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10 [Additional Counsel on Following Sheet.]

11 **UNITED STATES DISTRICT COURT FOR THE**
12 **EASTERN DISTRICT OF CALIFORNIA**

13 FREEMAN and VALECEA DIGGS,) CASE NO.: 2:15-CV-01428-WBS-AC
14 individually and on behalf of all others) [CLASS ACTION]
15 similarly situated,)
16 Plaintiffs,) **STIPULATION AND (PROPOSED)**
17 v.) **ORDER EXTENDING THE TIME**
18 WILSHIRE COMMERCIAL) **SET FORTH IN THE PRETRIAL**
19 CAPITAL, LLC a California limited) **SCHEDULING ORDER OF**
20 liability company dba WILSHIRE) **SEPTEMBER 22, 2016 (DOCUMENT**
21 CONSUMER CREDIT,) **#38) FOR THE BRIEFING**
22 Defendant.) **SCHEDULE ON MOTION ON**
23) **ALLEGED CAPACITY OF**
24) **DEFENDANT'S AUTOMATIC**
25) **TELEPHONE DIALING SYSTEM ,**
26) **AND EXPERT DESIGNATION**
27) **DATES, AND CLASS**
28) **CERTIFICATION DISCOVERY**
) **AND BRIEFING DATES.**
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) Courtroom: 5
) Assigned to: Judge William B. Shubb
) Complaint filed: July 6, 2015

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Attorneys for Plaintiffs, Verina Freeman, Valecea Diggs, and the potential class

1 This Stipulation and [Proposed] Order is submitted based upon the following
2 facts:

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4 Whereas, on September 26, 2016, Judge William B. Shubb issued the pre-
5 trial scheduling order, where a dispositive motion calendar was set and tiered on
6 discovery and discreet issues relating to standing. In said order the expert
7 disclosures and expert reports were to be submitted by January 3, 2017, with
8 rebuttal experts disclosed on or before February 3, 2017. A hearing for a motion
9 regarding the alleged capacity of defendant's Automatic Telephone Dialing System
10 to make autodialed calls to plaintiffs and proposed class members shall take place
11 on April 3, 2017 at 1:30 p.m., Any motion regarding the alleged capacity of
12 defendant's Automatic Telephone Dialing System to make autodialed calls to
13 plaintiffs and proposed class members shall be filed by March 6, 2017. Any
14 opposition to such motion shall be filed by March 20, 2017. Any reply to such
15 opposition shall be filed by March 27, 2017.

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21 Whereas, the parties have been unable to complete discovery regarding
22 scheduling depositions necessary to address the capacity issue of Defendant's ATDS.
23 The parties have agreed that additional depositions will take place on February 23,
24 2017 and February 24, 2017. Plaintiff is in the process of preparing a request for
25 additional documents and additional deponents that have been identified by Wilshire.
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Whereas, on January 3, 2017 while Defendant served an expert designation
and an appropriate report, the Plaintiffs did identify their expert witness but did not

1 produce the Federal Rule of Civil Procedure 26(a)(2) report. In the interests of
2 maintaining a high standard of professional civility, and in an effort to resolve this
3 impasse, on January 17, 2017, the parties met and conferred on the most efficient
4 course of action. As the expert report on the capacity of the auto dialer not only
5 speaks to standing but also relates to an essential element of the plaintiffs' TCPA
6 claim, the parties have stipulated to extend the deadlines and hearing dates and
7 request that the Court modify its scheduling order as follows related to the capacity
8 issue (and not affecting the briefing schedule on Article III standing):
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12 1. Discovery concerning the alleged capacity of defendant's Automatic
13 Telephone Dialing System to make autodialed calls to plaintiffs shall be
14 continued from February 6, 2017 to May 22, 2017.
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16 2. The parties shall disclose experts and produce reports in accordance
17 with Federal Rule of Civil Procedure 26(a)(2) by no later than April 21, 2017
18 (continued from January 3, 2017).
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20 3. With regard to expert testimony intended solely for rebuttal, those
21 experts shall be disclosed and reports produced in accordance with Federal
22 Rule of Civil Procedure 26(a)(2) on or before May 22, 2017 (continued from
23 February 3, 2017).
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26 4. A hearing for a motion regarding the alleged capacity of defendant's
27 Automatic Telephone Dialing System to make autodialed calls to plaintiffs
28 and proposed class members shall take place on July 3, 2017 (Continued

1 from April 3, 2017) at 1:30 p.m. Any motion regarding the alleged capacity
2 of defendant's Automatic Telephone Dialing System to make autodialed
3 calls to plaintiffs shall be filed by June 5, 2017 (continued from March 6,
4 2017). Any opposition to such motion shall be filed by June 19, 2017
5 (continued from March 20, 2017). Any reply to such opposition shall be
6 filed by June 26, 2017 (continued from March 27, 2017).

9 5. Discovery concerning the merits of the purported class shall
10 commence on July 6, 2017.

12 6. Any hearing for a motion for class certification shall take place on
13 September 7, 2017 (Continued from July 10, 2017) at 1:30 p.m. Any motion
14 for class certification shall be filed by August 1, 2017 (continued from June
15 12, 2017). Any opposition to such motion shall be filed by August 16, 2017
16 (continued from June 26, 2017). Any reply to such opposition shall be filed by
17 August 30, 2017 (continued from July 3, 2017.)

21 7. All other dates remain on calendar.

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28 So Stipulated.

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Dated: February 3, 2017

MOLINO & BERARDINO, APLC

s/Benjamin John Carter
Benjamin John Carter, Esq.
Attorney for Defendant,
Wilshire Commercial Capital, LLC
E-Mail: bcarter@molinolawfirm.com

Dated: February 3, 2017

KEMNITZER BARRON & KRIEG, PC

s/Elliot Conn
Elliot Conn, Esq.
Bryan Kemnitzer, Esq.
Attorney for Plaintiffs,
Verina Freeman and Valecea Diggs
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1 Good cause carrying and based upon the stipulation of the parties the Court's
2 September 22, 2016 scheduling order is modified as follows:

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4 1. Discovery concerning the alleged capacity of defendant's Automatic
5 Telephone Dialing System to make autodialed calls to plaintiffs shall be continued
6 from February 6, 2017 to **May 22, 2017**.

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8 2. The parties shall disclose experts and produce reports in accordance with
9 Federal Rule of Civil Procedure 26(a)(2) by no later than **April 24, 2017** (continued
10 from January 3, 2017).

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12 3. With regard to expert testimony intended solely for rebuttal, those experts shall
13 be disclosed and reports produced in accordance with Federal Rule of Civil
14 Procedure 26(a)(2) on or before **May 22, 2017** (continued from February 3, 2017).

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16 4. A hearing for a motion regarding the alleged capacity of defendant's
17 Automatic Telephone Dialing System to make autodialed calls to plaintiffs and
18 proposed class members shall take place on **July 10, 2017** (Continued from April
19 3, 2017) at 1:30 p.m. Any motion regarding the alleged capacity of defendant's
20 Automatic Telephone Dialing System to make autodialed calls to plaintiffs shall be
21 filed by **June 5, 2017** (continued from March 6, 2017). Any opposition to such
22 motion shall be filed by **June 19, 2017** (continued from March 20, 2017). Any
23 reply to such opposition shall be filed by **June 26, 2017** (continued from March
24 27, 2017).

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26 5. Discovery concerning the merits of the purported class shall commence on
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July 6, 2017.

6. Any hearing for a motion for class certification shall take place on **September 18, 2017** (Continued from July 10, 2017) at 1:30 p.m. Any motion for class certification shall be filed by **August 7, 2017** (continued from June 12, 2017). Any opposition to such motion shall be filed by **August 21, 2017** (continued from June 26, 2017). Any reply to such opposition shall be filed by **August 28, 2017** (continued from July 3, 2017.)

7. All other dates remain on calendar.

SO ORDERED.

Dated: February 9, 2017


WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE