

**IN THE CIRCUIT COURT FOR THE SEVENTEENTH JUDICIAL CIRCUIT
IN BROWARD COUNTY, FLORIDA**

 LAUREN MINNITI, individually and on)
 behalf of all others similarly situated,)
 Plaintiff,)
 v.)
 PIZZA HUT OF AMERICA, INC.,)
 a Delaware corporation,)
 Defendant.)

No.

JURY TRIAL DEMANDED

CLASS REPRESENTATION COMPLAINT

Plaintiff Lauren Minniti (“Plaintiff”) brings this Complaint against Defendant Pizza Hut of America, Inc. (“Pizza Hut”), on behalf of herself and all others similarly situated, and complains and alleges upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

I. NATURE OF THE ACTION

1. Pizza Hut is a corporation operating in the food-industry, principally, the sale of pizzas. Pizza Hut offers delivery services of its products for an additional fee. In violation of Florida law, however, Pizza Hut charges sales tax on the delivery fees.

2. In order to redress these injuries, Plaintiff asserts claims for violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201 *et seq.*, (the “FDUPTA”), negligent misrepresentation, and unjust enrichment. Plaintiff seeks an injunction requiring Pizza Hut to cease all tax-overcharges on its goods or services, and an award of damages, to the Class members, together with costs and reasonable attorneys’ fees.

II. JURISDICTION AND VENUE

18. This Court has original jurisdiction pursuant to Florida Statutes §26.012, because the amount for the proposed class action exceeds \$15,000.

3. This Court has personal jurisdiction over Pizza Hut pursuant to Florida's Long-Arm Statute, Florida Statutes § 48.193, because the conduct giving rise to Plaintiffs' claims occurred in this State, and Pizza Hut conducts business transactions in this State

4. Venue is proper in Broward County pursuant to Florida Statutes §§ 47.011, 47.051 because Pizza Hut's unlawful conduct occurred here, and Pizza Hut conducts business transactions in Broward County.

III. PARTIES

Plaintiff

5. Plaintiff Lauren Minniti is an individual domiciled in Broward County, Florida. Plaintiff is a citizen of the State of Florida.

Defendant

6. Defendant Pizza Hut is a corporation organized in and existing under the laws of the State of Delaware with its principal place of business located in Dallas County, Texas. Pizza Hut is a citizen of the States of Delaware and Texas.

IV. FACTUAL BACKGROUND

Florida Tax Rates

7. According to the Florida Department of Revenue, the sales and use tax rate for the State of Florida is 6.00%.¹

¹ Florida Dep't of Revenue, Florida Tax and Interest Rates, http://dor.myflorida.com/dor/taxes/tax_interest_rates.html#sales (last visited June 5, 2014).

8. Florida counties may also choose to charge a “discretionary sales surtax” (also called “county tax”).²

9. For example, the Organization of Broward County Government does not impose discretionary sales surtax.³

10. In contrast, the Orange County Government does impose a 0.5% discretionary sales surtax.⁴

11. Regardless, in Florida, sales tax may *only* be imposed on the total sales price of tangible personal property.⁵

12. Sales tax may *not* be imposed on delivery fees if: (1) the sales tax is separately stated on a receipt; and (2) consumers can avoid a delivery fee by picking-up the ordered personal property.⁶

Pizza Hut’s Business Model

13. Pizza Hut offers pizza and other food and beverage products for sale online, over the phone, through a mobile application, and at various store locations.

14. When placing an order with a Pizza Hut, consumers may elect to have the order delivered, subject to an additional fee (the “Delivery Fee”). Consumers may also elect to pick-up the order in-person.

15. The Delivery Fee is listed separately on consumers’ receipts.

16. Florida law provides that sales tax may not be imposed on delivery fees.

² *Id.*

³ Florida Dep’t of Revenue, Discretionary Sales Surtax Information, http://dor.myflorida.com/dor/forms/current/dr15dss_1113.pdf (last visited June 5, 2014).

⁴ *Id.*

⁵ Fla. Admin. Code 12A-1.045(4)(a), available at <https://www.flrules.org/gateway/ruleno.asp?id=12A-1.045>.

⁶ *Id.*

17. Pizza Hut, nonetheless, directs its stores to charge sales taxes on delivery fees based on the applicable taxes in the counties where the stores are located.

18. Pizza Hut and its agents knew or should have known of the sales tax requirements in each county where its stores operate, and that its practices violated Florida law.

Damage to Plaintiff and the Class

19. On or about May 28, 2014, Plaintiff placed an order for the delivery of a pizza to a residence located in Fort Lauderdale, Broward County, Florida. (*See* Receipt attached hereto as Exhibit A.)

20. In Broward County, consumers are not charged a discretionary sales surtax.

21. Accordingly, the total sales tax in Broward County is 6.00%.

22. The Pizza Hut Receipt separately lists the total sales price as \$12.00; the Delivery Fee as \$2.75; and the sales tax as \$0.89.

23. Pizza Hut charged Plaintiff a total amount of \$15.64.

24. Six percent of \$12.00 is \$0.72.

25. Plaintiff, however, was charged \$0.89 in sales tax.

26. If the total sales price was added to the Delivery Fee, the sum would equal \$14.75.

27. Six percent of \$14.75 is \$0.885—rounded up to \$0.89.

28. Accordingly, Plaintiff was charged sales tax on Pizza Hut's Delivery Fee.

29. At the time of purchase, Plaintiff did not expect to be improperly charged sales tax and did not know that Pizza Hut had charged her for sales tax on delivery fees.

30. After a closer scrutiny of the receipt, however, Plaintiff discovered Pizza Hut had charged her sales tax on the Delivery Fee.

31. On information and belief, Pizza Hut charged and continues to charge sales tax on delivery fees to thousands, of unsuspecting consumers, like Plaintiff, in the State of Florida.

V. CLASS REPRESENTATION ALLEGATIONS

32. Plaintiff brings this action, as set forth below, on behalf of herself and as a class action pursuant to the provisions of Florida Rule of Civil Procedure 1.220 on behalf of a class defined as:

All individuals in the State of Florida who: (a) purchased food or beverage products from Defendant Pizza Hut of America Inc. or one of its locations; (b) had the option to pick-up their purchase; (c) elected to have their purchase delivered; and (d) were charged sales tax on delivery fees for their purchase (the "Class").

Excluded from the Class are Pizza Hut and its subsidiaries and affiliates; all persons who make a timely election to be excluded from the Class; governmental entities; and the judge to whom this case is assigned and any immediate family members thereof.

33. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of her claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

34. **Numerosity** – The members of the Class are so numerous that individual joinder of all Class members is impracticable. On information and belief, there are thousands of consumers who have been damaged by Pizza Hut's wrongful conduct as alleged herein. The precise number of Class members and their addresses is presently unknown to Plaintiff, but may be ascertained from Pizza Hut's books and records. 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.

35. **Commonality and Predominance.** This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

- a. whether Pizza Hut offers delivery services to consumers for food or beverage ordered online or at a Pizza Hut store location;
- b. whether Pizza Hut charged a sales tax on the delivery fee charged to consumers who requested that their food or beverage orders be delivered;
- c. whether Florida law prohibits sales tax on Pizza Hut's delivery fees;
- d. whether Pizza Hut's conduct is a deceptive or unfair act in violation of Florida law;
- e. whether Pizza Hut retained any benefit as a result of collecting sales tax on delivery fees;
- f. whether Pizza Hut is unjustly enriched by the retention of that benefit;
- g. whether Plaintiff and the Class are entitled to actual or other forms of damages, and other monetary relief and, in what amount(s); and
- h. whether Plaintiff and the Class are entitled to equitable relief, including but not limited to injunctive relief and restitution.

36. **Typicality.** Plaintiff's claim is typical of the other Class members' claims because, among other things, all Class members were comparably injured through the uniform prohibited conduct described above.

37. **Adequacy of Representation.** Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the other Class members she seeks to represent; she has retained counsel competent and experienced in complex commercial and class action litigation; and Plaintiff intends to prosecute this action vigorously. The interests of the Class members will be fairly and adequately protected by the Plaintiff and her counsel.

38. **Declaratory and Injunctive Relief.** Pizza Hut has acted or refused to act on grounds generally applicable to Plaintiff and the other Class members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class as a whole.

39. **Superiority.** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Pizza Hut, so it would be impracticable for Class members to individually seek redress for Pizza Hut's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

VI. CLAIMS ALLEGED

COUNT I

Violation of the Florida Deceptive and Unfair Trade Practices Act (On Behalf of the Class)

40. Plaintiff incorporates paragraphs 1-39 as if fully set forth herein.

41. When Plaintiff and the other Class members ordered Pizza Hut's products, Pizza Hut represented that the total price included the sales tax required and allowable by Florida law.

