

1 DANIELLE J. MOSS (admitted *pro hac vice*)
dmoos@gibsondunn.com
2 GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
3 New York, NY 10166-0193
Telephone: 212.351.4000
4 Facsimile: 212.351.4035

5 MEGAN COONEY, SBN 295174
mcooney@gibsondunn.com
6 LAUREN M. FISCHER, SBN 318625
lfischer@gibsondunn.com
7 GIBSON, DUNN & CRUTCHER LLP
3161 Michelson Drive
8 Irvine, CA 92612-4412
Telephone: 949.451.3800
9 Facsimile: 949.451.4220

10 Attorneys for Defendant PELOTON
INTERACTIVE, INC.

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13

14 MARK COHEN, as an individual and
on behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 PELOTON INTERACTIVE, INC., a
18 Delaware corporation; and DOES 1
through 50, inclusive,

19 Defendants.
20

CASE NO. 2:22-cv-01425-MWF-E

**DEFENDANT PELOTON
INTERACTIVE, INC.'S NOTICE OF
MOTION AND MOTION TO STAY
ACTION; MEMORANDUM OF
POINTS AND AUTHORITIES**

*[Declaration of Megan Cooney; Proposed
Order; and Request for Judicial Notice
filed concurrently herewith]*

Hearing:

Date: May 2, 2022
Time: 10:00 a.m.
Place: Courtroom 5A
Judge: Michael W. Fitzgerald

NOTICE OF MOTION AND MOTION TO STAY ACTION:

PLEASE TAKE NOTICE that on May 2, 2022, at 10:00 a.m., or as soon thereafter as the matter may be heard, in Los Angeles, California, before the Honorable Michael W. Fitzgerald, Defendant Peloton Interactive, Inc. (“Peloton”), by and through its counsel of record, will and hereby does move the Court to enter an order staying this action pending resolution of an overlapping, earlier-filed putative class action, *Hernandez, et al. v. Peloton Interactive, Inc.*, Case Nos. RG20053333 and RG20061729 (“*Hernandez*”), which is currently awaiting final settlement approval before the Alameda County Superior Court. A stay is warranted for two reasons. First, the *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976) abstention doctrine supports staying a later-filed federal court action pending resolution of an overlapping action pending in a state court, as is the case here. *See also Brown v. Abercrombie & Fitch Co.*, 2015 WL 12778338, at *6 (C.D. Cal. June 24, 2015) (staying later-filed federal action overlapping with state court action awaiting settlement approval). Second, the Court also has authority to stay this action under its inherent authority in order to conserve judicial and party resources. *See CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). A stay will undoubtedly conserve judicial and party resources without any prejudice to Plaintiff, who is already represented by the class in *Hernandez* and whose claims are already being litigated with anticipated final resolution this summer.

This motion is made following the conference of counsel pursuant to Local Rule 7-3, which took place on March 18, 2022. *See* Declaration of Megan Cooney ¶ 4. Peloton understands that Plaintiff intends to oppose this motion. *Id.* ¶ 5. This motion is based on this Notice of Motion; the following Memorandum of Points and Authorities; the accompanying Request for Judicial Notice; the Declaration of Megan Cooney; the files in these actions; argument of counsel; and such other matters as the Court may consider.

1 Dated: March 30, 2022

2 DANIELLE J. MOSS
3 MEGAN COONEY
4 LAUREN M. FISCHER
5 GIBSON, DUNN & CRUTCHER LLP

6 By: /s/ Megan Cooney
Megan Cooney

7 Attorneys for Defendant PELOTON
8 INTERACTIVE, INC.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. FACTUAL AND PROCEDURAL BACKGROUND 2

 A. Cohen’s Claims in This Action 2

 B. Overlap with *Hernandez* 3

III. ARGUMENT 4

 A. The Court Should Stay This Action Under the *Colorado River* Doctrine 4

 B. The Court Should Stay This Action Under its Inherent Authority 11

IV. CONCLUSION 15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page(s)

CASES

Adedapoidle-Tyehimba v. Crunch LLC,
 2013 WL 1890718 (N.D. Cal. May 3, 2013)..... 1, 5, 9, 10

Advanced Internet Techs., Inc. v. Google, Inc.,
 2006 WL 889477 (N.D. Cal. Apr. 5, 2006)..... 13

Bangor Hydro Elec. Co. v. Bridgewell Res. LLC,
 2011 WL 13250919 (D. Or. July 20, 2011) 14

Bargas v. Rite Aid Corp.,
 2013 WL 12371614 (C.D. Cal. July 22, 2013) 10

Bowyer v. Ducey,
 506 F. Supp. 3d 699 (D. Ariz. 2020) 6

In re Bozic,
 888 F.3d 1048 (9th Cir. 2018) 11

Branca v. Iovate Health Sciences USA, Inc.,
 2013 WL 1344306 (S.D. Cal. Apr. 2, 2013) 13

Brown v. Abercrombie & Fitch Co.,
 2015 WL 12778338 (C.D. Cal. June 24, 2015)..... 1, 5

Casserly v. Power Balance, LLC,
 2011 WL 13220130 (C.D. Cal. June 13, 2011)..... 14

CMAX, Inc. v. Hall,
 300 F.2d 265 (9th Cir. 1962) 11, 13

Colorado River Water Conservation Dist. v. U.S.,
 424 U.S. 800 (1976)..... 1, 4, 10

Darsie v. Avia Grp. Int’l, Inc.,
 36 F.3d 743 (8th Cir. 1994) 10

Ellis v. Costco Wholesale Corp.,
 657 F.3d 970 (9th Cir. 2011) 14

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.