

FILED

MAY 05 2014

CLERK OF CIRCUIT COURT #66
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

**IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS**

ZACHARY TUCKER, Individually and on behalf of all others similarly situated, Plaintiffs, v. PAPA JOHN'S INTERNATIONAL, INC. and PAPA JOHN'S USA, INC. Defendants.	6668 CASE NO. <u>14 L ~~668~~</u> JURY TRIAL DEMANDED
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CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff, Zachary Tucker (hereinafter, "Plaintiff"), individually and on behalf of all others similarly situated, by and through undersigned counsel, and hereby brings this Class Action Complaint against Defendants, Papa John's International, Inc. and Papa John's, USA, Inc. (hereinafter, "Defendants"). Plaintiff makes the following allegations upon information and belief, except as to his own actions, the investigation of his counsel, and the facts that are matter of public record:

1. This is a civil action brought pursuant to 735 ILCS 5/2-801 on behalf of Plaintiff and a Class consisting of individuals who were charged improper Illinois sales tax on the delivery charge associated with the delivery of pizza and other items (hereinafter the "Class").

JURISDICTION AND VENUE

2. The Court has jurisdiction over this action pursuant to 735 ILCS 5/2-209(a)(1) because Defendants do business and are registered to do business in this state and Plaintiff is a citizen of the state of Illinois.

3. Venue is proper in the Court of Madison County pursuant to 735 ILCS 5/2-101 because Defendants have offices or agents in Madison County, and substantial part of the acts or omissions giving rise to the claims asserted in this Complaint occurred within Madison County, Illinois.

4. Federal diversity jurisdiction is lacking because the unaggregated amount in controversy is less than \$75,000.00, inclusive of injunctive relief, treble damages, costs, attorneys' fees, and other relief. In addition, the aggregated amount in controversy, inclusive of injunctive relief, treble damages, costs, attorneys' fees, and other relief, does not exceed \$5 million.

PARTIES

5. Plaintiff, Zachary Tucker, is a citizen of the state of Illinois, residing in Madison County, Illinois.

6. Defendant, Papa John's International, Inc., is a Delaware corporation with its principal place of business in Louisville, Kentucky.

7. Defendant, Papa John's USA, Inc., is a Kentucky corporation with its principal place of business in Louisville, Kentucky, and is a wholly owned subsidiary of Papa John's International, Inc. Papa John's USA, Inc. owns stores in Illinois.

8. Papa John's International, Inc. and Papa John's USA, Inc., (collectively referred to as "Papa John's"), is comprised of a single integrated enterprise that owns, has a financial interest in, and/or franchises approximately 122 restaurant locations in Illinois.

FACTS

a. Facts Common to All Class Members

9. Defendants offer pizza and other foods for sale to the general public. A customer may order pizza and food from Defendants either in person at the store location, over the phone, via an ordering application on a smartphone, or through the internet website, www.papajohns.com, which redirects customers to order.papajohns.com/index.html.

10. When placing an order with any traditional Papa John's Illinois location, customers may physically go to the store where they placed the order to pick up their food or, at the customers' option, Defendants will deliver the food to the customer. If a customer elects to have their food order delivered, Defendants charge the customer a delivery fee, which is listed separately on the Defendants' purchase receipt.

11. Papa John's and all of its franchised Papa John's locations throughout Illinois charge customers a sales tax on the delivery fee.

12. The billing practice for charging sales tax on delivery fees was orchestrated and mandated by Papa John's and is followed by most, if not all, locations in Illinois at the direction of Papa John's. Papa John's stores are instructed and required to collect sales tax on delivery fees.

13. Papa John's proprietary PROFIT System, point-of sale technology ("Profit System"), was integrated into all traditional Papa John's locations. The Profit System provides digital ordering for customers and provides locations with a fast and supposedly accurate method for order taking and pricing. The Profit System from Papa John's dictates the method used for calculating pricing, including sales tax charges, which franchise owner's utilize, at the direction of Papa John's, to create bills for its customers.

14. In Illinois, sales tax may only be imposed on the total sales price of taxable tangible property. The sales price is the total amount paid for tangible goods, including services

that are part of the sale; however, when a customer has the option to either pick up the goods or have the goods delivered by the seller, as in the case herein, a seller may not legally charge sales tax on a separate charge for delivery where the cost of delivering the merchandise is equal to or exceeds the delivery fee. To the extent the actual cost of delivery is less than the delivery fee itself, under Illinois law, Papa John's is permitted to charge sales tax only on the excess amount. See the Department's regulation at 86 Ill. Adm. Code 130.415(d) and Nancy Kean v. Wal-Mart Stores, Inc., 235 Ill. 2d 351 (2009).

