

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

SARAH MACK, individually and on behalf of all others
similarly situated,

CLASS ACTION

Plaintiff,

Case No.

JURY TRIAL DEMANDED

vs.

CONFLUENCE GROUP II, LLC d/b/a
ORANGETHEORY FITNESS CUMBERLAND,

Defendant.

CLASS ACTION COMPLAINT

1. Plaintiff, Sarah Mack (“Plaintiff”), brings this action against Defendant, Confluence Group II, LLC d/b/a Orangetheory Fitness Cumberland (“Defendant”), to secure redress for violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.

NATURE OF THE ACTION

2. This is a putative class action pursuant to the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (the “TCPA”).

3. Defendant is a fitness gym franchise. To promote its services, Defendant engages in unsolicited marketing, harming thousands of consumers in the process.

4. Through this action, Plaintiff seeks injunctive relief to halt Defendant’s illegal conduct, which has resulted in the invasion of privacy, harassment, aggravation, and disruption of the daily life of thousands of individuals. Plaintiff also seeks statutory damages on behalf of herself and members of the class, and any other available legal or equitable remedies.

JURISDICTION AND VENUE

5. Jurisdiction is proper under 28 U.S.C. § 1331 as Plaintiff alleges violations of a federal statute. Jurisdiction is also proper under 28 U.S.C. § 1332(d)(2) because Plaintiff alleges a national class,

which will result in at least one class member belonging to a different state than that of Defendant. Plaintiff seeks up to \$1,500.00 (one-thousand-five-hundred dollars) in damages for each call in violation of the TCPA, which, when aggregated among a proposed class numbering in the tens of thousands, or more, exceeds the \$5,000,000.00 (five-million dollars) threshold for federal court jurisdiction under the Class Action Fairness Act (“CAFA”). Therefore, both the elements of diversity jurisdiction and CAFA jurisdiction are present.

6. Venue is proper in the United States District Court for the Northern District of Georgia pursuant to 28 U.S.C. § 1391(b) and (c), because Defendant resides within this judicial district, Defendant is deemed to reside in any judicial district in which it is subject to the court’s personal jurisdiction, and because Defendant provides and markets its services within this district thereby establishing sufficient contacts to subject it to personal jurisdiction. Further, Defendant’s tortious conduct against Plaintiff occurred within the State of Georgia and, on information and belief, Defendant has sent the same text messages complained of by Plaintiff to other individuals within this judicial district, such that some of Defendant’s acts in making such calls have occurred within this district, subjecting Defendant to jurisdiction in the State of Georgia.

PARTIES

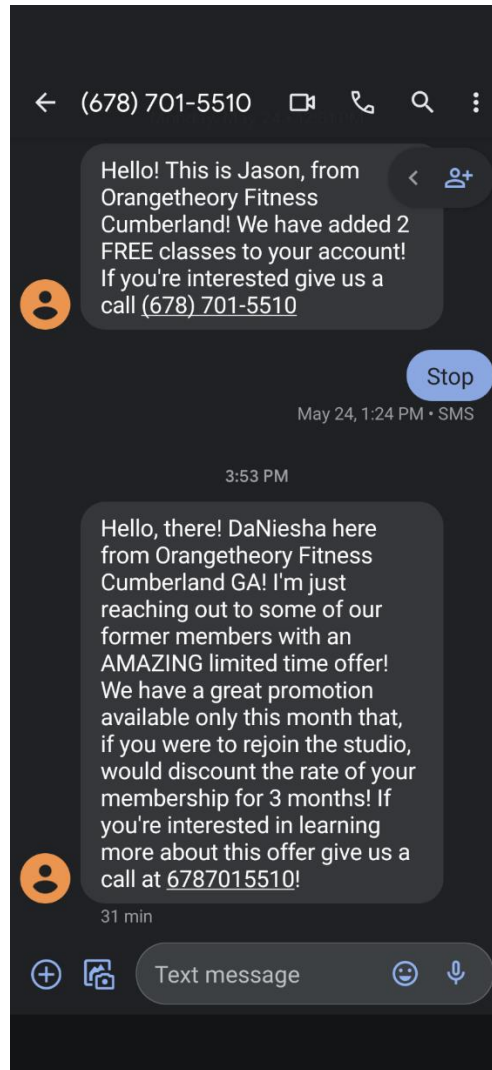
7. Plaintiff is a natural person who, at all times relevant to this action, was a resident of Fairfax County, Virginia.

8. Defendant is a Georgia limited liability company whose principal office is located at 120 Interstate N Pkwy, Suite 444, Atlanta, GA 30339. Defendant directs, markets, and provides its business activities throughout the State of Georgia.

9. Unless otherwise indicated, the use of Defendant’s name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, vendors, and insurers of Defendant.

FACTS

10. On or about May 24, 2021, Defendant sent a telemarketing text message to Plaintiff's cellular telephone number ending in 9874 (the "9874 Number"). The text messages did not contain instructions on how to opt-out of future messages.



11. On May 24, 2021, Plaintiff responded with the word "Stop" in an attempt to opt-out of any further text message communications with Defendant.

12. Despite Plaintiff's use of standard and clear opt-out language, Defendant ignored Plaintiff's opt-out demand and continued to send Plaintiff another telemarketing text message on or about June 10, 2021.

13. Defendant's text messages were transmitted to Plaintiff's cellular telephone, and within the time frame relevant to this action.

14. Defendant's text messages constitute telemarketing because they encouraged the future purchase or investment in property, goods, or services, i.e., selling Plaintiff a gym membership.

15. The information contained in the text message advertises Defendant's various discounts and promotions, which Defendant sends to promote its business.

16. Defendant sent the subject texts from within this judicial district and, therefore, Defendant's violation of the TCPA occurred within this district. Upon information and belief, Defendant caused other text messages to be sent to individuals residing within this judicial district.

17. Defendant's texts were not made for an emergency purpose or to collect on a debt pursuant to 47 U.S.C. § 227(b)(1)(B).

18. Upon information and belief, Defendant does not have a written policy for maintaining an internal do not call list pursuant to 47 U.S.C. § 64.1200(d)(1).

19. Upon information and belief, Defendant does not inform and train its personnel engaged in telemarketing in the existence and the use of any internal do not call list pursuant to 47 U.S.C. § 64.1200(d)(2).

20. At no point in time did Plaintiff provide Defendant with her express written consent to be contacted.

21. To the extent that Defendant had express consent to contact Plaintiff for promotional purposes, that consent was expressly revoked when Plaintiff responded "Stop" on May 24, 2021.

22. Plaintiff is the subscriber and sole user of the 9874 Number and is financially responsible for phone service to the 9874 Number.

23. The text messages originated from telephone number 678-701-5510, a number which upon information and belief is owned and operated by Defendant or on behalf of Defendant.

24. Defendant's unsolicited text messages caused Plaintiff actual harm, including invasion of her privacy, aggravation, annoyance, intrusion on seclusion, trespass, and conversion. Defendant's text messages also inconvenienced Plaintiff and caused disruption to her daily life.

CLASS ALLEGATIONS

PROPOSED CLASS

25. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23, on behalf of herself and all others similarly situated.

26. Plaintiff brings this case on behalf of a Class defined as follows:

Internal Do Not Call Class: All persons within the United States who, within the four years prior to the filing of this Complaint, were sent a text message from Defendant or anyone on Defendant's behalf, to said person's cellular telephone number *after* making a request to Defendant to not receive future text messages.

27. Defendant and its employees or agents are excluded from the Class. Plaintiff does not know the number of members in the Class, but believes the Class members number in the several thousands, if not more.

NUMEROSITY

28. Upon information and belief, Defendant has placed violative calls to cellular telephone numbers belonging to thousands of consumers throughout the United States after they had opted out of future communications with Defendant. The members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

29. The exact number and identities of the Class members are unknown at this time and can only be ascertained through discovery. Identification of the Class members is a matter capable of ministerial determination from Defendant's call records.

COMMON QUESTIONS OF LAW AND FACT

30. There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual members of the Class. Among the questions of law and fact common to the Class are:

- a) Whether Defendant violated 47 C.F.R. § 64.1200(d);
- b) Whether Defendant's conduct was knowing and willful;
- c) Whether Defendant adhered to requests by class members to stop sending text messages to their telephone numbers;
- d) Whether Defendant keeps records of text recipients who revoked consent to receive texts.
- e) Whether Defendant has any written policies for maintaining an internal do not call list.
- f) Whether Defendant violated the privacy rights of Plaintiff and members of the class;
- g) Whether Defendant is liable for damages, and the amount of such damages; and
- h) Whether Defendant should be enjoined from such conduct in the future.

31. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendant routinely transmits text messages to telephone numbers assigned to cellular telephone services is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

TYPICALITY

32. Plaintiff's claims are typical of the claims of the Class members, as they are all based on the same factual and legal theories.

PROTECTING THE INTERESTS OF THE CLASS MEMBERS

33. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class, and has retained competent counsel. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

PROCEEDING VIA CLASS ACTION IS SUPERIOR AND ADVISABLE

34. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is

economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are in the millions of dollars, the individual damages incurred by each member of the Class resulting from Defendant's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

35. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example, one court might enjoin Defendant from performing the challenged acts, whereas another may not. Additionally, individual actions may be dispositive of the interests of the Class, although certain class members are not parties to such actions.

COUNT I
Violations of the TCPA, 47 U.S.C. § 227(c)(2)
(On Behalf of the Plaintiff and the Internal Do Not Call Class)

36. Plaintiff re-alleges and incorporates the foregoing allegations set forth in paragraphs 1 through 35 as is fully set forth herein.

37. The TCPA provides that any "person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may" bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. 47 U.S.C. § 227(c)(5).

38. Under 47 C.F.R. § 64.1200(d), "[n]o person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet certain minimum standards, including:

(3) Recording, disclosure of do-not-call requests. If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request

(6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a consumer's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

47 C.F.R. § 64.1200(d)(3), (6).

39. Under 47 C.F.R § 64.1200(e) the rules set forth in 47 C.F.R. § 64.1200(d) are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers:

(e) The rules set forth in paragraph (c) and (d) of this section are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers to the extent described in the Commission's Report and Order, CG Docket No. 02-278, FCC 03-153, "Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991.

47 C.F.R. § 64.1200(e).

40. Plaintiff and the Internal Do Not Call Class members made requests to Defendant not to receive calls from Defendant.

41. Defendant failed to honor Plaintiff and the Internal Do Not Call Class members' requests.

42. Upon information and belief, Defendant has not instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of their behalf, pursuant to 47 C.F.R. § 64.1200(d).

43. Because Plaintiff and the Internal Do Not Call Class members received more than one text message in a 12-month period made by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200(d), as described above, Defendant violated 47 U.S.C. § 227(c)(5).

44. As a result of Defendant's violations of 47 U.S.C. § 227(c)(5), Plaintiff and the Internal Do Not Call Class members are entitled to an award of \$500.00 in statutory damages, for each and every negligent violation, pursuant to 47 U.S.C. § 227(c)(5).

45. As a result of Defendant's violations of 47 U.S.C. § 227(c)(5), Plaintiff and the Internal Do Not Call Class members are entitled to an award of \$1,500.00 in statutory damages, for each and every knowing and/or willful violation, pursuant to 47 U.S.C. § 227(c)(5).

46. Plaintiff and the Internal Do Not Call Class members also suffered damages in the form of invasion of privacy.

47. Plaintiff and the Internal Do Not Call Class members are also entitled to and seek injunctive relief prohibiting Defendant's illegal conduct in the future, pursuant to 47 U.S.C. § 227(c)(5).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for the following relief:

- a) An order certifying this case as a class action on behalf of the Class as defined above, and appointing Plaintiff as the representative of the Class and Plaintiff's counsel as Class Counsel;
- b) An award of actual and statutory damages for Plaintiff and each member of the Class;
- c) An order declaring that Defendant's actions, set out above, violate the TCPA;
- d) An injunction requiring Defendant to cease all unsolicited text messaging activity, and to otherwise protect the interests of the Class;
- e) Such further and other relief as the Court deems necessary.

JURY DEMAND

Plaintiff and Class Members hereby demand a trial by jury.

