

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

BRENT BARDALES,
individually and on behalf of all
others similarly situated,

Plaintiff,

CLASS ACTION

JURY TRIAL DEMANDED

vs.

eWORLDTRADE LLC,
a Delaware limited liability company,

Defendant.

_____ /

CLASS ACTION COMPLAINT

Plaintiff, Brent Bardales, brings this class action against Defendant, eWorldTrade LLC, and alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

NATURE OF THE ACTION

1. This is a putative class action under the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, (the “TCPA”).

2. To promote its business-to-business on-line marketplace, Defendant engages in intrusive text messaging marketing, with little regard for consumers’ privacy rights.

3. Defendant transmits its telemarketing text messages without first obtaining the express consent of recipients.

4. Through this action, Plaintiff seeks injunctive relief to halt Defendant’s conduct which has resulted in the invasion of privacy, harassment, aggravation, and disruption of the daily life of thousands of individuals nationwide. Plaintiff also seeks statutory damages on behalf of

himself and members of the class, and any other available legal or equitable remedies resulting from the illegal actions of Defendant.

JURISDICTION AND VENUE

5. Jurisdiction is proper under 28 U.S.C. § 1331 as Plaintiff alleges violations of a federal statute. Jurisdiction is also proper under 28 U.S.C. § 1332(d)(2) because Plaintiff alleges a national class, which will result in at least one class member belonging to a different state than that of Defendant.

6. Plaintiff seeks up to \$1,500.00 (one-thousand-five-hundred dollars) in damages for each call in violation of the TCPA, which, when aggregated among a proposed class numbering in the tens of thousands, or more, exceeds the \$5,000,000.00 (five-million dollars) threshold for federal court jurisdiction under the Class Action Fairness Act (“CAFA”). Therefore, both the elements of diversity jurisdiction and CAFA jurisdiction are present.

7. Venue is proper in the United States District Court for the Southern District of Florida pursuant to 28 U.S.C. § 1391(b) and (c) because Defendant is deemed to reside in any judicial district in which it is subject to the court’s personal jurisdiction, and because Defendant provides and markets its services within this district thereby establishing sufficient contacts to subject it to personal jurisdiction. Further, Defendant’s tortious conduct against Plaintiff occurred within the State of Florida and, on information and belief, Defendant has sent the same text messages complained of by Plaintiff to other individuals within this judicial district, such that some of Defendant’s acts in making such calls have occurred within this district, subjecting Defendant to jurisdiction in the State of Florida.

PARTIES

8. Plaintiff is a natural person and resident of Miami-Dade County, Florida

9. Defendant is a Delaware corporation whose principal place of business is located at 1910 Pacific Ave., Dallas, Texas 75201. Defendant directs, markets, and provides its business activities throughout the United States, including the State of Florida.

THE TCPA

10. The TCPA regulates and restricts the use of automatic telephone equipment, and protects consumers from unwanted text messages that are made with autodialers.

11. The TCPA prohibits: (1) any person from calling a cellular telephone number; (2) using an automatic telephone dialing system or prerecorded message; (3) without the recipient's prior express consent. 47 U.S.C. § 227(b)(1)(A).

12. The TCPA defines an "automatic telephone dialing system" ("ATDS") as "equipment that 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." 47 U.S.C. § 227(a)(1).

13. In an action under the TCPA, a plaintiff must only show that the defendant "called a number assigned to a cellular telephone service using an automatic dialing system or prerecorded voice." *Breslow v. Wells Fargo Bank, N.A.*, 857 F. Supp. 2d 1316, 1319 (S.D. Fla. 2012), *aff'd*, 755 F.3d 1265 (11th Cir. 2014).

14. The Federal Communications Commission is empowered to issue rules and regulations implementing the TCPA. In 2012, the FCC issued an order tightening the restrictions for automated telemarketing calls, requiring "prior express **written** consent" for such calls to wireless numbers. *See In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27 F.C.C.R. 1830, 1838 ¶ 20 (Feb. 15, 2012)(emphasis supplied).

15. To obtain express written consent for telemarketing calls, a defendant must establish that it secured the plaintiff's signature in a form that gives the plaintiff a "'clear and conspicuous disclosure' of the consequences of providing the requested consent....and having received this information, agrees unambiguously to receive such calls at a telephone number the [plaintiff] designates." *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27 F.C.C.R. 1830, 1837 ¶ 18, 1838 ¶ 20, 1844 ¶ 33, 1857 ¶ 66, 1858 ¶ 71 (F.C.C. Feb. 15, 2012).

16. The TCPA regulations promulgated by the FCC define "telemarketing" as "the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services." 47 C.F.R. § 64.1200(f)(12). In determining whether a communication constitutes telemarketing, a court must evaluate the ultimate purpose of the communication. *See Golan v. Veritas Entm't, LLC*, 788 F.3d 814, 820 (8th Cir. 2015).

17. "Neither the TCPA nor its implementing regulations 'require an explicit mention of a good, product, or service' where the implication of an improper purpose is 'clear from the context.'" *Id.* (citing *Chesbro v. Best Buy Stores, L.P.*, 705 F.3d 913, 918 (9th Cir. 2012)).

18. "'Telemarketing' occurs when the context of a call indicates that it was initiated and transmitted to a person for the purpose of promoting property, goods, or services." *Golan*, 788 F.3d at 820 (citing 47 C.F.R. § 64.1200(a)(2)(iii); 47 C.F.R. § 64.1200(f)(12); *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 F.C.C. Rcd at 14098 ¶ 141, 2003 WL 21517853, at *49).

19. The FCC has explained that calls motivated in part by the intent to sell property, goods, or services are considered telemarketing under the TCPA. *See In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd. 14014, ¶¶ 139-142

(2003). This is true whether call recipients are encouraged to purchase, rent, or invest in property, goods, or services during the call *or in the future*. *Id.*

20. In other words, offers “that are part of an overall marketing campaign to sell property, goods, or services constitute” telemarketing under the TCPA. *See In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd. 14014, ¶ 136 (2003).

21. If a call is not deemed telemarketing, a defendant must nevertheless demonstrate that it obtained the plaintiff’s prior express consent. *See In the Matter of Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 30 FCC Rcd. 7961, 7991-92 (2015) (requiring express consent “for non-telemarketing and non-advertising calls”).

22. Moreover, the FCC has issued rulings and clarified that consumers are entitled to the same consent-based protections for text messages as they are for calls to wireless numbers. *See Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 952 (9th Cir. 2009) (The FCC has determined that a text message falls within the meaning of “to make any call” in 47 U.S.C. § 227(b)(1)(A)); *Toney v. Quality Res., Inc.*, 2014 WL 6757978, at *3 (N.D. Ill. Dec. 1, 2014) (Defendant bears the burden of showing that it obtained Plaintiff’s prior express consent before sending her the ***text message***). (emphasis added).

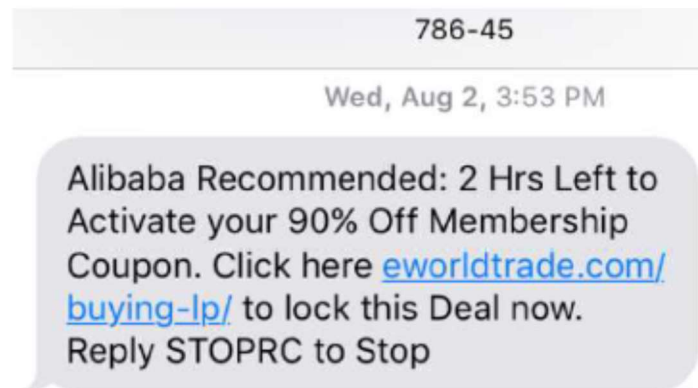
23. According to the FCC’s findings, calls in violation of the TCPA are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used. *Rules and Regulations Implementing the Telephone*

Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

24. Thus, it is well-established that a plaintiff alleging a violation of the TCPA “need not allege any additional harm beyond the one Congress has identified.” *Van Patten v. Vertical Fitness Grp., LLC*, 847 F.3d 1037, 1043 (9th Cir. 2017)).

