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9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11  
12 **ANTON A. EWING,**

13 )  
14 **Plaintiff,** )

15 **v.** )

16 **FREEDOM FOREVER, LLC,** )

17 **Defendant.** )

) **Case No. 25-cv-00530-RBM-SBC**  
)  
)  
) **MEMORANDUM IN**  
) **SUPPORT OF DEFENDANT**  
) **FREEDOM FOREVER**  
) **LLC’S MOTION TO**  
) **STRIKE PORTIONS OF**  
) **PLAINTIFF’S FIRST**  
) **AMENDED COMPLAINT**

21 Hearing Date: June 9, 2025  
22 Time: 9:00 a.m.  
23 Courtroom: 5B  
24 Hon. Ruth B. Montenegro

1 Defendant, Freedom Forever, LLC (“Freedom Forever”), pursuant to Federal  
2 Rule of Civil Procedure 12, files this Motion to Strike portions of the First Amended  
3 Complaint (“Complaint”) filed by Plaintiff, Anton Ewing (“Plaintiff” or “Ewing”).  
4 Ewing purports to seek “money damages and injunctive relief . . . to stop” Freedom  
5 Forever “from violating the Telephone Consumer Protection Act [“TCPA”] and the  
6 Telemarketing Sales Rule [“TSR”] by calling with prerecorded artificial voice  
7 messages to Plaintiff’s personal residential cellular phone,” which allegedly is  
8 registered on “the National Do Not Call Registry,” without Ewing’s consent. ECF  
9 7 at 1-2. The Complaint, however, ventures far beyond that basic set of allegations  
10 and adds such irrelevant items as (1) a failure to understand the difference between  
11 “auto-dialing” and an automatic telephone dialing system (“ATDS”), only the latter  
12 of which can support a TCPA claim, (2) alleged “spoofing,” which is not cognizable  
13 under the TCPA, and (3) references to YouTube videos, which are neither  
14 transcribed nor linked to allow the reader to understand the supposed allegations  
15 represented by those videos. These allegations should be stricken under Rule 12.

16  
17 **RELEVANT BACKGROUND**

18 Ewing filed the First Amended Complaint on March 7, 2025. *See* ECF 7. The  
19 thrust of the Complaint is that (1) Ewing registered his phone number on the  
20 “National Do Not Call Registry” (“DNC”) (*id.* at 2); (2) Freedom Forever allegedly  
21 sent one text message and called Ewing five times notwithstanding his DNC  
22 registration in violation of the TCPA (*id.*, ¶ 30); and (3) supposedly used an  
23 “artificial prerecorded voice message with an ATDS” also in violation of the TCPA  
24 (*id.*, ¶ 55).

25  
26 Ewing seeks statutory damages under the TCPA of “\$3,000 per call.” *Id.* at  
27 23. He also seeks injunctive relief “requiring Defendant to cease all unsolicited  
28 calling activity that violated the TSR, the FTC Act and the TCPA, and to otherwise

1 protect the interests [of] Plaintiff Ewing.” *Id.* Freedom Forever now files this  
2 motion to strike certain allegations in the Complaint pursuant to Fed. R. Civ. P. 12(f).  
3

### 4 LEGAL STANDARDS

5 Federal Rule of Civil Procedure 12(f) “states that a district court ‘may strike  
6 from a pleading an insufficient defense or any redundant, immaterial, impertinent,  
7 or scandalous matter.’” *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th  
8 Cir. 2010) (quoting Fed. R. Civ. P. 12(f)). “‘Immaterial’ matter is that which has no  
9 essential or important relationship to the claim for relief or the defenses being  
10 pleaded.” *Ewing v. Freedom Forever, LLC*, 2024 WL 221777, \*12 (S.D. Cal. Jan.  
11 19, 2024) (quoting *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993),  
12 *rev’d on other grounds*, 510 U.S. 517 (1994)). “‘Impertinent’ matter consists of  
13 statements that do not pertain, and are not necessary, to the issues in question.” *Id.*  
14 (quoting *Fantasy*, 984 F.2d at 1527).

### 15 ARGUMENT

#### 16 **A. “Autodialing” and “ATDS”**

17 Ewing makes several allegations concerning purported ‘autodialing,’ which  
18 he then equates to use of an ATDS. *See* ECF 7, ¶ 5 (referencing a “web page” where  
19 Freedom Forever supposedly is “admitting and confessing that it uses an ATDS to  
20 make calls” based on alleged language that customers are consenting “to contact me  
21 via telephone calls, using automated dialing technology for marketing/advertising  
22 purposes”), ¶ 6 (“The reason Defendant Freedom is attempting to obtain permission  
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1 to use an auto dialer is because they use auto dialers.”), ¶ 13 (alleged “auto-dialing”  
2 equipment).

3 The problem for Ewing is that “autodialing” does not equate to “ATDS,” and  
4 Ewing’s effort to equate those two concepts is improper.<sup>1</sup> The focus of an ATDS, in  
5 light of *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163 (2021), is not how the numbers  
6 are dialed, but how the equipment produced or generated that number to begin with.  
7 *See Facebook*, 141 S. Ct. at 1171 (noting that equipment must have the capacity to  
8 use a random or sequential number generator to either store or produce phone  
9 numbers to be called, because a contrary interpretation “would capture virtually all  
10 modern cell phones”) (quotations omitted). As one court summarized: “If the  
11 equipment only stores and automatically dials numbers but does not randomly  
12 generate those numbers, it is not a prohibited ATDS under the Act.” *Atkinson v. Pro*  
13 *Custom Solar LLC*, 2022 WL 4071998, \*6 (W.D. Tex. Sept. 1, 2022) (quoting  
14 *Facebook*, 141 S. Ct. at 1170). Accordingly, confusing allegations concerning an  
15 “auto-dialer” are irrelevant to the issues in the case and should be stricken.  
16

### 17 **B. Spoofing Allegations**

18 Ewing alleges that Freedom Forever “use[s] a fake name and will spoof a fake  
19 number in order to evade TCPA lawsuits.” ECF 7, ¶ 15. There is, however, no cause  
20 of action under the TCPA for alleged “spoofing.” *See, e.g., Dobronski v. Selectquote*  
21 *Ins. Servs.*, 462 F. Supp. 3d 784, 790 (E.D. Mich. 2020) (ruling that “[a]bsent any  
22 authoritative basis for a private cause of action for ‘spoofing’ under this federal  
23 communications regulation, the Court is disinclined to create one here”). The  
24 allegations concerning “spoofing” should, therefore, be stricken.  
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28 <sup>1</sup> To be clear, Ewing will not be able to prove either “autodialing” or use of an ATDS  
if the case continues.



1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, declare:

3  
4 I am a resident of the State of California, over the age of eighteen years, and not a party  
5 to the within action. My business address is Pierson Ferdinand LLP, 12100 Wilshire Blvd., Suite  
6 800, Los Angeles, CA 90025.

7 On May 1, 2025, I served the document:

8 **MEMORANDUM IN SUPPORT OF DEFENDANT FREEDOM FOREVER LLC'S**  
9 **MOTION FOR PARTIAL DISMISSAL OR, IN THE ALTERNATIVE, TO STRIKE**  
10 **PORTIONS OF PLAINTIFF'S COMPLAINT**

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

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

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

21 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
22 May 1, 2025, at Oceanside, California.

23 /s/ Brandon T. Willenberg  
24 Brandon T. Willenberg

25 **SERVICE LIST**

26 Anton A. Ewing  
27 3077 B Clairmont Drive, #372  
28 San Diego, CA 92117  
Email: [anton@antonewing.com](mailto:anton@antonewing.com)  
Plaintiff Pro Se

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