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9 [Additional Counsel on Following Sheet.]

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

12 FREEMAN and VALECEA DIGGS,) CASE NO.: 2:15-CV-01428-WBS-AC
13 individually and on behalf of all others) [CLASS ACTION]
14 similarly situated,)
15) **STIPULATION AND (PROPOSED)**
16 Plaintiffs,) **ORDER EXTENDING THE TIME**
17 v.) **SET FORTH IN THE PRETRIAL**
18) **SCHEDULING ORDER OF**
19 WILSHIRE COMMERCIAL) **SEPTEMBER 19, 2017 (DOCUMENT**
20 CAPITAL, LLC a California limited) **#67), AS AMENDED SEPTEMBER 22,**
21 liability company dba WILSHIRE) **2016 (DOCUMENT #38), AS**
22 CONSUMER CREDIT,) **AMENDED BY FEBRUARY 9, 2017**
23) **ORDER (DOCUMENT #54), AS**
24 Defendant.) **AMENDED BY APRIL 24, 2017**
25) **ORDER (DOCUMENT #62), AS**
26) **AMENDED JUNE 28, 2017**
27) **(DOCUMENT #65), FOR THE**
28) **BRIEFING SCHEDULE ON 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

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

1 **COMES NOW THE PARTIES TO THE ABOVE-REFERENCED**
2 **ACTION AND RECITE AND STIPULATE AS FOLLOWS:**

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

5 By way of this stipulation, the Parties jointly request an extension of time to
6 complete expert discovery regarding the alleged capacity of Defendant's Automated
7 Telephone Dialing System ("ATDS") and to file the parties scheduled motions on the
8 alleged Automatic Telephone Dialing System used to call Plaintiffs. Plaintiffs have
9 disclosed their expert and he has produced a report; Defendants have disclosed their
10 rebuttal expert, Jerry Kaufman, and produced his report. However, on the eve of the
11 date scheduled for Jerry Kaufman's deposition he became ill and is unable to travel
12 and testify in this matter. It is expected that Jerry Kaufman will be able to sit for a
13 deposition in the first three weeks in December 2017. December 2017 is after the
14 ordered discovery cut-off and after the parties motions are due. Plaintiff will need to
15 depose Defendant's rebuttal expert, and have the transcript, before filing the motion
16 on the ATDS system. The Parties stipulate to the following schedule and request an
17 order from the Court setting the following:
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- 22 • December 19, 2017: Discovery cut-off for expert discovery concerning the
23 capacity of Defendant's alleged ATDS;
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- 25 • January 17, 2017: Deadline to file any motion regarding the capacity of
26 Defendant's alleged Automatic Telephone Dialing ;
27
- 28 • February 2, 2017: Deadline to file any opposition to the motion on capacity;

- 1 • February 12, 2018: Deadline to file reply to motion on capacity;
- 2 • February 26, 2018: Hearing date for any motion regarding the capacity of
- 3 Defendant's alleged Automatic Telephone Dialing System;
- 4
- 5 • February 26, 2018: 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 with regard to class certification and trial.
- 9
- 10
- 11 • The parties are also amenable to scheduling a Case Management Conference
- 12 at the Court's convenience to discuss the case in more detail.
- 13

14 **II. STATUS OF DISCOVERY**

15 The Court's September 19, 2018 Amended Scheduling Order (Dkt. 67)

16 required the Parties to make any motion regarding the alleged auto dialer capacity of

17 Defendant's Telephone Dialing System to make autodialed calls to Plaintiffs to be

18 filed by November 30, 2017 with a hearing date of January 16, 2018.

19

20

21 The Parties have cooperated with discovery in anticipation of this motion, and

22 have professionally resolved any issues that have arisen. Defendant has consulted its

23 expert, and is working out available deposition dates in the first two weeks of

24 December 2017. Once the Defendant's rebuttal expert's deposition, is complete,

25 Plaintiff will be able to brief the issue of capacity.

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III. PRIOR EXTENSIONS

Given the technical complexity of the issues in this case, and a medical necessity pertaining to both parties designated experts, this is the Parties' fifth request for an extension for discovery and briefing regarding Defendant's alleged ATDS used to call the named Plaintiffs. The Court issued the pretrial schedule in this matter on September 22, 2016 (Dkt. 38); and granted a first extension on February 9, 2017 (Dkt. 54); second extension on APRIL 24, 2017 (Dkt. 62); third extension on June 28, 2017 (Dkt. 65); fourth extension September 19, 2017 (Dkt. 67).