15. For all food ordered from Papa John's, a customer has the option to pick up the food or have it delivered. Accordingly, Papa John's and its franchise owners are not legally permitted to charge sales tax on a delivery fee charged for customers who elect to have their food delivered.

16. Despite clear Illinois law to the contrary, Papa John's and its franchise stores have in the past charged and continue to charge sales tax on the entire delivery fee. As a result, every customer who has ordered food for delivery from any Papa John's location in Illinois has paid excess sales tax that Defendants and other franchise owners were not entitled to collect.

b. Facts as to Plaintiff Zachary Tucker

17. Plaintiff Zachary Tucker placed an order via telephone with a Papa John's location in Wood River, Illinois. Plaintiff Zachary Tucker chose to have the order delivered as opposed to picking up the order at the store. Plaintiff Zachary Tucker was charged a delivery fee believed to be in the amount of \$2.39. Plaintiff Zachary Tucker was improperly charged sales tax of 6.850% on the delivery fee. Under Illinois law, Defendants were not allowed to charge sales tax on the delivery fee. Accordingly, Defendants required Plaintiff Tucker to pay an additional \$0.16 in sales tax for the non-taxable service.

CLASS ACTION ALLEGATIONS

18. This action is brought as a class action pursuant to 735 ILCS 5/2-801 on behalf of the Plaintiff named above and all others similarly situated. The class is defined as:

All persons who ordered food from any Papa John's location in the State of Illinois and selected to have their order delivered, were charged a delivery fee, and were charged and paid sales tax on the itemized delivery fee.

19. Excluded from the proposed Class are:

- a. Defendants;
- b. Any entities in which Defendants have or had a controlling interest;
- c. Any officers or directors of Defendants;
- d. The legal representatives, heirs, successors, and assigns of Defendants;
- e. Any Judge assigned to this action and his or her immediate family, and anyone who timely requests exclusion from the Class;

20. Numerosity: Members of the proposed Class are so numerous that their individual joinder is impracticable. The precise identities, number, and addresses of members of the proposed Class are unknown to Plaintiff, but may and should be known with proper and full discovery of Defendants, third-parties, and their respective records. All Class members pray for money damages, temporary and permanent injunctive relief, and declaratory relief because the parties opposing the proposed Class have acted on grounds generally applicable to the proposed Class, thereby making appropriate injunctive relief to the proposed Class as a whole.

21. Existence of Common Questions of Fact and Law: There is a well-defined commonality and community of interest in the questions of fact and law affecting the members of the proposed Class. The common questions of fact and law include, among other things:

- a. Whether Defendants violated Illinois Department of Revenue Regulation Title 86, Part 130 Section 130.415 by charging a sales tax on the delivery fee for pizza;
- b. Whether Defendants provided customers with an option to choose either carry-out or delivery for food ordered at a Papa John's location in Illinois;
- c. Whether Defendants charged a sales tax on the delivery fee charged to its customers who selected to have their food delivered;
- d. Whether Defendants were negligent in charging sales tax on delivery fees;
- e. Whether Defendants negligently misrepresented that a sales tax was owed on delivery fees charged to its customers;
- f. Whether Defendants negligently calculated the sales tax owed by its customers for delivery orders;
- g. Whether Plaintiff and the proposed class are entitled to declaratory judgment to prevent Defendants from overcharging sales tax; and
- h. The policies and procedures developed by the Defendants regarding charging the class members tax on the delivery charge;
- i. Defendants' vicarious liability for the actions of its employees and agents;
- j. The legal relationships among the Defendants; and
- k. The extent of damages caused by the defendants' violations;
- l. Whether and to what extent Defendants' acts and practices, as complained of herein, are unfair, and therefore, in violation of Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.*;
- m. Whether and to what extent Defendants' acts or practices, as complained of herein, violate 735 ILCS 5/2-701, Illinois' Declaratory Judgment statute.
- n. Whether Defendants' conduct described herein is in breach of contract;
- o. Whether Plaintiff and the respective class members are entitled to an injunction prohibiting Defendants from engaging in trade practices as described herein and breaching their fiduciary duty to Plaintiff and respective class.
- p. Whether Plaintiff and the respective class members are entitled to damages;
- q. Whether Plaintiff and the respective class are entitled to treble damages;
- r. Whether Plaintiff and the respective class are entitled to attorneys' fees;

- s. Whether Plaintiff and the respective class are entitled to costs; and
- t. Whether Plaintiff and the respective class members are entitled to an injunction preventing Defendants from charging sales tax on any delivery fee to the class members.

