

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
MISSOURI, EASTERN DIVISION

Daniel Human, individually and on behalf of others similarly situated
v. Fisher Investments, Inc., et al.

Human v. Fisher Investments · No. 4:24-cv-01177-MTS · Decided March 31, 2026

SUMMARY

The United States District Court for the Eastern District of Missouri sanctions Plaintiff Daniel Human in a putative Telephone Consumer Protection Act action against Fisher Investments, Inc., and related defendants. The Court finds that Human and his counsel engaged in repeated discovery delays and that Human intentionally discarded a desktop computer shortly before a court-ordered device inspection. As a sanction, the Court states that it will strike Plaintiff’s pleadings.

CASE DETAILS

COURT	United States District Court for the Eastern District of Missouri, Eastern Division
WRITING FOR THE COURT	Matthew T. Schelp
JURISDICTION	United States District Court for the Eastern District of Missouri, Eastern Division
DECIDED	March 31, 2026
DOCKET	4:24-cv-01177-MTS
DISPOSITION	dismissed
PROCEDURAL POSTURE	In a removed putative class action alleging violations of the Telephone Consumer Protection Act, Fisher moved to compel discovery and for sanctions after Plaintiff failed to comply with discovery obligations and intentionally disposed of a desktop computer shortly before a court-ordered device inspection. The district court imposed terminating sanctions.
STANDARD OF REVIEW	The appropriateness and extent of sanctions under the district court’s inherent authority are committed to the district court’s discretion. The court applied the requirements for terminating sanctions under Federal Rule of Civil Procedure 37 and required an express finding of bad faith for dismissal under inherent authority.

TOPICS

sanctions

discovery dispute

civil procedure

consumer protection

PRACTICE AREAS

Civil procedure

Discovery sanctions

Evidence spoliation

Telephone Consumer Protection Act

Consumer protection

QUESTIONS PRESENTED

1. Whether Plaintiff's failure to comply with a court-ordered device inspection and intentional destruction of a responsive computer justified terminating sanctions under Federal Rule of Civil Procedure 37(b)(2) (A).
2. Whether the loss of electronically stored information through intentional destruction justified dismissal and striking of pleadings under Federal Rule of Civil Procedure 37(e)(2).
3. Whether the court's inherent authority to sanction abuse of the judicial process independently supported dismissal and striking Plaintiff's pleadings.
4. Whether Fisher's motion to compel should be denied as moot after terminating sanctions were imposed.

HOLDINGS

1. Terminating sanctions were warranted because Fisher obtained a discovery order, Human willfully violated that order by failing to produce a responsive desktop computer, and the violation prejudiced Fisher.
2. Dismissal and striking the pleadings were authorized under Rule 37(e)(2) because electronically stored information that should have been preserved was lost, could not be restored or replaced through additional discovery, and Human acted with intent to deprive Fisher of its use in the litigation.
3. The court's inherent authority independently supported dismissal of Human's claim and striking his answer to Fisher's counterclaim because Human acted in bad faith and repeatedly abused the judicial process.
4. Fisher's motion to compel was denied without prejudice as moot because the terminating sanctions resolved the discovery dispute.

KEY QUOTATIONS

"To justify a sanction of dismissal, Rule 37 requires: '(1) an order compelling discovery, (2) a willful violation of that order, and (3) prejudice to the other party.'" (Discussion § II.a)

"The Court therefore finds that the sanction of dismissal of his claim and striking of his pleadings is warranted under the avenues available to this Court." (Conclusion)

FACTUAL BACKGROUND

Human brought a TCPA putative class action against Fisher, which maintained that Human had consented to the calls and manufactured a TCPA claim. During discovery, Human failed to timely respond, resisted a court-ordered device inspection, and appeared hours late after attempting to dismiss the action immediately before the inspection. He produced a phone and laptop but concealed the existence of a frequently used desktop computer, which he admitted disposing of in the trash less than forty-eight hours before the inspection. The court found that the desktop contained central evidence relevant to Fisher's fraud theory and that Human destroyed it intentionally and in bad faith, substantially prejudicing Fisher.

PROCEDURAL HISTORY

Human filed the action pro se in Missouri state court, and Fisher removed it to the Eastern District of Missouri. After Fisher answered, Human amended his complaint, repeatedly sought stays, failed to timely respond to discovery, avoided a deposition, attempted twice to file unilateral notices of voluntary dismissal, and appealed nonfinal orders. The Eighth Circuit dismissed his premature appeal for lack of jurisdiction and later summarily denied his mandamus petition. Fisher moved to compel and for sanctions; following a hearing, the court found willful, bad-faith discovery violations and dismissed Human's claims while striking his answer to Fisher's counterclaim.

DISPOSITION

dismissed

CASES CITED

- *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 998 (11th Cir. 2020)
- *Molock v. Whole Foods Mkt. Grp.*, 952 F.3d 293, 299-300 (D.C. Cir. 2020)
- *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992)
- *State ex rel. Nixon v. Coeur D'Alene Tribe*, 164 F.3d 1102, 1106 (8th Cir. 1999)
- *Rsrv. Mining Co. v. Env't Prot. Agency*, 514 F.2d 492, 541 (8th Cir. 1975) (en banc)
- *Cerro Gordo Charity v. Fireman's Fund Am. Life Ins. Co.*, 819 F.2d 1471, 1480 (8th Cir. 1987)
- *Furness v. Lilienfield*, 35 B.R. 1006, 1009 (D. Md. 1983)
- *In re Ashcroft*, 888 F.2d 546, 547 (8th Cir. 1989) (per curiam)
- *Omaha Indian Tribe, Treaty of 1854 with U.S. v. Tract I-Blackbird Bend Area*, 933 F.2d 1462, 1468 (8th Cir. 1991)
- *Jones v. Niagara Frontier Transp. Auth.*, 836 F.2d 731, 734 (2d Cir. 1987)
- *In re O'Brien*, 351 F.3d 832, 839 (8th Cir. 2003)
- *Scallen v. Comm'r of Internal Revenue*, 877 F.2d 1364, 1370 (8th Cir. 1989)
- *Acad. Bank, N.A. v. AmGuard Ins. Co.*, 116 F.4th 768, 785 (8th Cir. 2024)
- *Union Pump Co. v. Centrifugal Tech. Inc.*, 404 F. App'x 899, 906 (5th Cir. 2010) (per curiam)
- *Stevenson v. Union Pac. R. Co.*, 354 F.3d 739, 745-46 (8th Cir. 2004)

- Chambers v. NASCO, Inc., 501 U.S. 32, 44-45 (1991)
- Adkins v. Wolever, 554 F.3d 650, 651 (6th Cir. 2009) (en banc)
- Dillon v. Nissan Motor Co., 986 F.2d 263, 268 (8th Cir. 1993)
- Frumkin v. Mayo Clinic, 965 F.2d 620, 626-27 (8th Cir. 1992)
- Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1118 (1st Cir. 1989)
- Silvestri v. Gen. Motors Corp., 271 F.3d 583, 590 (4th Cir. 2001)
- West v. Goodyear Tire & Rubber Co., 167 F.3d 776, 779 (2d Cir. 1999)

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