

Honorable David G. Estudillo

**UNITED STATES DISTRICT COURT
IN AND FOR THE WESTERN DISTRICT OF WASHINGTON**

NATHEN BARTON,

Plaintiff,

vs.

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

Case No. 3:21-cv-05610-DGE

DEFENDANTS JOE DELFGAUW, XANADU
MARKETING INC., AND STARTER HOME
INVESTING INC. MOTION FOR SUMMARY
DISPOSITION

ORAL ARGUMENT REQUESTED

NOTE ON MOTION CALENDAR:
August 11, 2025

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3 **STATUTES**

4 RCW 80.36.390 17
 5 RCW 19.86.020 16, 18
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 13 47 U.S.C. § 227(b)(1)(A)(iii) 11, 12
 14 47 U.S.C. § 227 (c)(5) 10
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 17 Rcd. 3787 (April 6, 2006)..... 15
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1 INTRODUCTION

2 JOE DELFGAUW, XANADU MARKETING INC., STARTER HOME INVESTING INC.
3 (“Defendants), pursuant to Rule 56 of the Federal Rules of Civil Procedure, respectfully moves for
4 judgment on the claims of NATHEN BARTON (“Barton”) First Amended Complaint (“FAC”)¹ in
5 its entirety and with prejudice.
6

7 Based on Barton’s Affirmative allegations, it is clear that Barton has used the Court system
8 both Federal and State level maliciously and deliberately in issuing Telephone Consumer Protection
9 Act (“TCPA”) civil complaints that are not justified and meritless.

10 This is a classic “manufactured” lawsuit brought against Defendants by a serial litigator who
11 concurrently filed virtually identical cookie-cutter lawsuits in this District Court and whose own
12 express allegations destroy any possibility of maintaining a cognizable claim.

13
14 Barton affirmatively alleges in his Complaint consent and creation of an Established
15 Business Relationship. Barton concedes having been able to identify Defendants on the websites he
16 alleges visiting when he clicked on the link in the first text message. Barton admits that he uses the
17 telephone and number at issue for “investigative means”² (*i.e.* making lawsuits), visiting
18 xanadutracking.com to increase his statutory damages and drag other parties into a manufactured
19 lawsuit. Once Barton visited the website, he answered questions (including submitting an address,
20 zip code and name, therefore receiving a text message and phone call from the site.)³ Barton
21 continued to do this after filing the original complaint to increase his statutory damages into this
22 manufactured lawsuit. Faced with near identical facts by an enterprising Plaintiff, one Court stated
23 (before order the plaintiff to show cause “why the complaint should not be dismissed is meritless”):
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27 ¹ DKT 83: Plaintiff’s First Amended Complaint
28 ² Delfgauw Decl. at Ex A: Deposition of Nathen Barton
³ Delfgauw Decl. at Ex B: Defendants’ Webform
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1 “The Court now turns to a troubling issue that the parties’ briefing on the motion to compel
2 arbitration brought to light. The statements of [plaintiff] in his affidavit and the representation of his
3 legal counsel . . . reveal that this lawsuit is based on a ruse.” *Johansen v. Nat’l Gas & Elec. LLC*, No
4 17-cv-587, 2017 U.S. Dist. LEXIS 208878, *8-*12 (S.D. Ohio Dec. 20, 2017) (where plaintiff
5 claimed that he “played along ‘as typically does,’” after receiving a call from the defendant, and
6 alleged a TCPA claim after receiving more calls).
7

8 The same is true here and the Court should dismiss this case with prejudice. The Barton has
9 already filed an initial complaint, and a First Amended Complaint. Barton has had two opportunities
10 to allege a claim and, critically, has never denied pressing “see results” or “join” when presented
11 with TCPA-complaint consent language on Xanadutracking.com or engaging with Defendants
12 Telemarketer by (mis)using the identity of other individual to further the call for investigative
13 purposes.⁴ For these reasons, and those discussed below, the Court should end this case.
14

15 **STATEMENT OF MATERIAL FACTS**

16 **I. BARTON AND THE 1019 NUMBER**

17 Nathen Barton is a professional plaintiff who earns money by suing companies who text-
18 message him, claiming they’ve violated the TCPA. Professional plaintiffs often operate by
19 registering their cell phone numbers on the national do not call database but then signing up online
20 to receive marketing messages, often using an assumed name and contact information.⁵ They then
21 claim to be mystified at receiving messages and demand tens of thousands of dollars in damages.
22 Barton knows that while he is *pro-se* and incurs no legal costs to threaten litigation, the other side
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27 ⁴ Delfgauw Decl. at Ex C: Call Log

28 ⁵ Delfgauw Decl. at Ex D: Dates and Information Used To Opt In
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1 must pay attorneys to defend. Barton demands more settlement than he could gain at trial, hoping to
2 extort a windfall for receiving a text message that he consented to.

3 Barton was sanctioned by Judge Settle in *Barton v. Leadpoint, Inc.*, No. 22-35130 22-35691,
4 2023 U.S. App LEXIS 18471, at *1 (9th Cir. July 20, 2023); aff'd in part, rev'd in part by *Barton v.*
5 *Leadpoint, Inc.*, No. 22-35130 22-35691, 2023 U.S. App. LEIS 18471, at *1 (9th Cir July 20, 2023).
6
7 Judge Settle found that Barton had manufactured a TCPA claim by purchasing a phone specifically
8 for the purpose of receiving TCPA calls, consenting to receive them, and then suing. Judge Settle
9 further noted that Barton “holds himself out to the world as an expert in TCPA litigation” and ran a
10 website called “TCPA University” that bragged Barton had received “enormous compensation for
11 the damages. I’m talking several tens of thousands of U.S. Dollars . . . and it keeps on coming.” *Id.*
12

13 In July 2020, Barton purchased a cell phone with a phone number that ends in 1019 (the
14 “1019 phone” or “1019 number”).⁶ FAC at 4:3-4. On February 16, 2021, Barton registered the
15 1019 number on the National Do-Not-Call Registry.⁷ Sixteen days later, Barton started his
16 investigation to file at least five lawsuits using the 1019 number.⁸
17

18 One of the prior owners of the 1019 number a woman with the initials “I.J-M”.⁹ According
19 to Ms. Jiminez-Martinez, she has not had access to that number since early 2020, when she and her
20 former husband divorced. Ms. Jiminez-Martinez statement coincides with Barton’s claim that, “On
21 July 9, 2020, Counter Defendant (Barton) paid and registered for a Washington State (360)
22

23
24 ⁶ Although Barton claims he purchased the phone for use by his son J.B., a minor, the record
25 evidence indicates that J.B. did not use the 1019 number as his personal line during the relevant time
26 period, and in fact that number was used for any residential purpose.

27 ⁷ Delfgaww Decl. at Ex E: Do Not Call Registry

28 ⁸ *Barton v. JMS Associate Marketing*, 3:21-cv-05509; *Barton v. Delfgaww*, 3:21-cv-05610; *Barton v.*
America’s Lift Chairs, LLC, 3:21-cv-05850; *Barton v. Walmart*, 3:23-cv-05063; *Barton v. Serve All*
Help All.

⁹ Defendants refer to I.J-M. by her initials to protect her privacy.

1 telephone area code cellular number”. *Id.* Barton has admitted to the ownership and registration of
2 the phone number at question in this case and has established a timeline that coincides with that of
3 the previous owner that Barton opted into Defendants online campaign on April 1, 2021.¹⁰ It is
4 undisputed that statements by both Ms. Martinez and Barton place exclusive ownership and
5 possession of phone number 1019, with Barton at the time of the opt-in; and although Barton, by his
6 own admission, had placed the phone number on the do not call prior to April 1, 2021. *Id.* It is
7 undisputed that exclusive ownership and position of phone number 1019 was that of Bartons.
8

9 **II. COMMUNICATION**

10 Defendants are in the business of finding rent to own homes for individuals with third party
11 providers. As relevant here, an individual can submit their name and contact information in an
12 online form on the Defendants’ website to indicate interest.¹¹ The form on Defendants’ website
13 informs the individual they will receive phone calls and texts pursuant to TCPA consent disclosure.
14 Defendants only contacts individuals that have expressed interest in receiving rent to own
15 information. Even though Barton denies having filled out the form in question to opt into
16 Defendants online campaign and giving consent to be contacted,¹² Barton himself has provided
17 evidence of his opt-in and grant of consent in his FAC.
18
19

20 Barton alleges receiving seven messages on April 1, 2021, from short code 33959. FAC at
21 4:15-22 – 5:1-5. Instead of responding “STOP” or ignoring the messages, Barton alleges that he
22 “clicked on different website links *Id.* at 5:6-8. Barton stated that “In every case, the links in
23 the text messages redirected to intermediate links before finally opening a last webpage or directly
24 linked to xanaduetracking.com.” *Id.* Remarkably, Barton acknowledges that he clicked on the text
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27 ¹⁰ Delfgaw Decl. at Ex F: Deposition of I.J-M

¹¹ Delfgaw Decl. at Ex B: Defendant’s Webform

¹² Delfgaw Decl. at Ex D: Dates and Information Used To Opt In

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1 message- and on that basis had to answer questions of name, phone number, and email to find out
2 the entity behind the solicitation after increasing his claimed statutory damages. Barton’s consented
3 by his actions and agreed to more texts messages and calls in order to generate statutory damages.

4
5 Barton alleges on April 2, 2021, the same date as his first text message, at 10:10 a.m. he
6 received an unconsented call from Defendants, initiated for the purpose of encouraging Barton to
7 purchase goods or services. *Id.* at 11:4-5. This phone call was made by a real person to Barton.
8 Defendants recording from April 2, 2021, is the start of Barton’s tactic to exploit the TCPA to file
9 this frivolous lawsuit and aiming to extract hefty compensation.¹³

10
11 Barton states that he received unconsented calls and text messages between April 1, 2021,
12 through August 4, 2021 (for which now claims he is entitled to damages). *Id.* at 4:3-22 – 13:6-9.
13 Instead of texting “stop” Barton clicked on the link in the text message, which he alleges took him to
14 a website that identified Defendants. Had Barton stopped there, he would not have “more than one
15 telephone call.” *See* 47 U.S.C. § 227 (c)(5). Those calls and text messages now form the basis of
16 Barton’s frivolous lawsuit. Notably, Barton does not allege that he [mis]used the identity of a prior
17 owner, does not allege asking anyone on a telephone call to stop calling, and does not allege
18 responding to any text message with “STOP.”
19

20 LEGAL STANDARD

21 Summary judgment is appropriate when “the movant shows that there is no genuine dispute.
22 as to any material fact and the movant is entitled to judgment as a matter of law.” 47 U.S.C. § 227
23 (c)(5). *see also Celotex Corp v. Catrett*, 477 U.S. 317, 322 (1986); *Anderson v. Liberty Lobby, Inc.*,
24 477 U.S. 242, 247 (1986). “There is no genuine issue of fact for trial where the record, taken as a
25 whole, could not lead a rational trier of fact to find for the non-moving party.” *Kantor v. BigTip*,
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28 ¹³ Delfgauw Decl. at Ex C: Call Log
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1 Mar. 12, 2020); *Moore v. CHW Grp., Inc.*, 2019 U.S. Dist. LEXIS 119161 (N.D. Ill. Jul. 17, 2019).
2 The TCPA prohibits making “any call” without the prior, express consent of the recipient “using any
3 automatic telephone dialing system or an artificial or prerecorded voice” to “any telephone number
4 assigned to a paging service [or] cellular telephone service.” 47 U.S.C. § 227(b)(1)(A)(iii); *see also*
5 *Patriotic Veterans, Inc. v. Indiana*, 736 F.3d 1041, 1045 (7th Cir. 2013).
6

7 Defendants seeks summary judgment in its favor on Barton's TCPA claim on two bases: (1)
8 Defendants do not utilize an automatic telephone dialing system or “ATDS”, as that term was
9 defined by the Seventh Circuit in *Gadelhak v. AT&T Servs.*, 950 F.3d 458, 464 (7th Cir. 2020); and
10 (2) Barton provided the required consent to Defendants texts and calls and there is no evidence of
11 revocation. It is Defendant's burden to prove consent under the TCPA. *Physicians Healthsource, Inc.*
12 *v. A-S Medication Sols., LLC*, 950 F.3d 959, 964 (7th Cir. 2020) (citing *True Health Chiropractic,*
13 *Inc. v. McKesson Corp.*, 896 F.3d 923, 931 (9th Cir. 2018), cert. denied 139 S. Ct. 2743, 204 L. Ed.
14 2d 1133 (2019)). As such, to obtain summary judgment, Defendants “must lay out the elements of
15 the [defense], cite the facts which it believes satisfies these elements, and demonstrate why the
16 record is so one-sided as to rule out the prospect of a finding in favor of the non-movant on the
17 [defense].” *Hotel 71 Mezz Lender LLC v. Nat'l Ret. Fund*, 778 F.3d 593, 601 (7th Cir. 2015). There
18 is no genuine dispute of material fact that Defendants called Barton. There is no evidence that
19 Defendants’ system is an ATDS. And finally, there is no genuine issue of material fact as to whether
20 Barton consented to the receipt of such calls, without ever properly or reasonably revoking
21 consent.¹⁴ Therefore, Barton’s claim under the TCPA must be dismissed.
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28 ¹⁴ Delfgaww Decl. at Ex C: Recordings of Barton
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1 **I. DEFENDANTS HAVE NEVER USED OR HAD THE CAPACITY TO UTILIZE AN**
2 **ATDS**

3 “To qualify as an ‘automatic telephone dialing system,’ a device must have the capacity either
4 to store a telephone number using a random or sequential generator or to produce a telephone
5 number using a random or sequential number generator.” *Facebook, Inc. v. Duguid*, 592 U.S. 395,
6 399, 141 S. Ct. 1163, 209 L. Ed. 2d 272 (2021). “[E]ven though a plaintiff will rarely, if ever, know
7 the specific functionality of a system used by a defendant before discovery, the plaintiff must still
8 allege sufficient facts to nudge his claim across the line from conceivable to plausible.” *Watts v.*
9 *Emergency Twenty Four, Inc.*, No. 20 C 1820, 2021 U.S. Dist. LEXIS 115053, 2021 WL 2529613,
10 at *4 (N.D. Ill. June 21, 2021) (internal quotations omitted). In *Gadelhak*, the Seventh Circuit
11 examined the statutory language of the TCPA as to an ATDS and held that the phrase “using a
12 random or sequential number generator” modifies both “store” and “produce,” which “mean[s] that a
13 device must be capable of performing at least one of those functions using a random or sequential
14 number generator to qualify as an [ATDS].” *Gadelhak v. AT&T Servs.*, 950 F.3d 458, 460, 463 (7th
15 Cir. 2020). Thus, equipment that “exclusively dials numbers stored in a customer database” is not an
16 ATDS. *Id.* at 460. “[T]he capacity to generate random or sequential numbers is necessary to the
17 statutory definition.” *Id.* at 469. “The TCPA does not prohibit all calls, only those made without
18 consent and using an ATDS or an artificial or pre-recorded voice.” *Hagood v. Portfolio Recovery*
19 *Assocs., LLC*, No. 3:18-CV-1510-NJR, 2020 U.S. Dist. LEXIS 47507, at *12 (S.D. Ill. Mar. 19,
20 2020).
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24 Here, the evidence is clear that Defendants do not use an ATDS. Defendants created its own
25 propriety system that only dials numbers from its customer database. Defendants operate an SMS
26 program hosted on a cloud-based software platform. The software notifies opt-in and members of
27 new offers and new programs. Defendants have never utilized a system, software or code base
28

1 capable of producing or generating a random or sequential phone number to be called or texted.
2 Consumer can only opt-in (subscribe) to Defendant’s mobile messaging or phone calls program by
3 manually submitting their mobile number to the database via an online webform- or by proactively
4 texting the word “JOIN” to subscribe.
5

6 In each instance, after Barton manually adds his mobile phone number to the database, the
7 consumer receives a wireless carrier-required text message and/or phone call. Therefore, the TCPA
8 claim must be dismissed.

