

**THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

JAVAE PATTON, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

Case No.

PIZZA HUT, LLC,

State Court Case No. 2021-018755-CA-01

Defendant.

_____/

NOTICE OF REMOVAL OF CIVIL ACTION

Pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, defendant Pizza Hut, LLC. (“Pizza Hut” or “Defendant”) hereby removes this action from the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, and styled as Case No. 2021-018755-CA-01 (the “State Court Action”), to the United States District Court for the Southern District of Florida, Miami Division. In support of removal, Pizza Hut states as follows:

I. BACKGROUND

1. On August 4, 2021, Plaintiff Javae Patton (“Plaintiff”), individually and on behalf of all others similarly situated, commenced a putative class action by filing a Class Action Complaint (“Complaint”) against Pizza Hut. A true and correct copy of the Complaint is attached hereto as **Exhibit A**.

2. On August 18, 2021, Pizza Hut was served with the Complaint. A true and correct copy of the Service of Process is attached hereto as **Exhibit B**.

3. True and correct copies of all process, pleadings, and orders in the State Court Action not previously referenced are attached hereto as **Exhibit C**.

4. The Complaint alleges that Pizza Hut sent telephonic sales calls to Plaintiff and putative class members without having secured prior express written consent in purported violation of the Florida Telephone Solicitation Act (“FTSA”), Fla. Stat. § 501.059 and Senate Bill No. 1120 (Ex. A ¶¶ 1–2).

5. This Notice of Removal is timely under 28 U.S.C. § 1446(b), as it is filed within thirty (30) days after Plaintiff’s service of the Complaint upon Pizza Hut.

6. Nothing in this Notice of Removal shall constitute a waiver of Pizza Hut's right to assert any defense, including motions pursuant to Federal Rule of Civil Procedure 12, as the case progresses.

II. VENUE

7. The basis for removal and this Court’s original jurisdiction derives from 28 U.S.C. § 1332. This is a purported class action in which the Complaint alleges that the putative class member number "in the several thousands" and the alleged damages sustained by the Class are "in the millions of dollars," exclusive of interest and costs, and is a class action in which the plaintiff is a citizen of a State different

from the defendant. Removal is proper under 28 U.S.C. § 1441 because this Court has original diversity jurisdiction over the underlying dispute pursuant to 28 U.S.C. § 1332(d)(2).

8. Venue is proper under 28 U.S.C. § 1441(a) because this Court is the district and division embracing Miami-Dade County, Florida, the location where the State Court Action is pending.

III. JURISDICTION

9. This action is properly removable under the Class Action Fairness Act, 28 U.S.C. § 1332 (“CAFA”), because, as discussed in more detail below, (i) it is a purported class action, (ii) the putative class exceeds 100 individuals, (iii) the plaintiff is a citizen of a State different from the defendant, and (iv) the amount in controversy exceeds \$5,000,000 in the aggregate, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d).

A. This Action Meets the “Class Action” Definition Under CAFA

10. The State Court Action is a “class action.” CAFA provides:

[T]he term “class action” means any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action

28 U.S.C. § 1332(d)(1)(B). CAFA further provides “[t]his subsection shall apply 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).

11. Plaintiff filed the State Court Action as a putative class action. *See* (Ex. A ¶ 1) (“This is a class action. . . .”)

12. Plaintiff also asserts that he seeks to represent a class, defined as:

All persons in Florida who, (1) were sent a telephonic sales call regarding Defendant’s goods and/or services, (2) using the same equipment or type of equipment utilized to call Plaintiff.

(Ex. A ¶ 18).

B. The Putative Class Exceeds 100 Members

13. Plaintiff alleges that the putative class is, upon information and belief, “in the several thousands, if not more.” (Ex. A ¶ 19). Accordingly, the proposed class has at least one hundred members in the aggregate. 28 U.S.C. § 1332(d)(5)(b).¹

C. The Action Meets CAFA’s Minimal Diversity Requirement

14. CAFA applies when “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). “Under CAFA, federal courts now have original jurisdiction over class actions in which the amount in controversy exceeds \$5,000,000 and there is minimal diversity (at least one plaintiff and one defendant are from different states).” *Evans v. Walter Indus., Inc.*, 449 F.3d 1159, 1163 (11th Cir. 2006).

¹ Although the putative class proposed by Plaintiff meets the threshold for jurisdictional purposes, Pizza Hut denies that this action ultimately will prove appropriate for class treatment.

15. Plaintiff alleges that he is a citizen of Florida. (Ex. A ¶ 5).

16. Pizza Hut is a limited liability company, incorporated in Delaware, with its principal place of business in Plano, Texas. (Ex. A ¶ 9; *see also Exhibit D*, Declaration of Michael Whitman, ¶ 3). The Sole Member and Manager of Pizza Hut, LLC is Pizza Hut Guarantor, LLC. Pizza Hut Guarantor, LLC is a Delaware limited liability company that is not qualified to do business in Florida. *Rolling Greens MHP, L.P. v. Comcast SCH Holdings, L.L.C.*, 374 F.3d 1020, 1022 (11th Cir. 2004) (“[A] limited liability company is a citizen of any state of which a member of the company is a citizen.” Accordingly, because Plaintiff is a citizen of Florida, and Pizza Hut a citizen of Delaware, CAFA’s minimal diversity requirement is satisfied.

D. This Action Meets CAFA’s Amount-in-Controversy Requirement

17. CAFA creates original jurisdiction for “any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(2). The claims of the individual class members are aggregated to determine whether the matter in controversy exceeds \$5,000,000. 28 U.S.C. § 1332(d)(6).

18. The amount-in-controversy analysis considers the amount the plaintiff has placed in controversy, not the amount the plaintiff is likely to recover. *McDaniel v. Fifth Third Bank*, No. 14-11615, 2014 U.S. App. LEXIS 10489, *2-*3 (11th Cir. June 5, 2014) (“[T]he plaintiff[’s] likelihood of success on the merits is largely

irrelevant to the court's jurisdiction because the pertinent question is what is in controversy in the case, not how much the plaintiffs are ultimately likely to recover.") (citing *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 751 (11th Cir. 2010) (emphasis in original)).

19. To satisfy this requirement, "a defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold; the notice need not contain evidentiary submissions." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 81 (2014); *see also Anderson v. Wilco Life Ins. Co.*, 943 F.3d 917, 925 (11th Cir. 2019).

20. Nevertheless, Pizza Hut has submitted a declaration in support of its notice of removal that demonstrates that amount in controversy requirement is satisfied. *See* Ex. D; *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 755 (11th Cir. 2010) (To establish the amount in controversy, "[d]efendants may introduce their own affidavits, declarations, or other documentation[.]"); *id.* at 756 (noting that "declaration by itself" can establish jurisdictional requirement); *Dudley v. Eli Lilly and Co.*, 778 F.3d 909, 917 (11th Cir. 2014) (agreeing with observation that defendant, in response to motion to remand, should not be required to produce "detailed, sales-record-by-sales-record proof" regarding the amount in controversy).

21. When determining whether the \$5,000,000 threshold has been surpassed, "a court may rely on evidence put forward by the removing defendant, as

well as reasonable inferences and deductions drawn from that evidence.” *Anderson*, 943 F.3d at 925 (citing *S. Fla. Wellness, Inc. v. Allstate Ins. Co.*, 745 F.3d 1312, 1315 (11th Cir. 2014)). Although Plaintiff’s Complaint filed in the State Court Action does not specify the amount of damages Plaintiff and the class seek in total, it includes allegations that indicate the amount in controversy exceeds \$5,000,000, exclusive of interests and costs. (Ex. A ¶ 26).

22. To that end, Plaintiff’s Complaint seeks declaratory and injunctive relief, statutory damages, and attorneys’ fees and costs. (Ex. A ¶ 67). The damages sought by Plaintiff are set forth by the FTSA, which provides for “actual damages or \$500, whichever is greater.” (Senate Bill No. 1120 (amending Flat. Stat. § 501.059 (10)(a)). Additionally, if the court finds that the defendant willfully or knowingly violated this the FTSA, the court may, in its discretion, increase the amount of the award to an amount equal to not more than three times the amount available under the FTSA. (*id.* (amending Fla. Stat. § 501.059 (10)(b)). The statute of limitations for an FTSA claim is four years. (Fla. Stat. § 95.11(3)(f))

23. Business records available to Pizza Hut reflect that during the four years prior to the filing of the Complaint, above 10,000 text messages were sent to customers with Florida area codes or addresses in Florida for the purpose of soliciting a sale of consumer goods, or obtaining information that may be used for the direct solicitation of a sale of consumer goods. *See* Ex. D ¶¶ 9-10. Since Plaintiff

seeks to recover up to the maximum statutory damages of \$500 for each class member, the aggregated sum of alleged statutory damages alone therefore exceeds \$5,000,000. Plaintiff's claims for attorneys' fees and injunctive relief further increase the "sum or value" his demand places in controversy and, when taken together with the statutory damages Plaintiff demands, yields a value that satisfies the jurisdiction amount under CAFA. *See* 28 U.S.C. § 1332(d)(2); *see also Federated Mut. Ins. Co. v. McKinnon Motors, LLC*, 329 F.3d 805, 808 (11th Cir. 2003) ("The general rule is that attorneys' fees do not count towards the amount in controversy unless they are allowed for by statute or contract.").

IV. NOTICE

24. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served on Plaintiff's counsel and a copy is being filed with the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

25. A copy of the civil cover sheet is attached hereto.

V. CONCLUSION

WHEREFORE, Pizza Hut, LLC respectfully requests that this matter be removed to the United States District Court for the Southern District of Florida and that this Court to assume full jurisdiction over the cause herein, as provided by law, and to issue all necessary orders and process.

DATED: September 16, 2021.

Respectfully submitted,

By: /s/ Cory W. Eichhorn

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Attorneys for Pizza Hut, LLC

EXHIBIT A

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO.

JAVAE PATTON,
individually and on behalf of all,
others similarly situated,

Plaintiff,

CLASS ACTION

JURY TRIAL DEMANDED

v.

PIZZA HUT, LLC,

Defendant.

_____ /

CLASS ACTION COMPLAINT

Plaintiff Javae Patton brings this class action against Defendant Pizza Hut, 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 Telephone Solicitation Act ("FTSA"), Fla. Stat. § 501.059, as amended by Senate Bill No. 1120.¹

2. To promote its goods and services, Defendant engages in telephonic sales calls to consumers without having secured prior express written consent as required by the FTSA.

3. Defendant's telephonic sales calls have caused Plaintiff and the Class members harm, including violations of their statutory rights, statutory damages, annoyance, nuisance, and invasion of their privacy.

¹ The amendment to the FTSA became effective on July 1, 2021.

4. Through this action, Plaintiff seeks an injunction and statutory damages on behalf of himself and the Class members, as defined below, and any other available legal or equitable remedies resulting from the unlawful actions of Defendant.

PARTIES

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

6. Plaintiff is, and at all times relevant hereto was, an individual and a “called party” as defined by Fla. Stat. § 501.059(1)(a) in that he was the regular user of cellular telephone number that received Defendant’s telephonic sales calls.

7. Defendant is, and at all times relevant hereto was, a foreign corporation and a “telephone solicitor” as defined by Fla. Stat. § 501.059(f). Defendant maintains its primary place of business and headquarters in Plano, Texas. Defendant directs, markets, and provides business activities throughout the State of Florida.

JURISDICTION AND VENUE

8. 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.

9. Defendant is subject to personal jurisdiction in Florida because this suit arises out of and relates to Defendant’s contacts with this state. Defendant made or caused to be made telephonic sales calls into Florida without the requisite prior express written consent in violation of the FTSA. Plaintiff received such calls while residing in and physically present in Florida.

10. Venue for this action is proper in this Court pursuant to Fla. Stat. § 47.051 because Defendant (1) is a foreign corporation doing business in this state; and (2) has an agent or other representative in Miami-Dade County.

FACTS

11. Commencing on or about July 9, 2021, Defendant sent the following telephonic sales calls to Plaintiff's cellular telephone number:

31524 >

Fri, Jul 9, 4:36 PM

Pizza Hut: Last call to order The Edge. Run (don't walk) to get it.

<https://bit.ly/3qWgew3>

Reply STOP to unsubscribe

Fri, Jul 23, 4:10 PM

Pizza Hut: Over a POUND of meat & cheese for just \$12.99. Get a large Meat Lover's today.

<https://bit.ly/2TtEZU9>

Reply STOP to unsubscribe

Friday 4:12 PM

Pizza Hut: There are six meats on every slice of our large Meat Lover's - just \$12.99.

<https://bit.ly/376RPea>

Sunday 1:10 PM

Pizza Hut: Check dinner (and tomorrow's breakfast) off the to-do list with the Big Dinner Box.

<https://bit.ly/3f10K5j>

Reply STOP to unsubscribe

12. As demonstrated by the above screenshots, the purpose of Defendant's telephonic sales calls was to solicit the sale of consumer goods and/or services.

13. Upon information and belief, Defendant caused similar telephonic sales calls to be sent to individuals residing in Florida.

14. Plaintiff is the regular user of the telephone number that received the above telephonic sales calls.

15. To transmit the above telephonic sales calls, Defendant utilized a computer software system that automatically selected and dialed Plaintiff's and the Class members' telephone numbers.

16. Plaintiff never provided Defendant with express written consent authorizing Defendant to transmit telephonic sales calls to Plaintiff's cellular telephone number utilizing an automated system for the selection or dialing of telephone numbers.

17. Defendant's telephonic sales calls caused Plaintiff and the Class members harm, including statutory damages, inconvenience, invasion of privacy, aggravation, annoyance.

CLASS ALLEGATIONS

PROPOSED CLASS

18. Plaintiff brings this lawsuit as a class action on behalf of himself individually and on behalf of all other similarly situated persons as a class action 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 in Florida who, (1) were sent a telephonic sales call regarding Defendant’s goods and/or services, (2) using the same equipment or type of equipment utilized to call Plaintiff.

19. Defendant and its employees or agents are excluded from the Class. Plaintiff does not know the exact number of members in the Class but believes the Class members number in the several thousands, if not more.

NUMEROSITY

20. Upon information and belief, Defendant has placed telephonic sales calls to telephone numbers belonging to thousands of consumers listed throughout Florida without their prior express written consent. The members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

21. The exact number and 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 call records.

COMMON QUESTIONS OF LAW AND FACT

22. 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 initiated telephonic sales calls to Plaintiff and the Class members; [2] Whether Defendant can meet its burden of

showing that it had prior express written consent to make such calls; and [3] Whether Defendant is liable for damages, and the amount of such damages.

23. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendant routinely transmits telephonic sales calls without prior express written consent is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

TYPICALITY

24. 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

25. 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

26. 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 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.

27. 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
VIOLATION OF FLA. STAT. § 501.059
(On Behalf of Plaintiff and the Class)

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

29. It is a violation of the FTSA to “make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.” Fla. Stat. § 501.059(8)(a).

30. A “telephonic sales call” is defined as a “telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.” Fla. Stat. § 501.059(1)(i).

31. “Prior express written consent” means an agreement in writing that:

1. Bears the signature of the called party;
2. Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection or dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail;

3. Includes the telephone number to which the signatory authorizes a telephonic sales call to be delivered; and
4. Includes a clear and conspicuous disclosure informing the called party that:
 - a. By executing the agreement, the called party authorizes the person making or allowing the placement of a telephonic sales call to deliver or cause to be delivered a telephonic sales call to the called party using an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called; and
 - b. He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

Fla. Stat. § 501.059(1)(g).

32. Defendant failed to secure prior express written consent from Plaintiff and the Class members.

33. In violation of the FTSA, Defendant made and/or knowingly allowed telephonic sales calls to be made to Plaintiff and the Class members without Plaintiff's and the Class members' prior express written consent.

34. Defendant made and/or knowingly allowed the telephonic sales calls to Plaintiff and the Class members to be made utilizing an automated system for the selection or dialing of telephone numbers.

35. As a result of Defendant's conduct, and pursuant to § 501.059(10)(a) of the FTSA, Plaintiff and Class members were harmed and are each entitled to a minimum of \$500.00 in damages for each violation. Plaintiff and the Class members are also entitled to an injunction against future calls. *Id.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for the following relief:

- a) An order certifying this case as a class action on behalf of the Class as defined above, and appointing Plaintiff as the representative of the Class and Plaintiff's counsel as Class Counsel;
- b) An award of statutory damages for Plaintiff and each member of the Class;
- c) An order declaring that Defendant's actions, as set out above, violate the FTSA;
- d) An injunction requiring Defendant to cease all telephonic sales calls made without express written consent, and to otherwise protect the interests of the Class;
- e) Such further and other relief as the Court deems necessary.

JURY DEMAND

Plaintiff, individually and on behalf of the Class, 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 itemization of telephone numbers associated with the communications or transmittal of the calls as alleged herein.

DATED: August 4, 2021

Respectfully Submitted,

HIRALDO P.A.

/s/ Manuel S. Hiraldo

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Aventura, Florida 333180
Email: rachel@dapeer.com
Telephone: 305-610-5223

Counsel for Plaintiff

EXHIBIT B



PROCESS SERVER DELIVERY DETAILS

Date: Wed, Aug 18, 2021

Server Name: Norman Collins

Entity Served	PIZZA HUT, LLC
Case Number	2021-018755-CA-01
Jurisdiction	TX

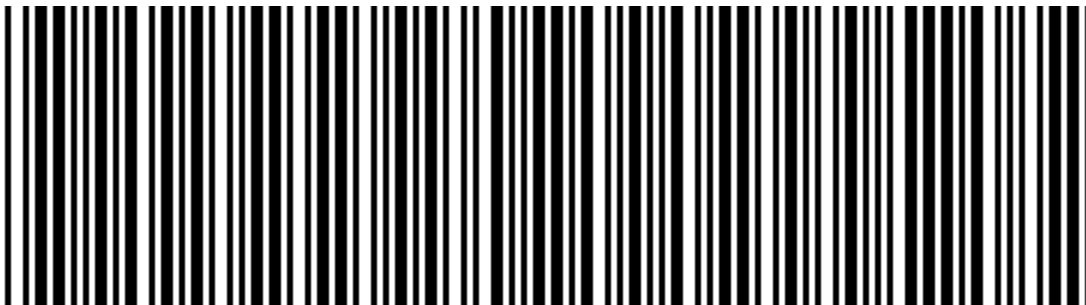


EXHIBIT C

COMPREHENSIVE CASE INFORMATION SYSTEM

Harvey Ruvin, Clerk of the Circuit and County Courts

MIAMI-DADE COUNTY



"We are agents of change and advocates of innovation. We apply appropriate strategic, technological, process and people"



eportaluser

Collapse All














Case Number	Filed Date	Disposition Date	County	Case Type	Status	Contested	Jury Trial
132021CA018755000001 [2021-018755-CA-01]	08/04/2021		MIAMI-DADE	Business Torts	Open	No	Yes

	Party Name	Party Type	Attorney	Bar ID
▶	THOMAS, WILLIAM J	JUDGE		
▶	Hiraldo, Manuel Santiago	ATTORNEY		
▶	Eichhorn, Cory William	ATTORNEY		
▶	WHITE, BRANDON T.	ATTORNEY		
▶	Alexander, Sydney B	ATTORNEY		
▶	Patton, Javae	PLAINTIFF	HIRALDO, MANUEL SANTIAGO	30380
▶	Pizza Hut LLC	DEFENDANT	ALEXANDER, SYDNEY BROOKE	1019569

Dockets

Page : 1

ALL

Image	Doc #	Action Date	Description	Pages
	15	09/11/2021	Request for Discovery	15
	14	09/08/2021	Case Management Report	6
	13	08/30/2021	Notice of Appearance Party: Eichhorn, Cory William; WHITE, BRANDON T.; Alexander, Sydney B; Pizza Hut LLC	2
	12	08/26/2021	Motion for Extension of Time Party: Hiraldo, Manuel Santiago; Patton, Javae	3
	11	08/17/2021	Order Setting Case Management Conference September 8, 2021 At 4:15 PM	8
	10	08/17/2021	Order: Mandatory Order To Confer And Certification Requirement	2
	9	08/17/2021	Notice of Hearing- 09/08/2021 @ 4:15 PM	3
	8	08/17/2021	Order: NOTICE AND ORDER OF ADHERENCE TO COMPLEX BUSINESS LITIGATION SECTION PROCEDURES	3
	7	08/17/2021	Order: ON MOTIONS AND MEMO REQUIREMENTS	3
	6	08/17/2021	Receipt: Receipt#:2890052 Amt Paid:\$10.00 Name:HIRALDO, MANUEL SANTIAGO 500 E BROWARD BLVD STE 2100 FORT LAUDERDALE FL 33394-3029 Comment: Allocation Code Quantity Unit Amount 3139-Summons Issue Fee 1 \$10.00 \$10.00 Tender Type:E-Filing ACH Tender Amt:\$10.00 Receipt Date:08/17/2021 Register#:289 Cashier:EFilingUser	
	5	08/16/2021	ESummons 20 Day Issued Re: Index # 4. Party: Pizza Hut LLC	1
	4	08/15/2021	(M) 20 Day (C) Summons (Sub) Received	1
	3	08/07/2021	Receipt: Receipt#:2970007 Amt Paid:\$401.00 Name:HIRALDO, MANUEL SANTIAGO 500 E BROWARD BLVD STE 2100 FORT LAUDERDALE FL 33394-3029 Comment: Allocation Code Quantity Unit Amount 3100-Circuit Filing Fee 1 \$401.00 \$401.00 Tender Type:E-Filing ACH Tender Amt:\$401.00 Receipt Date:08/07/2021 Register#:297 Cashier:EFilingUser	
	2	08/04/2021	Complaint	10
	1	08/04/2021	Civil Cover Sheet - Claim Amount Amount: 100001.00	3

Judge Assignment History

Assigned Date	Withdraw Date	Judicial Officer	Type
08/04/2021	-	Thomas, William	

Court Events

Event Date	Judge	Docket Type	Location	Prosecutor	Defendant Attorney
2021-09-08 16:15:00	Section, CA 44	Case Management Conference			Eichhorn, Cory William

Financial Summary

Financial Summary			
Assessment	Total: \$411.00	Paid to Date: \$411.00	Balance Due: \$0.00
Restitution	Total: \$0.00	Paid to Date: \$0.00	Balance Due: \$0.00
Financial Details			

Count	Assessment Due	Assessment Paid to Date	Restitution Due	Restitution Paid to Date	Last Payment Date
	\$411.00	\$411.00	\$0.00	\$0.00	-

This information reflects the financial obligations shown on the Florida Comprehensive Case Information System (CCIS) for THIS CASE ONLY. For the current balances of your financial obligations, you should contact the Clerk of the Court in the county where the financial obligation was imposed. Nothing in CCIS alters any financial obligation imposed by a court.

Reopen History



Reopen Date	Reopen Close Date	Reopen Reason
No records found.		

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 ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

Javae Patton
Plaintiff

Case # _____
Judge _____

vs.

Pizza Hut 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: []
(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/ Manuel S Hiraldo
Attorney or party

Fla. Bar # 30380
(Bar # if attorney)

Manuel S Hiraldo
(type or print name)

08/04/2021
Date

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO.

JAVAE PATTON,
individually and on behalf of all,
others similarly situated,

Plaintiff,

CLASS ACTION

JURY TRIAL DEMANDED

v.

PIZZA HUT, LLC,

Defendant.

_____ /

CLASS ACTION COMPLAINT

Plaintiff Javae Patton brings this class action against Defendant Pizza Hut, 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 Telephone Solicitation Act ("FTSA"), Fla. Stat. § 501.059, as amended by Senate Bill No. 1120.¹

2. To promote its goods and services, Defendant engages in telephonic sales calls to consumers without having secured prior express written consent as required by the FTSA.

3. Defendant's telephonic sales calls have caused Plaintiff and the Class members harm, including violations of their statutory rights, statutory damages, annoyance, nuisance, and invasion of their privacy.

¹ The amendment to the FTSA became effective on July 1, 2021.

4. Through this action, Plaintiff seeks an injunction and statutory damages on behalf of himself and the Class members, as defined below, and any other available legal or equitable remedies resulting from the unlawful actions of Defendant.

PARTIES

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

6. Plaintiff is, and at all times relevant hereto was, an individual and a “called party” as defined by Fla. Stat. § 501.059(1)(a) in that he was the regular user of cellular telephone number that received Defendant’s telephonic sales calls.

7. Defendant is, and at all times relevant hereto was, a foreign corporation and a “telephone solicitor” as defined by Fla. Stat. § 501.059(f). Defendant maintains its primary place of business and headquarters in Plano, Texas. Defendant directs, markets, and provides business activities throughout the State of Florida.

JURISDICTION AND VENUE

8. 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.

9. Defendant is subject to personal jurisdiction in Florida because this suit arises out of and relates to Defendant’s contacts with this state. Defendant made or caused to be made telephonic sales calls into Florida without the requisite prior express written consent in violation of the FTSA. Plaintiff received such calls while residing in and physically present in Florida.

10. Venue for this action is proper in this Court pursuant to Fla. Stat. § 47.051 because Defendant (1) is a foreign corporation doing business in this state; and (2) has an agent or other representative in Miami-Dade County.

FACTS

11. Commencing on or about July 9, 2021, Defendant sent the following telephonic sales calls to Plaintiff's cellular telephone number:

31524 >

Fri, Jul 9, 4:36 PM

Pizza Hut: Last call to order The Edge. Run (don't walk) to get it.

<https://bit.ly/3qWgew3>

Reply STOP to unsubscribe

Fri, Jul 23, 4:10 PM

Pizza Hut: Over a POUND of meat & cheese for just \$12.99. Get a large Meat Lover's today.

<https://bit.ly/2TtEZU9>

Reply STOP to unsubscribe

Friday 4:12 PM

Pizza Hut: There are six meats on every slice of our large Meat Lover's - just \$12.99.

<https://bit.ly/376RPea>

Sunday 1:10 PM

Pizza Hut: Check dinner (and tomorrow's breakfast) off the to-do list with the Big Dinner Box.

<https://bit.ly/3f10K5j>

Reply STOP to unsubscribe

12. As demonstrated by the above screenshots, the purpose of Defendant's telephonic sales calls was to solicit the sale of consumer goods and/or services.

13. Upon information and belief, Defendant caused similar telephonic sales calls to be sent to individuals residing in Florida.

14. Plaintiff is the regular user of the telephone number that received the above telephonic sales calls.

15. To transmit the above telephonic sales calls, Defendant utilized a computer software system that automatically selected and dialed Plaintiff's and the Class members' telephone numbers.

16. Plaintiff never provided Defendant with express written consent authorizing Defendant to transmit telephonic sales calls to Plaintiff's cellular telephone number utilizing an automated system for the selection or dialing of telephone numbers.

17. Defendant's telephonic sales calls caused Plaintiff and the Class members harm, including statutory damages, inconvenience, invasion of privacy, aggravation, annoyance.

CLASS ALLEGATIONS

PROPOSED CLASS

18. Plaintiff brings this lawsuit as a class action on behalf of himself individually and on behalf of all other similarly situated persons as a class action 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 in Florida who, (1) were sent a telephonic sales call regarding Defendant’s goods and/or services, (2) using the same equipment or type of equipment utilized to call Plaintiff.

19. Defendant and its employees or agents are excluded from the Class. Plaintiff does not know the exact number of members in the Class but believes the Class members number in the several thousands, if not more.

NUMEROSITY

20. Upon information and belief, Defendant has placed telephonic sales calls to telephone numbers belonging to thousands of consumers listed throughout Florida without their prior express written consent. The members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

21. The exact number and 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 call records.

COMMON QUESTIONS OF LAW AND FACT

22. 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 initiated telephonic sales calls to Plaintiff and the Class members; [2] Whether Defendant can meet its burden of

showing that it had prior express written consent to make such calls; and [3] Whether Defendant is liable for damages, and the amount of such damages.

23. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendant routinely transmits telephonic sales calls without prior express written consent is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

TYPICALITY

24. 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

25. 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

26. 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 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.

27. 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
VIOLATION OF FLA. STAT. § 501.059
(On Behalf of Plaintiff and the Class)

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

29. It is a violation of the FTSA to “make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.” Fla. Stat. § 501.059(8)(a).

30. A “telephonic sales call” is defined as a “telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.” Fla. Stat. § 501.059(1)(i).

31. “Prior express written consent” means an agreement in writing that:

1. Bears the signature of the called party;
2. Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection or dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail;

3. Includes the telephone number to which the signatory authorizes a telephonic sales call to be delivered; and
4. Includes a clear and conspicuous disclosure informing the called party that:
 - a. By executing the agreement, the called party authorizes the person making or allowing the placement of a telephonic sales call to deliver or cause to be delivered a telephonic sales call to the called party using an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called; and
 - b. He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

Fla. Stat. § 501.059(1)(g).

32. Defendant failed to secure prior express written consent from Plaintiff and the Class members.

33. In violation of the FTSA, Defendant made and/or knowingly allowed telephonic sales calls to be made to Plaintiff and the Class members without Plaintiff's and the Class members' prior express written consent.

34. Defendant made and/or knowingly allowed the telephonic sales calls to Plaintiff and the Class members to be made utilizing an automated system for the selection or dialing of telephone numbers.

35. As a result of Defendant's conduct, and pursuant to § 501.059(10)(a) of the FTSA, Plaintiff and Class members were harmed and are each entitled to a minimum of \$500.00 in damages for each violation. Plaintiff and the Class members are also entitled to an injunction against future calls. *Id.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for the following relief:

- a) An order certifying this case as a class action on behalf of the Class as defined above, and appointing Plaintiff as the representative of the Class and Plaintiff's counsel as Class Counsel;
- b) An award of statutory damages for Plaintiff and each member of the Class;
- c) An order declaring that Defendant's actions, as set out above, violate the FTSA;
- d) An injunction requiring Defendant to cease all telephonic sales calls made without express written consent, and to otherwise protect the interests of the Class;
- e) Such further and other relief as the Court deems necessary.

JURY DEMAND

Plaintiff, individually and on behalf of the Class, 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 itemization of telephone numbers associated with the communications or transmittal of the calls as alleged herein.

DATED: August 4, 2021

Respectfully Submitted,

HIRALDO P.A.

/s/ Manuel S. Hiraldo

Manuel S. Hiraldo, Esq.
Florida Bar No. 030380
401 E. Las Olas Boulevard
Suite 1400
Ft. Lauderdale, Florida 33301
Email: mhiraldo@hirdolaw.com
Telephone: 954.400.4713

DAPEER LAW, P.A.

Rachel N. Dapeer, Esq.
20900 NE 30th Avenue, Ste. 417
Aventura, Florida 333180
Email: rachel@dapeer.com
Telephone: 305-610-5223

Counsel for Plaintiff

<input checked="" type="checkbox"/> IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA. <input type="checkbox"/> IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.		
DIVISION <input checked="" type="checkbox"/> CIVIL <input type="checkbox"/> DISTRICTS <input type="checkbox"/> OTHER	SUMMONS 20 DAY CORPORATE SERVICE (a) GENERAL FORMS	CASE NUMBER 2021-018755-CA-01
PLAINTIFF(S) JAVAE PATTON	VS. DEFENDANT(S) PIZZA HUT, LLC	SERVICE

THE STATE OF FLORIDA:

To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and copy of the complaint or petition in this action on defendant(s): Pizza Hut, LLC

Registered Agent: C T Corporation System

1999 BRYAN ST. SUITE 900 DALLAS, TX 75201


Each defendant is required to serve written defense to the complaint or petition on

Plaintiff's Attorney: Manuel S Hiraldo

whose address is: 401 E. Las Olas Blvd., Ste. 1400, Fort Lauderdale, FL 33301

CLOCK IN

within 20 days " Except when suit is brought pursuant to s. 768.28, Florida Statutes, if the State of Florida, one of its agencies, or one of its officials or employees sued in his or her official capacity is a defendant, the time to respond shall be 40 days. When suit is brought pursuant to. 768.28, Florida Statutes, the time to respond shall be 30 days." after service of this summons on that defendant , exclusive of the day of service, and to file the original of the defenses with the Clerk of this Clerk 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.

HARVEY RUVIN CLERK of COURTS	 DEPUTY CLERK	DATE 8/16/2021
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AMERICANS WITH DISABILITIES ACT OF 1990
ADA NOTICE

"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Alian Simpkins, the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1st Avenue, Suite 2400, Miami, FL 33128; Telephone (305) 349-7175; TDD (305) 349-7174, Email ADA@jud11.flcourts.org; or via Fax at (305) 349-7355, at least seven (7) days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than seven (7) days; if you are hearing or voice impaired, call 711."

<input checked="" type="checkbox"/> IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA. <input type="checkbox"/> IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.		
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CLOCK IN

within 20 days " Except when suit is brought pursuant to s. 768.28, Florida Statutes, if the State of Florida, one of its agencies, or one of its officials or employees sued in his or her official capacity is a defendant, the time to respond shall be 40 days. When suit is brought pursuant to. 768.28, Florida Statutes, the time to respond shall be 30 days." after service of this summons on that defendant , exclusive of the day of service, and to file the original of the defenses with the Clerk of this Clerk 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.

HARVEY RUVIN CLERK of COURTS	DEPUTY CLERK	DATE
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ADA NOTICE

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**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2021-018755-CA-01

SECTION: CA44

JUDGE: William Thomas

Javae Patton

Plaintiff(s)

vs.

Pizza Hut LLC

Defendant(s)

_____ /

MANDATORY ORDER TO CONFER AND CERTIFICATION REQUIREMENT

This case is subject to the Complex Business Litigation Rules. The rules require that parties meet and confer prior to filing any motion to determine if issues can be narrowed, the appropriate amount of time required for hearing if hearing is requested, and any other issues such as the completion of related discovery. Meet and Confer under these rules requires **an actual effort** between attorneys, not staff.

It is therefore: **ORDERED** and **ADJUDGED** as follows:

All parties to a motion must meet the conferral requirements of the division. The motion must contain a certification of the efforts at meet and confer, which shall include:

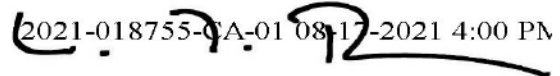
- A description of all efforts at a meet and confer, including names of movant and respondent attorneys, dates and method (email, telephone, live meeting) requesting a meet and confer; and
- A description of all dates for meet and confer actually held and the method and names of participating attorneys; and
- Results achieved, including consensus as to amount of time required for hearing, if granted.

The only motions exempt from the meet and confer requirement are Motions for Injunctive Relief

Without Notice; Motions for Summary Judgment and Motions to Amend to Add Punitive Damages.

ANY OTHER MOTION submitted without a certificate of conferral will be rejected by the Court without prejudice.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 17th day of August, 2021.

 2021-018755-CA-01 08-17-2021 4:00 PM

2021-018755-CA-01 08-17-2021 4:00 PM

Hon. William Thomas

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

Manuel S Hiraldo, mhiraldo@hirdolaw.com

Rachel Dapeer, rachel@dapeer.com

Physically Served:

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2021-018755-CA-01

SECTION: CA44

JUDGE: William Thomas

Javae Patton

Plaintiff(s)

vs.

Pizza Hut LLC

Defendant(s)

_____ /

**NOTICE AND ORDER OF ADHERENCE TO COMPLEX BUSINESS LITIGATION
SECTION PROCEDURES**

WHEREAS, the Complex Business Litigation Procedures shall apply to all actions in the Complex Business Litigation Section and Fla. R. Civ. P. 1.201 Complex Litigation, except to the extent that, in any particular action, they are superseded by an Order.

WHEREAS, the Complex Business Litigation Procedures are designed to facilitate the proceedings of cases by the Eleventh Judicial Circuit Complex Business Litigation Section; to promote the transmission and access to case information by the Court, litigants, counsel, and the public; and to facilitate the efficient and effective presentation of evidence in the courtroom. These Procedures shall be construed and enforced to avoid technical delay, **encourage civility**, permit just and prompt determination of all proceedings, and promote the efficient administration of justice.

NOTICE IS HEREBY GIVEN that all outstanding and future motions pertaining to cases within the Complex Business Litigation Section must adhere to Complex Business Litigation Section Procedures, which are available at the court's website www.jud11.flcourts.org.

The Parties are ordered to provide courtesy copies of all motions and where required, memoranda pertaining thereto, hereinafter filed in this case, to the undersigned Judge by email. Hard copies need not be delivered unless requested by chambers. All e-mails must bear the case number first in the subject line, followed by the case name.

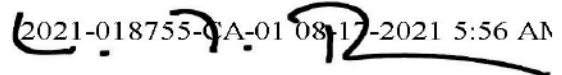
MOTIONS, OPPOSITIONS AND REPLIES FILED MUST BE EMAILED IN WORD FORMAT TO CBL44DOCS@JUD11.FLCOURTS.ORG

Any previously filed motion not in compliance with procedures, e.g., memorandum of law where required, must be resubmitted in conformity with the Complex Business Litigation Procedures.

Counsel for Plaintiff(s) and Third Party Plaintiff(s) is/are ORDERED to confirm all parties subsequently named or appearing herein have been served copies of this Notice. If any subsequently served or named party has not been served with a copy of this notice, Plaintiff and Third Party Plaintiff shall provide the party with a copy of this Notice.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1st Ave., Suite 2702, Miami, FL 33128, Telephone (305) 349-7175; TDD (305) 349-7174, Fax (305) 349-7355 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 17th day of August, 2021.

 2021-018755-CA-01 08-17-2021 5:56 AM

2021-018755-CA-01 08-17-2021 5:56 AM

Hon. William Thomas

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

Manuel S Hiraldo, mhiraldo@hirdolaw.com

Rachel Dapeer, rachel@dapeer.com

Physically Served:

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CIRCUIT CIVIL DIVISION

CASE NO.: 2021-018755-CA-01

SECTION: CA44

Javae Patton
Plaintiff(s),

vs.

Pizza Hut LLC
Defendant(s)

ZOOM/VIRTUAL
NOTICE OF SPECIAL SET HEARING
The Case Management Conference

YOU ARE HEREBY NOTIFIED that, a Special Set hearing on the
above cause is scheduled for **15 min** on **09-08-2021 at 4:15 PM**
in Room Virtual courtroom.

Virtual Court is held remotely on the Zoom platform. You will receive an email from the Court with the information you need to connect to your event by video or phone if you are on the E-Filing Portal service list. If you do not receive an email, check the judge's webpage for the Zoom link to their virtual courtroom or further instructions. You may also register for text notification via link <https://cmap.jud11.flcourts.org/ebench/textNotificationsRegistration.jsp>.

IT IS THE RESPONSIBILITY OF THE SCHEDULER TO PROVIDE TIMELY NOTICE OF THE ZOOM MEETING DETAILS TO ANY PARTY NOT REGISTERED ON THE E-FILING SERVICE PORTAL.

CERTIFICATE OF SERVICE

A true and correct copy of the above notice was delivered to the parties below on
08-17-2021.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Aliean Simpkins, the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1st Ave., Suite 2400, Miami, FL 33128, Telephone (305) 349-7175; TDD (305) 349-7174, Fax (305) 349-7355, Email: ADA@jud11.flcourts.org at least seven (7) days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than seven (7) days; if you are hearing or voice impaired, call 711.

Copies Furnished to:
Electronically Served

Manuel S Hiraldo, mhiraldo@hirdolaw.com
Rachel Dapeer, rachel@dapeer.com

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2021-018755-CA-01

SECTION: CA44

JUDGE: William Thomas

Javae Patton

Plaintiff(s)

vs.

Pizza Hut LLC

Defendant(s)

_____ /

ORDER ON MOTIONS AND MEMO REQUIREMENTS

This case is pending in the Complex Business Litigation division, and must follow the Complex Business Litigation rules. In addition, it is

ORDERED and ADJUDGED as follows:

Short Motions

As a general rule, ten-minute Motion Calendar motions do not require memoranda of law. Copies of motions and any response shall be submitted through CourtMap in accordance with the Court's motion calendar procedures posted on its website.

Motions Requesting a Special Set Hearing

Hearings must be requested using CourtMap which is available on the judge's webpage. Motions may be scheduled or ruled upon without a hearing, in the court's discretion.

Content of motions shall state with particularity the grounds therefore, citing any statute or rule of procedure relied upon; shall set forth the relief sought and shall include the required certification of conferral. The Court will not consider issues at a hearing on the motion that were not addressed in the

motion and memoranda in support of and in opposition to the motion.

Memoranda Requirements

These requirements and deadlines may not be waived or altered except by court order.

ALL motions, opposition to motions and replies are REQUIRED to be emailed in WORD FORMAT to CBL44DOCS@jud11.flcourts.org

Failure to File and Serve Motion Materials: CBL 4.4 A motion or opposition unaccompanied by a required memorandum may be summarily rejected or denied. Failure to timely file a memorandum in opposition to a motion may result in the pending motion being considered and decided as an uncontested motion. **Motion briefing deadlines are court orders.**

Motion	Memoranda of law	Page limit	Time deadline	
Motion filed by movant	As required by CBL rules	20	When filing the motion	Memos which are not filed with the motion will be disregarded
Opposition to motion	At time of filing opposition, if needed	20	10 days after service of motion as computed in Fla. R. Civ. P. 1.090	If no response is timely filed, the Court will proceed and may grant the motion as unopposed
Reply	If needed, limited to matters raised in the opposition	10	5 days after service of opposition as computed in Fla. R. Civ. P. 1.090	If no reply is timely filed, the Court will proceed
Sur-reply	With Court permission only			

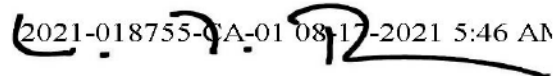
Motions Decided on Papers and Memoranda: Motions may be considered and decided by the Court without a hearing. CBL 4.5 **A hearing is at the discretion of the Court.**

Sealed and Confidential Documents

Sealed or confidential documents should be e-filed pursuant to the instructions on the Clerk's e-filing portal. In Camera inspections shall be conducted as instructed by the Court.

DONE and **ORDERED** in Chambers at Miami, Miami-Dade County, Florida, on this 6th day of January, 2020.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 17th day of August, 2021.

 2021-018755-CA-01 08-17-2021 5:46 AM

2021-018755-CA-01 08-17-2021 5:46 AM

Hon. William Thomas

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

Manuel S Hiraldo, mhiraldo@hirdolaw.com

Rachel Dapeer, rachel@dapeer.com

Physically Served:

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2021-018755-CA-01

SECTION: CA44

JUDGE: William Thomas

Javae Patton

Plaintiff(s)

vs.

Pizza Hut LLC

Defendant(s)

_____ /

ORDER SETTING THE CASE MANAGEMENT CONFERENCE

WHEREAS, the Complex Business Litigation Procedures shall apply to all actions in the Complex Business Litigation Section and Fla. R. Civ. P. 1.201 Complex Litigation, except to the extent that, in any particular action, they are superseded by an Order.

WHEREAS, the Complex Business Litigation Procedures are designed to facilitate the proceedings of cases by the Eleventh Judicial Circuit Complex Business Litigation Section; to promote the transmission and access to case information by the Court, litigants, counsel, and the public; and to facilitate the efficient and effective presentation of evidence in the courtroom. These Procedures shall be construed and enforced to avoid technical delay, **encourage civility**, permit just and prompt determination of all proceedings, and promote the efficient administration of justice.

NOTICE IS HEREBY GIVEN that all outstanding and future motions pertaining to cases within the Complex Business Litigation Section must adhere to Complex Business Litigation Section Procedures, which are available at the court's website:

<http://www.jud11.flcourts.org/About-the-Court/Our-Courts/Civil-Court/Complex-Business-Litigation>.

NOTICE IS HEREBY GIVEN that on September 8th, 2021 at 4:15 PM, in Courtroom 13-2, of the Miami-Dade County Courthouse, 73 West Flagler Street, Miami, Florida, the undersigned shall convene a Case Management Conference ("CMC") in this cause.

The Parties are ordered to provide courtesy copies of all motions and where required, memoranda pertaining thereto, hereinafter filed in this case, to the undersigned Judge in Room 1307 of the Miami-Dade County Courthouse by U.S. mail, hand delivery, or e-mail attachment addressed to: cbl44@jud11.flcourts.org. If by email, hard copies need not be delivered unless requested by chambers. All e-mails must bear the case number first in the subject line, followed by the case name.

Orders, agreed and otherwise, shall be submitted via e-courtesy.

Plaintiff is required to provide a full set of pending motion(s) to dismiss, opposition(s) and reply to chambers a minimum of one (1) week prior to the initially scheduled CMC. MOTIONS FILED WITHOUT COURTESY COPIES MAY NOT BE CONSIDERED.

Any previously filed motion not in compliance with procedures, e.g., memorandum of law where required, must be resubmitted in conformity with the Complex Business Litigation Procedures.

Counsel for Plaintiff(s) and Third Party Plaintiff(s) is/are ORDERED to confirm all parties subsequently named or appearing herein have been served copies of this

Notice and Order. If any subsequently served or named party has not been served with a copy of this notice, Plaintiff and Third Party Plaintiff shall provide the party with a copy of this Notice.

Trial Counsel and their clients shall appear in person for the CMC.^[1] Failure of any party to attend, including the insurance carrier representative, shall subject that party to sanctions and/or fees. Regardless of the pendency of any undecided motions, Trial Counsel shall meet no less than 10 days in advance of the CMC and address the following which will be included in the Joint Case Management Report, along with other appropriate topics, including those set forth in Fla. R. Civ. P. 1.201(b) Complex Litigation, some of which subjects and topics will be incorporated into a Case Management Order:

1. The name of lead trial counsel for each party, and the name of any unrepresented party;
2. A brief factual statement of the case;
3. Pleading issues, including service of process, venue, joinder of additional parties, theories of liability, damages claimed and applicable defenses;
4. The identity and number of any motions to dismiss or other preliminary or pre-discovery motions which have been filed and the time period in which they shall be filed, briefed and argued;
5. A discovery plan and schedule including the length of the discovery period, the anticipated number of fact and expert depositions to be permitted and, as appropriate, the length and sequence of such depositions;
 - 5.a. A description of pertinent documents and a list of fact witnesses the parties believe to be relevant.
6. Anticipated areas of any expert testimony, the number of experts to be called by each party, timing for identification of experts, and exchange of expert reports;
7. An estimate of the volume of documents and computerized information likely to be

the subject of discovery from parties and nonparties and whether there are technological means which may render document discovery more manageable at an acceptable cost;

8. The possibility of obtaining admissions of fact and voluntary exchange of documents and electronically stored information, stipulations regarding authenticity of documents, electronically stored information, and the need for advance rulings from the Court on admissibility of evidence.
9. The advisability of using the general magistrate for discovery purposes at no cost to the parties; and the advisability of using the general and/or a special magistrate(s) for fact finding, mediation, or discovery disputes or such other matters as the parties may agree upon;
10. The time period, after the close of discovery within which post-discovery dispositive motions shall be filed, briefed and argued, and a tentative schedule for such activities;
11. The possibility of settlement and the timing of Alternative Dispute Resolution, including the selection of a mediator or arbitrator(s);
12. Whether or not a party or parties desire to use technologically advanced methods of presentation or court-reporting and, to the extent that this is the case, a determination of the following: Fairness issues, including but not necessarily limited to use of such capabilities by some but not all of the parties and/or by parties whose resources permit or require variations in the use of such capabilities; Issues related to compatibility of court and party facilities and equipment; Issues related to the use of demonstrative exhibits and any balancing of relevance and potential prejudice which may need to occur in connection with such exhibits; Such other issues related to the use of the Court's and parties' special technological facilities as may be raised by any party or the Court or its technological advisor, given the nature of the case and the resources of the

parties.

13. A good faith estimate by counsel for each party based upon consultation with all of the parties of the costs and fees each party is likely to incur in pursuing the litigation through trial court adjudication;
14. A preliminary listing of the principal legal and factual issues which counsel believe will need to be decided in the case;
15. A preliminary listing of any legal principles and facts that are not in dispute;
16. A good faith estimate by counsel for each party of the length of time to try the case;
17. Whether a demand for jury trial has been made.

Within ten (10) days of the meeting among Trial Counsel, but no less than fourteen (14) days in advance of the Case Management Conference, the Parties shall file a Joint Case Management Report addressing the matters described in paragraphs 1 - 17 above and shall provide a courtesy copy to the Court by U.S. mail, hand delivery, or E-Mail attachment containing the Joint Case Management Report. The Court's e-mail address is CBL44@jud11.flcourts.org, emails addressed to other than that address are improper.

All counsel and parties are responsible for filing a Joint Case Management Report in full compliance with this Order. Plaintiff's counsel shall have the primary responsibility to coordinate the meeting of Lead Trial Counsel and unrepresented parties in person, and the filing of the Joint Case Management Report. If counsel is unable to coordinate such compliance, counsel shall timely notify the Court by written motion to be set and heard on motion calendar or request for a status conference. Failure to provide the required case management report may subject the violating party(ies) to sanctions and/or fees.

Pursuant to the provisions of Fla. R. Civ. P. 1.201(b)(3), and notwithstanding rule 1.440, at the initial case management conference, the Court will set the trial date or dates no sooner than

6 months and no later than 24 months from the date of the initial case management conference unless good cause is shown for an earlier or later setting. **As provided in the rule, continuance of the trial of a complex action should rarely be granted, and then only upon good cause shown.**

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Court's ADA Coordinator (305) 375-2006 within two (2) working days of your receipt of this notice. If you are hearing or voice impaired, call (800) 955-8771.

CASE MANAGEMENT SCHEDULE

ESI EXCHANGE PROPOSAL (including search terms, formats, data sources to be searched, etc)	
MOTIONS TO AMEND/ADD PARTIES (includes AFFIRMATIVE DEFENCES)	
FACT WITNESS DEPOSITIONS/ DISCOVERY CONCLUDES	
COMPLETION OF PAPER DISCOVERY	
INITIAL MEDIATION DEADLINE	
NUMBER OF EXPERTS PER PARTY/SIDE	
PLAINTIFF/THIRD PARTY PLAINTIFF/CROSS PLAINTIFF(S) DESIGNATE EXPERTS AND COMPLY WITH CBL 6.3 AND DATES OF AVAILABILITY FOR DEPOSITION MUST INCLUDE: EXPERTS QUALIFICATIONS, REPORT DETAILING OPINION, BASIS FOR OPINION, AND DOCUMENTS RELIED UPON FOR OPINION	
DEFENDANT/THIRD PARTY/CROSS DEFENDANT(S) DESIGNATE EXPERTS AND COMPLY WITH CBL 6.3 AND DATES OF AVAILABILITY FOR DEPOSITION MUST INCLUDE: EXPERTS QUALIFICATIONS, REPORT DETAILING OPINION, BASIS FOR OPINION, AND DOCUMENTS RELIED UPON	

FOR OPINION	
REBUTTAL EXPERT DISCLOSURE REPORTS DUE MUST INCLUDE: EXPERTS QUALIFICATIONS, REPORT DETAILING OPINION, BASIS FOR OPINION, AND DOCUMENTS RELIED UPON FOR OPINION	
EXPERT DEPOSITIONS COMPLETED	
DISPOSITIVE MOTIONS FILED	
DAUBERT/FRYE MOTIONS FILED	
MOTIONS IN LIMINE FILED	
FINAL MEDIATION DEADLINE	
FINAL PRETRIAL CONFERENCE THE COURT SHALL ADDRESS ALL PENDING MOTIONS, INCLUDING JURY INSTRUCTIONS, VERDICT FORM, MOTIONS IN LIMINE, DEPOSITION DESIGNATIONS, OBJECTIONS TO EXHIBITS AND FRYE MOTIONS	

^[1] A representative of the insurance carrier for any insured party who is **not** such carrier's outside counsel and who has decision making authority without further consultation shall attend.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 17th day of August, 2021.

2021-018755-CA-01 08-17-2021 4:12 PM

2021-018755-CA-01 08-17-2021 4:12 PM

Hon. William Thomas

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

Manuel S Hiraldo, mhiraldo@hirdolaw.com

Rachel Dapeer, rachel@dapeer.com

Physically Served:

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO. 2021-018755-CA-01

JAVAE PATTON,
individually and on behalf of all,
others similarly situated,

Plaintiff,

CLASS ACTION

JURY TRIAL DEMANDED

v.

PIZZA HUT, LLC,

Defendant.

_____ /

**MOTION FOR ENLARGEMENT OF TIME FOR THE
PARTIES TO CONFER AND FILE JOINT CASE MANAGEMENT REPORT**

Plaintiff Javae Patton, pursuant to Florida Rule of Civil Procedure 1.090, requests an enlargement of time for the Parties to confer and file Joint Case Management Report, and in support thereof state as follows:

1. Rule 1.090(b) of the Florida Rules of Civil Procedure provides, in pertinent part:

When an act is required or allowed to be done at or within a specified time by order of court, by these rules, or by notice given thereunder, for cause shown the court at any time in its discretion (1) with or without notice, may order the period enlarged if request therefor is made before the expiration of the period originally prescribed

Id.

2. Pursuant to the Court's August 17, 2021 Order setting the case management conference, the deadline for the Parties to file their Joint Case Management Report was August 25, 2021.

3. However, Defendant was just served with the Complaint on August 18, 2021 and has not yet entered an appearance.

4. Accordingly, the instant request for an enlargement of time is being made to allow sufficient time for Defendant to appear in the case and for the Parties to confer and jointly submit a scheduling report.

5. This Motion is made in good faith and not for the purpose of delay, and no prejudice will result in granting said request.

WHEREFORE, Plaintiff Javae Patton respectfully requests this Honorable Court enter an Order granting this Motion, providing the Parties with an extension of time to confer and file their Joint Case Management Report, along with any other relief this Court deems just and proper in light of the foregoing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of August 2021, a true and correct copy of the foregoing was filed with the Clerk of Miami-Dade County by using the Florida Courts e-Filing Portal.

DATED: August 26, 2021

Respectfully Submitted,

HIRALDO P.A.

/s/ Manuel S. Hiraldo
Manuel S. Hiraldo, Esq.
Florida Bar No. 030380
401 E. Las Olas Boulevard
Suite 1400
Ft. Lauderdale, Florida 33301
Email: mhiraldo@hiral dolaw.com
Telephone: 954.400.4713

DAPEER LAW, P.A.
Rachel N. Dapeer, Esq.
20900 NE 30th Avenue, Ste. 417

Aventura, Florida 333180
Email: rachel@dapeer.com
Telephone: 305-610-5223

Counsel for Plaintiff

IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR MIAMI-
DADE COUNTY, FLORIDA

CASE NO. 2021-018755 CA 01

JAVAE PATTON,

Plaintiff,

v.

PIZZA HUT, LLC,

Defendant.

_____ /

NOTICE OF APPEARANCE AND DESIGNATION OF EMAIL ADDRESSES

PLEASE TAKE NOTICE of the appearance of Cory W. Eichhorn, Brandon T. White and Sydney Alexander of the law firm of Holland & Knight LLP, as counsel for Defendant Pizza Hut, LLC ("Defendant") in the above-referenced matter. All future pleadings, orders, correspondence, and other papers filed or served in this action, should be directed to Cory W. Eichhorn, Brandon T. White and Sydney Alexander as counsel for Defendant. Also, pursuant to the Florida Supreme Court's ruling regarding email service requirements, counsel designates the following email addresses for service:

Primary: Cory.Eichhorn@hklaw.com
Brandon.white@hklaw.com
Sydney.Alexander@hklaw.com

Secondary: Julia.Frow@hklaw.com
Denise.Perlich@hklaw.com

Dated: August 30, 2021

Respectfully submitted,

By: s/Cory W. Eichhorn

Cory W. Eichhorn, Esq.
FBN# 576761
Brandon T. White, Esq.
FBN# 106792
Sydney Alexander, Esq.
FBN#1019569
Holland & Knight, LLP
701 Brickell Ave, Suite 3300
Miami, FL 33131
Tel: (305) 374-8500
Fax: (305) 789-7799
Attorneys for Defendant Pizza Hut, LLC

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on this 30th day of August, 2021, the foregoing was filed in the Florida Courts e-Filing Portal which will serve counsel of record via email:

By: /s/ Cory W. Eichhorn

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2021-018755-CA 01
SECTION: CA44
JUDGE: William Thomas

Javae Patton
Plaintiff(s)

vs.

Pizza Hut LLC
Defendant(s)

JOINT CASE MANAGEMENT REPORT

Pursuant to this Court's Order Setting Case Management Conference (Doc. 11), by and through the undersigned counsel, Plaintiff JAVAЕ PATTON and Defendant PIZZA HUT LLC (collectively, the "Parties"), file this Joint Case Management Report.

1. The name of lead trial counsel for each party, and the name of any unrepresented party;

Plaintiff's Statement: Lead trial counsel for Plaintiff will be Manuel Hiraldo of Hiraldo P.A. and Rachel Dapeer of Dapeer Law, P.A.

Defendant's Statement: Lead trial counsel for Defendant will be Cory Eichhorn and Brandon T. White of Holland & Knight LLP

2. A brief factual statement of the case;

Plaintiff's Statement: Plaintiff Javae Patton, filed this putative class action lawsuit for alleged violations of the Florida Telephone Solicitation Act ("FTSA"). On or about July 9, 2021, Defendant, Pizza Hut LLC sent text messages to Plaintiff on his cellular telephone.

Defendant's Statement: Pizza Hut denies that it has violated the FTSA and further denies that Plaintiff is entitled to any relief, whatsoever, from Pizza Hut.

3. Pleading issues, including service of process, venue, joinder of additional parties, theories of liability, damages claimed and applicable defenses;

Plaintiff's Statement: There are no issues regarding service of process or venue. As for

liability and damages, Plaintiff contends that Defendant violated the FTSA by utilizing a computer software system that automatically transmits text messages to Plaintiff and other individuals on their cellular telephones without proper consent. Therefore, Plaintiff contends that Defendant is liable for damages of \$500 per violation and up to \$1,500 per violation if this Court determines Defendant's actions were willful.

Defendant's Statement: Pizza Hut agrees that there are no issues regarding service of process, but denies that venue is proper in this Court. Plaintiff's claims are subject to removal under the Class Action Fairness Act ("CAFA"). Further, Plaintiff claims are subject to a binding arbitration agreement and class action waiver. As for liability and damages, Pizza Hut denies that it has violated the FTSA and further denies that Plaintiff is entitled to any relief, whatsoever, from Pizza Hut.

4. **The identity and number of any motions to dismiss or other preliminary or pre-discovery motions which have been filed and the time period in which they shall be filed, briefed and argued;**

None to date.

5. **A discovery plan and schedule including the length of the discovery period, the anticipated number of fact and expert depositions to be permitted and, as appropriate, the length and sequence of such depositions;**

Plaintiff's Statement: All fact discovery should be completed by March 21, 2022, and all expert discovery should be completed by May 20, 2022. The Parties anticipate depositions of Plaintiff, Defendant, any vendors used by Defendant to transmit the text messages in question, and any experts retained by the Parties.

5.a. A description of pertinent documents and a list of fact witnesses the parties believe to be relevant.

Plaintiff's Statement: Pertinent documents include any consent documents, transmission logs, and documents which identify who the text messages were sent to. Also pertinent are any documents regarding Defendant's policies and procedures for complying with the FTSA and for marketing through text messages and website. Plaintiff anticipates Plaintiff, Defendant and any vendors utilized by Defendant to send the text messages in question will be relevant fact witnesses.

Defendant's Statement: Pizza Hut anticipates discovery into its defenses with respect to the alleged FTSA claim in accordance with the Florida Rules of Civil Procedure.

6. **Anticipated areas of any expert testimony, the number of experts to be called by each party, timing for identification of experts, and exchange of expert reports;**

The Parties expect that each side will retain an expert to opine on the capabilities of the text message system utilized by Defendant to send the text messages. The Parties should disclose experts, expert witness summaries and reports by March 21, 2022. The Parties should exchange expert witness summaries and reports by April 5, 2022. Any motions to

strike or exclude expert testimony should be filed by May 21, 2022.

- 7. An estimate of the volume of documents and computerized information likely to be the subject of discovery from parties and nonparties and whether there are technological means which may render document discovery more manageable at an acceptable cost**

The Parties do not anticipate that the volume of documents that are subject of discovery will be too voluminous and will seek production of documents in paper, excel or Adobe .PDF form. The Parties are willing to work together, and with any nonparties, to make document discovery more manageable.

- 8. The possibility of obtaining admissions of fact and voluntary exchange of documents and electronically stored information, stipulations regarding authenticity of documents, electronically stored information, and the need for advance rulings from the Court on admissibility of evidence.**

The Parties are willing to work together to obtain admissions of fact, voluntary exchanges of documents, stipulations, electronically stored information and where possible advance rulings from the Court on the admissibility of evidence. The Parties are willing to stipulate to a Protective Order to aid in discovery.

- 9. The advisability of using the general magistrate for discovery purposes at no cost to the parties; and the advisability of using the general and/or a special magistrate(s) for fact finding, mediation, or discovery disputes or such other matters as the parties may agree upon;**

The Parties do not consent to referring discovery and other non-dispositive issues to a general or special magistrate judge at this time, but agree to revisit this issue should the need arise in the future.

- 10. The time period, after the close of discovery within which post-discovery dispositive motions shall be filed, briefed and argued, and a tentative schedule for such activities;**

The Parties agree that all dispositive and other pretrial motions must be filed by June 17, 2022.

- 11. The possibility of settlement and the timing of Alternative Dispute Resolution, including the selection of a mediator or arbitrator(s);**

The Parties have agreed to keep settlement discussions open. The parties agree to mediate by no later than May 9, 2022, and agree to select their mediator by November 1, 2021.

- 12. Whether or not a party or parties desire to use technologically advanced methods of presentation or court-reporting and, to the extent that this is the case, a determination of the following: Fairness issues, including but not necessarily limited to use of such capabilities by some but not all of the parties and/or by parties whose resources permit or require variations in the use of such capabilities; Issues related to compatibility of court and party facilities and equipment; Issues related to the use of**

demonstrative exhibits and any balancing of relevance and potential prejudice which may need to occur in connection with such exhibits; Such other issues related to the use of the Court's and parties' special technological facilities as may be raised by any party or the Court or its technological advisor, given the nature of the case and the resources of the parties.

The Parties agree to remote depositions and hearings.

13. A good faith estimate by counsel for each party based upon consultation with all of the parties of the costs and fees each party is likely to incur in pursuing the litigation through trial court adjudication;

The Parties estimate costs and attorney time spent litigating this matter will be over a hundred thousand dollars for each party.

14. A preliminary listing of the principal legal and factual issues which counsel believe will need to be decided in the case;

- a. Whether Defendant utilized a computer software system to send text messages to Plaintiff and the Class;
- b. Whether Defendant had proper consent to transmit the text messages to Plaintiff and the Class;
- c. Whether this matter can be litigated as a putative Class action where Plaintiff provided consent to be contacted at the subject number and has not alleged damages; and
- d. Whether Plaintiff was damaged by the alleged receipt of a text message;

15. A preliminary listing of any legal principles and facts that are not in dispute;

- a. None.

16. A good faith estimate by counsel for each party of the length of time to try the case;

The Parties believe that trial will take 5-10 days.

17. Whether a demand for jury trial has been made.

Plaintiff has made a demand for a jury trial.

CASE MANAGEMENT SCHEDULE [on following page]

ESI EXCHANGE PROPOSAL (including searchterms, formats, data sources to be searched, etc)	The Parties do not anticipate ESI will be necessary in this case.
MOTIONS TO AMEND/ADD PARTIES (includes AFFIRMATIVE DEFENSES)	September 13, 2021
FACT WITNESS DEPOSITIONS/ DISCOVERY CONCLUDES	March 21, 2022
COMPLETION OF PAPER DISCOVERY	March 21, 2022
INITIAL MEDIATION DEADLINE	May 9, 2022
NUMBER OF EXPERTS PER PARTY/SIDE	2
PLAINTIFF/THIRD PARTY PLAINTIFF/CROSSPLAINTIFF(S) DESIGNATE EXPERTS AND COMPLY WITH CBL 6.3 AND DATES OF AVAILABILITY FOR DEPOSITION MUST INCLUDE: EXPERTS QUALIFICATIONS, REPORT DETAILING OPINION, BASIS FOR OPINION, AND DOCUMENTS RELIED UPON FOR OPINION	March 21, 2022
DEFENDANT/THIRD PARTY/CROSS DEFENDANT(S) DESIGNATE EXPERTS ANDCOMPLY WITH CBL 6.3 AND DATES OF AVAILABILITY FOR DEPOSITION MUST INCLUDE: EXPERTS QUALIFICATIONS, REPORT DETAILING OPINION, BASIS FOR OPINION, AND DOCUMENTS RELIED UPON FOR OPINION	April 21, 2022
REBUTTAL EXPERT DISCLOSURE REPORTSDUE MUST INCLUDE: EXPERTS QUALIFICATIONS, REPORT DETAILING OPINION, BASIS FOR OPINION, AND DOCUMENTS RELIED UPON FOR OPINION	May 5, 2022
EXPERT DEPOSITIONS COMPLETED	May 20, 2022
DISPOSITIVE MOTIONS FILED	June 17, 2022
DAUBERT/FRYE MOTIONS FILED	June 17, 2022
MOTION FOR CLASS CERTIFICATION FILED	August 12, 2022
MOTIONS IN LIMINE FILED	August 26, 2022
FINAL MEDIATION DEADLINE	September 20, 2022

**FINAL PRETRIAL CONFERENCE
THE COURT SHALL ADDRESS ALL
PENDING MOTIONS, INCLUDING
JURY INSTRUCTIONS, VERDICT
FORM, MOTIONS IN LIMINE,
DEPOSITION DESIGNATIONS,
OBJECTIONS TO EXHIBITS AND FRYE
MOTIONS**

October 7, 2022

Dated: September 8, 2021

Respectfully submitted,

/s/ Rachel Dapeer

DAPEER LAW, P.A.

Rachel N. Dapeer, Esq.
20900 NE 30th Avenue, Ste.
417

Aventura, Florida 333180
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Telephone: 305-610-5223

*Counsel for Plaintiff and the
Proposed Class*

/s/ Brandon White

HOLLAND & KNIGHT

701 Brickell Avenue, Suite 3300
Miami, FL 33131

Telephone: 305-789-7576

Email:
cory.eichhorn@hklaw.com

Attorneys for Defendant

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY**

CASE NO.: 2021-018755-CA-01

JAVAE PATTON, *individually and
on behalf of all others similarly situated,*

Plaintiff,

**CLASS ACTION
JURY TRIAL DEMANDED**

v.

PIZZA HUT, LLC,

Defendant.

_____ /

PLAINTIFF'S FIRST SET OF DISCOVERY REQUESTS TO DEFENDANT

Plaintiff, pursuant to Rules 1.340, 1.351, and 1.370 of the Florida Rules of Civil Procedure, propounds the following discovery on Defendant. The Interrogatories, Requests for Production of Documents, and Request for Admissions must be answered separately and fully, in writing and under oath if applicable. As required by the Federal Rules of Civil Procedure, discovery must be answered and produced within thirty (30) days after service thereof.

SECTION I
INSTRUCTIONS

- (1) Restate each Interrogatory, Request for Production of Documents, and Request for Admissions in full immediately above your response.
- (2) In answering these discovery requests, you shall furnish all information available to you at the time of your answers and shall timely supplement your answers if you learn of additional responsive facts.
- (3) Answer each discovery request fully, providing all information actually or constructively available to you collectively and/or individually, or any other persons or entities that you know to possess or have access to the requested information.
- (4) If you fail to answer any discovery request in accordance with these instructions, specifically state the reason(s).
- (5) If you interpose any objection to any discovery request, fully state the grounds for the objection and the legal authority upon which you would rely in response to a Motion to Compel.

- (6) With respect to each document otherwise called for by this discovery, as to which you assert a claim of privilege, or the applicability of the work product doctrine, state separately the following, in addition to the information otherwise requested:
- (A) The type of document(s);
 - (B) Its date;
 - (C) The name, business address, and present position of its author(s);
 - (D) The business affiliation and position of its author(s) at the time of preparation of the document;
 - (E) The name, business address, and present position of its addressee and all other recipients of the document;
 - (F) The business affiliation and position of its addressee and all other recipients at the time of receipt of the document;
 - (G) A general description of the subject matter of the document;
 - (H) The basis of the claim of privilege; *and*
 - (I) The facts and law upon which you will rely in support of that contention in response to a Motion to Compel.
- (7) For every Request for Production, to the extent that a responsive “document” or any type of responsive materials of any type existed at some point in time, but no longer exists, please identify such “documents” or such responsive materials.
- (8) If your objection is based upon the work product doctrine, set forth the following information:
- (A) Whether the requested information or document(s) exists and the general nature of such items (e.g. recording, video, etc.);
 - (B) The identity of the individual(s) in possession of the requested information or document(s);
 - (C) The date the requested information or items were created and the date same was obtained by you.
- (9) You are requested to produce all Documents and ESI in Your possession, custody, or control – as well as Documents and ESI that are in the possession of Your partners, officers, employees, attorneys, accountants, representatives, or agents, or that are otherwise subject to Your custody or control – that are described below.
- (10) Unless otherwise indicated, the Documents and ESI to be produced include all Documents and ESI prepared, sent, dated or received, or those that otherwise came into existence at any point in time.
- (11) The production by one person, party, or entity of a Document or item of ESI does not relieve another person, party, or entity from the obligation to produce his, her, or its own copy of that Document or ESI, even if the two are identical.

- (12) In producing Documents and ESI, You are requested to produce a copy of each original Document and ESI together with a copy of all non-identical copies and drafts of that Document. If the original of any Document and ESI cannot be located, a copy shall be provided in lieu thereof, and shall be legible and bound or stapled in the same manner as the original.
- (13) Documents and ESI shall be produced as they are kept in the usual course of business. All Documents and ESI shall be produced with a copy of the file folder, envelope, or other container in which the Documents and ESI are kept or maintained. All Documents and ESI shall be produced intact in their original files, without disturbing the organization of Documents and ESI employed during the conduct of the ordinary course of business and during the subsequent maintenance of the Documents and ESI.
- (14) Documents and ESI not otherwise responsive to this discovery request shall be produced if such Documents and ESI mention, discuss, refer to, or explain the Documents and ESI which are called for by this discovery request, or if such Documents and ESI are attached to Documents and ESI called for by this discovery request and constitute routing slips, transmittal memoranda, or letters, comments, evaluations or similar materials.
- (15) Each Document and item of ESI requested herein is requested to be produced in its entirety and without deletion or excisions, regardless of whether You consider the entire Document or item of ESI to be relevant or responsive to this request. If You have redacted any portion of a Document or item of ESI, stamp the word "redacted" on each page of the Document or item of ESI that You have redacted.
- (16) Notwithstanding a claim that a Document or item of ESI is protected from disclosure, any Document or item of ESI so withheld must be produced with the portion claimed to be protected redacted.
- (17) Every Request for Production herein shall be deemed a continuing discovery request, and You are to supplement information which adds to or is in any way inconsistent with Your initial answers to these Requests.
- (18) Plaintiff reserves the right to propound additional discovery requests.

SECTION II **DEFINITIONS**

- (1) "**Class Members**" shall mean all persons to whom You sent a Text Message after June 30, 2021 where the telephone number of the recipient consisted of an area code associated with any geographic location in Florida, or where You had indication that the recipient was located in or resides in Florida.
- (2) "**Communication**" means the conveyance (in the form of facts, ideas, thoughts, opinions, data, inquiries or otherwise) of information and includes, without limitation, correspondence, memoranda, reports, presentations, face-to-face conversations, telephone

conversations, text messages, instant messages, voice messages, negotiations, agreements, inquiries, understandings, meetings, letters, notes, telegrams, mail, email, and postings of any type.

- (3) **“Document”** shall include any written or graphic matter or any other means of preserving thought or expression, and all tangible things from which information can be processed or transcribed in your actual or constructive possession, custody, care or control, which pertain directly or indirectly, in whole or in part, either to any of the subjects listed below or to any other matter relevant to the issues in this action, or which are themselves listed below as specific documents, including, but not limited to: correspondence, memoranda, notes, messages, letters, telegrams, teletype messages, bulletins, diaries, chronological data, minutes, books, reports, charts, ledgers, invoices, worksheets, receipts, computer printouts, computer disks, electronic mail (e-mail), schedules, affidavits, contracts, transcripts, surveys, graphic representation of any kind, photographs, graphs, microfilms, videotapes, tape recordings, electronically stored material, motion pictures or other films. Further, the word “Documents” shall be deemed to include the original and any draft thereof, and any copy of an original or a draft which differs in any respect from such original or draft.
- (4) **“Electronic Media”** means any magnetic, optical, or other storage media device used to record or access ESI including, without limitation, computer memory, hard disks, floppy disks, flash memory devices, CDs, DVDs, Blu-ray disks, cloud storage (e.g., DropBox, Box, OneDrive, and SharePoint), tablet computers (e.g., iPad, Kindle, Nook, and Samsung Galaxy), cellular or smart phones (e.g., BlackBerry, iPhone, Samsung Galaxy), personal digital assistants, magnetic tapes of all types or any other means for digital storage and/or transmittal.
- (5) **“ESI” or “Electronically Stored Information”** refers to information and Documents – with all Metadata intact – created, manipulated, communicated, stored, and best utilized in digital form, and requiring the use of Electronic Media to access. Such information includes emails, email attachments, message boards, forums, support tickets, support articles, security alerts, pop-ups, videos, discussion boards, data, charts, BETA results, error messages, bug reports, source code, investigative reports, monitoring reports, comments, press releases, drafts, models, templates, websites, instant messages, chats, and intercompany and intra- company Communications.
- (6) **“Identify”** means, with respect to any “person,” or any reference to the “identity” of any “person,” to provide the name, home address, telephone number, business name, business address, business telephone number and a description of each such person’s connection with the events in question.
- (7) **“Identify”** means, with respect to any “document,” or any reference to stating the “identification” of any “document” provide the title and date of each such document, the name and address of the party or parties responsible for the preparation of each such document, the name and address of the party who requested or required the preparation and on whose behalf it was prepared, the name and address of the recipient or recipients to each

such document and the present location of any and all copies of each such document, and the names and addresses of any and all persons who have custody or control of each such document or copies thereof.

- (8) **“Including”** means “including but not limited to” and “including without limitation.”
- (9) **“Metadata”** refers to structured information about an electronic file that is embedded in the file, describing the characteristics, origins, usage and validity the electronic file.
- (10) **“Person”** shall mean any natural person, entity, corporation, partnership, association, joint venture, trust, government unit, agency, branch, or office or any subdivision or department thereof.
- (11) **“Plaintiff”** shall mean the named Plaintiff in this action.
- (12) **“Relate(s) to” “Related to” or “Relating to”** shall be construed to mean referring to, reflecting, concerning, pertaining to or in any manner being connected with the matter discussed.
- (13) **“Subject Text Messages”** shall mean the text messages sent to Plaintiff as identified in Plaintiff’s operative Complaint.
- (14) **“Text Messages”** shall mean a text message sent to a mobile telephone regarding Your goods and/or services, and which was sent using the same type of equipment used to send the Subject Text Messages.
- (15) **“You” or “Your”** shall mean the Defendant in this case, including any of Your directors, officers, employees, partners, members, representatives, agents (including attorneys, accountants, consultants, investment advisors or bankers), and any other person purporting to act on Your behalf. In the case of business entities, these defined terms include parents, subsidiaries, affiliates, predecessor entities, successor entities, divisions, departments, groups, acquired entities and/or related entities or any other entity acting or purporting to act on its behalf.

SECTION III **RELEVANT TIME PERIOD**

Unless otherwise specified, the relevant time period for these discovery requests is four (4) years from the filing of the Complaint in this case.

SECTION IV
INTERROGATORIES

- (1) Identify the total number of Text Messages that have been sent to the Class Members. For each Text Message, please identify the date, content, and telephone number of the recipient of the Text Message, and describe how the Text Messages were sent, including a description of the equipment used to obtain, store, and send messages to each telephone number. For any Text Messages sent simultaneously to numerous persons, identify the contents of the Text Message and the number of recipients such Text Message was sent.

ANSWER:

- (2) Describe in detail the method or process by which the Subject Text Messages and Text Messages to the Class Members were sent. Your response should include, but not be limited to, a description of each stage of the transmission process for the Text Messages.

ANSWER:

- (3) List any and all persons, natural or otherwise, believed or known by You to have any knowledge concerning any of the issues raised by the pleadings, specifying the subject matter about which the witnesses have knowledge, and state whether You have obtained any statements (oral, written and/or recorded) from any of said witnesses, list the dates any such witness statements were taken, by whom any such witness statements were taken, and who has present possession, custody, or control of any such statements.

ANSWER:

- (4) Identify the name(s) of the individual(s) who prepared and/or approve the content of the Subject Text Messages.

ANSWER:

- (5) Identify who sent the Subject Text Messages to Plaintiff.

ANSWER:

- (6) Describe the equipment used to send the Text Messages to the Class Members and Subject Text Messages, including any piece of equipment utilized to store the recipients' telephone numbers. Your answer should include a description of how that equipment interacts with any equipment used to send the messages.

ANSWER:

- (7) Have you ever received formal or informal complaints regarding Text Messages? If so, identify the complaint, including the date and name(s) of the individual(s) making the complaint.

ANSWER:

- (8) Describe what type of consent or permission, if any, You obtained from Plaintiff to send the Subject Text Messages prior to sending the messages.

ANSWER:

- (9) Describe what type of consent or permission, if any, You obtained from the Class Members prior to sending Text Messages to their telephone numbers.

ANSWER:

- (10) Describe all policies and procedures You have in place to ensure compliance with the National Do Not Call Registry.

ANSWER:

- (11) Describe all policies and procedures You have in place to ensure that Text Messages are sent only to persons to have consented to receive such messages.

ANSWER:

- (12) Describe and detail, if and how You maintain or update Your Do Not Call List as part of complying with the National Do Not Call Registry.

ANSWER:

- (13) Before you contact someone, explain and describe any process You use to verify whether that telephone number appears on the National Do Not Call Registry.

ANSWER:

SECTION V
REQUESTS FOR PRODUCTION OF DOCUMENTS

Please produce –

- (1) Every insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment against you in this action or to indemnify you or reimburse you for payments made to satisfy the judgment, irrespective of whether you have or intend to make such a claim.
- (2) Documents and ESI, including organizational charts, sufficient to identify all Persons who may possess knowledge relevant to this Action.
- (3) Documents and ESI sufficient to identify all databases, networks, or any other repositories of information under Your control that may contain Documents and ESI relevant to this Action.
- (4) Documents and ESI sufficient to identify all methods and media utilized by Your employees for inter-office (internal) Communication in the course of their work, including but not limited to inter-office mail (electronic and physical), reports (electronic and physical), chats, and video chats, as well as how and where such Communications are stored.
- (5) All communications between You and any Person regarding the transmission of Text Messages, including any contracts or agreements, invoices, or receipts.
- (6) Documents sufficient to identify all Persons from which You purchased telephone numbers to which You sent Text Messages to the Class Members.
- (7) Documents sufficient to identify the equipment or software used to place the Subject Text Messages and Text Messages.
- (8) Documents and ESI sufficient to identify the total number of Class Members.
- (9) Documents and ESI sufficient to identify the Class Members including, but not limited to, their names, telephone numbers, and e-mail addresses.

- (10) All Documents and ESI concerning or identifying Plaintiff.
- (11) All communications between You and any Person regarding this lawsuit or Plaintiff.
- (12) Documents sufficient to identify each source(s) from which You obtained each telephone number to which Text Messages were sent to the Class Members.
- (13) Documents sufficient to identify the criteria used to select or obtain the list of telephone numbers to which Text Messages were sent to the Class Members.
- (14) All lists of telephone numbers purchased by You for the purpose of attempting to send Text Messages to the Class Members.
- (15) All call logs, disposition reports, transmission reports, computer-generated document, or other document(s) that identify each and every Subject Text Message sent.
- (16) All call logs, disposition reports, transmission reports, computer-generated document, or other document(s) that identify (1) the total number of Text Messages attempted to the Class Members, (2) the date and time of each Text Message was attempted, (3) the intended recipient of the Text Message, (4) the result of each attempted Text Message, i.e., whether the Text Message was successfully transmitted, and (5) any response by the recipient of the Text Message.
- (17) All of Your policies, practices, procedures, manuals, handbooks, or instructions related to TCPA compliance, including Do Not Call rules and regulations compliance.
- (18) A copy of Your internal "Do Not Call List", if any.
- (19) Documents sufficient to identify the type of consent or permission, if any, You obtained to send the Subject Text Messages prior to You attempting transmission of the messages.
- (20) Documents sufficient to identify the type of consent or permission, if any, You obtained from the Class Members prior to You attempting transmission of the messages.
- (21) All documents that recorded in writing any formal or informal complaint received by You regarding Text Messages.

- (22) All policies and procedures You have in place to ensure compliance with the National Do Not Call Registry.
- (23) All policies and procedures You have in place to ensure that Text Messages are sent only to persons to have consented to receive such messages.
- (24) Documents sufficient to identify the process, if any, You utilize to verify whether that telephone number appears on the National Do Not Call Registry before sending a text message to that number.
- (25) Documents sufficient to identify the hardware, software, and/or methodology used to store Plaintiff's telephone number.
- (26) Documents sufficient to identify the hardware, software, and/or methodology used to transmit the Subject Text Messages.
- (27) Documents sufficient to identify the hardware, software, and/or methodology used to transmit Text Messages.
- (28) Documents sufficient to identify the total number of Text Messages sent to the Class Members.
- (29) Documents sufficient to identify the method or process by which Text Messages and the Subject Text Messages were sent.
- (30) For the Class Members, all documents supporting Your contention, if any, that You secured consent to transmit Text Messages to those individuals.
- (31) All documents pertaining to the type of consent or permission, if any, You obtained from Plaintiff to send the Subject Text Messages prior to sending the messages.
- (32) Documents sufficient to identify the computer and/or other device use to transmit the Subject Text Messages and Text Messages.

- (33) For each intended recipient of Text Messages, documents sufficient to identify the date of when that person last transacted business with You.
- (34) Documents sufficient to identify Your policies, practices, and/or procedures for transmitting Text Messages.
- (35) All documents, manuals, memorandum, instructions regarding your “Do Not Call List” or the National Do Not Call Registry.
- (36) Any training materials for your employees/agents regarding your “Do Not Call List” or the National Do Not Call Registry.

SECTION VI
REQUEST FOR ADMISSIONS

Admit or deny the following –

- (1) Admit that Plaintiff did not give You consent or permission to text message Plaintiff’s telephone number.
- (2) Admit that the text messages sent to Plaintiff’s telephone number were not dialed or sent manually.
- (3) Admit that the purpose of the text messages sent to Plaintiff was to advertise Your products.
- (4) Admit that the alleged class consists of more than 50 individuals.
- (5) Admit that the members of the class can be determined utilizing records and call logs in Your possession, custody, and/or control.

VERIFICATION

Under penalties of perjury, I, the undersigned affiant, declare that I have read the foregoing
Answers to Interrogatories, and that the Answers are true and correct.

AFFIANT SIGNATURE

PRINTED NAME OF AFFIANT

CAPACITY / TITLE OF
AFFIANT

BEFORE ME, the undersigned authority, personally appeared

_____, who produced as identification

_____, bearing number

_____ expiring on _____ who did take

an oath, who stated that he/she is the person noted above, and that, according to his/her best

knowledge and belief, the forgoing answers are true and correct.

Sworn to and subscribed before me, this _____ day of _____, 201_____.

SIGNATURE OF NOTARY

PRINTED NAME OF NOTARY



Dated: September 11, 2021

/s/ Manuel S. Hiraldo
Manuel S. Hiraldo, Esq.
Hiraldo P.A.
Florida Bar No. 030380
401 E. Las Olas Boulevard
Suite 1400
Ft. Lauderdale, Florida 33301
mhiraldo@hirdolaw.com
(t) 954.400.4713

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 11, 2021, I electronically served the foregoing document on all counsel of record for Defendant.

/s/ Manuel S. Hiraldo
Manuel S. Hiraldo, Esq.
Hiraldo P.A.
Florida Bar No. 030380
401 E. Las Olas Boulevard
Suite 1400
Ft. Lauderdale, Florida 33301
mhiraldo@hirdolaw.com
(t) 954.400.4713

Counsel for Plaintiff

**THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

JAVAE PATTON, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

Case No.

PIZZA HUT, LLC,

State Court Case No. 2021-018755-CA-01

Defendant.

_____ /

DECLARATION OF MICHAEL WHITMAN

I, Michael Whitman, declare as follows:

1. I submit this declaration in my capacity as a Senior Manager of Customer Engagement and Retention at Pizza Hut, LLC ("Pizza Hut") in support of Pizza Hut's Notice of Removal in the above-referenced lawsuit ("Lawsuit").

2. I make these statements based on my knowledge of the matters set forth herein, and based on Pizza Hut's business records created and kept in the ordinary course of its business, and if called and sworn as a witness, I could and would competently testify to the information contained herein.

3. Pizza Hut is a limited liability company incorporated in Delaware, with its principal place of business in Plano, Texas. The Sole Member and Manager of Pizza Hut is Pizza Hut Guarantor, LLC. Pizza Hut Guarantor, LLC is a Delaware limited liability company that is not qualified to do business in Florida.

4. For purposes of preparing this declaration, I am familiar with the issues appearing in this Lawsuit, including the allegations in Plaintiff's Complaint. I have worked at Pizza Hut since January 2021, in my current position.

5. In my current role, among other responsibilities, I am familiar with the manner and method by which Pizza Hut maintains its normal business books and records, including computer records. These books and records are made in the course of regularly conducted business activity: (1) at or near the time the events they purport to describe occurred, by a person with knowledge of the acts and events; or (2) by a computer or other similar digital means, which contemporaneously records an event as it occurs. The contents of this Declaration are believed to be true and correct based upon my personal knowledge of the record-keeping systems under which Pizza Hut maintains its business books and records.

6. Given the allegations in the Lawsuit, the secure databases where customer data is maintained were searched by authorized employees and/or agents of Pizza Hut with personal knowledge of the subject matter to determine the number of unique SMS text messages sent by Pizza Hut to customers whose phone number has a Florida area code.

7. The secure databases where customer data is maintained were also searched by authorized employees and/or agents of Pizza Hut with personal knowledge of the subject matter to determine the number of unique SMS text messages sent by Pizza Hut to customers who listed a Florida address when creating a Pizza Hut account.

8. The searches were limited to SMS text messages sent to customers between July 1, 2021 and September 9, 2021 (the "Relevant Period").

9. Based on the records, Pizza Hut sent more than 10,000 unique SMS text messages to customers whose phone number has a Florida area codes during the Relevant Period.

10. Additionally, Pizza Hut sent more than 10,000 unique SMS text messages to customers who entered a Florida addresses as their home address when creating a Pizza Hut account.

11. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Pizza Hut, Inc.

Name (Signature): Michael Whitman

Name (Printed): Michael Whitman

Title: Sr. Manager of Customer Engagement and Retention

Dated: 9/16/21

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.)

I. (a) PLAINTIFFS

Javae Patton

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Manuel Hiraldo, Hiraldo P.A., 401 E. Las Olas Blvd.
#1400, Ft. Lauderdale, FL 33301 (954) 400-4713;

DEFENDANTS

Pizza Hut, LLC

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.

Attorneys (If Known)

Cory Eichhorn, Esq., Brandon White, Esq., Holland & Knight LLP, 701 Brickell Ave., #3300, Miami, FL 33131;

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

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 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)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C., Section 1332

Brief description of cause:

Plaintiff alleges that Pizza Hut placed telephonic sales calls to consumers listed throughout FL without their prior express written consent.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
5,000,000.+

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

September 17, 2021

/S/ Brandon White

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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.Cv.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; **NOTE: 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.** 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.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. 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.
- VII. 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 actual dollar amount 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.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Pizza Hut Text Message Ads Violated Florida Law](#)
