

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION  
Case No. 15-36**

PHYSICIANS HEALTHSOURCE, INC., an	)
Ohio corporation, individually and as the	)
representative of a class of similarly-situated	)
persons,	)
	)
Plaintiff,	)
	)
v.	)
	)
SALIX PHARMACEUTICALS, INC.,	)
SALIX PHARMACEUTICALS, LTD. and	)
JOHN DOES 1-10,	)
	)
Defendants.	)

**PLAINTIFF’S MOTION FOR CLASS ACTION DETERMINATION AND  
POSTPONEMENT PENDING DISCOVERY**

NOW COMES Plaintiff, pursuant to Fed. R. Civ. P. 23(c)(1), and hereby submits its Motion for Class Action Determination and Postponement Pending Discovery, and states as follows:

1. On January 15, 2015, Plaintiff filed its Class Action Complaint, challenging Defendants’ alleged practice of sending “unsolicited advertisements” by facsimile in violation of the Telephone Consumer Protection Act of 1991 (“TCPA”), 47 U.S.C. § 227(b)(1)(C).
2. For the reasons stated in the accompanying Brief, Plaintiff respectfully requests that the Court order postponement of the class determination pending discovery, Plaintiff proposes that the Court set a date following the conclusion of class discovery for renewal of the motion.
3. Plaintiff seeks to keep this motion “pending” in order to prevent a “pick-off” attempt, in which class-action defendants sometimes attempt to moot an entire class action by

offering the named plaintiff full individual relief. *See Kensington Physical Therapy, Inc. v. Jackson Therapy Partners, LLC*, 880 F. Supp. 2d 689, 694 (D. Md. 2012) (noting absence of “controlling Fourth Circuit precedent” on whether offer made prior to motion for class certification moots the case).

4. Plaintiff respectfully requests that the Court not deny the motion without prejudice, as that would most likely invite a pick-off offer and unnecessary subsequent briefing on a motion to dismiss for lack of subject-matter jurisdiction under Fed. R. Civ. P. 12(b)(1).

WHEREFORE, Plaintiff respectfully requests that this Court continue Plaintiff’s Motion for Class Action Determination to a date after the conclusion of a Rule 23 Discovery Schedule, at which time Plaintiff will file a renewed motion for class determination.

Respectfully submitted, this the 22<sup>nd</sup> day of January, 2015.

PHYSICIANS HEALTHSOURCE, INC., an Ohio corporation, individually and as the representative of a class of similarly-situated persons

By: s/ John F. Bloss  
John F. Bloss

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### **CERTIFICATE OF SERVICE**

I hereby certify that on January 22, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record, and a copy to be personally upon Defendant along with the summons and complaint.

**/s/ John F. Bloss**