UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 18-cv-24934-UU

CHRISTIE FANTIS,

Plaintiff,

v.

FLYWHEEL SPORTS, INC.,

Defendant.
_____/

ORDER

THIS CAUSE comes before the Court upon Defendant Flywheel Sports, Inc's Motion to Compel Arbitration and to Stay Proceedings and Incorporated Memorandum of Law. D.E. 12. Magistrate Judge John O'Sullivan issued a Report and Recommendation (D.E. 26) on March 11, 2019, recommending that the Court deny Defendant's Motion to Compel Arbitration and to Stay Proceedings. Defendant objected to the Report and Recommendation. D.E. 30.

THE COURT has made a *de novo* review of Defendant's Motion to Compel Arbitration and Plaintiff's Response, the Report and Recommendation, Defendant's Objections and Plaintiff's Response, and is otherwise fully advised in the premises. The matter is now ripe for disposition.

Upon *de novo* review, the Court agrees with Magistrate Judge O'Sullivan's recommendation and concurs in all of the findings. Defendant's Objections largely restate the arguments made to Magistrate Judge O'Sullivan. Those arguments were exhaustively addressed in the Report and Recommendation and Court finds that the Magistrate Judge correctly applied the law to the relevant facts.

In summary, Flywheel's website includes Terms of Service ("TOS") and the TOS includes the arbitration provision that is the subject of the underlying motion to compel. However, Plaintiff did not register for a Flywheel class on the Flywheel website; rather, Plaintiff registered online for a Flywheel class through ClassPass, a third-party service provider. At no time during the ClassPass registration process was Plaintiff presented with Flywheel's TOS, directed by hyperlink or otherwise to the TOS, or told where she could find the TOS.

Additionally, the ClassPass application, to the extent it contained any language which would have put a reasonably prudent individual on inquiry notice, merely referenced the ClassPass Terms of Use ("TOU"). And the ClassPass TOU merely contained a cryptic reference to the fact that participation in any fitness class was subject to the rules, policies or conditions "of the applicable Venue. . ." Plaintiff further maintained, without contradiction, that she never visited Flywheel's own website where the TOS is referenced.[1] Defendant, in its Objections, does not take issue with these findings in any material respect.

What Defendant does contest is the application of the law to these facts, maintaining that these facts show, at a minimum, that Plaintiff was on inquiry notice of the arbitration provision. However, the Court has reviewed again the legal authorities on which Defendant relies and agrees with Magistrate Judge O'Sullivan that the Defendant has failed to demonstrate mutual assent to Flywheel's TOS, including the arbitration provision by inquiry notice or otherwise. Therefore, the arbitration provision in the Flywheel's TOS is unenforceable as to Plaintiff. Accordingly, it is hereby

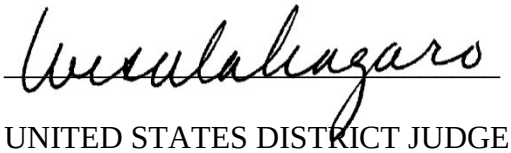
ORDERED and ADJUDGED that Magistrate Judge O'Sullivan's Report and Recommendation, (D.E. 26), is RATIFIED, AFFIRMED and ADOPTED. Defendant Flywheel

[1] That fact makes Defendant's timing argument that Plaintiff was on inquiry notice of the arbitration provision from the Flywheel website immaterial and unpersuasive.

Sports, Inc's Motion to Compel Arbitration and to Stay Proceedings and Incorporated Memorandum of Law (D.E. 12) is hereby DENIED. It is further

ORDERED AND ADJUDGED that Plaintiff SHALL file a motion for class certification no later than **Monday, May 27, 2019**. Failure to comply with this order will result in the imposition of appropriate sanctions.

DONE AND ORDERED in Chambers at Miami, Florida, this 29th__ day April, 2019.



UNITED STATES DISTRICT JUDGE

cc: counsel of record via cm/ecf