

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

SHARON SMITH, ETIENNE PIERRE, and WILLIE WASHINGTON, on behalf of themselves and all similarly situated,

Plaintiffs,

vs.

Case No. _____

SHUTTLE SERVICES M.I.A., INC., a Florida corporation, and FIRST TRANSIT, INC., a Delaware corporation,

Defendants.

_____ /

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendants Shuttle Services M.I.A., Inc. and First Transit, Inc. (“Defendants”) hereby remove to this Court the state court action described below pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. This Court has jurisdiction over said action on the basis of the Class Action Fairness Act (“CAFA”). In support of this Notice of Removal, Defendants state the following:

BACKGROUND

1. This is a putative class action pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, styled SHARON SMITH, ETIENNE PIERRE, and WILLIE WASHINGTON, on behalf of themselves and all similarly situated, vs. SHUTTLE SERVICES M.I.A., INC., a Florida corporation, and FIRST TRANSIT, INC., a Delaware corporation.

2. This action was originally commenced by its filing in state court on February 25, 2016. That Complaint sought certification of a class pursuant only to Fla. R. Civ. P. 1.220(b)(2).

The only possible relief the putative class could obtain pursuant to that rule was an injunction.¹ There was no legally permissible claim for damages. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360-61 (2011) (stating that the federal equivalent of Rule 1.220(b)(2) “does not authorize class certification when each class member would be entitled to an individualized award of monetary damages”).

3. Plaintiffs have subsequently prepared an Amended (By Interlineation) Class Action Complaint (“Amended Complaint”) seeking certification of a class pursuant to Fla. R. Civ. P. 1.220(b)(1) or, alternatively, 1.220(b)(3). Am. Compl. ¶ 17.²

4. Copies of all other process, pleading, and orders from the state court action are attached hereto as composite Exhibit A pursuant to 28 U.S.C. § 1446(a).

5. Section 1441(a) provides that “[e]xcept as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a). Venue in this Court is proper under 28 U.S.C. § 1441(a) and Local Rule 3.1 because (i) this action is being removed from the state court in which it was originally filed, the Circuit Court of the Eleventh Judicial Circuit in and for Miami-

¹ Rule 1.220(b)(2) provides that a claim may be maintained on behalf of a class if, *inter alia*, “the party opposing the class has acted or refused to act on grounds generally applicable to all the members of the class, thereby making **final injunctive relief or declaratory relief** concerning the class as a whole appropriate.” Fla. R. Civ. P. 1.220 (emphasis added); *see also Freedom Life Ins. Co. of Am. v. Wallant*, 891 So. 2d 1109, 1117 (Fla. 4th DCA 2004) (stating that “(b)(2) certification does not extend to cases in which the appropriate final relief relates exclusively or predominantly to money damages”) (internal quotation marks and citation omitted).

² Plaintiffs have provided a Motion to Amend their Class Complaint along with a draft Agreed Order, which deems the Amended Complaint filed as of the date of that Order. Defendants have no objection to such amendment. These pleadings have also been attached as Exhibit B.

Dade County, Florida, which sits within the Southern District of Florida, and (ii) the Complaint alleges that the cause of action accrued in Miami-Dade County, Florida. *See* Am. Compl. ¶ 3.

I. THIS COURT HAS JURISDICTION PURSUANT TO THE CLASS ACTION FAIRNESS ACT (“CAFA”)

6. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332(d), the codification of CAFA.

7. CAFA confers jurisdiction on federal district courts over class actions in which: (1) any plaintiff class member is diverse in citizenship from any defendant; (2) there are at least 100 proposed plaintiff class members; and (3) the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d). CAFA authorizes removal of such actions pursuant to 28 U.S.C. § 1446.

8. As a threshold matter, this action is a proposed “class action” as defined by CAFA because it is a case brought by a representative of a putative class and was filed in state court pursuant to a statute or rule authorizing such a class. *See* 28 U.S.C. § 1332(d)(1)(B).³ Specifically, Plaintiffs now bring their claims under Florida Rule of Civil Procedure 1.220(b)(1) or, alternatively, 1.220(b)(3), which authorize class actions, and represent that they bring this lawsuit against Defendants “on behalf of themselves and a class consisting of Defendants’ drivers and those riders of the Employee and Public Remote Parking Lot Shuttle Buses at Miami International Airport.” Am. Compl. ¶ 13. The Plaintiffs seek class certification pursuant to Rule 1.220(b)(1) or 1.220(b)(3), declaratory relief, actual damages, liquidated damages, punitive damages, service/incentive awards, and attorneys’ fees and costs. *See id.* ¶ 17 & pp. 10-11 (“Prayer for Relief”).