FACTS SPECIFIC TO PLAINTIFF

25. On or about August 2, 2017, Defendant caused the following automated text message to be sent to Plaintiff’s cellular telephone number ending in 8558 (the “8558 Number”):



26. The text message received by Plaintiff originated from short-code 786-45, a number owned and operated by Defendant.

27. The link contained in the text message received by Plaintiff is a link to Defendant’s website (www.eworldtrade.com), where Defendant advertises its business-to-business marketplace services. Therefore, Defendant’s text message constitutes telemarketing because it encouraged the future purchase or investment in Defendant’s services.

28. Plaintiff received the subject text within this judicial district and, therefore, Defendant’s violation of the TCPA occurred within this district. Upon information and belief, Defendant caused other text messages to be sent to individuals residing within this judicial district.

29. Plaintiff has never visited Defendant's website or used Defendant's services, and has never had any type of relationship with Defendant.

30. Plaintiff did not provide Defendant his telephone number, and did not provide any type of consent to receive automated text messages from Defendant.

31. Plaintiff is the subscriber and sole user of the 8558 Number, and is financially responsible for phone service to the 8558 Number.

32. Through its telemarketing calls, Defendant violated Plaintiff's substantive rights under the TCPA.

33. Defendant's TCPA violation caused Plaintiff a particularized and concrete injury. Plaintiff personally received an automated/prerecorded telemarketing call from Defendant on his cellular telephone. Further, Plaintiff suffered the following injuries:

- a. Invasion of his privacy;
- b. Inconvenience;
- c. Unwanted occupation of his time and mental energy;
- d. Unwanted occupation of his cellular telephone;
- e. Nuisance;
- f. Trespass on his cellular telephone; and
- g. Aggravation and annoyance.

CLASS ACTION ALLEGATIONS

34. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23, on behalf of himself and all others similarly situated.

35. Plaintiff represents, and is a member of the following classes:

All persons within the United States who, within the four years prior to the filing of this Complaint, were sent a text message made through the use of an automatic telephone dialing system, from Defendant or anyone on Defendant's behalf, to said person's cellular telephone number, who had not expressly consented to receiving such calls

Numerosity

36. Upon information and belief, the members of the class are believed to number in the thousands or millions such that joinder of all members is impracticable.

37. The exact number and identities of the Class members are unknown at this time and can only be ascertained through discovery. Identification of the Class members is a matter capable of ministerial determination from Defendant's call records.

Common Questions of Law and Fact

38. There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual members of the Class. Among the questions of law and fact common to the Class are:

- a. Whether Defendant sent non-emergency text messages to Plaintiff's and Class members' cellular telephones using an autodialer;
- b. Whether Defendant can meet its burden of showing that it obtained prior express consent to make such calls;

- c. Whether Defendant's conduct was knowing and willful;
- d. Whether Defendant is liable for damages, and the amount of such damages; and
- e. Whether Defendant should be enjoined from such conduct in the future.

39. The common questions in this case are capable of having common answers. Defendant routinely places automated calls to telephone numbers assigned to cellular telephones thus, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

Typicality

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

Protecting the Interests of the Class Members

41. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class, and has retained counsel who is experienced in prosecuting class actions. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

Proceeding Via Class Action is Superior and Advisable

42. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Classes are economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Classes are in the millions of dollars, the individual damages incurred by each member of the Class resulting from Defendant's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their

own separate claims is remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

43. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example, one court might enjoin Defendant from performing the challenged acts, whereas another may not. Additionally, individual actions may be dispositive of the interests of the Class, although certain class members are not parties to such actions.

COUNT I
VIOLATION OF THE TCPA, 47 U.S.C. § 227(b)
(On Behalf of Plaintiff and the Class)

44. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

45. It is a violation of the TCPA to make “any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice...to any telephone number assigned to a...cellular telephone service....” 47 U.S.C. § 227(b)(1)(A)(iii).

46. Defendant – or third parties directed by Defendant – used equipment having the capacity to dial numbers without human intervention to transmit text messages to the cellular telephones of Plaintiff and Class Members.

47. These calls were made without regard to whether Defendant had first obtained express consent to make such calls. In fact, Defendants did not have prior express consent to call the cell phones of Plaintiff and Class Members when the subject calls were made.

48. Defendant violated § 227(b)(1)(A)(iii) of the TCPA by using an automatic telephone dialing system transmit telemarketing text messages to the cell phones of Plaintiff and Class Members without their prior express written consent.

49. As a result of Defendant's conduct, and pursuant to § 227(b)(3) of the TCPA, Plaintiff and the Class Members were harmed and are each entitled to a minimum of \$500.00 in damages for each violation. Plaintiff and the class are also entitled to an injunction against future calls.

WHEREFORE, Plaintiff, Brent Bardales, on behalf of himself and the other members of the Class, pray for the following relief:

- a. A declaration that Defendant's practices described herein violate the Telephone Consumer Protection Act, 47 U.S.C. § 227;
- b. An injunction prohibiting Defendant from using an automatic telephone dialing system to call and text message telephone numbers assigned to cellular telephones without the prior express permission of the called party;
- c. An award of actual and statutory damages; and
- d. Such further and other relief the Court deems reasonable and just.

COUNT II

Knowing and/or Willful Violation of the TCPA, 47 U.S.C. § 227(b)
(On Behalf of Plaintiff and the Class)

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

51. At all times relevant, Defendant knew or should have known that its conduct as alleged herein violated the TCPA.

52. Specifically, upon information and belief, Defendant has received one or more

complaints from recipients of its telemarketing text messages.

53. Despite these consumer complaints, Defendant continues to engage in spam text messaging to promote its services.

54. Defendant knew that it did not have prior express consent to send these text messages, and knew or should have known that its conduct was a violation of the TCPA.

55. Because Defendant knew or should have known that Plaintiff and Class Members had not given prior express consent to receive its autodialed calls, the Court should treble the amount of statutory damages available to Plaintiff and the other members of the putative Class pursuant to § 227(b)(3) of the TCPA.

56. As a result of Defendant's violations, Plaintiff and the Class Members are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

WHEREFORE, Plaintiff, Brent Bardales, on behalf of himself and the other members of the Class, pray for the following relief:

- a. A declaration that Defendant's practices described herein violate the Telephone Consumer Protection Act, 47 U.S.C. § 227;
- b. An injunction prohibiting Defendant from using an automatic telephone dialing system to call and text message telephone numbers assigned to cellular telephones without the prior express permission of the called party;
- c. An award of actual and statutory damages; and
- d. Such further and other relief the Court deems reasonable and just.

JURY DEMAND

Plaintiff and Class Members hereby demand a trial by jury.

DOCUMENT PRESERVATION DEMAND

Plaintiff demands that Defendant take affirmative steps to preserve all records, lists, electronic databases or other itemization of telephone numbers associated with the Defendant and the communication or transmittal of the text messages and calls as alleged herein

Dated: August 30, 2017

Respectfully submitted,

HIRALDO P.A.

/s/ Manuel S. Hiraldo

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

Brent Bardales

(b) County of Residence of First Listed Plaintiff Miami-Dade County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hiraldo P.A., 401 E. Las Olas. Blvd., Ste. 1400, Fort Lauderdale, FL
33301, 954-400-4713

DEFENDANTS

eWorldTrade, LLC

County of Residence of First Listed Defendant Dallas County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT
LAND INVOLVED.

