

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Case No.: \_\_\_\_\_

JASON GOLDSTEIN, *individually and  
on behalf of all others similarly situated,*

Plaintiff,

vs.

Removed from the Circuit Court  
Of Palm Beach County, Florida  
CASE NO. 502021CA001745XXXXMB

FANDANGO MEDIA, LLC,

Defendant.  
\_\_\_\_\_ /

**DEFENDANT'S NOTICE OF REMOVAL**

Defendant Fandango Media, LLC ("Fandango"), by and through its undersigned counsel, hereby gives notice pursuant to 28 U.S.C. §§ 1441, 1446, and 1453, and in accordance with 28 U.S.C. §§ 1332 and 1711, of the removal of this action from the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, bearing the Case Number 502021CA001745XXXXMB, to the United States District Court for the Southern District of Florida based on the following:

**I. TIMELINESS OF REMOVAL**

1. On or about February 8, 2021, Plaintiff Jason Goldstein ("Plaintiff") filed a Complaint against Defendant Fandango Media, LLC, in the Circuit Court of Palm Beach County, Florida, Case No. 502021CA001745XXXXMB (the "Action"). A true and correct copy of the Complaint and Summons is attached as Exhibit A.

2. On February 11, 2021, Fandango was served with the Complaint. *See Ex. A.*

3. The timing of this Notice of Removal is proper under, under 28 U.S.C. § 1446(b)(1), because it is filed within thirty (30) days of Fandango’s receipt of the Complaint, as calculated according to the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 6(a)(1).

**II. SUMMARY OF PLAINTIFF’S ALLEGATIONS AND GROUNDS FOR REMOVAL**

4. This Court has original subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §§1332(d) and 1441(b) because (a) at least one member of the plaintiff class is a citizen of a different state than Fandango; and (b) the amount in controversy exceeds the jurisdictional minimum of \$5,000,000. *See* 28 U.S.C. §§ 1332(d)(2), 1441(b).

5. CAFA applies “to any class action before or after the entry of a class certification order by the court with respect to that action.” 28 U.S.C. § 1332(d)(8). This case is a putative “class action” under CAFA because it was brought under a state statute or rule, namely Florida Rule of Civil Procedure 1.220, authorizing an action to be brought by one or more representative persons as a class action. *See* 28 U.S.C. § 1332(d)(1)(B); *see also* Ex. A, ¶¶20-29.

6. In the Complaint, Plaintiff pleads a single cause of action on behalf of himself and a putative class of similarly situated individuals against Fandango for alleged violations of Fla. Stat. Ann. § 934.03, *et seq.*, the Florida Security of Communications Act (“FSCA”). *See* Ex. A, Complaint.

7. Plaintiff’s Complaint asserts, “[u]pon information and belief,” that during Plaintiff’s visits to Fandango’s website Fandango tracked Plaintiff’s use of and interaction with the site, and that such tracking constitutes an “interception of [Plaintiff’s] electronic communications” in violation of the FSCA. Ex. A, ¶¶14-15, 35.

8. Plaintiff alleges that he “brings this lawsuit as a class action on behalf of all other similarly situated persons [...] defined as ‘[a]ll persons residing within the State of Florida (1) who visited Defendant’s website and (2) whose electronic communications were intercepted by Defendant or on Defendant’s behalf (3) without their prior consent.’” Ex. A, ¶20.

9. On behalf of himself and the putative class, Plaintiff seeks declaratory and injunctive relief; “actual, liquidated damages, and/or punitive statutory damages; [r]easonable attorney’s fees and costs; and [s]uch further and other relief the Court deems reasonable and just.” Ex. A, ¶¶a-e.

10. Under CAFA, federal courts have original jurisdiction over class actions where the amount in controversy exceeds \$5 million in the aggregate for the entire class, exclusive of interest and costs; the putative class action contains at least 100 members; and any member of the putative class is a citizen of a state different from that of any defendant. *See* 28 U.S.C. §§ 1332(d)(2), (d)(5)(B), and (d)(6).

11. Fandango denies any liability as to Plaintiff’s individual claims and as to the claims of the putative class members. Fandango expressly reserves all of its rights, including, but not limited to, its right to file motions to compel arbitration and motions challenging the pleadings. However, for purposes of meeting the jurisdictional requirements for removal *only*, Fandango submits on a good-faith basis that this action satisfies all requirements for federal jurisdiction under CAFA because, as set forth below, the allegations in the Complaint along with Fandango’s submissions in support of this Notice of Removal identify a putative class of more than 100 members, establish the minimum diversity of citizenship required under CAFA, and put in controversy more than \$5 million in the aggregate for the entire class, exclusive of interest and costs. *See* 28 U.S.C. §§ 1332(d)(2), (d)(5)(B), and (d)(6).

**A. There Is At Least Minimal Diversity Of Citizenship Between The Parties In This Action Because Fandango Is A Citizen Of A Different State Than Plaintiff**

12. The minimum diversity of citizenship criterion under CAFA is met if a plaintiff or “any member” of the putative class “is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

13. Upon information and belief and as alleged by Plaintiff, at the time Plaintiff commenced this class action, and at all times since, Plaintiff was and is “a citizen and resident of Palm Beach County, Florida.” *See* Ex. A, Complaint ¶5.

14. Plaintiff further alleges that the putative class consists of “[a]ll persons residing within the State of Florida (1) who visited Defendant’s website and (2) whose electronic communications were intercepted by Defendant or on Defendant’s behalf (3) without their prior consent.” Ex. A, ¶20. Residence is an essential element of citizenship for purposes of establishing diversity jurisdiction. *See Travaglio v. Am. Exp. Co.*, 735 F.3d 1266, 1269 (11th Cir. 2013) (citizenship in a state “requires both residence in a state and an intention to remain there indefinitely”) (internal quotation marks and citation omitted). Thus, it is reasonable to infer that most, if not all, of the putative class members are citizens of Florida.

15. At the time Plaintiff commenced this class action, and at all times since, Fandango was and is a limited liability company organized and existing under the laws of the Commonwealth of Virginia with its principal place of business in the State of California. *See* Exhibit B, Declaration of Gabriela Kornzweig, ¶4. Fandango’s members, and the members of all limited liability companies within its corporate structure, are corporations incorporated in Delaware, California, or Pennsylvania; with principal places of businesses in Pennsylvania or California. *Id.* ¶¶4-22. Fandango is thus a citizen of Pennsylvania, Delaware, and California.

*See Wright Transp., Inc. v. Pilot Corp.*, 841 F.3d 1266, 1269 (11th Cir. 2016) (a limited liability company is a citizen of any state of which a member of the company is a citizen).

16. Accordingly, for purposes of diversity jurisdiction at least one member of the plaintiff class is a citizen of a different state than Fandango. *See* 28 U.S.C. § 1332(d)(2)(A).

**B. The Putative Class Consists Of More Than 100 Members**

17. In the Complaint, Plaintiff alleges violation of FSCA on behalf of himself and a putative class of “no less than 100” individuals who “visited” Fandango’s. *See* Ex. A, ¶¶20, 22. Though the precise numbers are “unknown” to Plaintiff, he alleges that the number of putative class members “may be readily ascertained from [Fandango’s] records.” *Id.*

18. Based on a search of Fandango’s records for the period consisting of calendar years 2019 and 2020, at least one million (1,000,000) unique individuals purchased movie tickets for theaters using Fandango’s website and entered a Florida zip code in connection with their payment for those tickets. *See* Exhibit C, Declaration of Kerry Samovar, ¶4.

19. Accordingly, while Fandango denies that class treatment is permissible or appropriate, the proposed class plainly consists of more than 100 members, based on the Complaint’s allegations and Fandango’s records.

**C. The Amount In Controversy Requirement Is Satisfied**

20. Although Fandango denies that Plaintiff’s claims have any merit and disputes that Plaintiff is entitled to any of the relief sought in the Complaint, Fandango avers, for the purposes of meeting the jurisdictional requirements for removal only, that the amount in controversy exceeds \$5 million.

21. Courts are not limited to the four corners of the Complaint when determining the amount in controversy. “If the jurisdictional amount is not facially apparent from the complaint,

the court should look to the notice of removal and may require evidence relevant to the amount in controversy at the time the case was removed.” *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 754 (11th Cir. 2010) (quoting *Williams v. Best Buy Co.*, 269 F.3d 1316, 1319 (11th Cir. 2001)) (holding that district court erred in rejecting defendant’s declaration in support of notice of removal evidencing the amount in controversy exceeded CAFA’s \$5 million threshold).

22. Plaintiff does not claim any specific amount in total damages, but avers that each member of the putative class is entitled to at least \$1,000 in statutory liquidated damages. *See* Ex. A, ¶39.

23. As set forth above, at least one million (1,000,000) unique individuals purchased movie tickets during the period consisting of calendar years 2019 and 2020 using Fandango’s website and entered a Florida zip code in connection with their payment for those tickets. *See* Ex. C, ¶4.<sup>1</sup>

24. According to Plaintiff’s definition of the putative class, each of these more than one million (1,000,000) individuals would be members of the putative class because anyone who purchased tickets on Fandango’s website necessarily “visited” the site. *See* Ex. A, ¶20. Thus, as alleged by Plaintiff, each of the one million (1,000,000) individuals could be entitled to damages of at least \$1,000, easily lifting the amount in controversy over \$5 million.

25. Without admitting the veracity of Plaintiff’s allegations or the propriety of class treatment in this Action, a reasonable and commonsense reasoning of the Complaint along with Fandango’s submissions in support of this Notice of Removal show that the amount in

---

<sup>1</sup> Plaintiff alleges that Fandango possesses knowledge concerning the identity of class members. *See* Ex. A, ¶23 (“[i]dentification of the Class members is a matter capable of ministerial determination from Defendant’s records ...”).

controversy requirement of 28 U.S.C. § 1332(d)(2) is satisfied. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014) (“a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold”).

### **III. THIS COURT HAS JURISDICTION AND REMOVAL IS PROPER**

26. Based on the foregoing facts and allegations, this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because:

- a. this is a civil action that is a class action within the meaning of § 1332(d)(1)(B);
- b. this action involves a putative class of more than 100 persons as required by § 1332(d)(5)(B);
- c. the amount in controversy exceeds \$5 million, exclusive of interest and costs as required by § 1332(d)(2); and
- d. a member of the putative class is a citizen of a state different from Fandango as required by § 1332(d)(2)(A).

27. Accordingly, removal of this action is proper under 28 U.S.C. §§ 1441, 1446, and 1453.

28. The United States District Court for the Southern District of Florida is the appropriate venue for removal because the Circuit Court of the Fifteenth Judicial Circuit Palm Beach County, Florida (where the Complaint was originally filed) is within the jurisdiction of the Southern District of Florida. *See* 28 U.S.C. §§ 1391, 1441(a), and 1446(a).

29. In accordance with 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings and orders served upon Fandango are attached as Exhibit A.

30. Pursuant to 28 U.S.C. §§ 1446(d) and 1453 prompt written notice of this Notice of Removal will be sent to Plaintiff and the Clerk of Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida contemporaneously with its filing in this Court.

31. Fandango reserves the right to amend or supplement this Notice of Removal.

32. This Notice of Removal is filed subject to and without waiver of any rights Fandango may have with respect to the Complaint.

WHEREFORE, Fandango respectfully removes this Action to this Court.

Dated: March 3, 2021

Respectfully submitted,

By: /s/ Nury Siekkinen

Nury Siekkinen

Florida Bar No. 1015937

Primary email: [nury@zwillgen.com](mailto:nury@zwillgen.com)

**ZWILLGEN PLLC**

1900 M Street NW, Suite 250

Washington, DC 20036

Telephone: (202) 296-3585

Facsimile: (202) 706-5298

*Attorney for Defendant Fandango Media, LLC*

**CERTIFICATE OF SERVICE**

I certify that on March 3, 2021, a true and accurate copy of the foregoing has been electronically filed with the Clerk of the Court by using the CM/ECF system. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List by electronic mail.

