UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

JERRY WOJCIK, an individual, on behalf of himself and all others similarly situated,

Plaintiff,

CASE NO. 8:12 CV 2414-SDM-TBM

v.

BUFFALO BILLS, INC.,
A New York Corporation,

Defendant.

MEMORANDUM OF LAW IN SUPPORT OF BUFFALO BILLS, INC.'S MOTION TO DISMISS THE COMPLAINT, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Defendant Buffalo Bills, Inc. ("BBI") owns and operates a professional football team called the "Buffalo Bills" (the "Team"), and is a constituent member of the National Football League. In relation to the Team, BBI through a non-party, implemented and administers a fan notification service whereby fans voluntarily subscribe to receive "up to the minute news and team alerts sent directly" via text message to their cellular phones (the "Text Service"). In order to subscribe to the Text Service, a fan must voluntarily "opt in" by texting the word "BILLS" to Short Message Service ("SMS") short code 64621, and in so doing provides his/her cellular telephone number to which texts will thereafter be sent. Each subscriber can

withdraw from participation in the Text Service at any time by texting the word "STOP" to the same SMS short code.

Plaintiff Jerry Wojcik ("Wojcik") is an alleged subscriber to the Text Service. Wojcik alleges in this putative class action that BBI violated the terms and conditions of the Text Service by sending him text messages in excess of five per calendar week. Wojcik contends that he never gave consent to receive more than five text messages per calendar week, and that any text sent in excess of five per calendar week is a violation of the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227 (the "TCPA").

The legislative history and reported case law amply demonstrate that the factual situation alleged in the Complaint is one that does not fall within the regulatory ambit of the TCPA. The TCPA was enacted to prohibit the receipt of unsolicited messages from third-parties with no relationship to the recipient, and was not intended to govern situations, as here, where express consent was given by Plaintiff to receive text messages. In bringing this putative class-action, Plaintiff and his counsel are looking to improperly expand the scope of the TCPA.

Moreover, Wojcik simply alleges in conclusory fashion that the equipment purportedly used to send the subject text messages to him was the type of "automatic telephone dialing system" defined within the TCPA. Wojcik offers no supporting material facts to support his conclusory contention, which alone is insufficient to support his claims. Accordingly, his complaint must be dismissed.

II. FACTUAL BACKGROUND

Wojcik filed his putative class action complaint on October 25, 2012, asserting claims for negligent and willful violations of the TCPA (the "Complaint"). (Doc. 1) Wojcik's Complaint focuses on the Text Service, and the specific terms and conditions thereof. Upon visiting the Team's official website on September 12, 2012, Wojcik alleges that he saw an advertisement on the site where "he could electronically subscribe through his cellular telephone to receive mobile text message alerts" from the Team by "texting the word 'BILLS' to short code 64621."[1] *Complaint* at ¶ 16. The terms and conditions of the Text Service are listed on the Team's website. *Id.* at ¶ 17. Wojcik's Complaint is predicated upon the following language contained on the website and in the terms and conditions of the Text Service: "You will be opted in to receive 3-5 messages per week for a period of 12 months," as well as the statement "you will receive up to 5msgs.week" contained in the confirmatory text Wojcik received after subscribing to the Text Service. *Id.* at ¶¶ 17-19. As alleged by Wojcik, "[t]he Buffalo Bills website, terms and conditions, and confirmatory text message all unequivocally state that the subscribers consent to and will be limited to the receipt of no more than five (5) text messages during any one week period." *Id.* at ¶20.

Wojcik alleges that he subscribed to the Text Service on Wednesday, September 12, 2012. *Id.* at ¶ 16. During his "second full week after joining" between the dates of Sunday, September 23, 2012 and Saturday, September 29, 2012, Wojcik alleges that he received a

---

[1] As alleged in the Complaint, a "short code" is a "special cellular telephone exchanges, typically only five or six digit extensions, that can be used to address [text messages] to mobile phones." *Complaint* at ¶ 9.

total of six text messages sent on the following days: "September 23 (3 messages), September 25 (2 messages), and September 28 (1 message)." *Id.* at ¶ 21.

Wojcik also alleges that "[s]everal weeks later" between the dates of Sunday, October 14, 2012 and Saturday, October 20, 2012, he received a total of seven text messages sent on the following days: "October 14 (2 messages), October 15, (2 messages), October 16, (1 message), October 17 (1 message), and October 19 (1 message)." *Id.* at ¶ 22. All of the text messages were alleged to have been sent from short code 64621. *Id.* at ¶¶ 21-22.

Wojcik admits to expressly consenting to receive at least five text messages per week, it is the three text messages purportedly sent in excess of this number that forms the basis of his two claims in the Complaint. *Id.* at ¶¶ 35-36; 39-40.

III. LEGAL STANDARD

Section 227(b)(1)(A) of the TCPA prohibits any person from making:

> Any call (**other than** a call made for emergency purposes or **made with the express prior consent** of the called party) using an automatic telephone dialing system …
>
> (iii) to any telephone number assigned to a … cellular telephone service … or any service for which the called party is charged for the call. (Emphasis added).

Section 227(a)(1) defines an "automatic telephone dialing system" ("ATDS") as "equipment which has the capacity … (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." Thus, to make out a claim, a plaintiff must allege an absence of prior express consent to receive text messages, and that the text messages were sent from an ATDS.

A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure tests the sufficiency of the complaint. The 'allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true ...'" *Lanfear v. Home Depot, Inc.*, 679 F.3d 1267, 1275 (11th Cir. 2012) (*citing Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Accordingly, "the plaintiff must plead 'a claim to relief that is plausible on its face.'" *Lanfear,* 679 F.3d at 1275 (*citing Twombly*, 550 U.S. at 570). Moreover, while all material factual allegations are accepted as true, '"[c]onclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal.'" *Jackson v. BellSouth Telecomm.*, 372 F.3d 1250, 1262 (11th Cir. 2004) (*citing Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002)). Under this standard, an examination of the Complaint establishes that Plaintiff has failed to allege material facts that would constitute a plausible violation of the TCPA.

Further, a motion to dismiss under Rule 12(b)(6) may be converted by the Court, in its discretion, into a motion for summary judgment. Fed. R. Civ. P. 12(d); *Jones v. Automobile Ins. Co. of Hartford, Conn.*, 917 F.2d 1528 (11th Cir. 1990) (holding that it is within trial judge's discretion to decide whether to consider matters outside of pleadings that are presented to court when considering motion to dismiss for failure to state a claim; however, if the judge does consider outside matters, the judge is required to comply with requirements of summary judgment rule). Pursuant to Fed.R. Civ. Proc. 56(a), a moving party is entitled to summary judgment upon establishing that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

As set forth below, while this motion can be granted under the Rule 12(b)(6) standard, because Plaintiff has failed to allege any facts supporting his claim that an ATDS was utilized, the Court may alternatively consider the accompanying Declaration of Charley Cassell (the "Cassell Declaration"), attached hereto as Exhibit "A", and grant summary judgment to Defendant BBI because there can be no sustainable allegation that an ATDS was involved in sending the alleged text messages to Plaintiff.

IV. ARGUMENT

A. The TCPA Does Not Cover Instances Where Express Consent Has Been Given by the Plaintiff to Receive Text Messages

The TCPA was enacted unambiguously to place "restrictions on unsolicited, automated telephone calls to the home," and to restrict "certain uses of facsimile (fax) machines and automated dialers." S. REP. No. 102-178, at 1 (1991), *reprinted in* 1991 U.S.C.C.A.N. 1968, 1968. Congressional intent was to minimize random calls tying up private phone lines, address privacy concerns associated with repeated telemarketing calls and blasted faxes, and eliminate advertising costs to recipients with no prior relationship with the caller. Thus, the emphasis was on situations where no express consent had been given prior to the commencement of communication. As the Supreme Court unanimously stated, "Congress determined that federal legislation was needed because telemarketers … were escaping state-law prohibitions on intrusive nuisance calls." *Mims v. Arrow Fin. Servs., LLC*, 132 S.Ct. 740, 744 (2012).

Here, prior express consent was admittedly given in order for a purported fan of the Buffalo Bills to receive texts informing him of happenings with the Team, with Plaintiff having the absolute right to stop receiving texts if he so chose. What is being alleged is that

this consent was exceeded, and therefore there was a violation of the TCPA. Put simply, there is no support for Plaintiff's contention that the facts of the instant matter support a claim under the TCPA.

The term "prior express consent" as used in the TCPA is undefined. However, both the legislative history for the TCPA, as well as the implementing regulations and interpretations of the Federal Communications Commission ("FCC"), support the position that Plaintiff's mere act of providing his cellular phone number to Defendant BBI evidences the required express consent, and that admitted fact is alone sufficient to preclude liability under the TCPA.[2]

The House report on what became section 227 states:

> [t]he restrictions on calls to emergency lines, pagers, and the like does not apply when the called party has provided the telephone number of such a line to the caller for use in normal business communications.

23 F.C.C.R. 559, 564 (*quoting* 23 H.R. REP. No. 102-317 at 17 (1991)).

Similarly, the FCC has stated "persons who knowingly release their phone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instruction to the contrary." 7 F.C.C.R. 8752, 8769. Also, "[w]e emphasize that prior express consent is deemed to be granted only if the wireless number was provided by the consumer ...." 23 F.C.C.R. 559, 564 (1991). *See also Meyer v. Portfolio Recovery Assocs., LLC*, 696 F.3d 943, 948 (9th Cir. 2012) ("Pursuant to the FCC ruling, prior express consent is deemed granted only if the wireless telephone number was provided by the consumer to the creditor, and only if it was provided at the time of the transaction").

---

[2] The TCPA gives the FCC the authority to prescribe regulations and implement the TCPA's provisions. 47 U.S.C. § 227(b)(2).

Thus for purposes of assessing potential liability under the TCPA, where, as here, the party receiving text messages to his cellular phone has voluntarily given his number to the party sending the texts, prior express consent is deemed to have been given. This of course makes logical sense, in that the TCPA was designed, in part, to address the cost of "unsolicited calls placed to fax machines, and cellular or paging telephone numbers ..." and that changes in technology at the time "made making unsolicited phone calls a more cost-effective method of reaching potential customers." S. REP. No. 102-178, at 2, 1991 U.S.C.C.A.N. 1968, 1969-1970. The distinction thus was intended to be between those relationships where a recipient of a text never gave consent, from those where consent was given (even if later such consent was allegedly exceeded).

If prior express consent has been manifested, then there cannot be a claim under the TCPA because the relationship between the sender and receiver of text messages is not one that is unsolicited. *See generally Lozano v. Twentieth Century Fox Film Corp.*, 702 F. Supp. 2d 999, 1011 (N.D. Ill. 2010) ("the TCPA serves a significant government interest of minimizing the invasion of privacy caused by unsolicited telephone communications to consumers").

As recently noted in *Ryabyshchuck v. Citibank (South Dakota) N.A.*, No. 11–CV–1236–IEG (WVG), 2012 WL 5379143, * 2 (S.D. Cal. Oct. 30, 2012), a TCPA case involving the sending of a confirmatory text message after an individual had sent a "stop" notice, the court in construing the extent and contour of the TCPA's general prohibition noted that:

> courts consistently and properly look to the purpose and history of the statute. *See Mims*, 132 S.Ct. at 744 ("In enacting the TCPA, Congress ..."); [*Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 954 (9th Cir. 2009)] ("the purpose and history of the TCPA indicate ..."). **Hence, as**

> **is widely-acknowledged, 'the purpose and history of the TCPA indicate that Congress was trying to prohibit use of ATDSs in a manner that would be an invasion of privacy.'** *Satterfield,* 569 F.3d at 954. **So, too, courts broadly recognize that not every text message or call constitutes an actionable offense; rather, the TCPA targets and seeks to prevent 'the proliferation of intrusive, nuisance calls.'** *See, e.g., Mims,* —— U.S. ——, 132 S.Ct. at 744, 181 L.Ed.2d 881. With the statute's purpose in view, the Ninth Circuit recently emphasized that **courts look to the surrounding circumstances in determining whether particular calls 'run afoul of the TCPA,' and in so doing, courts must 'approach the problem with a measure of common sense.'** *Chesbro v. Best Buy Stores, L.P.,* —— F.3d ——, 2012 WL 4902839, at *3 (9th Cir. Oct. 17, 2012); *see also Mt. Graham Red Squirrel v. Madigan,* 954 F.2d 1441, 1453 (9th Cir. 1992) ("Common sense not dogma is what is needed in order to explore the actual meaning of legislative enactments."). (Emphasis added).

Here, by texting "BILLS" to short code 64621, Wojcik was voluntarily providing his cellular phone number to Defendant BBI. Accordingly, he was giving Defendant BBI express consent to send him informational text messages updating him about developments with the Team. That Defendant BBI allegedly exceeded the "promised" maximum number of text messages does not constitute the intrusive/nuisance type of telemarketing message that the TCPA was enacted to prohibit.

As noted by the FCC:

> While we observe the increasing pervasiveness of telemarketing, we also acknowledge that wireless services offer access to information that consumers find highly desirable and thus do not want to discourage purely informational messages. As was roundly noted in the comments, wireless use has expanded tremendously since passage of the TCPA in 1991. We believe that requiring prior express written consent for all robocalls to wireless numbers would serve as a disincentive to the provision of services on which consumers have come to rely.

27 F.C.C.R. 1830, 1841.

It has been held that "context is indisputably relevant to determining whether a particular call is actionable under the TCPA." *Ryabyshchuck*, 2012 WL 5379143 at *3. Logic and common sense dictate that within the context of providing informational text messages to Plaintiff about the Team, Plaintiff was receiving the very information he had expressly signaled an interest in receiving, and not the unsolicited "robo" solicitations the TCPA was enacted to prevent. To allow Plaintiff to expand the scope of the TCPA to apply to the facts in this case would, in all likelihood, lead to the disincentive and discouragement of informational text services against which the FCC has cautioned.

In this instance, the fact that more text messages were purportedly sent than were originally offered does not alter the analysis. The "prior express consent" requirement was satisfied the moment Wojcik texted the word "BILLS" to short code 64621, thereby voluntarily and affirmatively assenting to participation in the Text Service. Should the Court rule otherwise, it would expand the scope of the TCPA beyond congressional intent and encompass situations never meant for redress under the statute.

A review of reported TCPA decisions does not alter this conclusion. Case law addressing the issue of "prior express consent" fails to squarely address the issue before this Court, *i.e.* whether despite voluntarily giving one's consent, such consent can be exceeded, thereby resulting in a TCPA violation.

Indeed, a large majority of the cases interpreting the TCPA's "prior express consent" exemption are in the context of a debtor-creditor relationship. In such situations, numerous federal courts have upheld and applied the FCC's 2008 Declaratory Ruling that "prior express consent" is granted where a wireless number was "provided by the consumer to the

creditor, and . . . such number was provided during the transaction that resulted in the debt owed." *In the Matter of Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991, Request for ACA Int'l for Clarification and Declaratory Ruling*, 23 F.C.C.R. 559, 564-65; *see also Gutierrez v. Barclays Group*, No. 10cv1012 DMS (BGS), 2011 WL 579238 (S.D. Cal. 2011) ("autodialed and pre-recorded message calls to wireless numbers that are provided by the called party to a creditor in connection with an existing debt are permissible as calls made with the 'express prior consent' of the called party"); *Gager v. Dell Fin. Serv.*, LLC, No. 3:11–cv–2115, 2012 WL 1942079 (M.D. Pa. May 29, 2012) ("provision of a cell phone number to a creditor, *e.g.*, as part of a credit application, reasonably evinces prior express consent by the cell phone subscriber to be contacted at that number regarding the debt").

Federal courts have also recently addressed: (1) whether the TCPA should be read to impose liability for a single confirmatory opt-out text message. *See Ryabyshchuck, supra*; *Ibey v. Taco Bell Corp.*, No. 12–CV–0583–H (WVG), 2012 WL 2401972 (S.D. Cal. June 18, 2012) (holding that sending a single confirmatory text message in response to an opt-out request from Plaintiff, who voluntarily provided his phone number by sending the initial text message, does not violate the TCPA); (2) whether a party's oral express consent or a representation from an intermediary that they have obtained the requisite consent from the called party satisfies the [prior express consent] requirement. *Pimental v. Google, Inc.*, No. C-11-02585-YGR, 2012 WL 1458179 (N.D. Cal. Apr. 26, 2012) (stay entered pending resolution of petition before the FCC); and (3) whether "prior express consent" was given where the plaintiff solely consented to receiving promotional texts from an online company

and its affiliates and brands, but instead received messages from a different company, with which it had no direct contractual relationship. *See Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946 (9th Cir. 2009) (holding no "prior express consent" given to non-affiliates and brands). None of these cases are directly on point with the issue presented herein.

If an analogy could be drawn it would be to those cases where confirmatory text messages were sent after the subscriber had requested that they stop. In both *Ryabyshchuck* and *Ibey*, *supra*, the crux of each plaintiff's complaint was that although consent was given, because the subscriber opted to no longer receive texts, the sending of a text message confirming the subscriber's decision to opt-out after being notified by the subscriber to stop violated the TCPA. The plaintiffs in each case were therefore arguing that while consent was admittedly given, such consent did not extend past the decision to opt-out of receiving text messages. In effect, the defendants in each case allegedly exceeded the scope of the consent that had been given. In each case, the court awarded the defendant judgment on the basis that:

> sending a single, confirmatory text message in response to an opt-out request from Plaintiff, who voluntarily provided his phone number by sending the initial text message, does not appear to demonstrate an invasion of privacy contemplated by Congress in enacting the TCPA. To impose liability under the TCPA for a single, confirmatory text message would contravene public policy and the spirit of the statute.

Ryabyshchuck, 2012 WL 5379143 at *3 (*citing Ibey*, 2012 WL 2401972 at *3).

Here, Wojcik likewise voluntary consented to receive text messages from the Defendant, and at all times could have opted-out the moment that he received a text message in excess of his purported expected limit of five per week. Given his admitted unilateral

ability to voluntarily opt-out of the Text Service at any time, Plaintiff cannot plausibly argue that he has received more than one purportedly unauthorized text. The receipt of merely one allegedly unauthorized text, when prior express consent had been given, is similar to the issue that was addressed in *Ryabyshchuck* and *Ibey*.

As in those cases, the circumstances of the instant matter are simply not equivalent to the involuntary invasion of privacy caused by repeated unsolicited calls/texts contemplated for redress by Congress in enacting the TCPA. As in *Ryabyschuck*:

> These circumstances 'unmistakably' display some measure of prior consent ... and dispel any allusion to 'the proliferation of intrusive, nuisance calls' targeted by the TCPA. *See Mims,* —— U.S. ——, 132 S.Ct. at 744, 181 L.Ed.2d 881 ... A finding to the contrary would 'stretch an inflexible interpretation beyond the realm of reason.'

Ryabyshchuck, 2012 WL 5379143 at *3 (internal citations omitted).

Accordingly, Plaintiff's complaint should be dismissed. To hold otherwise would contravene public policy and the spirit of the TCPA.

B. Plaintiff Fails to Allege Facts Supporting the Alleged Use of an ATDS

In *Twombly*, the Supreme Court stated that "[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations ... a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do ...." *Twombly*, 550 U.S. at 555. Subsequently, in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Supreme Court affirmed and further clarified the pleading requirements necessary to withstand a Rule 12(b)(6) attack. In *Iqbal*, the Court held that "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice." *Id.*

at 678. Nor does a complaint suffice if it tenders '"naked assertion[s]' devoid of 'further factual enhancement.' *Id.* at 678 (*citing Twombly*, 550 U.S. at 555). In short, the pleading standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.*

In formulaic and conclusory fashion, Wojcik alleges at paragraph 24 of the Complaint that "Upon information and belief ... The messages at issue were sent to members *en masse* using an automatic telephone dialing system, also known as an 'auto-dialer'; the auto-dialer used by Defendant had the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers." Wojcik's allegation is unsupported by any facts, and is too conclusory to be presumed to be true.

There are no alleged facts from which the Court could infer that an ATDS was used. For example, there are no allegations that the text messages at issue were sent to anyone in addition to Plaintiff; that the text messages contained information indicating that they had been sent out in an automated manner; or were otherwise sent in a manner implying use of an ATDS. Moreover, Wojcik admittedly provided his cell phone number to Defendant, which strongly suggests that there was no need for a random or sequential number generator on the part of Defendant. *Cf. Knutson v. Reply!, Inc.*, No. 10cv1267 BEN (WMc), 2011 WL 1447756 (S.D. Cal. Apr. 13 2011) (denying motion to dismiss TCPA claim where allegations that the plaintiff attempted to call number calling him; number that the plaintiff called did not ring and was automatically terminated within moments of the plaintiff placing the call; Plaintiff received no response to inquiries concerning who was calling; and that after

approximately five seconds of answering a call, the plaintiff could hear the line click over to another party, were sufficient for court to infer that an ATDS was being used).

Wojcik's allegation concerning the purported use of an ATDS simply parrots Section 227(a)(1) of the TCPA, which, as noted above, defines an ATDS as "equipment which has the capacity … (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." Wojcik's ATDS allegation is nothing more than rank speculation, which is patently insufficient under *Twombly*. *Twombly*, 550 U.S. at 555 ("Factual allegations must be enough to raise a right to relief above the speculative level"). Accordingly, absent more specific factual allegations, Wojcik's speculative allegation on the alleged use of an ATDS, a necessary element for his claim under the TCPA, is insufficient on its face, and his claims must be dismissed.

The accompanying Cassell Declaration (should the Court consider it) further establishes that the equipment utilized to send out the text messages is not an ATDS. Such equipment is not used for, nor does it have the capability to store or produce numbers to be called using a random or sequential number generator. There is therefore no merit to Plaintiff's conclusory, "upon information and belief" allegation to the contrary. The mere storing of voluntarily submitted cellular telephone numbers, and the sending out of text messages to those numbers is insufficient to establish the use of an ATDS. *See generally Buslepp v. Improv Miami, Inc.*, No. 12–60171–CIV, 2012 WL 4932692, *2 (S.D. Fla. Oct. 16, 2012) ("Defendant's storing customers' phone numbers in a database … does not establish that Defendant used an ATDS"). Since an ATDS has not been sufficiently alleged,

nor, in fact, been used, Wojcik has not brought a cognizable claim under the TCPA and his complaint should be dismissed as a matter of law.

V. CONCLUSION

By reason of the foregoing, the instant motion to dismiss, or in the alternative motion for summary judgment, of Defendant Buffalo Bills, Inc. should be granted in its entirety.

Dated: November 19, 2012
Tampa, Florida

/s/ Janelle A. Weber
Jeffrey F. Reina (Pro hac vice motion pending)
(Lead counsel)
N.Y. Bar No. 3011822
LIPSITZ GREEN SCIME CAMBRIA LLP
42 Delaware Avenue, Suite 120
Buffalo, New York 14202
jreina@lglaw.com
Telephone: (716) 849-1333 [Ext. 481]
Facsimile: (716) 855-1580

Janelle A. Weber
Florida Bar No. 017630
John E. Johnson
Florida Bar No. 593000
SHUTTS & BOWEN LLP
4301 W. Boy Scout Boulevard, Suite 300
Tampa, Florida 33607
jweber@shutts.com
Telephone: (813) 229-8900\
Facsimile: (13) 229-8901

Attorneys for Defendant, Buffalo Bills, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of November, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

James Salvatore Giardina, Esq.
james@consumerrightslawgroup.com

Scott D. Owens, Esq.
scott@scottdowens.com

/s/ Janelle A. Weber
Attorney

TPADOCS 19617978 3