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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) **AS AMENDED BY APRIL 24, 2017**
24) **ORDER (DOCUMENT #62), FOR**
25) **THE BRIEFING SCHEDULE ON**
26) **MOTION ON ALLEGED**
27) **CAPACITY OF DEFENDANT'S**
28) **AUTOMATIC TELEPHONE**
) **DIALING SYSTEM, AND EXPERT**
) **DESIGNATION DATES, AND**
) **CLASS CERTIFICATION**
) **DISCOVERY AND BRIEFING**
) **DATES.**
) Courtroom: 5
) Assigned to: Judge William B. Shubb
) Complaint filed: July 6, 2015

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15 Attorneys for Plaintiffs, Verina Freeman, Valecea Diggs, and the potential class.
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1 **COMES NOW THE PARTIES TO THE ABOVE-REFERENCED**
2 **ACTION AND RECITE AND STIPULATE AS FOLLOWS:**

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4 **I. INTRODUCTION**

5 By way of this stipulation, the Parties jointly request an extension of time to
6 complete discovery regarding the alleged capacity of Defendant’s Automated
7 Telephone Dialing System (“ATDS”) and to disclose expert reports regarding the
8 alleged ATDS. Plaintiffs have disclosed their expert, but additional discovery is
9 needed, including receiving responses to already issued third-party subpoenas to
10 phone companies, in order to be able to provide complete expert reports. The Parties
11 stipulate to the following schedule and request an order from the Court setting the
12 following:
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- 16 • August 21, 2017: Deadline for the Parties to disclose experts and produce
17 expert reports;
- 18 • September 18, 2017: Discovery cut-off for discovery concerning the capacity
19 of Defendant’s alleged ATDS;
- 20 • September 21, 2017: Deadline for the Parties to disclose rebuttal experts and
21 produce rebuttal expert reports;
- 22 • October 6, 2017: Deadline to file any motion regarding the capacity of
23 Defendant’s alleged Automatic Telephone Dialing System;
- 24 • October 20, 2017: Deadline to file any opposition to the motion on capacity;
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- 1 • October 27, 2017: Deadline to file reply to motion on capacity;
- 2 • November 13, 2017: Hearing date for any motion regarding the capacity of
- 3 Defendant's alleged Automatic Telephone Dialing System;
- 4
- 5 • November 13, 2017: Following the hearing on the motion regarding the
- 6 capacity of Defendant's alleged Automatic Telephone Dialing System, the
- 7 Court will conduct a case management conference to set further dates on
- 8 calendar.
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- 11 • All other dates remain on calendar.

12 **II. STATUS OF DISCOVERY**

13 The Court's April 24, 2017 Amended Scheduling Order (Dkt. 62) required the

14 Parties to make any motion regarding the alleged auto dialer capacity of Defendant's

15 Telephone Dialing System to make autodialed calls to Plaintiffs to be filed by July

16 24, 2017 with a hearing date of August 28, 2017.

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19 The Parties have cooperated with discovery in anticipation of this motion.

20 Defendant has taken the depositions of both Plaintiffs and Plaintiffs have conducted

21 five separate depositions of various Wilshire employees, and designated persons who

22 are most knowledgeable. Defendant has also produced 8,175 pages of documents.

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24 In addition, Plaintiffs have issued third-party subpoenas to obtain documents from

25 Windstream Communications fka PAETEC, Defendants telephone service provider,

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27 in order to confirm the phone records produced. Plaintiffs await the response to

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1 Windstream due on July 5, 2017. The results of the Windstream subpoenas are
2 required prior to taking further Wilshire depositions and producing expert reports.
3
4 Once these Wilshire depositions, currently noticed for July 20, 2017, are complete,
5 Plaintiffs will be able to provide an expert report and then Defendant will be able to
6 designate a rebuttal expert, and the parties will be able to brief the issue of capacity.
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8 **III. PRIOR EXTENSIONS**

9 Given the technical complexity of the issues in this case, this is the Parties'
10 third request for an extension for discovery and briefing regarding Defendant's
11 alleged ATDS used to call the named Plaintiffs. The Court granting the first
12 extension on February 9, 2017 (Dkt. 54) and the second extension on April 24, 2017
13 (Dkt. 62).
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16 **NOW THEREFORE THE PARTIES STIPULATE:**

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18 The Parties have stipulated to an extension of the deadlines and hearing dates
19 and request that the Court modify its scheduling order as follows:

20
21 1. The parties shall disclose experts and produce reports in accordance
22 with Federal Rule of Civil Procedure 26(a)(2) by no later than August 21, 2017.

23
24 2. Discovery concerning the alleged capacity of defendant's Automatic
25 Telephone Dialing System to make autodialed calls to Plaintiffs shall be continued to
26 September 18, 2017.

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28 3. With regard to expert testimony intended solely for rebuttal, those
experts shall be disclosed and reports produced in accordance with Federal Rule of

1 Civil Procedure 26(a)(2) on or before September 21, 2017.

2 4. A hearing for motion regarding the alleged capacity of Defendant's
3 Automatic Telephone Dialing System to make autodialed calls to Plaintiffs shall
4 take place on November 13, 2017 at 1:30 p.m. Any motion regarding the alleged
5 capacity of defendant's Automatic Telephone Dialing System to make autodialed
6 calls to Plaintiffs shall be filed by October 6, 2017, Opposition thereto shall be
7 filed by October 20, 2017, and Reply to such Opposition shall be filed by October
8 27, 2017.

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12 5. On November 13, 2017, following the hearing on the motion regarding
13 the capacity of Defendant's alleged Automatic Telephone Dialing System, the
14 Court will conduct a case management conference to set further dates on calendar.

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16 6. All other dates shall remain on calendar.

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18 So Stipulated.

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Dated: June 26, 2017

MOLINO & BERARDINO, APLC

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Dated: June 26, 2017

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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, amended by the February 9, 2017 order,
3 further amended by the April 24, 2017 order, is modified as follows:
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5 1. The parties shall disclose experts and produce reports in accordance
6 with Federal Rule of Civil Procedure 26(a)(2) by no later than **August 21, 2017**.
7

8 2. Discovery concerning the alleged capacity of defendant's Automatic
9 Telephone Dialing System to make autodialed calls to Plaintiffs shall be continued to
10 **September 18, 2017**.
11

12 3. With regard to expert testimony intended solely for rebuttal, those
13 experts shall be disclosed and reports produced in accordance with Federal Rule of
14 Civil Procedure 26(a)(2) on or before **September 21, 2017**.
15

16 4. A hearing for motion regarding the alleged capacity of Defendant's
17 Automatic Telephone Dialing System to make autodialed calls to Plaintiffs shall
18 take place on **November 13, 2017** at 1:30 p.m. Any motion regarding the alleged
19 capacity of defendant's Automatic Telephone Dialing System to make autodialed
20 calls to Plaintiffs shall be filed by **October 6, 2017**, Opposition thereto shall be
21 filed by **October 20, 2017**, and Reply to such Opposition shall be filed by **October**
22 **30, 2017**.
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26 5. Following the hearing on the motion regarding the capacity of
27 Defendant's alleged Automatic Telephone Dialing System on **November 13, 2017**,
28 the Court will conduct a case management conference to set further dates on

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calendar.

7. All other dates shall remain on calendar.

SO ORDERED.

Dated: June 27, 2017



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

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SERVICE LIST

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

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