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19 HYDROPHONICS, INC.

20 **UNITED STATES DISTRICT COURT**

21 **CENTRAL DISTRICT OF CALIFORNIA**

22 VANESSA CAMACHO, individually
23 and on behalf of all others similarly
24 situated,

25 Plaintiff,

26 v.

27 ROUTE FOUR, LLC d/b/a
28 HYDROPHONICS, INC.,

Defendants.

CASE NO. 5:20-CV-00980-JGB-KK

Assigned to the Hon. Jesus G. Bernal

**DEFENDANT ROUTE FOUR,
LLC D/B/A HYDROPHONICS,
INC.’S NOTICE OF MOTION
AND MOTION TO STAY
PROCEEDINGS PENDING
RULING BY THE SUPREME
COURT**

Date: September 14, 2020

Time: 9:00 a.m.

Courtroom: 1

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on September 14, 2020 at 9:00 a.m. in
3 Courtroom 1 of the above-entitled Court of the United States District Court for the
4 Central District of California, located at 3470 Twelfth Street, Riverside, California
5 92501, Defendant Route Four, LLC d/b/a Hydroponics, Inc. will and hereby does
6 move for a stay of proceedings in this action pending a ruling by the United States
7 Supreme Court in *Facebook, Inc. v. Duguid*, --- S. Ct. ----, No. 19-511, 2020 WL
8 3865252 (Mem) (S. Ct. July 9, 2020), regarding the definition of an “automatic
9 telephone dialing system” under the Telephone Consumer Protection Act, 47
10 U.S.C. § 227 *et seq.*

11 This Motion is made on the grounds that a trial court has broad discretion to
12 stay all proceedings pending the resolution of independent proceedings elsewhere
13 that may have a bearing on the action before the trial court. *See Landis v. N. Am.*
14 *Co.*, 299 U.S. 248, 254 (1936). The decision by the Supreme Court in *Facebook*
15 will directly affect the outcome of this action, will not prejudice Plaintiff, and will
16 promote judicial economy. Additionally, Defendant would suffer harm if a stay
17 were not granted.

18 This Motion is based on this Notice of Motion, the Memorandum of Points
19 and Authorities filed concurrently herewith, the operative complaint and pleadings
20 on file with the Court, the concurrently filed Request for Judicial Notice, and any
21 other evidence or oral argument as the Court may consider in connection with this
22 Motion.

23 This Motion is made following the conference of counsel pursuant to L.R. 7-
24 3, which took place on July 28, 2020.

1 Dated: August 4, 2020

STEPTOE & JOHNSON LLP

2 By: /s/ Ashwin J. Ram

3 Ashwin J. Ram
4 Cody DeCamp

5 ROUTE FOUR, LLC d/b/a
6 HYDROPONICS, INC.

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1 Defendant Route Four, LLC d/b/a Hydroponics, Inc. (“Route Four”) hereby
2 moves the Court for an order staying these proceedings pending the ruling of the
3 United State Supreme Court in *Facebook, Inc. v. Duguid*, --- S. Ct. ----, No. 19-511,
4 2020 WL 3865252 (Mem) (S. Ct. July 9, 2020) (“*Facebook*”). The decision in
5 *Facebook* will provide much needed clarity on the definition of an “Automatic
6 Telephone Dialing System,” as defined by the Telephone Consumer Protection Act,
7 the very system that Plaintiff alleges Route Four utilized to send unsolicited text
8 messages to her mobile telephone number. Further litigation absent this guidance
9 threatens to waste the Court’s and the parties’ resources.

10 **I. INTRODUCTION**

11 This case arises out of alleged violations of the Telephone Consumer
12 Protection Act (“TCPA”). Plaintiff Vanessa Camacho (“Plaintiff”) is a citizen of
13 California who alleges, on behalf of herself and a putative nationwide class, that
14 Route Four unlawfully sent her text messages in violation of the TCPA’s automatic-
15 call restrictions, codified at 47 U.S.C. § 227(b)(1)(A).

16 The TCPA does not expressly regulate the sending of text messages, and
17 imposes statutory penalties that threaten alleged violators with potentially severe
18 liabilities. Nevertheless, the Ninth Circuit has broadly interpreted the statute. For
19 example, its recent rulings in *Duguid v. Facebook, Inc.*, 926 F.3d 1146 (9th Cir.
20 2019), *cert. granted in part* No. 19-511, 2020 WL 3865252 (S. Ct. July 9, 2020)
21 (“*Duguid*”) and *Marks v. Crunch San Diego, LLC*, 904 F.3d 1041 (9th Cir. 2018)
22 have broadly interpreted the phrase “automatic telephone dialing system”
23 (“ATDS”), and have created a split with other Circuits on this important predicate
24 for TCPA liability. The United States Supreme Court recently granted *certiorari in*
25 *part* in *Facebook*, to address the following question:

26 Whether the definition of ATDS in the TCPA [Telephone
27 Consumer Protection Act] encompasses any device that
28 can “store” and “automatically dial” telephone numbers,

1 even if the device does not “us[e] a random or sequential
2 number generator.”

3 Petition for Writ of Certiorari, *Facebook, Inc. v. Duguid*, No. 19-511, at ii (St. Ct.
4 Oct. 17, 2019).¹

5 As set forth in further detail below, the question certified by the Supreme
6 Court in *Facebook* will address the growing circuit split on the proper definition of
7 an ATDS, the very technology Plaintiff’s Complaint alleges Route Four utilized to
8 send unauthorized text messages. The outcome of this case may well depend on the
9 meaning of an ATDS. If Route Four did not use an ATDS to transmit messages, it
10 cannot be liable. *See* 47 U.S.C. § 227(b)(1).

11 This Court should stay the proceedings in this case until the Supreme Court
12 determines this issue. A stay will conserve the resources of the Court and the parties.
13 In addition, Plaintiff will sustain no real prejudice, and, in any event, the prejudice
14 defendant would suffer without a stay outweighs any inconvenience to Plaintiff with
15 a stay in place.

16 **II. STATEMENT OF FACTS**

17 **A. The Instant Litigation**

18 Plaintiff filed the Complaint in this action against Route Four on May 6, 2020.
19 *See* Compl. (ECF No. 1). The Complaint alleges that Plaintiff received “at least
20 three” telemarketing text messages from Route Four between September 18, 2019
21 and October 29, 2019. *See id.* ¶ 17. Plaintiff claims that these text messages
22 constitute violations of the TCPA’s automatic-dialing restrictions codified at 47
23 U.S.C. § 227(b)(1)(A). *See id.* ¶¶ 62-74. The Complaint alleges that Route Four
24 sent these text messages to consumers by and through the use of an ATDS without
25

26 ¹ The *Facebook* docket states “Petition GRANTED limited to Question 2 presented
27 by the petition.” *See* July 9, 2020 docket entry available at
28 <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/19-511.html>; Defendant’s Request for Judicial Notice (“RJN”) Exs. A, B.

1 receiving Plaintiff's express written consent to do so. *See id.* ¶¶ 19, 22-30, 47-57.
2 The Complaint contains no allegations that Plaintiff's receipt of purportedly
3 unsolicited text messages is ongoing. *See id.* The Complaint only alleges a single
4 cause of action for violation of the TCPA's automatic calling restrictions. *See id.* ¶¶
5 45-57. Plaintiff identifies as one of the purportedly common questions of fact and
6 law that predominate the litigation as follows: "[w]hether the dialing system used to
7 call is an Automatic Telephone Dialing System[.]" *See id.* ¶ 38c. Plaintiff's prayer
8 for relief asks the Court to issue a declaration that Route Four is using an ATDS to
9 send unauthorized text messages, and injunctive relief prohibiting Route Four from
10 using an ATDS to send unauthorized text messages. *See id.* (Prayer for Relief at p.
11 13).

12 Route Four engaged in a pre-motion meet and confer with Plaintiff to see
13 whether it could seek this stay through a stipulated motion in accordance with Local
14 Rule 7-3. The conference was held on July 28, 2020, but the parties were unable to
15 agree on a joint filing, as Plaintiff objects to any stay of the proceedings.

16 **B. The Supreme Court Grants Cert in Facebook Inc. v. Duguid**

17 On July 9, 2020, the United States Supreme Court granted *certiorari* on the
18 Ninth Circuit's decision in *Duguid*, 926 F.3d at 1146. RJN Exs. A, B.