22. Typicality: Plaintiff is a member of the proposed Class. The Plaintiff's claims and the claims of the proposed Class have a common origin and share common bases. Plaintiff's claims originate from the same unfair, deceptive, and fraudulent practices of the Defendants, and the Defendants act and have acted in the same way toward Plaintiff and the proposed Class members. If brought and prosecuted individually, the claims of each Putative Class member would necessarily require proof of the same material and substantive facts, rely upon the same remedial theories, and seek the same relief.

23. Adequacy: Plaintiff is an adequate representative of the proposed Class because Plaintiff's interests do not conflict with the interests of the members of the proposed Class Plaintiff seeks to represent. Plaintiff has retained competent counsel, and Plaintiff intends to prosecute this action vigorously. Plaintiff's counsel will fairly and adequately protect the interests of the members of the proposed Class.

24. Superiority: A Class action is superior to all other available methods for the fair and efficient adjudication of this controversy because joinder of all Members is impracticable. Furthermore, as the damages suffered by individual Class Members might be relatively small, the expense and burden of individual litigation makes it impossible for Members of the proposed Class to individually redress the wrongs done to them. There will be no difficulty in the management of this case as a Class action.

25. In the alternative, the Class may be certified because:

- a. the prosecution of separate actions by the individual Members of the Class would create a risk of inconsistent or varying adjudication with respect to

individual Class Members that would establish incompatible standards of conduct for Defendants;

- b. the prosecution of separate actions by individual Class Members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other Class Members not party to the adjudications, or they would substantially impair or impede their ability to protect their interests; and
- c. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final and injunctive relief with respect to the Members of the Class as a whole.

26. This lawsuit may be maintained as a class action pursuant to 735 ILCS 5/2-801 because Plaintiff and the proposed Class seek declaratory and injunctive relief, and all of the above factors of numerosity, common questions of fact and law, typicality and adequacy are present. Moreover, Defendants have acted on grounds generally applicable to Plaintiff and the proposed Class as a whole, thereby making declaratory and/or injunctive relief proper and suitable remedies.

27. This lawsuit may be maintained as a class action under 735 ILCS 5/2-801 because questions of fact and law common to the Class predominate over the questions affecting only individual members of the Class, and a class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by each individual class member may be disproportionate to the burden and expense of individual prosecution of complex and extensive litigation to proscribe Defendants' conduct and practices. Additionally, effective redress for each and every class member against Defendants may be limited or even impossible where serial, duplicate, or concurrent litigation occurs arising from these disputes. Even if individual class members could afford or justify the prosecution of their separate claims, such an approach would compound judicial inefficiencies, and could lead to incongruous and conflicting judgments against Defendants.

28. To the extent that there are any contractual prohibitions or other purported impediments to pursue these claims on a class action basis, Plaintiff specifically alleges, and will prove, if necessary, that any such bar is unconscionable, unfair and against the public policy of the State of Illinois.

COUNT I NEGLIGENCE

COMES NOW Plaintiff, individually and on behalf of all others similarly situated, and for Count I of Plaintiff's Complaint against Defendants, states the following:

29. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

30. Papa John's was negligent and breached its duty of reasonable care in one or more of the following ways:

- a. by incorrectly calculating the amount of sales tax it was allowed to charge to customers for sales tax;
- b. by charging customers a sales tax on a delivery fee assessed separately and on top of the cost of the product(s) being delivered in violation of Illinois law;
- c. by failing to disclose to its customers that it was charging sales tax on the delivery fee associated with the delivery of Papa John's pizza and/or other items; and/or
- d. for charging more than the advertised delivery fee.

31. As a direct and proximate result of Papa John's negligence, Plaintiff, and all others similarly situated, paid sales tax on non-taxable services.

COUNT II NEGLIGENT MISREPRESENTATION

COMES NOW Plaintiff, individually and on behalf of all others similarly situated, and

for Count II of Plaintiff's Complaint against Defendants, states the following:

32. Plaintiff realleges the allegations in the preceding paragraphs as if fully set out herein.

33. Papa John's, in its transactions with Plaintiff and the class members, supplied false information regarding the proper sales tax due and owing.

34. These representations were made with the actual knowledge of Defendants.

35. Defendants intended for Plaintiff to rely upon the material misrepresentations to induce them to have their pizza delivered.

36. The representations set forth herein were material to Plaintiff and the class members.

37. Plaintiff and the class members justifiably relied on the information supplied by Papa John's, which was supplied directly to Plaintiff with Defendants knowing that Plaintiff would rely on the information.

38. Papa John's failed to exercise reasonable care in communicating the information in the course and scope of its employment.

39. Plaintiff and the class members suffered financial loss by relying on the information supplied by Papa John's.

**COUNT III
BREACH OF CONTRACT/ BREACH OF DUTY OF
GOOD FAITH AND FAIR DEALING**

COMES NOW Plaintiff, individually and on behalf of all others similarly situated, and for Count III of Plaintiff's Complaint against Defendants, states the following:

40. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

41. Plaintiff and the Class entered into agreements with Defendants whereby Plaintiff and the Class agreed to pay a certain sum of money in exchange for Defendants to deliver pizza and/or other products to Plaintiff and the class members.

42. Defendants expressly and/or impliedly agreed to bill and collect only for such charges that Plaintiff and the respective Class clearly and explicitly authorized.

43. Defendants also expressly and/or impliedly agreed to provide clear and nonmisleading information regarding the cost of delivery of the pizza and other items to Plaintiff and the respective Class.

44. Defendants further expressly and/or impliedly agreed to carry out its obligations of good faith and fair dealing.

45. Defendants breached its contractual obligations, including its contractual obligation of good faith and fair dealing, by charging its customers an amount above and beyond the delivery fee separately agreed to even though Illinois has deemed these services to be nontaxable.

46. Defendants further breached its contractual obligations by providing Plaintiff and the respective Class with misleading information regarding the cost of delivery of the pizza and other items.

47. Plaintiff and the respective Class performed their contractual obligations.

48. The aforementioned breaches of contract have proximately caused the Plaintiff and the Class' damages.

**COUNT IV
DECLARATORY RELIEF
ALL DEFENDANTS**

COMES NOW Plaintiff, individually and on behalf of all others similarly situated, and

for Count IV of Plaintiff's Complaint against Defendants, states the following:

49. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

50. An actual and justiciable controversy exists between Defendants and Plaintiff and the Class.

51. As described above, Defendants charged and collected sales tax on nontaxable delivery fees charged to its customers.

52. Illinois Department of Revenue Regulation Title 86, Part 130 Section 130.415 states that if the seller and the buyer agree upon the transportation or delivery charges separately from the selling price of the tangible personal property which is sold, then the cost of the transportation or delivery service is not a part of the "selling price" of the tangible personal property which is sold, but instead is a service charge, separately contracted for, and need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability. Delivery charges are deemed to be agreed upon separately from the selling price of the tangible personal property being sold so long as the seller requires a separate charge for delivery and so long as the charges designated as transportation or delivery or shipping and handling are actually reflective of the costs of such shipping, transportation, or delivery. To the extent that such charges exceed the costs of shipping, transportation, or delivery, the charges are subject to tax.

53. Papa John's gives each delivery driver a per delivery reimbursement in addition to minimum wage. The amount Papa John's pays to delivery drivers to deliver the pizza and/or other items is equal to or exceeds the delivery fee. Because the delivery fee does not exceed the cost of delivering the pizza and/or other items, the delivery fee is not subject to Illinois tax. To

the extent the delivery fee should exceed the cost of delivering the pizza, only the excess would be subject to Illinois tax.

54. Plaintiff and Class are entitled to a declaration from this Court that Defendant's practice of charging a sales tax on the delivery fee violates Illinois Department of Revenue Regulation Title 86, Part 130 Section 130.415.

55. The additional sales tax is charged in violation of Illinois law.

COUNT V
VIOLATION OF 815 ILCS 505/1 *ET SEQ.*
THE ILLINOIS CONSUMER FRAUD ACT

COMES NOW Plaintiff, individually and on behalf of all others similarly situated, and for Count V of Plaintiff's Complaint against Defendants, states the following:

56. Plaintiff repeats, realleges, and incorporates by reference each of the foregoing paragraphs of this Complaint as if fully set forth herein.

57. This Count is a class action claim brought pursuant to 815 ILCS §505/1 *et seq.* known as The Illinois Consumer Fraud and Deceptive Business Practices Act.

58. Pursuant to the Illinois Consumer Fraud & Deceptive Practices Act, 815 ILCS 505/1 *et seq.* (hereinafter, "IFCA"), unfair methods of competition and unfair acts or practices, including but not limited to the use or employment of any false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act" in the conduct of any trade or commerce are declared unlawful, whether any person has in fact been misled, deceived or damaged thereby.

59. Defendants, through its employees, agents and representatives, have violated ICFA by engaging in the following deceptive practices of:

- (a) Charging a sales tax on the delivery fee, thereby violating Illinois Department of Revenue Regulation Title 86, Part 130 Section 130.415;
- (b) Making material omissions and misrepresentations regarding the proper sales tax due and owing on the delivery fee portion of the pizza bill.

60. These material omissions and misrepresentations were made with the actual knowledge of Defendants.

61. Defendants intended for Plaintiff to rely upon the material omissions and misrepresentations to induce them to pay for the sales tax assessed on the delivery fee.

62. The material omissions and misrepresentations set forth herein were material to Plaintiff, and if Plaintiff had known that sales tax was assessed on the delivery fee, Plaintiff would not have paid it.

63. Additionally Defendants conduct as described herein constitutes an "unfair practice."

64. Defendants' practice of charging sales tax on the delivery fee portion of the pizza bill: (1) offends Illinois public policy in part because it violates Illinois Department of Revenue Regulation Title 86, Part 130 Section 130.415; (2) is immoral, unethical, oppressive, or unscrupulous; and (3) has caused and causes substantial injury to consumers.

65. As a direct and proximate result of Defendants' unfair acts or deceptive practices, Plaintiff and Class were damaged.

66. Defendants offered their pizza and/or other items and the delivery associated therewith to Plaintiff and the Putative Class for personal, family, or household purposes.

67. Plaintiff and the class members are consumers within the meaning of the Act. 815 ILCS 505/1(e).

68. In the event Plaintiff is the prevailing party, Plaintiff also seeks a reasonable attorney's fee and costs as provided under the ICFA.

69. Plaintiff and the Class are entitled to equitable relief, including restitutionary disgorgement of monies unlawfully collected by Defendants and an injunction prohibiting Defendants from engaging in the same or similar practices described herein in the future.

COUNT VI
VIOLATION OF 815 ILCS 510/1 *ET SEQ.*
THE UNIFORM DECEPTIVE TRADE PRACTICES ACT

COMES NOW Plaintiff, individually and on behalf of all others similarly situated, and for Count VI of Plaintiff's Complaint against Defendants, states the following:

70. Plaintiff repeats, realleges, and incorporates by reference each of the foregoing paragraphs of this Complaint as if fully set forth herein.

71. Pursuant to 815 ILCS 510/1, *et seq.*, a person likely to be damaged by an unfair trade practice of another may be granted injunctive relief upon terms that the court considers reasonable.

72. In pertinent part, pursuant to 815 ILCS 510/2(a)(12), a person engages in an unfair trade practice when, in the course of his or her business, vocation, or occupation the person... engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding.

73. In particular, in violation of 815 ILCS 510 *et seq.*, Defendants, through their employees, agents and representatives engaged in conduct which creates a likelihood of confusion or misunderstanding by charging a sales tax on a delivery fee in violation of Illinois law.

74. Each of the aforementioned actions and failures to act of Defendants constitute an unfair trade practices within the meaning of the Uniform Deceptive Trade Practices Act, 815 ILCS 510/1 *et seq.*

75. As a result of each of the aforementioned unfair trade practice, Defendants have directly, foreseeably, and proximately caused damages to Plaintiff and Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks the following relief:

- a. An Order certifying the proposed Class herein and appointing Plaintiff and the undersigned counsel of record to represent the Class;
- b. An Order issuing a preliminary injunction enjoining Defendants and all others, known and unknown, from charging a sales tax on the delivery fee;
- c. An Order issuing a permanent injunction enjoining Defendants and all others, known and unknown, from continuing to take illegal action as set forth in this Complaint;
- d. A Judgment awarding Plaintiff and the Class compensatory, consequential, and statutory damages, pre-judgment interest, and post-judgment interest;
- e. A Judgment awarding Plaintiff and the Class restitution of all monies paid in connection with the wrongfully charged sales tax on the delivery fee;
- f. A Judgment for actual damages for injuries suffered by Plaintiff and the members of the proposed Class as a result of Defendants' violation of ICFA;
- g. A Judgment awarding Plaintiff and the Class reasonable attorneys' fees and costs of this action in accordance with UDTPA;
- h. A Declaratory Judgment ordering Defendants to cease and desist charging a sales tax on the delivery fee in accordance with 735 ILCS 5/2-701; and
- i. Such other and further relief as this Honorable Court finds just and proper under the circumstances.

