

1 MOLINO & BERARDINO, A Professional Law Corporation
2 Anthony A. Molino, Esq. [SBN 156661] molino@molinolawfirm.com
3 Steven R. Berardino, Esq. [SBN 075820] sberardino@molinolawfirm.com
4 Michelle Cooper, Esq. [SBN 093668] mcooper@molinolawfirm.com
5 Benjamin J. Carter, Esq. [SBN 287462] bcarter@molinolawfirm.com
6 4751 Wilshire Boulevard, Suite 207
7 Los Angeles, California 90010-3838
8 Telephone (323) 692-4010 Facsimile (323) 692-4015

9 Attorneys for Defendant, WILSHIRE COMMERCIAL CAPITAL, LLC

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 JUNE**
20 liability company dba WILSHIRE) **28, 2017 (DOCUMENT #65), AS**
21 CONSUMER CREDIT,) **AMENDED SEPTEMBER 22, 2016**
22 Defendant.) **(DOCUMENT #38), AS AMENDED**
23) **BY FEBRUARY 9, 2017 ORDER**
24) **(DOCUMENT #54), AS AMENDED**
25) **BY APRIL 24, 2017 ORDER**
26) **(DOCUMENT #62), FOR THE**
27) **BRIEFING SCHEDULE ON**
28) **MOTION ON ALLEGED**
) **CAPACITY OF DEFENDANT'S**
) **AUTOMATIC TELEPHONE**
) **DIALING SYSTEM, AND EXPERT**
) **DESIGNATION DATES,**
)
) Courtroom: 5
) Assigned to: Judge William B. Shubb
) Complaint filed: July 6, 2015

1 KEMNITZER, BARRON, & KRIEG, LLP
2 BRYAN KEMNITZER, Esq. Bar No. 066401
3 ELLIOT CONN, Esq. Bar No. 279920
4 445 Bush St., 6th Floor
5 San Francisco, CA 94108
6 Telephone: (415) 632-1900
7 Facsimile: (415) 632-1901

8 Scott D. Owens, Esq.
9 *admitted pro hac vice*
10 Scott D. Owens, P.A.
11 3800 S. Ocean Drive, Suite 235
12 Hollywood, FL 33019
13 Telephone: (954) 589-0588
14 Facsimile: (954) 337-0666

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:**

3 **I. INTRODUCTION AND GOOD REASON FOR EXTENSION**

4 By way of this stipulation, the Parties jointly request an extension of time to
5 complete discovery regarding the alleged capacity of Defendant’s Automated
6 Telephone Dialing System (“ATDS”) and to disclose rebuttal expert reports
7 regarding the alleged ATDS. Plaintiffs have disclosed their expert and he has
8 produced a report; however, Plaintiffs’ designated expert, Mr. Jeffrey A. Hansen, due
9 to medical reasons, including a recent surgery, has been unable to sit for a deposition
10 regarding his current findings, and will not be able to do so until after the rebuttal
11 expert disclosure/report deadline. Defendant will need to depose Plaintiffs’ expert,
12 currently scheduled for October 12, 2017, and have the transcript reviewed by its
13 expert before filing the motion on the ATDS system, and before filing the rebuttal
14 expert report. The Parties stipulate to the following schedule and request an order
15 from the Court setting the following:

- 16 • November 10, 2017: Discovery cut-off for discovery concerning the capacity
17 of Defendant’s alleged ATDS;
- 18 • October 25, 2017: Deadline for the Parties to disclose rebuttal experts and
19 produce rebuttal expert reports;
- 20 • November 30, 2017: Deadline to file any motion regarding the capacity of
21 Defendant’s alleged Automatic Telephone Dialing;

- 1 • December 18, 2017: Deadline to file any opposition to the motion on
- 2 capacity;
- 3
- 4 • January 4, 2018: Deadline to file reply to motion on capacity;
- 5
- 6 • January 15, 2018: Hearing date for any motion regarding the capacity of
- 7 Defendant's alleged Automatic Telephone Dialing System;
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- 9 • January 15, 2018: Following the hearing on the motion regarding the capacity
- 10 of Defendant's alleged Automatic Telephone Dialing System, the Court will
- 11 conduct a case management conference to set further dates on calendar with
- 12 regard to class certification and trial.
- 13
- 14 • The parties are also amenable to scheduling a Case Management Conference
- 15 at the Court's convenience to discuss the case in more detail.
- 16

17 **II. STATUS OF DISCOVERY**

18 The Court's June 28, 2017 Amended Scheduling Order (Dkt. 65) required the
19 Parties to make any motion regarding the alleged auto dialer capacity of Defendant's
20 Telephone Dialing System to make autodialed calls to Plaintiffs to be filed by
21 October 6, 2017 with a hearing date of November 13, 2017.

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23 The Parties have cooperated with discovery in anticipation of this motion, and
24 have professionally resolved any issues that have arisen. Plaintiffs have consulted
25 their expert, and he is available on October 12, 2017 for a deposition. Once the
26 Plaintiff's expert's deposition, is complete, Defendant will be able to designate a
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1 rebuttal expert, and the parties will be able to brief the issue of capacity.

2 **III. PRIOR EXTENSIONS**

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4 Given the technical complexity of the issues in this case, and a medical
5 necessity pertaining to Plaintiff's designated expert, this is the Parties' fourth request
6 for an extension for discovery and briefing regarding Defendant's alleged ATDS
7 used to call the named Plaintiffs. The Court issued the pretrial schedule in this matter
8 on September 22, 2016 (Dkt. 38); and granted a first extension on February 9, 2017
9 (Dkt. 54); second extension.
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12 **NOW THEREFORE THE PARTIES STIPULATE:**

13 The Parties have stipulated to an extension of the deadlines and hearing dates
14 and request that the Court modify its scheduling order as follows:
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16 1. Discovery concerning the alleged capacity of defendant's Automatic
17 Telephone Dialing System to make autodialed calls to Plaintiffs shall be continued to
18 November 10, 2017.
19

20 2. Plaintiffs will produce their designated expert for deposition during on
21 October 12, 2017 in San Diego.
22

23 3. With regard to expert testimony intended solely for rebuttal, those experts shall
24 be disclosed and reports produced in accordance with Federal Rule of Civil
25 Procedure 26(a)(2) on or before October 25, 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 January 15, 2018 at 1:30 p.m. Any motion regarding the alleged
2 capacity of defendant's Automatic Telephone Dialing System to make autodialed
3 calls to Plaintiffs shall be filed by November 30, 2017, Opposition thereto shall be
4 filed by December 18, 2017, and Reply to such Opposition shall be filed by
5 January 4, 2018.
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8 5. On January 15, 2018, following the hearing on the motion regarding the
9 capacity of Defendant's alleged Automatic Telephone Dialing System, the Court
10 will conduct a case management conference to set further dates on calendar.
11

12 So Stipulated.

13 Dated: September 18, 2017

MOLINO & BERARDINO, APLC

14
15 s/Benjamin J. Carter

16 Steven R. Berardino, Esq.

17 Benjamin J. Carter, Esq.

18 Attorneys for Defendant,

19 Wilshire Commercial Capital

E-Mails: sberardino@molinolawfirm.com

bcarter@molinolawfirm.com

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21
22 Dated: September 18, 2017

KEMNITZER BARRON & KRIEG, PC

23 s/Bryan Kemnitzer

24 Bryan Kemnitzer, Esq.

25 Elliot J. Conn, Esq.

26 Attorney for Plaintiffs,

27 Verina Freeman and Valecea Diggs

E-Mail: bryan@kbklegal.com

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 February 9, 2017 scheduling
3 order, further amended by the April 24, 2017 order, and further amended by the June
4 28, 2017 order, is modified as follows:
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6 1. Discovery concerning the alleged capacity of defendant's Automatic
7 Telephone Dialing System to make autodialed calls to Plaintiffs shall be continued to
8 **November 13, 2017.**
9

10 2. Plaintiffs are ordered to produce their designated expert for deposition
11 on October 12, 2017 in San Diego.
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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 **October 25, 2017.**
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17 4. A hearing for motion regarding the alleged capacity of Defendant's
18 Automatic Telephone Dialing System to make autodialed calls to Plaintiffs shall
19 take place on **January 16, 2018 at 1:30 p.m.** Any motion regarding the alleged
20 capacity of defendant's Automatic Telephone Dialing System to make autodialed
21 calls to Plaintiffs shall be filed by **November 30, 2017**, Opposition thereto shall be
22 filed by **December 18, 2017**, and Reply to such Opposition shall be filed by
23 **January 4, 2018.**
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27 5. Following the hearing on the motion regarding the capacity of
28 Defendant's alleged Automatic Telephone Dialing System on **January 16 2018 at**

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1:30 p.m., the Court will conduct a case management conference to reset the current Pretrial Conference date of January 29, 2018 and trial date of March 27, 2018. A Joint Status Report shall be filed no later than **January 2, 2018**.

IT IS SO ORDERED.

Dated: September 18, 2017


WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE