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11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 ANTON A. EWING,) Case No. 23-cv-01240-JLS-AHG

14)
15 Plaintiff,)

16 v.)

17)
18)
19)
20 FREEDOM FOREVER, LLC,)

21)
22 Defendant.)
23)

24)
25)
26)
27)
28)
DEFENDANT’S RENEWED
MOTION FOR SANCTIONS,
UP TO AND INCLUDING
TERMINATING
SANCTIONS AND
MEMORANDUM OF
LAW IN SUPPORT

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INTRODUCTION

Defendant, Freedom Forever, LLC (“Freedom Forever”), files this Renewed Motion for Sanctions, up to and Including Terminating Sanctions against Plaintiff, Anton Ewing (“Ewing”). Ewing’s rampant violations of basic norms of civility and professionalism have continued unabated since the Court denied, without prejudice, Freedom Forever’s motion for terminating sanctions (ECF 24). Unless and until Ewing is made to pay for his conduct, he will continue to make a mockery of this Court, its Local Rules on civility and professionalism, and any efforts to bring this case to a resolution.

Stated simply, the Court warned Ewing, but he utterly failed to heed to that warning. In denying, without prejudice, Freedom Forever’s first motion for terminating sanctions, the Court sent this stern and unequivocal warning to Ewing:

The Court’s decision to deny sanctions at this juncture, however, should not be construed as approval of Plaintiff’s approach to this litigation thus far. After reviewing the communications between the Parties, the Court agrees with Defendant that Plaintiff’s emails are unnecessarily combative and unprofessional. The Court reminds Plaintiff that he is obligated, as a litigant before this Court, to comply with Civil Local Rule 2.1 in its entirety, including its requirements that he “seek sanctions sparingly, and not to obtain a tactical advantage or for any other improper purpose”; “address legal arguments with other lawyers professionally[] and not personally”; and “treat adverse witnesses, litigants, and opposing counsel with courtesy, fairness[,] and respect.” See S.D. Cal. CivLR 2.1. The Court also reminds Plaintiff that as he must attempt to resolve disputes informally with opposing counsel and entertain reasonable requests for cooperation, *see id.*, he may not refuse to communicate with opposing counsel via email, *see Ewing v. GoNow Travel Club LLC*, No. 19-CV-297-BAS-AGS, 2019 WL 4688760, at *2 (S.D. Cal. Sept. 26, 2019). ***This Order constitutes a warning to Plaintiff that if his unprofessional conduct continues—and reaches a point that it interferes with the efficient resolution of this case—this Court may resort to monetary and/or terminating sanctions.***

(ECF 24 at 10-11 (emphasis added).)

1 To say that Ewing has flagrantly violated the Court’s warning would be an
2 understatement: not only has he continued failing “to comply with Civil Local Rule
3 2.1 in its entirety,” he actually has increased the volume and tone of his misbehavior.
4 In addition to the continued unprofessional, harassing, and belligerent emails and
5 communications, Ewing has, among many other things detailed below, (1) filed a
6 completely frivolous sanctions motion against Freedom Forever in clear violation of
7 the Court’s admonition above that he “seek sanctions sparingly, and not to obtain a
8 tactical advantage or for any other improper purpose”; (2) threatened to sue Freedom
9 Forever’s lead counsel personally; (3) filed a completely baseless bar complaint
10 against Freedom Forever’s lead counsel; and (4) threatened to have lead counsel
11 arrested if and when he enters California.
12

13 Litigants and counsel should not have put up with this blatant abuse and
14 weaponization of the judicial system. Ewing’s M.O. is that he resorts to these kinds
15 of shenanigans as a method of bullying defendants into settling without regard to (or
16 in spite of) the weakness of Ewing’s case on the merits. That has not happened here
17 because Ewing has no case “on the merits” against Freedom Forever, which has
18 prompted him to resort to ever-increasing misbehavior and belligerence. He has been
19 amply warned in this case and by other judges in this District in prior cases about
20 his boorish behavior, but he simply – and almost gleefully – ignores those warnings,
21 assuming (safely, so far) that no judge will levy a dismissal sanction or, in the
22 alternative, the severe monetary sanction that his misconduct so richly deserves.
23 Until that happens, responsible companies like Freedom Forever, and the counsel
24 they employ, will be forced to unnecessarily expend resources on these sorts of
25 collateral issues that delay the inevitable resolution of the case in their favor.
26

27 The time has come for Ewing to pay the ultimate sanction for his rampant,
28 ongoing misbehavior. The Court should enter terminating sanctions against Ewing

1 and dismiss his lawsuit, leaving only Freedom Forever’s counterclaims to be
2 litigated. In the alternative, the Court should award Freedom Forever monetary
3 sanctions in the amount of \$25,000, to be paid promptly by Ewing, to (only partially)
4 compensate Freedom Forever for the expenses and resources it has been forced to
5 incur as a result of Ewing’s misconduct.
6

7 **BACKGROUND RELEVANT TO MOTION**

8 Even though he purports to proceed pro se, Ewing is, as the Court has noted,
9 “a law school graduate” who, in filings in prior cases in this Court, “says he passed
10 the Arizona and Nevada bar exams.” *Ewing v. LeadExcel, Inc.*, 2021 WL 9097616,
11 *3 (S.D. Cal. July 30, 2021). In the *LeadExcel* matter, the Court observed that Ewing
12 “holds himself out to the public as knowledgeable in the law, and he has filed and
13 prosecuted numerous cases in this District.” *Id.* In other words, “the fact that he is
14 pro se litigant who does not have a law license does not excuse his repeated
15 disobedience to rules and the Court’s orders.” *Id.*

16 **I. EWING’S HARASSING, UNPROFESSIONAL, AND THREATENING**
17 **BEHAVIOR AND MISCONDUCT**

18 **A. Ewing’s Disparaging, Threatening, Uncivil Emails in 2023**

19 With Ewing, there is no such thing as a calm, professional exchange of emails
20 or communications. He also is fond of firing off unsolicited emails, frequently in the
21 form of temper tantrums, whenever the mood strikes him – which is often. Freedom
22 Forever detailed Ewing’s disparaging and uncivil emails at the outset of the case in
23 its initial Motion for Terminating Sanctions and respectfully refers the Court to that
24 filing for a full description. (ECF 16-1, 16-2.) In short, just a few weeks into the
25 case, Ewing: (1) made baseless threats of criminal violations regarding Freedom
26 Forever and its counsel (ECF 16-1 at 2-3) – a particularly bold tack from someone
27
28

1 who, per an opinion from this District, previously sustained “a felony conviction”¹;
2 (2) consistently disparaged Freedom Forever and its counsel (*id.* at 3); (3) made
3 meritless threats to file sanctions motions against Freedom Forever (*id.* at 3-5); (4)
4 sent threatening emails such as a “command” to “[c]ease and desist from emailing
5 me further. Violating this command will have serious consequences for you.” (*Id.* at
6 5)²; and (5) sent an *ex parte* threatening email to a Freedom Forever employee
7 warning him, “Do not destroy any evidence in this matter. I will be taking your
8 deposition.” (*Id.* at 5-7.)³

10 **B. Ewing’s Most Recent Threats, Misbehavior, and Vexatious Litigation**

11 **1. The Uncivil and Unprofessional Emails**

12 Freedom Forever filed its answer and counterclaims on May 20, 2024. (ECF
13 35.) Unaccustomed to playing defense, Ewing became completely unglued at the
14 prospect of being sued and not only resumed his bullying and harassing tactics, he
15 increased them beyond any bounds of human and litigation professionalism.

16 First, on May 20, the day the Counterclaims were filed, Ewing sent nine
17 emails to Freedom Forever’s counsel. (*See* Ex. A.) The next day, May 21, Ewing
18 sent an incredible 22 emails to counsel, most of them threatening sanctions and/or
19 frivolous anti-SLAPP maneuvers, as well as a renewed breach of contract claim
20 Ewing had waived by failing to file it in this case. (*See* Ex. B.)

21
22
23 ¹ *See Ewing v. Superior Court of Cal.*, 90 F. Supp. 3d 1067, 1071, 1078 (S.D. Cal. 2015) (reciting what the Court termed Ewing’s “felony conviction”).

24 ² Precisely that sort of “don’t contact me” “command” from Ewing prompted the
25 Court to sanction him in a prior case. *See Ewing v. GoNow Travel Club, LLC*, 2019
26 WL 4688760, *3 (S.D. Cal. Sept. 26, 2019) (sanctioning Ewing where, *inter alia*,
27 Ewing “told [defense counsel] many times to put Plaintiff’s number on the firm’s
28 internal do not call list,” a “requirement” that “is unreasonable, illogical, and makes
it very difficult for counsel to contact Plaintiff,” rendering efficient communication
between the parties impossible”).

³ These sorts of emails are exactly the types of unprofessional” emails for which the
Court has criticized Ewing in the past. *See, e.g., Stark v. Smart Solar Mktg.*, 2019
WL 13203946, *3 (S.D. Cal. May 21, 2019) (finding “the emails from Ewing to
Defendants’ counsel are unprofessional and unnecessarily aggressive”).

1 None of these heavy-handed tactics produced Ewing’s desired result, which
2 was for Freedom Forever to withdraw its Counterclaims or, better yet for Ewing, to
3 pay Ewing money to settle the case. Accordingly, Ewing (1) filed his frivolous anti-
4 SLAPP declaration on May 23, 2024 (ECF 37); (2) filed a case in the Superior Court
5 of San Diego County (where he is designated as a vexatious litigant) alleging the
6 same breach of contract claim he waived in this Court; (3) on May 24, sent multiple
7 emails to counsel, one of which (yet again) accused counsel of “a criminal act” and
8 (falsely) termed the Counterclaims “baseless, frivolous, contrary to well-settled law,
9 and devoid of merit.” (*See Ex. C, p.1.*)

11 **2. Directly Contacting (Again) Freedom Forever and the Aftermath**

12 Reaching ever-desperate levels, Ewing then sent Freedom Forever’s two
13 counsel of record a draft settlement agreement, ludicrously demanding a \$45,000
14 settlement, that he (the supposed non-lawyer) demanded “to be presented to
15 Freedom Forever pursuant to State Bar rules,” warning that “[i]f you do not, I will.”
16 (*Ex. D, p.1.*) The sheer lunacy of the demand was apparent, and Ewing was warned
17 not to contact Freedom Forever directly. (*Id.*) Ignoring that warning and eschewing
18 any and all bounds of reasoned judgment, Ewing sent an email to Freedom Forever’s
19 general counsel on Monday, May 27 – the Memorial Day holiday. (*See Ex. E.*)

21 Among the many false statements in this email were (1) an alleged refusal by
22 counsel to communicate the settlement offer (counsel never refused to do so); (2)
23 misstatements about lead counsel’s California-based cases, of which Ewing clearly
24 has no understanding; and (3) falsely accusing counsel of “ad hominem attacks”
25 (none of which Ewing identified in the note) and being a “potty-mouth.” (*Id.*, pp. 2-
26 3.) Counsel promptly challenged Ewing to identify any email where counsel had
27 “refused to convey a settlement offer”; Ewing did not identify one and, instead, once
28 again called counsel a “fool” who allegedly sends “potty-mouth emails.” (*Id.*, p.1.)

1 Trying to defuse Ewing’s rants, counsel replied by saying, “Freedom Forever
2 rejects your recent offer and will not make a counter,” adding that his continued
3 behavior would support a renewed motion for terminating sanctions: “There will no
4 response to any subsequent emails from you that are completely irrelevant and are
5 nothing but ad hominem attacks on me. If you want to keep sending them you are
6 welcome to as they are greatly assisting a renewed motion for terminating
7 sanctions.” (*Id.*, p.1.) Ewing, of course, could not receive that without an absurd
8 response: “File and see how fast you get served with another Rule 11 motion.” (*Id.*)
9

10 **3. Threats to Sue Freedom Forever’s Counsel Personally**

11 Next, Ewing proved insufficiently capable of managing the should-be benign
12 task of conducting the Rule 26(f) conference and accompanying proposed schedule.
13 After conflicts as to the date of the conference (it ultimately was held on June 3),
14 Ewing went on another rant about the contents of the Court submission. First,
15 bizarrely, Ewing threatened counsel, “I will also sue you, personally, for breach of
16 contract.” (ECF 41-2.) He added, notwithstanding that counsel is a Georgia citizen,
17 “I would sue you in California.” (Ex. F, p.1.) Because seemingly no lengthy email
18 exchange with Ewing passes without a criminal accusation, Ewing once again falsely
19 accused counsel of a “crime in California under section 6128” by supposedly
20 “[m]aking a knowingly false statement to a judge.” (*Id.*, p.2.)
21

22 **4. The Frivolous Bar Complaint and Unconscionable Arrest Threat**

23 Ewing has displayed an unhealthy fixation with lead counsel’s historical case
24 representations in the State of California, apparently (and completely erroneously)
25 believing counsel somehow is engaging in the unauthorized practice of law in
26 California – a cheeky assertion given that Ewing is a convicted felon who either has
27 not taken, or taken and not passed, the California bar. Thus, Ewing – as he does in
28 many of his cases when any opposing counsel does even the remotest thing that

1 irritates Ewing – filed an entirely baseless bar complaint against lead counsel. (ECF
2 41-1.) Clearly, Ewing’s (awful) reputation with that body precedes him – nothing
3 has come of the frivolous bar complaint, but it is yet one more stratagem Ewing is
4 attempting to employ to interfere with Freedom Forever’s (and the Court’s) ability
5 to litigate the case in a reasonable manner.
6

7 But even that paled with the Ewing’s worst and most sanctionable move yet,
8 which occurred on June 27. In the course of a dispute over service of initial
9 disclosures, Ewing threatened, “shall I file a police report and have you arrested
10 when you enter CA?” (ECF 41-3.) Not content with that threat, Ewing sent another
11 email exactly one minute later:

12 Every attorney is guilty of a misdemeanor who either:

13 (a) Is guilty of any deceit or collusion, or consents to any deceit
or collusion, with intent to deceive the court or any party.

14 (b) Willfully delays his client's suit with a view to his own gain.

15 (c) Willfully receives any money or allowance for or on account
16 of any money which he has not laid out or become answerable for.

17 Any violation of the provisions of this section is punishable by
18 imprisonment in the county jail not exceeding six months, or by a fine
not exceeding two thousand five hundred dollars (\$2,500), or by both.

19 *Ca. Bus. and Prof'l. Code § 6128*

20 Amended by Stats. 1976, Ch. 1125

21 (Ex. G, p.1.) Counsel did not respond to such unprofessionalism and outlandish
22 threats. But that doesn’t render Ewing’s threats any less sanctionable.

23 **5. Subsequent Vexatious and Harassing Emails**

24 One would think Ewing would realize how far he overstepped the bounds of
25 human and professional civility by threatening the arrest of opposing counsel. But
26 one would be wrong to think that. First, not long after the “arrest” email, Ewing
27 inquired about whether Freedom Forever had investigated an alleged recent call
28 Ewing claimed to have received. He was told that Freedom Forever “reached out to
the person you said called you (Who is not employed by Freedom Forever) and not

1 been able to connect with him yet.” (Ex. H, p.1.) For no good reason, Ewing
2 responded as follows: “Your client lies. Lawsuit is being filed. He is actively
3 licensed, recently in fact, with Freedom. He said he was called as Freedom. It does
4 not get any worse. Either make an offer or get served.” (*Id.*)

5
6 The next day (June 28), continuing his obsession with counsel’s California
7 work, Ewing emailed: “Are you practicing law in case 24cv911, when you are not
8 licensed to do so?” (Ex. I, p.1.) And he added his usual “crime” threat: “You know,
9 sir, practicing law without a license, is a crime. But you knew that right? Nobody
10 cares about your frivolous opinions about other cases.” (*Id.*)

11 **6. Breaching the Confidentiality of the ENE**

12 The parties participated in the Court-ordered ENE on July 3. Obviously,
13 Ewing expected the case to settle. The ENE did not result in a settlement, however,
14 prompting Ewing to come unhinged yet again, sending a lengthy rant-by-email that
15 thought nothing of breaching the should-be private sessions that occurred in the
16 ENE. (Ex. J.) Ewing purported to recite that “Judge Goddard told me that you/your
17 client have the following concerns,” then proceeded to concoct issues that were not,
18 in fact, discussed in the ENE (at least by Freedom Forever):

- 19 • “Judge Goddard says that you do not believe that Hakuna Matata Energy
20 called me on behalf of Freedom.” (*Id.*, p.1.) Hakuna Matata Energy never
21 came up in the sessions.
- 22 • “Judge Goddard says that Mr. Bouchy is very angry.” (*Id.*, p.2.) Brett
23 Bouchy – who is not a party to this case – also never came up.

24
25 If that weren’t enough, Ewing attempted his usual threats in his increasingly
26 desperate efforts to extricate himself from the case he initiated, such as: (1) “Today
27 was game over for you.”; (2) “[E]ven if you were to get a judgment against me in
28 this case, that will not stop me from filing a new TCPA lawsuit in the future for a

1 new call in the future.” (*Id.*)

2 Moreover, confirming that he has a criminal history, Ewing made the odd
3 boast that he is “completely and absolutely judgment proof,” contending that Mr.
4 Bouchy “will never get a dime out of me” and supposedly “knows I have a
5 racketeering conviction and so he must understand that I have nothing to get and I
6 have all the right in the world, protected, to sue again and again.” (*Id.*) Freedom
7 Forever did not respond to that post-ENE rant.
8

9 **7. Apparent and Attempted Violations of CIPA**

10 Ewing apparently has failed to grasp the irony (or hypocrisy) of suing for
11 purported violations of the CIPA for alleged recording of conversations when he has
12 attempted, and apparently succeeded, in doing the exact same thing. First, as part of
13 the squabble concerning the content of the Case Management Report, Ewing
14 disclosed that “I will remind the judge, ex parte, during the ENE” of some vague and
15 imagined transgression by counsel and added, “I will play a recording of your voice
16 that I might have.” (Ex. F, p.2.) Obviously, Freedom Forever’s counsel has never
17 consented to have any conversations with Ewing recorded.⁴
18

19 Ewing then topped himself at the Zoom discovery conference on July 8 by
20 waving a tape recorder to the camera and stating that he was recording the
21 conference, even though he knew it was being taken down by a court reporter
22 anyway. Magistrate Judge Goddard ordered Ewing to cease recording and to erase
23 any recording he had made up to that point in the proceedings. (Freedom Forever
24 assumes Ewing did so.) Regardless, these antics further illustrate that Ewing is

25 ⁴ See Cal. Penal Code § 632 (prohibiting “intentionally and without the consent of
26 all parties to a confidential communication ... record[ing] a] confidential
27 communication ... carried on ... by means of a telegraph, telephone, or other device,
28 except a radio.”). Accordingly, as the Court has observed, “§ 632.7 prohibits the
unauthorized recording of calls that are received with the other party's consent.”
Brinkley v. Monterey Fin. Servs., LLC, 340 F. Supp. 3d 1036, 1043 (S.D. Cal. 2018).
Freedom Forever likely will amend its Counterclaims to add a claim under § 632.7
if terminating sanctions are not granted.

1 willing to break the law whenever he sees fit and has no remorse about doing so.

2 **8. Baseless Sanctions Motions in Violation of Court Order**

3 The Court specifically warned Ewing “to comply with Civil Local Rule 2.1 in
4 its entirety,” including its requirement that litigants “seek sanctions sparingly, and
5 not to obtain a tactical advantage or for any other improper purpose.” (ECF 24 at 10-
6 11.) Ewing ignored that warning in at least two ways. First, he filed an entirely
7 meritless anti-SLAPP declaration aimed at the Counterclaims. (ECF 37.) Second, he
8 filed an equally baseless motion for sanctions on the same alleged basis. (ECF 39.)⁵
9 There should be no question that these filings violated the Court’s warning and have
10 been filed for no purpose other than to “obtain a tactical advantage” or were filed
11 “for any other improper purpose” in violation both of Local Rule 2.1 and this Court’s
12 express warning to Ewing to refrain from making exactly these sorts of filings.⁶

14 **II. EWING’S HISTORY OF SANCTIONS/SANCTIONABLE CONDUCT**

15 **A. Ewing’s Frequently Sanctionable Conduct**

16 As Freedom Forever has noted (ECF 16 at 7-8), judges in this District and
17 elsewhere⁷ have sanctioned Ewing for all types of misconduct, ranging from Rule
18 11 violations to discovery violations to making blatant misrepresentations to the
19 Court to generally sending harassing and threatening emails, and have otherwise
20

22 ⁵ These examples do not include yet another baseless sanctions motion Ewing filed
23 against Freedom Forever’s counsel in the case where he is improperly attempting to
24 revive his waived breach of contract claim, Case No. 24-cv-0911, which should be
25 treated as a violation of the Court’s admonition in this case given that Ewing has
26 purposefully tried to circumvent the Court’s dismissal of his breach of contract claim
27 in this case by attempting to reassert it in Case No. 24-cv-0911.

28 ⁶ Ewing’s latest baseless sanctions threat occurred mere days ago, when he pitched
an email fit over Freedom Forever’s refusal to update its initial disclosures to
identify a company called Apricot Solar, *a company Ewing (as he concedes) did
not identify in his Complaint*. Here was Ewing’s (typically ridiculous) response to
that refusal: “Send over the Apricot evidence. I am telling you to do this. Obey or
get sanctioned. You are on notice dear sir.” (Ex. K, p.1.)

⁷ See *T.D. Services Co. v. Ewing*, 2017 WL 5563402, *1 (Cal. App. 4th Dist. Nov.
20, 2017) (trial court “imposed \$5,000 in sanctions” on Ewing, affirmed on appeal).

1 noted his unprofessional behavior.⁸

- 2 • *Ewing v. K2 Property Dev.*, 2018 WL 4846649, *2 (S.D. Cal. Oct. 4, 2018):
3 The Court assessed fees against Ewing in the amount of \$2,214, noting
4 Ewing’s “pattern of misrepresentations and unprofessional conduct.”
- 5 • *GoNow Travel Club*, 2019 WL 4688760, *2-4: The Court recited several
6 instances of Ewing misconduct, prompting the Court to sanction Ewing “in
7 the amount of \$500.00.”
- 8 • *Ewing v. LeadExcel, Inc.*, 2020 WL 2037111, *2 (S.D. Cal. Apr. 27, 2020),
9 2021 WL 9097616, *2 (S.D. Cal. July 30, 2021): The Court recited that
10 Ewing “has been repeatedly admonished and rebuked by different judges.
11 His improper and abusive filings have been repeatedly stricken, in part or in
12 whole,” and he has “been forbidden to block opposing counsel’s emails. He
13 has been rebuked for disobeying Court orders, violating civility
14 requirements by harassing and baselessly insulting his opponents,
15 attempting to mislead the Court, and engaging in misrepresentations
16 calculated to push non-lawyers into agreeing to a quick settlement,” and,
17 citing several prior orders from this District, sanctioned Ewing \$1,000; a
18 year later, in the same case, Ewing again violated a Court order and, as the
19 Court held, “committed a fresh violation of Fed. R. Civ. P. 11(b),” the Court
20 rejecting Ewing’s M.O. of “[f]eigning legal incompetence and ignorance,
21 blaming his opponent, and attacking the Court,” which “will not shield
22 Ewing from sanctions.”

23
24
25 **B. Court Admonitions to Ewing**

26 In 2019, Ewing’s misconduct reached such levels that the Court issued what
27

28 ⁸ Indeed, as far back as nine years ago, the Court referenced “the documented history of Ewing’s stalking and harassment of other people who opposed him in litigation.” *Ewing v. Flora*, 2015 WL 5177772, *6 (S.D. Cal. Aug. 26, 2015).

1 was styled as “FINDINGS AND ADMONITION TO PLAINTIFF.” *Ewing v. Oasis*
2 *Media, LLC*, Case No. 18cv1455-LAB (JLB), Dkt. No. 82 (S.D. Cal. May 30, 2019)
3 (copy in record at ECF 15-1). The Court “found that” Ewing “had been repeatedly
4 ordered to obey Civil Local Rule 83.4 (concerning civility and professionalism),”
5 yet “he repeatedly violated this rule” as “Ewing was discourteous and unprofessional
6 when communicating with opposing parties and counsel; he disparaged their
7 intelligence, ethics, and behavior; and he acted in a manner detrimental to the proper
8 functioning of the judicial system.” *Id.* at 1. The Court continued:

9
10 Specifically, Ewing is **ORDERED** to be courteous and civil in all
11 communications with opposing counsel, parties, and third parties and
12 to refrain from disparaging their intelligence, ethics, or behavior. This
13 includes making accusations for improper purposes (such as to harass,
14 delay, or embarrass) or making any accusation without first confirming
15 that it is accurate and supported by evidence. *See* Fed. R. Civ. P.
16 11(b)(1) and (3).

17 *Id.* (emphasis original).

18 Ewing has failed to heed that admonition here, and he also has ignored the
19 Court’s express warning not to engage in the types of behavior (among other
20 misbehaviors) detailed above. He is simply out of control and has not respect for the
21 Court, the judicial system, or litigants. There is no excuse for allowing this rampant
22 misconduct to go unpunished.

23 **LEGAL STANDARDS**

24 **I. SANCTIONS UNDER THE COURT’S INHERENT POWERS**

25 “Three primary sources of authority enable courts to sanction parties or their
26 lawyers for improper conduct: (1) Federal Rule of Civil Procedure 11, which applies
27 to signed writings filed with the court, (2) 28 U.S.C. § 1927, which is aimed at
28 penalizing conduct that unreasonably and vexatiously multiplies the proceedings,
and (3) the court’s inherent power.” *Fink v. Gomez*, 239 F.3d 989, 991 (9th Cir.

1 2001). As the Ninth Circuit held in *Fink*, under the leading Supreme Court opinions
2 of *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980), and *Chambers v. NASCO,*
3 *Inc.*, 501 U.S. 32 (1991), “the district court has the inherent authority to impose
4 sanctions for bad faith, which includes a broad range of willful improper conduct.”
5 239 F.3d at 992; *see also Van Osten v. Home Depot, U.S.A., Inc.*, 2021 WL 3471581,
6 *2 (S.D. Cal. May 4, 2021) (“Under its inherent powers, a court may impose
7 sanctions where a party has,” *inter alia*, “acted in bad faith, vexatiously, or for
8 oppressive reasons.”) (quoting *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*,
9 572 U.S. 545, 557 (2014)). In this context, “sanctions are available if the court
10 specifically finds bad faith or conduct tantamount to bad faith. Sanctions are
11 available for a variety of types of willful actions, including recklessness when
12 combined with an additional factor such as frivolousness, harassment, or an
13 improper purpose.” *Fink*, 239 F.3d at 994.⁹

15 II. SANCTIONS FOR VIOLATIONS OF THE COURT’S LOCAL RULES

16 Further, the Court’s Local Rules put all litigants, including pro se litigants, on
17 notice that they are bound the Rules: “Failure of counsel, or *of any party*, to comply
18 with these rules . . . may be grounds for imposition by the Court of any and all
19 sanctions authorized by statute or rule or within the inherent power of the Court,
20 including, without limitation, *dismissal of any actions*, entry of default, finding of
21 contempt, imposition of monetary sanctions or attorneys’ fees and costs, and other
22 lesser sanctions.” S.D. Cal. CivLR 83.1(a) (emphasis added); *Pruco Life Ins. Co. v.*
23 *Cal. Energy Dev. Inc.*, 2021 WL 2453280, *3 (S.D. Cal. June 16, 2021) (quoting

25 ⁹ Further, “the Court has statutory authority pursuant to 28 U.S.C. § 1927 to require
26 anyone ‘who so multiplies the proceedings in any case unreasonably and vexatiously
27 ... to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably
28 incurred because of such conduct.’” *Sundby v. Marquee Funding Grp.*, 2020 WL
5709445, *5 (S.D. Cal. Sept. 24, 2020) (quoting 28 U.S.C. § 1927). It is settled that
“Section 1927 sanctions “may be imposed upon a pro se plaintiff.” *Wages v. I.R.S.*,
915 F.2d 1230, 1235-36 (9th Cir. 1990). For the same reasons that “inherent power”
sanctions should be levied here, sanctions under § 1927 are also appropriate.

1 CivLR 83.1(a); *see also American Ass’n of Naturopathic Phys. v. Hayhurst*, 227 F.3d
2 1104, 1108 (9th Cir. 2000) (citing “the rule that ‘pro se litigants are not excused from
3 following court rules’”) (quotations omitted); *Lee v. Rosen Music Studio*, 778 Fed.
4 Appx. 435, 436 (9th Cir. 2019) (same); *Murillo v. Ramos*, 2022 WL 1506280, *1
5 (S.D. Cal. May 12, 2022) (“Pro se litigants are generally bound to comply with the
6 Court’s Local Rules and any order of the Court.”); *Pawlicki v. Paramo*, 2018 WL
7 3239615, *5 (S.D. Cal. July 2, 2018) (similar); *Snyder v. Ramos*, 2022 WL 2318691,
8 *1 (S.D. Cal. June 28, 2022) (same).¹⁰

10 **ARGUMENT**

11 **I. EWING’S NUMEROUS AND REPEATED INSTANCES OF**
12 **MISCONDUCT, THREATS, BASELESS MOTIONS, AND OTHER**
13 **MISBEHAVIOR CLEARLY WARRANT SANCTIONS.**

14 “A court may consider all acts of misconduct [in] evaluating propriety or
15 sanctions.” *In re Lopez*, 2008 WL 11338405, *4 (S.D. Cal. Dec. 5, 2008). Ewing’s
16 disparaging and intimidating communications violate Local Rules 2.1 and 83.1 and,
17 therefore, plainly cross the threshold for sanctions.

18 Indeed, there can be no debate that Ewing’s conduct is sanctionable. As the
19 Ninth Circuit has observed, “[a] judicial system premised on the fair and orderly
20 administration of justice cannot countenance intimidation tactics from the litigants
21 who seek to vindicate rights within that system.” *Howard v. Harris*, 2018 U.S. App.
22 LEXIS 13991, *3 (9th Cir. May 25, 2018); *Syran v. LexisNexis Group*, 2005 WL
23 8149144, *2 (S.D. Cal. Nov. 9, 2005) (“party should not threaten or seek sanctions
24

25 ¹⁰ Ewing has long been on notice of the Rules. *See, e.g., Flora*, 2015 WL 5177772,
26 *4 (“So even though he is pro se, this district’s Local Rules require Ewing to follow
27 the rules of professionalism outlined in Civil Local Rule 83.4, which require him to,
28 among other things, “be courteous and civil in all communications” and “attempt to
informally resolve disputes with opposing counsel.” Civ. L.R. 83.4(a)(1).”). Also,
he cannot claim ignorance of the Local Rules given his extensive filing history in
this Court, plus the frequency with which he cites those Rules in many of his
disparaging emails.

1 as a means of intimidation or to emphasize the merits of its own position”).

2 Nor does Ewing’s pro se status entitle him to any leniency where this sort of
3 misconduct is concerned. *See, e.g., Nguyen v. Biter*, 2015 WL 366932, *7 (E.D. Cal.
4 Jan. 27, 2015) (“Plaintiff is mistaken that proceeding pro se shields him from the
5 consequences of his actions or excuses misbehavior. It does not. Parties and counsel
6 have a duty to behave civilly and respectfully toward one another, and conduct to
7 the contrary is sanctionable where it undermines the integrity of judicial
8 proceedings.”); *Nelson v. Eaves*, 140 F. Supp. 2d 319, 322 (S.D.N.Y. 2001) (issuing
9 terminating sanctions based on plaintiff’s threatening and harassing letters: “The
10 language of the letters reveals malice and an intent to harass. It is apparent that
11 [plaintiff] is simply entertaining himself—and abusing the judicial system in the
12 process.”); *Cameron v. Lambert*, 2008 WL 4823596, *4 (S.D.N.Y. Nov. 7, 2008)
13 (pro se plaintiff “is not entitled to any latitude when it comes to threatening and
14 inappropriate conduct”) (imposing termination sanctions).

15
16 As noted, sanctions pursuant to the Court’s inherent powers are appropriate
17 where a party has “acted in bad faith, vexatiously, or for oppressive reasons.” *Octane*
18 *Fitness*, 572 U.S. at 557; *see also Gastelum v. Tjx Cos.*, 2023 WL 320955, *3 (S.D.
19 Cal. Jan. 19, 2023) (“Court has the discretion and inherent authority to
20 impose sanctions” where, party “‘has acted in bad faith, vexatiously, wantonly, or
21 for oppressive reasons,’ or ‘willfully abuse[s] judicial processes’”) (quoting *Piper*,
22 447 U.S. at 766). As the Court has observed, bad faith “does not require a finding of
23 wrongful intent or any particular mental state. Rather, ‘[d]isobedient conduct not
24 shown to be outside the control of the litigant is sufficient to demonstrate willfulness,
25 bad faith, or fault.’” *Van Osten*, 2021 WL 3471581, n.3 (quoting *Jorgensen v.*
26 *Cassiday*, 320 F.3d 906, 912 (9th Cir. 2003)).

27
28 As the Court has observed: “Incivility is a scourge upon the once-venerable

1 legal profession and has unfortunately become increasingly more rampant in the
2 profession in recent years.” *La Jolla Spa*, 2019 WL 4141237, *1 (citing *Lasalle v.*
3 *Vogel*, 36 Cal. App. 5th 127 (Cal. Ct. App. 2019)). As his history in this Court
4 establishes, Ewing is the embodiment of this “scourge.” Regarding professionalism,
5 the Court has succinctly stated:

6 Local Rule 2.1 requires other lawyers be addressed professionally and
7 with courtesy and respect. CivLR 2.1.a.3.a) and b). Engaging in such
8 conduct may warrant discipline or sanctions. CivLR 2.2 and CivLR
9 83.1(Sanctions for Noncompliance with Rules).

10 *Van Osten*, 2021 WL 3471581, *6.

11 “*Pro se* parties are not permitted to harass opposing counsel.” *Fathi v.*
12 *Saddleback Valley Unified Sch. Dist.*, 2020 WL 7315462, *6 (C.D. Cal. Oct. 28,
13 2020). As *Fathi* held, “[w]here *pro se* plaintiff’s [sic] threaten or harass opposing
14 counsel, courts are empowered to issue orders requiring that the party cease such
15 conduct.” *Id.*, *7; *see also McCrudden v. DeMarco*, 2023 WL 2808707, *12 (C.D.
16 Cal. Feb. 10, 2023) (“[l]itigation requires opposing parties and counsel to, at a
17 minimum, follow the Local Rules, comply with Court orders, [and] communicate
18 with a modicum of civility . . .”); *La Jolla Spa*, 2019 WL 4141237, *22 (sanctioning
19 counsel who “demonstrated a knowing intent to harass [opposing counsel] based on
20 the long-held belief that this case is ‘garbage’”).

21 Ewing’s behavior compares (un)favorably with what the Court called the
22 “antics” of a sanctioned counsel in a prior case, who “was not courteous or civil;
23 acted in a manner detrimental to the proper functioning of the judicial system; [and]
24 disparaged opposing counsel.” *La Jolla Spa*, 2019 WL 4141237, *23. As the Court
25 held in language that is equally appropriate here, “[t]he sheer volume of [the] antics
26 belie any notion of mistake or negligent conduct on her part but rather disturbingly
27 reveal a systematic effort to obstruct [counsel] for no good or justifiable reason or
28 purpose. [Sanctioned counsel] undeniably acted in bad faith.” *Id.*; *see also Van*

1 *Osten*, 2021 WL 3471581, *14 (“[B]y his unprofessional and disparaging conduct
2 towards” opposing counsel, counsel “violated Civil Local Rules 2.1. and his conduct
3 is sanctionable under Civil Local Rule 83.1”).

4
5 None of this should be surprising given Ewing’s extensive history of
6 misconduct and sanctions in this Court. The passage from a case in which the Court
7 sanctioned another frequent violator of the Court’s rules on decorum and misconduct
8 applies equally to Ewing: “Based on this Court’s extensive experience with
9 [violator], her conduct . . . was hardly surprising. It was simply a *drastically*
10 amplified version of the conduct that the Court had witnessed first-hand in the past.”
11 *La Jolla Spa*, 2019 WL 4141237, *22 (emphasis original). Ewing’s conduct clearly
12 merits sanctions.

13 **II. THE COURT SHOULD IMPOSE TERMINATING SANCTIONS AND**
14 **DISMISS PLAINTIFF EWING’S CASE.**

15 In considering terminating sanctions, the Court must first determine the
16 existence of bad faith on the part of the party to be sanctioned. *See Leon v. IDX*
17 *Systems Corp.*, 464 F.3d 951, 958-59 (9th Cir. 2006). This is not a difficult standard;
18 indeed, “disobedient conduct not shown to be outside the control of the litigant is all
19 that is required to demonstrate willfulness, bad faith, or fault.” *Henry v. Gill Ind.,*
20 *Inc.*, 983 F.2d 943, 948 (9th Cir. 1993); *see also Steadman v. Bassett Furniture Ind.,*
21 *Inc.*, 2014 WL 12577588, *4 (S.D. Cal. Oct. 20, 2014) (quoting *Henry*); *Sec. and*
22 *Exch. Com’n v. Lee*, 2017 WL 127977, *2 (S.D. Cal. Jan. 12, 2017) (imposing
23 terminating sanctions: “[Parties’] sanctionable conduct was their own fault; it was
24 willful, and demonstrated bad faith.”); *AECOM Energy & Constr., Inc. v.*
25 *Topolewski*, 2022 WL 595937, *8 (C.D. Cal. Feb. 25, 2022) (conduct “is willful if
26 it is within the offending party’s control”) (citing cases). Ewing’s harassing,
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1 within his control. The “bad faith” element plainly is satisfied.

2 **A. This Circuit Employs a Five-Part Test for Terminating Sanctions.**

3 The Ninth Circuit utilizes a five-part test to determine whether terminating
4 sanctions are appropriate. Specifically, this Circuit states that “the district court
5 should consider the following factors: “(1) the public’s interest in expeditious
6 resolution of litigation; (2) the court’s need to manage its dockets; (3) the risk of
7 prejudice to the party seeking sanctions; (4) the public policy favoring disposition
8 of cases on their merits; and (5) the availability of less drastic sanctions.” *Leon*, 464
9 F.3d at 959 (quoting *Anheuser-Busch, Inc. v. Natural Beverage Dist.*, 69 F.3d 337,
10 348 (9th Cir. 1995)); *see also Garrison v. Ringgold*, 2020 WL 6537389, *5 (S.D.
11 Cal. Nov. 6, 2020) (applying this test).¹¹ Dismissal is proper where “the conduct to
12 be sanctioned” is “due to willfulness, fault, or bad faith.” *Anheuser-Busch*, 69 F.3d
13 at 348 (quoting *Henry*, 983 F.2d at 946); *see also La Jolla Spa*, 2019 WL 4141237,
14 *23 (record “demonstrates that [sanctioned counsel’s] conduct was not inadvertent,
15 accidental, or negligent—it was knowing, intentional, and willful”).

16
17 This District has not hesitated to impose terminating sanctions for a variety of
18 party misconduct, including violations of this Court’s Local Rules. *See, e.g., SEC v.*
19 *Blockvest, LLC*, 2020 WL 1910355, *14 (S.D. Cal. Apr. 20, 2020) (imposing
20 terminating sanctions where corporate defendant, among other violations, failed to
21

22 ¹¹ The Court also has quoted the test as follows: “When considering whether
23 terminating sanctions are appropriate, the Ninth Circuit directs district courts to
24 consider ‘(1) the existence of certain extraordinary circumstances, (2) the presence
25 of willfulness, bad faith, or fault by the offending party, (3) the efficacy of lesser
26 sanctions, [and] (4) the relationship or nexus between the misconduct drawing the
27 dismissal sanction and the matters in controversy in the case’” *Tan v. Konnektive*
28 *Rewards*, 2023 WL 4339629, *3 (S.D. Cal. June 7, 2023) (quoting *Halaco Eng’g*
Co. v. Costle, 843 F.2d 376, 380 (9th Cir. 1988)). If the Court applies this test, the
“nexus” requirement is met because each instance of Ewing’s misconduct related to
some aspect of this case (i.e., motion to dismiss, extension to respond to complaint,
etc.). *See Tan*, 2023 WL 4339629, *3 (false declarations supplied “relationship
between the misconduct and the matters in controversy”); *see also Anheuser-Busch*,
69 F.3d at 355 (“Because there is a close nexus between [the] misconduct and the
merits of [the] case, due process concerns are not implicated.”).

1 obtain counsel in violation of Local Rule 83.3). Likewise, the Ninth Circuit has
2 consistently affirmed the imposition of terminating sanctions.¹² Indeed, in just the
3 first six months of 2024, the Ninth Circuit affirmed the imposition of terminating
4 sanctions in no fewer than *three* cases.¹³

5
6 **B. Application of the “Terminating Sanctions” Test Mandates Dismissal.**

7 Application of the Ninth Circuit’s five-factor test should result in terminating
8 sanctions. At bottom, Ewing’s conduct undermines the integrity of the Court and
9 these proceedings, and “[i]t is well settled that dismissal is warranted where, as here,
10 a party has engaged deliberately in deceptive practices that undermine the integrity
11 of judicial proceedings.” *Anheuser-Busch*, 69 F.3d at 348 (affirming dismissal
12 sanction). As detailed above, Ewing’s conduct here fits firmly within that context.

13 **1. The “Public Interest” Factor Favors Dismissal.**

14 The “public interest” factor favors dismissal. “The public has an overriding
15 interest in securing ‘the just, speedy, and inexpensive determination of every
16 action.’” *Blockvest*, 2020 WL 1910355, *14 (quoting *In re PPA Prod. Liab. Lit.*, 460
17 F.3d 1217, 1227 (9th Cir. 2006)). As the Court in *Blockvest* held, “The public’s
18 interest in expeditious resolution of litigation always favors dismissal.” *Id.* (quoting
19 *Nourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 2002)).

20
21 **2. The “Docket Management” Factor Favors Terminating Sanctions.**

22 As the Court has recognized, “District courts have an inherent power to
23 control their dockets,” and “dismissal must be available to the district court in
24 appropriate cases, not merely to penalize those whose conduct may be deemed to

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26 ¹² See, e.g., *Boulton v. US Tax Lien Ass’n, LLC*, 813 Fed. Appx. 294, 295 (9th Cir.
27 2020); *Yan Sui v. Marshack*, 691 Fed. Appx. 374, 374 (9th Cir. 2017); *Pray v. M/Y*
NO BAD DAYS, 303 Fed. Appx. 563, 564 (9th Cir. 2008); *Leon*, 464 F.3d at 958-60;
28 *Anheuser-Busch*, 69 F.3d at 348-50 (all affirming terminating sanctions).

¹³ See *Jones v. Riot Hospitality Grp. LLC*, 95 F.4th 730 (9th Cir. 2024); *Transamerica*
Life Ins. Co. v. Arutyunyan, 93 F.4th 1136 (9th Cir. 2024); *Burris v. JPMorgan*
Chase & Co., 2024 WL 1672263 (9th Cir. Apr. 18, 2024).

1 warrant such a sanction, but to deter those who might be tempted to such conduct in
2 the absence of such a deterrent.” *Blockvest*, 2020 WL 1910355, *14 (quoting *In re*
3 *PPA*, 460 F.3d at 1227) (quoting, in turn, *Nat’l Hockey League v. Metro. Hockey*
4 *Club, Inc.*, 427 U.S. 639, 643 (1976)). As the Court has held in other cases,
5 misconduct that interferes with the Court’s ability to effectively manage its docket
6 justifies terminating sanctions. *See Lowry v. Metro. Transit Bd. MTBS*, 2013 WL
7 4046657, *17 (S.D. Cal. Aug. 5, 2013) (terminating sanctions where Plaintiff’s
8 misconduct impacted Court’s ability to manage its docket: “[Plaintiff’s] behavior
9 has resulted in numerous unnecessary court appearances, the frequent issuance of
10 orders, In the future, such a high level of supervision will undoubtedly continue
11 to consume judicial resources that could be devoted to other matters.”).

12 **3. The Risk of Prejudice to Freedom Forever Favors Dismissal.**

13
14 It is not clear whether prejudice, in fact, is a required showing to justify the
15 dismissal sanction. *See, e.g., Anheuser-Busch*, 69 F.3d at 353. Nevertheless, the
16 prejudice to Freedom Forever is manifest and plain. “A defendant suffers prejudice
17 if the plaintiff’s actions impair the defendant’s ability to go to trial or threaten to
18 interfere with the rightful decision of the case.” *Id.* at 353-54 (quoting *Henry*, 983
19 F.2d at 946). Sending arrest threats to counsel, filing frivolous bar complaints,
20 sending emails directly to a party with full knowledge the party is represented by
21 counsel, and making disparaging remarks to, and about, Defendant and counsel in
22 nearly every communication on practically a daily basis clearly cause prejudice to
23 Freedom Forever and its efforts to defend the case.
24

25 The Court consistently has found prejudice in these circumstances. *See, e.g.,*
26 *Steadman*, 2014 WL 12577588, *5 (imposing terminating sanctions where
27 defendant “has already been prejudiced by the time, effort, and expenses needed to
28 defend this case; it will continue to be prejudiced if this case is allowed to proceed”);

1 *Lowry*, 2013 WL 4046657, *19 (finding prejudice and imposing termination
2 sanction: “[T]he lack of respect for the Court and opposing counsel, and the
3 disregard for any sort of attempt at cooperation, leads this Court to the determination
4 that granting Defendants’ Motion for Terminating Sanctions is the only option
5 remaining.”). The “prejudice” factor is satisfied.
6

7 **4. The “Disposition of Cases” Factor Does Not Overcome Dismissal.**

8 The “disposition of cases” factor cannot overcome the weight of the other
9 factors favoring dismissal. Indeed, as the Ninth Circuit held in one of its leading
10 cases affirming the imposition of terminating sanctions, “the public policy favoring
11 disposition of cases on their merits . . . standing alone, is not sufficient to outweigh
12 the other four factors.” *Leon*, 464 F.3d at 960-61 (quotations omitted). This Court
13 has agreed. *See Blockvest*, 2020 WL 1910355, *15 (“[T]his factor ‘lends little
14 support’ to a party whose conduct impeded progress toward disposition on the
15 merits.”) (imposing terminating sanctions) (quoting *In re PPA*, 460 F.3d at 1228).
16

17 **5. Ewing’s History of Misconduct, and His History of Sanctions in
18 This Court, Demonstrate the Futility of Lesser Sanctions.**

19 In assessing the utility of lesser sanctions prior to dismissal, courts examine
20 “(1) whether the district court explicitly discussed the feasibility of less drastic
21 sanctions and explained why such alternate sanctions would be inappropriate; (2)
22 whether the district court implemented alternative sanctions before ordering
23 dismissal; and (3) whether the district court warned the party of the possibility of
24 dismissal before ordering dismissal.” *Leon*, 464 F.3d at 960 (quoting *Anheuser–*
25 *Busch*, 69 F.3d at 352). None of those factors prevents terminating sanctions here.
26

27 **a. Futility of Lesser (i.e., Monetary) Sanctions**

28 It is clear that lesser sanctions, such as monetary sanctions, do not work with
Ewing. As the numerous cases cited above – in which Ewing has been assessed
monetary sanctions for various forms of misbehavior – demonstrate, he is not the

1 least bit deterred by the threat, or even imposition, of monetary sanctions.¹⁴ They
2 are imposed, he pays them and/or quickly settles the case, and then moves on to his
3 next lawsuit(s), and the cycle repeats itself, as has occurred for most of the past
4 decade – and it should not be allowed to continue. *See Lowry*, 2013 WL 4046657,
5 *17 (terminating sanctions where “Plaintiff has taken advantage of the Court’s
6 resources, willingness to allow him leeway, and repeatedly has broken his promises
7 to conduct himself in a civil and courteous manner in his dealings with the Court
8 and counsel”).

9
10 Meanwhile, costs to litigants and the Court’s judicial resources are wasted in
11 dealing with Ewing’s consistent misconduct. The Court has imposed monetary
12 sanctions on Ewing not once or twice, but several times; clearly, those monetary
13 sanctions have done nothing to curb Ewing’s quick trigger finger on firing off
14 disparaging, harassing, and abusive emails to parties and their counsel. There should
15 be no question that imposing lesser sanctions on Ewing is an exercise in futility.

16 Furthermore, there is the question whether Ewing would even be able to pay
17 a significant monetary sanction. As noted above, in an almost gleeful tone, he
18 asserted, “I have no assets” and “I have no job or wages to garnish. . . . You cannot
19 get money from me because I have none.” (Ex. J, p.1.) Therefore, if those statements
20 are to be believed, monetary sanctions are pointless because Ewing has no “assets”
21 and will not be able to pay them. This supplies yet another reason to eschew the
22 imposition of monetary sanctions – by Ewing’s own statements, they would be futile.

23 **b. Consideration of Alternative Sanctions Unnecessary**

24
25 As the Court has observed, “because bad faith behavior poses such a serious
26 threat to the authority of a district court, the existence of bad faith constitutes

27
28 ¹⁴ It is proper for the Court to reference Ewing’s other cases in assessing sanctions
here. *Cf. Cadles of West Va., LLC v. Alvarez*, 2022 WL 5133478, *6 (S.D. Cal. Oct.
4, 2022) (“In undertaking its sanctions inquiry, the Court may consider the party’s
diligent and obstructive conduct in the instant action and any related actions.”).

1 egregious circumstances which can warrant dismissal even without the explicit
2 consideration of alternative sanctions and relative fault.” *Blockvest*, 2020 WL
3 1910355, *16 (quoting *In re Fitzsimmons*, 920 F.2d 1468, 1474 (9th Cir. 1990)).
4 There is no need for the Court to impose some lesser sanction prior to imposing a
5 terminating sanction. As detailed above, multiple prior monetary sanctions from
6 numerous judges in this District have done nothing to curb Ewing’s misconduct and
7 misbehavior, and there is no reason to believe that yet another monetary sanction
8 will magically jolt him into some semblance of professionalism. If Ewing is going
9 to continue being allowed to file cases in this Court, at some point he needs to be
10 given the hard message that he cannot be allowed to maintain these suits if he is
11 going to send ex parte communications to a defendant’s employees and make
12 disparaging and harassing remarks to defendants and their counsel. Ewing clearly
13 believes no judge on this Court is going to throw out one of his cases as a sanction
14 – that is why he continues to engage in such clear misconduct. Only until a judge
15 imposes the sanction of dismissal will there be any chance of Ewing behaving as a
16 proper litigant (and person) should.

17
18 As the Ninth Circuit has held, “[i]t is appropriate to reject lesser sanctions
19 where the court anticipates continued deceptive misconduct.” *Connecticut Gen. Life*
20 *Ins. Co. v. New Images of Beverly Hills*, 482 F.3d 1091, 1097 (9th Cir. 2007);
21 *AmTrust Bank v. Lewis*, 687 Fed. Appx. 667, 670 (9th Cir. 2017) (same); *see also*
22 *S.E.C. v. Blockvest, LLC*, 2020 WL 2786869, *14 (S.D. Cal. May 29, 2020) (quoting
23 *Connecticut Gen.*); *Lowry*, 2013 WL 4046657, *2 (“While the Court is reluctant to
24 impose the sanction of dismissal, [plaintiff] has shown a continued lack of respect
25 for the judicial process that he himself initiated, and ‘[i]t is appropriate to reject
26 lesser sanctions where the court anticipates continued deceptive misconduct.’”) (quoting
27 *Connecticut Gen.*). There is no need to “anticipate” continued misbehavior
28

1 from Ewing; based on his conduct in his dozens of prior cases stretching back nearly
2 a decade, it is guaranteed to recur here absent terminating sanctions, which in itself
3 justifies terminating sanctions. Indeed, “[t]erminating sanctions may also be
4 imposed when lesser sanctions would not deter future wrongdoing.” *Garrison v.*
5 *Ringgold*, 2020 WL 5511978, *7 (S.D. Cal. Sept. 11, 2020), *adopted in part, rejected*
6 *in part*, 2020 WL 6537389 (S.D. Cal. Nov. 6, 2020) (citing *Computer Task Group,*
7 *Inc. v. Brotby*, 364 F.3d 1112, 1116-17 (9th Cir. 2004)).

8
9 It is obvious that previous monetary sanctions imposed on Ewing have done
10 nothing whatsoever to curb his misconduct. There is no basis to consider them, or
11 any other lesser sanction, in this instance.

12 **c. Numerous and Unheeded Warnings in Prior Cases**

13 Furthermore, as the Court has recognized, “it is not always necessary for the
14 court to impose less serious sanctions first, or to give any explicit warning.”
15 *Blockvest*, 2020 WL 1910355, *17 (quoting *Valley Eng’rs Inc. v. Elec. Eng’g Co.*,
16 158 F.3d 1051, 1057 (9th Cir. 1998)). Just as a court “should not have to warn a
17 party to refrain from” – for example, – “inventing phantom witnesses,” as occurred
18 in *Am. Rena Int’l Corp. v. Sis–Joyce Int’l Co., Ltd.*, 2015 WL 12732433, *32 (C.D.
19 Cal. Dec. 14, 2015) (quoted in *Blockvest*, 2020 WL 1910355, *17), it should not
20 have to warn a person who is a law school graduate and who has passed the bar
21 exams of two states not to behave in a professional manner.

22
23 At least as far back as five years ago, the Court noted that Ewing “has been
24 placed on notice of the local rules on professionalism and their applicability to him
25 by this Court.” *Stark v. Stall*, 2019 WL 3718878, *4 (S.D. Cal. Aug. 7, 2019). Ewing
26 has been slapped on the writs numerous times for his “unprofessional” tone and
27 remarks. *See, e.g., Flora*, 2016 WL 1465182, *3 (“It is apparent from the documents
28 attached to the instant motion that Plaintiff has engaged in improper and

1 unprofessional conduct. . . . [T]he Court will not permit Plaintiff to further harass
2 Defendant or defense counsel.”); *GoNow Travel Club*, 2019 WL 3253058, *4
3 (noting Ewing’s “complaint and opposition are marked by extreme comments about
4 Defendant,” including that defendant “lied under oath” and “perjured himself,”
5 adding Ewing’s telling Court “to ‘not be hypocritical’ and ‘get control of’” defense
6 counsel were “unprofessional”).
7

8 Plus, *the Court in this case* explicitly warned Ewing that “if his
9 unprofessional conduct continues – and reaches a point that it interferes with the
10 efficient resolution of this case – this Court may resort to monetary and/or
11 terminating sanctions.” (ECF 24 at 11.) It would be hard to “interfere[.]” with the
12 resolution of this case more than (1) threatening the arrest of opposing counsel if he
13 appears in the forum state; (2) filing a frivolous bar complaint against counsel; (3)
14 contacting the opponent’s general counsel directly; and (4) filing baseless sanctions
15 motions, which in itself violates the Court’s order that Ewing “seek sanctions
16 sparingly.” (*Id.* at 10 (quoting S.D. Cal. CivLR 2.1).) Ewing has been warned time
17 after time to cease making disparaging and unprofessional remarks in litigation
18 matters; he simply refuses to do so. Clearly, he has failed to heed these many prior
19 warnings from the Court. Thus, the Court should enter terminating sanctions.
20

21 CONCLUSION

22 Freedom Forever respectfully requests that the Court enter terminating
23 sanctions against Ewing and/or monetary sanctions in the amount of \$25,000 to
24 (only partially) compensate Freedom Forever for the resources it has been forced to
25 expend dealing with Ewing’s rampant misbehavior and violations.

26 DATED: July 16, 2024

27 */s/ Larry R. Schmadeka*
28 Larry R. Schmadeka (SBN
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*Attorneys for Defendant,
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CERTIFICATE OF SERVICE

I, the undersigned, declare:

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Pierson Ferdinand LLP, 260 Newport Coast, Suite 100, Newport Beach, CA 92660.

On July 16, 2024, I served the within document:

DEFENDANT’S RENEWED MOTION FOR SANCTIONS, UP TO AND INCLUDING TERMINATING SANCTIONS

x **CM/ECF SYSTEM.** I caused a true and correct copy to be electronically filed with the Clerk of the Court for the Southern District of California using the CM/ECF system.

X **BY ELECTRONIC SERVICE:** I caused the document(s) to be electronically served on the interested parties identified in the service list by submitting an electronic version of the document(s) to the parties identified on the service list to the email addresses provided to me.

x **BY FIRST CLASS MAIL--**by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at Paso Robles, addressed as set forth in the service list below.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 16, 2024, at Paso Robles, California.

/s/ Larry R. Schmadeka
Larry R. Schmadeka

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