

1 Frank S. Hedin (SBN 291289)  
HEDIN HALL LLP  
2 1395 Brickell Avenue, Suite 1140  
Miami, Florida 33131  
3 Telephone: + 1 (305) 357-2107  
Facsimile: + 1 (305) 200-8801  
4 Email: fhedin@hedinhall.com

5 *Counsel for Plaintiff and the Putative Class*

6  
7 **UNITED STATES DISTRICT COURT**  
8 **CENTRAL DISTRICT OF CALIFORNIA**

9 DAVID SHABTAI, individually and on  
10 behalf of all others similarly situated,

11 Plaintiff,

12 v.

13 FASHION NOVA LLC,

14 Defendant.

Case No. \_\_\_\_\_

CLASS ACTION

**CLASS ACTION COMPLAINT**

15  
16 Plaintiff David Shabtai, individually and on behalf of all others similarly  
17 situated, complains and alleges as follows based on personal knowledge as to himself,  
18 on the investigation of his counsel, and on information and belief as to all other matters.

19 **NATURE OF ACTION**

20 1. Plaintiff brings this Class Action Complaint for legal and equitable  
21 remedies resulting from the illegal actions of Fashion Nova LLC (“Defendant”) in  
22 sending automated telephonic sales calls, in the form of text messages, to his cellular  
23

24 CLASS ACTION COMPLAINT

Civil Case No.: \_\_\_\_\_

1 telephone and the cellular telephones of numerous other individuals across Florida, in  
2 clear violation of the Florida Telephone Solicitation Act, Fla. Sta § 501.059 (“FTSA”).

### 3 **JURISDICTION AND VENUE**

4 2. The Court has subject-matter jurisdiction over this action pursuant to 28  
5 U.S.C. § 1332(d) because there are more than 100 class members and the aggregate  
6 amount in controversy exceeds \$5,000,000, exclusive of interest, fees, and costs, and  
7 at least one Class member is a citizen of a state different from Defendant.  
8

9 3. Personal jurisdiction and venue are proper because Defendant maintains  
10 its headquarters and principal place of business in Vernon, California, within this  
11 judicial District.

### 12 **PARTIES**

13 4. Plaintiff is a resident and citizen of Miami, Florida. Plaintiff was at all  
14 times mentioned herein the regular user of the telephone number (305) \*\*\*-9746 (the  
15 “9746 Number”).  
16

17 5. Defendant Fashion Nova LLC is an online fashion retailer. Defendant is  
18 is a limited liability company organized and existing under the the laws of California  
19 and maintains its corporate headquarters and principal place of business in Vernon,  
20 California. On September 21, 2021, Defendant’s sole member or manager disclosed  
21 to the California Secretary of State was “Nova Fashion, Inc.”, a current  
22  
23

1 corporation, incorporated in the State of California, with a principal place of business  
2 in Vernon, California. Defendant is a “person” within the meaning of Fla. Stat. §  
3 501.059(8)(a).

#### 4 **THE FLORIDA TELEPHONE SOLITITATION ACT**

5 6. “Americans passionately disagree about many things. But they are largely  
6 united in their disdain for robocalls. The Federal Government receives a staggering  
7 number of complaints about robocalls—3.7 million complaints in 2019 alone. The  
8 States likewise field a constant barrage of complaints.” *Barr v. Am. Ass'n of Political*  
9 *Consultants*, 140 S. Ct. 2335, 2343 (2020).

10 7. Thus, on July 1, 2021, to better protect its residents’ privacy from intrusive  
11 calls and text messages, Florida enacted an amendment to the FTSA to prohibit, *inter*  
12 *alia*, the transmission of unsolicited sales calls and text messages to its residents’  
13 telephones.  
14

15 8. As amended, the FTSA provides, in pertinent part: “A person may not  
16 make or knowingly allow a telephonic sales call to be made if such call involves an  
17 automated system for the selection or dialing of telephone numbers or the playing of a  
18 recorded message when a connection is completed to a number called without the prior  
19 express written consent of the called party.” Fla. Stat. § 501.059(8)(a).  
20  
21  
22  
23

1 9. “Telephonic sales call” is defined, in pertinent part, as a “telephone call  
2 [or] text message . . . to a consumer for the purpose of soliciting a sale of any consumer  
3 goods or services . . . or obtaining information that will or may be used for the direct  
4 solicitation of a sale of consumer goods or services[.]” *Id.* § 501.059(1)(i).

5 10. “Prior express written consent” is defined, in pertinent part, as “a written  
6 agreement that . . . [b]ears the signature of the called party[,] [c]learly authorizes the  
7 person making or allowing the placement of a telephonic sales call by telephone call  
8 [or] text message . . . to deliver or cause to be delivered to the called party a telephonic  
9 sales call using an automated system for the selection or dialing of telephone  
10 numbers[,] . . . [i]ncludes the telephone number to which the signatory authorizes a  
11 telephonic sales call to be delivered[,] and [i]ncludes a clear and conspicuous disclosure  
12 informing the called party that”:  
13

14  
15 A. By executing the agreement, the called party authorizes  
16 the person making or allowing the placement of a telephonic sales  
17 call to deliver or cause to be delivered a telephonic sales call to the  
called party using an automated system for the selection or dialing  
of telephone numbers . . . ; and

18 B. He or she is not required to directly or indirectly sign the  
19 written agreement or to agree to enter into such an agreement as a  
condition of purchasing any property, goods, or services.

20 *Id.* § 501.059(1)(g).  
21  
22  
23

1 11. “There is a rebuttable presumption that a telephonic sales call made to any  
2 area code in this state is made to a Florida resident or to a person in this state at the  
3 time of the call.” *Id.* § 501.059(8)(d)

4 12. Any person aggrieved by a violation of the FTSA may recover \$500.00  
5 for each violation pursuant to § 501.059(10)(a), or up to \$1,500.00 for each violation  
6 committed knowingly or willfully pursuant to § 501.059(10)(b).  
7

8 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

9 13. Since July 1, 2021, Plaintiff has received, at the 9746 Number, at least one  
10 text message that Defendant made or knowingly allowed another person to make on its  
11 behalf.

12 14. For example, on or about August 28, 2022, Defendant made, or knowingly  
13 allowed to be made on its behalf, a text message to the 9746 Number that stated as  
14 follows:  
15

16 Fashion Nova: HURRY!! BIGGEST F\*cking Labor Day Sale  
17 EVER Starts Now!! 40% OFF EVERYTHING Use Code: LD40 -  
-> <http://sms.fashionnova.com/l/xu2/AsZCn>

18 15. At the time the subject text messages were made to and received by  
19 Plaintiff, Plaintiff was “an actual or prospective purchaser, lessee, or recipient of  
20 consumer goods or services.” *Id.* § 501.059(1)(b).  
21  
22  
23

1 16. The text messages that Defendant made or knowingly allowed another  
2 person to make on its behalf to Plaintiff's 9746 Number were sent to Plaintiff for the  
3 purpose of "soliciting a sale of . . . consumer goods or services" to Plaintiff, or  
4 "obtaining information [from Plaintiff] that w[ould] or m[ight] be used for the direct  
5 solicitation of a sale of consumer goods or services" to Plaintiff. *Id.* § 501.059(1)(b) &  
6 (1)(i).

7  
8 17. Accordingly, the text messages that Defendant made or knowingly  
9 allowed another person to make on its behalf to Plaintiff's 9746 Number constituted  
10 "telephonic sales calls" within the meaning of Fla. Stat. § 501.059(1)(i).

11 18. Plaintiff is the "regular user of" the 9746 Number, and is therefore the  
12 "called party" with respect to the subject text messages made by or on behalf of  
13 Defendant to the 9746 Number. *See* Fla. Stat. § 501.059(1)(a).

14  
15 19. Each text message sent by or on behalf of Defendant to Plaintiff's 9746  
16 Number originated from the telephone number 32032, which is number leased or  
17 owned by or on behalf of Defendant that Defendant uses or knowingly allows another  
18 person to use to transmit telephonic sales calls, in the form of text messages, to  
19 consumers in an automated and *en masse* fashion.

20  
21 20. All telephone contact by Defendant or affiliates, subsidiaries, or agents of  
22 Defendant to Plaintiff's 9746 Number occurred using an "automated system for the  
23

1 selection or dialing of telephone numbers” within the meaning of Fla. Stat. §  
2 501.059(8)(a). Specifically, Defendant utilized an “automated system for the selection  
3 or dialing of telephone numbers” to transmit the subject text messages to Plaintiff’s  
4 9746 Number because such messages were sent from telephone numbers used to  
5 message consumers *en masse*; because Defendant’s dialing equipment includes  
6 features substantially similar to a predictive dialer, inasmuch as it is capable of making  
7 numerous calls or texts simultaneously (all without human intervention); and because  
8 the hardware and software used by Defendant to send such messages have the capacity  
9 to both select numbers to be dialed and to dial such numbers in an automated fashion  
10 and without human intervention. And indeed, Defendant (or another person Defendant  
11 knowingly allowed to act on its behalf) actually transmitted the text messages at issue  
12 in this case to Plaintiff in an automated fashion and without human intervention, with  
13 hardware and software that automatically selected and dialed Plaintiff’s 9746 Number  
14 and the other telephone numbers to which it transmitted such text messages.  
15  
16

17 21. Because Plaintiff’s cellular phone alerts him whenever he receives a text  
18 message, each telephonic sales call by or on behalf of Defendant to Plaintiff’s 9746  
19 Number invaded Plaintiff’s privacy and intruded upon Plaintiff’s seclusion upon  
20 receipt.  
21  
22  
23

1 22. Plaintiff has never provided his prior “prior express written consent” to  
2 Defendant or any other party acting on Defendant’s behalf to authorize the subject  
3 telephonic sales calls to the 9746 Number by means of an “automated system for the  
4 selection or dialing of telephone numbers” within the meaning of Fla. Stat. §  
5 501.059(8)(a). Indeed, prior to making (or knowingly allowing another person to make  
6 on its behalf) the subject telephonic sales calls to Plaintiff’s 9746 Number, Defendant  
7 lacked a signed written agreement with Plaintiff that complies with the requirements  
8 of Fla. Stat. § 501.059(1)(g).  
9

10 **CLASS ALLEGATIONS**

11 23. Class Definition. Plaintiff brings this civil class action on behalf of himself  
12 individually and on behalf of all other similarly situated persons as a class action  
13 pursuant to Federal Rule of Civil Procedure 23. The “Class” which Plaintiff seeks to  
14 represent is comprised of and defined as follows:  
15

16 All persons in Florida who, at any time since July 1, 2021, received  
17 a telephonic sales call made by or on behalf of Defendant using the  
18 same type of equipment used to make telephonic sales calls to  
19 Plaintiff.

20 24. Excluded from the class are Defendant, its officers and directors, members  
21 of the immediate families of the foregoing, legal representatives, heirs, successors, or  
22 assigns of the foregoing, and any entity in which Defendant has a controlling interest.  
23

1 25. Plaintiff reserves the right to modify the definition of the Class (or add  
2 one or more subclasses) after further discovery.

3 26. Plaintiff and all Class members have been impacted and harmed by the  
4 acts of Defendant or its affiliates, agents, or subsidiaries acting on its behalf.

5 27. This Class Action Complaint seeks injunctive relief and monetary  
6 damages.

7 28. Defendant or any affiliates, subsidiaries, or agents of Defendant have  
8 acted on grounds generally applicable to the Class, thereby making final injunctive  
9 relief and corresponding declaratory relief with respect to the Class as a whole  
10 appropriate. Moreover, on information and belief, Plaintiff alleges that the FTSA  
11 violations complained of herein are substantially likely to continue in the future if an  
12 injunction is not entered.  
13

14 29. This action may properly be brought and maintained as a class action  
15 pursuant to Federal Rule of Civil Procedure 23(a) and (b). This class action satisfies  
16 the numerosity, typicality, adequacy, commonality, predominance, and superiority  
17 requirements.  
18

19 30. On application by Plaintiff's counsel for class certification, Plaintiff may  
20 also seek certification of subclasses in the interests of manageability, justice, or judicial  
21 economy.  
22

1           31. Numerosity. The number of persons within the Class is substantial,  
2 believed to amount to at least several thousand persons dispersed throughout Florida,  
3 who collectively received at least tens of thousands of telephonic sales calls by or on  
4 behalf of Defendant since July 1, 2021. It is, therefore, impractical to join each member  
5 of the Class as a named plaintiff. Further, the size and relatively modest value of the  
6 claims of the individual members of the Class renders joinder impractical. Accordingly,  
7 utilization of the class action mechanism is the most economically feasible means of  
8 determining and adjudicating the merits of this litigation.  
9

10           32. Typicality. Plaintiff received at least one telephonic sales call from  
11 Defendant since July 1, 2021 while in Florida, and Defendant lacks any record  
12 establishing Plaintiff’s “prior express written consent.” Consequently, the claims of  
13 Plaintiff are typical of the claims of the members of the Class, and Plaintiff’s interests  
14 are consistent with and not antagonistic to those of the other Class members he seeks  
15 to represent. Plaintiff and all members of the Class have been impacted by, and face  
16 continuing harm arising out of, Defendant’s FTSA-violative misconduct as alleged  
17 herein.  
18

19           33. Adequacy. As the proposed Class representative, Plaintiff has no interests  
20 adverse to or which conflict with the interests of the absent members of the Class, and  
21 he is able to fairly and adequately represent and protect the interests of such a Class.  
22

1 Plaintiff has raised viable statutory claims of the type reasonably expected to be raised  
2 by members of the Class and will vigorously pursue these claims. If necessary as the  
3 litigation (including discovery) progresses, Plaintiff may seek leave to amend this Class  
4 Action Complaint to modify the Class definition set forth above, add additional Class  
5 representatives, or assert additional claims.

6  
7 34. Competency of Class Counsel. Plaintiff has retained and is represented  
8 by experienced, qualified, and competent counsel committed to prosecuting this action.  
9 Plaintiff's counsel are experienced in handling complex class action claims, including  
10 in particular claims brought under consumer protection and data-privacy statutes  
11 similar to the FTSA.

12  
13 35. Commonality and Predominance. There are well-defined common  
14 questions of fact and law that exist as to all members of the Class and predominate over  
15 any questions affecting only individual members of the Class. These common legal  
16 and factual questions, which do not vary from Class member to Class member and may  
17 be determined without reference to the individual circumstances of any Class member,  
18 include (but are not limited to) the following:

- 19 a) Whether Defendant made or knowingly allowed another person to make  
20 the subject text messages to Plaintiff's and Class members' cellular  
21 telephones;  
22

- 1 b) Whether such text messages were sent using an “automated system for the  
2 selection or dialing of telephone numbers” within the meaning of Fla. Stat.  
3 § 501.059(8)(a);
- 4 c) Whether Defendant can meet its burden to show that it obtained prior  
5 “prior express written consent” to transmit the subject text messages  
6 within the meaning of Fla. Stat. § 501.059(1)(g), assuming such an  
7 affirmative defense is timely raised;
- 8 d) Whether any of the violations of the FTSA committed by or on behalf of  
9 Defendant were knowing or willful;
- 10 e) The amount of statutory damages to which Plaintiff and the Class are  
11 entitled as a result of any violations of the FTSA committed by or on  
12 behalf of Defendant; and
- 13 f) Whether Defendant or any affiliates, subsidiaries, or agents of Defendant  
14 should be enjoined from engaging in such conduct in the future.

