

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DENNIS GRAY,

Plaintiff,

v.

Case No: 8:16-cv-2360-T-35JSS

TALK FUSION, INC., et al.,

Defendants.

/

ORDER

THIS CAUSE comes before the Court for consideration of Defendants' Motion to Dismiss for Lack of Case or Controversy (Dkt. 69), to which Plaintiff has responded in opposition (Dkt. 71).

Plaintiff Dennis Gray filed this putative class action against Talk Fusion, Inc. and related entities for violations of the Racketeer Influenced and Corrupt Organizations Act and state-law consumer statutes, based on Defendants' alleged operation of an illegal pyramid scheme. (Dkt. 3) On September 13, 2016, Defendants moved to compel arbitration of Plaintiff's claims. (Dkts. 61, 62). Before the Court ruled on the motions to compel, Defendants filed the instant motion to dismiss, which asserts that the claims of named Plaintiff, Dennis Gray, are moot because he voluntarily rejoined Talk Fusion and is again selling Talk Fusion products. (Dkt. 69 at 2). In response, Plaintiff's putative class counsel does not dispute that the individual claims of Plaintiff Dennis Gray are moot, but he requests leave to amend the complaint, in order to substitute a different named class representative. (Dkt. 71)

Upon consideration, it is hereby **ORDERED** that:

(1) Defendants' Motion to Dismiss for Lack of Case or Controversy (Dkt. 69) is **DENIED**, and Plaintiff's request to amend is **GRANTED**. Plaintiff's counsel may file a Second Amended Complaint within **sixty 60 days** of the date of this Order. Until a Second Amended Complaint is filed, this action is **STAYED**. If counsel fails to secure another named Plaintiff for this putative class action within the time frame allotted, this action will be dismissed without prejudice.

(2) Defendants' Motions to Compel Arbitration (Dkts. 61 and 62) are **DENIED WITHOUT PREJUDICE AS MOOT**.

DONE and **ORDERED** in Tampa, Florida, this 25th day of April, 2017.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record