UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA ORLANDO DIVISION

CLAUDIA ZARNESKY, individually and on behalf of all others similarly situated,	
Plaintiff,	Case No.
V.	State Court Case No. 2021-30199

FRONTIER AIRLINES, INC.,

Defendant.

CICI

Class Action

NOTICE OF REMOVAL OF CIVIL ACTION

PLEASE TAKE NOTICE that Defendant Frontier Airlines, Inc. ("Frontier Airlines" or "Defendant"), by and through its counsel, hereby files this notice of removal in the above-captioned action, currently pending in the Circuit Court of the Seventh Judicial Circuit in and for Volusia County, Florida, as Case No. 2021-30199 CICI (the "State Court Action"). This removal is made pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453. For the reasons set forth below, this Court has subject matter jurisdiction.

I. BACKGROUND

1. On or about February 15, 2021, Plaintiff Claudia Zarnesky, individually and on behalf of all others similarly situated, commenced a putative class action against Frontier Airlines by filing a Class Complaint and Demand for Jury Trial (the "Complaint") in the Circuit Court of the Seventh Judicial Circuit in

and for Volusia County, Florida. A true and correct copy of the Complaint is attached hereto as **Exhibit A**.

- 2. On February 23, 2021, Frontier Airlines was served with the Complaint. A true and correct copy of the Service of Process is attached hereto as **Exhibit B**.
- 3. True and correct copies of all process, pleadings, and orders in the State Court Action and not previously referenced are attached hereto as **Exhibit C**.
- 4. The Complaint alleges that Defendant unlawfully intercepted Plaintiff's electronic communications in violation of the Florida Security of Communications Act, Fla. Stat. Ann. § 934.01, et seq. ("FSCA"). (Ex. A¶1.)
- 5. This Notice of Removal is timely under 28 U.S.C. § 1446(b), as it is filed within thirty (30) days after Plaintiff's service of the Complaint upon Frontier Airlines.
- 6. Nothing in this Notice of Removal shall constitute a waiver of Defendant's right to assert any defense, including motions pursuant to Federal Rule of Civil Procedure 12, as the case progresses.

II. VENUE

7. Venue is proper under 28 U.S.C. § 1441(a) because this Court is the United State District Court for the district and division embracing the location where the State Court Action was pending.

III. JURISDICTION

8. This Court has jurisdiction over this action under the Class Action Fairness Act ("CAFA"), codified under 28 U.S.C. § 1332(d) and § 1453, because: (A) it meets CAFA's definition of a class action; (B) the putative class consists of more than 100 members; (C) there is minimal diversity of citizenship; and (D) the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d).

A. This Action Meets the "Class Action" Definition Under CAFA.

9. The State Court Action is a "class action." CAFA provides:

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

28 U.S.C. § 1332(d)(1)(B). CAFA further provides "[t]his subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action." 28 U.S.C. § 1332(d)(8).

10. Plaintiff filed the State Court Action as a putative class action. (*See* Ex. A at 1 (titled "Class Action Complaint"); *id.* ¶ 1 ("This is a class action"), *id.* ¶¶ 20-29 (section entitled "Class Action Allegations").) Plaintiff also asserts that she seeks to represent a class, defined as:

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

(Ex. A \P 20.) The class definition excludes Defendant as well as Defendant's employees or agents. (*Id.* \P 21.) Accordingly, the Complaint clearly qualifies as a "class action" under CAFA.

B. The Putative Class Exceeds 100 Members.

11. Plaintiff concedes that the putative class is "believed to be no less than 100 individuals." (*Id.* ¶ 22; *see also* **Exhibit D**, Declaration of Jacob Maloney, ¶ 4.) Accordingly, the proposed class has at least one hundred members in the aggregate. 28 U.S.C. § 1332(d)(5)(b).¹

C. This Action Meets CAFA's Minimal Diversity Requirement.

- 12. CAFA applies when "any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A). "Under CAFA, federal courts... have original jurisdiction over class actions in which the amount in controversy exceeds \$5,000,000 and there is minimal diversity (at least one plaintiff and one defendant are from different states)." *McDaniel v. Fifth Third Bank*, No. 14-11615, 2014 U.S. App. LEXIS 10489, *2-*3 (11th Cir. June 5, 2014) (citing *Evans v. Walter Indus., Inc.*, 449 F.3d 1159, 1163 (11th Cir. 2006)).
 - 13. Plaintiff alleges she is a citizen of Volusia County, Florida. (Ex. A ¶ 5.)
- 14. As a corporation, Frontier Airlines is deemed to be a citizen of its state of incorporation and the state where it maintains its principal place of business.

 28 U.S.C. § 1332(c)(1). Frontier Airlines is a Colorado corporation, and Plaintiff

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¹ Although the putative class alleged by Plaintiff meets the threshold for jurisdictional purposes, Frontier Airlines denies that this action ultimately will prove appropriate for class treatment.

accurately alleges that Frontier Airlines has its principal place of business in Denver, Colorado. (Ex. A. § 6.) Frontier Airlines is therefore a citizen of Colorado for purposes of diversity jurisdiction. See 28 U.S.C. § 1332(c)(1).

15. Accordingly, because Plaintiff is a citizen of Florida, and Frontier Airlines is a citizen of Colorado, CAFA's minimal diversity requirement is satisfied. 28 U.S.C. § 1332(d)(2)(A).