DOCUMENT PRESERVATION DEMAND

Plaintiff demands that Defendant take affirmative steps to preserve all records, lists, electronic databases or other itemizations associated with the allegations herein, including all records, lists, electronic databases or other itemizations in the possession of any vendors, individuals, and/or companies contracted, hired, or directed by Defendant to assist in sending the alleged communications.

Dated: October 28, 2021

Shamis & Gentile, P.A.

/s/ Andrew J. Shamis

Andrew J. Shamis, Esq.

Georgia Bar No. 494196

ashamis@shamisgentile.com

14 NE 1st Avenue, Suite 705

Miami, FL 33132

Telephone: 305-479-2299

Counsel for Plaintiff and the Class

CIVIL COVER SHEET

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

Sarah Mack, individually and on behalf of all others similarly situated

DEFENDANT(S)

Confluence Group II, LLC d/b/a Orangetheory Fitness Cumberland

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Fairfax County, VA (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Fulton County, GA (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

Shamis & Gentile, PA
14 NE 1st Ave., Suite 705
Miami, FL 33132
ashamis@shamisgentile.com

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. GOVERNMENT PLAINTIFF
2 U.S. GOVERNMENT DEFENDANT
3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

- PLF DEF PLF DEF
1 1 CITIZEN OF THIS STATE 4 4 INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE
2 2 CITIZEN OF ANOTHER STATE 5 5 INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE
3 3 CITIZEN OR SUBJECT OF A FOREIGN COUNTRY 6 6 FOREIGN NATION

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 ORIGINAL PROCEEDING
2 REMOVED FROM STATE COURT
3 REMANDED FROM APPELLATE COURT
4 REINSTATED OR REOPENED
5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)
6 MULTIDISTRICT LITIGATION - TRANSFER
7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT
8 MULTIDISTRICT LITIGATION - DIRECT FILE

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Telephone Consumer Protection Act, 47 U.S.C. s 227 et seq.

(IF COMPLEX, CHECK REASON BELOW)

- 1. Unusually large number of parties.
2. Unusually large number of claims or defenses.
3. Factual issues are exceptionally complex
4. Greater than normal volume of evidence.
5. Extended discovery period is needed.
6. Problems locating or preserving evidence
7. Pending parallel investigations or actions by government.
8. Multiple use of experts.
9. Need for discovery outside United States boundaries.
10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # AMOUNT \$ APPLYING IFP MAG. JUDGE (IFP)
JUDGE MAG. JUDGE (Referral) NATURE OF SUIT CAUSE OF ACTION

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 440 OTHER CIVIL RIGHTS
- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other
- 448 EDUCATION

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395f)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 463 HABEAS CORPUS- Alien Detainee
- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se
- 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 375 FALSE CLAIMS ACT
- 376 Qui Tam 31 USC 3729(a)
- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/ICC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 485 TELEPHONE CONSUMER PROTECTION ACT
- 490 CABLE/SATELLITE TV
- 890 OTHER STATUTORY ACTIONS
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT 899
- 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
- 950 CONSTITUTIONALITY OF STATE STATUTES

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTI TRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK
- 880 DEFEND TRADE SECRETS ACT OF 2016 (DTSA)

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT
- 835 PATENT-ABBREVIATED NEW DRUG APPLICATIONS (ANDA) - a/k/a Hatch-Waxman cases

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ _____

JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE _____ DOCKET NO. _____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. _____, WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

SIGNATURE OF ATTORNEY OF RECORD

10/28/2021
DATE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

SARAH MACK, individually and on behalf of all others
similarly situated,

Plaintiff,

v.

CONFLUENCE GROUP II, LLC d/b/a ORANGETHEORY
FITNESS CUMBERLAND,

Defendant.

Case No.

CLASS ACTION

SUMMONS

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Confluence Group II, LLC d/b/a Orangetheory Fitness Cumberland
Registered Agent: James Weeks
120 Interstate N Pkwy, Suite 444
Atlanta, GA 30339

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Shamis & Gentile, P.A.
Andrew J. Shamis, Esq.
14 NE 1st Ave, STE 705
Miami, FL 33132
305-479-2299

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ On *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other (specify):

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0,00 _____

I declare under penalty of perjury that this information is true.

Date _____

Servers Signature

Printed name and title

Server's Address

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Orangetheory Fitness Sent Unlawful Telemarketing Texts](#)