42. However, Pizza Hut knowingly overcharged sales tax to Plaintiff and the other Class members by improperly charging sales tax on delivery fees.

43. Pizza Hut's overcharge was inconspicuous in that only a close inspection and calculation of the percentages conducted by consumers would reveal the overcharge.

44. Pizza Hut's conduct constitutes a deceptive and unfair practice under the FDUPA.

45. Pizza Hut intended Plaintiff and the other Class members to rely on Pizza Hut's representations in order to purchase Pizza Hut's products.

46. Pizza Hut's unfair and deceptive practices took place in the course of trade or commerce when Pizza Hut advertised, solicited, offered, and sold its products to Plaintiff and the other Class members.

47. Plaintiff and the other Class members suffered injuries in fact and actual damages, including the loss of money and costs incurred as a result of Pizza Hut's violation of the FDUPA.

48. Plaintiffs' and the Class members' injuries were proximately caused by Pizza Hut's unfair and deceptive behavior, which was conducted with reckless indifference toward the rights of others, such that an award of punitive damages is appropriate.

49. As a result, Plaintiff and the other Class members are entitled to monetary damages, injunctive relief, and other relief this Court deems equitable.

COUNT II
Negligence
(On Behalf of the Class)

50. Plaintiff incorporates paragraphs 1-39 as if fully set forth herein.

51. Pizza Hut owed Plaintiff and the other Class members a duty to exercise reasonable care to assess, represent, and charge the correct amount of sales tax on its products to be delivered to consumers.

52. Pizza Hut breached that duty of care by: (1) misrepresenting that sales tax was owed on delivery fees; and (2) charging and collecting sales tax on delivery fees in violation of Florida law.

53. Pizza Hut's conduct directly and proximately caused Plaintiff and the other Class members to pay sales tax on delivery services.

54. Plaintiff's and the other Class members' payment of sales tax on Pizza Hut's delivery services was reasonably foreseeable to Pizza Hut, particularly in light of the fact that Pizza Hut and/or its agents represented that the total payment owed included sales tax.

55. Neither Plaintiff nor the other Class members contributed to the misrepresentation that sales tax was owed on delivery services.

56. Plaintiff's and the other Class members' payment of sales tax on Pizza Hut's delivery services constitutes a cognizable injury in the form of lost money.

COUNT III
Unjust Enrichment
(On Behalf of the Class)

57. Plaintiff incorporates paragraphs 1-39 as if fully set forth herein.

58. Pizza Hut has been and continues to be unjustly enriched by receiving the benefits of overcharging Plaintiff and the Class.

59. When Plaintiff and the Class purchased Pizza Hut's products, they reasonably expected Defendants to charge only the sales tax required and allowable by Florida law.

60. However, Pizza Hut overcharged Plaintiff and the Class.

61. Retention of this benefit is inequitable, and Plaintiff and the Class should be compensated by an ascertainable value to be proven at trial based on the retention of the benefit.

62. This unjust enrichment has been to the detriment of Plaintiff and other members of the Class.

63. Plaintiff and other members of the Class have suffered injuries in fact, including loss of money and costs incurred as a result of the overcharges.

64. As a result, Plaintiff and the Class are entitled to monetary damages, injunctive relief, and other relief this Court deems equitable

VII. JURY DEMAND

Plaintiff demands a trial by jury of all claims in this Complaint so triable.

VIII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff Lauren Minniti, individually and on behalf of the Class, requests that the Court enter an Order as follows:

- A. Certifying the Class as defined above, appointing Plaintiff Lauren Minniti as the representative of the Class, and appointing her counsel as Class Counsel;
- B. Awarding of damages;
- C. Requiring Pizza Hut to cease overcharging sales tax on delivery services in violation of Florida law, and otherwise protecting the interests of the Class;
- D. Awarding of reasonable attorneys' fees and costs; and
- E. Awarding such other and further relief that the Court deems reasonable and just.

Dated: December 9, 2014

Respectfully submitted,

LAUREN MINNITI, individually and on behalf of all others similarly situated

By: s/ Scott D. Owens

One of the Attorneys for Plaintiff
And the Proposed Putative Class

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**Pro hac vice application forthcoming*

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