³ “[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.” *Id.*

9. As demonstrated below, all of the remaining requirements for CAFA jurisdiction are met here. Further, to the extent there is any doubt whether the CAFA requirements are met, it is clear from both Supreme Court precedent and CAFA's legislative history that such doubts should be resolved in favor of federal jurisdiction. *See, e.g., Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 554 (2014) (stating that "no anti-removal presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court"); S. Rep. 109-14, at 43 (2005) ("Overall, [CAFA] is intended to expand substantially federal court jurisdiction over class actions. Its provisions should be read broadly, with a strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant."); *id.* at 35 (explaining that the intent of CAFA "is to strongly favor the exercise of federal diversity jurisdiction over class actions with interstate ramifications"). Indeed, the Eleventh Circuit has recognized that, in light of the Supreme Court's holding in *Dart*, courts "may no longer rely on any presumption in favor of remand in deciding CAFA jurisdictional questions." *Dudley v. Eli Lilly & Co.*, 778 F.3d 909, 912 (11th Cir. 2014).

A. CAFA's Diversity-of-Citizenship Requirement Is Satisfied.

10. Under CAFA, the requisite diversity of citizenship is satisfied so long as there is "minimal diversity," which exists if "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); *see also Evans v. Walter Indus., Inc.*, 449 F.3d 1159, 1163 (11th Cir. 2006) (stating that "[u]nder CAFA, federal courts now have original jurisdiction over class actions in which . . . there is minimal diversity (at least one plaintiff and one defendant are from different states)").

11. Here, the named Plaintiffs are alleged to be citizens of Florida. *See* Am. Compl. ¶ 4.

12. First Transit, Inc. is incorporated in the state of Delaware and maintains its headquarters and principal place of business in Cincinnati, Ohio. *See* Am. Compl. ¶ 8; Declaration of Michael Petrucci (“Petrucci Decl.”) ¶¶ 2-3, attached hereto as Exhibit C. It is therefore a citizen of a state other than Florida. *See* 28 U.S.C. § 1332(c)(1).

13. Shuttle Services M.I.A., Inc. is incorporated and maintains its principal place of business in Florida. *See* Am. Compl. ¶ 7; Petrucci Decl. ¶ 4. It is therefore a citizen of Florida.

14. In light of the Plaintiffs’ Florida citizenships and First Transit, Inc.’s citizenship of a state other than Florida, CAFA’s minimal diversity requirement is satisfied. *See* 28 U.S.C. § 1332(d)(2).

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

15. Although Defendants do not concede that Plaintiffs have defined a proper class or that a class can be defined or maintained or its members ascertained, Plaintiffs’ Complaint alleges that the proposed class “is in excess of thousands” (Am. Compl. ¶ 16), thus satisfying the numerosity requirement of 28 U.S.C. § 1332(d)(5)(B). *See Murray v. Midland Funding, LLC*, 2015 WL 3874635, at *2 (D. Md. June 23, 2015) (finding that CAFA jurisdiction existed where, among other things, the “complaint adequately allege[d] numerosity to permit a conclusion that the total plaintiff class members easily exceed 100 in number”); *Murray v. DirecTV, Inc.*, 2013 WL 12131736, at *2 (C.D. Cal. July 23, 2013) (finding that the numerosity requirement was satisfied because the complaint alleged that “more than 57,000 persons” were putative class members and, thus, “it [wa]s apparent on the face of the [complaint] that there [we]re over 100 putative class members”).

C. CAFA's Amount-In-Controversy Requirement Is Satisfied.

16. Under CAFA, the claims of the individual, putative class members are aggregated to determine whether the amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest or costs. *See* 28 U.S.C. § 1332(d)(6). The amount in controversy is not the amount the plaintiffs are likely to recover, but rather “an estimate of the amount that will be put at issue in the course of the litigation.” *Dudley*, 778 F.3d at 913 (quoting *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 751 (11th Cir. 2010)). “[A] defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart*, 135 S. Ct. at 554; *see also Pretka*, 608 F.3d at 754 (“[A] removing defendant is not required to prove the amount in controversy beyond all doubt or to banish all uncertainty about it.”).

17. In addition to unspecified actual and punitive damages, Plaintiffs seek damages for a period of one year pursuant to Fla. Stat. §934.10(1)(b) at the minimum rate of \$100 per day. *See* Am. Compl. ¶ 17(c) & pp. 10-11, ¶ F (“Prayer for Relief”).⁴ Conservatively assuming there are only 1,000 (as opposed to the “thousands” alleged) putative class members,⁵ the total damages claimed amount to \$36,500,000.⁶ *See Cappuccitti v. DiNecTV, Inc.*, 623 F.3d 1118, 1122-23 n.7 (11th Cir. 2010) (using “simple arithmetic” to conclude that the complaint’s

⁴ Section 934.10 allows “[a]ny person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of ss. 934.03-934.09” to recover, *inter alia*, “[a]ctual damages, but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher.” Fla. Stat. § 934.10(1).

⁵ Plaintiffs allege that the number of putative class members “is in excess of thousands.” Am. Compl. ¶ 16.

⁶ Even in the *unlikely* scenario that those 1,000 riders only road the shuttle one time each week (as opposed to the more likely scenario that each of the alleged “thousands” of putative class members road the shuttle on multiple work days each week), the amount in controversy would still exceed the \$5 million CAFA threshold (e.g., 1,000 riders x 52 rides x \$100 in liquidated damages = \$5,200,000).

allegations satisfied CAFA's jurisdictional requirements); *see also Scott v. Cricket Commc'ns, LLC*, 865 F.3d 189, 196 (4th Cir. 2017) (noting that "a removing defendant is somewhat constrained by the plaintiff" and explaining it is appropriate for defendant's allegations as to the amount in controversy to rely on "reasonable estimates, inferences, and deductions").

18. Although Defendants believe that they will establish that they do not have any liability to Plaintiffs or to any putative class member, it is clear from the Amended Complaint and Plaintiffs' class allegations that the amount in controversy exceeds \$5,000,000.

II. PROCEDURAL REQUIREMENTS AND TIMELINESS OF REMOVAL

19. Removal of this case to the U.S. District Court on the basis of CAFA jurisdiction is timely and permissible.

20. 28 U.S.C. § 1453(b) makes clear that "the 1-year limitation [on removing diversity cases to a U.S. district court] under section 1446(c)(1)" does not apply to class actions. 28 U.S.C. § 1453(b). Rather, "under CAFA, class actions may be removed at *any* point during the pendency of litigation in state court, so long as removal is initiated within thirty days after the defendant is put on notice that a case which was not removable based on the face of the complaint has become removable." *Dudley v. Eli Lilly & Co.*, 778 F.3d 909, 913 (11th Cir. 2014) (citation omitted; emphasis in original).

21. The policy underlying this procedure is sound: "Any other reading of §§ 1332 and 1453 would thwart clear congressional intent by permitting plaintiffs to evade federal jurisdiction through clever gamesmanship: filing an individual complaint in state court, waiting a year, then transforming the original complaint into a class action by amendment, when it would be too late for a defendant, now facing a class action, to file a notice of removal." *Reece*, 760 F.3d at 776.

22. Applying that policy to this case, removal under CAFA is appropriate. Plaintiffs' original complaint sought certification under Fla. R. Civ. P. 1.220(b)(2). It is not disputed that Rule 1.220(b)(2), pursuant to which Plaintiffs originally sought relief, primarily governs declaratory and injunctive relief. As the original Complaint was framed, Plaintiffs could not have recovered on behalf of the putative (b)(2) class the substantial actual, liquidated, and punitive damages that are now at stake in the Amended Complaint. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360-61 (2011); *Freedom Life Ins. Co. of Am. v. Wallant*, 891 So. 2d 1109, 1117 (Fla. 4th DCA 2004) (“(b)(2) certification does not extend to cases in which the appropriate final relief relates exclusively or predominantly to money damages”).⁷ Plaintiffs now seek certification in the Amended Complaint pursuant to Rule 1.220(b)(1) or, alternatively, 1.220(b)(3), which (although Defendants believe they do not have any liability to Plaintiffs or to any putative class member) make Plaintiffs' recovery of the damages sought feasible for the first time. Accordingly, under the provisions of CAFA, this removal was timely effected within 30 days of Plaintiffs' allegations rendering this action removable.

23. Contemporaneously with the filing of this Notice of Removal, written notice has been served upon the Plaintiffs through their counsel of record and a copy of this Notice of Removal has been filed with the Circuit Court for Miami-Dade County, Florida.

RESERVATION OF DEFENSES

24. Nothing in this Notice of Removal shall be interpreted as a relinquishment of Defendants' right to assert any defense or affirmative matter.

25. Defendants reserve the right to amend this Notice of Removal.

⁷ Damages now sought by Plaintiffs under Fla. Stat. § 934.10(1)(b) are “determined on a claimant-by-claimant basis” and are not merely “incidental to injunctive relief.” *Stalley v. ADS All. Data Sys., Inc.*, 296 F.R.D. 670, 684 (M.D. Fla. 2013).

Dated: September 4, 2018

Respectfully submitted,

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Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Removal was filed on September 4, 2018 with the Clerk of Court by using the CM/ECF system, which system served all counsel or parties of record, and that a true and correct copy of the foregoing was served via electronic mail and by U.S. Mail, first-class postage prepaid, to all counsel or parties on the Service List below.

By: /s/ Benjamine Reid
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IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 16-004697-CA-23

SHARON SMITH, ETIENNE PIERRE, and
WILLIE WASHINGTON, on behalf of
themselves and all similarly situated,

Plaintiff,

v.

SHUTTLE SERVICE MIA, INC., a Florida corporation,
And FIRST TRANSIT, INC., a Delaware corporation,

Defendants.

**PLAINTIFFS' UNNOPOSED MOTION FOR LEAVE TO AMEND COMPLIANT BY
INTERLINEATION**

Plaintiffs SHARON SMITH (“Smith”), ETIENNE PIERRE (“Pierre”) and WILLIE WASHINGTON (“Washington”) (collectively, “Plaintiffs”), by and through their undersigned counsel, on behalf of themselves and all similarly situated, request the entry of an Order granting leave of Court to amend their Complaint by interlineation, pursuant to Florida Rule of Civil Procedure 1.190, and state:

1. Plaintiffs filed this class action on February 25, 2016, against Shuttle Service MIA, Inc. and First Transit, Inc. (collectively “Defendants”).

