

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
FLORIDA

**Briana Glasel, individually and on behalf of all others similarly
situated v. Office Depot, LLC**

Glasel · No. 24-cv-80910-DIMITROULEAS/MATTHEWMAN · Decided January 26, 2026

SUMMARY

A Chief United States Magistrate Judge recommends denying Office Depot, LLC’s motion to compel arbitration and stay proceedings in a putative Telephone Consumer Protection Act class action. The recommendation concludes that Office Depot waived its arbitration right by substantially participating in litigation before moving to compel arbitration, despite asserting a generic arbitration-related affirmative defense. In the alternative, the recommendation finds that Plaintiff assented to authenticated Terms of Use containing an arbitration provision and class action waiver, which would support compelling individual arbitration if the district judge disagrees on waiver.

CASE DETAILS

COURT	United States District Court for the Southern District of Florida
WRITING FOR THE COURT	William Matthewman
JURISDICTION	United States District Court for the Southern District of Florida
DECIDED	January 26, 2026
DOCKET	24-cv-80910-DIMITROULEAS/MATTHEWMAN
DISPOSITION	other
PROCEDURAL POSTURE	Magistrate judge report and recommendation on Defendant's motion to compel arbitration and stay proceedings in a putative Telephone Consumer Protection Act class action.
STANDARD OF REVIEW	The court applied the totality-of-the-circumstances standard to determine whether Defendant waived its contractual right to arbitrate. For the existence and enforceability of an arbitration agreement, the court applied ordinary state-law contract principles to formation and federal law to enforceability.
PRECEDENTIAL VALUE	Unknown; magistrate judge report and recommendation

TOPICS

arbitration

class actions

civil procedure

consumer protection

PRACTICE AREAS

civil procedure

arbitration

consumer protection

class actions

commercial litigation

QUESTIONS PRESENTED

1. Whether Office Depot waived its contractual right to compel arbitration by substantially participating in the litigation and delaying its motion to compel.
2. Whether Office Depot established the existence of an enforceable arbitration agreement through the text-message exchange and authenticated business records.
3. If waiver did not apply, whether the court should compel individual arbitration, enforce the class-action waiver, and stay the action under the Federal Arbitration Act.

HOLDINGS

1. Under the totality of the circumstances, Office Depot waived its right to arbitrate by actively litigating the case on the merits, participating in discovery, mediation, scheduling, and related proceedings, and waiting more than a year after asserting a generic arbitration affirmative defense to file its motion to compel.
2. Office Depot met its burden to establish, for purposes of the alternative analysis, that Glasel assented to the Terms of Use containing an arbitration provision and class-action waiver through the authenticated November 20, 2023 text-message exchange.

KEY QUOTATIONS

“Therefore, the Undersigned finds that Defendant has waived its right to arbitration.” (11)

“In light of the foregoing, the undersigned Chief United States Magistrate Judge RECOMMENDS that Defendant’s Motion to Compel Arbitration and Stay Proceedings [DE 41]. be DENIED.” (13)

FACTUAL BACKGROUND

Briana Glasel alleges that Office Depot violated the TCPA by sending prohibited text messages and by contacting her despite do-not-call restrictions. Office Depot relied on a November 20, 2023 text exchange in which it sent a message directing Glasel to reply "Y" to confirm consent to its Terms, and Glasel replied "Y." The Terms allegedly included a mandatory arbitration provision and a class-action waiver. Before seeking arbitration, Office Depot filed dispositive motions, answered, participated in scheduling and mediation, exchanged discovery, issued subpoenas, pursued a Rule 12(c) motion, and provided deposition availability.

PROCEDURAL HISTORY

Plaintiff filed a putative class action alleging violations of the TCPA and related FCC regulations. Defendant filed motions to dismiss, an answer and affirmative defenses, participated in scheduling, mediation, discovery, and other litigation activity, and later moved to compel arbitration and stay the proceedings. The magistrate

judge recommended denying the motion, concluding that Defendant waived arbitration by substantially litigating the case and delaying its motion; alternatively, the judge recommended compelling individual arbitration and staying the action if the district judge disagreed on waiver.

DISPOSITION

other

CASES CITED

- Lambert v. Austin Ind., 544 F.3d 1192, 1195 (11th Cir. 2008)
- Johnson v. N. Broward Hosp. Dist., No. 0:24-CV-62361, 2025 WL 2799835, at *1 (S.D. Fla. Oct. 2, 2025)
- Calcaterra v. Baptist Health S. Fla., Inc., 733 F. Supp. 3d 1349, 1353 (S.D. Fla. 2024)
- Babcock v. Neutron Holdings, Inc., 454 F. Supp. 3d 1222, 1228 (S.D. Fla. 2020)
- Gutierrez v. Wells Fargo Bank, NA, 889 F.3d 1230, 1236-1237 (11th Cir. 2018)
- Warrington v. Rocky Patel Premium Cigars, Inc., No. 22-12575, 2023 WL 1818920, at *2 (11th Cir. Feb. 8, 2023)
- S&H Contractors, Inc. v. A.J. Taft Coal Co., 906 F.2d 1507, 1514 (11th Cir. 1990)
- Payne v. Savannah Coll. of Art & Design, Inc., 81 F.4th 1187, 1201 (11th Cir. 2023)
- Amargos v. Verified Nutrition, LLC, 653 F. Supp. 3d 1269, 1275-1276 (S.D. Fla. 2023)
- Hodgson v. Royal Caribbean Cruises, Ltd., 706 F. Supp. 2d 1248, 1257-1258 (S.D. Fla. 2009)
- Dockeray v. Carnival Corp., 724 F. Supp. 2d 1216, 1222 (S.D. Fla. 2010)
- Zononi v. CHW Grp., Inc., No. 22-CV-14358, 2023 WL 8679400, at *3 (S.D. Fla. Nov. 16, 2023)
- Davis v. White, 795 F. App'x 764, 766-770 (11th Cir. 2020)
- Terris v. Sprint Corp., No. 8:23-CV-1033-WFJ-AAS, 2023 WL 5863524, at *3 (M.D. Fla. Sept. 11, 2023)
- Morgan v. Sundance, Inc., 596 U.S. 411 (2022)
- Mamani v. Sanchez Berzain, 636 F. Supp. 2d 1326, 1329 (S.D. Fla. 2009)