/s/ Nury Siekkinen

Nury Siekkinen (Florida Bar No. 1015937)



**SERVICE LIST**

Andrew J. Shamis  
SHAMIS & GENTILE, P.A.  
14 NE 1<sup>st</sup> Avenue, Suite 705  
Miami, Florida 33132  
[ashamis@shamisgentile.com](mailto:ashamis@shamisgentile.com)

Scott Edelsberg  
EDELBERG LAW, PA  
20900 NE 30<sup>th</sup> Avenue, Suite 417  
Aventura, Florida 33180  
[scott@edelsberglaw.com](mailto:scott@edelsberglaw.com)

Manuel Hiraldo  
HIRALDO P.A.  
401 E. Las Olas Blvd., Suite 1400  
Fort Lauderdale, Florida 33301  
[MHiraldo@Hiraldolaw.com](mailto:MHiraldo@Hiraldolaw.com)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS JASON GOLDSTEIN, individually and on behalf of all others similarly situated

DEFENDANTS FANDANGO MEDIA, LLC

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number) Shamis & Gentile, P.A., 14 NE 1st Ave., Suite 705, Miami, FL 33132 (305) 479-2299 Edelsberg Law, PA, 20900 NE 30th Ave., Suite 417, Aventura, FL 33180 (305) 975-3320 Hiraldo P.A., 401 E. Las Olas Blvd., Ste. 1400, Fort Lauderdale, FL 33301 (954) 400-4713

Attorneys (If Known) ZwillGen PLLC, 1900 M Street NW, Ste. 250, Washington, DC 20036 (202) 296-3585

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Grid of categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Re-filed (See VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation Transfer
7 Appeal to District Judge from Magistrate Judgment
8 Multidistrict Litigation - Direct File
9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case YES NO b) Related Cases YES NO
JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1453, Removal of Class Action Complaint from Circuit Court; violation of Fl. Stat. Ann. § 934.03
LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ per statute CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE
DATE 3/3/2021 SIGNATURE OF ATTORNEY OF RECORD /s/ Nury Siekkinen

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked. Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

**VI. Related/Refiled Cases.** This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

**VII. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
 Brief Description: Unauthorized reception of cable service

**VIII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# **Exhibit A**

# Case Number: 50-2021-CA-001745-XXXX-MB Case Style: GOLDSTEIN, JASON V FANDANGO MEDIA LLC

[apps.mypalmbeachclerk.com/eCaseView/search.aspx](https://apps.mypalmbeachclerk.com/eCaseView/search.aspx)



<u>Docket Number</u>	<u>Effective Date</u>	<u>Description</u>	<u>Notes</u>
2	02/08/2021	CIVIL COVER SHEET	
3	02/08/2021	COMPLAINT	CLASS ACTION COMPLAINT; FB PLTF
4	02/08/2021	SUMMONS ISSUED	efilings@shamisgentile.com FANDANGO MEDIA LLC SERVED
1	02/09/2021	DIVISION ASSIGNMENT	AJ: Circuit Civil Central - AJ (Civil)
5	02/09/2021	PAID \$411.00 ON RECEIPT 3903518	\$411.00 3903518 Fully Paid
6	02/10/2021	NOTICE OF APPEARANCE CIVIL	F/B ATTY MANUEL S HIRALDO OBO PLT
7	02/18/2021	SERVICE RETURNED (NUMBERED)	RETURN OF SERVICE SERVED FANDANGO MEDIA, LLC - 02/11/2021

RETURN OF SERVICE

State of Florida

County of Palm Beach

Circuit Court

Case Number: 502021CA001745XXXXMB

Plaintiff:

JASON GOLDSTEIN, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED

vs.

Defendant:

FANDANGO MEDIA, LLC

For:

Andrew J. Shamis, Esq.  
Shamis & Gentile, P.A.  
14 NE 1ST Avenue, Suite 400  
Miami, FL 33132

Received by Global Process Services Corp on the 9th day of February, 2021 at 2:23 pm to be served on FANDANGO MEDIA, LLC C/O CT CORPORATION SYSTEM, 818 WEST SEVENTH STREET, SUITE 930, LOS ANGELES, CA 90017.

I, Tamar Ravid, do hereby affirm that on the 11th day of February, 2021 at 1:45 pm, I:

served a CORPORATION by delivering a true copy of the **Summons and Class Action Complaint** with the date and hour of service endorsed thereon by me, to: **JESSIE GASTELUM** as **AUTHORIZED AGENT** for **FANDANGO MEDIA, LLC C/O CT CORPORATION SYSTEM**, at the address of: **818 WEST SEVENTH STREET, SUITE 930, LOS ANGELES, CA 90017**, and informed said person of the contents therein, in compliance with state statutes.

I certify that I am over the age of eighteen, and that I have no interest in the above action. Per F.S.92.525(2) Under penalties of perjury, I declare that I have read the foregoing Return of Service and the facts stated in it are true.

Tamar Ravid

Tamar Ravid  
#5967

Global Process Services Corp  
P.O. Box 961556  
Miami, FL 33296  
(786) 287-0606

Our Job Serial Number: GER-2021000383  
Ref: S&G

Copyright © 1992-2021 Database Services, Inc. - Process Server's Toolbox V8.1g



Filing # 121014502 E-Filed 02/08/2021 04:00:52 PM

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.

JASON GOLDSTEIN, individually and on behalf of  
all others similarly situated,

CLASS ACTION

*Plaintiff,*

JURY TRIAL DEMANDED

vs.

FANDANGO MEDIA, LLC,

*Defendant.*

SUMMONS

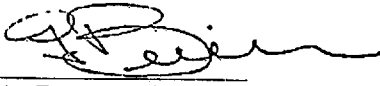
THE STATE OF FLORIDA:  
To Each Sheriff/Certified Process Server of the State

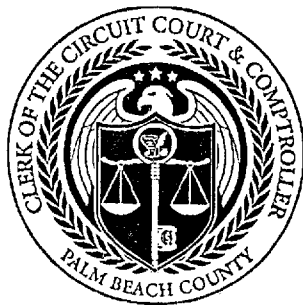
TO: Fandango Media, LLC  
c/o C T Corporation System  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017

Each Defendant is required to serve written defenses to the Complaint or petition on:  
**Andrew Shamis, Esq, Shamis & Gentile, P.A., 14 NE 1st Ave STE 705, Miami, Florida 33132,**  
within **twenty (20) days** after service of this summons on that Defendant, exclusive of the date of  
service, and to file the original of the defenses with the Clerk of this Court either before service on  
Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered  
against that Defendant for the relief demanded in the complaint or petition.

Dated this Feb 09 2021 1:27 day of \_\_\_\_\_, 2021.

CLERK JOSEPH ABRUZZO  
As Clerk of the Court

By:   
As Deputy Clerk



GINA BRIMMER D.C.

Filing # 121014502 E-Filed 02/08/2021 04:00:52 PM

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.

JASON GOLDSTEIN, *individually and on  
behalf of all others similarly situated,*

Plaintiff,

vs.

FANDANGO MEDIA, LLC,

Defendant.

---

CLASS ACTION

JURY TRIAL DEMANDED

**CLASS ACTION COMPLAINT**

Plaintiff Jason Goldstein brings this class action against Defendant Fandango Media, LLC, and alleges as follows upon personal knowledge as to Plaintiff and Plaintiff's own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by Plaintiff's attorneys.

**NATURE OF THE ACTION**

1. This is a class action under the Florida Security of Communications Act, Fla. Stat. Ann. § 934.01, *et seq.* ("FSCA"), arising from Defendant's unlawful interception of electronic communications. Specifically, this case stems from Defendant's use of tracking, recording, and/or "session replay" software to intercept Plaintiff's and the class members' electronic communications with Defendant's website, including how they interact with the website, their mouse movements and clicks, information inputted into the website, and/or pages and content viewed on the website.

2. Defendant intercepted the electronic communications at issue without the knowledge or prior consent of Plaintiff and the Class members. Defendant did so for its own



financial gain and in violation of Plaintiff's and the Class members' privacy rights under the FSCA. Such clandestine monitoring and recording of an individual's electronic communications has long been held a violation of the FSCA. *See, e.g., O'Brien v. O'Brien*, 899 So. 2d 1133 (Fla. 5th DCA 2005).

3. Defendant has intercepted the electronic communications involving Plaintiff and the Class members' visits to its website, causing them injuries, including invasion of their privacy and/or exposure of their private information.

4. Through this action, Plaintiff seeks injunctive relief to halt Defendant's unlawful interceptions. Plaintiff also seeks damages authorized by the FSCA on behalf of Plaintiff and the Class members, defined below, and any other available legal or equitable remedies resulting from the actions of Defendant described herein.

#### **PARTIES**

5. Plaintiff is, and at all times relevant hereto was, a citizen and resident of Palm Beach County, Florida.

6. Defendant is, and at all times relevant hereto was, a limited liability company that maintains its primary place of business at 407 North Maple Drive, Beverly Hills, California 90210.

#### **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction pursuant to Florida Rule of Civil Procedure 1.220 and Fla. Stat. § 26.012(2). The matter in controversy exceeds the sum or value of \$30,000 exclusive of interest, costs, and attorney's fees.

8. Defendant is subject to personal jurisdiction in Florida because this suit arises out of and relates to Defendant's contacts with this state. Defendant intercepted electronic communications from and to Florida without the consent of Plaintiff and the Class members.

Plaintiff and the Class members were in Florida when Defendant's unlawful interceptions occurred, and were injured while residing in and physically present in Florida.

9. Venue for this action is proper in this Court because all facts giving rise to this action occurred in this circuit.

### FACTS

10. Defendant owns and operates the following website: [www.fandango.com](http://www.fandango.com).

11. Over the past year and a half, Plaintiff visited Defendant's website approximately 3-6 times.

12. Plaintiff most recently visited Defendant's website on or about February 2020.

13. Plaintiff was in Florida during each visit to Defendant's website.

14. Upon information and belief, during one or more of these visits, Defendant utilized tracking, recording and/or "session replay" software to contemporaneously intercept Plaintiff's use and interaction with the website, including mouse clicks and movements, information inputted by Plaintiff, and/or pages and content viewed by Plaintiff. Defendant also recorded Plaintiff's location during the visits, as well as the time and dates of each visit.

15. Plaintiff never consented to interception of his electronic communications by Defendant or anyone else.

16. At no point in time did Plaintiff provide Defendant, its employees, or agents with consent to intercept Plaintiff's electronic communications.

17. Plaintiff and the putative Class members did not have a reasonable opportunity to discover Defendant's unlawful interceptions because Defendant did not disclose or seek their consent to intercept the communications.

18. Upon information and belief, Defendant similarly intercepted the electronic communications of other individuals located in Florida who visited Defendant's website.

19. Defendant's surreptitious interception Plaintiff's electronic communications caused Plaintiff harm, including invasion of his privacy and/or the exposure of private information.

### CLASS ALLEGATIONS

#### PROPOSED CLASS

20. Plaintiff brings this lawsuit as a class action on behalf of all other similarly situated persons pursuant to Florida Rule of Civil Procedure 1.220(b)(2) and (b)(3). The "Class" that Plaintiff seeks to represent is defined as:

**All persons residing within the State of Florida (1) who visited Defendant's website and (2) whose electronic communications were intercepted by Defendant or on Defendant's behalf (3) without their prior consent.**

21. Defendant and its employees or agents are excluded from the Class. Plaintiff reserves the right to modify or amend the Class definitions, as appropriate, during the course of this litigation.

#### NUMEROSITY

22. The Class members are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. The precise number of Class members is unknown to Plaintiff, but may be readily ascertained from Defendant's records and is believed to be no less than 100 individuals. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice

23. The identities of the Class members are unknown at this time and can be ascertained only through discovery. Identification of the Class members is a matter capable of ministerial determination from Defendant's records kept in connection with its unlawful interceptions.

**COMMON QUESTIONS OF LAW AND FACT**

24. There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual members of the Class. Among the questions of law and fact common to the Class are:

- (1) Whether Defendant violated the FSCA;
- (2) Whether Defendant intercepted Plaintiff's and the Class members' electronic communications;
- (3) Whether Defendant disclosed to Plaintiff and the Class Members that it was intercepting their electronic communications;
- (4) Whether Defendant secured prior consent before intercepting Plaintiff's and the Class members' electronic communications;
- (5) Whether Defendant is liable for damages, and the amount of such damages;
- and
- (6) Whether Defendant should be enjoined from such conduct in the future.

25. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendants routinely intercepts electronic communications without securing prior consent is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

**TYPICALITY**

26. Plaintiff's claims are typical of the claims of the Class members, as they are all based on the same factual and legal theories.

**PROTECTING THE INTERESTS OF THE CLASS MEMBERS**

27. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class and has retained competent counsel. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

**SUPERIORITY**

28. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are potentially in the millions of dollars, the individual damages incurred by each member of the Class resulting from Defendant's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

29. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example, one court might enjoin Defendant from performing the challenged acts, whereas another may not. Additionally, individual actions may be dispositive of the interests of the Class, although certain class members are not parties to such actions.

**COUNT I**  
**Violations of the FSCA, Fla. Stat. Ann. § 934.03**  
**(On Behalf of Plaintiff and the Class)**

30. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set forth herein.

31. It is a violation of the FSCA to intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept any electronic communication. Fla. Stat. Ann. § 934.03(1)(a).

32. Further, it is a violation to intentionally use, or endeavor to use, “the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection[.]” Fla. Stat. Ann. § 934.03(1)(d).

33. The FSCA defines “intercept” as the “acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.” Fla. Stat. Ann. § 934.02(3).

34. The FSCA defines “electronic communication” as “any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce....” Fla. Stat. Ann. § 934.02(12).

35. Defendant violated § 934.03(1)(a) of the FSCA by intercepting Plaintiff’s and the Class members’ electronic communications when they visited Defendant’s website.

36. Defendant intercepted Plaintiff’s and the Class members’ electronic communications without their prior consent.

37. Defendant violated § 934.03(1)(d) of the FSCA by using the unlawfully intercepted electronic communications.

38. Plaintiff and the Class members had an expectation of privacy during their visits to Defendant's website, which Defendant violated by intercepting their electronic communications with the website.

39. As a result of Defendant's conduct, and pursuant to § 934.10 of the FSCA, Plaintiff and the other members of the putative Class were harmed and are each entitled to "liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher[.]" Fla Stat. Ann. § 934.10(b).

40. Plaintiff is also entitled to "reasonable attorney's fees and other litigation costs reasonably incurred." Fla Stat. Ann. § 934.10(d).

41. Plaintiff and the Class members are also entitled to an injunction.

**WHEREFORE**, Plaintiff Jason Goldstein, on behalf of himself and the other members of the Class, prays for the following relief:

- a. A declaration that Defendant's practices described herein violate the Florida Security of Communications Act;
- b. An injunction prohibiting Defendant from intercepting the electronic communications of individuals visiting Defendant's website without their knowledge and consent;
- c. An award of actual, liquidated damages, and/or punitive statutory damages;
- d. Reasonable attorney's fees and costs; and
- e. Such further and other relief the Court deems reasonable and just.

**JURY DEMAND**

Plaintiff and Class Members hereby demand a trial by jury.

**DOCUMENT PRESERVATION DEMAND**

Plaintiff demands that Defendant take affirmative steps to preserve all records, lists, electronic databases or other itemizations associated with the allegations herein, including all records, lists, electronic databases or other itemizations in the possession of any vendors, individuals, and/or companies contracted, hired, or directed by Defendant to assist in sending the alleged communications.

Dated: February 8, 2021

Respectfully Submitted,

By: /s/ Andrew J. Shamis  
**SHAMIS & GENTILE, P.A.**  
Andrew J. Shamis, Esq.  
Florida Bar No. 101754  
ashamis@shamisgentile.com  
14 NE 1st Avenue, Suite 705  
Miami, Florida 33132  
(t) (305) 479-2299  
(f) (786) 623-0915

**EDELSBERG LAW, PA**  
Scott Edelsberg, Esq.  
Florida Bar No. 100537  
scott@edelsberglaw.com  
20900 NE 30th Ave., Suite 417  
Aventura, FL 33180  
Telephone: 305-975-3320

**HIRALDO P.A.**  
Manuel Hiraldo, Esq.  
Florida Bar No. 030380  
401 E. Las Olas Blvd., Suite 1400  
Fort Lauderdale, FL 33301  
MHiraldo@Hiraldolaw.com  
Telephone: 954-400-4713

*Counsel for Plaintiff and Proposed Class*



**FORM 1.997. CIVIL COVER SHEET**

The civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other documents as required by law. This form must be filed by the plaintiff or petitioner with the Clerk of Court for the purpose of reporting uniform data pursuant to section 25.075, Florida Statutes. (See instructions for completion.)

