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7 IN THE UNITED STATES DISTRICT COURT
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9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 SHAWN ESPARZA, on behalf of herself,
12 and all others similarly situated,

13 Plaintiff,

14 v.

15 SMARTPAY LEASING, INC.,

16 Defendant.
17 _____/

No. C 17-03421 WHA

**ORDER DENYING LEAVE TO
FILE MOTION FOR
RECONSIDERATION**

18 An order dated April 20 summarized the ruling made on the record at the April 17
19 discovery hearing (Dkt. No. 59). The April 20 order directed defendant to respond to plaintiff's
20 Request for Production of Documents Number 27, which sought a list containing the (1) date,
21 (2) time, and (3) phone number for each instance in which defendant sent a text message
22 "simultaneously or within seconds" of the user sending a text message opting out of future
23 communications.

24 At the discovery hearing, the undersigned judge observed that if defendant conceded
25 that any TCPA violation as to plaintiff was willful then the requested discovery may be
26 unnecessary (Dkt. No. 60 at 10:10–13). Defendant declined to make such a concession. The
27 undersigned judge accordingly concluded that the requested information was relevant to
28 whether or not any TCPA violation as to plaintiff was willful or knowing. The April 20 order
directed defendant to respond to plaintiff's discovery request by April 30 at noon.

1 In defendant's motion for reconsideration, defense counsel states that she lacked
2 authorization to make a concession regarding willfulness at the time of the discovery hearing.
3 Having further discussed the matter with her client, however, counsel now has such
4 authorization. Defendant accordingly seeks leave to file a motion for reconsideration of the
5 April 20 order. Plaintiff opposes.

6 Having considered plaintiff's opposition, this order agrees that the extent of defendant's
7 willfulness with respect to any TCPA violation would be relevant to determining whether or not
8 to award treble damages. An award of treble damages is not automatic upon a finding of willful
9 or knowing conduct. Rather, upon finding that a defendant willfully or knowingly violated the
10 TCPA, "the court *may*, in its discretion," increase the amount of the damages award to an
11 amount "*not more than 3 times*" the amount otherwise available under the statute. 8 U.S.C. §
12 227(b)(3) (emphasis added). Although defendant has offered to concede willfulness, it has not
13 offered to concede treble damages. Defendant's request for leave to file a motion for
14 consideration of the April 20 order is **DENIED**.

15 By **MAY 17**, defendant shall file a notice with the Court confirming that it has complied
16 with the April 20 order. Plaintiff's request for sanctions is **DENIED**.

17 **IT IS SO ORDERED.**

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19 Dated: May 10, 2018.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE