site. Where does it say the Rent to Own site at 7:54?"

35. After hearing the question, Delfgauw testified: "It doesn't say it anywhere because the only time a website shows up in letter J in any of those reports is -- is when we don't own the site. Because we own Rent to Own Home Finder, we don't have to put our own site on our own report. We just know it from the number, 3824."

36. After this response, Delfgauw was asked: "Okay. So at 7:53, someone signed into the Mommies Savings Club site and then at seven -- one minute later or less, if you look at the seconds, somebody signed into the Rent to Own -- exactly which rent to own site did they sign into?"

37. After hearing the question, Delfgauw testified: "It was renttoownhomefinder.com".

38. In the Delfgauw I lawsuit, Delfgauw stipulated that the April 1, 2021, request for calls stemmed from data entered into a website Xanadu owned educationsschoolmatching.com.

39. In the *McCrae-Coley* case Delfgauw testified that campaign\_id/Campaign 3824 represented website renttoownhomefinder.com.

40. In the Delfgauw I case Delfgauw testified that campaign\_id/Campaign 3824 represented website educationsschoolmatching.com.

41. The data in the SHD000003 of the *McCrae-Coley* case represents that it was created on 5/11/2021.

1 42. That is 40 days after 4/1/2021.

2 43. The reason that 3824 changed from educationschoolmatching com on 4/1/2021 to  
3 renttoownhomefinder.com on 5/11/2021 is because

4 44. The website associated with 3824 did not change between 4/1/2021 to 5/11/2021.

5 45. The reason that 3824 changed from educationschoolmatching com on 4/1/2021 to  
6 renttoownhomefinder.com on 5/11/2021 is because Delfgaw fabricated documents in the  
7 Delfgaw I lawsuit and he forgot his own fake story.

8 46. In Delfgaw I, Docket 395, page 29, ¶15, they said: Before Starter Home Investing Inc sent  
9 the seven text messages to (360) 910-1019 on April 1, 2021, advertising goods or services  
10 from Degree Locate, Get Hope To Own, credit-score-first.com, yourent2own.com, Lawsuit  
11 Winning, Lions Gate Loans, Honest Loans, and Classes & Careers, entities Degree Locate,  
12 Get Hope To Own, credit-scorefirst.com, yourent2own.com, Lawsuit Winning, Lions Gate  
13 Loans, Honest Loans, and Classes & Careers, Starter Home Investing Inc. and Xanadu  
14 Marketing Inc. did not have the invitation or consent from Barton to do so.

15 47. Delfgaw's companies continued to call the same 1019 phone number in Delfgaw I after  
16 the events in Delfgaw I.

17 48. This second lawsuit is referred to as Delfgaw II and it covers calls initiated to the 1019  
18 phone number beyond the events covered in Delfgaw I.

19 49. Defendant Joe Delfgaw owns approximately 60 corporations, and through himself and his  
20 corporations he owns a network of approximately 11,000 websites.

21 50. These 11,000 websites are just cut and paste jobs will no actual information and just generic  
22 boiler plate text, and a set of boxes collecting names, email addresses, and telephone  
23 numbers.

1 51. Ostensibly, these websites operate like sea sponges, waiting for internet traffic to float past  
2 and enter their personal information in exchange for poorly worded text messages linking to  
3 yet more dodgy looking websites.

4 52. Few people would ever find or see these cut and paste websites, let alone enter their personal  
5 information into such websites, so the Defendants pay Affiliate Marketers to bring them  
6 internet traffic.

7 53. Affiliate Marketers get paid for some conversions – someone who came to a defendant  
8 website via a link identifying the web traffic with the affiliate marketer, entered their  
9 personal information, and supposedly agreed to text message and phone call solicitations.

10 54. Delfgaw explained “Affiliate Marketers” as “it’s a relationship that you have where people  
11 that want visitors to their website actually contract the services of an affiliate marketer to  
12 give them customers, drive traffic to their websites.”

13 55. Delfgaw explained an “opt in” in Delfgaw I as “when someone or something goes to a  
14 website and fills out contact information, inviting communications such as text messages,  
15 emails, or phone calls”.<sup>3</sup>

16 56. The Defendants and their Affiliate Marketers form a symbiotic relationship – the Affiliate  
17 Marketers use spam bots or click farms or sources of human labor to fill out the forms on  
18 these cut and paste websites and fraudulently claim other people agreed to receive phone  
19 call solicitations on behalf of the unwitting actual owners of the phone numbers.

20 57. They each know their role – the Affiliate Marketer creates the fraudulent consents,  
21 Delfgaw and his companies convert the phone calls to money, and no questions asked  
22 money flows back to the Affiliate Marketer.

23  
24 <sup>3</sup> Delfgaw I, docket 394, 3:15-16.

1 58. The Affiliate Marketer is happy – he gets paid. The Defendants are happy – they have  
2 another “customer” entered into their database!

3 59. The Defendants know full well the scam. On a BBB webpage dedicated to the Defendants  
4 (“Lending Cloud 365), on 4/22/2021 a customer complained about getting a bunch of text  
5 messages.<sup>4</sup>

6 60. The Defendants responded:

7 61. “If Ms. \*\*\*\*\* information was provided by accident or by someone impersonating  
8 her the company would have no way of knowing that.”  
9

10  
11 // Blank //

12  
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23  
24 <sup>4</sup> <https://www.bbb.org/us/mi/grand-rapids/profile/loans/lending-cloud-365-0372-38227617>

**Most Recent Customer Review**



L.H.



04/22/2021

Sent me a bunch of texts saying I applied for a loan, along with a link on each of the 7 messages they sent me. I didn't click on any since it could easily be smishing. Short code is 33959 , incase anyone else gets these texts. I'm in California, even if I was in the market (which I'm not), why would I borrow with someone in Michigan.



**Lending Cloud 365 Response**

05/03/2021

Lending Cloud 365 obtains consumer contact information that has been provided by the consumer on company website. If Ms. \*\*\*\*\* information was provided by accident or by someone impersonating her the company would have no way of knowing that. Never-the-less, the company apologizes for any inconvenience this may have caused and Ms. \*\*\*\*\* information will be removed from the company database.

- 62.
- 63. This is correct because the Defendants created their websites for exactly this affect – anyone can enter anyone else’s information into their websites because the Defendants do absolutely nothing to verify the identity of the person entering the information into the website.
- 64. And they do absolutely nothing to verify the person in possession and control of the phone is the person entering the information into the website.

1 65. All of the Delfgauw 1 Defendants stipulated to this and other facts in Delfgauw 1 Docket  
2 378.

3 66. Delfgauw’s attorney entered Delfgauw 1 Docket 378 into the Delfgauw I court’s docket.

4 67. Barton did not enter Delfgauw 1 Docket 378 into the Delfgauw I court’s docket.

5 68. The Delfgauw I Defendants said in Delfgauw 1 docket 378 (“Docket 378 Stipulated Facts”):  
6 “All Parties In This Litigation Stipulate to the Following Facts”.

7 69. The Delfgauw I court relied on the Docket 378 Stipulated Facts to dismiss the Delfgauw I  
8 Defendants’ claims against Barton in Delfgauw I.

9 70. The Delfgauw I court said in Delfgauw I docket 416, page 4, lines 2-4: “Because the Court  
10 believes that the joint stipulations and Defendants’ admissions will make it impossible for  
11 Defendants to carry their burden of proof on their counterclaim at trial, the Court GRANTS  
12 the motion for summary judgement.”

13 71. The Delfgauw I court said in Delfgauw I docket 416, page 5, lines 5-7: “Because of  
14 Defendant/Counterclaimant’s stipulations and admissions, and their lack of independently  
15 supporting evidence, the Court finds that there is no longer a triable jury question as to  
16 common law fraud.”

17 72. The Delfgauw I court said in Delfgauw I docket 416, page 6, lines 12-13: “they [the  
18 Delfgauw I Defendants] do not claim that the stipulation is itself fraudulent or inaccurate.”

19 73. The Delfgauw I court said in Delfgauw I docket 416, page 6, lines 12-13: “Thus, the Court  
20 will treat the stipulation as a binding statement of undisputed facts for trial and for the  
21 purposes of this motion.”

22 74. The Delfgauw I court said in Delfgauw I docket 416, page 6, lines 21-22: “stipulations of  
23 fact, when fairly entered into, are controlling on the participating parties and on the trier of  
24 fact without further evidence”.

1 75. The Delfgauw I court said in Delfgauw I docket 416, page 7, lines 4-6: ‘The fraud  
2 counterclaim is a state law claim, and the Supreme Court of Washington has likewise  
3 recognized that “factual stipulations are generally binding on the parties and on the court.”’

4 76. The Delfgauw I court said in Delfgauw I docket 416, page 9, lines 1-2: “Even setting aside  
5 the stipulations, Defendants/Counterclaimants have failed to show that there is a genuine  
6 dispute of material fact by reference to admissible evidence.”.

7 77. Delfgauw I docket 378 said: “Either party may refer to one or more of the following  
8 statements to withdraw these facts from contention.”

9 78. Delfgauw 1 docket 378 stipulated fact ¶1 said: The Defendants sent the content of the  
10 following text messages to telephone number (360) 910-1019 from the SMS short codes  
11 indicated as follows:

12 The text messages shown in NB307 on 4/1/2021  
13 The text messages shown in NB308 on 4/1/2021  
14 The text message dated 4/12/2021 shown in NB337  
15 The text message dated 7/13/2021 shown in NB343  
16 The text message dated 8/11/2023 shown in NB347  
17 The text message dated 9/21/2021 shown in NB355  
18 The text message dated 11/17/2021 shown in NB362  
19 The text message dated 11/23/2021 shown in NB365  
20 The text message dated 4/5/2021 shown in NB385  
21 The text message dated 4/8/2021 shown in NB385  
22 The text message dated 6/11/2021 shown in NB395  
23 The text message dated 8/4/2021 shown in NB400  
24 The text messages dated 11/17/2021 shown in NB410  
The text messages shown in NB412 on 11/17/2024

79. The Delfgauw 1 Defendants stipulated that they sent the 1019 phone number text messages  
on 9/21/2021, 11/17/2021, and 11/23/2021.

80. Delfgauw 1 docket 378 stipulated fact ¶2 said: The person who used and controlled the  
email address ivettealfredomartinez@gmail.com is the person who caused the Defendants  
the injury the Defendants allege in their counter claim.

1 81. Barton never controlled the email address ivettealfredomartinez@gmail.com.

2 82. Barton never had the password for email address ivettealfredomartinez@gmail.com.

3 83. Delfgaw 1 docket 378 stipulated fact ¶3 said: Joeseph Deflgaw is the founder and owner  
4 of Validiform.

5 84. Delfgaw 1 docket 378 stipulated fact ¶4 said: During the times relevant to this lawsuit  
6 Joeseph Deflgaw and the entities under Joeseph Deflgaw’s control simply assumed all the  
7 information submitted during the “opt in” process was correct, and they didn’t take any  
8 actions to verify the accuracy of the “opt in” information submitted. Likewise, they took no  
9 steps to verify if the owner of the email address ivettealfredomartinez@gmail.com was the  
10 same person who had use of the phone number (360) 910 1019.

11 85. Delfgaw 1 docket 378 stipulated fact ¶5 said: Xanadu could have verified that the person in  
12 possession of the phone wanted Xanadu’s text messages by requiring them to respond to a  
13 question to complete the ‘opt in’, or asking them to reply back with a specified response to  
14 confirm the “opt in”.

15 86. Delfgaw 1 docket 378 stipulated fact ¶6 said: The language the Defendants’ claim Barton  
16 agreed to on educationschoolmatching.com by checking a box and clicking submit said  
17 entering in a phone number or email address on the website was only consenting to receive  
18 messages from a specific list of partners. None of the text messages Starter Home or Xanadu  
19 sent to (360) 910 1019 was from this specific list of partners.

20 87. Delfgaw 1 docket 378 stipulated fact ¶7 said: Before Starter Home Investing Inc sent the  
21 seven text messages to (360) 910-1019 on April 1, 2021, advertising goods or services from  
22 Degree Locate, Get Hope To Own, credit-scorefirst.com, yourent2own.com, Lawsuit  
23 Winning, Lions Gate Loans, Honest Loans, and Classes & Careers, entities Degree Locate,  
24 Get Hope To Own, credit-score-first.com, yourent2own.com, Lawsuit Winning, Lions Gate

1 Loans, Honest Loans, and Classes & Careers, Starter Home Investing Inc. and Xanadu  
2 Marketing Inc. did not have the invitation or consent from Barton to do so.

3 88. Delfgaww 1 docket 378 stipulated fact ¶8 said: None of the text messages the Defendants  
4 sent to (360) 910-1019 were a special sales promotion.

5 89. Delfgaww 1 docket 378 stipulated fact ¶9 said: During all times relevant to this Lawsuit,  
6 Xanadu Marketing Inc owned the websites renttoownhomefinder.com.

7 XanaduMarketing.com, houses-into-homes.com apexpagebuilder.com, rounduplawsuit.live,  
8 theultimaterenttoownhomeprogram.com, completetheseoffers.com,

9 cloudbasedcampaigns.com educationschoolmatching.com, assistingrenters.com,

10 thetaxaxe.org. increasemyscore.live, thecardinalprogram.com, gethopetown.com, and

11 roundupfiler.live.

12 90. Delfgaww 1 docket 378 stipulated fact ¶10 said: During all times relevant to this lawsuit,  
13 only Xanadu Marketing Inc. or Starter Homes Investing Inc. sent text messages using SMS  
14 short codes 365365, 46758, 33959, or 94657.

15 91. Delfgaww 1 docket 378 stipulated fact ¶11 said: During all times relevant to this lawsuit  
16 Affiliate marketers could earn money from ‘opt ins on EducationSchoolMatching.com.

17 92. Delfgaww 1 docket 378 stipulated fact ¶12 said: During all times relevant to this lawsuit  
18 Educationschoolmatching.com collected the type of computer and the operating system of  
19 the device that is used to “opt in” on the website.

20 93. Delfgaww 1 docket 378 stipulated fact ¶13 said: Apex Page Builder was an unregistered  
21 trade name used by Xanadu Marketing Inc that was officially registered on 11/30/2021.

22 94. Delfgaww 1 docket 378 stipulated fact ¶14 said: The first time Joeseeph Deflgaww or entities  
23 under Joeseeph Delfgaww’s control registered the doing-business-as name Lending Cloud  
24 Alerts was on 11/2/2021.

1 95. Delfgauw 1 docket 378 stipulated fact ¶15 said: Xanadu Marketing Inc. uses the URL  
2 xanadumarketing.outgrow.com.

3 96. Delfgauw 1 docket 378 stipulated fact ¶16 said: An entity under Joeseeph Deflgauw’s control  
4 paid an Affiliate Marketer for at least one “opt the Defendants claim Barton is responsible  
5 for.

6 97. Delfgauw 1 docket 378 stipulated fact ¶17 said: IP address 8.8.8.8 is the IP address of a  
7 Google Public DNS server.

8 98. Delfgauw 1 docket 378 stipulated fact ¶18 said: The opt-ins of phone number (360) 910-  
9 1019 on educationschoolmatching.com during the times relevant to this lawsuit were from  
10 IP addresses 71.238.123.34 and 8.8.8.8 and the same entity did them both.

11 99. Delfgauw 1 docket 378 stipulated fact ¶19 said: No text message or phone call Joeseeph  
12 Delfgauw or an entity under Joeseeph Delfgauw’s control initiated to (360) 360 1019  
13 between March 29, 2021, and December 1, 2021, advertised products or services from  
14 educationschoolmatching.com, or was from educationschoolmatching.com.

15 100.Delfgauw 1 docket 378 stipulated fact ¶20 said: The Defendants have no information that it  
16 was not a form spammer who “opted in” and caused their injury.

17 101.Delfgauw 1 docket 378 stipulated fact ¶21 said: The Defendants did not have a Federal  
18 Trade Commission Subscription Account Number during the year 2021.

19 102.Delfgauw 1 docket 378 stipulated fact ¶22 said: During the times relevant to this lawsuit, an  
20 “opt in” on educationschoolmatching.com that provided a telephone number and email  
21 address would result in the email address receiving one or more emails and each email  
22 contained clickable links.

23 103.Delfgauw 1 docket 378 stipulated fact ¶23 said: During all times relevant to this lawsuit  
24 there was no contract between Starter Home Investing Inc. and Xanadu Marking Inc.

1 104.Delfgauw 1 docket 378 stipulated fact ¶24 said: Joeseph Delfgauw is aware that entities  
2 under his control send text message solicitations.

3 105.Delfgauw 1 docket 378 stipulated fact ¶25 said: Apex Page Builder was an unregistered  
4 trade name used by Xanadu Marketing Inc that was officially registered on 11/30/2021.

5 106.Delfgauw 1 docket 378 stipulated fact ¶26 said: Tort Experts (LGNB LLC) did not allow  
6 Xanadu Marketing Inc. to SMS anymore because Tort Experts (LGNB LLC) does not let  
7 any entity solicit Tort Experts (LGNB LLC) products or services via SMS messages.

8 107.Delfgauw 1 docket 378 stipulated fact ¶27 said: The names LENDING CLOUD HOMES  
9 and LENDING CLOUD AUTO are the only other names Starter Home is allowed to do  
10 business under.

11 108.Delfgauw 1 docket 378 stipulated fact ¶28 said: Joe Delfgauw is actively involved in  
12 managing Starter Homes Investing Inc.

13 109.Delfgauw 1 docket 378 stipulated fact ¶29 said: Text messages Starter Home Investing Inc  
14 sends sometimes contain an internet link to xanadutracking.com or  
15 xanaduemarketing.outgrow.com.

16 110.Delfgauw 1 docket 378 stipulated fact ¶30 said: The Dialer data was deleted to deprive  
17 Barton of the evidence.

18 111.In Delfgauw I, Starter Home Investing Inc. (“Starter Home”) was asked to list the date of  
19 every phone call or text message “you or an entity under your control initiated to (360) 910-  
20 1019 between 3/29/2021 and 1/23/2022” and they answered: “Unknown due to dialer update  
21 that resulted in loss of data.”

22  
23 // Blank //

18	15	<b><u>INTERROGATORY NO. 1:</u></b>
19	16	List the date of every phone call or text message you or an entity under your control initiated to
20	17	(360) 910 1019 between 3/29/2021 and 1/23/2022.
21	18	<b><u>ANSWER:</u></b>

1	19	<b>RESPONSE TO INTERROGATORY NO. 1:</b>
2	20	Defendant objects to Interrogatory No. 1. as irrelevant and seeks information regarding
3	21	communications not plead in Plaintiff's complaint or amended complaint. The only
4	22	communications relevant are the eight alleged by Plaintiff. For each alleged communication, Plaintiff himself has provided content and date.

*Donna Johnson*

**AMENDED RESPONSE: Unknown due to dialer update that resulted in loss of data.**

112.

113. In Delfgauw I, Starter Home was asked to give a true and accurate copy of the contents of each text message they sent to the 1019 phone number. They answered: "Unknown due to dialer update that resulted in loss of data."

7	23	<b><u>INTERROGATORY NO. 2:</u></b>
8	1	For every text message you identified in Interrogatory No. 1 above, give a true and accurate
9	2	copy of the contents of the text message.
10	3	<b><u>ANSWER:</u></b>

11	1	<b>RESPONSE TO INTERROGATORY NO. 2:</b>
12	2	Defendant objects to Interrogatory No. 2. as irrelevant and seeks information regarding
13	3	communications not plead in Plaintiff's complaint or amended complaint. The only communications relevant are the eight alleged by Plaintiff. For each alleged communication, Plaintiff himself has provided content and date.

*Donna Johnson*

**AMENDED RESPONSE: Unknown due to dialer update that resulted in loss of data.**

114. The Delfgauw 1 Defendants deleted the dialer data to deprive Barton of the call records.

1 115.Delfgauw 1 docket 378 stipulated fact ¶31 said: Domain xanadumarketing.outgrow.us is  
2 used by Xanadu Marketing Inc.

3 116.Delfgauw 1 docket 378 stipulated fact ¶32 said: The doing business as name "DIAL  
4 FUSION" is registered to Xanadu Marketing Inc.

5 117.Delfgauw 1 docket 378 stipulated fact ¶33 said: Joseph Delfgauw or entities under his  
6 control have some ownership of The Mountaintop Affiliate Network.

7 118.Delfgauw 1 docket 378 stipulated fact ¶34 said: The Mountaintop Affiliate Network has  
8 some ownership of entities under Delfgauw's control.

9 119.Delfgauw 1 docket 378 stipulated fact ¶35 said: Joseph Delfgauw knew entities under his  
10 control were using SMS messages to solicit Tort Expert (LGNB LLC) products or services.

11 120.Delfgauw 1 docket 378 stipulated fact ¶36 said: Joseph Delfgauw is the President of  
12 MOUNTAINTOP AFFILIATE NETWORK INC.

13 121.Delfgauw 1 docket 378 stipulated fact ¶37 said: Most of the time Joseph Delfgauw spends  
14 working is spent with entities under Joseph Delfgauw's control whose primary revenue  
15 stream is from sending text message solicitation or phone call solicitation.

16 122.Delfgauw 1 docket 378 stipulated fact ¶38 said: Joseph Delfgauw was aware that the  
17 contract between Tort Experts (LGNB LLC) and Mountaintop Affiliate Network Inc.  
18 prohibited using SMS messages to solicit Tort Experts (LGNB LLC) products or services.

19 123.Delfgauw 1 docket 378 stipulated fact ¶39 said: Joseph Delfgauw personally approved of  
20 entities under Joseph Delfgauw's control using SMS messages to solicit Tort Expert (LGNB  
21 LLC) products or services.

22 124.Delfgauw 1 docket 378 stipulated fact ¶40 said: Ivette Jimenez was a previous subscriber of  
23 the 1019 number.

1 125. In Delfgauw 1 docket 394 page 3 “ADMITTED FACTS” the Delfgauw 1 Defendants said:  
2 Joe Delfgauw is the owner and president of two marketing businesses, Starter Home  
3 Investing Inc and Xanadu Marketing Inc. We will call them Xanadu and Starter Home. Mr.  
4 Delfgauw actively controls the day-to-day operations of Xanadu and Starter Home. On April  
5 1, 2021, the name Ivette Jimenez, the phone number (360) 910-1019, and the email address  
6 ivettealfredomartinez@gmail.com were entered into a website owned by Xanadu,  
7 educationschoolmatching.com. Ivette Jimenez, also known as Ivette Marquez, was a  
8 previous subscriber of the 1019 number and ivettealfredomartinez@gmail.com is her email  
9 address. Based on the terms presented on the website, the person or thing entering the  
10 information consented to up to three messages per week from the website and a specific list  
11 of partners. None of the calls Xanadu or Starter Home placed to the 1019 phone number  
12 were from the website or this list of partners. Websites may ask for a person's name, email  
13 address and phone number. In the telemarketing world an opt-in is when someone or  
14 something goes to a website and fills out contact information, inviting communications such  
15 as text messages, emails, or phone calls.

16 The calls the Defendants initiated to the 1019 phone number were based on an opt in  
17 from website educationschoolmatching.com. on April 1, 2021. The opt-ins indicate one or  
18 more fields were filled in which represented consenting to receiving communications. Later  
19 that day April 1, 2021, Starter Home used a computer and software called a Dialer to send  
20 seven separate text messages to (360) 910-1019 that were advertising financial loans, rent-  
21 to-own housing, credit improvement services, and for profit going-back-to-school-services  
22 from Degree Locate, Get Hope To Own, credit- scorefirst.com, yourent2own.com, Lawsuit  
23 Winning, Lions Gate Loans, Honest Loans, and Classes & Careers

24 Some specific examples are:

1 “Here are 2, 3, and 4 bedroom rent to own homes!”

2 “Great News! Based on your score and profile, you should get approved for zero down  
3 home loans here”

4 “Each person that used Round Up can receive \$15,000 in compensation. Claims yours  
5 below.”

6 “We need your credit score, looks like you may qualify for zero down. Also we just  
7 emailed you more info.”

8 Over the next months, Starter Home continued advertising these and other goods and  
9 services to the 1019 number via text messages.

10 During all times relevant, Nathen Barton was the subscriber of the 1019 number, and he  
11 put the 1019 number on the Federal Trade Commission’s national do not call list on  
12 February 16, 2021. He filed this lawsuit against Joe Delfgauw, Starter Home and Xanadu on  
13 August 23, 2021. Joe Delfgauw was served on September 7, 2021, and the 1019 number was  
14 removed from Starter Home’s and Xanadu’s calling lists the same day.

15 The IP address used to submit the information on educationschoolmatching.com April  
16 1, 2021, was 71.238.123.34. After April 1, 2021, the same name, Ivette Jimenez, the same  
17 phone number, (360) 910-1019, and the same email address,  
18 ivettealfredomartinez@gmail.com was again entered into the website  
19 educationschoolmatching.com on a, using IP address 8.8.8.8, and again consented to up to  
20 three messages per week from the website.

21 126. In Delfgauw 1, when Starter Home Investing Inc. (“Starter Home”) was asked “What steps  
22 did Joe Delfgauw take to cause you to stop calling (360) 910 1019”, Starter Home said  
23  
24

under penalty of perjury:

20

21 3 INTERROGATORY NO. 10:

22 4 What steps did Joe Delfgauw take to cause you to stop calling or texting (360) 910 1019.

23 5 ANSWER:

24

DEFENDANT AND COUNTERPLAINTIFF'S  
 AMENDED RESPONSES TO DISCOVERY - 6 / 49  
 CASE NO 3:21-CV-05610-JRC

1

2 RESPONSE TO INTERROGATORY 10:

3 Defendant objects to Interrogatory No. 10. The judicial system is serious institution

4 and there is no place for immature game playing regardless how funny Plaintiff may

5 think he is. Plaintiff filed this lawsuit and claimed he did not give consent, thus

6 ending marketing communication between the parties. Such inquiry by Plaintiff is i

7 nsulting to all parties and the court. *Benna J. [Signature]*

8

9 **AMENDED RESPONSE:** Upon receiving plaintiff's lawsuit, the plaintiff's number was

10 removed from the database. Despite Plaintiff alleging to have received multiple text

11 messages from which Plaintiff could have responded and ended all communication, this

12 was the first time Defendant was made aware of Plaintiffs desire to no longer receive

13 communications.

127. Starter Home was then asked what date it took that action, and it responded under oath


“The day Defendant was served. Unsure of exact date.”

128. The Defendants have seen and responded to many complaints about unsolicited text

messages over the last years and Defendants have done nothing to make submitting


fraudulent information more difficult.

129. Even after seeing and responding to complaint after complaint.

2  **Initial Complaint** **Complaint Type:** Problems with Product/Service  
3 05/18/2022 **Status:** Unanswered ?


4 Every single day for over a year, I get hundreds of calls and emails about recruitment  
5 funding. I have requested them to take my name off the list over and over and over and over  
6 but lend-could.com does not stop. I also get similar message from other emails like  
7 \*\*\*\*\* --- can you please help stop this barrage of emails and phone calls?

130.

6  **Initial Complaint** **Complaint Type:** Billing/Collection Issues  
7 10/23/2021 **Status:** Resolved ?


8 Starting week of 11 October 2021. I started receiving calls, sometimes 2 or 3 per day, on my  
9 landline from this place. (Identifying as "Cloud Based Personal Loans, same address) I am on  
10 a do not call list, but granted the number may have been given out by a previous tenant.  
11 Regardless, every caller has been told to not call again. Every caller has been insistent on  
12 selling me their product and getting my personal information. Every caller has been asked  
13 (with increasing rudeness) to not call the number again. A caller who identified himself as  
14 "\*\*\*\*" said (literally), "The company will continue calling until they get the information they are  
15 looking for". I do not associate with nor do business with these types. Nor will I in the future.

131.

12  **Initial Complaint** **Complaint Type:** Problems with Product/Service  
13 06/10/2021 **Status:** Unanswered ?


14 Keep getting spam text messages with no way to stop

132.

15  **Initial Complaint** **Complaint Type:** Problems with Product/Service  
16 04/21/2021 **Status:** Answered ?

17 I receive multiple spam text messages every day from this number even though I have them  
18 blocked. I did not sign up for any of these services and they disrupt my life. Please remove  
19 me from any and all contact lists with this company.

133.

19  **Initial Complaint** **Complaint Type:** Problems with Product/Service  
20 04/09/2021 **Status:** Resolved ?

21 Started this morning April 9 at 1:02 am, from 339-59. Lovely to get woken up by four different  
22 texts. The first at 1:02 am was saying that I just filled out a "Rent to Own or HomeBuyer form",  
23 which I of course did not do, and linked to some scam looking site. The second at 1:07 am  
24 was giving me yet another (different) scam looking site for "2, 3, and 4 Bedroom Rent to Own  
Homes!". The third at 1:12 am was asking if I had received my credit score in regards to  
getting a down payment to another completely different scam site. The fourth, and so far  
final text was at 1:17 am for me to take a renters quiz to see if I "Qualify for up to \$6000 in  
Grants" and linked to yet another scam site. I certainly never gave out my information to  
these people. I shouldn't be having to waste my time at 1:30 am filing a complaint, I should  
be asleep. This is ridiculous.

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135.



**Initial Complaint**  
02/26/2021

**Complaint Type:** Advertising/Sales Issues  
**Status:** Answered ?

Unsolicited text messages. Multiple texts in a matter of minutes asking for information on a loan. I have never even heard of this company. This company sent me unsolicited text messages in multiples in a matter of minutes. I have never heard of this company nor have I ever requested loan information of any sort from them. I do not wish to be contacted by them nor do I wish for them to have any of my information.

136.



**Initial Complaint**  
02/15/2021

**Complaint Type:** Billing/Collection Issues  
**Status:** Answered ?

Loan application texts from \*\*\*\*\* that I have nothing to do with. I keep getting back to back texts from \*\*\*\*\* about loan request that I have not had anything to do with. I do not know how my number is ever associated with this, but I need this to stop. This has all started today around 6:30am and my information needs to be taken out from this company.

137.



**Initial Complaint**  
02/10/2021

**Complaint Type:** Advertising/Sales Issues  
**Status:** Answered ?

Never interacted with this company but somehow ended up with 5 spam link riddled texts in 10 minutes. Unblockable number too. Stop texting me. Somehow ended up bombarded by spam link texts from \*\*\*\*\* at 8:40pm which is apparently linked to this company. Would've just blocked them and moved on, but apparently they can't be blocked. 5 texts in 10 minutes, all with scammy links attached. Remove me from your lists and stop contacting me.

138.



**Initial Complaint**  
02/08/2021

**Complaint Type:** Advertising/Sales Issues  
**Status:** Answered ?

I have been receiving unsolicited text messages regarding loans. I have neither inquired or even looked into a loan with any company. I have been receiving text messages from the phone number \*\*\*\*\* with messages like: "Looks like there is one more step needed for your personal loan approval", "Based on your loan application and our search, this lender should approve your loan request", "Because you wanted a personal loan, let's see if we can get you \$6345 in education grants", etc. I have not inquired, applied, or even considered any type of loan from this company or any others. Seeing as I have not taken a single step towards looking into any type of loan, it's a clear indication of a phishing scam and one I am unwilling to engage with.

139.




**Initial Complaint**  
01/24/2021

**Complaint Type:** Problems with Product/Service  
**Status:** Resolved ?

I am receiving multiple unsolicited text messages. I have a never requested info from this company. Texts asking for info to get a loan. I am receiving multiple unsolicited text messages from this company asking me for info to complete a loan application or to get a credit card. I have never given out my phone number to them. 1/24/21 received 4 text messages all within 5 minutes from \*\*\*\*\*.


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 **Initial Complaint**  
01/21/2021


**Complaint Type:** Advertising/Sales Issues  
**Status:** Answered ?

Unsolicited context- private information sold for phishing scams. I have been receiving multiple texts from this company Phone Id \*\*\*\* Texts saying- "You just filled out our \*\*\*\*\* or \*\*\*\*\* form! Let's get you approved!" I did not give these people my information nor did I consent to be contacted. I am pretty sure it is all a scam for loans.

 **Initial Complaint**  
12/28/2020


**Complaint Type:** Problems with Product/Service  
**Status:** Answered ?

Receiving unsolicited texts about loans saying i filled out forms or asking me to start a bank account. All of which reads like phishing scams. Receiving unsolicited texts about loans saying i filled out forms or asking me to start a bank account. All of which reads like phishing scams. 3 texts came in under 1 hour. None of my credit monitoring services indicated any inquiry was made. Texts make me uneasy like this company is in the business of identity theft

 **Initial Complaint**  
11/29/2020


**Complaint Type:** Advertising/Sales Issues  
**Status:** Answered ?

Randomly starting getting text from \*\*\*\*\*! At 9:30pm and they continued. I do not want to receive texts from these people! Take me off your list Stop texting me

 **Initial Complaint**  
11/12/2020

**Complaint Type:** Problems with Product/Service  
**Status:** Resolved ?

Constant unwanted or unsolicited texts and emails this company sold my info to scammers who bombard and phish me constantly. You should be closed as a scam and phishing ring. I halfway filled out one application two years ago, and when you started bombarding me with emails until I threatened you with lawsuit. Contacting my text email and phone wasn't good enough, but you sold my information and probably others to scammers who are constantly phishing me for payday loans, and attempts to extort me for money. It's you I know it is. Not only should you be put out of business you should be criminally charged.


 **Initial Complaint**  
11/09/2020

**Complaint Type:** Problems with Product/Service  
**Status:** Answered ?

I am receiving multiple unsolicited text messages. I have a never associates myself with this company. I have never given out my phone number to them. 11/9/20 I received 3 text messages all within 5 minutes

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145.

 **Initial Complaint**  
11/06/2020

**Complaint Type:** Advertising/Sales Issues  
**Status:** Answered ?

I've never applied for a loan with this company they keep calling and texting my cell phone congrats I've been approved one step left. Not sure how they got my information or phone number as I'm on the do not call list as it is a concern to receive these texts as I do not want a loan or my personal information on the web or with them I've blocked there texts then I get 000000 unknown calls and strange calls different numbers my phone sends them to voicemail and I do not answer as I wish they would stop


146.

 **Initial Complaint**  
11/04/2020

**Complaint Type:** Problems with Product/Service  
**Status:** Resolved ?

I keep getting text messages from # \*\*\*\*\*aying I filled out a Rent-to-own form but did not fill out a form. I have received at least three text messages from \*\*\*\*\*. Two read: "You just filled out our Rent to Own or HomeBuyer form! Let's get you Approved! Start here <http://buyzerodowns.com>." The most recent reads: "Here are 3, 4 and 5 Bedroom Rent to Own Homes! I did not fill out any form and did not give consent for receiving text messages or any communication.

147.

 **Initial Complaint**  
09/10/2020

**Complaint Type:** Problems with Product/Service  
**Status:** Resolved ?

Getting repeated, unsolicited, texts day and night. Blocking and deleting only seem to make it worse. Scammers. Getting repeated, unsolicited, texts day and night. Blocking and deleting only seem to make it worse. The repetitious texts are intended to have you eventually make a mistake and press one of their links, god only knows what it would do.

148.

 **Initial Complaint**  
06/25/2020

**Complaint Type:** Advertising/Sales Issues  
**Status:** Answered ?

Receiving text messages late at night. I keep getting text messages from #\*\*\*\*\* late at night. They read as follows: You just filled out our Rent to Own or HomeBuyer form! Let's get you Approved! Start here \*\*\*\*\* Here are 3, 4 and 5 Bedroom Rent to Own Homes! \*\*\*\*\* P.S. I have never filled out any forms!

149.

 **Initial Complaint**  
02/12/2020

**Complaint Type:** Advertising/Sales Issues  
**Status:** Answered ?

Unwanted text message spam advertising free credit report. NA



**Initial Complaint**  
01/08/2020

**Complaint Type:** Problems with Product/Service  
**Status:** Answered

I'm receiving unsolicited texts from # \*\*\*\*\* claiming to be from this company about a change in my credit score. They are spam or phishing despite my number being on the do not call registry. I monitor my credit very closely and don't need them or any other outfit sending unsolicited correspondence to me. I believe no unsolicited company should have access to my credit in the 1st place.

150.

**II. THE PARTIES TO THIS COMPLAINT**

151. Plaintiff Nathen Barton is a natural person resides at 4618 NW 11<sup>th</sup> St, Camas, Washington 98607.

152. Defendant Joseph Robert Delfgauw (“Delfgauw”) is a Florida resident with address 3405 SW 8<sup>th</sup> St., Cape Coral FL 33991.

153. This is the same Delfgauw as in the Delfgauw I litigation.

154. Defendant Starter Home Investing Inc. (“Starter Home”) is a Michigan corporation with principal address 956 3 Mile Road NW, Grand Rapids MI 49544.

155. This is the same Starter Home as in the Delfgauw I litigation.

156. Defendant Education Assistance, Inc. (“EAI”) is a Michigan corporation with principal address 956 3 Mile Road NW, Grand Rapids MI 49544.

157. John Doe 1-10 are currently unknown entities who participated in initiating the illegal calls.

**III. BASIS FOR JURISDICTION**

158. Plaintiff Nathen Barton is a natural person and resident of Clark County, Washington. All the specific phone calls alleged in this complaint were received in Clark County, Washington State, in and since the year 2021.

159. Jurisdiction in this court is correct because of where Plaintiff resides, and his residence is a nexus where Plaintiff suffered personal injury and invasion of privacy at the hands of the Defendants.

1 160. During the calls the Defendants knew Plaintiff resided in Clark County, WA, and they  
2 continued calling.

3 161. Delfgauw was in court for the Delfgauw I lawsuit at the time the corporations he manages  
4 initiated these calls to the 1019 phone number.

5 162. Further, by calling a (360) area code phone number they expected to be subject to this  
6 jurisdiction.

7 163. As the telephone callers, they avail themselves of doing business in this County, and they  
8 should expect to be subject to the jurisdiction of this Court.

9 164. Washington State has long held that a party availing themselves of the privilege of  
10 conducting activities inside of Washington State is subject to the jurisdiction of Washington  
11 State. See *Cofinco of Seattle, Ltd. v. Weiss*, 25 Wash.App. 195, 196, 605 P.2d 794 (1980).

12 165. The Defendants need not physically visit Washington.

13 166. The internet and the telephone allow anyone in one state to do business in all others. In a  
14 case decided before “internet” was a word, our Washington Supreme Court recognized that  
15 jurisdiction may be established by “affirmative acts taking place here by which the out-of-  
16 state resident overtly submits to jurisdiction”. *Griffiths & Sprague Stevedoring Co. v.*  
17 *Bayly, Martin & Fay, Inc.*, 71 Wash.2d 679, 684, 430 P.2d 600 (1967) quoting *Quigley v.*  
18 *Spano Crane Sales & Serv., Inc.*, 70 Wn.2d 198, 422 P.2d 512 (1967).

19 167. The Defendants initiated or incentivized others to initiate phone call solicitations to Plaintiff  
20 and other residents of Washington State, and they a significant fraction of the phone calls  
21 would be to Washington State residents, establishing jurisdiction here. *Nixon v. Cohn*, 62  
22 Wn.2d 987, 385 P.2d 305 (1963)).

23 168. Plaintiff is suing in part under federal statute the Telephone Consumer Protection Act of  
24 1991, known as the TCPA, giving rise to a lawsuit that may be brought in Federal Court

1 pursuant to *Mims v. Arrow Fin. Services, LLC*. Venue is proper under 28 U.S.C. §  
2 1391(b)(2) because the telemarketing calls at issue were made into this District.

3 **IV. STATEMENT OF CLAIM**

4 169. Plaintiff was the subscriber of the phone number that received the calls during all times the  
5 calls alleged were received.

6 170. Plaintiff was not reimbursed for the monthly phone line subscription fees.

7 171. Plaintiff used the telephone numbers that received the calls as a residential telephone line.

8 172. The phone was and is on a limited-service plan, with each call, text, or data usage  
9 subtracting from a fixed amount of each available each month.

10 173. Therefore, each ringing call Plaintiff answered has an economic cost.

11 174. Each text message received had an economic cost.

12 175. Plaintiff registered the phone number at issue on the FTC national *do-not-call* registry more  
13 than 31 days before all calls at issue in this Complaint.

14 176. All of Delfgauw I Defendants said in docket 395 page 53: “The parties in this case have  
15 already agreed that the phone number (360) 910-1019 was registered on the FTC’s national  
16 do-not-call registry by the Plaintiff”.

17 177. At no time relevant to this lawsuit did Plaintiff provide his prior express consent to receive  
18 solicitation calls from the Defendants.

19 178. On September 9, 2021, Plaintiff specifically asked the Delfgauw I Defendants to add his  
20 1019 phone number to their *do-not-call* lists.

21 179. On September 9, 2021, Plaintiff specifically asked the Delfgauw I Defendants to stop  
22 soliciting the 1019 phone number.

23 180. Delfgauw said the 1019 phone number was removed from the Delfgauw I Defendants  
24 calling lists on September 9, 2021, or the day after.

1 181. Delfgauw said the 1019 phone number was removed from the Delfgauw I Defendants  
2 database on September 9, 2021, or the day after.

3 182. Starter Home said the 1019 phone number was removed from the Delfgauw I Defendants  
4 calling lists on September 9, 2021, or the day after.

5 183. Starter Home removed the 1019 phone number from its calling lists on September 9, 2021.

6 184. Starter Home removed the 1019 phone number from its database on September 9, 2021.

7 185. Starter Home removed the 1019 phone number from its calling lists on September 10, 2021.

8 186. Starter Home removed the 1019 phone number from its database on September 10, 2021.

9 187. Starter Home removed the 1019 phone number from its calling lists in September of 2021.

10 188. Starter Home removed the 1019 phone number from its database in September of 2021.

11 189. Starter Home said the 1019 phone number was removed from the Delfgauw I Defendants  
12 database on September 9, 2021, or the day after.

13 190. Delfgauw said the 1019 phone number was removed from the Delfgauw I Defendants  
14 calling lists the day he was served the Delfgauw I lawsuit.

15 191. Delfgauw said the 1019 phone number was removed from the Delfgauw I Defendants  
16 database the day he was served the Delfgauw I lawsuit.

17 192. Delfgauw said the 1019 phone number was removed from the Delfgauw I Defendants  
18 calling lists the day after he was served the Delfgauw I lawsuit.

19 193. Delfgauw said the 1019 phone number was removed from the Delfgauw I Defendants  
20 database the day after he was served the Delfgauw I lawsuit.

21 194. Between the day the Delfgauw I Defendants removed the 1019 phone number from their  
22 database and September 22, 2021, the Delfgauw I Defendants did not receive consent to  
23 telephone solicit the 1019 phone number.

1 195. Between the day the Delfgauw I Defendants removed the 1019 phone number from their  
2 calling list and September 22, 2021, the Delfgauw I Defendants did not receive consent to  
3 telephone solicit the 1019 phone number.

4 196. Between the day the Delfgauw I Defendants removed the 1019 phone number from their  
5 database and November 18, the Delfgauw I Defendants did not receive consent to telephone  
6 solicit the 1019 phone number.

7 197. Between the day the Delfgauw I Defendants removed the 1019 phone number from their  
8 calling list and November 18, 2021, the Delfgauw I Defendants did not receive consent to  
9 telephone solicit the 1019 phone number.

10 198. Between the day the Delfgauw I Defendants removed the 1019 phone number from their  
11 database and November 24, the Delfgauw I Defendants did not receive consent to telephone  
12 solicit the 1019 phone number.

13 199. Between the day the Delfgauw I Defendants removed the 1019 phone number from their  
14 calling list and November 24, 2021, the Delfgauw I Defendants did not receive consent to  
15 telephone solicit the 1019 phone number.

16 200. Between the day the Delfgauw I Defendants removed the 1019 phone number from their  
17 database and November 24, the Delfgauw I Defendants did not receive consent to telephone  
18 solicit the 1019 phone number.

19 201. Between the day the Delfgauw I Defendants removed the 1019 phone number from their  
20 calling list and November 24, 2021, the Delfgauw I Defendants did not receive consent to  
21 telephone solicit the 1019 phone number.

22 202. Between the day the Delfgauw I Defendants removed the 1019 phone number from their  
23 database and September 22, 2021, the Delfgauw II Defendants did not receive consent to  
24 telephone solicit the 1019 phone number.

1 203. Between the day the Delfgauw I Defendants removed the 1019 phone number from their  
2 calling list and September 22, 2021, the Delfgauw II Defendants did not receive consent to  
3 telephone solicit the 1019 phone number.

4 204. Between the day the Delfgauw I Defendants removed the 1019 phone number from their  
5 database and November 18, the Delfgauw II Defendants did not receive consent to  
6 telephone solicit the 1019 phone number.

7 205. Between the day the Delfgauw I Defendants removed the 1019 phone number from their  
8 calling list and November 18, 2021, the Delfgauw II Defendants did not receive consent to  
9 telephone solicit the 1019 phone number.

10 206. Between the day the Delfgauw I Defendants removed the 1019 phone number from their  
11 database and November 24, the Delfgauw II Defendants did not receive consent to  
12 telephone solicit the 1019 phone number.

13 207. Between the day the Delfgauw I Defendants removed the 1019 phone number from their  
14 calling list and November 24, 2021, the Delfgauw II Defendants did not receive consent to  
15 telephone solicit the 1019 phone number.

16 208. Between the day the Delfgauw I Defendants removed the 1019 phone number from their  
17 database and November 24, the Delfgauw II Defendants did not receive consent to  
18 telephone solicit the 1019 phone number.

19 209. Between the day the Delfgauw I Defendants removed the 1019 phone number from their  
20 calling list and November 24, 2021, the Delfgauw II Defendants did not receive consent to  
21 telephone solicit the 1019 phone number.

22 210. The Delfgauw I Defendants do not have evidence that someone, between September 1,  
23 2021, and May 31, 2022. consented to receiving telephone solicitations initiated by one or  
24 more Delfgauw I Defendant to 1019 phone number between.

1 211. The Delfgauw I Defendants do not have evidence that Barton, between September 1, 2021,  
2 and May 31, 2022. consented to receiving telephone solicitations initiated by one or more  
3 Delfgauw I Defendant to 1019 phone number between.

4 212. The Delfgauw II Defendants do not have evidence that someone, between September 1,  
5 2021, and May 31, 2022. consented to receiving telephone solicitations initiated by one or  
6 more Delfgauw II Defendant to 1019 phone number between.

7 213. The Delfgauw II Defendants do not have evidence that Barton, between September 1, 2021,  
8 and May 31, 2022. consented to receiving telephone solicitations initiated by one or more  
9 Delfgauw II Defendant to 1019 phone number between.

10 214. The Delfgauw I Defendants were not given consent to telephone solicit the 1019 phone  
11 number between September 1, 2021, and May 31, 2022.

12 215. The Delfgauw 2 Defendants do not have evidence of them being given consent to telephone  
13 solicit the 1019 phone number between September 1, 2021, and May 31, 2022.

14 216. By September 21, 2021, Xanadu added the 1019 phone number back into its database and  
15 went back to calling the number.

16 217. By September 21, 2021, Starter Home added the 1019 phone number back into its database  
17 and went back to calling the number.

18 218. By September 21, 2021, Xanadu added the 1019 phone number back into its calling list and  
19 went back to calling the number.

20 219. By September 21, 2021, Starter Home added the 1019 phone number back into its calling  
21 list and went back to calling the number.

22 220. By November 17, 2021, Xanadu added the 1019 phone number back into its database and  
23 went back to calling the number.

1 221. By November 17, 2021, Starter Home added the 1019 phone number back into its database  
2 and went back to calling the number.

3 222. By November 17, 2021, Xanadu added the 1019 phone number back into its calling list and  
4 went back to calling the number.

5 223. By November 17, 2021, Starter Home added the 1019 phone number back into its calling  
6 list and went back to calling the number.

7 224. In the 9<sup>th</sup> circuit, a text message is considered a telephone call. Satterfield v. Simon  
8 Schuster, 569 F.3d 946, 949 (9th Cir. 2009).

9 225. Defendants did not have Plaintiff’s consent to solicit him at any time at any phone number.

10 226. Plaintiff did not give anyone instructions to cause the Defendants to solicit him.

11 227. Plaintiff has no knowledge of anyone ever asking the Defendants to solicit any phone  
12 number.

13 228. Delfgauw testified in Delfgauw I docket 404 ¶10: *ō Y g " e c p p q v " u g p f " c ' v g z v "*  
14 *p w o d g t " k u " g p v g t g f " k p v q " q w t " u { u v g o 0 ö*

15 229. The Delfgauw II Defendants cannot send a text message unless a number is entered into  
16 their system.

17 230. Delfgauw testified in Delfgauw I docket 391 ¶3: “An opt in occurs when someone fills out  
18 the required fields on a website to receive information. It can only be done by a user  
19 providing their contact information, such as an email address, and agreeing to receive  
20 communications.”

21 231. An opt in occurs when someone fills out the required fields on a website to receive  
22 information. It can only be done by a user providing their contact information, such as an  
23 email address, and agreeing to receive communications.”

24

1 232. Delfgauw testified in Delfgauw I docket 391 ¶6: “The only way information enters our  
2 system is from being entered by a user.”

3 233. Opt in information only enters a Delfgauw II Defendant’s system if it is entered by a user.

4 234. Opt in information only enters a Delfgauw II Defendant’s system if it is entered by a user  
5 through a website.

6 235. Delfgauw testified in Delfgauw I docket 391 ¶7: “There is no other way that this  
7 information would be in our system.”

8 236. All the calls the Delfgauw I Defendants initiated to the 1019 phone number were for the  
9 purpose of encouraging Plaintiff to purchase goods or services.

10 237. All the calls the Delfgauw II Defendants initiated to the 1019 phone number were for the  
11 purpose of encouraging Plaintiff to purchase goods or services.

12 238. All of the Delfgauw 1 Defendants said in docket 395 page 53: “The parties in this case have  
13 already agreed that the purpose of all the calls was to promote property, goods, or services  
14 for sale or lease”.

15 239. No Defendant in Delfgauw II has or had a Federal Trade Commission Subscription  
16 Account Number for the (360) area code.

17 240. No Defendant in Delfgauw II had a Federal Trade Commission Subscription Account  
18 Number for the (360) area code during the year 2021.

19 241. No Defendant in Delfgauw II had a Federal Trade Commission Subscription Account  
20 Number for the (360) area code during the year 2022.

21 242. The following phone call allegations to the 1019 phone number are not exhaustive – on  
22 information and belief the Defendants have solicited the 1019 phone number from other  
23 phone numbers and SMS Short Codes.

1 243. On information and belief, between 1/1/2022 and today, the Defendants have initiated  
2 additional text message solicitations to the 1019 phone number using an entity under  
3 Delfgauw's control that are not yet traced to them.

4 244. On information and belief, between 1/1/2022 and today, the Defendants have initiated voice  
5 call solicitations to the 1019 phone number using an entity under Delfgauw's control that  
6 are not yet traced to them.

7 **Unsolicited Text Message #1**

8 245. On June 17, 2022, Barton received a text message on his 1019 cell phone from SMS Short  
9 Code 33959:

10 "2, 3 & 4 Bedroom, 2 Bath Homes from \$499/mo!  
11 <http://homepoint.live/358819495>  
12 Credit Issues Ok, Low Down Payment"

13 246. The Defendants initiated and/or assisted in the transmission of this text message to  
14 advertise goods or services, and to encourage Plaintiff to buy goods or services.

15 247. The text message did not identify the sender of the text message.

16 248. On June 17, 2022, SMS Short Code 33959 was registered to Starter Home.

17 249. On June 17, 2022, SMS Short Code 33959 was registered to Xanadu.

18 250. On June 17, 2022, Starter Home used SMS Short Code 33959 to send text messages.

19 251. On June 17, 2022, Xanadu used SMS Short Code 33959 to send text messages.

20 252. On June 17, 2022, SMS Short Code 33959 was registered to a company under the control of  
21 Delfgauw.

22 253. One or more Defendants sent this text message to the 1019 phone number on June 17, 2022.

23 254. The Defendants do not have a record of sending this text message.

24 255. The Defendants do not have a record of sending this text message because they deleted  
their calling records to deprive Barton of the evidence.

**Unsolicited Text Message #2**

256. On June 21, 2022, Barton received a text message on his 1019 cell phone from SMS Short

Code 33959:

“2, 3 & 4 Bedroom, 2 Bath Homes from \$499/mo!

<http://homepoint.live/358819495>

Credit Issues Ok, Low Down Payment”

257. The Defendants initiated and/or assisted in the transmission of this text message to advertise goods or services, and to encourage Plaintiff to buy goods or services.

258. The text message did not identify the sender of the text message.

259. On June 21, 2022, SMS Short Code 33959 was registered to Starter Home.

260. On June 21, 2022, SMS Short Code 33959 was registered to Xanadu.

261. On June 21, 2022, Starter Home used SMS Short Code 33959 to send text messages.

262. On June 21, 2022, Xanadu used SMS Short Code 33959 to send text messages.

263. On June 21, 2022, SMS Short Code 33959 was registered to a company under the control of Delfgauw.

264. One or more Defendants sent this text message to the 1019 phone number on June 21, 2022.

265. The Defendants do not have a record of sending this text message.

266. The Defendants do not have a record of sending this text message because they deleted their calling records to deprive Barton of the evidence.

**Unsolicited Text Message #3**

267. On June 24, 2022, Barton received a text message on his 1019 cell phone from SMS Short

Code 33959:

“Ok, Here are the house lings in your Area

<https://homes-4-you.xyz>”

1 268. The Defendants initiated and/or assisted in the transmission of this text message to  
2 advertise goods or services, and to encourage Plaintiff to buy goods or services.

3 269. The text message did not identify the sender of the text message.

4 270. On June 24, 2022, SMS Short Code 33959 was registered to Starter Home.

5 271. On June 24, 2022, SMS Short Code 33959 was registered to Xanadu.

6 272. On June 24, 2022, Starter Home used SMS Short Code 33959 to send text messages.

7 273. On June 24, 2022, Xanadu used SMS Short Code 33959 to send text messages.

8 274. On June 24, 2022, SMS Short Code 33959 was registered to a company under the control of  
9 Delfgauw.

10 275. One or more Defendants sent this text message to the 1019 phone number on June 24, 2022.

11 276. The Defendants do not have a record of sending this text message.

12 277. The Defendants do not have a record of sending this text message because they deleted  
13 their calling records to deprive Barton of the evidence.

14 **Unsolicited Text Message #4**

15 278. On June 26, 2022, Barton received a text message on his 1019 cell phone from SMS Short  
16 Code 33959:

17 “Ok, Here are the house lings in your Area  
18 <https://homes-4-you.xyz>”

19 279. The Defendants initiated and/or assisted in the transmission of this text message to  
20 advertise goods or services, and to encourage Plaintiff to buy goods or services.

21 280. The text message did not identify the sender of the text message.

22 281. On June 26, 2022, SMS Short Code 33959 was registered to Starter Home.

23 282. On June 26, 2022, SMS Short Code 33959 was registered to Xanadu.

24 283. On June 26, 2022, Starter Home used SMS Short Code 33959 to send text messages.

1 284. On June 26, 2022, Xanadu used SMS Short Code 33959 to send text messages.

2 285. On June 26, 2022, SMS Short Code 33959 was registered to a company under the control of  
3 Delfgauw.

4 286. One or more Defendants sent this text message to the 1019 phone number on June 26, 2022.

5 287. The Defendants do not have a record of sending this text message.

6 288. The Defendants do not have a record of sending this text message because they deleted  
7 their calling records to deprive Barton of the evidence.

8 **Unsolicited Text Message #5**

9 289. On July 7, 2022, Barton received a text message on his 1019 cell phone from SMS Short  
10 Code 33959:

11 “2, 3 & 4 Bedroom, 2 Bath Homes from \$499/mo!  
12 <http://homeleaders.site/358819495>  
13 Credit Issues Ok, Low Down Payment”

14 290. The Defendants initiated and/or assisted in the transmission of this text message to  
15 advertise goods or services, and to encourage Plaintiff to buy goods or services.

16 291. The text message did not identify the sender of the text message.

17 292. On July 7, 2022, SMS Short Code 33959 was registered to Starter Home.

18 293. On July 7, 2022, SMS Short Code 33959 was registered to Xanadu.

19 294. On July 7, 2022, Starter Home used SMS Short Code 33959 to send text messages.

20 295. On July 7, 2022, Xanadu used SMS Short Code 33959 to send text messages.

21 296. On July 7, 2022, SMS Short Code 33959 was registered to a company under the control of  
22 Delfgauw.

23 297. One or more Defendants sent this text message to the 1019 phone number on July 7, 2022.

24 298. The Defendants do not have a record of sending this text message.

1 299. The Defendants do not have a record of sending this text message because they deleted  
2 their calling records to deprive Barton of the evidence.

3 **Unsolicited Text Message #6**

4 300. On August 31, 2021, Barton received a text message on his 1019 cell phone from SMS  
5 Short Code 65016:

6 “Go back to Online School & get \$6595 yearly to be-come a Teacher, Criminal Justice,  
7 Attorney, Nurse or 225 More Degrees & Jobs  
8 <http://edulocater.live/358819495>”

9 301. The Defendants initiated and/or assisted in the transmission of this text message to  
10 advertise goods or services, and to encourage Plaintiff to buy goods or services.

11 302. The text message did not identify the sender of the text message.

12 303. The text message did not identify the sender of the text message.

13 304. On August 31, 2022, SMS Short Code 65016 was registered to Starter Home.

14 305. On August 31, 2022, SMS Short Code 65016 was registered to Xanadu.

15 306. On August 31, 2022, SMS Short Code 65016 was registered to Education Assistance, Inc.

16 307. On August 31, 2022, Starter Home used SMS Short Code 65016 to send text messages.

17 308. On August 31, 2022, Xanadu used SMS Short Code 65016 to send text messages.

18 309. On August 31, 2022, Education Assistance, Inc. used SMS Short Code 65016 to send text  
19 messages.

20 310. On August 31, 2022, SMS Short Code 65016 was registered to a company under the control  
21 of Delfgauw.

22 311. One or more Defendants sent this text message to the 1019 phone number on August 31,  
23 2022.

24 312. The Defendants do not have a record of sending this text message.

1 313. The Defendants do not have a record of sending this text message because they deleted  
2 their calling records to deprive Barton of the evidence.

3 **Unsolicited Text Message #7**

4 314. On June 12, 2022, Barton received a text message on his 1019 cell phone from SMS Short  
5 Code 65016:

6 “The Gov. is giving out grant money that doesn’t need to be repaid. See if you are  
7 eligible!  
8 <http://grantexperts.site/358819495>”

9 315. The Defendants initiated and/or assisted in the transmission of this text message to  
10 advertise goods or services, and to encourage Plaintiff to buy goods or services.

11 316. The text message did not identify the sender of the text message.

12 317. On June 12, 2022, SMS Short Code 65016 was registered to Starter Home.

13 318. On June 12, 2022, SMS Short Code 65016 was registered to Xanadu.

14 319. On June 12, 2022, 2022, SMS Short Code 65016 was registered to Education Assistance,  
15 Inc.

16 320. On June 12, 2022, Starter Home used SMS Short Code 65016 to send text messages.

17 321. On June 12, 2022, Xanadu used SMS Short Code 65016 to send text messages.

18 322. On June 12, 2022, Education Assistance, Inc. used SMS Short Code 65016 to send text  
19 messages.

20 323. On June 12, 2022, SMS Short Code 65016 was registered to a company under the control of  
21 Delfgauw.

22 324. One or more Defendants sent this text message to the 1019 phone number on June 12, 2022.

23 325. The Defendants do not have a record of sending this text message.

24 326. The Defendants do not have a record of sending this text message because they deleted  
their calling records to deprive Barton of the evidence.

**Unsolicited Text Message #8**

327. On June 28, 2022, Barton received a text message on his 1019 cell phone from SMS Short

Code 65016:

“The Gov. is giving out grant money that doesn’t need to be repaid. See if you are eligible!

<http://grantexperts.site/358819495>”

328. The Defendants initiated and/or assisted in the transmission of this text message to advertise goods or services, and to encourage Plaintiff to buy goods or services.

329. The text message did not identify the sender of the text message.

330. On June 28, 2022, SMS Short Code 65016 was registered to Starter Home.

331. On June 28, 2022, SMS Short Code 65016 was registered to Xanadu.

332. On June 28, 2022, 2022, SMS Short Code 65016 was registered to Education Assistance, Inc.

333. On June 28, 2022, Starter Home used SMS Short Code 65016 to send text messages.

334. On June 28, 2022, Xanadu used SMS Short Code 65016 to send text messages.

335. On June 28, 2022, Education Assistance, Inc. used SMS Short Code 65016 to send text messages.

336. On June 28, 2022, SMS Short Code 65016 was registered to a company under the control of Delfgauw.

337. One or more Defendants sent this text message to the 1019 phone number on June 28, 2022.

338. The Defendants do not have a record of sending this text message.

339. The Defendants do not have a record of sending this text message because they deleted their calling records to deprive Barton of the evidence.

**Website <https://prime-schools.com/> is owned and controlled by Education Assistance, Inc.**

1 340. During all times relevant to this lawsuit, Education Assistance, Inc. controlled website  
2 <https://prime-schools.com/>.

3 341. During all times relevant to this lawsuit, Education Assistance, Inc. owned website  
4 <https://prime-schools.com/>.

5 342. During all times relevant to this lawsuit, Education Assistance, Inc. was owned by  
6 Delfgauw.

7 343. During all times relevant to this lawsuit, Education Assistance, Inc. was controlled by  
8 Delfgauw.

9 **Starter Home Investing, Inc. is owned and controlled by Delfgauw**

10 344. During all times relevant to this lawsuit, Starter Home Investing, Inc was owned by  
11 Delfgauw.

12 345. During all times relevant to this lawsuit, Starter Home Investing, Inc was controlled by  
13 Delfgauw.

14 **Joe Delfgauw is Personally Liable**

15 346. Delfgauw was personally served the lawsuit in Delfgauw Litigation 1.

16 347. Delfgauw personally knew Barton did not want phone calls from him or any entity under  
17 Delfgauw's ownership or control.

18 348. Delfgauw knew he should remove the 1019 phone number from the Delfgauw I Defendants  
19 calling list.

20 349. Delfgauw knew from the Delfgauw I litigation he should remove the 1019 phone number  
21 from the calling list of any entity under his ownership or control.

22 350. In Delfgauw I docket 391 Delfgauw testified in a declaration as follows.  
23  
24

1 351. Delfgaw I docket 391 ¶1 said: I am the defendant and counterclaimant in this action and I  
2 make this declaration in that capacity and on behalf of my self and the entities sued under  
3 my control. If called to testify, I would testify truthfully as to the following:

4 352. Delfgaw I docket 391 ¶2 said: I have eight years of experience in the text messaging  
5 business.

6 353. Delfgaw I docket 391 ¶3 said: An opt in occurs when someone fills out the required fields  
7 on a website to receive information. It can only be done by a user providing their contact  
8 information, such as an email address, and agreeing to receive communications.

9 354. Delfgaw I docket 391 ¶4 said: When we received Mr. Barton's complaint, I confirmed the  
10 information received by IP address 71.238.123.34 through the documents from Forward  
11 Control Software and Elite Marketing Services.

12 355. Delfgaw I docket 391 ¶5 said: The information we obtained was the name Ivette Jimenez,  
13 email address ivettealfredomartizez@gmail.com and phone number (360) 910-1019.

14 356. Delfgaw I docket 391 ¶6 said: The only way information enters our system is from being  
15 entered by a user.

16 357. Delfgaw I docket 391 ¶7 said: There is no other way that this information would be in our  
17 system.

18 358. Delfgaw stipulated that the 1019 phone number was removed from the Delfgaw I  
19 Defendants calling lists.

20 359. Delfgaw had the 1019 phone number removed from the Delfgaw I Defendants calling  
21 lists before 9/21/2021.

22 360. Delfgaw had the 1019 phone number removed from the Delfgaw I Defendants calling  
23 lists before 11/17/2021.

1 361. Delfgauw had the 1019 phone number removed from the Delfgauw I Defendants calling  
2 lists before 11/23/2021.

3 362. Delfgauw had the 1019 phone number removed from the calling list of every entity under  
4 his control before 9/21/2021.

5 363. Delfgauw had the 1019 phone number removed from the calling list of every entity under  
6 his control before 11/17/2021.

7 364. Delfgauw had the 1019 phone number removed from the calling list of every entity under  
8 his control before 11/23/2021.

9 365. The Delfgauw I Defendants admitted the Starter Home texted the 1019 number on  
10 9/21/2021, 11/17/2021, and 11/23/2021.

11 366. Delfgauw testified in Delfgauw I docket 391 ¶3 and ¶6 that phone numbers only enter their  
12 system from a user.

13 367. No Defendant in Delfgauw I claimed there was a request for calls to the 1019 phone  
14 number between the time the 1019 phone number was removed from Starter Home's  
15 database "The Day Defendant was served" and the dates the Delfgauw I Defendants  
16 stipulated they resumed texting the 1019 phone number on 9/21/2021, 11/17/2021, and  
17 11/23/2021.

18 368. Delfgauw said in Delfgauw I exhibit NB274 responses #32: "The opt-in which provided  
19 consent by which Defendants' were permitted to communicate with Plaintiff took place on  
20 April 1, 2021, and is the only opt-in relevant to the allegations set forth in Plaintiff's  
21 Amended Complaint."

22 369. Delfgauw said in Delfgauw I exhibit NB274 responses #33: "The opt-in which provided  
23 consent by which Defendants' were permitted to communicate with Plaintiff took place on  
24

1 April 1, 2021, and is the only opt-in relevant to the allegations set forth in Plaintiff's  
2 Amended Complaint."

3 370. Plaintiff's Delfgaw I Amended Complaint was filed on 12/31/2021.

4 371. Delfgaw or someone/something under his control was the user who entered the 1019  
5 number back into their database between the time it was removed from their database "The  
6 Day Defendant was served" and when the Delfgaw I Defendants resumed texting the 1019  
7 phone number on 9/21/2021, 11/17/2021, and 11/23/2021.

8 372. Delfgaw or someone/something under his control then deleted the request for calls they  
9 themselves created between the time it was removed from their database "The Day  
10 Defendant was served" and when the Delfgaw I Defendants resumed texting the 1019  
11 phone number on 9/21/2021, 11/17/2021, and 11/23/2021.

12 373. This is why the request for calls made between the time Delfgaw removed the 1019 phone  
13 number from Delfgaw I Defendants database, the Delfgaw I Defendants resumed calling  
14 the 1019 phone number did not appear in Delfgaw I's docket 205-1.

15 374. One or more of the Delfgaw I Defendants removed the request for calls they created from  
16 Delfgaw I docket 205-1.

17 375. Only Delfgaw had the motive to do so.

18 376. Delfgaw put the 1019 number back into their system, or instructed someone to do so.

19 377. And calls resumed from entities under Delfgaw's control resumed to the 1019 phone  
20 number.

21 378. Delfgaw knew entities under his control were calling the 1019 number after it was added  
22 back in.

23 379. Delfgaw decided not to stop texting Plaintiff and he makes the decisions at Starter Home.

24 380. He testified:

1 381. Q. What kind of decisions do you make for Starter Home on a day-to-day basis?

2 382. A. I mean I run the company. I assign people to do their jobs and so I guess I'm not exactly  
3 sure what you're -- what you're asking. I mean when you own a company and you're the  
4 manager, you tell people what to do.

5 383. Delfgaw controls Starter Home and he made the decision to continue texting the 1019  
6 number after knowing Barton did not want calls from Delfgaw or all entities under  
7 Delfgaw's control.

8 384. At all times material to the Complaint, acting alone or in concert with others, Delfgaw  
9 formulated, directed, controlled, had the authority to control, or participated in the acts and  
10 practices that lead to Starter Home and EAI to solicit Plaintiff without consent.

11 385. Delfgaw is the principal in charge of Starter Home and EAI and controls the day-to-day  
12 operations of Starter Home and EAI and directed the employees, contractors, agents, and  
13 salespersons to make TCPA violating phone calls.

14 386. On October 17, 2022, Joseph Delfgaw was deposed.

15 387. The deposition was regarding civil action 1:21-cv-00666.

16 388. The deposition was via videoconference.

17 389. Delfgaw was speaking for defendants Starter Home Investing Inc., and Xanadu Marketing  
18 Inc.

19 390. Delfgaw testified as follows:

20 391. Question to Delfgaw: So the IPQS, it -- you said it pings the phone number and what  
21 else?

22 392. Delfgaw's answer to the question was: The email address

23 393. Question to Delfgaw: Okay. So it just -- when you ping it, what are you pinging it for?  
24 What are you trying to see?

1 394. Delfgauw’s answer to the question was: So in other words, let’s say someone put in a fake  
2 phone number, someone put in a landline or somebody put in – you know, those things  
3 would actually reject the lead, for lack of a better term. It wouldn’t be accepted. It has to  
4 have a real phone number and it has to have a real email address.

5 395. Question to Delfgauw: Okay. So it just tells you if the information is real. Does it tell  
6 you – does it give you any information to whether who actually entered the – who or what  
7 entered the information? Does IPQS tell you who or what entered the information, real or  
8 not?

9 396. Delfgauw’s answer to the question was: No, IPQS does not.

10 397. Question to Delfgauw: What does? What do you do to find out – now you have an active  
11 phone number according to IPQS. What is your – what process, if any, do you go through  
12 to see if it was it was legitimately entered into and opted into?

13 398. Delfgauw answer to the question was: We go by the statistics of the opt-out rate because  
14 most people that don’t want to receive texts just reply “Stop,” or “Help.”

15 399. Delfgauw testified that his companies look at how many other people reply STOP to his  
16 companies’ texts to determine if a specific person has consented phone calls from his  
17 companies.

18 400. This is normal practice for Delfgauw’s companies because Delfgauw implemented and  
19 approved of using the statistics of the opt-out rate to determine if a phone number was  
20 legitimately entered into the websites Delfgauw controls through his corporate ownership  
21 and control.

22 401. Delfgauw is well aware the entities he is in control of routinely violate the TCPA and  
23 refuses to alter their behavior.

1 402. Delfgauw is the only person with the power to make the unlawful, fraudulent, and unethical  
2 behavior stop at Starter Home and EAI. Yet, he has taken no steps to stop the behavior  
3 because the behavior benefits him financially. Delfgauw breaks the law with his eyes and  
4 pocketbooks wide open.

5 403. Defendant Delfgauw should be held personally liable because to do otherwise would simply  
6 allow Delfgauw to simply dissolve these other entities, walk away, and set up a new  
7 corporation and repeat his conduct. This would result in both the TCPA and Washington  
8 State telemarketing law being unenforceable.

9 404. Washington State Law says:

10 405. “[i]ndividuals who directly . . . violate the TCPA should not escape liability solely because  
11 they are corporate officers" and a corporate officer is deemed to have "made" a call, and  
12 thus liable under the TCPA, if the officer "had direct, personal participation in or personally  
13 authorized the conduct found to have violated the statute." His argument also ignores that  
14 Washington courts extend personal liability to corporate officers who supervised, directed,  
15 or approved wrongful business conduct.” [Hoffman v. Logan](#), No. 81887-2-I, 9 (Wash. Ct.  
16 App. Jul. 26, 2021).

17 406. Most Courts have allowed corporate officers to be held personally liable for the acts of the  
18 corporation if the offers were personally involved in the wrongdoing.

19 407. The Starter Home and EAI corporations were used by Delfgauw in an attempt to shield  
20 himself from the personal liability of illegal telemarketing.

21 408. He knows at least some of the “consents” he collects on his websites are not valid.

22 409. He solicits them anyway.

23 410. Delfgauw was deposed on May 18, 2022, as part of the Delfgauw I litigation. He was

24 asked: “What information do you have that I [Nathen Barton] opted in on your web site?”

1 411. After hearing the question, Delfgauw testified: “The information that I have is the  
2 information that was provided in terms of the IP Address, the phone number, and this  
3 information. Obviously your name is Nathen Barton, it is not Ivette Jimenez. I have no idea  
4 -- usually what happens is when someone receives a text message, they just simply reply  
5 "Stop," if they don't want to receive another text message, and that usually ends that, if it  
6 was not the person who opted in.”

7 412. Although the Ninth Circuit has not ruled on this issue, numerous district courts have agreed  
8 that the TCPA’s language allows for personal liability for corporate officers where they  
9 “had direct, personal participation in or personally authorized the conduct found to have  
10 violated the statute.”<sup>5</sup>, quoting *Blastfax*<sup>6</sup>; see also, personal participation in the payment for  
11 and authorization of fax ads is sufficient to render a corporate officer liable under the  
12 TCPA)<sup>7</sup>; (“[I]f an individual acting on behalf of a corporation could avoid individual  
13 liability, the TCPA would lose much of its force.”)<sup>8</sup>; (observing that if the defendants, who  
14 were the same defendants as in *American Blastfax*, “actually committed the conduct that  
15 violated the TCPA, and/or ... actively oversaw and directed the conduct,” they could be  
16 held individually liable for the statutory violations)<sup>9</sup>; (holding that corporate executives  
17 were personally liable because they “set company policies and [oversaw] day-to-day  
18 operations” and were “clearly involved in the business practices” that violated the TCPA)<sup>10</sup>.

20 \_\_\_\_\_  
21 <sup>5</sup> [Sandusky Wellness Ctr., LLC v. Wagner Wellness, Inc.](#), Case No. 3:12 CV 2257, 2 (N.D. Ohio Mar. 28, 2014)

22 <sup>6</sup> [State of Texas v. American Blastfax, Inc.](#), NO. A 00 CA 085 SS, (W.D. Tex. Aug. 17, 2001)

23 <sup>7</sup> [Jackson Five Star Catering, Inc. v. Beason](#), Case No. 10-10010, 3 (E.D. Mich. Nov. 8, 2013)

24 <sup>8</sup> [State v. Universal Elections](#), 787 F. Supp. 2d 408, 414 (D. Md. 2011)

<sup>9</sup> [Baltimore-Washington Telephone Company v. Hot Leads Co.](#), 584 F. Supp. 2d 736, 744 (D. Md. 2008)

<sup>10</sup> *Covington & Burling v. Int'l Mktg. & Research, Inc.*, No. CIV A 01–0004360, 2003 WL 21384825, at \*6 (D.C.Super. Apr. 17, 2003)

1 Where courts have declined to find personal liability, there has been little evidence of the  
2 corporate officer's direct participation in the wrongdoing.<sup>11</sup>

3 413. This Seattle court wrote:

4 “American Blastfax relies on the Fifth Circuit's rule regarding statutory liability for  
5 corporate officers, which is considerably narrower than the Ninth Circuit's rule on that  
6 issue. Compare American Blastfax, 164 F. Supp. 2d at 898 (quoting *Mozingo v. Correct*  
7 *Mfg. Corp.*, 752 F.2d 168, 174 (5th Cir. 1985)) (finding that corporate officers must be  
8 the "guiding spirits' and the 'central figures' behind the TCPA violations" to be found  
9 liable) with *Transgo*, 768 F.2d at 1021. Mais also applies out-of-circuit law and  
10 concludes that "[s]ome showing of intentional misconduct or gross failure to implement  
11 policies that comply should be required." 2013 WL 1283885, at \*4 n.1. Both American  
12 Blastfax and Mais conflict with binding precedent from the Ninth Circuit, and thus the  
13 court finds them unpersuasive.”<sup>12</sup>

#### 14 **Defendants are Annoying the Public**

15 414. The phone ringing and chirping and displaying notices is an invasion of privacy, a trespass  
16 into Plaintiff's property and seclusion, a waste of time, and cost limited time, data, and text  
17 messages on the cell phone plan.

18 415. Answering the phone and dealing with text messages takes time that could be spent doing  
19 other things, and these calls do have a real, if small, cost in electricity and life of the phone.

20 416. Plaintiff and his family were temporarily deprived of legitimate use of his phone and phone  
21 service because the phone line was tied up during the telemarketing calls and text messages,  
22 and his and his family's privacy was improperly invaded.

23 417. These phone calls were initiated to encourage Plaintiff to purchase goods or services.

#### 24 **Delfgaw has a history of fraud**

418. Delfgaw was convicted of fraud.

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<sup>11</sup> *Mais v. Gulf Coast Collection Bureau, Inc.*, Case No. 11-61936-Civ-Scola, (S.D. Fla. Mar. 27, 2013)

<sup>12</sup> *Booth v. AppStack, Inc.*, CASE NO. C13-1533JLR, 32 (W.D. Wash. May. 24, 2016)

1 419. In 2018, Delfgauw pled guilty to 18 U.S.C. 1344 Financial Institution Fraud.<sup>13</sup>

2 420. Delfgauw admitted to knowingly executing a scheme to defraud and to obtain money by  
3 means of materially false and fraudulent pretenses and representations.

4 421. Citimortgage lost \$203,000 to the scheme.

5 422. In Delfgauw I, docket 103 page 6 starting at line 23, Delfgauw said his plea deal: “states a  
6 range of 15 to 21 years” in prison.

7 423. In Delfgauw I, docket 103 page 7 starting at line 2, Delfgauw said: “Facing up to 21 years  
8 in prison sounds bad”.

9 424. Delfgauw admitted that as part of the scheme he recruited WL to be the buyer of a property  
10 located at 2458 Elliot, Lincoln Park, Michigan.

11 425. Delfgauw admitted that as part of the scheme he promised WL that although the property  
12 would be purchased in her name, she would not have to make the mortgage payments or  
13 fund the down payment.

14 426. Delfgauw admitted that as part of the scheme he arranged for his company to provide false  
15 proof of employment for WL, which was provided to the mortgage lender the intent to  
16 influence its decision to approve the loan.

17 427. Delfgauw admitted that as part of the scheme Delfgauw paid WL \$3,000 after the closing  
18 once the property was purchased in her name.

19 428. During Delfgauw I litigation, the Delfgauw I Defendants produced a document Barton  
20 named NB488 in the Delfgauw I proposed pretrial order in Delfgauw I docket 394.

21  
22  
23  
24 <sup>13</sup> [2:18-cr-20030-DML-DPG](#), United States District Court, Eastern District of Michigan, Southern Division

1 429. This document is:

2 **From:** Alex Jakimtschuk  
3 **Sent:** Wednesday, November 17, 2021 1:53 PM  
4 **To:** legal@xanadumarketing.com  
5 **Subject:** Damages Barton Vs. Xanadu

6 My name is Alexander Jakimtschuk and I work for The MountainTOP Network. As a result of the Nathan  
7 Barton Lawsuit, we were told by Tort Experts (LGNB LLC) to not allow Xanadu to SMS anymore. From  
8 Jan 1 2021 to September 8 2021 they earned 133, 592 dollars from sending SMS messages on that offer  
9 and they lost the ability for any future earnings because of this.

10 Kind Regards,

11 --



12 430. In this Delfgauw II lawsuit, this document is also referred to as “NB488”.

13 431. The Xanadu in NB488 is Xanadu Marketing Inc., a defendant in the Delfgauw I litigation.

14 432. The Mountaintop Affiliate Network in NB488 is a company Delfgauw controls.

15 433. On January 4, 2022, Delfgauw signed discovery response to a request for documents  
16 propounded by Barton in the Delfgauw I litigation.

17 434. That request for documents was titled COUNTER DEFENDANT’S SIXTH REQUEST  
18 FOR PRODUCTION TO COUNTER PLAINTIFF JOE DELFGAUW.

19 435. Delfgauw responded to Production Request No. 31:

16	<b><u>PRODUCTION REQUEST NO. 31:</u></b>	Produce all contracts between Mountaintop
17		Affiliate Network Inc. and Xanadu Marketing Inc. that were in effect when Mountaintop
18		Affiliate Network Inc. was told not to allow Xanadu to SMS anymore.
19	<b><u>RESPONSE:</u></b>	
20		Xanadu was never told not to use SMS Marketing.
21		

1 436. Delfgaw testified for Xanadu in a deposition:

2 437. Question to Delfgaw: What are the damages that were caused beyond the opt-ins.

3 438. Delfgaw's answer to the question: We have an advertiser that will no longer allow us to  
4 send SMS because of a -- because of the lawsuit I believe you filed against them and I don't  
5 have that accurate information because I think you guys signed a non-disclosure, but they  
6 won't let us text anymore because of that.

7 439. The advertiser Delfgaw was referring to was Tort Experts (LGNB LLC).

8 440. Delfgaw knowingly used text messages in violation of the terms of his contract with Tort  
9 Experts (LGNB LLC).

10 441. Delfgaw stipulated in Delfgaw I docket 378 ¶38: "Joseph Delfgaw was aware that the  
11 contract between Tort Experts (LGNB LLC) and Mountaintop Affiliate Network Inc.  
12 prohibited using SMS messages to solicit Tort Experts (LGNB LLC) products or services".

13 442. For context, Joseph Delfgaw stipulated in Delfgaw I docket 378 ¶36 he the President of  
14 Mountaintop Affiliate Network Inc.

15 443. Delfgaw said in Delfgaw I docket 394 page 3 lines 9-10: "Mr. Delfgaw actively  
16 controls the day-to-day operations of Xanadu and Starter Home."

17 444. Delfgaw stipulated in Delfgaw I docket 378 ¶39: "Joseph Delfgaw personally approved  
18 of entities under Joseph Delfgaw's control using SMS messages to solicit Tort Expert  
19 (LGNB LLC) products or services."

20 445. Tort Experts (LGNB LLC) found out and forced Delfgaw's businesses to stop.

21 446. See Delfgaw I docket 378 ¶26: "Tort Experts (LGNB LLC) did not allow Xanadu  
22 Marketing Inc. to SMS anymore because Tort Experts (LGNB LLC) does not let any entity  
23 solicit Tort Experts (LGNB LLC) products or services via SMS messages."  
24

1 447. Delfgauw defrauded Tort Experts (LGNB LLC) by using text messages to solicit Tort  
2 Experts (LGNB LLC)'s goods or services when Delfgauw knew using text messages to  
3 solicit Tort Experts (LGNB LLC)'s goods or services was forbidden by contract.

4 **V. RELIEF**

5 **Federal Law - TCPA 47 U.S.C. 227 & 47 C.F.R § 64.1200**

6 **Count 1**

7 448. Defendants violated the regulations governing the TCPA, 47 C.F.R § 64.1200, and TCPA  
8 47 U.S.C. 227(c) by calling or texting Plaintiff's cellular telephone number without consent  
9 when the number was registered on the FTC's do-not-call list more than 30 days prior to  
10 each call.

11 **Count 2**

12 449. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(d) and The TCPA's  
13 implementing regulation, 47 C.F.R. § 64.1200(d)(4) were promulgated under 47 U.S.C.  
14 227(c).

15 450. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(d), provides in relevant part  
16 that: "No person or entity shall initiate . . . any call for telemarketing purposes to a  
17 residential telephone subscriber unless such person or entity has instituted procedures for  
18 maintaining a list of persons who request not to receive such calls made by or on behalf of  
19 that person or entity. The procedures instituted must meet the following minimum  
20 standards:"

21 451. The Defendants knew not to call the 1019 number but called it anyway, indicating that they  
22 did not institute procedures for maintaining a list of persons who request not to receive such  
23 calls made by or on behalf of that person or entity.

24 **Count 3**

1 452. The TCPA’s implementing regulation, 47 C.F.R. § 64.1200(d)(4), provides in relevant part  
2 that: “A person or entity making . . . any call for telemarketing purposes must provide the  
3 called party with the name of the individual caller, the name of the person or entity on  
4 whose behalf the call is being made, and a telephone number or address at which the person  
5 or entity may be contacted.”

6 453. Section 64.1200(e) provides that §§ 64.1200(c) and (d) “are applicable to any person or  
7 entity making telephone solicitations or telemarketing calls to wireless telephone numbers.”

8 454. Defendants violated 47 C.F.R. § 64.1200(d)(4) by initiating, or causing to be initiated,  
9 telephone solicitations to Plaintiff while failing to “provide the called party with the name  
10 of the individual caller, the name of the person or entity on whose behalf the call is being  
11 made, and a telephone number or address at which the person or entity may be contacted.”

12 **Washington State Law - RCW 19.190**

13 **Count 4**

14 455. Washington State’s Consumer Electronic Mail Act (“CEMA”) prohibits initiating or  
15 substantially assisting in the transmission of any “electronic text message sent to promote  
16 real property, goods, or services for sale or lease”<sup>14</sup> without the explicit permission of the  
17 receiving party.

18 456. (1) No person conducting business in the state may initiate or assist in the transmission of  
19 an electronic commercial text message to a telephone number assigned to a Washington  
20 resident for cellular telephone or pager service that is equipped with short message  
21 capability or any similar capability allowing the transmission of text messages.

22  
23  
24 <sup>14</sup> [RCW 19.190.010\(3\)](#)

1 457. (2) The legislature finds that the practices covered by this section are matters vitally  
2 affecting the public interest for the purpose of applying the consumer protection act, chapter  
3 19.86 RCW. A violation of this section is not reasonable in relation to the development and  
4 preservation of business and is an unfair or deceptive act in trade or commerce and an  
5 unfair method of competition for the purpose of applying the consumer protection act,  
6 chapter 19.86 RCW. [RCW 19.190.060](#).

7 458. The Washington State Supreme Court has held<sup>15</sup> that sending a text message in violation of  
8 CEMA is a per-se violation of the states' Consumer Protection Act statute, meaning it  
9 automatically satisfies all five elements. "In fact, damages for CEMA violations  
10 are *automatic*." *Id.*

11 459. The Washington State legislature determined that "[d]amages to the recipient of a . . .  
12 commercial electronic text message sent in violation of this chapter are five hundred  
13 dollars, or actual damages, whichever is greater." RCW 19.190.040(1).

14 460. The Defendants either initiated or substantially assisted in the transmission of text messages  
15 to Plaintiff that promoted the sale of goods or services.

### 16 **Treble Damages**

17 461. Plaintiff believes the record shows that Defendants' violations of the law were willful or  
18 knowing, or reckless.

19 462. They added the 1019 phone number back into the calling database after it was removed.

20 463. They continued to initiate solicitations to the 1019 number while the Delfgauw I litigation  
21 was ongoing.

22 464. They knew or should have known not to text the 1019 phone number.  
23

24 <sup>15</sup> [Wright v. Lyft, Inc.](#), 189 Wash. 2d 718, (Wash. 2017)

1 465. They know or should have known any consents they receive from their own websites are  
2 completely unreliable.

3 466. They removed the 1019 number from their system, and then put it back in.

4 467. They didn't identify themselves in the text messages as required by law. They have been  
5 sued several times without changing their behavior.

6 468. Therefore, Plaintiff asks for treble damages under TCPA 47 U.S.C. 227(c)(5).

7 **Injunctive Relief**

8 469. TCPA 47 U.S.C. 227(c)(5)(A) allows "an action based on a violation of the regulations  
9 prescribed under this subsection to enjoin such violation"

10 470. Plaintiff is not unique – he simply had the misfortune to be targeted by Defendants' mass  
11 calling machine.

12 471. It is reasonable to believe that Defendants have done this many times in the past and will  
13 continue harming the residents of this State and other States in the future.

14 472. Plaintiff asks this Court to enjoin the Defendants from further violations of State and  
15 Federal telemarketing laws.

16 **All other Possible Damages**

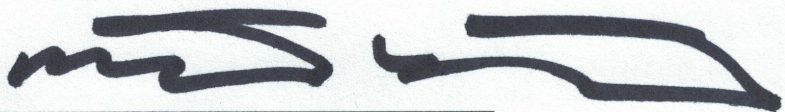
17 473. Plaintiff is not asking for actual damages due to telemarketing law violations but does ask  
18 for all possible statutory damages that he might be entitled too.

19 474. Other damages prayed for are court costs, taxable litigation costs, and attorney fees (should  
20 he retain an attorney).

21  
22 // Blank //

1 Signed at Vancouver, WA on 11/3/2024

2



3 (Nathen Barton)

4 Nathen Barton  
5 (469) 347-2139  
6 4618 NW 11<sup>th</sup> Cir  
7 Camas WA 98607

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

NATHEN BARTON,

Plaintiff,

v.

JOE DELFGAUW, XANADU  
MARKETING INC., STARTER HOME  
INVESTING INC. & John Doe 1-10

Defendants.

CASE NO. **24-204347-06**

ANSWER TO COMPLAINT &  
COUNTER COMPLAINT

COMES NOW Defendants Joe DELFGAUW, XANADU MARKETING INC., AND STARTER HOME INVESTING INC. in the above captioned case, with his response to Plaintiff's Complaint and his request the Court Dismiss, for reasons set forth below:

**DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES**

**Defendant Joseph Delfgaw, representing himself Pro Se, hereby answers the complaint of Plaintiff Nathan Barton and herby demands the Complaint be filed within 14 days of date of service:**

**General Denial** The Defendant denies each and every allegation contained in the Plaintiff's complaint except those expressly admitted below.

## Affirmative Defenses

### I. Lack of Personal Jurisdiction

The Court does not have personal jurisdiction over the Defendant. The Defendant is a resident of the State of Florida and has never been a resident in the state of Washington. Therefore, the Defendant is not a resident of the State of Washington and lacks sufficient minimum contacts with the State of Washington for personal jurisdiction.

### II. Contributory Negligence

Plaintiff's claims are barred or diminished by Plaintiff's own contributory negligence or fault.

#### I. Res Judicata

**Same Parties:** The parties involved in this second lawsuit are the same as the lawsuit filed by Plaintiff case number **3:21-cv-05610-DGE**. **Same Cause of Action:** The claim in this second lawsuit is substantially similar to the claim in the first lawsuit case number **3:21-cv-05610-DGE**. The Plaintiff himself states in his complaint line 48, "this second lawsuit is referred to as Delfgaw II and it covers calls initiated to the 1019 phone number beyond the events covered in the Delfgaw I; which clearly confirms that he is trying to waste the courts time by filing a duplicate suit regarding the same texts that are in question in the lawsuit case number **3:21-cv-05610-DGE**. The remedy would be to amend the first suit and he has not done that.

#### II. Assumption of Risk

Plaintiff assumed the risk of the conduct alleged in the complaint.

#### III. Waiver

Plaintiff's claims are barred by the doctrine of waiver, in that Plaintiff voluntarily and knowingly waived any rights to claim relief based on the events described in the complaint.

#### IV. Estoppel

Plaintiff is estopped from asserting the claims set forth in the complaint due to Plaintiff's prior actions, representations, or omissions.


#### V. Unclean Hands

Plaintiff's claims are barred by the doctrine of unclean hands, in that Plaintiff engaged in misconduct relating to the matter in dispute. The Defendant asserts that Plaintiff committed a

wrongful act and/or fraud and/or misrepresentation and is attempting to benefit from those acts through this lawsuit.

WHEREFORE, Defendant respectfully requests that the Court dismiss Plaintiff's complaint with prejudice, award Defendant its costs, and grant such other relief as the Court deems just and proper.

Dated this 30<sup>th</sup> day of December, 2024

/s/   
Joseph Delfgauw

**COUNTERCLAIM and THE PRESENT CLAIMS**

JOE DELFGAUW and XANADU MARKETING INC, STARTER HOME INVESTING INC. (collectively “Counterclaimants”) file this Counterclaim against NATHEN BARTON (“BARTON”), an in support of their individual and collective Causes of Action state:

**I. PARTIES**

1.1 Counterclaimant JOE DELFGAUW is a natural person over the age of 18, residing in the Lee County, Florida.

1.2 Counterclaimant XANADU MARKETING INC. is a domestic profit corporation, formed in the State of Michigan.

**II. JURISDICTION AND VENUE**

2.1 The original complaint was filed in this venue and jurisdiction.

**III. ADDITIONAL FACTS**

3.1 Counterclaimants JOE DELFGAUW, XANADU MARKETING INC. and STARTER HOME INVESTING are informed and believe and thereon allege that Counter defendant NATHEN BARTON in or about April 1, 2021 opted into a marketing campaign to receive communication from an entity operated or represented by the Counterclaimants or one of its affiliates. Contrary to what Mr. Barton presents, it is contested that collectively, the Defendants telephone solicited the 1019 phone number without consent on any level. There was an opt-in on April 1, 2021. We know that he opted in because when he opted in, he interacted with text message and we know that because the IP address that corresponds with the opt-in, is the same IP address matches the corresponding click from the text messages. (See Attached Exhibit A)

3.2 Counterclaimants and their affiliates retain information and regarding the IP

address of individuals that interact with its websites.

#### **IV. CAUSE OF ACTION – FRAUD**

- 4.1 Counterclaimants are informed and believe and thereon allege that Counter defendant NATHEN BARTON provided a fake name when he provided his phone number on the website when opting in to receive information.
- 4.2 Counter defendant opted in, gave false information, and then waited for contact.
- 4.3 Once Counter defendant was contacted by Counterclaimants, and other businesses, using a fake area code, so that once his complaint was filed, he could not be traced through his opt-in information. Nathan Barton engaged with Xanadu Call Center and gave false information regarding his identity using identity Ivette Jimenez and proceeded to give consent for communication. (See Attached Exhibit B)
- 4.4 Barton interacted with links provided in text messages and pretended to be someone else – the former owner of the phone numbers. Further, if consent is received, it is valid for 18 months. The TCPA says that an opt in is valid for 18 months. The terms of service for Delfgauw’s entities states that there would be up to 3 text messages a week from any affiliate. The only way they number would be in the computer systems is for someone to have opted-in, provided their number. And that is what Barton did—or someone who had the phone prior to him, or on his behalf.
- 4.5 Counter defendant has filed at least nine similar lawsuits in this and other courts, alleging similar actions.

#### **V. CAUSE OF ACTION -FRAUD BY NONDISCLOSURE**

- 5.1 Counterclaimant is informed and believes and thereon alleges that when BARTON knew or had reason to know that prior to his lawsuit, he affirmatively gave Counterclaimant and/or third parties consent to receive text messages and phone calls from Counterclaimant's and third-party providers. BARTON took no action to correct that opt-in information
- 5.2 BARTON's failure to disclose his desire to not receive text messages and phone calls was material because he knew that Counterclaimant had received an opt-in notice from BARTON for the alleged phone number
- 5.3 By failing to disclose his desire to not receive text messages and phone calls BARTON intended Counterclaimant to fulfill their contractual obligation with third parties who would then send BARTON text messages that all believed had been requested by BARTON. Counterclaimant expended both employee time and resources to fulfill its contractual obligations based on BARTON's failure to disclose

### **CONCLUSION AND REQUEST FOR RELIEF**

Counterclaimant request that the Court enter a judgment that BARTON is liable for common-law fraud and fraud by non-disclosure and award Counterclaimant's actual damages, exemplary damages, interest, costs, attorney's fees as needed and all other relief that this Court finds fair and just.

Dated this 30<sup>th</sup> day of December, 2024

/s/   
Joseph Delfgaauw