

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

VINCENT LUCAS,
Plaintiff,

Case No. 1:17-cv-374
Cole, J.
Litkovitz, M.J.

vs.

MONITRONICS INTERNATIONAL, INC., et al.,
Defendants.

ORDER

This matter is before the Court following the conditional remand order issued by the United States Judicial Panel on Multidistrict Litigation (“JPML”) (Doc. 33). This matter is also before the Court on plaintiff’s motion to consolidate with related case/renewed motion to permit plaintiff to use the Court’s CM/ECF filing system (Doc. 34) and plaintiff’s motion to withdraw his motion to remand to state court (Doc. 35).

I. Conditional Remand Order

On June 19, 2017, this Court granted Monitronics’ motion to stay all proceedings in this Court pending the JPML’s decision on whether to transfer and consolidate plaintiff’s case with similar cases alleging Telephone Consumer Protection Act (“TCPA”) violations against Monitronics in the Northern District of West Virginia. (Doc. 15). On October 16, 2017, the JPML issued a transfer order consolidating plaintiff’s case with similar cases in the Northern District of West Virginia. (Doc. 31).

Thereafter, this matter remained stayed in this Court. On September 24, 2019, the JPML issued a conditional remand order remanding this case back to this Court. (Doc. 33). In light of the JPML’s conditional remand order, the stay in this matter is **LIFTED**. This case is reinstated

on the Court's active docket.¹

II. Motion to Consolidate/Motion for Access to Electronic Filing System (Doc. 34)

Pursuant to Fed. R. Civ. P. 42(a), plaintiff moves to consolidate this case with another one of his cases in this Court—*Lucas v. Gotra*, No. 1:18-cv-664. (Doc. 34). Plaintiff alleges that both lawsuits contain common questions of law or fact, both of which include violations of the TCPA and Ohio telemarketing law by defendant Defend America, LLC, which plaintiff states is the sole remaining defendant in this case. (*Id.* at 2-3). Plaintiff further moves the Court for permission to access the CM/ECF electronic filing system. (*Id.* at 3).

In *Lucas v. Gotra*, Magistrate Judge Bowman issued a Report and Recommendation in July 2019 recommending that plaintiff's case against all defendants be dismissed with prejudice. (Case No. 1:18-cv-664, Doc. 40). With respect to plaintiff's claims against Defend America, LLC, Judge Bowman recommended that plaintiff's motion for default judgment be denied and plaintiff's claims be dismissed under the doctrine of res judicata. (*Id.* at 13). Judge Bowman ruled that plaintiff's inclusion of identical claims against Defend America, LLC, in the multidistrict litigation case bars relitigation of plaintiff's identical claims under the doctrine of claim preclusion. (*Id.*). Judge Bowman cited the MDL's June 26, 2019 Order and Suggestion of Remand, which noted that plaintiff's case was settled and resolved either prior to or in mediation. (*Id.* at 11-12) (citing MDL Order and Suggestion of Remand, *Lucas v. Monitronics*, No. 5:17-cv-00157 (Doc. 191). Plaintiff subsequently filed a notice of withdrawal of his motion for default judgment, which clarified that he did not reach a settlement with Defend America,

¹ Plaintiff states that the only remaining defendant in this case is Defend America, LLC. (Doc. 34 at 2). Plaintiff's claims against defendants Monitronics and Alliance Security were voluntarily dismissed during the multidistrict litigation proceeding. (Doc. 33-2, 33-3). Moreover, plaintiff has voluntarily dismissed claims against defendants Comet Media, Inc., Jessica Merrick, Rick Merrick, Tyler Coon, John Doe Companies, and Lucky 7, Inc. PH. (Docs. 14, 19, 36).

LLC, contrary to the MDL Court's June 26, 2019 Order and Suggestion of Remand. (Case No. 1:18-cv-664, Doc. 41). In light of this motion, Judge Bowman issued a supplemental Report and Recommendation, which still recommended dismissal of plaintiff's entire case, including his claims against Defend America, LLC. (*Id.* at Doc. 42 at 7-9).

Plaintiff's motion to consolidate this case with Case No. 1:18-cv-664 is denied in view of Magistrate Judge Bowman's Report and Recommendation and Supplemental Report and Recommendation, both of which recommend dismissal of plaintiff's case. It would be futile for this case to be consolidated with a case that is recommended for dismissal. However, the Court will grant the portion of plaintiff's motion that requests permission to use the Court's CM/ECF filing system. Documents filed electronically shall conform substantially to the requirements of the Local Rules and to the format for the ECF system set out in the most current editions of the ECF Policies and Procedures Manual issued by the Clerk. *See* S.D. Ohio Civ. R. 5.1(c). Plaintiff must abide by the Court's ECF policies and procedures, the Local and Federal Civil Rules, and the requirements of the registration form attached to his motion. By registering, plaintiff consents to receiving notice of filings pursuant to the Federal Rules of Civil Procedure via the Court's electronic filing system. Permission to file electronically may be revoked at any time. Accordingly, plaintiff's motion is **GRANTED** to the extent he requests permission to access the CM/ECF filing system and **DENIED** to the extent he requests to consolidate this case with Case No. 1:18-cv-664.

III. Motion to Withdraw Remand to State Court (Doc. 35)

Plaintiff moves to withdraw his motion to remand to state court, which was filed before this case was transferred to the Northern District of West Virginia as a part of multidistrict litigation. (Doc. 35). For good cause shown, plaintiff's motion is **GRANTED**. The Clerk is

directed to terminate plaintiff's motion to remand (Doc. 20).

IV. Conclusion

It is **ORDERED** that:

1. The stay in this matter is **LIFTED** and this case is reinstated on the Court's active docket.
2. Plaintiff's motion to access the CM/ECF filing system (Doc. 34) is **GRANTED**.
3. Plaintiff's motion to consolidate with related case (Doc. 34) is **DENIED**.
4. Plaintiff's motion to withdraw his motion to remand (Doc. 35) is **GRANTED**. The Clerk is **DIRECTED** to terminate this motion (Doc. 20) from the docket.
5. Plaintiff is **ORDERED** to file a status report on the remaining claims in this case within **thirty (30) days**.

Date: April 27, 2020



Karen L. Litkovitz
United States Magistrate Judge