

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KRISTIE FARNHAM, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

CARIBOU COFFEE COMPANY, INC.,

Defendant.

ORDER

16-cv-295-wmc

In this civil action, plaintiff Kristie Farnham asserts claims on behalf of herself individually and a putative class for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, based on defendant Caribou Coffee Company, Inc.'s alleged use of an automatic telephone dialing system ("ATDS") to send text messages to plaintiff's cellular phone without her prior express consent. Before the court is defendants' motion to stay this case pending a decision by the United States Court of Appeals for the D.C. Circuit on a consolidated appeal of the Federal Communication Commission's July 10, 2015, TCPA Declaratory Ruling and Order. (Dkt. #12.) The court will deny the motion for the same reasons provided in the court's order on a related motion to stay also issued today in *Hogen v. Prof'l Serv. Bureau, Inc.*, No. 16-cv-602 (W.D. Wis.).¹

¹ In this case, plaintiff argues that her claims do not turn on the definition of ATDS. This is different than the reasons provided by the plaintiffs in *Hogen* for denying the stay, but the court finds this argument also supports a finding that the D.C. Circuit's ruling may not be dispositive of plaintiff's claims, as was also the case in *Hogen*.

Accordingly, IT IS ORDERED that defendants' motion to stay (dkt. #12) is DENIED without prejudice should the circumstances change; plaintiff's motion for leave to file sur-reply (dkt. #22) is DENIED as moot.

Entered this 9th day of March, 2017.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge