

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Plaintiff,

v.

Case No.

Defendant.

_____ /

FAST-TRACK SCHEDULING ORDER

Under Federal Rule of Civil Procedure 16, the Court finds it necessary to implement a schedule tailored to meet the circumstances of this case, which was brought under one or more of the following: the Telephone Consumer Protection Act (as amended by the Junk Fax Prevention Act) (TCPA), the Fair Debt Collection Practices Act (FDCPA), the Real Estate Settlement Procedures Act (RESPA), the Florida Consumer Collection Practices Act (FCCPA), and/or other state law consumer protection statutes. Consistent with the just, speedy and inexpensive administration of justice, it is **ORDERED** that the initial disclosures and Case Management Report requirements of Rule 26(a)(1) and Local Rule 3.05 are stayed, and the parties must comply with the following schedule and directives:

1. No later than **[90 DAYS AFTER THE DATE OF THE ORDER]**, Plaintiff¹ must serve on Defendant all documents in Plaintiff's possession, custody, or control that relate to the telephone calls, faxes, text messages, letters, or other debt collection/solicitation activities in question including, but is not limited to:

¹ If there is more than one plaintiff or defendant, the singular reference to plaintiff or defendant includes the plural.

- a. telephone records, call logs, facsimile confirmations, voice recordings, and account notations for any telephone calls, faxes, or text messages Plaintiff contends Defendant made;
- b. documents and/or other relevant evidence showing that Plaintiff had the applicable telephone at the time Defendant allegedly made the telephone calls or texts in question;
- c. documents and/or other relevant evidence showing that Plaintiff either (i) did not consent to Defendant making the telephone calls or sending the text messages or faxes in question; and/or (ii) revoked consent before Defendant made those telephone calls, or sent the text messages or faxes;
- d. documents and/or other relevant evidence on Plaintiff's prior complaints to Defendant about Defendant making the unwanted telephone calls, texts, or faxes; and
- e. written correspondence, including court documents, pertaining to Defendant's alleged debt collection efforts.

After producing the information to Defendant, Plaintiff must file a Certificate of Compliance with the Court.

2. No later than **[90 DAYS AFTER THE DATE OF THE ORDER]** Defendant must serve on Plaintiff all documents in Defendant's possession, custody, or control that relate to the telephone calls, faxes, text messages, letters, or other debt collection/solicitation activities in question, including, but is not limited to:

- a. telephone records, facsimiles, call logs, and voice recordings about the telephone calls Plaintiff contends Defendant made, including notations

made by Defendant's representative or employee during the telephone call(s);

- b. documents showing Plaintiff consented to Defendant making the telephone calls, sending the text messages, or faxes in question;
- c. documents and/or other relevant evidence pertaining to Plaintiff's prior complaints to Defendant about Defendant making the unwanted telephone calls, sending the unwanted text messages, or faxes; and
- d. written correspondence, including court documents, pertaining to Defendant's alleged debt collection efforts.

Upon producing the information to Plaintiff, Defendant must file a Certificate of Compliance with the Court.

3. Notwithstanding Paragraphs 1 and 2 or a Court order, all discovery is **STAYED**. But Counsel may serve subpoenas on telecommunications entities so accurate information may be gathered. If the parties serve subpoenas for telephone records, they should do so as early as possible and should work together to facilitate the process. Although the Local Rules prohibit filing discovery, a subpoena issued to a telecommunications entity must be electronically filed so the Court may monitor the information's facilitation. The parties must also notify the Court when the information requested in the subpoena is furnished.

4. On or before **[120 DAYS AFTER THE DATE OF THE ORDER]**, Plaintiff must file its Answers to the Court's Interrogatories. Then on or before **[140 DAYS AFTER THE DATE OF THE ORDER]**, Defendant must file its Answers to the Court's Interrogatories. The Interrogatories are attached.

5. This action is **REFERRED** to mediation. The mediation must be conducted as outlined in this Order and the Local Rules. By **[150 DAYS AFTER THE DATE OF THE ORDER]**, lead counsel must file a joint notice that identifies the mediator and the agreed date and time of mediation.