NOW THEREFORE THE PARTIES STIPULATE:

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

1. Discovery concerning the alleged capacity of defendant's Automatic Telephone Dialing System to make autodialed calls to Plaintiffs shall be continued to December 19, 2017.

2. Defendants will produce their designated rebuttal expert for a deposition during the first three weeks of December 2017.

3. A hearing for motion regarding the alleged capacity of Defendant's Automatic Telephone Dialing System to make autodialed calls to Plaintiffs shall take place on February 26, 2018 at 1:30 p.m. Any motion regarding the alleged capacity of defendant's Automatic Telephone Dialing System to make autodialed

1 calls to Plaintiffs shall be filed by January 17, 2018, Opposition thereto shall be
2 filed by February 2, 2018, and Reply to such Opposition shall be filed by February
3 12, 2018.
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5 4. On February 26, 2018, following the hearing on the motion regarding
6 the capacity of Defendant's alleged Automatic Telephone Dialing System, the
7 Court will conduct a case management conference to set further dates on calendar.
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11 So Stipulated.
12

13 Dated: November 22, 2017

MOLINO & BERARDINO, APLC

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19 Wilshire Commercial Capital
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21
22 Dated: November 22, 2017

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23 s/Bryan Kemnitzer
24 Bryan Kemnitzer, Esq.
25 Elliot J. Conn, Esq.
26 Attorney for Plaintiffs,
27 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, 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, and further amended by the September 19, 2017 order, is modified as
5 follows:
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8 1. Discovery concerning the alleged capacity of defendant's Automatic
9 Telephone Dialing System to make autodialed calls to Plaintiffs shall be continued to
10 **December 19, 2017.**

11
12 2. Defendants shall produce their designated rebuttal expert for a
13 deposition during the first three weeks of December 2017..
14

15 3. A hearing for motion regarding the alleged capacity of Defendant's
16 Automatic Telephone Dialing System to make autodialed calls to Plaintiffs shall
17 take place on **February 26, 2018** at 1:30 p.m. Any motion regarding the alleged
18 capacity of defendant's Automatic Telephone Dialing System to make autodialed
19 calls to Plaintiffs shall be filed by **January 17, 2018**, Opposition thereto shall be
20 filed by **February 2, 2018**, and Reply to such Opposition shall be filed by
21 **February 12, 2018.**

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25 4. Following the hearing on the motion regarding the capacity of
26 Defendant's alleged Automatic Telephone Dialing System on **February 26, 2018**,
27 the Court will conduct a case management conference to reset dates on calendar.
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5. A Joint Status Report shall be filed no later than **February 12, 2018**;

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6. The Pretrial Conference date of January 29, 2018 and Trial date of March 27, 2018 are VACATED.

SO ORDERED.

Dated: November 22, 2017


WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

1 **PROOF OF SERVICE (F.R.C.P. 5 (b) (2) (C))**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3
4 I, Beverly Langworthy, am employed in the County of Los Angeles, State of
5 California. I am over the age of eighteen years and not a party to the within action,
6 my business address is 4751 Wilshire Boulevard, Suite 207, Los Angeles,
7
8 California 90010.

9 On November 22, 2017 I served **STIPULATION AND (PROPOSED)**
10 **ORDER EXTENDING THE TIME SET FORTH IN THE PRETRIAL**
11 **SCHEDULING ORDER OF SEPTEMBER 19, 2017 (DOCUMENT #67), AS**
12 **AMENDED SEPTEMBER 22, 2016 (DOCUMENT #38), AS AMENDED BY**
13 **FEBRUARY 9, 2017 ORDER (DOCUMENT #54), AS AMENDED BY**
14 **APRIL 24, 2017 ORDER (DOCUMENT #62), AS AMENDED JUNE 28, 2017**
15 **(DOCUMENT #65), FOR THE BRIEFING SCHEDULE ON MOTION ON**
16 **ALLEGED CAPACITY OF DEFENDANT’S AUTOMATIC TELEPHONE**
17 **DIALING SYSTEM, AND EXPERT DESIGNATION DATES** on interested
18 parties:
19

20 X By CM/ECF Notice of Electronic Filing. Said document was filed with the
21 Court using the CM/ECF system. Notice of this filing will be sent to all parties
22 registered to receive service by operation of the Court’s electronic filing system.

23 **[SEE ATTACHED SERVICE LIST]**

24 I declare under penalty of perjury that the foregoing is true and correct under
25 the law of the United States of America. Executed this 22nd day of November 2017
26
27 Los Angeles, California.

28

Beverly Langworthy

SERVICE LIST

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

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