2. Due to a scrivener’s error, Plaintiffs’ Complaint states that Plaintiffs seek a class action pursuant to Rule 1.220(b)(2) of the Florida Rules of Civil Procedure, which primarily governs declaratory relief and injunction class actions. Plaintiffs’ class action primarily seeks an award or statutory damages on behalf of the class pursuant to Rule 1.220(b)(1) or, alternatively, 1.220(b)(3).

3. Plaintiffs seek to amend their complaint by interlineation to replace references in the Complaint to Fla. R. Civ. P. 1.220(b)(2) with a reference to Rule 1.220(b)(1) or, alternatively, 1.220(b)(3). A copy of Plaintiff's proposed Amended Complaint by interlineation is attached hereto as Exhibit "A."

4. Plaintiffs have conferred with counsel for Defendant, and Defendant does not appose the relief requested herein.

WHEREAS, based upon the foregoing, Plaintiffs request the entry of an Order granting leave of Court to file their amended Complaint, and grant such relief as the Court deems appropriate.

Dated: August 29, 2018

Respectfully submitted,

/s/ Gregg I. Shavitz

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 29, 2018, a true and correct copy of the foregoing was filed with the Clerk of the Court via the E-filing Portal, and served via Electronic Mail by the E-filing Portal upon:

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IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

SHARON SMITH, ETIENNE PIERRE, and
WILLIE WASHINGTON, on behalf of
themselves and all similarly situated,

CASE NO: 16-004697-CA-23

Plaintiffs,

v.

SHUTTLE SERVICE MIA, INC., a Florida
corporation, and FIRST TRANSIT, INC.,
a Delaware corporation,

Defendants.

_____ /

AMENDED (BY INTERLINEATION) CLASS ACTION COMPLAINT

Plaintiffs, SHARON SMITH, ETIENNE PIERRE, and WILLIE WASHINGTON, by and through their undersigned counsel, on behalf of themselves and all similarly situated, hereby sue the Defendants, SHUTTLE SERVICE MIA, INC., a Florida corporation, and FIRST TRANSIT, INC., a Delaware corporation, and for their cause of action declare and aver as follows:

INTRODUCTION

1. Plaintiffs bring the instant action on behalf of themselves and all similarly situated against Defendants for violations of the Florida Security of Communications Act, Chapter 934, Florida Statutes, as a result of the Defendants' unlawful monitoring, interception and recording of Plaintiffs' private communications who either as drivers or riders on Defendants' vehicles have had their private conversations and communicated recorded and stored by Defendants without advising or warning them as required by Florida law.

JURISDICTION AND VENUE

2. This is a claim for equitable relief and monetary relief in excess of \$15,000.00, and thus jurisdiction is proper in this Court.
3. The unlawful practices occurred in Miami-Dade County, and therefore venue is properly in this Court.

PARTIES

4. Plaintiffs, SMITH and PIERRE, are citizens of Miami-Dade County, Florida, over the age of 18 years, and are otherwise *sui juris*.
5. At all times material hereto, Plaintiffs SMITH and PIERRE were employees of Defendants, working as shuttle bus drivers.
6. Plaintiff, WASHINGTON, is a citizen of Broward County, Florida and works in Miami-Dade County, Florida at Miami International Airport. Plaintiff, WASHINGTON, is over the age of 18 years, and is otherwise *sui juris*.
7. At all times material hereto, Defendant, SHUTTLE SERVICE MIA, INC., was and continues to be a Florida corporation, doing business in Miami Dade County, Florida.
8. At all times material hereto, Defendant, FIRST TRANSIT, INC., was and continues to be a Delaware corporation, doing business in Miami Dade County, Florida.
9. At all times material hereto, Defendant, SHUTTLE SERVICE MIA, INC., was and continues to be a wholly owned subsidiary of Defendant, FIRST TRANSIT, INC.
10. At all times material hereto, Defendant, FIRST TRANSIT, INC., was and continues to be a leading provider of passenger transportation contract and management services in the United States.

11. At all times material hereto, the Defendants have contracted with the Miami-Dade Aviation Department to manage and operate the Employee and Public Remote Parking Lot Shuttle Bus Service at Miami International Airport.
12. During all times relevant to the claims alleged the Shuttle Bus Services was operated twenty-four hours per day, Monday through Friday, and upon information and belief, for some hours on Saturdays and Sundays, for the employees of the County, airlines, and various companies, including vendors, conducting business at the Airport.

CLASS REPRESENTATION ALLEGATIONS

13. Plaintiffs bring this case as a class action pursuant to Rule 1.220(b)(1) of the Florida Rules of Civil Procedure, or alternatively pursuant to Rule 1.220(b)(3), on behalf of themselves and a class consisting of Defendants' drivers and those riders of the Employee and Public Remote Parking Lot Shuttle Buses at Miami International Airport who worked for the County, the airlines, and various companies, including vendors, conducting business at the Airport (the "Shuttle Riding Class" or "Class").
14. The Plaintiffs' claims involve questions of law and fact that are common to each member of the Shuttle Riding Class. Among the questions of law and fact common to Plaintiffs and the members of the Class are:
 - a. Whether the actions of the Defendants in monitoring, recording, and storage of oral communication of Plaintiffs and members of the Shuttle Riding Class violate the Florida Security of Communications Act, Chapter 934, Florida Statutes;
 - b. Whether the actions of the Defendants in failing to advise the Shuttle Riding Class that their oral communications are subject to being monitored, recorded, and stored violate the Florida Security of Communications Act, Chapter 934, Florida Statutes;

- c. Whether the Plaintiffs and members of the Shuttle Riding Class have a reasonable expectation of privacy that their oral communications are not being intercepted, recorded, and stored by the Defendants;
 - d. Whether the Defendants have the legal right and authority to intercept, record, and store the oral communications of the Shuttle Riding Class;
 - e. Whether the Plaintiffs and members of the Shuttle Riding Class are entitled to injunctive relief prohibiting the continued interception, recording, and storage of their oral communications each time they ride buses operated by the Defendants; and
 - f. Whether the Plaintiffs and members of the Shuttle Riding Class are entitled to actual, statutory, and punitive damages for the conduct of the Defendants.
15. The Plaintiffs' claims are typical of the claims of the members of the Shuttle Riding Class because the Plaintiffs and members of the Class are all subject to the Defendants' intentional, illegal and unauthorized interception of oral communications that take place on the shuttle buses it operates at Miami International Airport. The Plaintiffs and the members of the Shuttle Riding Class have and will continue to sustain similar damages as a result of the actions of the Defendants.
16. The approximate number of Shuttle Riding Class members for the Material Period, as defined herein, is in excess of thousands. The Plaintiffs will fairly and adequately protect and represent the interests of the members of the Class because Plaintiffs' interests are fully aligned with the interests of the Class members. The Plaintiffs have retained counsel sufficiently experienced in the litigation of claims such as in this action and who have no conflict of interest with other Class members in the maintenance of this Class action. The Plaintiffs will vigorously pursue the claims of

the Class.

17. The particular facts and circumstances that support maintenance of this action as a class action pursuant to Rule 1.220(b)(1), or alternatively Rule 1.220(b)(3), of the Florida Rules of Civil Procedure are:
 - a. The Defendants have acted on grounds which violate the Florida Security of Communications Act, Chapter 934, Florida Statutes, in that every member of the Shuttle Riding Class has had their oral communications intercepted on a daily basis with equipment in the care, custody, and control of the Defendants, and that the members of the Class have not and are not being advised of this deprivation of their rights under Florida law.
 - b. The Plaintiffs and members of the Shuttle Riding Class are entitled to injunctive relief, actual damages and/or statutory damages, and punitive damages pursuant to §§ 934.03-934.09, Florida Statutes.
 - c. The monies sought to be paid to members of the Shuttle Riding Class are equal to “[a]ctual damages, but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher.” Accordingly, the cost of administering the recovery of funds on behalf of individual members of the Class will be minimized.

STATEMENT OF FACTS

18. Plaintiff, SMITH, was hired as a driver for the Defendants in February of 2002.
19. Plaintiff, PIERRE, was hired as a driver for the Defendants in February of 1999.
20. During the Material Period, as defined herein, Plaintiffs SMITH and PIERRE drove 28-passenger buses, shuttling members of the Shuttle Riding Class between the parking lots adjacent to Miami International Airport and the Miami Airport terminals.
21. Plaintiff, WASHINGTON, has been an employee at Miami International Airport and for the last seven years, up through the Spring of 2014, has ridden the Defendants’ buses between the Airport parking lot and the main terminal.

22. In April of 2014, Plaintiffs SMITH and PIERRE first became aware that the Defendants were monitoring and recording all oral communications on the buses.
23. Shortly thereafter, Plaintiff, WASHINGTON, as an airport employee, also became aware that the Defendants were monitoring and recording all oral communications on the buses.
24. Defendants misled the Plaintiffs and members of the Shuttle Riding Class into believing that they had a reasonable expectation of privacy on the buses, as all of the signs posted on the buses merely advised the Shuttle Riding Class that they were subject to **video monitoring only**.
25. Defendants' signage failed to advise the members of the Shuttle Riding Class that Defendants also were intercepting, recording and storing their **oral** communications. Indeed, the signage indicating only video monitoring gave the clear impression to the members of the Shuttle Riding Class that Defendants were not recording their oral communications.
26. When the Defendants' unlawful interception, recording and storage of the oral communications of Plaintiffs and the members of the Shuttle Riding Class the Defendants revised their signage on the buses in or about May 2014 to advise all riders that they were both being subjected to video **and** audio monitoring.
27. On or about May 18, 2015, the Parties entered into a Tolling Agreement, whereby the claims of Plaintiffs and the Shuttle Riding Class were tolled through the date of the filing of this Complaint.
28. Thus, the Material Period for the claims alleged herein is May 18, 2013 to approximately May 2014, or the date when Defendants changed their signage to

indicate that they were conducting both video and audio recording of the communications of the Shuttle Riding Class.

29. During the Material Period, the Defendants' surreptitious audio microphones unlawfully intercepted and recorded the Plaintiffs and the members of the Shuttle Rider Class when they engaged in private conversations while driving and riding on the bus and on their phone calls, as well as when the Plaintiff drivers used their cell phones during idle and break time when they were not driving.
30. Furthermore, because the Defendants are under contract with Miami Dade Transit, all of the recordings of all oral communications that Defendants have intercepted during the Material Period are public records under Chapter 119, Florida Statutes, and are subject to public disclosure and records requests.
31. During the Material Period, the Plaintiffs and all members of the Shuttle Riding Class had a reasonable expectation of privacy such that their **oral** conversations, including telephonic communications, and the contents thereof, were **not** subject to interception by electronic or other means or otherwise being recorded, stored, and shared with any third person without their consent.
32. Upon information and belief, during the Material Period, the Defendants possessed in their care, custody, and control the unauthorized electronic interception alleged herein.
33. During the Material Period, any and all oral communications which occurred on Defendants' buses constitute a wire and oral communication within the meaning of Florida Statutes § 934.02(1)-(2).

34. During the Material Period, Plaintiffs, were and continue to be “aggrieved person[s]” within the meaning of Florida Statutes § 934.02(9).
35. During the Material Period, all members of the Shuttle Riding Class, by virtue of Defendants’ failure to advise them that their conversations were being monitored and recorded are likewise “aggrieved person[s]” within the meaning of Florida Statutes § 934.02(9).
36. Plaintiffs have retained the Law Firm of Michael A. Pancier, PA and the Shavitz Law Group, P.A. and have agreed to pay the firms a reasonable fee for their services.

STATEMENT OF CLAIMS

COUNT I - VIOLATION OF FLA. STAT. § 934.10 - Individual Claims

37. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully set forth herein.
38. Florida Statute § 934.03(1) provides: “[A]ny person who ... intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication . . . is guilty of a felony of the third degree.” Likewise, Florida Statute § 934.10 provides:

(1) Any person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of §§ 934.03-934.09 shall have a civil cause of action against any person or entity who intercepts, discloses, or uses, or procures any other person or entity to intercept, disclose, or use, such communications and shall be entitled to recover from any such person or entity which engaged in that violation such relief as may be appropriate.
39. By and through its above-referenced conduct, Defendants violated the Florida Security of Communications Act.

40. As a direct and proximate result of Defendants' unlawful actions, Plaintiffs are entitled to actual damages plus statutory liquidated damages of \$ 100.00 per day or \$1,000.00 (whichever is greater) during the Material Period against each Defendant, jointly and severally .
41. Defendants' actions were willful and wonton in full disregard of Plaintiffs' rights under the Florida Security of Communications Act.
42. Plaintiffs are entitled to an award of attorneys' fees and costs of litigation pursuant to Florida Statutes §934.10(1)(d).

WHEREFORE, Plaintiffs SHARON SMITH, ETIENNE PIERRE, and WILLIE WASHINGTON, demand judgment against Defendants, SHUTTLE SERVICE MIA, INC., and FIRST TRANSIT, INC., jointly and severally, as follows:

- A. Injunctive relief prohibiting the Defendants from further engaging in unlawful conduct under the Florida Security of Communications Act;
- B. Declaratory relief that the conduct of the Defendants complained of herein is in violation of the Florida Security of Communications Act;
- C. Actual damages;
- D. Liquidated damages computed at the rate of \$ 100.00 per day or \$1,000.00 (whichever is greater) during the Material Period against each Defendant, jointly and severally, for violations of the Florida Security of Communications Act;
- E. Punitive Damages;
- F. Attorneys' fees and costs of litigation pursuant to Florida Statutes §934.10(1)(d); and

F. Any other relief that the Court deems just and proper.

COUNT II – VIOLATION OF FLA. STAT. § 934.10 - CLASS ALLEGATIONS

43. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully set forth herein.

44. Florida Statute § 934.03(1) provides: “[A]ny person who ... intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication ... is guilty of a felony of the third degree.” Likewise, Florida Statute § 934.10 provides:

(1) Any person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of §§ 934.03-934.09 shall have a civil cause of action against any person or entity who intercepts, discloses, or uses, or procures any other person or entity to intercept, disclose, or use, such communications and shall be entitled to recover from any such person or entity which engaged in that violation such relief as may be appropriate.

45. As a direct and proximate result of Defendants’ unlawful actions, all members of the class are entitled to actual damages plus statutory liquidated damages of \$100.00 per day or \$1,000.00 (whichever is greater) during the Material Period against each Defendant, jointly and severally .

46. Defendants’ actions were willful and wonton in full disregard of the Shuttle Riding Class members’ rights under the Florida Security of Communications Act.

47. The Plaintiffs’ class is entitled to an award of attorneys’ fees and costs of litigation pursuant to Florida Statutes §934.10(1)(d).

PRAYER FOR RELIEF

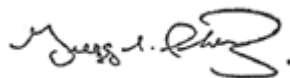
WHEREFORE, Plaintiffs, on behalf of themselves and all members of the Shuttle Riding Class all members of the aforementioned class Plaintiffs demand judgment against

Defendants, SHUTTLE SERVICE MIA, INC., and FIRST TRANSIT, INC., jointly and severally, and request the Court for the following:

- A. Certification of the Shuttle Riding Class pursuant to Florida Rule of Civil Procedure 1.220(b)(1) or alternatively, 1.220(b)(3);
- B. Appointment of Plaintiffs as Class Representatives;
- C. Appointment of Michael Pancier, P.A. and Shavitz Law Group, P.A. as Class Counsel;
- D. Entry of declaratory relief that the conduct of the Defendants constitutes a conspiracy to violate the Florida Security of Communications Act;
- E. Award of actual damages;
- F. Award of liquidated damages computed at the rate of \$ 100.00 per day or \$1,000.00 (whichever is greater) during the Material Period against each Defendant, jointly and severally; for violations of the Florida Security of Communications Act;
- G. Award of punitive Damages;
- H. Award of service/incentive awards to the Class Representatives;
- I. Award of attorneys' fees and costs of litigation pursuant to Florida Statutes §934.10(1)(d); and
- J. Any other relief that the Court deems just and proper.

Dated: _____, 2018

Respectfully submitted,



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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on _____, 2018, a true and correct copy of the foregoing was filed with the Clerk of the Court via the E-filing Portal, and served via Electronic

Mail by the E-filing Portal upon:

Gregg I. Shavitz, Esq.
The Shavitz Law Group
gshavitz@shavitzlaw.com
co-counsel for Plaintiff

Michael A. Pancier, Esq.
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co-counsel for Plaintiff

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Attorneys for Defendants

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

CASE NO. 16-004697-CA-23

SHARON SMITH, ETIENNE PIERRE, and
WILLIE WASHINGTON, on behalf of
themselves and all similarly situated, Plaintiffs,

vs.

SHUTTLE SERVICE MIA, INC., a Florida
corporation, and FIRST TRANSIT, INC., a
Delaware corporation, Defendants.

AGREED ORDER ON MOTION TO AMEND

This matter came before the Court on the Motion to Amend and the Court having reviewed the file including the Amended Class Complaint attached to Plaintiffs' Motion to Amend, having been advised of the agreement of the parties and being otherwise fully advised in the premises, it is ORDER AND ADJUDGED as follows:

1. The Motion is Granted.
2. The Amended Class Complaint shall be deemed to have been filed as of the date of this Order.
3. Defendants shall have thirty (20) days from the date of this Order within which to file responsive pleadings.
4. Any existing trial settings or scheduling orders shall remain in effect.

DONE AND ORDERED, in Chambers, in Miami-Dade County, Florida, this ____ day of _____, 2018.

BARBARA ARECES
CIRCUIT COURT JUDGE

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

SHARON SMITH, ETIENNE PIERRE, and WILLIE WASHINGTON, on behalf of themselves and all similarly situated,

Plaintiffs,

vs.

Case No. _____

SHUTTLE SERVICES M.I.A., INC., a Florida corporation, and FIRST TRANSIT, INC., a Delaware corporation,

Defendants.

_____ /

**DECLARATION OF MICHAEL PETRUCCI
IN SUPPORT OF DEFENDANT'S NOTICE OF REMOVAL**

Michael Petrucci declares and says:

1. My name is Michael Petrucci. I am over the age of 18. I have never been convicted of a felony or crime involving moral turpitude, and I am otherwise competent to make this declaration.
2. I am employed by First Transit, Inc. ("First Transit") as Senior Vice President, General Counsel & Secretary at First Transit's corporate headquarters in Cincinnati, Ohio. As part of my job duties, I have responsibility for maintain the corporate minute books for all First Transit subsidiaries. I have personal knowledge of the facts stated herein, and they are true and correct.
3. First Transit is organized and incorporated in the state of Delaware. First Transit maintains it principal place of business in Ohio.
4. Shuttle Services M.I.A., Inc. ("Shuttle Services") is a subsidiary of First Transit, Inc. Shuttle Services is incorporated and maintains its principal place of business in Florida.

I swear under penalty of perjury and the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

SIGNED this 4th day of September, 2018 at Cincinnati, Ohio.



MICHAEL PETRUCCI, DECLARANT

115638010.1

JS 44 (Rev. 06/17) FLSD Revised 06/01/2017

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS SHARON SMITH, ETIENNE PIERRE, and WILLIE WASHINGTON

DEFENDANTS SHUTTLE SERVICES M.I.A., INC. and FIRST TRANSIT, INC.

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

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

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

(c) Attorneys (Firm Name, Address, and Telephone Number) SHAVITZ LAW GROUP, P.A., 1515 South Federal Hwy, Suite 404, Boca Raton, FL 33432, Tel.: (561) 447-8888

Attorneys (If Known) CARLTON FIELDS JORDEN BURT, P.A., Miami Tower, Suite 4200, 100 S.E. Second St., Miami, FL 33131, Tel.: (305) 530-0050

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

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

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

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

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 [X] 1
2 2
3 3
4 4
5 [X] 5
6 6

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

- CONTRACT
110 Insurance
120 Marine
130 Miller Act
140 Negotiable Instrument
150 Recovery of Overpayment & Enforcement of Judgment
151 Medicare Act
152 Recovery of Defaulted Student Loans (Excl. Veterans)
153 Recovery of Overpayment of Veteran's Benefits
160 Stockholders' Suits
190 Other Contract
195 Contract Product Liability
196 Franchise
REAL PROPERTY
210 Land Condemnation
220 Foreclosure
230 Rent Lease & Ejectment
240 Torts to Land
245 Tort Product Liability
290 All Other Real Property
PERSONAL INJURY
310 Airplane
315 Airplane Product Liability
320 Assault, Libel & Slander
330 Federal Employers' Liability
340 Marine
345 Marine Product Liability
350 Motor Vehicle
355 Motor Vehicle Product Liability
360 Other Personal Injury
362 Personal Injury - Med. Malpractice
CIVIL RIGHTS
440 Other Civil Rights
441 Voting
442 Employment
443 Housing/Accommodations
445 Amer. w/Disabilities - Employment
446 Amer. w/Disabilities - Other
448 Education
PERSONAL INJURY
365 Personal Injury - Product Liability
367 Health Care/Pharmaceutical Personal Injury Product Liability
368 Asbestos Personal Injury Product Liability
LABOR
710 Fair Labor Standards Act
720 Labor/Mgmt. Relations
740 Railway Labor Act
751 Family and Medical Leave Act
790 Other Labor Litigation
791 Empl. Ret. Inc. Security Act
PRISONER PETITIONS
Habeas Corpus:
463 Alien Detainee
510 Motions to Vacate Sentence
Other:
530 General
535 Death Penalty
540 Mandamus & Other
550 Civil Rights
555 Prison Condition
560 Civil Detainee - Conditions of Confinement

- FORFEITURE/PENALTY
625 Drug Related Seizure of Property 21 USC 881
690 Other
BANKRUPTCY
422 Appeal 28 USC 158
423 Withdrawal 28 USC 157
PROPERTY RIGHTS
820 Copyrights
830 Patent
835 Patent - Abbreviated New Drug Application
840 Trademark
SOCIAL SECURITY
861 HIA (1395ff)
862 Black Lung (923)
863 DIWC/DIWW (405(g))
864 SSID Title XVI
865 RSI (405(g))
FEDERAL TAX SUITS
870 Taxes (U.S. Plaintiff or Defendant)
871 IRS-Third Party 26 USC 7609
OTHER STATUTES
375 False Claims Act
376 Qui Tam (31 USC 3729 (a))
400 State Reapportionment
410 Antitrust
430 Banks and Banking
450 Commerce
460 Deportation
470 Racketeer Influenced and Corrupt Organizations
480 Consumer Credit
490 Cable/Sat TV
850 Securities/Commodities/Exchange
890 Other Statutory Actions
891 Agricultural Acts
893 Environmental Matters
895 Freedom of Information Act
896 Arbitration
899 Administrative Procedure Act/Review or Appeal of Agency Decision
950 Constitutionality of State Statutes

V. ORIGIN

- 1 Original Proceeding
2 [X] Removed from State Court
3 Re-filed (See VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation Transfer
7 Appeal to District Judge from Magistrate Judgment
8 Multidistrict Litigation - Direct File
9 Remanded from Appellate Court

VI. RELATED/RE-FILED CASE(S)

(See instructions): a) Re-filed Case [] YES [X] NO b) Related Cases [] YES [X] NO

JUDGE:

DOCKET NUMBER:

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): Putative CAFA class action, seeking relief pursuant to Fla. Stat. § 934.10

LENGTH OF TRIAL via 7 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 [X] DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint:

JURY DEMAND: [] Yes [X] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE September 4, 2018

SIGNATURE OF ATTORNEY OF RECORD

[Handwritten Signature]

FOR OFFICE USE ONLY RECEIPT #

AMOUNT

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.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked. Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

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

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

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

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

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

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

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

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

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

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

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

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

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

Brief Description: Unauthorized reception of cable service

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

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

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

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Florida Shuttle Bus Cos. Secretly Monitored, Recorded Drivers', Riders' Conversations, Class Action Alleges](#)