- a. *Scheduling Mediation*: The parties must mediate no later than **[160 DAYS AFTER THE DATE OF THE ORDER]**. But the parties may not mediate until they exchange the information required by this Scheduling Order (e.g., answers to interrogatories).
- b. *Cancelling Mediation*: Once a mediation date is set, neither party may cancel the mediation without first obtaining leave of Court, even if the parties have settled before mediation.
- c. *Rescheduling Mediation*: Once the mediation has been scheduled, the parties may reschedule mediation only with the Court's permission. So, for example, if the parties cannot complete the document exchange and interrogatory answers before the scheduled mediation, they must file a motion. In moving the Court to reschedule mediation, counsel must include the proposed date for mediation. The Court may deny any motion to reschedule the mediation for a date beyond this Order's mediation deadline. If the Court allows the parties to reschedule mediation, the parties may still be required to pay the mediator's cancellation fee.
- d. *Extension of Mediation*: An extension of the mediation deadline also requires a Court order and is increasingly disfavored as the mediation deadline approaches. Before moving to extend the deadline, the moving

party must consult both the mediator and opposing counsel to determine an agreed day and time for the rescheduled mediation.

e. *General Rules on Mediation*: In addition to the Local Rules' requirements for mediation, the Court requires:

- i. Case Summary: At least five business days before the scheduled mediation, each party must email the mediator and opposing counsel a brief written summary of the facts and issues. The mediator and parties must treat each summary as a confidential communication and must not disclose the summary or its content.
- ii. Mediator's Authority: The mediator may confer privately with any counsel, individual party, corporate or municipal representative, or claims professional for any proper purpose in the mediator's discretion. The mediation must continue until adjourned by the mediator. No participant may compel the early conclusion of a mediation because of travel or another engagement. Only the mediator may declare an impasse or end the mediation. To coordinate the mediation, the mediator may set an abbreviated scheduling conference before the mediation.
- iii. Attendance: All counsel, parties, corporate representatives, and any other required claims professionals must be present at the mediation with full authority to negotiate a settlement. Absent exigent circumstances and the Court's leave, lead counsel must appear in person at the mediation. Failure to do so may cause sanctions. The

Court does not allow mediation by telephone or video conference.

- iv. Attorneys' Fees: For cases in which statutory attorneys' fees may be claimed, counsel should be prepared to discuss reasonable attorneys' fees and have that information in hand at the mediation.
- v. Paying the Mediator: The parties must pay the mediator at the mediator's prevailing hourly rate, which, unless otherwise agreed by counsel, the parties must bear equally and pay immediately after the mediation.
- vi. Results of Mediation: Lead counsel must file a notice informing the Court of the results of mediation within **twenty-four hours** after the conclusion of mediation.

6. If mediation does not result in settlement, the parties must conduct a case management meeting immediately after the mediation to jointly prepare the attached Fast-Track Case Management Report. Within **twenty-four hours** of the conclusion of mediation, the parties must separately file a:

- a. completed fast-track case management report; and
- b. joint notice outlining the legal issues to be resolved at summary judgment and/or the factual matters for trial.

This case will be set for trial approximately 180 days after the mediation conference.

7. After reviewing the Fast-Track Case Management Report, the Court will decide if a preliminary pretrial conference (PPTC) is required. If a PPTC is required, the Court will set a hearing about one week after the mediation conference. Lead counsel must appear in person and be prepared to discuss the claims, defenses, and any unique

aspects of the case.

8. If the parties wish to voluntarily consent to the assigned Magistrate Judge, they must sign and file the form titled, “[Notice, Consent, and Reference of a Civil Action to a Magistrate Judge](#)” found on the Court’s website. Any party may withhold consent with no adverse consequences.

DONE and **ORDERED** in Fort Myers, Florida on this **[DAY]** day of **[MONTH YEAR]**.

Attachments:

Court’s Interrogatories to Plaintiff
Court’s Interrogatories to Defendant
Fast-Track Case Management Report

COURT’S INTERROGATORIES TO PLAINTIFF

1. What kind of communications are at issue? Telephone calls placed to a land line, or to a cellular phone? Letters mailed to a residence? Facsimile transmissions? Please be specific.
2. How many calls, letters, or other communications are at issue? For instance, if you allege telephone calls were placed in violation of the TCPA, how many calls were placed?
3. When did the communications take place?
4. If telephone calls are at issue, do you allege that Defendant used an automatic dialer?
5. If telephone calls are at issue, do you allege that Defendant used a live person or a recorded voice to transmit the relevant information?
6. If telephone calls are at issue, do you allege that the calls were placed to a telephone registered in your name? If not, to whom is the account registered?
7. Do you have a prior business relationship with Defendant?
8. Did you sign any document in which you consented to be contacted by Defendant?
9. Do you intend to pursue a class action?

(Plaintiff’s Signature)

STATE OF FLORIDA
COUNTY OF Select County

BEFORE ME, the undersigned authority, on this day, personally appeared _____, who being first duly sworn, and _____ who is personally known to me or who produced _____ as identification, deposes and says that he/she has read the foregoing Answers to Interrogatories, knows the contents of same, and to the best of his/her knowledge and belief, the same are true and correct.

SWORN TO AND SUBSCRIBED before me on this *Select Date*.

NOTARY PUBLIC

Signature of Person Taking Acknowledgment

Print Name:

Title:

Notary Public Serial No. (if any):

Commission Expires:

Notary Stamp:

COURT'S INTERROGATORIES TO DEFENDANT

1. How many telephone calls, letters or other mailings, or facsimiles do your records show as made or sent during the period alleged by Plaintiff?
2. If telephone calls are at issue, were the calls made by an automatic dialer?
3. If telephone calls are at issue, was a prerecorded voice used?
4. Did you ever receive documented prior consent to contact Plaintiff?
5. Did you ever receive documented revocation of a consent to contact Plaintiff?
6. Before the Complaint was filed, were you ever placed on notice that Plaintiff had retained counsel regarding the debt alleged to be at issue?
7. What is your capacity regarding the debt alleged to be at issue? For example, are you the owner of a note, a servicer, or both?

(Defendant's Signature)

STATE OF FLORIDA
COUNTY OF *Select County*

BEFORE ME, the undersigned authority, on this day, personally appeared _____, who being first duly sworn, and _____ who is personally known to me or who produced _____ as identification, deposes and says that he/she has read the foregoing Answers to Interrogatories, knows the contents of same, and to the best of his/her knowledge and belief, the same are true and correct.

SWORN TO AND SUBSCRIBED before me on this *Select Date*.

NOTARY PUBLIC

Signature of Person Taking Acknowledgment

Print Name:

Title:

Notary Public Serial No. (if any):

Commission Expires:

Notary Stamp:

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Plaintiff,

v.

Case No. 2: -cv- -FtM-38

Defendant.

_____ /

FAST TRACK CASE MANAGEMENT REPORT²

The parties agree to these dates and discovery plan under Federal Rule of Civil

Procedure 26 and Local Rule 3.05:

| DEADLINE | AGREED DATE |
|---|---|
| Rule 26(a)(1) Mandatory Initial Disclosures | <input type="checkbox"/> Exchanged <input type="checkbox"/> To be exchanged by <i>Select Date</i> |
| Corporate Disclosure Statement Complete | <input type="checkbox"/> Filed and served by all parties <input type="checkbox"/> Not filed by _____ <input type="checkbox"/> Amended certificate to be filed by <i>Select Date</i> |
| Discovery [Court recommends 2 months after the mediation conference] | <i>Select Date</i> |
| Dispositive and <i>Daubert</i> Motions [Court recommends 3 months after the mediation conference] | <i>Select Date</i> |

² This Fast Track Case Management Report applies only to cases brought under the Telephone Consumer Protection Act (as amended by the Junk Fax Prevention Act) (TCPA), the Fair Debt Collection Practices Act (FDCPA), the Real Estate Settlement Procedures Act (RESPA), the Florida Consumer Collection Practices Act (FCCPA), and/or other state law consumer protection statutes.

| DEADLINE | AGREED DATE |
|---|---|
| Meeting in Person to Prepare Joint Final Pretrial Statement [Court recommends 3 weeks before the Final Pretrial Conference] | Select Date |
| Joint Final Pretrial Statement, Motions <i>in Limine</i>, and Trial Briefs [Court recommends 2 weeks before the Final Pretrial Conference] | Select Date |
| Final Pretrial Conference | Select Date |
| Monthly Trial Term [Cases are scheduled for a monthly trial term—not a specific date. The Court recommends 5 months after the mediation conference] | Month Year |
| Estimated Length of Trial | Select days |
| Jury or Non-Jury | Select |
| All Parties Consent to the Assigned Magistrate Judge | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| All Parties Request a Settlement Conference with the Non-Assigned Magistrate Judge | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Likely to Request in Future |
| Notice of Pendency of Other Actions Completed and Attached (Attachment A) | <input type="checkbox"/> Yes <input type="checkbox"/> No |

Date: _____

Signature of Counsel or *Pro Se* Litigant:

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |