

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

BENJAMIN RUBY, individually, and on	)	
behalf of all others similarly situated	)	
	)	
Plaintiff,	)	
	)	Case No. 21-cv-01152
v.	)	
	)	<b>JURY TRIAL DEMANDED</b>
BUILD-A-BEAR WORKSHOP, INC.,	)	
	)	
	)	
Defendant.	)	

**DEFENDANT BUILD-A-BEAR WORKSHOP, INC.’S NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that Defendant Build-A-Bear Workshop, Inc. (“Defendant”), by and through its undersigned counsel, hereby removes the above-styled action, pending as Case No. 21SL-CC03859, from the Circuit Court for the Twenty-First Judicial Circuit, St. Louis County, State of Missouri, to the United States District Court for the Eastern District of Missouri, Eastern Division, pursuant to 28 U.S.C. §§ 1331, 1441, and 1446. In support of removal, Defendant states as follows:

**THE STATE ACTION**

1. On or about August 24, 2021, Plaintiff Benjamin Ruby (“Plaintiff”), individually and purportedly on behalf of others similarly situated, filed a “Class Action Petition” (the “Petition”) in the Missouri Circuit Court for the Twenty-First Judicial Circuit, St. Louis County, styled *Benjamin Ruby v. Build-A-Bear Workshop, Inc.*, Case No. 21SL-CC03859 (the “State Court Action”).

2. The Petition, along with “a copy of all process, pleadings, and orders served upon” Defendant, which comprise the complete state court file, including the Petition, is attached hereto as **Exhibit A**.

3. The Petition in the State Court Action purports to assert a single claim against Defendant under the Telephone Consumer Protection Act of 1991, as amended (47 U.S.C. § 227, *et seq.*), and the regulations promulgated pursuant thereto (referred to collectively in the Petition as the “TCPA”). (*See Ex. 1*, Pet., at ¶¶ 42-52.)

4. Plaintiff’s claim arises out of the alleged transmission of certain text messages to Plaintiff after he allegedly registered his telephone number with the national Do Not Call Registry. (*See id.*) Plaintiff further alleges that Defendant sent the same text messages to “at least 40 and possible hundreds” of other, unidentified persons. (*See id.* at ¶ 36.)

5. Defendant is the only defendant in this matter.

### **REMOVAL IS PROPER**

#### **A. This Court has Subject-Matter Jurisdiction over the State Court Action Pursuant to 28 U.S.C. §§ 1331 and 1441.**

6. Federal courts have “original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

7. Pursuant to 28 U.S.C. § 1441(a), a defendant may remove to federal district court “any civil action brought in a State court of which the district courts of the United States have original jurisdiction.”

8. This Court has original, federal-question jurisdiction over the State Court Action pursuant to 28 U.S.C. § 1331 because the action arises under federal law – namely, the TCPA.

9. Federal-question jurisdiction exists over an action when the plaintiff's well-pleaded complaint contains a claim arising under federal law. *See* 28 U.S.C. § 1331; *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987).

10. Here, the Petition in the State Court Action asserts a claim against Defendant under 47 U.S.C. § 227 based on Defendant's alleged transmission of certain text messages, which the Plaintiff alleges violated the TCPA. (*See* Ex. A, Pet., at ¶¶ 42-52.)

11. In *Mims v. Arrow Financial Services, L.L.C.*, 565 U.S. 368, 385–86 (2012), the Supreme Court of the United States held that claims asserted under the TCPA arise under federal law such that subject-matter jurisdiction exists under 28 U.S.C. § 1331. *See id.* at 753 (holding the Eleventh Circuit erred in dismissing TCPA claims for lack of subject-matter jurisdiction: “Nothing in the text, structure, purpose, or legislative history of the TCPA calls for displacement of the federal-question jurisdiction U.S. district courts ordinarily have under 28 U.S.C. § 1331.”).

12. Accordingly, the State Court Action arises under federal law and is removable pursuant to 28 U.S.C. §§ 1331 and 1441. *See e.g., Heller v. HRB Tax Grp., Inc.*, No. 4:11CV1121 TIA, 2012 WL 163843, at \*2 (E.D. Mo. Jan. 19, 2012) (citing *Mims*) (denying motion to remand and concluding that federal-question jurisdiction exists over action asserting claims for violation of TCPA); *see also, e.g., Edmonds v. DirectTV, LLC*, No. 1:16-cv-1291-STA-egb, 2017 WL 1435760, at \*1 (W.D. Tenn. Apr. 21, 2017 ) (same); *Speidel v. American Honda Finance Corp.*, No. 2:14-cv-19-FTM-38CM, 2014 WL 820703, at \*1-2 (M.D. Fla. Mar. 3, 2014) (same).

**B. Defendant Has Satisfied the Procedural Requirements for Removal under 28 U.S.C. § 1446 and the Local Rules of this Court.**

13. Pursuant to 28 U.S.C. § 1446(a) and E.D. Mo. L.R. 2.03, Defendant attaches hereto as Exhibit A the complete file from the State Court Action, including the state court docket sheet,

summons, return of summons, and all process, pleadings, orders, and other documents which, as of the date this Notice of Removal is filed, are on file in the State Court Action.

14. Removal is timely pursuant to 28 U.S.C. § 1446(b) because this Notice of Removal is filed within thirty days from August 25, 2021,—the date on which Defendant was served with process in the State Court Action. *See* Server’s Return & Aff. of Service, Ex. A hereto at 23-24; *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 353-54 (1999) (thirty-day removal period does not begin to run until a defendant is formally served with summons and the complaint).

15. Since Defendant filing this Notice of Removal is the only named defendant, there are no other defendants required to consent to, or join in, removal. *See* 28 U.S.C. § 1446(b)(2)(A).

16. Venue is proper in this Court because the State Court Action was filed in the Missouri Circuit Court for the Twenty-First Judicial Circuit, St. Louis County, and the United States District Court for the Eastern District of Missouri, Eastern Division is the “district court of the United States for the district and division within which [the State Court Action] is pending.” *See* 28 U.S.C. § 1446(a); E.D. Mo. L.R. 2.07(A)(1).

17. Pursuant to 28 U.S.C. § 1446(d) and E.D. Mo. L.R. 2.03, after filing the instant Notice of Removal in this Court, Defendant will promptly provide written notice of removal to Plaintiff’s counsel, and file with this Court the Notice to Plaintiff of Filing Notice of Removal.

18. Pursuant to 28 U.S.C. § 1446(d) and E.D. Mo. L.R. 2.03, after filing the instant Notice of Removal in this Court, Defendant will file a copy of this Notice of Removal with the Clerk of the State Court, and then file in this Court the Notice of Filing Notice of Removal with the State Court.

19. Accordingly, this action may be properly removed to this Court. Nothing in this Notice of Removal constitutes an admission of any allegation in the Petition or a waiver of any defense, argument, or principle of equity available to Defendant.

WHEREFORE, Defendant Build-A-Bear Workshop, Inc. respectfully removes the State Court Action from the Circuit Court for the Twenty-First Judicial Circuit, St. Louis County to this Court and requests that this Court exercise its subject-matter jurisdiction over this matter and grant such other and further relief to Defendant as the Court deems just and proper.

Dated: September 24, 2021

Respectfully submitted,

**LEWIS RICE LLC**

By: /s/ Edward T. Pivin

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*Attorneys for Defendant Build-A-Bear Workshop, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 24<sup>th</sup> day of September, 2021, a true copy hereof was served via electronic mail and U.S. mail, first-class postage prepaid, on the following:

BUTSCH, ROBERTS & ASSOCIATES LLC

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Christopher E. Roberts

231 South Bemiston Ave., Ste. 260

Clayton, MO 63105

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*Attorneys for Plaintiff*

By: /s/ Edward T. Pivin



## 21SL-CC03859 - BENJAMIN RUBY V BUILD-A-BEAR WORKSHOP, INC. (E-CASE)

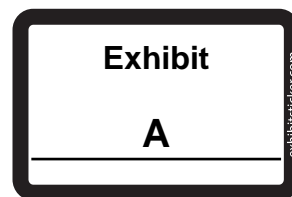
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Sort Date Entries: ☒ Descending ☐ Ascending Display Options:

- 08/30/2021 ☐ **Summons Personally Served**  
Document ID - 21-SMCC-7544; Served To - BUILD-A-BEAR WORKSHOP, INC.; Server - ; Served Date - 25-AUG-21; Served Time - 00:00:00; Service Type - Special Process Server; Reason Description - Served
- 08/25/2021 ☐ **[Affidavit Filed](#)**  
Affidavit of Service; Electronic Filing Certificate of Service.  
**Filed By:** CHRISTOPHER ELISHA ROBERTS  
**On Behalf Of:** BENJAMIN RUBY
- 08/24/2021 ☐ **[Entry of Appearance Filed](#)**  
Entry of Appearance; Electronic Filing Certificate of Service.  
**Filed By:** DAVID THRIFT BUTSCH  
**On Behalf Of:** BENJAMIN RUBY
- ☐ **[Summons Issued-Circuit](#)**  
Document ID: 21-SMCC-7544, for BUILD-A-BEAR WORKSHOP, INC..Summons Attached in PDF Form for Attorney to Retrieve from Secure Case.Net and Process for Service.
- ☐ **Filing Info Sheet eFiling**  
**Filed By:** CHRISTOPHER ELISHA ROBERTS
- ☐ **[Motion Special Process Server](#)**  
Motion to Appoint Special Process Server.  
**Filed By:** CHRISTOPHER ELISHA ROBERTS  
**On Behalf Of:** BENJAMIN RUBY
- ☐ **[Pet Filed in Circuit Ct](#)**  
Petition.  
**Filed By:** CHRISTOPHER ELISHA ROBERTS
- ☐ **Judge Assigned**  
DIV 12



IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI

BENJAMIN RUBY, individually, and on	)	
behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	Case No.
v.	)	
	)	Division
BUILD-A-BEAR WORKSHOP, INC.	)	
	)	<b>JURY TRIAL DEMANDED</b>
Serve registered agent at:	)	
Tina Klocke	)	
1954 Innerbelt Business Center Drive	)	
St. Louis, Missouri 63114	)	
	)	
Defendant.	)	

**CLASS ACTION PETITION**

Plaintiff Benjamin Ruby, through his undersigned counsel, brings this Class Action Petition against Defendant Build-a-Bear Workshop, Inc. (“Build-a-Bear”), and states as follows:

INTRODUCTION

1. This case concerns Build-a-Bear’s violations of the Telephone Consumer Protection Act (TCPA) and its regulations by sending two or more text messages to members of the Do Not Call Registry without their consent in a 12-month period.

2. In the early 1990s, Congress enacted the TCPA to protect consumers’ privacy rights, namely, the right to be left alone from unwanted telemarketing calls. A leading sponsor of the TCPA described unwanted telemarketing calls as “the scourge of modern civilization.” 137 Cong. Rec. 30821 (1991).

3. The TCPA and its corresponding regulations afford special protections for people who registered their cell phone numbers on the National Do Not Call Registry. Specifically, the



TCPA provides that each person who receives more than one call on their cell phone after being registered on the National Do Not Call Registry is entitled to recover a penalty of \$500 per call, and up to \$1,500 per call if the TCPA is willfully or knowingly violated.

4. Plaintiff is a member of the Do Not Call Registry.

5. Build-a-Bear sent Plaintiff unwanted text messages, and expressly and repeatedly revoked his consent. By continuing to send unwelcome text messages to Plaintiff after he revoked consent, Build-a-Bear violated the TCPA and its regulations.

6. Plaintiff brings this TCPA action individually, and on behalf of all those similarly situated, to seek redress for Build-a-Bear's wrongful conduct.

#### PARTIES

7. Plaintiff Benjamin Ruby is an individual who resides in Louisville, Kentucky.

8. Defendant Build-a-Bear Workshop, Inc. is a Delaware corporation with its principal place of business in St. Louis County at 1954 Innerbelt Business Center Drive, St. Louis, Missouri.

#### JURISDICTION AND VENUE

9. In addition to its headquarters being in St. Louis County, Build-a-Bear conducts substantial business in St. Louis County, including, but not limited to sales and marketing of stuffed animals and characters.

10. This Court has personal jurisdiction over Build-a-Bear because it has solicited business in the State of Missouri, conducts business in the State of Missouri, has committed the acts described below in the State of Missouri and otherwise has sufficient minimum contacts with the State of Missouri.

11. Venue is proper in this Court because a substantial portion of the events giving rise to the claims asserted in this Petition occurred in St. Louis County, Missouri.

#### FACTUAL ALLEGATIONS

12. Build-a-Bear is in the business of selling and marketing stuffed animals and characters. According to its website, Build-a-Bear has sold 160 million stuffed dolls. According to its 2020 Form 10-K filed with the Securities and Exchange Commission, Build-a-Bear conducts business through its website and operates 305 stores in the United States. Pursuant to these operations, Build-a-Bear maintains a database with information about more than 10 million consumers.

13. Through the Do Not Call Registry maintained by the Federal Trade Commission, consumers may register their telephone numbers and express their unwillingness to receive unsolicited text messages.

14. Plaintiff registered his mobile phone number, 270-871-XXXX, with the Do Not Call Registry on May 4, 2008.

15. Plaintiff purchased three stuffed animals through Build-a-Bear's website in August 2020. To the best of his knowledge, Plaintiff was not aware of consenting to receiving text messages from Build-a-Bear.

16. In November 2020, Build-a-Bear began texting Plaintiff text messages to his mobile phone via SMS short code 34345. Each text started with the abbreviation "BABW," short for "Build-a-Bear Workshop." The text messages promoted the sale of stuffed animals and supplied short hyperlinks to the Build-a-Bear website or social media.

17. On November 18, 2020, Build-a-Bear sent the following text message to Plaintiff:

BABW: Good Morning, Friend! Join us today for Merry Gifting LIVE. Deal reveals, great gift ideas and more. Starts at 10am CST and Facebook <https://bit.ly/36Sn24y>

18. On November 25, 2020, Build-a-Bear sent the following text message to Plaintiff:

BABW: Friend, guess what? You can save for Black Friday! Furry friends starting online at \$8 and more deals. Shop now for your Nice List. <https://bit.ly/35Vtetc>

19. On November 29, 2020, Build-a-Bear sent the following text message to Plaintiff:

BABW: Psst! Do not miss out, Friend! CyBEAR Monday starts NOW. Take 40% off furry friends online and save on more deals! <https://bit.ly/2JhY2f5>

20. Later on November 29, 2020, Plaintiff responded by texting “Stop” twice. Build-a-Bear replied twice with the following message:

You have been opted out and will receive no further messages from Build-A-Bear Alerts, 877-789-2327 and Guest.Services@buildabear.com for assistance.

21. Notwithstanding Plaintiff’s purported opt out, on December 7, 2020, Build-a-Bear sent the following message to Plaintiff:

BABW: The Christmas Countdown is on, Friend! Furry friends start at \$8 online for a limited time. It’s not too late to deliver hugs in time! [www.buildabear.com](http://www.buildabear.com).

22. Plaintiff again responded by texting “Stop.” Build-a-Bear again replied,

You have been opted out and will receive no further messages from Build-A-Bear Alerts, 877-789-2327 and Guest.Services@buildabear.com for assistance.

23. Notwithstanding Plaintiff’s repeated attempts to opt out, on December 17, 2020, Build-a-Bear sent the following message to Plaintiff :

BABW: We’ve got your back, Friend! Make unique gifts online and select pickup in store or NEW same-day delivery! You’ve got this, Santa! <https://bit.ly/34l5k9f>

24. Later on December 17, Plaintiff texted back in frustration, “I’ve told you to stop quit harassing me.” Build-a-Bear replied, “Sorry, we’re unable to reply to individual text messages. We invite you to check out all the fun stuff on buildabear.com—if you need help, our team will be happy to assist you!”

25. Later on December 17, Plaintiff responded by texting “Stop” in response four more times. Build-a-Bear made the same response as to the prior “stop” texts (“You have been opted out ....”).

26. On January 21, 2021, Build-a-Bear sent the following text message to Plaintiff:

BABW: Hi, Friend! Bear hugs make the best gift, especially when its National Hug Day! Shop huggable friends online starting at only \$10. <https://bit.ly/2LRZvKo>

27. On January 26, 2021, Build-a-Bear sent the following text message to Plaintiff:

BABW: PRO TIP—Order sweet gifts by tomorrow for delivery in time for Valentine’s Day using standard shipping. Channel Your Inner Cupid! <https://bit.ly/2NZP1JG>

28. Later on January 26, Plaintiff texted back twice: “Stop” and “Quit.” This prompted two more identical responses (“You have been opted out ....”).

29. Plaintiff’s efforts to opt out of text messages show that Build-a-Bear’s systems for opting out are nonfunctional and that consumers were powerless to opt out of Build-a-Bear’s text messages.

30. According to its Global Privacy Policy as of January 2021, Build-a-Bear “honors a ‘once out—always out’ policy. Once you opt out, you are opted out of that type of communication and that brand until we are explicitly told in writing to opt you back in.”

31. Even when Plaintiff repeatedly and unambiguously revoked consent, Build-a-Bear knowingly and willfully sent several text messages to Plaintiff, a member of the Do Not Call

Registry, in violation of its “once out—always out” policy. After his revocations, Plaintiff never explicitly told Build-a-Bear in writing that he was consenting to receive text messages.

32. Plaintiff maintained his registration on the Do Not Call Registry because he did not want to receive unwelcome and annoying communications like the text messages he received from Build-a-Bear. Plaintiff was annoyed by the text messages he received from Build-a-Bear. He felt that the text messages, particularly after his repeated requests to opt out, were intrusive and that they interfered with his use and enjoyment of his telephone.

#### CLASS ACTION ALLEGATIONS

33. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully stated herein.

34. Plaintiff brings this action on behalf of himself and the following class in accordance with Missouri Supreme Court Rule 52.08:

All natural persons residing in the United States who (1) registered their telephone number(s) with the Do Not Call Registry; (2) at least 31 days after Do Not Call registration and in the four years prior to the filing of this lawsuit, received two or more text message solicitations from Build-a-Bear within a 12-month period; and (3) prior to receiving such text message solicitations, had revoked consent to receiving such text message solicitations from Build-a-Bear.

35. Plaintiff maintains the right to redefine the Class as necessary to reflect the developing facts as litigation and discovery progresses.

36. The Class is numerous which makes joinder of individual plaintiffs impractical. The actual number of Class Members is not precisely known, but the Class is likely to consist of at least 40 and possibly hundreds of individuals. Build-a-Bear has information that will allow the number of Class Members to be more precisely determined.

37. This litigation presents several questions of law and fact that are common to both Plaintiff and the Class, and these questions predominate over any questions that may affect individual class members. These questions are, but not limited to the following:

- a. Whether Build-a-Bear sent text messages to persons who had previously registered their telephone numbers with the National Do Not Call Registry;
- b. Whether Build-a-Bear sent text messages to members of the Do Not Call Registry without their consent;
- c. Whether Build-a-Bear sent text messages to members of the Do Not Call Registry after those persons sent communications revoking their consent;
- d. Whether Build-a-Bear sent text messages to members of the Do Not Call Registry for the purpose of advertising any property, goods, or services;
- e. Whether Build-a-Bear willfully or knowingly violated the TCPA and its regulations.

38. Plaintiff's claims are typical to all Class Members. Through a common course of misconduct, including Build-a-Bear's failure to maintain effective systems for Class Members to opt out of text messages, Plaintiff and Class Members suffered similar types of harm.

39. Plaintiff will fairly and adequately represent and protect the interests of Class Members. Plaintiff retained experienced counsel with the necessary expertise and resources to prosecute this class action litigation. Plaintiff and his counsel do not anticipate circumstances where Plaintiff's interests would conflict with those of Class Members.

40. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The value of Class Members' claims is low enough that it is not

economical for Class Members to individually litigate their claims. Proceeding as a class will prevent inconsistent rulings and judgments.

41. Build-a-Bear acted on grounds that generally apply to the Class such that injunctive relief and money damages is appropriate. Such grounds include injunctive relief to prevent Build-a-Bear from texting members of the Do Not Call Registry who have not consented or revoked their consent to text messages.

COUNT I  
VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT  
(47 U.S.C. § 227, et seq.)  
(Individually and on Behalf of the National Do Not Call Registry Class)

42. Plaintiff re-alleges all preceding paragraphs of this Complaint and incorporates them here by reference.

43. The TCPA grants a private right of action to a person who receives more than one telephone call within a 12-month period in violation of TCPA laws and regulations protecting members of the Do Not Call Registry. *See* 47 U.S.C. § 227(c)(5).

44. For purposes of the TCPA, “telephone calls” include text messages. *See* Federal Communications Commission, Public Notice, *Text Message Senders Must Comply with the Telephone Consumer Protection Act*, DA 16-1299 (Nov. 18, 2016); *see generally Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 954 (9th Cir. 2009).

45. TCPA regulations forbid telephone solicitations to any residential telephone subscriber who registered his or her telephone number on the Do Not Call Registry. 47 C.F.R. § 64.1200(c)(2).

46. For purposes of the TCPA, “telephone solicitation” is defined as a “call or message for the purpose of encouraging the purchase ... [of] property, goods, or services” but excludes a

call or message “to any person with that person’s prior express invitation or permission.” 47 U.S.C. § 227(a)(4).

47. At all times relevant to the allegations in this Complaint, Plaintiff was a residential telephone subscriber with his telephone number registered to the Do Not Call Registry.

48. Within a 12-month period, including but not limited to the period from November 2020 through the date of the filing of this Complaint, Build-a-Bear sent more than one text message to Plaintiff. The text messages encouraged Plaintiff to purchase Build-a-Bear’s goods and services, specifically the stuffed animals and characters that Build-a-Bear constructs and offers for sale.

49. Plaintiff did not invite Build-a-Bear to send him text messages or grant Build-a-Bear permission to send him text messages. Assuming strictly for the sake of argument that Plaintiff ever granted prior consent to text messages from Build-a-Bear, Plaintiff unambiguously revoked consent through text messages to Build-a-Bear on November 29, 2020; December 7, 2020; December 17, 2020; and January 26, 2021.

50. A person aggrieved by violations TCPA laws and regulations protecting members of the Do Not Call Registry may pursue injunctive relief; recover actual monetary loss or up to \$500 per each violation, whichever is greater; or both. If violations of TCPA regulations protecting members of the Do Not Call registry are knowing or willful, the damages may be tripled. 47 U.S.C. § 227(c)(5).

51. Because Build-a-Bear disregarded Plaintiff’s repeated attempts to revoke consent to text messages, and because its systems for revoking consent by text message are ineffective and nonfunctional, Build-a-Bear’s violations are knowing and willful.

52. Plaintiff and the Class accordingly demand judgment against Build-a-Bear for statutory damages, treble damages, attorney fees and costs, and any other relief provided by law.



PRAYER FOR RELIEF

Plaintiff Benjamin Ruby prays for relief as follows:

- a. Class certification under Missouri Supreme Court Rule 52.08 and appointment of the undersigned counsel as Class Counsel.
- b. Damages in an amount to be determined at trial, or in the alternative, statutory damages under the TCPA of no less than \$500 per violation, and up to \$1,500 per each violation determined to be willful.
- c. All other damages and relief authorized by statute or law, including but not limited to attorney fees and costs.
- d. A decree enjoining Defendant from further violations of the TCPA including, but not limited to, violations of TCPA regulations protecting members of the Do Not Call Registry.
- e. All courts costs and requiring Build-a-Bear to pay for class administration.
- f. All applicable pre-judgment and post-judgment interest.
- g. Any other relief this Court deems just and equitable.

**JURY TRIAL DEMANDED**

**BUTSCH, ROBERTS & ASSOCIATES LLC**

By: /s/Christopher E. Roberts

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*ATTORNEYS FOR PLAINTIFF*

In the  
**CIRCUIT COURT**  
**Of St. Louis County, Missouri**



For File Stamp Only

BENJAMIN RUBY  
 Plaintiff/Petitioner

August 24, 2021  
 Date

vs.

BUILD-A-BEAR WORKSHOP, INC.  
 Defendant/Respondent

Case Number

Division

**REQUEST FOR APPOINTMENT OF PROCESS SERVER**

Comes now Plaintiff Benjamin Ruby, pursuant  
 Requesting Party

to Local Rule 28, and at his/her/its own risk requests the appointment of the Circuit Clerk of

Jack Eisen 1601 Orchard Lakes, St. Louis, MO 63146 314-993-1998  
 Name of Process Server Address Telephone

Name of Process Server Address or in the Alternative Telephone

Name of Process Server Address or in the Alternative Telephone

Natural person(s) of lawful age to serve the summons and petition in this cause on the below named parties. This appointment as special process server does not include the authorization to carry a concealed weapon in the performance thereof.

SERVE:

Tina Klocke  
 Name  
1954 Innerbelt Business Center Dr.  
 Address  
St. Louis, MO 63114  
 City/State/Zip

SERVE:

Name  
 Address  
 City/State/Zip

SERVE:

Name  
 Address  
 City/State/Zip

SERVE:

Name  
 Address  
 City/State/Zip

Appointed as requested:

**JOAN M. GILMER**, Circuit Clerk

By \_\_\_\_\_  
 Deputy Clerk

\_\_\_\_\_ Date

/s/ Christopher E. Roberts  
 Signature of Attorney/Plaintiff/Petitioner  
61895  
 Bar No.  
231 South Bemiston Ave., Ste. 260, Clayton, MO 63105  
 Address  
(314) 863-5700 (314) 863-5711  
 Phone No. Fax No.

## Local Rule 28. SPECIAL PROCESS SERVERS

(1) Any Judge may appoint a Special Process Server in writing in accordance with the law and at the risk and expense of the requesting party except no special process server shall be appointed to serve a garnishment [except as allowed by Missouri Supreme Court Rule 90.03(a)].

This appointment as Special Process Server does not include the authorization to carry a concealed weapon in the performance thereof.

(2) The Circuit Clerk may appoint a natural person other than the Sheriff to serve process in any cause in accordance with this subsection;

(A) Appointments may list more than one server as alternates.

(B) The appointment of a person other than the Sheriff to serve process shall be made at the risk and expense of the requesting party.

(C) Any person of lawful age, other than the Sheriff, appointed to serve process shall be a natural person and not a corporation or other business association.

(D) No person, other than the Sheriff, shall be appointed to serve any order, writ or other process which requires any levy, seizure, sequestration, garnishment, [except as allowed by Missouri Supreme Court Rule 90.03(a)], or other taking.

(E) Requests for appointment of a person other than the Sheriff to serve process shall be made on a "Request for Appointment of Process Server" electronic form, which may be found on the Court's Web Site, <http://www.stlouisco.com>. (LawandPublicSafety/Circuit/Forms).

(F) This appointment as Special Process Server does not include the authorization to carry a concealed weapon in the performance thereof.

## SERVICE RETURN

Any service by the St. Louis County Sheriff's Office shall be scanned into the courts case management system. Any service by another Sheriff or a Special Process Server or any other person authorized to serve process shall return to the attorney or party who sought service and the attorney shall file the return electronically to the Circuit Clerk.

In the  
**CIRCUIT COURT**  
**Of St. Louis County, Missouri**



For File Stamp Only

BENJAMIN RUBY  
 Plaintiff/Petitioner

August 24, 2021  
 Date

vs.

BUILD-A-BEAR WORKSHOP, INC.  
 Defendant/Respondent

Case Number

Division

**REQUEST FOR APPOINTMENT OF PROCESS SERVER**

Comes now Plaintiff Benjamin Ruby, pursuant  
 Requesting Party

to Local Rule 28, and at his/her/its own risk requests the appointment of the Circuit Clerk of

Jack Eisen 1601 Orchard Lakes, St. Louis, MO 63146 314-993-1998  
 Name of Process Server Address Telephone

Name of Process Server Address or in the Alternative Telephone

Name of Process Server Address or in the Alternative Telephone

Natural person(s) of lawful age to serve the summons and petition in this cause on the below  
 named parties. This appointment as special process server does not include the authorization  
 to carry a concealed weapon in the performance thereof.

SERVE:

Tina Klocke  
 Name  
1954 Innerbelt Business Center Dr.  
 Address  
St. Louis, MO 63114  
 City/State/Zip

SERVE:

Name  
 Address  
 City/State/Zip

SERVE:

Name  
 Address  
 City/State/Zip

SERVE:

Name  
 Address  
 City/State/Zip

Appointed as requested:

**JOAN M. GILMER**, Circuit Clerk

By /s/Molly Thal  
 Deputy Clerk

08/24/2021  
 Date

/s/ Christopher E. Roberts  
 Signature of Attorney/Plaintiff/Petitioner  
61895  
 Bar No.  
231 South Bemiston Ave., Ste. 260, Clayton, MO 63105  
 Address  
(314) 863-5700 (314) 863-5711  
 Phone No. Fax No.

## Local Rule 28. SPECIAL PROCESS SERVERS

(1) Any Judge may appoint a Special Process Server in writing in accordance with the law and at the risk and expense of the requesting party except no special process server shall be appointed to serve a garnishment [except as allowed by Missouri Supreme Court Rule 90.03(a)].

This appointment as Special Process Server does not include the authorization to carry a concealed weapon in the performance thereof.

(2) The Circuit Clerk may appoint a natural person other than the Sheriff to serve process in any cause in accordance with this subsection;

(A) Appointments may list more than one server as alternates.

(B) The appointment of a person other than the Sheriff to serve process shall be made at the risk and expense of the requesting party.

(C) Any person of lawful age, other than the Sheriff, appointed to serve process shall be a natural person and not a corporation or other business association.

(D) No person, other than the Sheriff, shall be appointed to serve any order, writ or other process which requires any levy, seizure, sequestration, garnishment, [except as allowed by Missouri Supreme Court Rule 90.03(a)], or other taking.

(E) Requests for appointment of a person other than the Sheriff to serve process shall be made on a "Request for Appointment of Process Server" electronic form, which may be found on the Court's Web Site, <http://www.stlouisco.com>. (LawandPublicSafety/Circuit/Forms).

(F) This appointment as Special Process Server does not include the authorization to carry a concealed weapon in the performance thereof.

## SERVICE RETURN

Any service by the St. Louis County Sheriff's Office shall be scanned into the courts case management system. Any service by another Sheriff or a Special Process Server or any other person authorized to serve process shall return to the attorney or party who sought service and the attorney shall file the return electronically to the Circuit Clerk.



## IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: STANLEY JAMES WALLACH	Case Number: 21SL-CC03859
Plaintiff/Petitioner: BENJAMIN RUBY	Plaintiff's/Petitioner's Attorney/Address CHRISTOPHER ELISHA ROBERTS SUITE 200 231 SOUTH BEMISTON AVE. CLAYTON, MO 63105
Defendant/Respondent: BUILD-A-BEAR WORKSHOP, INC.	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Tort	

(Date File Stamp)

## Summons in Civil Case

The State of Missouri to: BUILD-A-BEAR WORKSHOP, INC.

Alias:

TINA KLOCKE, REGISTERED AGENT  
1954 INNERBELT BUSINESS CTR DR  
ST. LOUIS, MO 63114

COURT SEAL OF



ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

**SPECIAL NEEDS:** If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739, email at SLCADA@courts.mo.gov, or through Relay Missouri by dialing 711 or 800-735-2966, at least three business days in advance of the court proceeding.

24-AUG-2021

Date

Further Information:  
MT

*Jean P. Dineen*  
Clerk

## Sheriff's or Server's Return

**Note to serving officer:** Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with \_\_\_\_\_ a person of the Defendant's/Respondent's family over the age of 15 years who permanently resides with the Defendant/Respondent.
- ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to \_\_\_\_\_ (name) \_\_\_\_\_ (title).
- ☐ other \_\_\_\_\_.

Served at \_\_\_\_\_ (address)

in \_\_\_\_\_ (County/City of St. Louis), MO, on \_\_\_\_\_ (date) at \_\_\_\_\_ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

**Must be sworn before a notary public if not served by an authorized officer:**

(Seal)

Subscribed and sworn to before me on \_\_\_\_\_ (date).

My commission expires: \_\_\_\_\_

Date

Notary Public

**Sheriff's Fees, if applicable**

Summons \$ \_\_\_\_\_

Non Est \$ \_\_\_\_\_

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00 \_\_\_\_\_

Mileage \$ \_\_\_\_\_ (\_\_\_\_\_ miles @ \$.\_\_\_\_\_ per mile)

**Total** \$ \_\_\_\_\_

A copy of the summons and a copy of the petition must be served on **each** Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.



Twenty First Judicial Circuit

## NOTICE OF ALTERNATIVE DISPUTE RESOLUTION SERVICES

### **Purpose of Notice**

As a party to a lawsuit in this court, you have the right to have a judge or jury decide your case. However, most lawsuits are settled by the parties before a trial takes place. This is often true even when the parties initially believe that settlement is not possible. A settlement reduces the expense and inconvenience of litigation. It also eliminates any uncertainty about the results of a trial.

Alternative dispute resolution services and procedures are available that may help the parties settle their lawsuit faster and at less cost. Often such services are most effective in reducing costs if used early in the course of a lawsuit. Your attorney can aid you in deciding whether and when such services would be helpful in your case.

### **Your Rights and Obligations in Court Are Not Affected By This Notice**

You may decide to use an alternative dispute resolution procedure if the other parties to your case agree to do so. In some circumstances, a judge of this court may refer your case to an alternative dispute resolution procedure described below. These procedures are not a substitute for the services of a lawyer and consultation with a lawyer is recommended. Because you are a party to a lawsuit, you have obligations and deadlines which must be followed whether you use an alternative dispute resolution procedure or not. **IF YOU HAVE BEEN SERVED WITH A PETITION, YOU MUST FILE A RESPONSE ON TIME TO AVOID THE RISK OF DEFAULT JUDGMENT, WHETHER OR NOT YOU CHOOSE TO PURSUE AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE.**

### **Alternative Dispute Resolution Procedures**

There are several procedures designed to help parties settle lawsuits. Most of these procedures involve the services of a neutral third party, often referred to as the “neutral,” who is trained in dispute resolution and is not partial to any party. The services are provided by individuals and organizations who may charge a fee for this help. Some of the recognized alternative dispute resolutions procedures are:

**(1) Advisory Arbitration:** A procedure in which a neutral person or persons (typically one person or a panel of three persons) hears both sides and decides the case. The arbitrator’s decision is not binding and simply serves to guide the parties in trying to settle their lawsuit. An arbitration is typically less formal than a trial, is usually shorter, and may be conducted in a private setting at a time mutually agreeable to the parties. The parties, by agreement, may select the arbitrator(s) and determine the rules under which the arbitration will be conducted.

**(2) Mediation:** A process in which a neutral third party facilitates communication between the parties to promote settlement. An effective mediator may offer solutions that have not been considered by the parties or their lawyers. A mediator may not impose his or her own judgment on the issues for that of the parties.

CCADM73

**(3) Early Neutral Evaluation (“ENE”):** A process designed to bring the parties to the litigation and their counsel together in the early pretrial period to present case summaries before and receive a non-binding assessment from an experienced neutral evaluator. The objective is to promote early and meaningful communication concerning disputes, enabling parties to plan their cases effectively and assess realistically the relative strengths and weaknesses of their positions. While this confidential environment provides an opportunity to negotiate a resolution, immediate settlement is not the primary purpose of this process.

**(4) Mini-Trial:** A process in which each party and their counsel present their case before a selected representative for each party and a neutral third party, to define the issues and develop a basis for realistic settlement negotiations. The neutral third party may issue an advisory opinion regarding the merits of the case. The advisory opinion is not binding.

**(5) Summary Jury Trial:** A summary jury trial is a non binding, informal settlement process in which jurors hear abbreviated case presentations. A judge or neutral presides over the hearing, but there are no witnesses and the rules of evidence are relaxed. After the “trial”, the jurors retire to deliberate and then deliver an advisory verdict. The verdict then becomes the starting point for settlement negotiations among the parties.

### **Selecting an Alternative Dispute Resolution Procedure and a Neutral**

If the parties agree to use an alternative dispute resolution procedure, they must decide what type of procedure to use and the identity of the neutral. As a public service, the St. Louis County Circuit Clerk maintains a list of persons who are available to serve as neutrals. The list contains the names of individuals who have met qualifications established by the Missouri Supreme Court and have asked to be on the list. The Circuit Clerk also has Neutral Qualifications Forms on file. These forms have been submitted by the neutrals on the list and provide information on their background and expertise. They also indicate the types of alternative dispute resolution services each neutral provides.

A copy of the list may be obtained by request in person and in writing to: Circuit Clerk, Office of Dispute Resolution Services, 105 South Central Ave., 5th Floor, Clayton, Missouri 63105. The Neutral Qualifications Forms will also be made available for inspection upon request to the Circuit Clerk.

The List and Neutral Qualification Forms are provided only as a convenience to the parties in selecting a neutral. The court cannot advise you on legal matters and can only provide you with the List and Forms. You should ask your lawyer for further information.

CCADM73

## **County Satellite Court Now Open in St. Ann**

**Hours: Mon-Fri 8:30 a.m. to 5:00 p.m. FREE PARKING**

For the convenience of North County residents, a satellite branch of the St. Louis County Circuit Court is now open at the St. Louis County Government Center Northwest at the 715 Northwest Plaza Drive in St. Ann.

### **Attending Court Hearings Remotely using E-Courts**

If you are scheduled to appear in court, you can access the courtroom remotely using the public computer stations (E-courts) in St. Ann and Clayton. These are available for use when courtroom access is restricted due to the pandemic.

**Please note:** Hearings for juvenile and paternity cases are confidential, and can only be accessed from the Clayton E-court at this time.

**Be sure to bring your paperwork with you; you will need your case number, as well as the date, time and number of the Division where you are scheduled to appear.**

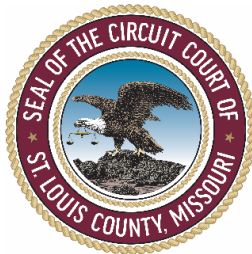
### **Filing Pleadings/New Petitions**

If you are representing yourself, you may file your paperwork at the St. Ann satellite court, in addition to the Clayton courthouse, using the secure drop box located inside the Court reception area.

### **Filing Orders of Protection**

Starting March 1, you may file for an Order of Protection at the Adult Abuse office in the St. Ann satellite court, in addition to the Clayton courthouse. Clerks will be available on-site to help you fill out and file the necessary paperwork.

**For more information call: 314-615-8029**



**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI**

BENJAMIN RUBY, on behalf of himself	)	
and all others similarly situated,	)	
	)	
	)	
Plaintiff,	)	
	)	
	)	Case No. 21SL-CC03859
v.	)	
	)	Div. 12
BUILD-A-BEAR WORKSHOP, INC.	)	
	)	
	)	
Defendant.	)	

**ENTRY OF APPEARANCE**

Comes now David T. Butsch of Butsch Roberts & Associates LLC and hereby enters his appearance on behalf of Plaintiff Benjamin Ruby.

**BUTSCH ROBERTS & ASSOCIATES LLC**

By: /s/ David T. Butsch  
David T. Butsch #37539  
231 South Bemiston Ave., Suite 260  
Clayton, MO 63105  
(314) 863-5700 (telephone)  
(314) 863-5711 (fax)  
Butsch@ButschRoberts.com

Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing was served August 24, 2021 by operation of the Court's electronic filing system.

/s/ David T. Butsch



## IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: STANLEY JAMES WALLACH	Case Number: 21SL-CC03859
Plaintiff/Petitioner: BENJAMIN RUBY	Plaintiff's/Petitioner's Attorney/Address CHRISTOPHER ELISHA ROBERTS SUITE 200 231 SOUTH BEMISTON AVE. CLAYTON, MO 63105
Defendant/Respondent: BUILD-A-BEAR WORKSHOP, INC.	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Tort	

(Date File Stamp)

## Summons in Civil Case

The State of Missouri to: BUILD-A-BEAR WORKSHOP, INC.

Alias:

TINA KLOCKE, REGISTERED AGENT  
1954 INNERBELT BUSINESS CTR DR  
ST. LOUIS, MO 63114

COURT SEAL OF



ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739, email at SLCADA@courts.mo.gov, or through Relay Missouri by dialing 711 or 800-735-2966, at least three business days in advance of the court proceeding.

24-AUG-2021

Date

Further Information:  
MT

*James P. Sherry*  
Clerk

## Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☒ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.  
☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with a person of the Defendant's/Respondent's family over the age of 15 years who permanently resides with the Defendant/Respondent.  
☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to

(name) (title).

☐ other

Served at 455 S. 18TH ST., ST. LOUIS, MO 63103 (address)  
 in ST. LOUIS (County/City of St. Louis), MO, on August 25, 2021 (date) at 12:30pm (time).

TALK EISEN

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on August 25, 2021 (date).

My commission expires: 8/8/22 Date

*Ann Mayer Eisen*  
Notary Public

ANN MAYER EISEN  
Notary Public - Notary Seal  
State of Missouri  
Commissioned for St. Louis County  
Commission Expires: August 08, 2022  
Commission Number: 14428270



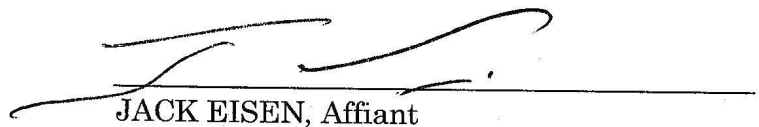
## AFFIDAVIT OF SERVICE

Comes now JACK EISEN, and being duly sworn upon his oath states as follows his Return on a Summons in Civil Case (Case No: 21SL-CC03859) directed to Build-A-Bear Workshop, Inc.

1. That he served Build-A-Bear Workshop, Inc. by personally handing a copy of said Summons in Civil Case (Case No: 21SL-CC03859) to Kevin Robinson.

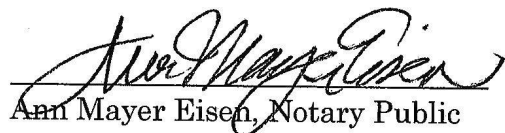
2. That said service was made at 12:30pm on the 25 day of August, 2021 within the City of St. Louis, State of Missouri, at Corporate Headquarters, 415 S. 18<sup>th</sup> St., St. Louis, MO 63103.

3. That the information given herein is true and accurate to Affiant's best knowledge, information and belief.

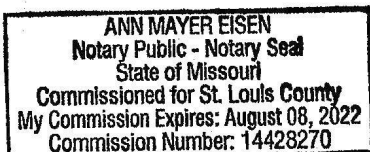
  
JACK EISEN, Affiant

STATE OF MISSOURI  
COUNTY OF ST. LOUIS

On this 25 day of August, 2021 personally appeared before me, the person who signed the foregoing Affidavit, that same was executed as Affiant's free act a Notary Public, the above named Affiant, who being duly sworn, declared that Affiant is and deed and that the statements therein are true and correct to the best of the Affiant's knowledge, information & belief.

  
Ann Mayer Eisen, Notary Public

My Commission Expires:



JS 44 (Rev. 10/20)

**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**

Benjamin Ruby

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

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

David T. Butsch & Christopher E. Roberts (Butsch, Roberts & Associates LLC)  
231 South Berniston Ave, Suite 260, Clayton, MO 63105 (314) 863-5700  
Shawn J. Wanta & Scott Moriarity (Bailion Thome Jozwiak & Wanta LLP)  
100 South Fifth Street, Suite 1200, Minneapolis, MN 55402, (612) 252-3570

**DEFENDANTS**

Build-A-Bear Workshop, Inc.

County of Residence of First Listed Defendant St. Louis County, Missouri  
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

Philip J. Mackey, Edward T. Pivin, and Michael Armstrong (Lewis Rice LLC)  
600 Washington Ave, Suite 2500, St. Louis, MO 63101 (314) 444-1343

**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 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 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	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <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 <b>LABOR</b> <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 <b>IMMIGRATION</b> <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 <b>PROPERTY RIGHTS</b> <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 <b>SOCIAL SECURITY</b> <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)) <b>FEDERAL TAX SUITS</b> <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 checked="" type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input 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
<b>REAL PROPERTY</b> <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	<b>CIVIL RIGHTS</b> <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	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <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 <b>Other:</b> <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):  
47 U.S.C. § 227 et seq.

Brief description of cause:  
Alleged violation of the Telephone Consumer Protection Act

**VII. REQUESTED IN COMPLAINT:**

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

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

September 24, 2021

SIGNATURE OF ATTORNEY OF RECORD

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.



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

Benjamin Ruby	)	
,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 21-cv-01152
Build-A-Bear Workshop,	)	
Inc.	)	
,	)	
	)	
Defendant,	)	
	)	

**ORIGINAL FILING FORM**

**THIS FORM MUST BE COMPLETED AND VERIFIED BY THE FILING PARTY  
WHEN INITIATING A NEW CASE.**

☐ THIS SAME CAUSE, OR A SUBSTANTIALLY EQUIVALENT COMPLAINT, WAS  
PREVIOUSLY FILED IN THIS COURT AS CASE NUMBER \_\_\_\_\_  
AND ASSIGNED TO THE HONORABLE JUDGE \_\_\_\_\_.

☐ THIS CAUSE IS RELATED, BUT IS NOT SUBSTANTIALLY EQUIVALENT TO ANY  
PREVIOUSLY FILED COMPLAINT. THE RELATED CASE NUMBER IS \_\_\_\_\_ AND  
THAT CASE WAS ASSIGNED TO THE HONORABLE \_\_\_\_\_. THIS CASE MAY,  
THEREFORE, BE OPENED AS AN ORIGINAL PROCEEDING.

☒ NEITHER THIS SAME CAUSE, NOR A SUBSTANTIALLY EQUIVALENT  
COMPLAINT, HAS BEEN PREVIOUSLY FILED IN THIS COURT, AND THEREFORE  
MAY BE OPENED AS AN ORIGINAL PROCEEDING.

**The undersigned affirms that the information provided above is true and correct.**

Date: 09/24/2021

/s/ Edward T. Pivin  
Signature of Filing Party

# 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 Build-a-Bear Sent Unlawful Texts to Phone Numbers on Do-Not-Call List](#)

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