9 **II. BARTON PROVIDED EXPRESS CONSENT AND NEVER REVOKED IT**

10 “Express Consent is an affirmative defense on which the Defendant bears the burden of
11 proof.” *Blow v. Bijora, Inc.*, 855 F.3d 793, 803 (7th Cir. 2017) (citation omitted). Here, Barton is a
12 “called party” because he was the current subscriber of the 1019 number. *Leyse v. Bank of Am. Nat.*
13 *Ass’n*, 804 F.3d 316, 325 (3d Cir. 2015). Express consent is easily demonstrated under the TCPA.
14 *See, e.g. Ryabyshchuk v. Citibank (S. Dakota) NA.*, No. 11-CV-1236-IEG WVG, 2012 WL 5379143
15 at *3 (S.D Cal October 30, 2012) (providing cellular phone number to Defendant was evidence of
16 prior express consent under the TCPA. As the Third Circuit has recognized in the context of
17 interpreting the TCPA, consent is nothing more than “**a willingness in fact for conduct to occur.**”
18 *Gager v. Dell Fin Servs , LLC*, 727 F.3d 5, 270-271 (3d Cir. 2013), (Emphasis added). Quoting
19 Restatement (Second) of Torts § 892.

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22 Additionally, consent is deemed given and effective until it is revoked with a clear
23 expression of a desire not to receive further communications. *Shannon v. State Collection Serv.*, No.
24 19-cv-983-wmc, 2021 U.S. Dist. LEXIS 25358, at *7 (W.D. Wis. Feb. 10, 2021); *Husain v. Bank of*
25 *Am., N.A.*, 2020 U.S. Dist. LEXIS 27349, 2020 WL 777293, at *7 (N.D. Ill. Feb. 18, 2020)(“In the
26 TCPA context, once consent is given, it is effective until revoked.”); *Advantage Healthcare, Ltd. v.*
27

1 *DNA Diagnostics Ctr., Inc.*, 2019 U.S. Dist. LEXIS 119162, 2019 WL 3216026, at *3 (N.D. Ill. July
 2 17, 2019)(“Consumers may revoke consent at any time as long as the revocation clearly expresses a
 3 desire not to receive further [communication].” (cleaned up.); *Payton v. Kale Realty, LLC*, 164 F.
 4 Supp. 3d 1050, 1065 (N.D. Ill. 2016) (“[C]onsent under the TCPA does not have an expiration date
 5 and is considered effective until revoked.”). The cases and rules are clear that Barton “may revoke
 6 consent at any time and through any reasonable means,” as long as the revocation “clearly expresses
 7 a desire not to receive further messages.” *In re Rules & Regs. Implementing the Tel. Consumer Prot.*
 8 *Act of 1991 (“2015 FCC Order”)*, at 7965, ¶ 2, 7996, ¶ 63; *see also Dolemba v. Kelly Servs., Inc.*,
 9 2017 U.S. Dist. LEXIS 13508, 2017 WL 429572, at *3 (N.D. Ill. Jan. 31, 2017); *Michel v. Credit*
 10 *Prot. Ass’n L.P.*, 2017 U.S. Dist. LEXIS 134767, 2017 WL 3620809, at *3 (N.D. Ill. Aug. 23, 2017)
 11 (“Once consent is given, it is effective until it is revoked.”).

12
 13
 14 Barton’s own allegations are that he affirmatively consented to receiving text messages and
 15 telephone calls from Defendants. He admits when he receives the text message from Defendants, he
 16 would click on the message so it would redirect him to the owner of the message. FAC at 5:6-8. He
 17 also admits when he received telephone calls on his mobile device, from Defendants agents he
 18 would engage with them by [mis]using an identity.¹⁵ The plain language of the TCPA, FCC
 19 regulations and case law make clear, Barton’s concession vitiates any violation of the statute. The
 20 TCPA was enacted to address uninvited and random encroachment of privacy; here, Barton admits –
 21 and the call logs¹⁶ verify – that he consented to receive text messages and phone calls on his mobile
 22 phone from Defendants.
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 27 ¹⁵ Delfgaw Decl. at Ex A: Deposition of Nathen Barton
 Delfgaw Decl. at Ex C: Call Log

28 ¹⁶ Delfgaw Decl. at Ex C: Call Log
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1 Furthermore, there is no private right of action under RCW 19.158.150. The statute provides
2 for a misdemeanor offense, which can only be prosecuted by a state actor, Barton is not. Nor is there
3 a single case attaching civil liability under this section.

4 **III. BARTON’S CLAIM UNDER RCW 80.36.390(2) FAILS**

5 Barton alleges that Defendants violated RCW 80.36.390(2). RCW 80.36.390(2) does not
6 exist. RCW 80.36.390(2)(a) states: For purposes of this section, each individual real estate agent or
7 insurance agency who maintains a separate list from other individual real estate or insurance agents
8 shall be treated as a company or organization. Defendants are neither individual real estate nor
9 insurance agents for this statute to apply.
10

11 Additionally, because Section 80.36.390 applies only to “telephone solicitation(s)”: that term,
12 as defined in the statute, “does not include: (a) Calls made in response to request or inquiry by the
13 called party.” 80.36.390(1). As discussed above, and in Barton’s FAC, Barton received the calls at
14 issue because he submitted his information and consented on Defendants webpage by clicking on the
15 text messages.
16

17 **IV. BARTON’S CLAIM UNDER RCW 19.190 FAILS**

18 Barton’s claim under RCW 19.190 fails for reasons already set forth above. First, Barton
19 does not enter “STOP” request when he received the text message. Second, Barton received the text
20 messages because he submitted his information and consent on Defendants webpage. The statute
21 only applies to an “unsolicited commercial text message” sent to cellular telephone. RCW
22 19.190.060¹⁸
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27 ¹⁸ Intent-2003 c 137: “. . . The legislature intends [intend] to limit the practice of sending unsolicited
28 commercial text messages to cellular telephone or pager numbers in Washington.”

V. THE COURT SHOULD STRIKE THE TREBLE DAMAGES, PUNITIVE DAMAGES AND ATTORNEY FEE REQUEST

The Court should strike Barton’s request for treble damages. The Consumer Protection Act declares that “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are . . . unlawful.” RCW 19.86.020. The CPA “shall be liberally construed that its beneficial purposes may be served. RCW 19.86.920. Barton has failed to show that the alleged conduct occurred and that it had the capacity to deceive or injure him to grant him treble damages.

The Court should strike Barton’s request for punitive damages. “Washington law prohibits punitive damage awards absent express statutory authorization.” *Nat’l City Bank, N.A .v. Prime Lending Inc.* 10-cv-034-KKS, 2010 U.S. Dist. LEXIS 85888 (E.D. Wash. July 19, 2010). Because Barton cites no statute authorizing damages for his claims, the Court should strike Barton’s request for punitive damages.

Barton asks this Court for “attorney fees” in his prayer for relief. FAC at 20:2-3. However, Barton cannot obtain attorney fees because he is proceeding pro se. *Fosselman v. Gibbs*, No. 06-cv-00375 PJH (NJV), 2010 U.S. Dist. LEXIS 47137, at *3 (N.D. Cal. Apr. 7, 2021). Therefore, Barton’s request for attorney fees is improper and should be stricken.

CONCLUSION

Defendants respectfully urge the Court to dismiss this lawsuit with prejudice.

Dated: July 11, 2025

Dawn R. Van Dusen

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CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2025, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system and sent a copy to Nathan Barton as follows:

Nathan Barton by email at farmersbranch2014@gmail.com

Executed on July 14, 2025 at Adrian, Michigan.

Dawn R. Van Dusen
Dawn R. Van Dusen, MSBA #P69647