

1 no attempt to designate any witnesses or exhibits for trial, nor has she opposed
2 Defendant's Motion to Strike.

3 Plaintiff's response is wholly insufficient to warrant continuation of any of the
4 dates previously set by this Court. Once a district court has issued a PTSO pursuant to
5 Federal Rule of Civil Procedure 16, that Rule's standards control. Johnson v. Mammoth
6 Recreations, Inc., 975 F.2d 604, 607–08 (9th Cir. 1992). Prior to the final pretrial
7 conference in this matter the Court can modify its PTSO upon a showing of "good
8 cause." See Fed. R. Civ. P. 16(b). "Rule 16(b)'s 'good cause' standard primarily
9 considers the diligence of the party seeking the amendment." Johnson, 975 F.2d at 609.
10 In explaining this standard, the Ninth Circuit has stated:

11 A district court may modify the pretrial schedule 'if it cannot
12 reasonably be met despite the diligence of the party seeking
13 the extension.' Moreover, carelessness is not compatible
14 with a finding of diligence and offers no reason for granting of
15 relief. Although the existence or degree of prejudice to the
16 party opposing the modification might supply additional
17 reasons to deny a motion, the focus of the inquiry is upon the
18 moving party's reasons for seeking modifications. If that
19 party was not diligent, the inquiry should end.

20 Id. (citations omitted). Plaintiff has not even attempted to show that she was diligent in
21 seeking to continue the trial date. Nor has she shown substantive good cause
22 necessitating more time. Accordingly, Plaintiff's Motion for an Extension of Time and a
23 New Date for Trial (ECF No. 218) is DENIED. Her oppositions to Defendant's Motions in
24 Limine (ECF Nos. 216-217) and her Trial Brief (ECF No. 214) are STRICKEN, and
25 Defendant's Motion to Strike and Motions in Limine are GRANTED as unopposed.¹

26 Based on Plaintiff's Response to Order to Show Cause (ECF No. 215), however,
27 the Court will nonetheless discharge the OSC and confirm this matter for trial. Having
28 reviewed the docket in its entirety, the Court makes the following findings and orders:

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¹ Alternatively, the Court finds the Motions supported by the law and the record in this case such that they should be granted on the merits as well.

1 I. JURISDICTION/VENUE

2 Jurisdiction is predicated upon 28 U.S.C. § 1331. Jurisdiction and venue are not
3 contested.

4 II. NON-JURY

5 The Court granted above Defendant's unopposed Motion to Strike Plaintiff's Jury
6 Demand. See ECF No. 204. Accordingly, this matter will be tried by the Court.

7 III. UNDISPUTED FACTUAL ISSUES

8 The parties have not stipulated to any facts.

9 IV. DISPUTED FACTUAL ISSUES

10 The remaining claims for trial are:

11 A. Plaintiff's Disputed Facts

- 12 1. Plaintiff disputes that Ocwen is not a debt collector by
13 correspondence from Ocwen to Plaintiff identifying itself as a debt
14 collector.
15 2. Plaintiff disputes all of Ocwen's facts.

16 B. Defendant's Disputed Facts

- 17 1. Ocwen's serviced debt is not a "debt" covered by the FDCPA.
18 2. Ocwen did not make repeated, harassing and abusive calls to
19 Plaintiff for the purposes of debt collection.
20 3. Ocwen made calls to Plaintiff to make initial contact with its new
21 customer and offer her the opportunity to discuss her foreclosure
22 prevention alternatives.
23 4. Ocwen made calls to Plaintiff because it was not able to reach
24 Plaintiff to discuss the foreclosure prevention alternatives.
25 5. Defendant did not make calls to Plaintiff without notifying who the
26 caller was in a meaningful manner.
27 6. Once Plaintiff requested that Ocwen stop calling her, Ocwen
28 ceased making calls.

1 7. If a violation did occur, it was a bona fide error because Ocwen has
2 policies and procedure in place to avoid such violations.

3 All issues of fact remaining in dispute are subject to proof at the time of trial.

4 V. WITNESSES

5 Plaintiff has not designated any witnesses.

6 Defendant anticipates calling the witnesses listed on Attachment “A”.

7 Each party may call a witness designated by the other.

8 A. No other witnesses will be permitted to testify unless:

9 (1) The party offering the witness demonstrates that the witness is
10 for the purpose of rebutting evidence which could not be reasonably anticipated
11 at the Final Pretrial Conference, or

12 (2) The witness was discovered after the Final Pretrial Conference
13 and the proffering party makes the showing required in “B” below.

14 B. Upon the post-pretrial discovery of witnesses, the attorney² shall promptly
15 inform the Court and opposing parties of the existence of the unlisted witnesses so that
16 the Court may consider at trial whether the witnesses shall be permitted to testify. The
17 evidence will not be permitted unless:

18 (1) The witnesses could not reasonably have been discovered prior to
19 pretrial;

20 (2) The Court and the opposing counsel were promptly notified upon
21 discovery of the witnesses;

22 (3) If time permitted, counsel proffered the witnesses for deposition;

23 (4) If time did not permit, a reasonable summary of the witnesses’
24 testimony was provided by opposing counsel or the pro se party.

25 C. All witnesses, other than parties who will testify as witnesses, are to remain
26 outside the courtroom until called to testify unless otherwise ordered by the Court.

27 Witnesses who fail to comply with this order may be precluded from testifying.

28 ² References to “attorney” or “counsel” shall be interpreted to refer to pro se parties as well.

1 VI. EXHIBITS - SCHEDULES AND SUMMARIES

2 At present, Plaintiff has not designated any exhibits.

3 At present, Defendant contemplates by way of exhibits those listed on Attachment
4 “B”.

5 **Defendant's exhibits shall be listed alphabetically.** The parties shall use the
6 standard exhibit stickers provided by the Court Clerk’s Office (blue for Defendant). After
7 three letters, note the number of letters in parenthesis (i.e., “AAAA(4)” to reduce
8 confusion during the trial. Exhibits shall be one-sided only, and all multi-page exhibits
9 shall be stapled or otherwise fastened together with each page within the exhibit shall be
10 numbered. All photographs shall be marked individually. The list of exhibits shall not
11 include excerpts of depositions which may be used to impeach witnesses.

12 Each party may use an exhibit designated by the other.

13 A. **No other exhibits will be permitted to be introduced unless:**

14 **(1) The party proffering the exhibit demonstrates that the exhibit is**
15 **for the purpose of rebutting evidence which could not be reasonably anticipated**
16 **at the Pretrial Scheduling Conference, or**

17 **(2) The exhibit was discovered after the Pretrial Scheduling**
18 **Conference and the proffering party makes the showing required in paragraph**
19 **“B”, below.**

20 B. Upon the post-pretrial discovery of exhibits, the parties shall promptly
21 inform the Court and opposing counsel of the existence of such exhibits so that the
22 Court may consider at trial their admissibility. The exhibits will not be received unless
23 the proffering party demonstrates:

24 (1) The exhibits could not reasonably have been discovered prior to
25 pretrial;

26 (2) The Court and the opposing party’s counsel were promptly informed
27 of their existence;

28 (3) The party or the party’s counsel forwarded a copy of the exhibit(s) (if

1 physically possible) to opposing counsel. If the exhibit(s) may not be copied, the
2 proffering party must show that he has made the exhibit(s) reasonably available for
3 inspection by the opposing counsel.

4 C. As to each exhibit, each party is ordered to exchange a copy identical to
5 the Court's copy, or other reproduction of the exhibit(s) in a three-ring binder(s) by **May**
6 **15, 2017**. The attorney or representative for each party is directed to present the original
7 and two (2) copies of the exhibit(s) and exhibit list to the Court Clerk's Office, no later
8 than **3:00 p.m., May 15, 2017**, or at such earlier time as may be ordered by the Court.
9 **NO EXCEPTIONS.**

10 D. **The Court shall be presented with a copy of the exhibit(s) in a 3-ring**
11 **binder(s) with a side tab identifying each exhibit by number or letter. Each binder**
12 **shall be no larger than three inches in width and have an identification label on the**
13 **front and side panel.**

14 VII. DISCOVERY DOCUMENTS

15 A. Filing Depositions. It is the duty of counsel to ensure that any deposition
16 which is to be used at trial has been lodged with the Clerk of the Court. In addition, two
17 unmarked copies of the transcripts must be delivered to the Court Clerk's Office.
18 Counsel are cautioned that a failure to discharge this duty may result in the Court
19 precluding use of the deposition or imposition of such other sanctions as the Court
20 deems appropriate.

21 B. Use of Depositions. The parties are ordered to file with the Court and
22 exchange between themselves by **May 15, 2017** a statement designating portions of
23 depositions intended to be offered or read into evidence (except for portions to be used
24 only for impeachment or rebuttal).

25 C. Interrogatories. The parties are ordered to file with the Court and
26 exchange between themselves by **May 15, 2017** the portions of Answers to
27 Interrogatories which the respective parties intend to offer or read into evidence at the
28 trial (except portions to be used only for impeachment or rebuttal).

1 VIII. FURTHER DISCOVERY OR MOTIONS

2 Pursuant to the Court's Pretrial Scheduling Order, all discovery and law and
3 motion was to have been conducted so as to be completed as of the date of the Final
4 Pretrial Conference. That Order is confirmed. The parties are free to engage in informal
5 agreements regarding discovery and law and motion matters. However, any such
6 agreements will not be enforceable in this Court.

7 IX. AUDIO/VISUAL EQUIPMENT

8 The parties are required to file electronically a joint request to the Courtroom
9 Deputy Clerk, Stephanie Deutsch, by **May 15, 2017**, if they wish to reserve and arrange
10 for orientation with all parties on the Court's mobile audio/visual equipment for
11 presentation of evidence. There will be one date and time for such orientation.

12 X. DATE AND LENGTH OF TRIAL

13 A court trial is scheduled for **May 22, 2017, at 9:00 a.m.**. The estimated length of
14 trial is **1 day**. Counsel are to call Stephanie Deutsch, Courtroom Deputy, at (916) 930-
15 4207, by **May 15, 2017** to ascertain the status of the trial date. The Court will permit
16 each side up to fifteen (15) minutes for closing arguments. Plaintiff will be permitted to
17 reserve time for rebuttal purposes but will be required to monitor any time so reserved.

18 XI. OBJECTIONS TO PRETRIAL ORDER

19 Each party is granted five (5) court days from the date of this Final Pretrial Order
20 to object to any part of the order or to request augmentation to it. A Final Pretrial Order
21 will be modified only upon a showing of manifest injustice. If no objection or
22 modifications are made, this Order will become final without further order of the Court
23 and shall control the subsequent course of the action, pursuant to Rule 16(e) of the
24 Federal Rules of Civil Procedure.

25 IT IS SO ORDERED.

26 Dated: April 25, 2017

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MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE