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KING COUNTY
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CASE NUMBER: 10-2-19384-7 SEA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MARIA AGNE, on her own behalf and on behalf of other similarly situated persons,

Plaintiffs,

v.

RAIN CITY PIZZA, L.L.C., an unknown business entity; EDWARD TALIAFERRO, individually and doing business as RAIN CITY PIZZA, L.L.C.; KEVIN SONNEBORN, individually and doing business as RAIN CITY PIZZA, L.L.C. and ROSE CITY PIZZA, L.L.C.; ROSE CITY PIZZA, L.L.C., an Oregon limited liability company; PAPA JOHN'S USA, INC., a Kentucky corporation; and PAPA JOHN'S INTERNATIONAL, INC., a Delaware corporation,

Defendants.

CLASS ACTION

Case No.

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiff MARIA AGNE ("Representative Plaintiff"), on her own behalf and on behalf of all other similarly situated persons (collectively "Plaintiffs"), by and through their counsel, bring the following Complaint against Defendants RAIN CITY PIZZA, L.L.C., EDWARD TALIAFERRO, KEVIN SONNEBORN, ROSE CITY PIZZA, L.L.C., PAPA JOHN'S USA, INC., and PAPA JOHN'S INTERNATIONAL, INC. (collectively

“Defendants”) to obtain from each of them all damages, injunctive relief, attorney fees, costs, and other remedies which Plaintiffs are entitled to recover under law and equity.

I. JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to RCW 2.08.010 because Plaintiffs request legal relief exceeding \$300.00.

2. Representative Plaintiff is a resident of King County in Washington State.

3. Many of the wrongful acts and omissions referenced in this Complaint occurred, were initiated, were furthered, or were given assistance in King County and Washington State.

4. Several of the Defendants domicile in King County of Washington State.

5. Defendants do business in King County and Washington State.

II. PARTIES

6. Upon information and belief: EDWARD TALIAFERRO and KEVIN SONNEBORN are individuals.

7. Upon information and belief: EDWARD TALIAFERRO and KEVIN SONNEBORN own, operate, supervise, manage, control, and/or do business together as RAIN CITY PIZZA, L.L.C. and/or other business entities (collectively “RAIN CITY”). RAIN CITY owns, operates, supervises, controls, and/or manages Papa John’s Pizza restaurants.

8. Upon information and belief: ROSE CITY PIZZA, L.L.C. purports to be an Oregon limited liability company. KEVIN SONNEBORN owns, operates, supervises, manages, and/or does business as ROSE CITY PIZZA, L.L.C. and other business entities

(collectively “ROSE CITY”). ROSE CITY owns, operates, supervises, controls and/or manages Papa John’s Pizza restaurants.

9. Upon information and belief: PAPA JOHN’S USA, INC. (“PJ’S USA”) purports to be a Kentucky corporation. PJ’s USA owns, operates, supervises, controls and/or manages Papa John’s Pizza restaurants.

10. Upon information and belief: PAPA JOHN’S INTERNATIONAL, INC. (“PJ’S INTERNATIONAL”) purports to be a Delaware corporation. PJ’S INTERNATIONAL owns, operates, directs, supervises, controls, manages, and/or does business as PJ’S USA. PJ’S USA is an alter ego and/or agent of PJ’S INTERNATIONAL.

11. Upon information and belief: PJ’S USA and PJ’S INTERNATIONAL (collectively “PJ’S CORPORATE”) supervise, control, manage, and/or assist all individuals and business entities who own, operate, supervise, control and/or manage Papa John’s Pizza restaurants. Without limitation on the foregoing, PJ’S CORPORATE supervises, controls, directs, manages, and/or assists the marketing and advertising of all Papa John’s Pizza restaurants.

12. Defendants do business under the trade name of “Papa John’s Pizza” and/or “Papa John’s.”

III. GENERAL ALLEGATIONS

13. “Papa John’s Pizza” and/or “Papa John’s” are trade names used by an international consortium of individuals and business entities who seek profit from selling pizzas and pizza-related products and services to consumers and each other.

14. PJ’S CORPORATE is at the apex of the international Papa John’s Pizza consortium, and it trains, manages, directs, controls, audits, supervises, and/or assists the

ownership and management of every Papa John's Pizza restaurant with regard to their marketing, operations, and training.

15. Under the direction, supervision, and/or control of PJ'S CORPORATE and/or each other, Defendants collaborate, agree, ratify, and/or determine what Papa John's Pizza products and services shall be sold and in what manner and to whom these products and services shall be marketed and advertised.

16. As stated on the 2010 first quarterly report of PJ'S CORPORATE,

Today, more than 25 percent of all Papa John's sales come online or through text, widget, or mobile device, and the company believes sales via alternative access channels could one day surpass traditional telephone orders.

17. Defendants have placed a tremendous focus on "alternative advertising" to drive these sales. As a consequence of the joint, combined, collaborative, and collective marketing and advertising efforts, agreements, contributions, and acts of the Defendants and others, Defendants have sold billions of dollars of Papa John's Pizza products and services to consumers.

18. Directly or through authorized agents, Defendants engaged in unlawful and otherwise wrongful marketing and advertising practices to the damage of Representative Plaintiff and persons similarly situated. Thus, Defendants caused the transmission of unsolicited electronic commercial text messages to telephone numbers assigned to Representative Plaintiff and other residents of Washington State for cellular or pager services equipped to receive such messages. Also, Defendants caused automatic dialing and announcing devices to be used for purposes of commercial solicitation of Representative Plaintiff and other telephone customers within Washington State.

IV. CLASS ACTION ALLEGATIONS

19. Representative Plaintiff brings this class action pursuant to Civil Rule 23 on behalf of herself and as a representative of the following class of persons entitled to remedies including, but not limited to, damages:

- a. All residents of Washington State with a cellular telephone number or pager number to which an electronic commercial text message was transmitted by a Defendant, or someone acting on behalf of a Defendant; and
- b. All residents of Washington State to whose telephone or pager number a Defendant, or someone acting on behalf of a Defendant, directed a commercial solicitation by means of an automatic dialing and announcing device.

20. Representative Plaintiff also brings this class action pursuant to Civil Rule 23 on behalf of herself and as a representative of the following class of persons entitled to injunctive relief:

- a. All residents of Washington State with a cellular telephone number or pager number in the possession, custody, or control of a Defendant.

21. Plaintiffs' class claims satisfy all of the requirements for class action certification pursuant to Civil Rule 23(a) and 23(b)(1), 23(b)(2), and 23(b)(3).

22. Satisfying all requisite numerosity requirements, at least several hundred Washington State residents are believed to belong to the class. As a result, joinder of all class members in a single action is impracticable. Defendants are in exclusive possession of the exact number of persons in the class, so discovery as to this matter should be provided immediately. Class members may be informed of the pendency of this class action through direct mail.

23. There are questions of fact and law common to the class, which predominate over any questions affecting only individual members. The questions of law and fact common to the class arising from Defendants' conduct include, without limitation, the following:

- a. Whether Defendants negligently and/or willfully caused violations of the Washington Consumer Protection Act;
- b. Whether Defendants negligently and/or willfully caused violations of RCW 19.190.060;
- c. Whether Defendants negligently and/or willfully caused violations of RCW 80.35.400;
- d. Whether Defendants, or someone acting on their behalf, caused transmissions of commercial text messages to residents of Washington State;
- e. Whether Defendants, or someone acting on their behalf, utilized automatic dialing and announcing devices for commercial solicitations to residents of Washington State;
- f. Whether Defendants' practices and policies will cause further violations of the Washington Consumer Protection Act;
- g. Whether Defendants' practices and policies will cause further violations of RCW 19.190.060;
- h. Whether Defendants' practices and policies will cause further violations of RCW 80.35.400; and
- i. Whether Defendants conspired together to perpetuate unlawful and/or wrongful practices and conduct.

24. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness and equity, to other available methods for the fair and efficient adjudication of Plaintiffs' claims.

25. Representative Plaintiff's claims are typical of those of the class in that she received on her cellular telephone phone multiple unsolicited commercial text messages and commercial solicitations that were the same or substantively similar to those transmitted and directed to the class. The transmission of these unsolicited commercial text messages and commercial solicitations violate RCW 19.86.10, *et seq.*, and related statutes, and they are in substance the type of commercial text message and commercial solicitation that would be transmitted and directed to numerous individuals.

26. A class action is the appropriate method for the fair and efficient adjudication of this controversy. Defendants' have acted in a general manner to the damage of the class. The presentation of separate actions by individual class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendants, and/or substantially impair or impede the ability of class members to protect their interests.

27. Further, Defendants have indicated that they will continue the "alternative advertising" of the type that has damaged Representative Plaintiff and the class in violation of applicable statutes. Accordingly, final injunctive relief is necessary and appropriate to ensure that Defendants cease and desist their unlawful and wrongful conduct. A class action is the most efficient means to ensure that Defendants' do not damage the class in the future.

28. Representative Plaintiff is an adequate representative of the class because she is a member of the class and her interests do not conflict with the interests of the members of the class she seeks to represent. The interests of the members of the class will be fairly and adequately protected by Representative Plaintiff. Also, Representative Plaintiff is

represented by a team of attorneys who together have extensive, multi-jurisdictional experience representing clients in complex class action litigation.

29. Maintenance of this action as a class action is a fair and efficient method for the adjudication of this controversy. It would be impractical and undesirable for each member of the class who suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

COUNT I

Violations of the Washington Consumer Protection Act

30. Plaintiffs reassert and re-allege the allegations set forth in the above paragraphs.

31. At all times material herein, Plaintiffs have been entitled to the rights, protections, and benefits provided under the Washington Consumer Protection Act and related Washington statutes.

32. Defendants' practices are unfair and deceptive and otherwise negligently, recklessly, willfully, and/or intentionally cause numerous *per se* violations of RCW 19.86.10, *et seq.*, including, but not limited to, violations of RCW 19.190.060 and/or RCW 80.35.400.

33. Defendants' practices are emblematic of organizational policies and agreements among the Defendants and others which have caused and, if unabated, will continue to cause incidents, occurrences, and conduct which violate RCW 19.86.10, *et seq.*

34. Defendants' conducted these practices in the scope of their trade – selling pizzas and pizza-related products and services.

35. Plaintiffs have suffered damages as a direct result of Defendants' numerous violations of RCW 19.86.10, *et seq.*

36. Plaintiffs were thereby damaged in an amount no less than \$500.00 per each of the numerous violations of RCW 19.86.10, *et seq.*, or such greater amount as may be proven at trial.

37. Plaintiffs will continue to be damaged if Defendants are not compelled to cease and desist their unfair, deceptive, and unlawful practices.

38. Plaintiffs are further entitled to all attorneys' fees, costs, and treble damages as allowed by RCW 19.86.10, *et seq.*

COUNT II

Negligence

39. Plaintiffs reassert and re-allege the allegations set forth in the above paragraphs.

40. Defendants owed a duty to act in the manner of reasonable pizza consortium and/or restaurant in their relationships with Plaintiffs and in supervising, managing, and training their officers, agents, employees, each other, and other persons under their control.

41. Defendants breached their duties by permitting, causing, suffering, requiring, and/or ratifying the acts and omissions which have damaged Plaintiffs as referenced herein.

42. The breach of duties, or negligence, of Defendants proximately caused Plaintiffs to suffer damages in amounts to be determined at trial.

V. PRAYER FOR RELIEF

WHEREFORE, Representative Plaintiff, and all others similarly situated, demand judgment against Defendants and pray this Superior Court do the following:

A. Grant a permanent injunction enjoining Defendants, their officers, successors, agents, assigns, and all persons in active concert or participation with them, from engaging in any other unfair, deceptive, or unlawful practices concerning the transmission of commercial text messages and commercial solicitations to Representative Plaintiff and other class members.

B. Order Defendants to make Representative Plaintiff and the other class members whole by providing compensation for past and future pecuniary losses resulting from the unlawful practices described in the above paragraphs, including out-of-pocket expenses, in amounts to be determined at trial, but in no event less than \$500.00 per violation of RCW 19.86.10, *et seq.*

C. Order Defendants to make Representative Plaintiff and the other class members whole by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices described in the above paragraphs, in amounts to be determined at trial.

D. Order Defendants to make Representative Plaintiff and the other class members whole by providing appropriate prejudgment interest, in an amount to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful practices.

E. Order Defendants to pay Representative Plaintiffs and the other class members punitive and/or treble damages to the fullest extent allowed by law.


F. Award Representative Plaintiff and the other class members the costs of this action, including attorneys' fees, as authorized by the Washington Consumer Protection Act and/or as sounds in tort and contract.

G. Grant any additional or further relief as provided by law, which this Court finds appropriate, equitable, or just.

Dated: May 28, 2010

Respectfully submitted,

KIRBY LAW GROUP

By: 
Albert H. Kirby, WSBA No. 40187
Attorneys for Plaintiffs