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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

WILSHIRE COMMERCIAL CAPITAL
L.L.C., a California limited
liability company, dba
WILSHIRE CONSUMER CREDIT,

Defendant.

CIV. NO. 2:15-1428 WBS AC

ORDER RE: MOTION TO STAY

Verina Freeman ("Freeman") and Velecea Diggs ("Diggs")
(collectively "plaintiffs") initiated this class action against
defendant Wilshire Commercial Capital, L.L.C. ("WCC") alleging
violations of the Telephonic Consumer Protection Act ("TCPA"), 47
U.S.C. § 227. On February 14, 2018, the parties submitted a
Joint Status Report (Docket No. 93) in which defendant requests
that in the event the court denies defendant's Motion to Deny
Class Certification, the court stay class discovery pending
Supreme Court review of Resh v. China Agritech, Inc. (9th Cir.

1 2017) 857 F.3d 994, cert. granted, 138 S. Ct. 543 (2017). The
2 Court is scheduled to hear Resh on March 28, 2018, and it is
3 expected to issue a ruling on the case by the end of June.

4 In Resh, the Ninth Circuit concluded that the filing of
5 a class action tolls the limitations period and permits a
6 previously absent class member to bring a subsequent class action
7 outside of the generally applicable limitations period. The
8 Supreme Court has previously ruled that the filing of a class
9 action suit tolls the running of the statute of limitations for a
10 purported member's individual claims. See Am. Pipe & Constr. Co.
11 v. Utah, 414 U.S. 538 (1974). However, there is a circuit split
12 regarding the interpretation of the American Pipe rule as it
13 relates to tolling for subsequent putative class actions. Three
14 courts of appeal, including the Ninth Circuit, have interpreted
15 the rule to mean that the limitations period is tolled not only
16 as to individual claims but also as to future class action
17 claims, while six other courts of appeal have found tolling only
18 permits subsequent individual actions.

19 If the Court reverses Resh and determines that the
20 statute of limitations is tolled only for individual claims, then
21 plaintiffs would be unable to bring this case as a class action,
22 though they would still be able to proceed with their individual
23 claims. Accordingly, the need to do class discovery may be
24 completely eliminated depending on the Supreme Court's ruling in
25 Resh. Therefore, the court will stay class discovery until the
26 Supreme Court issues an opinion. A status conference is set for
27 August 6, 2018, at 1:30 pm in Courtroom No. 5.

28 IT IS SO ORDERED.

1 Dated: March 6, 2018



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

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