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

- 16. CAFA creates original jurisdiction for "any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs." 28 U.S.C. § 1332(d)(2). The claims of the individual class members are aggregated to determine whether the matter in controversy exceeds \$5,000,000. 28 U.S.C. § 1332(d)(6). The amount-in-controversy analysis considers the amount the plaintiff has placed in controversy, not the amount the plaintiff is likely to recover. *McDaniel*, 2014 U.S. App. LEXIS 10489 at *3 ("[T]he plaintiff['s] likelihood of success on the merits is largely irrelevant to the court's jurisdiction because the pertinent question is what is *in controversy* in the case, not how much the plaintiffs are ultimately likely to recover.") (citing *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 751 (11th Cir. 2010) (emphasis in original).
- 17. To satisfy this requirement, "a defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold; the notice need not contain evidentiary submissions." Dart Cherokee Basin Operating Co., LLC v. Owens, 574 U.S. 81, 81 (2014); see also

Anderson v. Wilco Life Ins. Co., 943 F.3d 917, 925 (11th Cir. 2019) (same). Nevertheless, Frontier Airlines has submitted a declaration in support of its notice of removal that demonstrates the amount in controversy requirement is satisfied. (See Ex. D § 4.) When determining whether the \$5,000,000 threshold has been surpassed, "a court may rely on evidence put forward by the removing defendant, as well as reasonable inferences and deductions drawn from that evidence." Anderson, 943 F.3d at 925 (citing S. Fla. Wellness, Inc. v. Allstate Ins. Co., 745 F.3d 1312, 1315 (11th Cir. 2014)). Frontier Airlines denies all liability alleged in the Complaint and further denies that class treatment is appropriate for this Action. However, if damages or restitution were awarded on Plaintiff's claims, the aggregate amount as to the putative class would satisfy the amount-in-controversy requirement.

- 18. Though Plaintiff has not specified the amount of relief she seeks, the allegations in the Complaint (as well as reasonable inferences and deductions drawn from those allegations) make clear that the amount Plaintiff has placed in controversy is easily above \$5,000,000, exclusive of interests and costs. Indeed, Plaintiff concedes that the proposed class of Florida residents is "numerous and geographically dispersed," and that "the aggregate damages sustained by the Class are potentially in the millions of dollars" (Ex. A ¶¶ 22, 28.)
- 19. Specifically, the Complaint seeks declarative and injunctive relief, liquidated damages, punitive statutory damages, and attorney's fees and costs. (*Id.* ¶¶ 39–41.) The liquidated damages sought by Plaintiff are set forth by the FSCA,

which provides for "liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher." (Ex. A ¶ 39.) The statute of limitations for an FSCA claim is two years. Fla. Stat. Ann. \S 934.10(3).

airline *purchases* made on the Frontier Airlines website to unique names and billing addresses in Florida during the two years prior to the filing of the Complaint. (Ex. D ¶ 4.) Thus, there necessarily were at least 5,000 Floridian *visitors* to Frontier Airlines' website during the period Plaintiff alleges Frontier Airlines was intercepting website visitor's electronic communications. Since Plaintiff seeks statutory damages of at least \$1,000 per class member, the amount of alleged statutory damages alone exceeds \$5,000,000. Plaintiff's claims for attorney's fees and injunctive relief, including the cost of implementing the requested relief, only further confirm that the amount in controversy requirement is met.

IV. NOTICE

21. As required by 28 U.S.C. § 1446(d), a copy of this notice of removal is being served upon Plaintiff's counsel and a copy is being filed with the Clerk of the Circuit Court of the Seventh Judicial Circuit in and for Volusia County, Florida.

V. CONCLUSION

WHEREFORE, Defendant Frontier Airlines, Inc. respectfully requests this Court to assume full jurisdiction over the cause herein, as provided by law, and to issue all necessary orders and process.

Respectfully submitted,

/s/ Jordan D. Maglich

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and

COOLEY LLP

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San Francisco, CA 94111-5800
Tel: (415) 693-2000
Fax: (415) 693-2222
(pro hac vice motion forthcoming)

Attorneys for Defendant Frontier Airlines, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 24, 2021, I electronically filed the foregoing and its attachments with the Clerk of the Court by using the CM/ECF system and sent the foregoing and its attachments via email to the following counsel of record:

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Attorneys for Defendant Frontier

Airlines, Inc.

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT IN AND FOR VOLUSIA COUNTY, FLORIDA

CASE NO.

CLAUDIA ZARNESKY, individually and on behalf of all others similarly situated,

CLASS ACTION

VS.

JURY TRIAL DEMANDED

FRONTIER AIRLINES, INC.,

Plaintiff,

Defendant.	
	/

CLASS ACTION COMPLAINT

Plaintiff Claudia Zarnesky brings this class action against Defendant Frontier Airlines, Inc., and alleges as follows upon personal knowledge as to Plaintiff and Plaintiff's own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by Plaintiff's attorneys.