19 In *Duguid*, a consumer filed a suit against Facebook for allegedly sending him
20 text messages without his express written consent using an ATDS as defined by the
21 TCPA in 47 U.S.C. § 227(b)(1). *Duguid*, 926 F.3d at 1149-50. On appeal, Facebook
22 challenged Plaintiff's contention that it utilized an ATDS to send text messages. *Id.*
23 at 1151. The Ninth Circuit, as it had previously concluded in *Marks*, 904 F. 3d at
24 1041, held that to qualify as an ATDS, a messaging platform need only have (1) the
25 capability to store numbers to be called and/or texted, *or* (2) produce numbers to be
26 called or texted using a random or sequential number generator. *Id.* This definition
27 would render every cell phone an ATDS.
28

1 **C. The Definition of ATDS Has Created a Growing Circuit Split**

2 The Ninth Circuit’s rulings in this area conflict with those of the Third,
3 Seventh, and Eleventh Circuits, which have all held that a messaging platform’s
4 ability to “store” *and* “produce” numbers to be called must both be done by a random
5 or sequential number generator. *See Gadelhak v. AT&T Servs., Inc.*, 950 F. 3d 458,
6 460 (7th Cir. 2020) (“We hold that ‘using a random or sequential number generator’
7 modifies both ‘store’ and ‘produce.’”); *Glasser v. Hilton Grand Vacations Co., LLC*,
8 948 F.3d 1301, 1306 (11th Cir. 2020) (“In the absence of an ideal option, we pick
9 the better option—in this instance that the clause modifies both verbs.”); *Dominguez*
10 *ex rel. Himself v. Yahoo, Inc.*, 894 F.3d 116, 119 (3d Cir. 2018).

11 The circuit split has only deepened in recent months, as the Second Circuit
12 weighed in on the issue on the side of the Ninth Circuit, holding that a messaging
13 platform satisfies the “store” prong of the ATDS analysis if it has the capacity to
14 store numbers, regardless of its ability to do so using a random or sequential number
15 generator. *Duran v. La Boom Disco, Inc.*, --- F. 3d ----, No. 19-600-cv, 2020 WL
16 1682773, at *6 (2d Cir. Apr. 7, 2020). Just last week, the Sixth Circuit entered the
17 fray with its own interpretation of what constitutes an ATDS. *See Allan v. Pa.*
18 *Higher Educ. Assistance Agency*, --- F. 3d ----, No. 19-2043, 2020 WL 4345341, at
19 *9 (6th Cir. July 29, 2020), citing 47 U.S.C. § 227(a)(1) (“We accordingly read §
20 227(a)(1) as follows: An ATDS is ‘equipment which has the capacity— (A) to store
21 [telephone numbers to be called]; or produce telephone numbers to be called, using
22 a random or sequential number generator; and (B) to dial such numbers.’”).

23 This Circuit split, which the Supreme Court is poised to resolve, is highly
24 relevant to this action, as Plaintiff alleges Route Four used an ATDS to send her text
25 messages. Facebook filed a Petition for Writ of Certiorari to the Supreme Court on
26 October 17, 2019. *See* RJN Ex. A. Facebook’s petition asked the Supreme Court to
27 certify the following two questions: (1) whether the TCPA’s prohibition on calls
28 made with an ATDS constitute an unconstitutional restriction on speech; and (2)

1 whether the Ninth Circuit’s holding that an ATDS need only have the capacity to
2 store numbers is a valid construction of the TCPA. *See* RJN Ex. B. Facebook’s
3 petition was fully briefed as of January 10, 2020, *see* RJN Ex. A, and the Supreme
4 Court granted *Certiorari* on July 9, 2020. *Facebook*, 2020 WL 3865252 (Mem).

5 **III. ARGUMENT**

6 **A. Legal Standard**

7 “[T]he power to stay proceedings is incidental to the power inherent in every
8 court to control the disposition of the causes on its docket with economy of time and
9 effort for itself, for counsel, and for litigants. How this can best be done calls for the
10 exercise of judgment, which must weigh competing interests and maintain an even
11 balance.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936); *Lockyer v. Mirant*
12 *Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005). “[T]he decision to grant a stay [. . .] is
13 generally left to the sound discretion of district courts.” *Ryan v. Gonzales*, 568 U.S.
14 57, 74 (2013) (citation omitted).

15 Stays are appropriate after weighing competing interests, including: (1) the
16 damage which may result from granting the stay, (2) the hardship or inequity that
17 may be experienced in being required to go forward with the case in the event it is
18 not stayed, and (3) “the orderly course of justice measured in terms of the simplifying
19 or complicating of issues, proof, and questions of law which could be expected to
20 result from a stay.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). This
21 Court should join the long list of Courts that have stayed TCPA cases pending
22 Supreme Court guidance on what constitutes an ATDS under the statute.

23 **B. The Relevant Factors Warrant a Stay in This Case**

24 **1. Plaintiff and the Putative Class will Suffer No Harm from**
25 **the Stay**

26 Plaintiff faces no prejudice in the event that the Court grants a stay pending
27 the outcome of the Supreme Court’s review of the *Facebook* case.

28 *First*, the stay sought is not indefinite and is likely to be of relatively short

1 duration, with a decision expected to issue in the Supreme Court’s next term.²
2 Courts in this district have held that stays pending appellate review by the California
3 Supreme Court and the United States Supreme Court do not constitute stays of
4 indefinite duration, and have granted stays pending such review. *See, e.g., Burnell*
5 *v. Swift Trans. Co.*, No. EDCV 10-00809 VAP (OPx), 2011 WL 13352810, at *3
6 (C.D. Cal. Jan. 20, 2011). In *Burnell*, the court stayed proceedings pending the
7 California Supreme Court’s review of a pending appeal, notwithstanding the fact
8 that oral argument had not been scheduled in the case. *Id.* The *Burnell* court was
9 convinced that such a stay would not be indefinite, in part because the California
10 Supreme Court maintained internal operating practices for the expedient disposition
11 of cases on its docket. *See id.* So too here. While the Supreme Court has only
12 recently granted *cert.*, the high court has internal operating procedures in place that
13 ensure that any stay pending its review of certified cases is not “indefinite.”³ Where
14 the California or United States Supreme Court is set to decide an issue that will have
15 a substantial bearing on the case where a stay is sought, courts have found stays of
16 one year to be reasonable. *See Quinn-White v. Novartis Pharm. Corp.*, No. CV 16-
17 4300 PSG (AGRx), 2016 WL 11519285, at *4 (C.D. Cal. Oct. 7, 2016) (“Moreover,
18 the requested stay, though potentially lengthy, is finite. The California Supreme
19 Court is expected to render its decision within one year after the completion of
20 briefing, which is set to close at the end of 2016.”) (internal quotations omitted); *see*
21 *also Inland Empire Immigrant Youth Collective v. Nielsen*, No. EDCV 17-2048 PSG
22 (SHKx), 2019 WL 8011739, at *3 (C.D. Cal. Nov. 7, 2019) (stay pending the United
23 States Supreme Court’s review of a matter that would bear on the case not indefinite,
24 as “[the] stay will terminate after the Ninth Circuit decides the appeal in this case,

26 ² Allison Grande, *Justices Set To Rattle TCPA Landscape With Autodialer Case*,
27 Law 360 (July 9, 2020), <https://www.law360.com/articles/1290605>.

28 ³ Supreme Court of the United States, *The Court and Its Procedures* (last visited
Aug. 4, 2020), <https://www.supremecourt.gov/about/procedures.aspx>.

1 which will occur after the Supreme Court decides Regents by mid-next year. Given
2 that the stay will only last for a ‘reasonable time,’ it is not effectively indefinite.”)
3 (internal citations omitted).

4 Indeed, in similar circumstances to the one presented in this case, where the
5 D.C. Circuit was poised to weigh in on the definition of an ATDS in *ACA*
6 *International v. Federal Communications Commission*, No. 15-1211 (D.C. Cir.), this
7 Court granted a stay of proceedings even though the D.C. Circuit’s decision was not
8 set to issue on a date certain. *See Small v. GE Capital, Inc.*, No. EDCV 15- 2479,
9 2016 WL 4502460, at *3 (C.D. Cal. June 9, 2016) (Bernal, J.) (“Although Plaintiff
10 is correct that it is unclear when the D.C. Circuit will issue its ruling, numerous
11 district courts within this district have stayed TCPA actions as early as December
12 2015 in anticipation of a ruling by the D.C. Circuit.”).

13 Here, the Supreme Court already granted review of the *Facebook* case on July
14 9, 2020. RJN Exs. A, B. On July 24, the Supreme Court issued a scheduling order
15 setting the briefing schedule, with Respondent’s brief due on October 16, 2020. *Id.*
16 Ex. A. A decision will likely issue this term. The proposed stay will thus be of short
17 duration and non-prejudicial to Plaintiff or the putative class’s interests.

18 *Second*, any harm to Plaintiff from the issuance of a stay in TCPA cases is
19 particularly minimal where, as here, the Complaint does not allege that Plaintiff is
20 continuing to receive unsolicited calls from Defendant. *See Robinson v. Diversified*
21 *Consultants, Inc.*, No. SACV 17-00992 JVS (JCGx), 2017 WL 7888058, at *3 (C.D.
22 Cal. Nov. 15, 2017) (“Additionally, [plaintiff] does not claim that he continues to
23 receive telephone calls from [defendant], and so there is no risk of ongoing harm to
24 [plaintiff]. Therefore, this factor favors staying the action.”) (internal citations
25 omitted); *Pinchem v. Regal Med. Grp., Inc.*, No. 2:15-cv-06518-ODW (KLSx), 2017
26 WL 3449062, at *2 (C.D. Cal. Mar. 3, 2017) (finding plaintiff could not make out a
27 case of hardship and therefore granting a stay, in part, “because the calls to [p]laintiff
28 have ceased, the only issue to be tried is [defendant]’s liability and any damages

1 owed for those previous calls”).

2 Here, Plaintiff only alleges that she received three text messages from
3 Defendant between September 18, 2019 and October 29, 2019. *See* Compl. ¶¶ 17,
4 18. The Complaint contains no allegations that Plaintiff – or anyone else – is
5 continuing to receive any purportedly unsolicited text messages. *See id.* As such,
6 there is no risk of ongoing harm to Plaintiff should a stay be granted.

7 *Third*, the fact that Plaintiff has not, and cannot, be harmed by a stay here is
8 informed by the early stage of the proceedings. In considering whether the non-
9 moving party will experience hardship as a result of any stay, it is appropriate for
10 the Court to consider “the stage in litigation, whether substantial discovery has
11 already taken place, and whether the matter has been set for trial.” *Alter v. Walt*
12 *Disney Co.*, No. CV 16-06644 SJO (Ex), 2016 WL 9455627, at *3 (C.D. Cal. Oct.
13 31, 2016) (granting stay in part due to the litigation being in its infancy, as “[t]he
14 Court has not held a scheduling conference in this matter, and formal discovery has
15 yet to commence”).

16 This case is still in its earliest stages. Defendant has not answered. No
17 discovery deadlines have been set. Nor has the Court held a scheduling conference
18 or set trial in this matter. Given that this case has only just been filed, Plaintiff will
19 suffer no harm from a brief stay of proceedings.

20 Since no harm will be done to Plaintiff in the event the Court grants a stay
21 pending the Supreme Court’s review of the *Facebook* case, this factor weighs in
22 favor of granting a stay.

23 **2. Defendant will Face Hardship and Inequity Absent a Stay**

24 Route Four will suffer harm in the event that a stay is not granted, as it will be
25 forced to litigate within the framework of an uncertain legal standard that will likely
26 control its liability in this litigation, in addition to facing substantial expense in
27 litigating issues that the Supreme Court may render moot in *Facebook*.

28 *First*, where a separate proceeding will control Defendant’s defense in the

1 matter sought to be stayed, failure to stay the proceedings constitutes an undue
2 hardship. *See L.A. Printex Indus., Inc. v. Did Fabric, Inc.*, No. CV 15 CV-2351-R,
3 2015 WL 12696174, at *2 (C.D. Cal. Nov. 17, 2015) (finding stay of case
4 appropriate where resolution of state court proceedings “will control Defendants’
5 defense in the instant action.”). Here, the definition of an ATDS is central to
6 Defendant’s liability in this litigation. Courts in this District have recognized that
7 TCPA liability often turns on the central question of whether the platform(s) utilized
8 by defendants constitutes an ATDS. *See, e.g., Washington v. Six Continents Hotels,*
9 *Inc.*, No. 2:16-cv-03719, -ODW (JEMx), 2017 WL 111913, at *1 (C.D. Cal. Jan. 9,
10 2017). In *Washington*, Judge Wright stayed a TCPA case where, as here, defendants
11 were alleged to use an ATDS, pending the D.C. Circuit’s review of *ACA*
12 *International v. Federal Communications Commission*, No. 15-1211 (D.C. Cir.).
13 *See id.* Given that the definition of an ATDS was “critical to the outcome of this
14 case—and [] the precise issue that the D.C. Circuit is now deciding,” the court held
15 that “if the Court denies the stay and requires the parties to go forward with this
16 action, they will be forced to spend time and money conducting discovery on a
17 critical issue of liability without knowing what law will ultimately apply at summary
18 judgment or at trial—a fool’s errand, to say the least.” *Id.* at *2. Accordingly, the
19 case was stayed pending the D.C. Circuit’s ruling. *Id.*; *see also Robinson*, 2017 WL
20 7888058, at *3 (“[Defendant] would experience hardship if the Court did not stay
21 the action. Because the D.C. Circuit will examine who constitutes a ‘called party’
22 under the [TCPA] and the existing safe harbor, the D.C. Circuit’s ruling will either
23 foreclose or strengthen [defendant]’s defenses to the TCPA claim. Accordingly,
24 proceeding with the case before the D.C. Circuit’s ruling would subject [defendant]
25 to potentially unnecessary discovery.”); *Beets v. Molina Healthcare, Inc.*, No. CV
26 16-05642-AB (KSx), 2016 WL 10966562, at *3 (C.D. Cal. Sept. 22, 2016)
27 (“Proceeding with litigation in light of the D.C. Circuit’s impending decision
28 presents a tremendous hardship not only to Defendant but also to Plaintiff, both of

1 whom would be forced to expend considerable resources at a time of significant legal
2 uncertainty.”).

3 Numerous other courts have stayed proceedings in TCPA litigation where the
4 definition of an ATDS has been set for review because of the prejudice caused to
5 defendants as a result of the definitional uncertainty. *See Young v. Synchrony Bank*,
6 No. CV 17-2054-AB (GJSx), 2017 WL 10562955, at *3 (C.D. Cal. Oct. 26, 2017)
7 (“the potential prejudice to Defendant is significant because denying a stay would
8 force Defendant to conduct discovery and defend the TCPA claim despite the
9 uncertain difference between ‘potential’ and ‘theoretical’ capacity under the
10 definition of an ATDS”); *see also Fontes v. Time Warner Cable Inc.*, No. CV 14-
11 2060-CAS (CWx), 2015 WL 9272790, at *5 (C.D. Cal. Dec. 17, 2015) (staying case
12 pending D.C. circuit’s review of what constitutes an ATDS “in light of the risk of
13 wasting the resources of the Court and the parties as well as the high degree of
14 uncertainty in this area of the law”).

15 Even outside of the TCPA context, courts in this District have held that where
16 the legal standard controlling the litigation is in flux, and set to be determined on
17 appellate review, “it is a hardship to conduct pointless discovery that may well be
18 moot following the holding in [the certified case].” *Quinn-White* 2016 WL
19 11519285, at *4. In staying proceedings pending the California Supreme Court’s
20 review of a controlling issue in the litigation, the court recognized that “[a] clear
21 legal standard after [a ruling in the certified case] will enable the parties to conduct
22 more efficient discovery and will simplify the issues and proof needed, should this
23 case move past the pleadings.” *Id.*

24 Here, it is beyond question that the Supreme Court, in whichever way it
25 rules, will provide clarity as to what constitutes an ATDS under the TCPA. It has
26 certified the precise question of whether a platform constitutes an ATDS simply
27 because it can “store” telephone numbers, or must do so using a random or
28 sequential number generator. Forcing Route Four to proceed with this litigation,

1 and engage in potential class discovery, when the legal standard of what constitutes
2 an ATDS, the definition of which will inform and control its defense in this action,
3 is in significant flux constitutes a hardship under governing case law. While
4 *certiorari* in *Facebook* has only just been granted, one court in this Circuit has
5 already granted a stay of TCPA proceedings pending the Supreme Court’s review
6 of *Facebook*. See *Hoffman v. Jelly Belly Candy Co., Inc.*, No. 2:19-cv-01935-
7 JAM-DB (E.D. Cal. June 26, 2020); RJN Exs. C, D.

8 Accordingly, this factor weighs in favor of granting a stay.

9 **3. The Orderly Administration of Justice Is Served by a Stay**

10 The orderly administration of justice will be served by a stay because the
11 Supreme Court’s decision in *Facebook* will address the central issue of this case –
12 the proper definition of an ATDS under the TCPA.

13 The Ninth Circuit has consistently held that the orderly administration of
14 justice is served by staying matters “pending resolution of independent proceedings
15 which bear upon the case.” *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857,
16 863 (9th Cir. 1979). Where controlling issues of law will be resolved on appeal, this
17 factor controls over any harm to Plaintiff. See, e.g., *Mina v. Red Robin Int’l Inc.*,
18 No. CV 18-9472 PSG (GJSx), 2019 WL 3207807, at *3 (C.D. Cal. Apr. 2, 2019)
19 (staying TCPA case over objection of Plaintiff in part because “[a]ny marginal
20 deterioration of evidence during this hypothetical period does not outweigh the
21 strong efficiency interest in avoiding unnecessary briefing and use of judicial
22 resources on an issue that is likely to soon be settled by the Ninth Circuit”). Courts
23 have recognized that stays are appropriate in such situations because “the Supreme
24 Court’s resolution of [a] circuit split may end up conserving resources for both the
25 Court and the parties.” *McAdory v. TTM Techs., Inc.*, No. SACV 16-01047, 2017
26 WL 8186697, at *2 (C.D. Cal. June 26, 2017). In *McAdory*, Judge Guilford found
27 it appropriate to stay proceedings pending the Supreme Court’s review of an issue
28 that would have a substantial impact on the proceedings, noting that:

1 The Court is also impelled to note that going back quite a
2 few years, inconvenience, if not injustice, has resulted
3 from this Court ruling on arbitrability issues while related
4 issues were pending in higher courts. This Court has
5 repeatedly attempted to discern the position of the Ninth
6 Circuit only to end up lost in the shifting sands of reversals
7 from higher courts. More than once, the interests of justice
8 were also lost in the shifting sands and the resulting delay.

9 *Id.* at *3; *see also Kim v. CashCall, Inc.*, No. SACV 17-0076-DOC (DFMx), 2017
10 WL 8186683, at *8 (C.D. Cal. June 8, 2017) (“Because the Supreme Court has
11 granted certiorari in *Morris*, which will resolve a central issue in the instant case,
12 and considering the possibility of wasted litigation costs, this Court STAYS this case
13 pending the Supreme Court’s decision in *Morris*.”); *Manos v. MTC Fin., Inc.*, No.
14 SACV 16-01142-CJC (KESx), 2016 WL 11005392, at *1 (C.D. Cal. Sept. 22, 2016)
15 (“It is in the interest of efficiency and judicial economy for the Court to wait for the
16 Ninth Circuit to decide *Ho* before expending significant judicial resources on this
17 action. The prospect—however uncertain—of the parties and Court engaging in
18 costly litigation, only to have the rug pulled out from under them by a Ninth Circuit
19 ruling, counsels for a stay.”).

20 The issue being reviewed by the Supreme Court need not resolve all of the
21 claims in the litigation, so long as the case will “provide the Court significant
22 guidance in deciding the merits.” *Yohn v. Cal. Teachers Ass’n*, No. SACV 17-202-
23 JLS-DFM, 2017 WL 10439829, at *3 (C.D. Cal. Nov. 13, 2017). The statutory
24 morass of the TCPA being clarified on appellate review, particularly the definition
25 of an ATDS, has been one of the most common bases for staying proceedings at the
26 district court level. When this Court stayed cases pending the D.C. Circuit’s review
27 of what constitutes an ATDS in *ACA International*, the Court recognized that in
28 TCPA litigation where the use of an ATDS is alleged in the complaint, “Plaintiff

1 must prove that Defendant called him using an ATDS to establish a TCPA violation,
2 the definition of ATDS directly pertains to this litigation.” *Ambrezewicz v.*
3 *LeadPoint, Inc.*, No. EDCV 16-2331 JGB (KKx), 2017 WL 8185862, at *3 (C.D.
4 Cal. May 8, 2017) (Bernal, J.) The Court found a stay appropriate because
5 defendant’s liability, whether or not it used an ATDS to send messages, “is likely to
6 turn on the precise issue the D.C. Circuit is now deciding.” *See id.*; *see also Small*,
7 2016 WL 4502460, at *3 (“The Court finds a stay is appropriate. First, the ruling in
8 *ACA International* will likely bear on whether Synchrony Bank’s dialer at [the] time
9 of the calls at issue was an ‘automatic telephone dialing system,’ for purposes of the
10 TCPA. Consequently, further litigation absent a ruling may be unnecessary and will
11 require both parties and the Court to spend substantial resources.”).

12 These opinions are in line with the overwhelming weight of the authority
13 issued by courts within this district that have granted stays pending further
14 clarification of what constitutes an ATDS. *See Nakai v. Charter Commc’ns, Inc.*,
15 CV 19-8035-GW-SSx, 2020 WL 1908949, at *6 (C.D. Cal. Apr. 15, 2020) (granting
16 stay pending review of Supreme Court decision on validity of TCPA because “the
17 Supreme Court will provide some guidance generally” on what constitutes an
18 ATDS.); *Castrellon v. Fitness Club Mgmt., LLC*, No. CV 17-08825 SJO (E), 2018
19 WL 5099741, at *7 (C.D. Cal. June 6, 2018) (“The Ninth Circuit’s ruling is likely to
20 provide controlling precedent informing this TCPA action. The Ninth Circuit’s
21 decision may be dispositive should it determine that dialing equipment without the
22 capacity to use a random or sequential number generator is not an ATDS, or that the
23 FCC’s older interpretations of the ATDS definition are not binding or no longer
24 binding. Thus, the stay is likely to simplify or be dispositive of the ATDS issues in
25 this action and, therefore, support ‘the orderly cause of justice.’”); *Ezati v. Ocwen*
26 *Loan Servicing, LLC*, No. SACV 17-834 JVS (DFMx), 2017 WL 10543298, at *2
27 (C.D. Cal. Aug. 14, 2017) (“the definition of an ATDS is indispensable to this
28 litigation. Accordingly, granting a stay would simplify the issues in this case and

1 conserve the Court's resources”); *Young*, 2017 WL 10562955, at *3 (“In *ACA*, the
2 D.C. Circuit will address, among other things, what type of equipment constitutes
3 an ATDS. Because Plaintiff must prove that Defendant called him using an ATDS
4 to establish a TCPA claim, the definition of an ATDS is indispensable in this
5 litigation.”); *Ramsden v. Ocwen Loan Servicing, LLC*, No. CV 17-03464 BRO
6 (ASx), 2017 WL 10543558, at *3 (C.D. Cal. Aug. 16, 2017) (“[I]t is prudent to stay
7 the case pending resolution of the D.C. Circuit’s review of the FCC’s Declaratory
8 Ruling. Defendant is correct that if the D.C. Circuit were to hold that the FCC’s
9 definition of ATDS is too expansive or that the FCC’s process for revocation of
10 consent were invalid, it could be dispositive of Plaintiff’s TCPA claims”);
11 *Smelkinson v. Fitness Int’l, LLC*, No. SA 16-01365 JVS (JCGx), 2016 WL
12 10957955, at *3 (C.D. Cal. Oct. 27, 2016) (“Staying this case will conserve judicial
13 resources and help clarify the law. Although the parties dispute whether a D.C.
14 Circuit order will bind this Court, a D.C. Circuit decision would undoubtedly help
15 this Court decide this case’s legal issues, particularly the definition of ‘autodialer.’”);
16 *Adams v. Mortg. LLC*, No. CV 15-9912-DMG (KSx), 2016 WL 11522152, at *2
17 (C.D. Cal. June 14, 2016) (“Because a successful TCPA claim requires [plaintiff] to
18 prove that [defendant] contacted him using an ATDS, that term’s definition directly
19 implicates this action.”); *Chattanond v. Discover Fin. Servs., LLC*, No. CV 15-
20 08549-RSWL-JCx, 2016 WL 8202736, at *4 (C.D. Cal. Feb. 26, 2016) (“Because
21 Plaintiff must prove that Defendant called her using an ATDS in order to establish a
22 TCPA claim, the definition of an ATDS is directly implicated in this litigation.”).

23 The Supreme Court is set to decide precisely whether the Ninth Circuit’s
24 interpretation of the TCPA’s ATDS definition, which has been adopted by two other
25 circuits and created a circuit split on the issue, is viable. As in the litany of cases
26 where stays were granted pending appellate review of the ATDS definition, the
27 definition of an ATDS is indispensable to this litigation. Plaintiff’s Complaint
28 consists of a single cause of action asserting a violation of the TCPA’s automatic