JURY DEMAND

WHEREFORE, Plaintiff demands a trial by jury on all issues so triable as a matter of right.

Dated: 5/5/14



Francis J. "Casey" Flynn, Jr., IL Bar # 6289490

Tiffany M. Yiatras, IL Bar #6286795

Corey D. Sullivan, IL Bar #6294688

CAREY, DANIS & LOWE

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**ATTORNEYS FOR PLAINTIFF AND THE
PROPOSED CLASS**

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JURY TRIAL REQUEST

Comes now plaintiff, individually and on behalf of all others similarly situated, by and through Plaintiff's attorneys of record, and hereby requests a twelve-person jury trial. This request is being filed in conjunction with the filing of Plaintiff's complaint.

Dated: 5/5/14



Francis J. "Casey" Flynn, Jr., IL Bar # 6289490
Tiffany M. Yiatras, IL Bar #6286795
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(seeking to be admitted *pro hac vice*)
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**ATTORNEYS FOR PLAINTIFF AND THE
PROPOSED CLASS**

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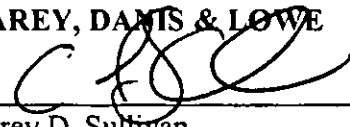
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ENTRY OF APPEARANCE

COMES NOW, Corey D. Sullivan of Carey, Danis & Lowe and enters his appearance as
counsel for the above named Plaintiffs.

CAREY, DANIS & LOWE .

By: 

Corey D. Sullivan
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ATTORNEYS FOR PLAINTIFFS

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ENTRY OF APPEARANCE

COMES NOW, Francis J. "Casey" Flynn, Jr. of Carey, Danis & Lowe and enters his
appearance as counsel for the above named Plaintiffs.

CAREY, DANIS & LOWE

By: 

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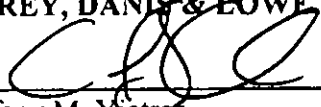
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ENTRY OF APPEARANCE

COMES NOW, Tiffany M. Yiatras of Carey, Danis & Lowe and enters her appearance as counsel for the above named Plaintiffs.

CAREY, DANIS & LOWE

By: 

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ATTORNEYS FOR PLAINTIFFS

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Plaintiffs,

v.

PAPA JOHN'S INTERNATIONAL, INC. and
PAPA JOHN'S USA, INC.,

Defendants.

CASE NO.

14L ~~668~~ 668

JURY TRIAL DEMANDED

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

COMES NOW Plaintiff, Zachary Tucker (hereinafter "Plaintiff" or "Tucker"), individually and on behalf of all others similarly situated, by Counsel and pursuant to 735 ILCS 5/2-801, and hereby moves this Court to certify this action as a class action. In support of this motion, Plaintiff states as follows:

1. Plaintiff respectfully requests that the Court certify the following class pursuant to 735 ILCS § 5/2-801 of the Illinois Rules of Civil Procedure:

All persons who ordered food from any Papa John's location in the State of Illinois and selected to have their order delivered, were charged a delivery fee, and charged and paid sales tax on the itemized delivery fee.

2. The requirements of 735 ILCS § 5/2-801 are met in that:

- (a) The class is so numerous that joinder of all members is impracticable;
- (b) There are common questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members;
- (c) The representative parties will fairly and adequately protect the interests of the class; and
- (d) The class action is an appropriate method for the fair and efficient

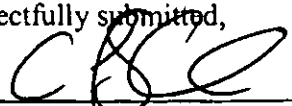
adjudication of the controversy.

WHEREFORE, Plaintiff respectfully requests the Court grant this Motion for Class Certification, and enter such other and further relief as the Court deems just and proper.

Dated: May 5, ~~2012~~ ²⁰¹⁴

Respectfully submitted,

By: _____


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**ATTORNEYS FOR PLAINTIFF AND THE
PROPOSED CLASS**

May 5, 2014

IN THE CIRCUIT COURT
FOR THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

CASE NUMBER: 2014 L 000668

ZACHARY TUCKER

Plaintiff(s)

VS.

PAPA JOHNS INTERNATIONAL INC

Defendant(s)

FILED

MAY 05 2014

CLERK OF CIRCUIT COURT #6
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

ASSIGNMENT ORDER

The above case is hereby assigned to the Honorable A.A. MATOESIAN for setting and disposition.

Clerk to send copies of this Order to the attorneys of record and any pro se party.

DATE: May 05, 2014

s/David Hylla
Chief Judge