**I. CASE STYLE**

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY, FLORIDA

Jason Goldstein  
Plaintiff

Case # \_\_\_\_\_  
Judge \_\_\_\_\_

vs.  
Fandango Media LLC  
Defendant

**II. AMOUNT OF CLAIM**

Please indicate the estimated amount of the claim, rounded to the nearest dollar. The estimated amount of the claim is requested for data collection and clerical processing purposes only. The amount of the claim shall not be used for any other purpose.

- \$8,000 or less
- \$8,001 - \$30,000
- \$30,001- \$50,000
- \$50,001- \$75,000
- \$75,001 - \$100,000
- over \$100,000.00

**III. TYPE OF CASE** (If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x on both the main category and subcategory lines.

## CIRCUIT CIVIL

- Condominium
- Contracts and indebtedness
- Eminent domain
- Auto negligence
- Negligence—other
  - Business governance
  - Business torts
  - Environmental/Toxic tort
  - Third party indemnification
  - Construction defect
  - Mass tort
  - Negligent security
  - Nursing home negligence
  - Premises liability—commercial
  - Premises liability—residential
- Products liability
- Real Property/Mortgage foreclosure
  - Commercial foreclosure
  - Homestead residential foreclosure
  - Non-homestead residential foreclosure
  - Other real property actions
- Professional malpractice
  - Malpractice—business
  - Malpractice—medical
  - Malpractice—other professional
- Other
  - Antitrust/Trade regulation
  - Business transactions
  - Constitutional challenge—statute or ordinance
  - Constitutional challenge—proposed amendment
  - Corporate trusts
  - Discrimination—employment or other
  - Insurance claims
  - Intellectual property
  - Libel/Slander
  - Shareholder derivative action
  - Securities litigation
  - Trade secrets
  - Trust litigation

## COUNTY CIVIL

- Small Claims up to \$8,000
- Civil
- Real property/Mortgage foreclosure

- Replevins
- Evictions
  - Residential Evictions
  - Non-residential Evictions
- Other civil (non-monetary)

**COMPLEX BUSINESS COURT**

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes  No

**IV. REMEDIES SOUGHT (check all that apply):**

- Monetary;
- Nonmonetary declaratory or injunctive relief;
- Punitive

**V. NUMBER OF CAUSES OF ACTION: [ 1 ]**  
(Specify)

1

**VI. IS THIS CASE A CLASS ACTION LAWSUIT?**

- yes
- no

**VII. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?**

- no
- yes If "yes," list all related cases by name, case number, and court.

**VIII. IS JURY TRIAL DEMANDED IN COMPLAINT?**

- yes
- no

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief, and that I have read and will comply with the requirements of Florida Rule of Judicial Administration 2.425.

Signature: s/ Angelica Gentile Gentile  
Attorney or party

Fla. Bar # 102630  
(Bar # if attorney)

Angelica Gentile Gentile  
(type or print name)

02/08/2021  
Date

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

**CASE NO. 502021CA001745XXXXMB**

JASON GOLDSTEIN,  
individually and on behalf of all,  
others similarly situated,

Plaintiff,

v.

FANDANGO MEDIA, LLC,

Defendant.

**CLASS ACTION**

**JURY TRIAL DEMANDED**

**NOTICE OF APPEARANCE ON BEHALF OF PLAINTIFF**

PLEASE TAKE NOTICE that Manuel S. Hiraldo of the law firm of Hiraldo P.A. enters his appearance in this case as counsel for Plaintiff and requests that copies of all pleadings, motions, orders, notices, correspondence, and documents of any kind regarding the above-styled cause be served upon said counsel.

Date: February 10, 2021

Respectfully submitted,

**HIRALDO P.A.**

401 E. Las Olas Boulevard, Suite 1400  
Ft. Lauderdale, Florida 33301

/s/ Manuel S. Hiraldo

Manuel S. Hiraldo

Florida Bar No. 030380

Email: mhiraldo@hiraldolaw.com

Telephone: 954.400.4713

*Counsel for Plaintiff*

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Fandango Tracked Florida Website Users' Communications](#)

---