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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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VERINA FREEMAN and VALECEA  
DIGGS, individually and on  
behalf of all others  
similarly situated,

Plaintiffs,

v.

WILSHIRE COMMERCIAL CAPITAL  
LLC d/b/a "Wilshire Consumer  
Credit," a California limited  
liability company,

Defendant.

CIV. NO. 2:15-1428 WBS AC

MEMORANDUM AND ORDER RE: MOTION  
FOR SUMMARY JUDGMENT

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Defendant Wilshire Commercial Capital moves for summary  
judgment against plaintiffs Verina Freeman and Valecea Diggs,  
upon the ground that plaintiffs do not have Article III standing  
for their putative class action under the Telephone Consumer  
Protection Act ("TCPA").

The Ninth Circuit's opinion in Van Patten v. Vertical

1 Fitness Group, No. 14-55980, 2017 WL 460663, --- F.3d ---- (9th  
2 Cir. 2017) is dispositive. The Van Patten court found that, in  
3 passing the TCPA, "Congress identified unsolicited contact as a  
4 concrete harm, and gave consumers a means to redress this harm"  
5 through the TCPA because such calls, "by their nature, invade the  
6 privacy and disturb the solitude of their recipients." Id. at  
7 \*4. Thus, a plaintiff "need not allege any additional harm"  
8 other than "unsolicited contact" because "a violation of the TCPA  
9 . . . [is] sufficient to confer Article III standing." Id.

10 This case is substantially similar. Plaintiffs bring a  
11 claim against defendant for violation of the TCPA for defendant's  
12 unsolicited calls to plaintiffs "using an ATDS or an artificial  
13 or prerecorded voice." (First Am. Compl. ¶¶ 23, 52-53 (Docket  
14 No. 40)); see 47 U.S.C. § 227(b)(1)(A). At oral argument,  
15 defense counsel argued Van Patten's Article III standing  
16 discussion was dicta. However, after specifically requesting the  
17 parties to brief the Article III standing issue the Ninth Circuit  
18 stated unequivocally that, "We hold that Van Patten alleged a  
19 concrete injury in fact sufficient to confer Article III  
20 standing." Van Patten, 2017 WL 460663, at \*4 n.2, \*5.  
21 Plaintiffs' TCPA claim is a sufficient concrete injury to confer  
22 Article III standing.

23 IT IS THEREFORE ORDERED that defendant's motion for  
24 summary judgment be, and the same hereby is, DENIED.

25 Dated: February 22, 2017

26 

27 **WILLIAM B. SHUBB**  
28 **UNITED STATES DISTRICT JUDGE**