

Secure v. Ultimate Fitness Grp., LLC

United States District Court for the Southern District of Florida, Miami Division

March 14, 2019, Decided; March 18, 2019, Entered on Docket

Case Number: 18-20483-CIV-MORENO

Reporter

2019 U.S. Dist. LEXIS 45194 *

JOAN SECURE, individually and on behalf of all others similarly situated, Plaintiff, vs. ULTIMATE FITNESS GROUP, LLC, a Florida limited liability company doing business as Orangetheory Fitness, Defendant.

Core Terms

Proceedings, restoration, Telephone, SUSPENSE, parties, sending, circumstances, reconsidering, telemarketing, promulgation, statistical, automated, recipient, awaiting, messages, premises, purposes, dialing, forbids, motions, revised, staying, brings, issues, notify, reply, texts

Counsel: [*1] For Joan Secure individually and on behalf of all others similarly situated, Plaintiff: Michael Eisenband, Eisenband Law, P.A., Fort Lauderdale, FL; Scott Adam Edelsberg, Edelsberg Law PA, Aventura, FL; Manuel Santiago Hiraldo, Hiraldo P.A., Fort Lauderdale, FL.

For Scott A Edelsberg, Plaintiff: Scott Adam Edelsberg, Edelsberg Law PA, Aventura, FL.

For Ultimate Fitness Group, LLC a Florida limited liability company doing business as Orangetheory Fitness, Defendant: Fredrick Howard Lebron McClure, J Trumon Phillips, LEAD ATTORNEYS, DLA Piper LLP (US), Tampa, FL.

For Hart Fitness, Inc. doing business as Orange Theory Fitness Cutler Bay (Orange Theory Cutler Bay), Defendant: Michael Christopher Fasano, LEAD ATTORNEY, Fasano Law Firm, PLLC, Miami, FL.

Judges: FEDERICO A. MORENO, UNITED STATES DISTRICT JUDGE.

Opinion by: FEDERICO A. MORENO

Opinion

ORDER GRANTING MOTION TO STAY AND PLACING MATTER IN CIVIL SUSPENSE FILE

THIS CAUSE came before the Court upon Defendant's Motion to Stay Proceedings (D.E. 61), filed on **February 15, 2019**. The Court has considering the motion, the response in opposition to the motion, and the reply to the response, and is otherwise fully advised in the premises.

Plaintiff brings forth a class action [*2] complaint alleging a violation of the Telephone Consumer Protection Act ("TCPA"), which forbids the making and sending of telemarketing calls and texts by way of an automated telephone dialing system ("ATDS"), without the consent of the recipient. One of the issues presented in this case is whether the Defendant did in fact use an ATDS when sending text messages to the Plaintiff. Because, as Defendant notes, the FCC is currently seeking public comment and reconsidering the definition of an ATDS, it is

ADJUDGED that Defendant's motion to stay is **GRANTED**. See *Buhr v. ADT, Inc.*, No. 18-80605 (S.D. Fla. 2019) (staying a similar case arising under the TCPA while awaiting the FCC's promulgation of the revised definition of an ATDS).

Based on the foregoing, it is further **ADJUDGED** that:

- I. The Clerk of this Court shall mark this cause as closed for statistical purposes and place the matter in a civil suspense file.
- II. The Court shall retain jurisdiction and the case shall be restored to the active docket upon motion of a party if circumstances change so that this action may proceed to final disposition.
- III. This order shall not prejudice the rights of the parties to this litigation.
- IV. All pending [*3] motions are DENIED AS MOOT pending restoration of the case to the active

docket.

V. The parties SHALL notify the Court within **three months** of entry of this order, and every three months thereafter, of the current status of the proceedings and when this action is ready to proceed.

DONE AND ORDERED in Chambers at Miami, Florida,
this 14th of March 2019.

/s/ Federico A. Moreno

FEDERICO A. MORENO

UNITED STATES DISTRICT JUDGE

End of Document