

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

|                         |   |                                     |
|-------------------------|---|-------------------------------------|
| <b>PETERSON MANUEL,</b> | : | <b>CIVIL ACTION NO. 1:15-CV-274</b> |
|                         | : |                                     |
| <b>Plaintiff</b>        | : | <b>(Chief Judge Conner)</b>         |
|                         | : |                                     |
| <b>v.</b>               | : |                                     |
|                         | : |                                     |
| <b>NRA GROUP, LLC,</b>  | : |                                     |
|                         | : |                                     |
| <b>Defendant</b>        | : |                                     |

**ORDER**

AND NOW, this 7th day of December, 2016, upon consideration of the parties' apparent dispute concerning the issues remaining for trial in this case, (see Doc. 73 at 2-4; Doc. 75 at 17-19), wherein plaintiff Peterson Manuel ("Manuel") alleges that the issue of statutory damages under the Telephone Consumer Protection Act ("TCPA") was resolved by this court at summary judgment, when the court held that "[u]ncontroverted record evidence establishes that Mercury Dialer placed 146 calls to Manuel," (Doc. 52 at 4 n.2), such that the only question for trial is the issue of treble damages, (Doc. 73 at 3, 5), but wherein defendant NRA Group, LLC ("NRA") posits that the issue of statutory damages was not resolved by the court's prior opinion because Manuel must further demonstrate that he either answered his phone or heard his phone buzz or ring for each of the subject calls, (Doc. 75 at 18), and the court noting that while the Third Circuit has not addressed the dispute *sub judice*, the Ninth Circuit has found that a "call" within the TCPA means "to communicate with or try to get into communication with a person by telephone," Satterfield v. Simon & Schuster, Inc., 569 F.3d 946, 954 (9th Cir. 2009), and other

district courts have relied on this definition in finding that a plaintiff need not answer or hear a call to prove prohibited conduct under the TCPA, but need only prove the act of placing the call itself, King v. Time Warner Cable, 113 F. Supp. 3d 718, 725 (S.D.N.Y. 2015); Filichio v. M.R.S. Assocs., Inc., No. 09-61629, 2010 WL 4261442, at \*3 (S.D. Fla. Oct. 19, 2010); see also Forrest v. Genpact Servs., LLC, 962 F. Supp. 2d 734, 737 (M.D. Pa. 2013), it is hereby ORDERED for purposes of clarification that the sole issue for trial shall be whether plaintiff should be awarded treble damages.

/S/ CHRISTOPHER C. CONNER  
Christopher C. Conner, Chief Judge  
United States District Court  
Middle District of Pennsylvania