NATURE OF THE ACTION

- 1. This is a class action under the Florida Security of Communications Act, Fla. Stat. Ann. § 934.01, *et seq.* ("FSCA"), arising from Defendant's unlawful interception of electronic communications. Specifically, this case stems from Defendant's use of tracking, recording, and/or "session replay" software to intercept Plaintiff's and the class members' electronic communications with Defendant's website, including how they interact with the website, their mouse movements and clicks, information inputted into the website, and/or pages and content viewed on the website.
- 2. Defendant intercepted the electronic communications at issue without the knowledge or prior consent of Plaintiff and the Class members. Defendant did so for its own

PAGE | 1 of 9

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

- 3. Defendant has intercepted the electronic communications involving Plaintiff and the Class members' visits to its website, causing them injuries, including invasion of their privacy and/or exposure of their private information.
- 4. Through this action, Plaintiff seeks injunctive relief to halt Defendant's unlawful interceptions. Plaintiff also seeks damages authorized by the FSCA on behalf of Plaintiff and the Class members, defined below, and any other available legal or equitable remedies resulting from the actions of Defendant described herein.

PARTIES

- 5. Plaintiff is, and at all times relevant hereto was, a citizen and resident of Volusia County, Florida.
- 6. Defendant is, and at all times relevant hereto was, a corporation that maintains its primary place of business at 4545 Airport Way, Denver, CO 80239.

JURISDICTION AND VENUE

- 7. This Court has subject matter jurisdiction pursuant to Florida Rule of Civil Procedure 1.220 and Fla. Stat. § 26.012(2). The matter in controversy exceeds the sum or value of \$30,000 exclusive of interest, costs, and attorney's fees.
- 8. Defendant is subject to personal jurisdiction in Florida because this suit arises out of and relates to Defendant's contacts with this state. Defendant intercepted electronic communications from and to Florida without the consent of Plaintiff and the Class members.

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

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

FACTS

- 10. Defendant owns and operates the following website: www.flyfrontier.com.
- 11. Over the past year, Plaintiff visited Defendant's website approximately 5 times.
- 12. Plaintiff most recently visited Defendant's website on or about January 2021.
- 13. Plaintiff was in Florida during each visit to Defendant's website.
- 14. Upon information and belief, during one or more of these visits, Defendant utilized tracking, recording and/or "session replay" software to contemporaneously intercept Plaintiff's use and interaction with the website, including mouse clicks and movements, information inputted by Plaintiff, and/or pages and content viewed by Plaintiff. Defendant also recorded Plaintiff's location during the visits, as well as the time and dates of each visit.
- 15. Plaintiff never consented to interception of her electronic communications by Defendant or anyone else.
- 16. At no point in time did Plaintiff provide Defendant, its employees, or agents with consent to intercept Plaintiff's electronic communications.
- 17. Plaintiff and the putative Class members did not have a reasonable opportunity to discover Defendant's unlawful interceptions because Defendant did not disclose or seek their consent to intercept the communications.
- 18. Upon information and belief, Defendant similarly intercepted the electronic communications of other individuals located in Florida who visited Defendant's website.

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

CLASS ALLEGATIONS

PROPOSED CLASS

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

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

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

NUMEROSITY

- 22. The Class members are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. The precise number of Class members is unknown to Plaintiff, but may be readily ascertained from Defendant's records and is believed to be no less than 100 individuals. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice
- 23. The identities of the Class members are unknown at this time and can be ascertained only through discovery. Identification of the Class members is a matter capable of ministerial determination from Defendant's records kept in connection with its unlawful interceptions.

COMMON QUESTIONS OF LAW AND FACT

- 24. There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual members of the Class. Among the questions of law and fact common to the Class are:
 - (1) Whether Defendant violated the FSCA;
 - (2) Whether Defendant intercepted Plaintiff's and the Class members' electronic communications;
 - (3) Whether Defendant disclosed to Plaintiff and the Class Members that it was intercepting their electronic communications;
 - (4) Whether Defendant secured prior consent before intercepting Plaintiff's and the Class members' electronic communications;
 - (5) Whether Defendant is liable for damages, and the amount of such damages; and
 - (6) Whether Defendant should be enjoined from such conduct in the future.
- 25. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendants routinely intercepts electronic communications without securing prior consent is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

TYPICALITY

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

PROTECTING THE INTERESTS OF THE CLASS MEMBERS

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

SUPERIORITY

- A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are potentially in the millions of dollars, the individual damages incurred by each member of the Class resulting from Defendant's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.
- 29. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example, one court might enjoin Defendant from performing the challenged acts, whereas another may not. Additionally, individual actions may be dispositive of the interests of the Class, although certain class members are not parties to such actions.

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

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

- 31. It is a violation of the FSCA to intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept any electronic communication. Fla. Stat. Ann. § 934.03(1)(a).
- 32. Further, it is a violation to intentionally use, or endeavor to use, "the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection[.]" Fla. Stat. Ann. § 934.03(1)(d).
- 33. The FSCA defines "intercept" as the "acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device." Fla. Stat. Ann. § 934.02(3).
- 34. The FSCA defines "electronic communication" as "any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce...." Fla. Stat. Ann. § 934.02(12).
- 35. Defendant violated § 934.03(1)(a) of the FSCA by intercepting Plaintiff's and the Class members' electronic communications when they visited Defendant's website.
- 36. Defendant intercepted Plaintiff's and the Class members' electronic communications without their prior consent.
- 37. Defendant violated § 934.03(1)(d) of the FSCA by using the unlawfully intercepted electronic communications.
- 38. Plaintiff and the Class members had an expectation of privacy during their visits to Defendant's website, which Defendant violated by intercepting their electronic communications with the website.

- 39. As a result of Defendant's conduct, and pursuant to § 934.10 of the FSCA, Plaintiff and the other members of the putative Class were harmed and are each entitled to "liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher[.]" Fla Stat. Ann. § 934.10(b).
- 40. Plaintiff is also entitled to "reasonable attorney's fees and other litigation costs reasonably incurred." Fla Stat. Ann. § 934.10(d).
 - 41. Plaintiff and the Class members are also entitled to an injunction.

WHEREFORE, Plaintiff Claudia Zarnesky, on behalf of herself and the other members of the Class, prays for the following relief:

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

JURY DEMAND

Plaintiff and Class Members hereby demand a trial by jury.

DOCUMENT PRESERVATION DEMAND

Plaintiff demands that Defendant take affirmative steps to preserve all records, lists, electronic databases or other itemizations associated with the allegations herein, including all records, lists, electronic databases or other itemizations in the possession of any vendors,

individuals, and/or companies contracted, hired, or directed by Defendant to assist in sending the alleged communications.

Dated: February 15, 2021

Respectfully Submitted,

By: /s/ Andrew J. Shamis

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Counsel for Plaintiff and Proposed Class



SEVENTH JUDICIAL CIRCUIT - VOLUSIA COUNTY P.O. BOX 6043 DELAND, FLORIDA 32721-6043 - WWW.CLERK.ORG

Filing #:121380087 Filer:Angelica Gentile Gentile Payment:\$410.00

1 Filing Fee: \$400.00

2 Summons Issuance: \$10.00

3 Complaints/Petitions Complaint: \$0.00

4 Complaints/Petitions Civil Cover Sheet: \$0.00

5 Complaints/Petitions Request that Summons be Issued: \$0.00

RETURN OF SERVICE

State of Florida

County of Volusia

Circuit Court

Case Number: 2021 30199 CICI

Plaintiff:

CLAUDIA ZARNESKY, INDIVUDALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED



VS.

Defendant:

FRONTIER AIRLINES, INC.

For:

SHAMIS & GENTILE, P.A.

Received by GLOBAL PROCESS SERVICES CORP. on the 23rd day of February, 2021 at 1:22 pm to be served on FRONTIER AIRLINES, INC. C/O CORPORATION SERVICE COMPANY, 1201 HAYS STREET, TALLAHASSEE, FL 32301.

I, JAMES J. KADY, do hereby affirm that on the 23rd day of February, 2021 at 1:59 pm. I:

served a CORPORATE, PARTNERSHIP, ASSOCIATION OR GOVERNMENT SERVICE by delivering a true copy of the SUMMONS and CLASS ACTION COMPLAINT with the date and hour of service endorsed thereon by me, to: Sheena Black as Service Liaison authorized to accept service, of the within named corporation, at the address of: 1201 Hays St, Tallahassee, FL 32301 on behalf of FRONTIER AIRLINES, INC., and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 32, Sex: F, Race/Skin Color: White, Height: 5'6", Weight: 160, Hair: Black, Glasses: N

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served.

"Under penalties of perjury, I declare that I have read the foregoing document and that the facts in it are true" F.S. 92.525. NOTARY NOT REQUIRED PURSUANT TO FS 92.525

JAMES J. KADY Process Server #65

GLOBAL PROCESS SERVICES CORP. P.O. Box 961556 Miami, FL 33296 (786) 287-0606

Our Job Serial Number: KDY-2021006950 Ref: 21-0461

IN THE CIRCUIT/COUNTY COURT IN AND FOR VOLUSIA COUNTY, FLORIDA

Judge : Leah R. Case - Div. 31

Case No : 2021 30199 CICI

CLAUDIA ZARNESKY, individually and on behalf of $\mbox{-}\mbox{-}\mbox{us-}$ all others similarly situated

FRONTIER AIRLINES, INC.

Defendant(s).

Plaintiff(s),

SUMMONS

THE STATE OF FLORIDA: TO EACH SHERIFF OF THE STATE:

YOU ARE HEREBY COMMANDED to serve this summons and a copy of the complaint or petition in the above styled cause upon the defendant(s):

FRONTIER AIRLINES, INC. C/O CORPORATION SERVICE COMPANY 1201 HAYS STREET TALLAHASSEE, FL 32301

Each defendant is hereby required to serve written defenses to said complaint or petition on plaintiff's attorney, whose name and address is

ANDREW J. SHAMIS SHAMIS & GENTILE, P.A. 14 NE 1ST AVENUE SUITE 705 MIAMI, FL 32301

within 20 days after service of this summons upon that defendant exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court before service on plaintiffs attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

DATED: February 22, 2021

forwarded to plaintiff's attorney via e-service for SOP



LAURA E. ROTH
CLERK OF CIRCUIT/COUNTY COURT

5 Kalemanaraka

By: S. Krummenacker, Deputy Clerk

CL-0224-1612

(See reverse side for additional information.)

Filing # 121380087 E-Filed 02/15/2021 T1:17:51 AM Page 1 of 12 PageID 22

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

I. CASE STYLE (Name of Court) In the Circ	uit Court of The Seventh Judicial Circuit in and For
Plaintiff CLAUDIA ZARNESKY, individually and on be	Case #:
VS.	Judge:
Defendant ADIDAS AMERICA, INC.,	_
II. AMOUNT OF CLAIM Please indicate the estimated amount of the claim, roun amount of the claim is requested for data collection and amount of the claim shall not be used for any other pure	d clerical processing purposes only. The
\$8,000 or less \$8,001 - \$30,000 \$30,001 - \$50,000 \$50,001 - \$75,000 \$75,001 - \$100,000 ✓ Over \$100,000	
III. TYPE OF CASE (If the case fits more than one If the most descriptive label is a subcategory (is indented a main category and subcategory boxes.	
CIRCUIT CIVIL	
Condominium Contracts and indebtedness Eminent domain Auto negligence Negligence—other Business governance Business torts Environmental/Toxic tort Third party indemnification Construction defect Mass tort Negligent security	

2021 30199 CICI

CL-0891-2008

Case 6:21-cv-00536 Document 1-3 Filed 03/24/21 Page 2 0	it 12 PageiD 23
Nursing home negligence	
Premises liability—commercial Premises liability—residential	
Products liability	
Real property/Mortgage foreclosure	
Commercial foreclosure	
Homestead residential foreclosure	
Non-homestead residential foreclosure Other real property actions	
— Other real property actions	
Professional malpractice	
Malpractice – business	
Malpractice – medical	
Malpractice – other professional	
✓ Other	
Antitrust/Trade regulation	
Business transactions	
Constitutional challenge – statute or ordinance	
Constitutional challenge – proposed amendment Corporate trusts	
Discrimination – employment or other	
Insurance claims	
Intellectual property	
Libel/Slander	
Shareholder derivative action	
Securities litigation	
Trade secrets	
Trust litigation	
COUNTY CIVIL	
Civil Real property/Mortgage foreclosure	
Replevins	
Evictions	
Residential Eviction	
Non-Residential Eviction	
Unon-monetary)	
IV. REMEDIES SOUGHT (check all that apply):	
Monetary;	
Non-Monetary declaratory or injunctive relief;	
Punitive	
V. NUMBER OF CAUSES OF ACTION: [1] (specify)	
Florida Security of Communications Act, Fla. Stat. Ann. § 934.01, et seq.	

yes no	AWSUIT?
VII. HAS NOTICE OF ANY KNOWN REI ✓ no yes If "yes", list all related cases by	ATED CASE BEEN FILED? y name, case number, and court.
VIII. IS JURY TRIAL DEMANDED IN CO ✓ yes no	MPLAINT?
and belief, and that I have read and will co Administration 2.425.	d in this cover sheet is accurate to the best of my knowledged omply with the requirements of Florida Rule of Judicia
Signature Andrew Shamis	Fla. Bar # 101754
Attorney or party	(Bar # if attorney)
/s/ Andrew Shamis	2/15/2021
(type or print name)	Date

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT IN AND FOR VOLUSIA COUNTY, FLORIDA

CASE NO.

CAS	SE NO.
CLAUDIA ZARNESKY, individually and on both of all others similarly situated,	pehalf CLASS ACTION
Plaintiff,	JURY TRIAL DEMANDED
vs.	
FRONTIER AIRLINES, INC.,	
Defendant.	
SUM	IMONS
THE STATE OF FLORIDA: To Each Sheriff/Certified Process Server of the	e State
TO: Frontier Airlines, Inc. c/o Corporation Service Company 1201 Hays Street Tallahassee, FL 32301	
Andrew Shamis, Esq, Shamis & Gentile, F 33132, within twenty (20) days after service the date of service, and to file the original of before service on Plaintiff's attorney or immed	vritten defenses to the Complaint or petition on: P.A., 14 NE 1 st Ave STE 705, Miami, Florida of this summons on that Defendant, exclusive of the defenses with the Clerk of this Court either diately thereafter. If a Defendant fails to do so, a nt for the relief demanded in the complaint or
Dated this day of	, 2021.
A	s Clerk of the Court
В	y:

As Deputy Clerk

IN THE CIRCUIT/COUNTY COURT IN AND FOR VOLUSIA COUNTY, FLORIDA

Judge : Leah R. Case - Div. 31

Case No : 2021 30199 CICI

CLAUDIA ZARNESKY, individually and on behalf of -vs-all others similarly situated

FRONTIER AIRLINES, INC. **Defendant(s).**

Plaintiff(s),

SUMMONS

THE STATE OF FLORIDA: TO EACH SHERIFF OF THE STATE:

YOU ARE HEREBY COMMANDED to serve this summons and a copy of the complaint or petition in the above styled cause upon the defendant(s):

FRONTIER AIRLINES, INC. C/O CORPORATION SERVICE COMPANY 1201 HAYS STREET TALLAHASSEE, FL 32301

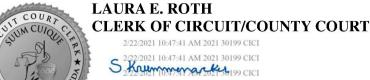
Each defendant is hereby required to serve written defenses to said complaint or petition on plaintiff's attorney, whose name and address is

ANDREW J. SHAMIS SHAMIS & GENTILE, P.A. 14 NE 1ST AVENUE SUITE 705 MIAMI, FL 32301

within 20 days after service of this summons upon that defendant exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court before service on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

DATED: February 22, 2021

forwarded to plaintiff's attorney via e-service for SOP



By: S. Krummenacker, Deputy Clerk

2/22/2021 10:47:41 AM 2021 30199 CICI

CL-0224-1612

(See reverse side for additional information.)

Case 6:21-cv-00536 Document 1-3 Filed 03/24/21 Page 7 of 12 PageID 28 ADDRESS OF THE CLERK OF THE CIRCUIT COURT

LAURA E. ROTH CLERK OF THE COURT P.O. BOX 6043 DELAND, FL 32721-6043

If English is not your native language and you need assistance understanding the court's proceedings, you will need to bring someone to interpret for you as this service is not provided by the court.

Si el inglés no es su lengua materna y va a necesitar ayuda para entender el proceso judicial, tendrá que traer a alguien para que le interprete ya que el tribunal no ofrece este servicio.

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REQUESTS FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES

If you are a person with a disability who needs an accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Court Administration, 101 N. Alabama Ave., Ste. D-305, DeLand, FL 32724, (386) 257-6096, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the appearance is less than 7 days; if you are hearing impaired or voice impaired, call 711.

THESE ARE NOT COURT INFORMATION NUMBERS

与法队》

SOLICITUD DE ADAPTACIONES PARA PERSONAS CON DISCAPACIDADES

Si usted es una persona con discapacidad que necesita una adaptación para poder participar en este procedimiento, usted tiene el derecho a que se le proporcione cierta asistencia, sin incurrir en gastos. Comuníquese con la Oficina de Administración Judicial (Court Administration), 101 N. Alabama Ave., Ste. D-305, DeLand, FL 32724, (386) 257-6096, con no menos de 7 días de antelación de su cita de comparecencia ante el juez, o de inmediato al recibir esta notificación si la cita de comparecencia está dentro de un plazo menos de 7 días; si usted tiene una discapacidad del habla o del oído, llame al 711.

ESTOS NUMEROS TELEFONICOS NO SON PARA OBTENER INFORMACION JUDICIAL

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT IN AND FOR VOLUSIA COUNTY, FLORIDA

CASE NO.: 2021 30199 CICI

CLAUDIA ZARNESKY, individually and on behalf of all others similarly situated,	CLASS ACTION
Plaintiff,	JURY TRIAL DEMANDED
v.	
FRONTIER AIRLINES, INC.,	
Defendant.	

NOTICE OF APPEARANCE ON BEHALF OF PLAINTIFF

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

Date: March 3, 2021

Respectfully submitted, /s/ Garrett O. Berg
SHAMIS & GENTILE, P.A.
Garrett O. Berg, Esq.
Florida Bar No. 1000427
gberg@shamisgentile.com
14 NE 1st Avenue, Suite 705
Miami, Florida 33132
Telephone: 305-479-2299

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 3, 2021, I electronically filed the foregoing document with the Clerk of the Court using the Florida Courts E-Filing Portal, which will furnish a copy to all individuals on the attached Service List.

Respectfully submitted, /s/ Garrett Berg

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT IN AND FOR VOLUSIA COUNTY, FLORIDA

CASE NO. 2021 30199 CICI

Claudia Zarnesky, individually and on behalf of all others similarly situated,		
Plaintiff,	CLA	SS ACTION
VS.	HIDS/TDIAL D	
Frontier Airlines, Inc.,	JURY TRIAL D	EMANDED
Defendant.	/	

PLAINTIFF'S NOTICE OF SERVICE OF FIRST SET OF DISCOVERY REQUESTS TO DEFENDANT

Plaintiff, by and through counsel and pursuant to Florida Rules of Civil Procedure 1.340, 1.350, and 1.370, hereby gives notice of serving Interrogatories, Request for Production of Documents, and Request for Admissions on Defendant to be answered separately and fully, in writing and under oath if applicable within thirty (30) days after service thereof.

DATED: March 11, 2021

By: /s/ Andrew J. Shamis

SHAMIS & GENTILE, P.A.

Andrew J. Shamis, Esq. Florida Bar No. 101754 ashamis@shamisgentile.com 14 NE 1st Avenue, Suite 705 Miami, Florida 33132 (t) (305) 479-2299 (f) (786) 623-0915

EDELSBERG LAW, PA

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

HIRALDO P.A.

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

Counsel for Plaintiff and Proposed Class

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the aforementioned discovery requested were served electronically on counsel for Defendant.

/s/ Andrew J. Shamis

SHAMIS & GENTILE, P.A.

Andrew J. Shamis, Esq. Florida Bar No. 101754 ashamis@shamisgentile.com 14 NE 1st Avenue, Suite 705 Miami, Florida 33132 (t) (305) 479-2299 (f) (786) 623-0915

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA ORLANDO DIVISION

and on behalf of all others similarly situated,	Case No.
Plaintiff,	State Court Case No. 2021-30199 CICI
v. FRONTIER AIRLINES, INC.,	Class Action
Defendant.	

DECLARATION OF JACOB MALONEY

- I, Jacob Maloney, declare as follows:
- 1. I am currently employed at Frontier Airlines, Inc. ("Frontier Airlines"). I have personal knowledge of the facts set forth herein and if called and sworn as a witness, I could and would competently testify thereto.
- 2. My title is Senior Manager, Ecommerce. I have worked at Frontier Airlines since February 19, 2018. I have been in my current role for approximately two years.
- 3. While employed at Frontier Airlines, I have gained knowledge regarding the Frontier Airlines website, www.flyfrontier.com (the "Website"), including the collection and storage of information regarding visits to the website and purchase information (e.g., name, address, etc.).
- 4. From February 15, 2019 to February 15, 2021, more than 5,000 airline purchases were made on the Website to unique names and billing addresses in the state of Florida.

I declare under penalty of perjury that the foregoing is true and current. Executed on this $23^{\rm rd}$ day of March, 2021 in Arvada, Colorado.

Jacob Maloney

Jacob Maloney

247471591

 $\text{Lase 6:21-cv-00536} \quad \text{Dequirent of First parallel Page 1 of 4 Page ID 36 }$

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	(33333333333333333333333333333333333333			DEFENDAN	TS					
` '	sy, individually and o	n behalf of all oth	ers	Frontier Airlin		nc.				
(b) County of Residence of	of First Listed Plaintiff V	olusia County, Flo	<u>orida</u>	County of Resider	nce of F	irst Liste	d Defendant <u>C</u>	olorado		
(E)	XCEPT IN U.S. PLAINTIFF CA	SES)		NOTE: IN LAND THE TRA	COND	EMNATIO	<i>AINTIFF CASES O</i> ON CASES, USE TH VOLVED.		OF	
(c) Attorneys (Firm Name, A	Address, and Telephone Number	r)		Attorneys (If Knov						
	e, P.A., 14 NE 1st A			Buchanan Ing	aerso	II & Ro	onev P.C., 4	01 E. Jack	son St	t
Miami, Florida, 3	33132 (see attachme	ent)		Suite 2400, T	Гатра	a FL 33	3602 (see att	achment)		
II. BASIS OF JURISD	ICTION (Place an "X" in o	One Box Only)		FIZENSHIP OF (For Diversity Cases On		NCIPA		Place an "X" in nd One Box for		
1 U.S. Government Plaintiff	3 Federal Question (U.S. Government N	Not a Party)		en of This State	PTF X 1	DEF 1	Incorporated or Pri of Business In T	ncipal Place	PTF 4	DEF 4
2 U.S. Government Defendant	X 4 Diversity (Indicate Citizenshi)	ip of Parties in Item III)	Citize	en of Another State	2	2	Incorporated and P of Business In A		5	x 5
				en or Subject of a reign Country	3	3	Foreign Nation		<u> </u>	<u>6</u>
IV. NATURE OF SUIT	1	•					for: Nature of S			
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210 Land Condemnation	440 Other Civil Rights	Habeas Corpus:		1 Employee Retirement		003 KSI	(403(g))	893 Enviro		
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THE CALLED OF A COLO	28 U.S.C. §§ 1332, 144	tute under which you are 11, 1446, and 1453	e filing (L	Oo not cite jurisdictional	statutes	unless di	versity):			
VI. CAUSE OF ACTION	Brief description of ca		intiff's ala	etronic communication	as in vio	lation of F	Florida Socurity of	Communicatio	ne Act & (034 03
VII. REQUESTED IN		nlawful interception of Pla IS A CLASS ACTION		EMAND \$	OIV III ei		HECK YES only			
COMPLAINT:	UNDER RULE 23			atutory, over \$5 mil			JRY DEMAND:	X Yes	□ No	
VIII. RELATED CASI	E(S) (See instructions):	JUDGE (see attach	ned)			DOCKI	ET NUMBER (se	e attached)		
DATE		SIGNATURE OF ATT		DE BECODO		_ DOOKI	-1 1.0 MDLK /30			
3/24/2021		/s/ Jordan D. Maglich								
FOR OFFICE USE ONLY			,							
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Zarnesky v. Frontier Airlines, Inc.

Attachment to Civil Cover Sheet

Section I(c) Attorney Information

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101 California Street, 5th Floor
San Francisco, CA 94111-5800

Tel: (415) 693-2000

Fax: (415) 693-2222

(pro hac vice motion forthcoming)

Section VIII - Related Cases

- Swiggum v. EAN Services, LLC, Case No. 9:21-cv-00493-TPB-CPT (M.D. Fla.) (U.S. District Judge Thomas P. Barber)
- Smart v. Bose Corp., Case No. 5:21-cv-00142-JSM-PRL (M.D. Fla.) (U.S. District Judge James S. Moody, Jr.)
- Smart v. The Home Depot Inc., Case No. 5:21-cv-00153-JSM-PRL (M.D. Fla.) (U.S. District Judge James S. Moody, Jr.)
- *Holden v. Banana Republic, LLC*, Case No. 3:21-cv-00268-BJD-JRK (M.D. Fla.) (U.S. District Judge Brian J. Davis)
- *Holden v. Old Navy, LLC*, Case No. 3:21-cv-00270-BJD-PDB (M.D. Fla) (U.S. District Judge Brian J. Davis)

- *Holden v. NortonLifeLock Inc.*, Case No. 3:21-cv-00279-BJD-JRK (M.D. Fla.) (U.S. District Judge Brian J. Davis)
- *Holden v. Fossil Group, Inc.*, Case No. 3:21-cv-00300-TJC-JBT (M.D. Fla.) (U.S. District Judge Timothy J. Corrigan)
- Goldstein v. Fandango Media, LLC, Case No. 9:21-cv-80466 (S.D. Fla.) (U.S. District Judge Rodolfo A. Ruiz, II)
- Goldstein v. Luxottica of America, Inc. dba Ray-Ban, Case No. 9:21-cv-80546-AMC (S.D. Fla.) (U.S. District Judge Aileen M. Cannon)
- *Perez v. Western Union Holdings*, Case No. 0:21-cv-60616-RKA (S.D. Fla.) (U.S. District Judge Roy K. Altman)
- Vicario v. The Neiman Marcus Group LLC, Case No. No. 1:21-cv-21065 (S.D. Fla.) (U.S. District Judge Robert N. Scola, Jr.)
- Goldstein v. T-Mobile USA Inc., Case No. 9:21-cv-80545-JIC (S.D. Fla.) (U.S. District Judge James I. Cohn)
- Liberto v. The Gap, Inc., Case No. 3:21-cv-510 (N.D. Fla.) (U.S. District Chief Judge Margaret Catherine Rodgers)
- *Harris v. Edward D. Jones & Co.*, Case No. 2021-CA-000963 (4th Jud. Ct. Duval County) (Circuit Court Judge Katie L. Dearing)
- *Liberto v. Dillard's Inc.*, Case No. 2021-CA-000350 (1st Jud. Ct. Escambia County) (Circuit Court Judge Gary L Bergosh)
- Londers v. Intel Corporation, Case No. 2021-CA-000301 (5th Jud. Ct. Lake County) (Circuit Court Judge Brian J. Welke)
- Benstine v. Lumen Technologies, Inc., Case No. 2021-CA-001041 (20th Jud. Ct. Lee County) (Circuit Court Judge Keith R. Kyle)
- Vicario v. Disney Store USA, LLC, Case No. 2021-CA-003655-CA-01 (11th Jud. Ct. Miami-Dade County) (Circuit Court Judge Carlos Lopez)
- *Underhill v. HSN, Inc.*, Case No. 2021-CA-000290 (4th Jud. Ct. Duval County) (Circuit Court Judge Katie L. Dearing)
- Goldstein v. Costco Wholesale Corporation, Case No. 50-2021-CA-001558 (15th Jud. Ct. Palm Beach County) (Circuit Court Judge John S. Kastrenakes)
- Goldstein v. Avis Budget Group, Inc., Case No. 2021-CA-001597 (15th Jud. Ct. Palm Beach County) (Circuit Court Judge John S. Kastrenakes)
- *Marshall v. WebMD LLC*, Case No. 2021-CA-000517 (12th Jud. Ct. Manatee County) (Circuit Court Judge Charles Sniffen)
- *Jacome v. Spirit Airlines, Inc.*, Case No. 2021-000947-CA-01 (11th Jud. Ct. Miami-Dade County) (Circuit Court Judge Carlos Lopez)
- Vicario v. Puma North America, Inc., Case No. 2021-003535-CA-01 (11th Jud. Ct. Miami-Dade County) (Circuit Judge Maria de Jesus Santovenia)
- Swiggum v. Beall's Inc., Case No. 2021-CA-000168 (12th Jud. Ct. Manatee County) (Circuit Court Judge Charles Sniffen)

- Zarnesky v. Adidas America Inc., Case No. 2021 30201 CICI (7th Jud. Ct. Volusia County) (Circuit Court Judge Mary G. Jolley)
- Harris v. Euromarket Designs Inc. dba Crate and Barrel, Case No. 2021-CA-000907 (4th Jud. Ct. Duval County) (Circuit Court Judge Gary Wilkinson)
- Belanger v. Norwegian Cruise Line Holdings Ltd., Case No. 2021 30222 CICI (7th Jud. Ct. Volusia County) (Circuit Court Judge Mary J. Jolley)
- *Harris v. Six Continents Hotels Inc.*, Case No. 2021-CA-001043 (4th Jud. Ct. Duval County) (Circuit Court Judge Gary Wilkinson)
- Leace v. General Motors LLC, Case No. CACE21004374 (17th Jud. Ct. Broward County) (Circuit Court Judge Jeffery R. Levenson)
- *Neal v. Container Store Inc.*, Case No. CACE21004409 (17th Jud. Ct. Broward County) (Circuit Court Judge Jeffery R. Levenson)
- *Makkinje v. AthenaHealth, Inc.*, Case No. 2021-CA-000898 (12th Jud. Ct. Manatee County) (Circuit Court Judge Charles Sniffen)
- Cardoso v. Whirpool Corp., Case No. CACE21004989 (17th Jud. Ct. Broward County) (Circuit Court Judge Carlos Augusto Rodriguez)

Volusia County Clerk of Circuit Court - Case Detail

-Case Information -

Case Number: 2021 30199 CICI Case Style: CLAUDIA ZARNESKY, ETC., ET AL V. FRONTIER AIRLI

Case Type: CIRCUIT CIVIL Category: OTHER CIVIL - CIRCUIT

Summary **Parties Docket Court Events Assessment**

Legend: 🤷	Viewable	Reviewed and	l Viewable 🛭 🗎 Viewable on Request 👄 Confiden	tial 🚇
Date	Doc.#	Docket Type	Description	View
Y	Y	Y	Y	
03/11/2021	7	NOTICE OF SERVICE	of discovery requests to Frontier Airlines Inc by Claudia Zarnesky et al	
03/09/2021	6	RETURNED SUMMONS SERVED	Frontier Airlines Inc	
03/03/2021	5	NOTICE OF APPEARANCE	of Garrett O Berg Esq obo Claudia Zarnesky etc	
02/22/2021	4	TWENTY DAY SUMMONS	To FRONTIER AIRLINES, INC. forwarded to plaintiff's attorney via e-service for SOP	
02/15/2021	3	REQUEST SUMMONS	to Frontier Airlines, Inc.	
02/15/2021	2	COMPLAINT	Class Action	1
02/15/2021	1	CIVIL COVER SHEET		B

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: Class Action Claims Frontier Airlines Unlawfully Monitors Florida Residents' Interactions with Website