

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

DAVID BAUER,

Plaintiff,

v.

Case No: 8:14-cv-116-T-30AEP

KOHL'S DEPARTMENT STORES,
INC.,

Defendant.

ORDER

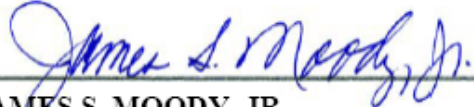
THIS CAUSE comes before the Court upon Defendant's Motion for Stay Pending FCC Interpretation of "Express Prior Consent of the Called Party" under the TCPA (Dkt. 25). Upon review and consideration, the Court concludes that the motion should be denied.

Defendant contends that this action should be stayed because the Federal Communications Commission ("FCC") should issue a declaratory ruling on the phrase "the express prior consent of the called party" under the Telephone Consumer Protection Act ("TCPA") in the near future. Defendant argues that Plaintiff's claim against Defendant under the TCPA alleges that Defendant made calls to Plaintiff asking for a "Jeanine" and that Plaintiff subsequently acknowledged in interrogatory responses that he dated a woman named Jeanine in 2008 and 2009. Defendant states that if the "Jeanine" that Plaintiff dated gave prior express consent to Defendant to call Plaintiff's phone number, Defendant's calls would not violate the TCPA's proscription of calls made without "the prior express consent of the called party."

Defendant's motion is premature. Defendant does not point to anything establishing that "Jeanine" gave prior express consent to Defendant to call Plaintiff's phone number. Thus, the issue of consent is not at issue at this point. Moreover, as Defendant acknowledges, the Eleventh Circuit issued a very recent opinion related to the issue of consent under the TCPA. *See Osorio v. State Farm Bank, F.S.B.*, ___ F.3d ___, 2014 WL 1258023 (11th Cir. Mar. 28, 2014). Accordingly, Defendant may move for summary judgment on this issue at the appropriate time.

It is therefore ORDERED AND ADJUDGED that Defendant's Motion for Stay Pending FCC Interpretation of "Express Prior Consent of the Called Party" under the TCPA (Dkt. 25) is denied.

DONE and **ORDERED** in Tampa, Florida on April 29, 2014.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record

S:\Even\2014\14-cv-116.denymstayFCC.wpd