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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), AS AMENDED BY FEBRUARY**
22 Defendant.) **9, 2017 ORDER (DOCUMENT #54),**
23) **FOR THE BRIEFING SCHEDULE**
24) **ON MOTION ON ALLEGED**
25) **CAPACITY OF DEFENDANT'S**
26) **AUTOMATIC TELEPHONE**
27) **DIALING SYSTEM , AND EXPERT**
28) **DESIGNATION DATES, AND**
) **CLASS 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 (DOCUMENT #38), which included a dispositive motion
6 calendar, tiered discovery, and discreet issues relating to standing. In said order the
7 expert 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 was scheduled to
11 take place on April 3, 2017 at 1:30 p.m., and the motion regarding same was to be
12 filed by March 6, 2017. Opposition to such motion was to be filed by March 20,
13 2017, and a reply to such opposition was to be filed by March 27, 2017.

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18 Whereas, on February 9, 2017, Judge William B. Shubb granted the parties'
19 stipulation extending time and hearing dates (Document #54). Discovery
20 concerning the alleged capacity of defendant's Automatic Telephone Dialing
21 System to make autodialed calls to Plaintiffs was continued from February 6, 2017
22 to May 22, 2017. The parties were required disclose experts and produce reports
23 in accordance with Federal Rule of Civil Procedure 26(a)(2) by no later than April
24 24, 2017 (continued from January 3, 2017). With regard to expert testimony
25 intended solely for rebuttal, those experts were to be disclosed and reports
26 produced in accordance with Federal Rule of Civil Procedure 26(a)(2) on or before
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1 May 22, 2017 (continued from February 3, 2017). A hearing for a motion
2 regarding the alleged capacity of defendant's Automatic Telephone Dialing System
3 to make autodialed calls to plaintiffs and proposed class members was scheduled
4 for July 10, 2017 (Continued from April 3, 2017) at 1:30 p.m., and the motion
5 regarding same was to be filed by June 5, 2017 (continued from March 6, 2017),
6 and a opposition to such motion was to be filed by June 19, 2017 (continued from
7 March 20, 2017), and a reply to such opposition was to be filed by June 26, 2017
8 (continued from March 27, 2017). Discovery concerning class certification ws
9 ordered to commence on July 6, 2017. Hearing on the motion for class certification
10 was ordered to take place on September 18, 2017 (Continued from July 10, 2017) at
11 1:30 p.m. Any motion for class certification was ordered to be filed by August 7,
12 2017 (continued from June 12, 2017), opposition to such motion was ordered to be
13 filed by August 21, 2017 (continued from June 26, 2017), and a reply to such
14 opposition was ordered to be filed by August 28, 2017 (continued from July 3, 2017.)
15 All other dates were ordered to remain on calendar.

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22 Whereas, given the technological complexity of the discovery, despite the best
23 efforts to both parties, the parties have been unable to complete discovery regarding
24 the capacity issue of Defendant's ATDS, and additional written discovery has been
25 propounded and depositions have been noticed in May 2017.

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28 Whereas, on January 3, 2017, while Defendant served an expert designation
and an appropriate report, the Plaintiffs identified their expert witness but did not

1 produce the Federal Rule of Civil Procedure 26(a)(2) report. Plaintiffs contend that
2 their expert will need more discovery from Defendant before they can appropriately
3 furnish a FRCP 26(a)(2) report.
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5 Whereas, in the interests of maintaining a high standard of professional
6 civility, and in an effort to resolve this impasse, on April 17, 2017, the parties met
7 and conferred on the most efficient course of action. As the expert report on the
8 capacity of the auto dialer not only speaks to standing but also relates to an essential
9 element of the Plaintiffs' TCPA claim, the parties have stipulated to extend the
10 deadlines and hearing dates and request that the Court modify its scheduling order as
11 follows:
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15 1. Discovery concerning the alleged capacity of defendant's Automatic
16 Telephone Dialing System to make autodialed calls to Plaintiffs shall be continued
17 from May 22, 2017 to July 26, 2017.
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19 2. The parties shall disclose experts and produce reports in accordance
20 with Federal Rule of Civil Procedure 26(a)(2) by no later than May 30, 2017
21 (continued from April 24, 2017).
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23 3. With regard to expert testimony intended solely for rebuttal, those
24 experts shall be disclosed and reports produced in accordance with Federal Rule of
25 Civil Procedure 26(a)(2) on or before June 30, 2017 (continued from May 22, 2017).
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27 4. A hearing for motion regarding the alleged capacity of Defendant's
28 Automatic Telephone Dialing System to make autodialed calls to Plaintiffs shall

1 take place on August 28, 2017 (Continued from July 10, 2017) at 1:30 p.m. Any
2 motion regarding the alleged capacity of defendant's Automatic Telephone Dialing
3 System to make autodialed calls to Plaintiffs shall be filed by July 24, 2017
4 (continued from June 5, 2017), Opposition thereto shall be filed by August 7, 2017
5 (continued from June 19, 2017), and Reply to such Opposition shall be filed by
6 August 14, 2017 (continued from June 26, 2017).
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9 5. Discovery concerning class certification shall commence on August 29,
10 2017 (continued from July 6, 2017).
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12 6. Any hearing for a motion for class certification shall take place on
13 November 13, 2017 (Continued from September 18, 2017) at 1:30 p.m. Any motion
14 for class certification shall be filed by October 2, 2017 (continued from August 7,
15 2017), Opposition thereto shall be filed by October 23, 2017 (continued from August
16 21, 2017), Reply to such Opposition shall be filed by October 30, 2017 (continued
17 from August 28, 2017.)
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20 7. All other dates shall remain on calendar.
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22 So Stipulated.

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Dated: April 21, 2017

MOLINO & BERARDINO, APLC

s/Steven R. Berardino

Steven R. Berardino, Esq.

Attorney for Defendant,

Wilshire Commercial Capital

E-Mails: sberardino@molinolawfirm.com

Dated: April 21, 2017

KEMNITZER BARRON & KRIEG, PC

s/Elliot J. Conn

Elliot J. Conn, Esq.

Attorney for Plaintiffs,

Verina Freeman and Valecea Diggs

E-Mail: elliott@kbklegal.com

1 Good cause carrying and based upon the stipulation of the parties the Court's
2 September 22, 2016 scheduling order, amended by the February 9, 2017 order, is
3 modified as follows:
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5 1. Discovery concerning the alleged capacity of defendant's Automatic
6 Telephone Dialing System to make autodialed calls to Plaintiffs shall be continued
7 from May 22, 2017 to **July 26, 2017**.

9 2. The parties shall disclose experts and produce reports in accordance
10 with Federal Rule of Civil Procedure 26(a)(2) by no later than **May 30, 2017**
11 (continued from April 24, 2017).

13 3. With regard to expert testimony intended solely for rebuttal, those
14 experts shall be disclosed and reports produced in accordance with Federal Rule of
15 Civil Procedure 26(a)(2) on or before **June 30, 2017** (continued from May 22, 2017).

18 4. A hearing for motion regarding the alleged capacity of Defendant's
19 Automatic Telephone Dialing System to make autodialed calls to Plaintiffs shall
20 take place on **August 21, 2017** (Continued from July 10, 2017) at 1:30 p.m. Any
21 motion regarding the alleged capacity of defendant's Automatic Telephone Dialing
22 System to make autodialed calls to Plaintiffs shall be filed by **July 24, 2017**
23 (continued from June 5, 2017), Opposition thereto shall be filed by **August 7, 2017**
24 (continued from June 19, 2017), and Reply to such Opposition shall be filed by
25 **August 14, 2017** (continued from June 26, 2017).

28 5. Discovery concerning class certification shall commence on **August 29,**

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2017 (continued from July 6, 2017).

6. Any hearing for a motion for class certification shall take place on **November 13, 2017** (Continued from September 18, 2017) at 1:30 p.m. Any motion for class certification shall be filed by **October 2, 2017** (continued from August 7, 2017), Opposition thereto shall be filed by **October 23, 2017** (continued from August 21, 2017), Reply to such Opposition shall be filed by **October 30, 2017** (continued from August 28, 2017.)

7. All other dates shall remain on calendar.

SO ORDERED.

Dated: April 21, 2017



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

SERVICE LIST

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Freeman v. Wilshire Commercial Capital
Case No.: 2:15-cv-01428-WBS-AC

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