

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARK W. DOBRONSKI,

Plaintiff,

v.

FORTIS PAYMENT SYSTEMS,  
LLC,

Defendant.

Case No. 23-cv-12391

Honorable Brandy R. McMillion

Magistrate Judge Elizabeth A. Stafford

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**REPORT AND RECOMMENDATION TO GRANT IN PART AND DENY  
IN PART DEFENDANT’S MOTION FOR SUMMARY JUDGMENT (ECF  
NO. 16)**

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**I. Introduction**

Plaintiff Mark W. Dobronski brings this action against Defendant Fortis Payment Systems, LLC, advancing claims for eight<sup>1</sup> telemarketing phone calls made in June through August 2023, in violation of the Telephone Consumer Protection Act (TCPA), the Michigan Home Solicitation Sales Act (MHSSA), and the Florida Telephone Solicitation Act (FTSA). ECF No. 1. The Honorable Brandy R. McMillion referred the case

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<sup>1</sup> Dobronski’s complaint states that Fortis made nine telemarketing calls, but he has since clarified that only eight calls are at issue. ECF No. 1, PageID.16; ECF No. 18, PageID.190, n.1.

for all pretrial proceedings under 28 U.S.C. § 636(b). ECF No. 14. Fortis moves for summary judgment. ECF No. 16. The Court **RECOMMENDS** that the motion be **GRANTED IN PART AND DENIED IN PART**.

## II. Analysis

### A.

“The Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The Court’s function at the summary judgment stage “is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

The party seeking summary judgment bears the initial burden of informing the Court of the basis for its motion and must specify the portions of the record that show the absence of a genuine dispute as to any material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the movant satisfies this burden, the burden shifts to the non-moving party to go beyond the pleadings and set forth specific facts showing a genuine issue for trial. *Id.* at 324. The Court must view the factual evidence in the light

most favorable to the non-moving party. *Scott v. Harris*, 550 U.S. 372, 380 (2007).

**B.**

Fortis moves for summary judgment on Dobronski's claims that Fortis: (1) disconnected unanswered telemarketing calls, in violation of 47 C.F.R. § 64.1200(a)(6) (count I); (2) failed to have a live agent available to speak with him after he answered, in violation of 47 C.F.R. § 64.1200(a)(7)(i) (count II); (3) made telephone solicitations to a residential subscriber on the national do-not-call list, in violation of 47 C.F.R. §§ 64.1200(c)(2) and (d)(3) (counts III and IV) and Mich. Comp. Laws § 445.111a(5) (count V); and (4) made various violations of the FTSA (count VI). The Court addresses those claims in turn.

**1.**

The TCPA directed the Federal Communications Commission to implement regulations protecting residential telephone subscribers from receiving unwanted telephone solicitations. *Charvat v. NMP, LLC*, 656 F.3d 440, 443 (6th Cir. 2011) (citing 47 U.S.C. § 227(c)(1)). The TCPA allows private actions for violating those regulations. *Id.* at 444 (citing 47 U.S.C. §§ 227(b)(3), (c)(5)).

Count I asserts violations of 47 C.F.R. § 64.1200(a)(6), which prohibits “[d]isconnect[ing] an unanswered telemarketing call prior to at least 15 seconds or four (4) rings.” Dobronski asserts that calls 4, 5, and 6 violated the regulation because Fortis prematurely disconnected before the call was answered. ECF No. 1, PageID.13-15. Dobronski alleges that each call rang only twice before it was disconnected and offers a call log detailing the call durations. ECF No. 1, PageID.13-15; ECF No. 16-12, PageID.176. Fortis offers its own call log reflecting different call durations. ECF No. 16-13, PageID.178. The parties’ records are summarized below:

<u>Call</u>	<u>Dobronski’s Call Log</u>	<u>Fortis’s Call Log</u>
Call 4 (August 2, 2023, at 1:43 p.m.)	11 seconds	15 seconds
Call 5 (August 9, 2023, at 9:53 a.m.)	8 seconds	17 seconds
Call 6 (August 9, 2023, at 9:53 a.m.)	9 seconds	No Record

Fortis contends that Dobronski’s call log is of unknown origin and contains conclusory, unsupported statements. ECF No. 16, PageID.106-107. This argument essentially amounts to an authentication challenge. “The Court cannot consider evidence at summary judgment that a jury could not consider at trial,” including evidence that has not been properly

authenticated. *Thomas v. Abercrombie & Fitch Co.*, 301 F. Supp. 3d 749, 754 (E.D. Mich. 2018). The authentication requirement compels a proponent to “produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Fed. R. Evid. 901(a). While the requirement is not demanding, “the evidence used to support a finding that the item is what the proponent claims it is must, itself, be admissible; in particular, it cannot be hearsay.” *J.A.T. of Fort Wayne Inc. v. Secura Ins. Co.*, 706 F. Supp. 3d 787, 799 (E.D. Mich. 2023) (cleaned up).