Attorneys (If Known)

(d) Check County Where Action Arose: ☒ MIAMI-DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE
HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIW W (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed- (see VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).a) Re-filed Case ☐ YES ☒ NOb) Related Cases ☐ YES ☒ NO

(See instructions second page):

JUDGE

DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (**Do not cite jurisdictional statutes unless diversity**):

Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq.

LENGTH OF TRIAL via 7 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

Manuel S. Hiraldo

DATE

August 30, 2017

FOR OFFICE USE ONLY

AMOUNT

RECEIPT #

IFP

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

(d) Choose one County where Action Arose.

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States District Courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

for the

BRENT BARDALES,
individually and on behalf of all
others similarly situated,

Plaintiff(s)

V.

eWORLDTRADE LLC,
a Delaware limited liability company,

Defendant(s)

Civil Action No.

To: *(Defendant's name and address)* eWorldTrade, LLC
Registered Agent:
Harvard Business Services, Inc.
16192 Coastal Highway
Lewes, DE 19958
302-645-7400

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: **Manuel S. Hiraldo, Esq.**

Manuel S. Hiraldo, Esq.
Hiraldo P.A.
401 E. Las Olas Blvd., Ste. 1400
Fort Lauderdale, FL 33301
954-400-4713
mhiraldo@hiraldolaw.com

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

BRENT BARDALES,
individually and on behalf of all
others similarly situated,

Plaintiff(s)

v.

eWORLDTRADE LLC,
a Delaware limited liability company,

Defendant(s)

Civil Action No. 1:17-cv-23287-UU

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* eWorldTrade, LLC
Registered Agent:
Harvard Business Services, Inc.
16192 Coastal Highway
Lewes, DE 19958
302-645-7400

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Manuel S. Hiraldo, Esq.
Hiraldo P.A.
401 E. Las Olas Blvd., Ste. 1400
Fort Lauderdale, FL 33301
954-400-4713
mhiraldo@hiraldolaw.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 08/30/2017



Steven M. Larimore
Clerk of Court

SUMMONS

s/ Randi Marks

Deputy Clerk
U.S. District Courts

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 1:17-cv-23287-UU

BRENT BARDALES,
individually and on behalf of all
others similarly situated,

Plaintiff,

CLASS ACTION

JURY TRIAL DEMANDED

vs.

eWORLDTRADE LLC,
a Delaware limited liability company,

Defendant.

_____ /

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel hereby discloses the following:

- 1) the name of each person, attorney, association of persons, firm, law firm, partnership, and corporation that may have an interest in the outcome of this action – including subsidiaries, conglomerates, affiliates, parent corporations, publicly traded companies that own 10% or more of a party's stock, and all other identifiable legal entities related to *any* party in this case:
 - Brent Bardales (Plaintiff)
 - Shamis & Gentile, P.A. (Counsel for Plaintiff)
 - Hiraldo P.A. (Counsel for Plaintiff)
 - eWorldTrade LLC (Defendant)
- 2) the name of every other entity whose publicly-traded stock, equity, or debt may be substantially affected by the outcome of the proceedings:
 - None known at this time.
- 3) the name of every other entity which is likely to be an active participant in the proceedings, including the debtor and members of the creditors' committee (or if no creditors' committee the 20 largest unsecured creditors):
 - None known at this time.

4) the name of each victim (individual or corporate) of civil and criminal conduct alleged to be wrongful, including every person who may be entitled to restitution:

- Brent Bardales (Plaintiff)
- Unnamed Class Members

Dated: August 30, 2017

Respectfully submitted,

HIRALDO P.A.

/s/ Manuel S. Hiraldo

Manuel S. Hiraldo
Florida Bar No. 030380
401 E. Las Olas Boulevard
Suite 1400
Ft. Lauderdale, Florida 33301
Email: mhiraldo@hirdolaw.com
Telephone: 954.400.4713

and

SHAMIS & GENTILE, P.A.

Andrew J. Shamis
Florida Bar No. 101754
efilings@sflinjuryattorneys.com
14 NE 1st Avenue, Suite 400
Miami, Florida 33132
(t) (305) 479-2299
(f) (786) 623-0915

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 30, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF.

By: /s/ Manuel S. Hiraldo

Manuel S. Hiraldo, Esq.

HIRALDO P.A.

401 E. Las Olas Boulevard

Suite 1400

Ft. Lauderdale, Florida 33301

Florida Bar No. 030380

mhiraldo@hirdolaw.com

Telephone: 954.400.4713

AO 440 (Rev. 01/09) Summons in a Civil Action (Page 2)

Civil Action No. 1:17-CV-23287-UU

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This summons for *(name of individual and title, if any)* eWORLDTRADE, LLC
was received by me on *(date)* 8/30/17

☐ I personally served the summons on the individual at *(place)* _____
on *(date)* _____, or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☒ I served the summons on *(name of individual)* GARY DAMINI (MANAGING AGENT), who is
designated by law to accept service of process on behalf of *(name of organization)* eWORLDTRADE, LLC

C/O HARVARD BUSINESS SERVICES, INC., 16192 COASTAL HIGHWAY, LEWES, DE 19958 on *(date)* 8/30/17 AT 3:30 PM


☐ I returned the summons unexecuted because _____, or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____

I declare under penalty of perjury that this information is true.

Date: 8/30/17



Server's signature

GRANVILLE MORRIS PROCESS SERVER

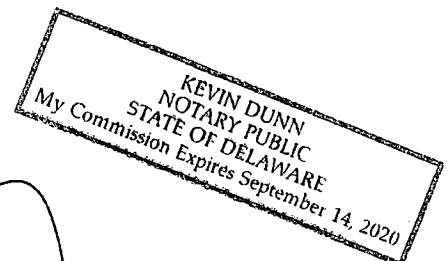
Printed name and title

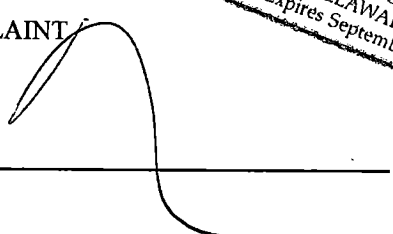
Server's address

Additional information regarding attempted service, etc:

SERVED SUMMONS & COMPLAINT

SWORN TO ME ON 8/30/17





**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO: 17-23287-CV-UNGARO**

BRENT BARDALES,

Plaintiff,

vs.

eWORLDTRADE LLC.,

Defendants.

ORDER SETTING INITIAL PLANNING AND SCHEDULING CONFERENCE

THIS CAUSE is hereby setting for an Initial Planning and Scheduling Conference before the Honorable Ursula Ungaro, at the United States Courthouse, 400 N. Miami Avenue, 12th Floor, Courtroom 4, Miami, Florida, on **NOVEMBER 3, 2017 at 10:30 A.M.**

Counsel for the Plaintiff(s) is instructed to provide copies of this order to all counsel of record and to any unrepresented parties that have appeared in the case. Pursuant to Fed.R.Civ.P. 26(f) and Local Rule 16.1B, the parties are jointly responsible for conferring to develop a proposed discovery plan; thereafter, the parties are to file and serve a Joint Planning and Scheduling Report, together with a proposed Scheduling Order, and an attached service list including the parties' names, phone numbers and facsimile numbers. The report and proposed order must be filed by **OCTOBER 20, 2017** and must recite the following:

1. A plain statement of the nature of the claim and any counterclaims, cross-claims, or third-party claim, including the amount of damages claimed and any other relief sought.
2. A brief summary of the facts which are uncontested or which can be stipulated to without discovery.

3. A brief summary of the issues as presently known.
4. Whether discovery should be conducted in phases or limited to particular issues.
5. A detailed schedule of discovery for each party.
6. Proposed deadlines for joinder of other parties and to amend the pleadings, to file and hear motions and to complete discovery.
7. Proposed approximate dates for final pre-trial conferences and trial.
8. The projected time necessary for trial and a statement of whether the case is jury or non-jury trial.
9. A list of all pending motions, whether each motion is "ripe" for review, the date each motion became ripe, and a summary of the parties' respective positions with respect to each ripe motion.
10. Any unique legal or factual aspects of the case requiring special consideration by the Court.
11. Any potential need for references to a special master or magistrate.
12. The status and likelihood of settlement.
13. Such other matters as are required by Local Rule 16.1(B) and as may aid the Court in setting the case for status or pretrial conference and in the fair and expeditious administration and disposition of this action.

SERVICE OF PROCESS

Notwithstanding the provisions of Federal Rule of Civil Procedure 4, the Plaintiff is ordered to serve and file returns of service on all Defendants promptly and at least no later than 14 days prior to the Planning and Scheduling Conference. In the event any Defendant remains unserved by that date, Plaintiff must include in the Joint Planning and Scheduling Report a detailed explanation sufficient to show good cause for the failure to effect service. If Plaintiff fails to provide a sufficient explanation, the unserved Defendant will be dismissed from the action without further notice.

ELECTRONICALLY STORED INFORMATION

If the parties anticipate that electronically stored information ("ESI") will be relevant to the parties' claims and defenses, they must engage in discussions and arrive at a plan, which is proportional and reasonable in relation to the nature and complexity of the case, for the preservation, identification, and production of ESI. The plan shall be separately submitted to the Court at the time

of filing the proposed Scheduling Order for Court approval.

In formulating a plan, the parties shall include, if necessary to the case, their stipulation regarding the specification of the formats in which documents are to be produced, the metadata fields, if any, that will be requested, the methods by which responsive documents will be identified, the procedures they will employ to protect claims of privilege, and other requirements, conditions or provisions that the parties believe are necessary to facilitate and expedite ESI document discovery.

With respect to initial disclosures required under Fed. R. Civ. P. 26(a)(1)-(2), pursuant to Rule 26(a), the disclosures must be made at or before the time the parties confer to develop the discovery plan. The parties must certify in the Joint Scheduling Report that such disclosures have been made unless a party objects during the conference that the required disclosure(s) is not appropriate in the circumstances of the action and files an objection to the specific disclosure(s) with the Court. Such objections must be filed no later than fifteen (15) days prior to the Initial Planning and Scheduling Conference and must include a full explanation of the basis for the objections.

In the event that motions are pending before the Court at the time of the Conference, the parties shall be prepared to argue, at the Court's discretion, the merits of such motions.

In the event the Court issues a Scheduling Order prior to the Initial Planning and Scheduling Conference based on the information provided by the parties in their Joint Planning and Scheduling Report, the Court will notify the parties whether the Conference will be canceled.

DONE AND ORDERED this 18 day of September, 2017 at Miami, Florida.


URSULA UNGARO
UNITED STATES DISTRICT JUDGE

cc: all counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 1:17-cv-23287-UU

BRENT BARDALES,

Plaintiff,

v.

EWORLDTRADE, LLC,

Defendant.

**ORDER ON CLERK'S ENTRY OF DEFAULT
AND MOTION FOR FINAL DEFAULT JUDGMENT**

THIS CAUSE is before the Court *sua sponte*.

THE COURT has reviewed the pertinent portions of the record and is otherwise fully advised in the premises. On August 31, 2017, Plaintiff filed a verified return of service, indicating that Defendant was served on August 30, 2017, such that its response to Plaintiff's Complaint was due on September 20, 2017. D.E. 5. However, as of September 21, 2017, Defendant has failed to respond to Plaintiff's Complaint and, in fact, has failed to file an appearance in this case. Accordingly, it is

ORDERED AND ADJUDGED that the Clerk of Court SHALL enter Clerk's Entry of Default against Defendant. It is further

ORDERED AND ADJUDGED that Plaintiff SHALL file a Motion for Final Default Judgment with respect to Defendant, in writing, duly supported by affidavits and other documentation and a proposed final order, by **Thursday, September 28, 2017**. Plaintiff SHALL serve the Motion on Defendant to the extent required by Rule 55. **Failure to file a Motion for**

Final Default Judgment, which complies with the requirements of this Order, by September 28, 2017, will result in dismissal of Plaintiff's claims against Defendant.

DONE AND ORDERED in Chambers at Miami, Florida, this 21st day of September, 2017.

A handwritten signature in black ink, reading "Ursula Ungaro", written over a horizontal line.

URSULA UNGARO
UNITED STATES DISTRICT JUDGE

copies provided: counsel of record

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

BRENT BARDALES

PLAINTIFF(S)

v.

EWORLDTRADE LLC,

CASE NUMBER

1:17-cv-23287-UU

DEFAULT BY CLERK F.R.Civ.P.55(a)

DEFENDANT(S).

Clerk's Default

It appearing that the defendant(s) herein, is/are in default for failure to appear, answer, or otherwise plead to the complaint filed herein within the time required by law.

Default is hereby entered against defendant(s)

EWORLDTRADE, LLC

as of course, on the date September 21, 2017.

**STEVEN M. LARIMORE
CLERK OF COURT**

By /s/ Landys Rodriguez
Deputy Clerk

cc: Judge Ursula Ungaro
Brent Bardales

DEFAULT BY CLERK F.R.Civ.P.55(a)

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 1:17-cv-23287-UU

BRENT BARDALES,
individually and on behalf of all
others similarly situated,

Plaintiff,

CLASS ACTION

JURY TRIAL DEMANDED

vs.

eWORLDTRADE LLC,
a Delaware limited liability company,

Defendant.

_____/

NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE

Plaintiff, Brent Bardales, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), hereby voluntarily dismisses the instant action. All claims of Plaintiff, Brent Bardales, individually, are hereby dismissed without prejudice, with each party to bear their own fees and costs.

Dated: September 27, 2017

Respectfully submitted,

HIRALDO P.A.

/s/ Manuel S. Hiraldo

Manuel S. Hiraldo

Florida Bar No. 030380

401 E. Las Olas Boulevard

Suite 1400

Ft. Lauderdale, Florida 33301

Email: mhiraldo@hirdolaw.com

Telephone: 954.400.4713

and

SHAMIS & GENTILE, P.A.

Andrew J. Shamis

Florida Bar No. 101754

efilings@sflinjuryattorneys.com

14 NE 1st Avenue, Suite 400

Miami, Florida 33132

(t) (305) 479-2299

(f) (786) 623-0915

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 27, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF.

By: /s/ Manuel S. Hiraldo

Manuel S. Hiraldo, Esq.

HIRALDO P.A.

401 E. Las Olas Boulevard

Suite 1400

Ft. Lauderdale, Florida 33301

Florida Bar No. 030380

mhiraldo@hirdolaw.com

Telephone: 954.400.4713

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:17-cv-23287-UU

BRENT BARDALES,

Plaintiff,

v.

EWORLDTRADE, LLC,

Defendant.

ADMINISTRATIVE ORDER

THIS CAUSE is before the Court *sua sponte*.

THE COURT has reviewed the record and is otherwise fully advised in the premises. On September 27, 2017, Plaintiff filed a Notice of Voluntary Dismissal Without Prejudice, D.E. 10. Accordingly, it is hereby

ORDERED AND ADJUDGED that, for Administrative Purposes, this case is CLOSED.

It is further

ORDERED AND ADJUDGED that all future hearings are CANCELLED.

DONE AND ORDERED in Chambers at Miami, Florida, this _27th_ day of September, 2017.



URSULA UNGARO
UNITED STATES DISTRICT JUDGE

copies provided: counsel of record