15  
16  
17 36. Superiority. A class action is superior to other available methods for the  
18 fair and efficient adjudication of this controversy because the prosecution of individual  
19 litigation on behalf of each Class member is impracticable. Even if every member of  
20 the Class could afford to pursue individual litigation, the court system could not;  
21 multiple trials of the same factual issues would magnify the delay and expense to all  
22  
23

1 parties and the court system. Individualized litigation would also present the potential  
2 for varying, inconsistent or contradictory judgments. By contrast, the maintenance of  
3 this action as a class action, with respect to some or all of the issues presented herein,  
4 presents few management difficulties, conserves the resources of the parties and the  
5 court system and protects the rights of each member of the Class. Plaintiff anticipates  
6 no difficulty in the management of this action as a class action. Class wide relief is  
7 essential to compel compliance with the FTSA and thus protect consumers' privacy.  
8 The interests of Class members in individually controlling the prosecution of separate  
9 claims is small because the statutory damages recoverable in an individual action for  
10 violation of the FTSA are likewise relatively small. Management of these claims is  
11 likely to present significantly fewer difficulties than are presented in many class actions  
12 because the text messages at issue are all automated and because Defendant lacks any  
13 record reflecting that it obtained the requisite prior express written consent from any  
14 Class member to be sent such messages. Class members can be readily located and  
15 notified of this class action by reference to Defendant's records and, if necessary, the  
16 records of Defendant's affiliates, agents, or subsidiaries and cellular telephone  
17 providers.  
18  
19

20 37. Additionally, the prosecution of separate actions by individual Class  
21 members would create a risk of multiple adjudications with respect to them that would,  
22  
23

1 as a practical matter, be dispositive of the interests of other members of the Class who  
2 are not parties to such adjudications, thereby substantially impairing or impeding the  
3 ability of such nonparty Class members to protect their interests. The prosecution of  
4 individual actions by Class members could also establish inconsistent results and/or  
5 establish incompatible standards of conduct for Defendant.

6  
7 **CLAIM FOR RELIEF**  
8 **VIOLATION OF THE FLORIDA**  
9 **TELEPHONE SOLICITATION SALES ACT**  
10 **(FLA. STAT. § 501.059)**

11 38. Plaintiff incorporates by reference the foregoing paragraphs of this Class  
12 Action Complaint as if fully stated herein.

13 39. Since July 1, 2021, Defendant has made, or knowingly allowed to be made  
14 on its behalf by another person, at least one text message to the 9746 Number, and  
15 Plaintiff received such text messages in Florida.

16 40. Likewise, since July 1, 2021, Defendant has made, or knowingly allowed  
17 to be made on its behalf by another person, at least one text message to each of the  
18 telephone numbers regularly used by the members of the Class in Florida.

19 41. Because Plaintiff is, and at all relevant times referenced herein was, the  
20 “regular user of” the 9746 Number, Plaintiff was the “called party” with respect to each  
21 of the text messages made by Defendant (or knowingly allowed to be made on its behalf  
22 by another person) to the 9746 Number.

1 42. Plaintiff is “an actual or prospective purchaser, lessee, or recipient of  
2 consumer goods or services” within the meaning of the FTSA. *See* Fla. Stat. §  
3 501.059(1)(b).

4 43. At least one of the text messages made by Defendant (or that Defendant  
5 knowingly allowed to be made on its behalf by another person) to the 9746 Number  
6 was made for the purpose of “soliciting a sale of . . . consumer goods or services” to  
7 Plaintiff, or “obtaining information [from Plaintiff] that w[ould] or m[ight] be used for  
8 the direct solicitation of a sale of consumer goods or services” to Plaintiff. *See id.* §  
9 501.059(1)(b) & (1)(i). Accordingly, at least one of the subject text messages that  
10 Defendant made or knowingly allowed another person to make on its behalf to  
11 Plaintiff’s 9746 Number constituted a “telephonic sales call” within the meaning of.  
12 *Id.* § 501.059(1)(i).

13  
14 44. Likewise, at least one of the text messages made by Defendant (or that  
15 Defendant knowingly allowed to be made on its behalf by another person) to each of  
16 the telephone numbers regularly used by the members of the Class was made for the  
17 purpose of “soliciting a sale of . . . consumer goods or services” to the Class member  
18 to whom the message was sent, or “obtaining information [from the Class member]  
19 that w[ould] or m[ight] be used for the direct solicitation of a sale of consumer goods  
20 or services” to him or her. *See id.* § 501.059(1)(b) & (1)(i). Accordingly, at least one  
21  
22  
23

1 of the subject text messages that Defendant made or knowingly allowed another person  
2 to make on its behalf to each of the Class members' telephone numbers constituted a  
3 "telephonic sales call." *Id.* § 501.059(1)(i).

4 45. Each of the telephonic sales calls made by Defendant (or that Defendant  
5 knowingly allowed to be made on its behalf by another person) to Plaintiff's 9746  
6 Number and to the Class members' telephone numbers occurred using an "automated  
7 system for the selection or dialing of telephone numbers" within the meaning of Fla.  
8 Stat. § 501.059(8)(a).

10 46. Prior to making or knowingly allowing another person to make on its  
11 behalf the subject telephonic sales calls to Plaintiff and the members of the Class,  
12 Defendant failed to obtain the "prior express written consent" from Plaintiff or any  
13 member of the Class. Indeed, prior to making the subject telephonic sales calls to  
14 Plaintiff's 9746 Number and to the telephone numbers regularly used by the members  
15 of the Class, Defendant lacked a signed written agreement with Plaintiff or any Class  
16 member that complies with the requirements of Fla. Stat. § 501.059(1)(g).

18 47. Plaintiff and all Class members are entitled to, and do seek, injunctive  
19 relief prohibiting Defendant's future transmission of telephonic sales calls to the  
20 telephone numbers regularly used by Plaintiff and the members of the Class absent  
21 their prior express written consent pursuant to Fla. Stat. § 501.059(10)(a)(1), as well as  
22

1 an award of \$500.00 in statutory damages for each violation of the FTSA committed  
2 by or on behalf of Defendant pursuant to Fla. Stat. § 501.059(10)(a)(2) (or \$1,500 for  
3 each such violation committed willfully or knowingly pursuant to pursuant to Fla. Stat.  
4 § 501.059(10)(b)).

5  
6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiff David Shabtai prays for relief and judgment in favor  
8 of himself and the Class as follows:

9 A. Injunctive relief sufficient to ensure Defendant refrains from violating the  
10 FTSA in the future pursuant to Fla. Stat. § 501.059(10)(a)(1);

11 B. Statutory damages of \$500.00 for himself and each Class member for each  
12 of Defendant's violations of the FTSA (or \$1,500.00 for each such violation to the  
13 extent committed willfully or knowingly) pursuant to Fla. Stat. § 501.059(10)(a)(2) &  
14 (10)(b);

15 C. An Order certifying this action to be a proper class action pursuant to  
16 Federal Rule of Civil Procedure 23, establishing an appropriate Class and any  
17 Subclass(es) the Court deems appropriate, finding that Plaintiff is a proper  
18 representative of the Class, and appointing the attorneys representing Plaintiff as  
19 counsel for the Class; and  
20  
21  
22  
23

1 D. An award of attorneys' fees and costs to Plaintiff's counsel pursuant to  
2 Fla. Stat. § 501.059(11) and Federal Rule of Civil Procedure 23.

3 **DEMAND FOR JURY TRIAL**

4 On behalf of himself and all others similarly situated, Plaintiff demands a trial  
5 by jury pursuant to Federal Rule of Civil Procedure 38(b) on all claims and issues so  
6 triable.

7 Dated: November 3, 2022

8 **HEDIN HALL LLP**

9 By: /s/ Frank S. Hedin  
Frank S. Hedin

10 Frank S. Hedin (SBN 291289)  
11 fhedin@hedinhall.com  
12 Arun G. Ravindran\*  
aravindran@hedinhall.com  
13 HEDIN HALL LLP  
14 1395 Brickell Avenue, Suite 1140  
Miami, Florida 33131  
15 Telephone: + 1 (305) 357-2107  
Facsimile: + 1 (305) 200-8801  
Email:

16 \* *Pro Hac Vice* Admission Forthcoming

17 *Counsel for Plaintiff and the Putative Class*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Fashion Nova Accused of Sending Unlawful, Automated Text Messages](#)

---