Dobronski’s call log states whether the calls were incoming or outgoing, the phone number they either came from or were made to, the date and time of the call, and the call duration. ECF No. 16-12, PageID.176. There is no sign that the record was prepared by a telephone service provider, and the slightly inconsistent formatting of the document raises a concern that Dobronski compiled the list himself. *Id.*

Dobronski states in an affidavit that the document was “obtained from [his] telephone service provider.” ECF No. 18, PageID.207. But such statements are inadmissible when the affiant “come[s] by his knowledge of exhibits through working with other parties, and not through personal knowledge, as Civil Rule 56(c)(4) requires.” *U.S. Fire Ins. Co. v. City of Warren*, No. 10-cv-13128, 2012 WL 13006156, at \*2 (E.D. Mich. June 12,

2012) (an attorney could not authenticate a city's public records, as he gained his knowledge by working with another individual with personal knowledge of and responsibility for those records). Likewise, Dobronski lacks personal knowledge of his service provider's records enabling him to certify their accuracy or completeness. He is not an employee of the service provider and has presented no evidence describing how the record was retrieved or that he is familiar with the provider's recordkeeping practices. See *Thomas*, 2017 WL 5289546, at \*4 (E.D. Mich., Nov. 13, 2017), *reconsideration granted on other grounds*, 301 F. Supp. 3d 749 (E.D. Mich. 2018) (holding that the plaintiff's phone records were inadmissible, as she failed to authenticate them through an affidavit from an AT&T custodian). Thus, the Court declines to consider Dobronski's call log.

By contrast, Fortis offers the declaration of Joshua Bryant, its vice president of sales, to authenticate its call log. ECF No. 16-2, PageID.129. Bryant stated that the log "is derived from [Fortis's] automated records of its business activities kept in the normal course of business." *Id.* He also stated that he personally generated the call log by searching Fortis's systems for dialing activity associated with Dobronski's phone number during the timeframe at issue. *Id.* Bryant is a custodian with personal

knowledge of how the document was created and who is “familiar with the company’s recordkeeping practices,” sufficient to satisfy Rule 901(a). See *Thomas*, 2017 WL 5289546, at \*4.

The admissible evidence shows that Fortis only made calls 4 and 5, both of which lasted at least 15 seconds, in compliance with 47 C.F.R. § 64.1200(a)(6). Dobronski does not offer evidence supporting his allegations that Fortis disconnected each call after only two rings or that Fortis made a second call on August 9, 2023. Count I should be dismissed.

**2.**

Count II asserts violations of 47 C.F.R. § 64.1200(a)(7), which prohibits telemarketers from “[a]bandon[ing] more than three percent of all telemarketing calls that are answered live by a person, as measured over a 30-day period for a single calling campaign.” A call is “‘abandoned’ if it is not connected to a live sales representative within two (2) seconds of the called person’s completed greeting.” *Id.* If a sales representative is unavailable, the telemarketer must provide:

(A) A prerecorded identification and opt-out message that is limited to disclosing that the call was for “telemarketing purposes” and states the name of the business, entity, or individual on whose behalf the call was placed, and a telephone number for such business, entity, or individual that permits the called person to make a do-not-call request, and

(B) An automated, interactive voice- and/or key press-activated opt-out mechanism that enables the called person to make a do-not-call request prior to terminating the call, including brief explanatory instructions on how to use such mechanism.

*Id.* § 64.1200(a)(7)(i) (cleaned up).

Dobronski alleges that calls 2, 3, and 7<sup>2</sup> violated this regulation because Fortis hung up when he answered rather than connecting him to a live sales representative. ECF No. 1, PageID.12-13, 17. Fortis argues that Dobronski's pleadings are inadequate because he alleges only that a live sales agent was unavailable but not that Fortis failed to provide a prerecorded message or an automated opt-out mechanism. ECF No. 16, PageID.109. But Dobronski's allegation that Fortis disconnected the calls when he answered sufficiently implies that no recording was played beforehand. And this regulation targets precisely the type of conduct alleged: the use of predictive dialers that result in consumers being met with "dead air" or hang-ups when they answer calls. *In re Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 F.C.C.R. 14014, 14108 (2003) (FCC Order). Dobronski's pleadings adequately state a claim.

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<sup>2</sup> Dobronski says that "[t]he reference to Call 8 in Count II should be deleted." ECF No. 18, PageID.190, n.1.

Yet the evidence does not support Dobronski's allegations. Again, Dobronski's call log is inadmissible. And Fortis's call log shows the following call durations:

<u>Call</u>	<u>Fortis's Call Log</u>
Call 2 (June 27, 2023, at 9:55 a.m.)	55 seconds
Call 3 (July 7, 2023, at 1:30 p.m.)	29 seconds
Call 7 (August 18, 2023, at 11:17 a.m.)	27 seconds

Those durations are longer than would be expected if Fortis had hung up just after Dobronski answered. It is true that the calls could be deemed "abandoned" under the statute had Dobronski answered and been met with dead air for 27 to 55 seconds before Fortis hung up. See 47 C.F.R. § 64.1200(a)(7). But Dobronski offers no evidence that this is what occurred. Nor has he offered any evidence that the calls were disconnected without a prerecorded message or an automated opt-out mechanism, as he may not rely on his unverified complaint at the summary judgment stage. See *Celotex*, 477 U.S. at 324.

Dobronski argues that Fortis has offered no evidence undermining his allegations. ECF No. 18, PageID.198. But a moving party need not "support its motion for summary judgment with evidence negating its

opponent's claims." *Met. Life Ins. Co. v. Kelly*, No. 16-cv-12544, 2017 WL 3085519, at \*3 (E.D. Mich. July 20, 2017). Instead, "the movant may meet the initial burden by pointing out to the court that the nonmoving party, having had sufficient opportunity for discovery, has no evidence to support an essential element of his or her case, and on which that party will bear the burden of proof at trial." *Id.* (cleaned up). That is, "a motion for summary judgment is a means by which to challenge the opposing party to 'put up or shut up' on a critical issue." *Cox v. Ky. Dep't of Transp.*, 53 F.3d 146, 149 (6th Cir. 1995) (cleaned up).

Because Dobronski has offered no evidence supporting a violation of 47 C.F.R. § 64.1200(a)(7), count II should be dismissed.

### 3.

Counts III and IV assert violations of regulations regarding the national do-not-call list. Chapter 47 C.F.R. §§ 64.1200(c)(2) prohibits telephone solicitations to "[a] residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government." Subsection 64.1200(d) prohibits callers from making "any call for telemarketing purposes to a residential telephone subscriber" unless the caller "has instituted procedures for

maintaining a list of persons who request not to receive such calls.” 47 C.F.R. § 64.1200(d) (cleaned up). The required procedures include recording a subscriber’s name and telephone number if that person requests not to receive calls from the telemarketer. *Id.* § 64.1200(d)(3).

To succeed on a claim alleging violations of these regulations, a plaintiff must prove that he was a “residential telephone subscriber.” *Stevens-Bratton v. Tru-Green, Inc.*, 437 F. Supp. 3d 648, 655 (W.D. Tenn. 2020); FCC Order, 18 F.C.C.R. at 14040 (“The national do-not-call rules will also not prohibit calls to businesses....Telemarketers may continue to contact all of these consumers despite the adoption of a national do-not-call list.”). The TCPA does not define “residential telephone subscriber,” but courts have interpreted that element as requiring proof that the number called was used for “residential purposes.” *Stevens-Bratton*, 437 F. Supp. 3d at 655.

While the Sixth Circuit has not addressed the issue, most courts have held “that a phone used for both personal and business purposes can still be regarded as residential within the meaning of [the TCPA], depending upon the facts and circumstances.” *Chennette v. Porch.com, Inc.*, 50 F.4th 1217, 1224 (9th Cir. 2022) (collecting cases); *Stevens-Bratton*, 437 F. Supp. 3d at 658 (“The determination about whether any particular wireless

subscriber is a residential subscriber is fact-intensive.” (cleaned up)). In evaluating whether mixed-use phones are residential, courts consider:

(1) whether plaintiffs have held out to the public or advertised their phone numbers for business purposes; (2) whether plaintiffs’ phones are registered with the telephone company as residential or business lines, including whether the phones are part of a family usage plan; (3) whether, and the extent to which, plaintiffs use their phones for business transactions or employment; (4) whether, and the extent to which, plaintiffs’ employers (or other business entities) pay for or reimburse plaintiffs for their phone bills.

*Chennette*, 50 F.4th at 1225. Although registration of a telephone number on the national do-not-call list gives rise to a presumption that the number is residential, that fact alone is not enough to survive summary judgment.

*Stevens-Bratton*, 437 F. Supp. 3d at 658.

Fortis contends that the phone number it called is a business line and not residential. ECF No. 16, PageID.111-114. Fortis, a payment processing business specializing in the firearms sector, obtains sales leads through the federal firearms listings (FFLs) maintained by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). ECF No. 16-2, PageID.129. Dobronski owns a business called Auto Arms, which holds a federal firearms license and is listed on the FFLs. ECF No. 16-3, PageID.138, 147-148. The FFLs from June through September 2023 list Auto Arms’ phone number as (734) \*\*\*-1000, the number at issue. ECF

No. 16-4, PageID.154; ECF No. 16-5, PageID.157; ECF No. 16-6, PageID.160; ECF No. 16-7, PageID.163. The same information is reflected on Washtenaw County's publicly available list of licensed firearm dealers. ECF No. 16-9, PageID.168. Fortis obtained and called that number from the publicly available FFLs. ECF No. 16-2, PageID.129. Fortis also emphasizes that Dobronski submits an annual renewal form and tax payment to ATF in connection with Auto Arms. ECF No. 16-3, PageID.142.

Dobronski says that he uses the phone number at issue at his home "for personal and general family related purposes," and that he personally pays for the line. ECF No. 18, PageID.206. He also states that his telephone service provider treats the line a residential account. *Id.* Although Dobronski admits that he holds a firearm license, he has been retired for several years. *Id.*, PageID.205. In the past 20 years, he has sold only one firearm, five years ago. *Id.*, PageID.204. He maintains his license to perform "custom gunsmith activities for long-time friends and acquaintances from the law enforcement sector, and those activities are performed on a *gratis* basis beyond reimbursement for miscellaneous out-of-pocket expenses." *Id.* Dobronski states that he does not advertise Auto Arms or list it in any directories. *Id.* And he provided his phone number to ATF because it was required on the license renewal application. *Id.*,

PageID.205. Viewed in favor of Dobronski, this evidence would support a finding that the phone line was residential.

Fortis insists that Dobronski advertised and held out his phone number to ATF and the public for business purposes. ECF No. 16, PageID.112-113. Fortis argues that an internet search for Auto Arms reveals several non-governmental websites listing the phone number as the business contact number. *Id.* But Dobronski provided his phone number to ATF only as a requirement to maintain his license. And the license is not used in connection with an active business, as Dobronski only completes a few projects for close friends and does not charge for his services. The non-governmental websites listing Auto Arms' phone number may have acquired the information the same way that Fortis did—through the FFLs. There is no evidence that Dobronski personally advertised the phone number for business purposes.

Fortis contends that Dobronski knew or should have known that the number would be held out to the public as Auto Arms' business number when he supplied it on the renewal applications. ECF No. 19, PageID.213. Fortis emphasizes that Auto Arms has held a license for 40 years and has appeared on the FFLs since at least January 2014. ECF No. 18, PageID.205; ECF No. 19-2, PageID.224. Yet Fortis also points out that

Auto Arms' phone number on the FFLs changed to the number at issue in May 2023, after Dobronski retired and just over a year before Fortis made the calls.<sup>3</sup> Deciding whether Dobronski knew that the new number would be held out to the public as a business number—when he did not personally advertise the number and Auto Arms conducted almost no business—would require the Court impermissibly to evaluate the credibility of his affidavit. *See Doe v. Snyder*, 449 F. Supp. 3d 719, 727 (E.D. Mich. 2020) (“The court may not make credibility determinations or weigh the evidence presented in support or opposition to a motion for summary judgment.” (cleaned up)).

Fortis also argues that Dobronski offers no evidence beyond his self-serving affidavit that his phone number is residential. ECF No. 16, PageID.112, 114; ECF No. 19, PageID.211-212. Fortis is correct that “a party cannot avoid summary judgment through the introduction of self-serving affidavits that contradict prior sworn testimony.” *U.S. ex rel. Compton v. Midwest Specialties, Inc.*, 142 F.3d 296, 303 (6th Cir. 1998). Nor does an affidavit containing conclusory allegations, unsupported by the

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<sup>3</sup> See State Federal Firearms Listings, *available at* [https://www.atf.gov/firearms/listing-federal-firearms-licensees/state?field\\_ffl\\_date\\_value%5Bvalue%5D%5Byear%5D=2023&ffl\\_date\\_month%5Bvalue%5D%5Bmonth%5D=5&field\\_state\\_value=MI](https://www.atf.gov/firearms/listing-federal-firearms-licensees/state?field_ffl_date_value%5Bvalue%5D%5Byear%5D=2023&ffl_date_month%5Bvalue%5D%5Bmonth%5D=5&field_state_value=MI) (last visited December 27, 2024).

record, create a triable issue of fact. *Mav of Mich., Inc. v. Am. Country Insur. Co.*, 289 F. Supp. 2d 873, 875 n.3 (E.D. Mich. 2003). But affidavits are by their nature self-serving, and “[a] court may not disregard evidence merely because it serves the interests of the party introducing it.” *Harris v. J.B. Robinson Jewelers*, 627 F.3d 235, 239 (6th Cir. 2010); *McKinney v. Hensen*, No. 1:23-cv-113, 2024 WL 1826358, at \*2 (W.D. Mich. Apr. 26, 2024). Thus, properly executed affidavits can defeat summary judgment. See *McKinney*, 2024 WL 1826358, at \*2; *Presidential Facility, LLC v. Debbas*, No. 09-12346., 2011 WL 6153693, at \*3 (E.D. Mich. Dec. 12, 2011).

In *Stevens-Bratton*, the plaintiff’s affidavit stated that she used her cellular phone number as both her residential and mobile phone line and that she did not have a dedicated residential landline. 437 F. Supp. 3d at 656. The court found that the self-serving affidavit did not create a factual issue because the first statement was conclusory, merely stating the legal requirement with no supporting facts. *Id.* And the second statement in the affidavit was contradicted by other record evidence. *Id.* at 656-57.

While Dobronski’s affidavit contains some conclusory statements (e.g., the telephone number “is a residential telephone line”), it contains sufficient factual detail to create a factual question. As described,

Dobronski says that the telephone line is for his home, he uses it for personal and family purposes, he pays for the phone service, and his service provider considers it a residential account. And considering Dobronski's explanation about ATF's licensing requirements and Auto Arms' limited operations, the statements in his affidavit are not inconsistent with Fortis's evidence that the phone number is listed on the FFLs for Auto Arms.

The other cases Fortis cites do not involve self-serving affidavits. See ECF No. 16, PageID.112. In *Shelton v. Target Advance LLC*, the court concluded that the plaintiff did not have standing to sue under the TCPA for calls to a phone number on the national no-not-call list because he used the number for both business and personal purposes. No. 18-2070, 2019 WL 1641353, at \*1, 6 (E.D. Pa. Apr. 16, 2019). Noting that the plaintiff advertised the number in connection with a business, the court concluded that "the phone number is also for business use, and business numbers are not permitted to be registered on the National Do Not Call Registry." *Id.* at \*6. But as discussed, most courts have held that mixed-use phone lines can be residential, depending on the circumstances. *Chennette*, 50 F.4th at 1224.

In *Bank v. Indep. Energy Grp. LLC*, the phone number was registered with the service provider as residential, but the attorney held it out to the public as a business line. No. 12-CV-1369, 2015 WL 4488070, at \*3-4 (E.D.N.Y. July 23, 2015). The attorney used the phone number on his business cards, professional letterhead, and court filings and provided it to clients and other attorneys. *Id.* at \*4. The court concluded that the number was not residential. *Id.* The facts here are distinguishable, as there is no evidence that Dobronski advertised his phone number beyond providing it as a contact to ATF to renew his license.

Thus, summary judgment on counts III and IV should be denied.

**4.**

Count V alleges that Fortis violated the MHSSA by making telephone solicitations to a residential subscriber on the national do-not-call list. ECF No. 1, PageID.18-19. The MHSSA prohibits a telephone solicitor from “making a telephone solicitation to a residential telephone subscriber whose name and residential telephone number is on the then-current version of the federal [do-not-call] list.” Mich. Comp. Laws § 445.111a(5) (cleaned up). A “residential telephone subscriber” is “a person residing in [Michigan] who has residential telephone service.” *Id.* § 445.111(l).

Fortis argues that Dobronski has not shown that he resided in Michigan when he received the calls. ECF No. 16, PageID.118-119. While no binding authority addresses the MHSSA's residency requirement, this Court previously analyzed the statute's language:

[T]he plain language of Mich. Comp. Laws §§ 445.111a(5) and 445.111(l) prohibits telemarketers from “making a telephone solicitation” to a person “residing” in Michigan with residential telephone service and who is on the national do-not-call list. The statute's use of the progressive tense of both “making” and “residing” expresses an intent to ban telemarketing calls to people residing in Michigan when the calls were placed. See *Deschaine v. St. Germain*, 256 Mich. App. 665, 670, 671 N.W.2d 79 (2003) (examining a statute's use of the present tense).

Michigan courts have defined “reside” in contexts outside the MHSSA. In *Kar v. Nanda*, the Michigan Court of Appeals held that “resided” meant “a place of abode accompanied with the intention to remain,” but did not require an intention to remain permanently and indefinitely. 291 Mich. App. 284, 294, 805 N.W.2d 609 (2011). Similarly, the court recently held that “reside” means “living in a place for substantial time beyond mere transient physical presence,” and that “‘residence’ is a broader concept than ‘domicile,’” given that a person can have multiple residences. *Mapp v. Progressive Ins. Co.*, 346 Mich. App. 575, 595 (2023).

*Dobronski v. Horvath & Tremblay, LLC*, No. 23-cv-10509, 2023 WL 7005864, at \*4 (E.D. Mich. Sept. 6, 2023) (cleaned up). The Court noted that being a Florida resident did not undermine Dobronski's Michigan residency but concluded that he failed to sufficiently allege that he resided in Michigan “for any length of time or that he lived there when he received

the calls from defendants.” *Id.* The district judge disagreed, finding that the complaint “plausibly allege[d] that [Dobronski] received the calls in question on a residential telephone line *while residing in Michigan.*” *Dobronski*, 2023 WL 7924707, at \*3 (E.D. Mich. Nov. 16, 2023) (emphasis added). The district judge did not disagree with the Court’s analysis that the MHSSA prohibits telemarketing calls to people residing in Michigan when the calls were placed.

Dobronski responds that he alleged in the complaint that he has a residence in Washtenaw County, Michigan; the calls were made to his residential phone line; and the calls were received in this judicial district. ECF No. 18, PageID.200 (citing ECF No. 1, PageID.1-2, 12-15). Again, he may not rely on his unverified complaint at the summary judgment stage. *See Celotex*, 477 U.S. at 324. And although he argues that the same pleadings were found sufficient in another case, that decision involved a motion to dismiss under Rule 12(b)(6), not a motion for summary judgment. *See Dobronski*, 2023 WL 7924707, at \*1. The MHSSA claim should be dismissed.

Dobronski stated in his affidavit that he has “a domicile residence in Florida, and vacation residences in Michigan.” ECF No. 18, PageID.205. But Dobronski offers no evidence that he received the calls at issue while

he was physically present in Michigan. Although the affidavit states that the phone number Fortis called is “a residential telephone line in [Dobronski’s] residence” in Michigan, it is unclear whether it was a landline or a cellular line that could be answered outside of Michigan.

**5.**

Count VI asserts violations of four provisions of the FTSA. Three of those provisions prohibit making a “telephonic sales call” under certain circumstances. Fla. Stat. §§ 501.059(2), (4), (8)(b). The statute defines a “telephonic sales call” as:

a telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of *any consumer goods or services*, soliciting an extension of credit for *consumer goods or services*, or obtaining information that will or may be used for the direct solicitation of a sale of *consumer goods or services* or an extension of credit for such purposes.

*Id.* § 501.059(1)(j) (emphasis added). “Consumer goods and services” means property “that is normally used for personal, family, or household purposes” or “any services related to such property.” *Id.* § 501.059(1)(c).

Florida courts have interpreted the FTSA narrowly, holding that the provisions barring telephonic sales calls do not apply to calls about non-consumer goods or services like business loans. *Brown v. Care Front Funding*, No. 8:22-cv-2408, 2023 WL 3098355, at \*4-5 (M.D. Fla. Apr. 6, 2023), *adopted*, 2023 WL 3092617 (M.D. Fla. Apr. 26, 2023); *see also*

*Moffet v. Everglades Coll., Inc.*, No. 8:23-cv-1787, 2024 WL 3342265, at \*3-4 (M.D. Fla. June 5, 2024) (holding that the FTSA did not govern calls about educational services, as education is not “property” or a service related to property).

Fortis offers payment processing services to businesses in the firearms industry and identified Auto Arms as a potential customer from the FLLs. ECF No. 16-2, PageID.129-130. During a call with a Fortis sales representative, Dobronski asked the representative to email him more information about Fortis’s services. *Id.*, PageID.130. Fortis’s email stated that it “offers payment processing solutions for businesses like yours in the firearms industry” and promised that it “can help save you money and support your business goals.” ECF No. 16-11, PageID.172-173. This evidence shows that Fortis offers business, not consumer, services. See *Brown*, 2023 WL 3098355, at \*4-5. Because Fortis’s calls solicited sales for non-consumer services, Dobronski’s claims under Fla. Stat. §§ 501.059(2), (4), and (8)(b) should be dismissed.

Dobronski does not rebut that reasoning but doubles down on his claim under Fla. Stat. § 501.059(5)(a). ECF No. 18, PageID.201-202. That provision prohibits telephone solicitations “to a consumer, *business*, or donor...who has previously communicated to the telephone solicitor or

other person that he or she does not wish to receive an outbound telephone call, text message, or voicemail transmission...[m]ade by or on behalf of the seller whose goods or services are being offered.” Fla. Stat. § 501.059(5)(a) (emphasis added). Dobronski emphasizes that the subsection prohibits telephone solicitations to businesses as well as consumers. ECF No. 18, PageID.201-202.

Even if Dobronski’s interpretation of the statute is correct, he fails to show a violation. Citing his complaint, Dobronski argues that he told a Fortis representative during call 1 not to call him again. ECF No. 18, PageID.202 (citing ECF No. 1, PageID.12). But his affidavit does not make this allegation. See ECF No. 18, PageID.205-207. As noted, Dobronski may not rely on his unverified pleadings at the summary judgment stage. See *Celotex*, 477 U.S. at 324. Thus, Dobronski has not offered evidence showing that Fortis violated Fla. Stat. § 501.059(5)(a) by continuing to call him after he told the representative not to contact him. See ECF No. 19, PageID.215-216. Summary judgment on count VI should be granted in Fortis’s favor.

### III. Conclusion

The Court thus **RECOMMENDS** that Fortis’s motion for summary judgment be **GRANTED IN PART AND DENIED IN PART** (ECF No. 16) and that counts I, II, V, and VI be dismissed.

s/Elizabeth A. Stafford  
ELIZABETH A. STAFFORD  
United States Magistrate Judge

Dated: January 8, 2025

### **NOTICE TO THE PARTIES ABOUT OBJECTIONS**

Within 14 days of being served with this report and recommendation, any party may serve and file specific written objections to this Court’s findings and recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). If a party fails to timely file specific objections, any further appeal is waived. *Howard v. Secretary of HHS*, 932 F.2d 505 (6th Cir. 1991). And only the specific objections to this report and recommendation are preserved for appeal; all other objections are waived. *Willis v. Secretary of HHS*, 931 F.2d 390, 401 (6th Cir. 1991).

Each **objection must be labeled** as “Objection #1,” “Objection #2,” etc., and **must specify** precisely the provision of this report and recommendation to which it pertains. Within 14 days after service of

objections, **any non-objecting party must file a response** to the objections, specifically addressing each issue raised in the objections in the same order and labeled as “Response to Objection #1,” “Response to Objection #2,” etc. The response must be **concise and proportionate in length and complexity to the objections**, but there is otherwise no page limitation. If the Court determines that any objections lack merit, it may rule without awaiting the response.

### **CERTIFICATE OF SERVICE**

The undersigned certifies that this document was served on counsel of record and any unrepresented parties via the Court’s ECF System to their email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on January 8, 2025.

s/Davon Allen  
DAVON ALLEN  
Case Manager