

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

LARISSA SILVEIRA,)
Individually and on behalf of all others)
similarly situated,)
)
Plaintiff,)
)
v.)
)
KINETIC BRANDS LLC dba)
CRETE,)
)
)
Defendant.)

CASE NO. _____

NOTICE OF REMOVAL OF
DEFENDANT KINETIC BRANDS LLC

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

Defendant, Kinetic Brands LLC (“Kinetic” or “Defendant”), expressly preserving all defenses including but not limited to defenses related to arbitration, personal jurisdiction, and proper venue, timely file this Notice of Removal, hereby removing this civil action, pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-DadeCounty, Florida, entitled *Silveira v. Kinetic Brands LLC*, Case No. 21-024229-CA-01 (the “State Court Action”), to the United States District Court for the Southern District of Florida. A true and correct copy of the Summons and Complaint served on Kinetic is attached as **Exhibit A**. Copies of other filings in the State Court Action to date are attached as **Composite Exhibit B**.

ORIGINAL JURISDICTION

1. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d) (the “Class Action Fairness Act” or “CAFA”) because at least one member of the putative class is a citizen of a state different from at least one defendant, the amount in controversy exceeds \$5 million exclusive of interest and costs, and there are more than 100 members in the putative class.

2. Plaintiff Larissa Silveira (“Plaintiff”) is alleged to be a resident of the State of Florida. (First Am. Compl. ¶¶ 6. 9.) Defendant Kinetic is informed and believes that Plaintiff is a citizen of the State of Florida.

3. Defendant Kinetic is alleged to be a New York limited liability company with its principal place of business and headquarters in New York County, New York. (*Id.*, ¶ 7.)

4. Defendant Kinetic is actually a Delaware limited liability company with its principal place of business and headquarters in Passaic, New Jersey at 90 Dayton Avenue, Building 22, 2nd Floor, Passaic, NJ 07055.

5. For purposes of assessing minimal diversity under CAFA, “a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business” (28 U.S.C. § 1332(c)(1)) and “an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.” 28 U.S.C. § 1332(d)(10).

6. Because the citizenship of at least one member of the putative class is diverse from the citizenship of at least one defendant, the requirements for minimal diversity under 28 U.S.C. § 1332(d)(2)(A) are satisfied here.

7. In the First Amended Complaint, Plaintiff seeks to certify two classes defined as follows:

No Consent Class: All persons in Florida who, (1) were sent a telephonic sales call regarding Defendant's goods and/or services, (2) using the same equipment or type of equipment utilized to call Plaintiff.

Seller Identification Class: All persons within the United States who, within the four years prior to the filing of this Complaint, were sent a text message from Defendant or anyone on Defendant's behalf, that did not disclose: (1) the name of the individual caller; or (2) the name of the person or entity on whose behalf the call is being made; or (3) a telephone number or address at which the person or entity may be contacted.

(First Am. Compl. ¶ 26.)

8. On behalf of the putative classes, Plaintiff seeks, among other relief, compensatory damages in the form of statutory damages under the Florida Telephone Solicitation Act, Fla. Stat. § 501.059, and the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”); and equitable and/or injunctive relief. Assuming, for the purposes of removal only, that the allegations in the First Amended Complaint are true, the amount in controversy exceeds \$5 million, and the aggregate number of members of the putative class exceeds 100. (*See* First Am. Compl., ¶ 28 (alleging that “Defendant has placed telephonic sales calls to telephone numbers belonging to *thousands* of consumers listed throughout Florida without their prior express written consent and without properly disclosing the identification of the seller/sender.”).)

9. Alternatively, the Court may exercise original jurisdiction over this matter pursuant to 28 U.S.C. § 1331 as this is a civil action “arising under the Constitution, laws, or treaties of the United States.” Specifically, Plaintiff’s Complaint purports to assert a claim under the TCPA and seeks monetary and injunctive relief for the alleged TCPA violations. (*See* First Am. Compl., ¶¶ 45-52.)

10. Because Plaintiff’s TCPA claim is a claim “arising under the . . . laws . . . of the United States,” this Court may exercise jurisdiction over this matter pursuant to 28 U.S.C. § 1331. Therefore, removal is appropriate on this independent and alternative ground.

VENUE AND PROCEDURE

11. Pursuant to 28 U.S.C. § 1446(b), this Notice is timely filed within thirty (30) days of service of the Complaint on Defendant. Kinetic was served with the Summons and First Amended Complaint on January 6, 2022. (*See* **Comp. Ex. B.**)

12. As of the date of removal, Kinetic has not filed a responsive pleading to the First Amended Complaint.

13. Pursuant to 28 U.S.C. § 1441(a), this is the appropriate Court to receive this Notice of Removal, as the State Court Action is pending in the Circuit Court of the Eleventh Judicial Circuit in and for Broward County, Florida, which is within the Southern District of Florida. Therefore, this Court is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

14. Pursuant to 28 U.S.C. § 1446(a), Kinetic attaches true and correct copies of all Pleadings and other documents filed in the State Court Action as **Composite Exhibit B**.

15. Pursuant to 28 U.S.C. § 1446(d), counsel for Plaintiff will be served with a copy of this Notice of Removal, and a copy of this Notice of Removal will be filed with the Clerk of the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. A copy of the Notice of Filing Notice of Removal filed with the state court is attached hereto as **Exhibit C**.

16. In light of the foregoing, removal of this case to the United States District Court for the Southern District of Florida is proper.

17. In filing this Notice of Removal, Kinetic does not waive, and expressly preserves, any and all defenses to the First Amended Complaint, including, but not limited to, defenses of arbitration, personal jurisdiction and improper venue, and reserves the right to move the Court concerning any such defenses upon removal to this Court.

WHEREFORE, Defendant Kinetic Brands LLC respectfully notifies this Court, the state court, and Plaintiff of removal of this action from the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida to the United States District Court for the Southern District of Florida.

Dated: January 26, 2022.

/s/ Irene Oria

Irene Oria, Esq.

Fla. Bar No. 484570

FISHERBROYLES LLP

199 E. Flagler St. #550

Miami, FL 33131

Tel.: (305) 536-2838

Facsimile: (305) 536-2838

Email: irene.oria@fisherbroyles.com

Counsel for Defendant

Kinectic Brands LLC

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2022, 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 counsel of record identified on the Service List below.

/s/ Irene Oria
Irene Oria, Esq.

SERVICE LIST

Andrew J. Shamis, Esq.
Garrett O. Berg, Esq.
SHAMIS & GENTILE P.A.
14 NE 1st Ave., Suite 705
Miami, Florida 33132
Email: ashamis@shamisgentile.com;
gberg@shamisgentile.com
Tel: (305) 479-2299
Counsel for Plaintiff

Scott Edelsberg, Esq.
EDELSBERG LAW P.A.
20900 NE 30th Ave., Suite 417
Aventura, Florida 33180
Email: scott@edelsberglaw.com
Tel: (305) 975-3320
Counsel for Plaintiff

CIVIL COVER SHEET

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 NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

Larissa Silveira

DEFENDANTS

Kinetic Brands LLC, dba Crete

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

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

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

Shamis & Gentile PA, 14 NE 1st Ave., # 705, Miami, FL, 33132, (305)479-2299

Irene Oria, Esq., FisherBroyles LLP, 155 E. Flagler St., # 550 Miami, FL 33131, (786) 873-4603

Edelsberg Law PA, 209 NE 30th Ave., #417, Aventura, FL 33180, (305) 975-3320

(d) Check County Where Action Arose: [X] 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 []
2 U.S. Government Defendant []
3 Federal Question (U.S. Government Not a Party) [X]
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)

- Citizen of This State [X]
Citizen of Another State []
Citizen or Subject of a Foreign Country []
Incorporated or Principal Place of Business In This State []
Incorporated and Principal Place of Business In Another State []
Foreign Nation []

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

Grid of categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN

- 1 Original Proceeding []
2 Removed from State Court [X]
3 Re-filed (See VI below) []
4 Reinstated or Reopened []
5 Transferred from another district (specify) []
6 Multidistrict Litigation Transfer []
7 Appeal to District Judge from Magistrate Judgment []
8 Multidistrict Litigation - Direct File []
9 Remanded from Appellate Court []

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case [] YES [X] NO b) Related Cases [] YES [X] NO

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): 28 USC 1332 (diversity); 47 USC 227 (alleged violations of Telephone Consumer Protection Act)

LENGTH OF TRIAL via 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 [X] DEMAND \$ Injunctive relief & unspecified monetary damages CHECK YES only if demanded in complaint:

JURY DEMAND: [X] Yes [] No

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

DATE SIGNATURE OF ATTORNEY OF RECORD

January 26, 2022

Irene Oria

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)”.

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. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

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.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

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.

EXHIBIT A

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2021-024229-CA-01

LARISSA SILVEIRA, individually and on behalf of
all others similarly situated,

CLASS ACTION

Plaintiff,

JURY TRIAL DEMANDED

vs.

KINETIC BRANDS LLC d/b/a
CRETE

Defendant.

SUMMONS

THE STATE OF FLORIDA:
To Each Sheriff/Certified Process Server of the State:

YOU ARE COMMANDED to serve this summons and a copy of the Complaint, in this
action on Defendant:

Kinetic Brands LLC dba Crete
~~Attn: Justin Geer- Registered Agent~~
~~145 Hamilton Place 51~~
~~New York, NY 10031~~

Kinetic Brands LLC
Attn: Harvard Business Services, Inc. c/o
Registered Agent
16192 Coastal HWY
Lewes, Delaware 19958

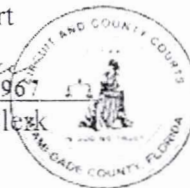
Each Defendant is required to serve written defenses to the Complaint or petition on:
Andrew Shamis, Esq, Shamis & Gentile, P.A., 14 NE 1st Ave STE 705, Miami, Florida 33132, within **twenty (20) days** after service of this summons on that Defendant, exclusive of the date of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the complaint or petition.

12/17/2021

Dated this _____ day of _____, 2021.

As Clerk of the Court

By:  307967
As Deputy Clerk



IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

LARISSA SILVEIRA, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

KINETIC BRANDS LLC d/b/a CRETE,

Defendant.

CLASS ACTION

Case No. 2021-024229-CA-01

JURY TRIAL DEMANDED

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiff Larissa Silveira brings this class action against Defendant, Kinetic Brands LLC d/b/a Crete and alleges as follows upon personal knowledge as to Plaintiff and Plaintiff's own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by Plaintiff's attorneys.

NATURE OF THE ACTION

1. This is a class action under the 47 U.S.C. § 227 et seq., the Telephone Consumer Protection Act ("TCPA") and under the Florida Telephone Solicitation Act ("FTSA"), Fla. Stat. § 501.059, as amended by Senate Bill No. 1120.¹
2. Defendant is a cosmetics company that sells a variety of nail paint and nail polish products.

¹ The amendment to the FTSA became effective on July 1, 2021.

3. To promote its goods and services, Defendant engages in aggressive telephonic sales calls to consumers without having secured prior express written consent as required under the FTSA, and with no regards for consumers' rights under the TCPA.

4. Defendant's telephonic sales calls have caused Plaintiff and the Class members harm, including violations of their statutory rights, statutory damages, annoyance, nuisance, and invasion of their privacy.

5. Through this action, Plaintiff seeks an injunction and statutory damages on behalf of herself and the Class members, as defined below, and any other available legal or equitable remedies resulting from the unlawful actions of Defendant.

PARTIES

6. Plaintiff is, and at all times relevant hereto was, an individual and a "called party" as defined by Fla. Stat. § 501.059(1)(a) in that she was the regular user of telephone number 786-***-7907 (the "7907 Number") that received Defendant's telephonic sales calls.

7. Defendant is, and at all times relevant hereto was, a New York limited liability company and a "telephone solicitor" as defined by Fla. Stat. § 501.059(f). Defendant maintains its primary place of business and headquarters in New York County, NY. Defendant directs, markets, and provides business activities throughout the State of Florida and the United States.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to Florida Rule of Civil Procedure 1.220 and Fla. Stat. § 26.012(2). The matter in controversy exceeds the sum or value of \$30,000 exclusive of interest, costs, and attorney's fees.

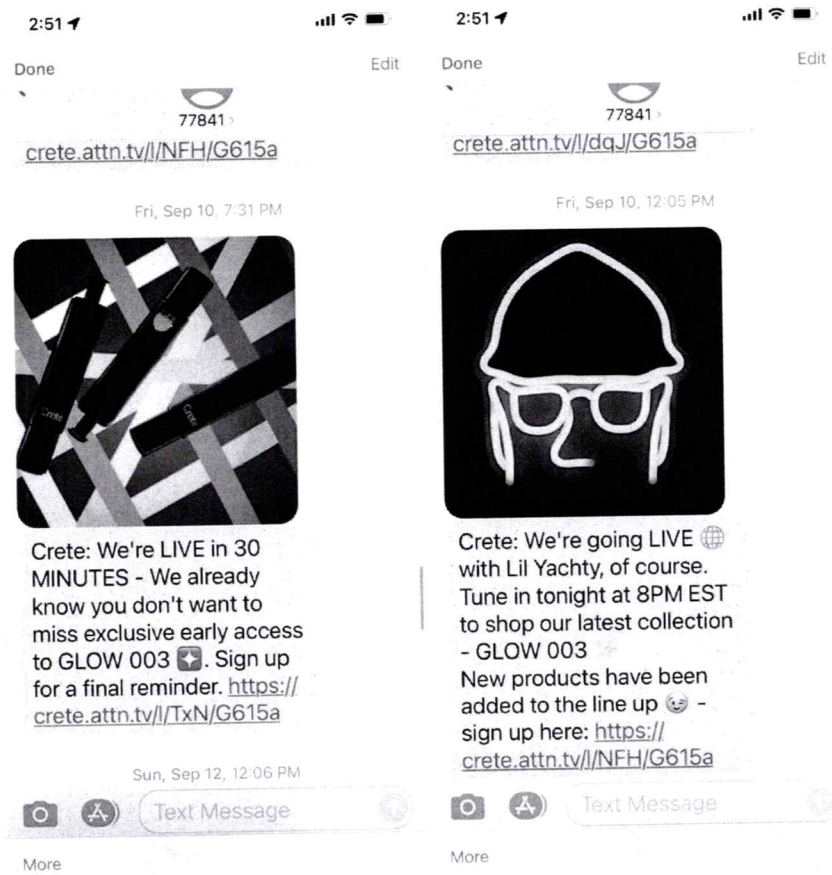
9. Defendant is subject to personal jurisdiction in Florida because this suit arises out of and relates to Defendant's contacts with this state. Defendant made or caused to be made

telephonic sales calls into Florida without the requisite prior express written consent in violation of the FTSA. Plaintiff received such calls while residing in and physically present in Miami-Dade County, Florida.

10. Venue for this action is proper in this Court pursuant to Fla. Stat. § 47.051 because Defendant (1) is a New York limited liability company doing business in this judicial circuit; and (2) all facts giving rise to this action occurred within this circuit.

FACTS

11. Over the past several months preceding the filing of this action, Defendant sent numerous telephonic sales calls to Plaintiff's cellular telephone number including but not limited to the following sent on September 10, 2021:



12. As demonstrated by the above screenshot, the purpose of Defendant's telephonic sales call was to solicit the sale of consumer goods and/or services. The messages contained language such as "We already know you don't want to miss exclusive early access..."

13. Defendant's call was not made for an emergency purpose or to collect on a debt pursuant to 47 U.S.C. § 227(b)(1)(B).

14. Defendant's call was transmitted to Plaintiff's cellular telephone, and within the time frame relevant to this action.

15. Defendant's calls constitute telemarketing because they encouraged the future purchase or investment in property, goods, or services, i.e., selling Plaintiff cosmetic products.

16. Defendant's calls did not disclose the name of the individual caller in violation of 47 C.F.R. § 64.1200(d)(4).

17. Defendant's calls did not disclose the legal name of the entity on whose behalf the call was being made in violation of 47 C.F.R. § 64.1200(d)(4).

18. Defendant's calls did not provide a telephone number or address at which they may be contacted in violation of 47 C.F.R. § 64.1200(d)(4).

19. At no point in time did Plaintiff provide Defendant with her express written consent to be contacted.

20. Upon information and belief, Defendant caused similar telephonic sales calls to be sent to individuals residing in Florida and throughout the United States.

21. To transmit the above telephonic sales calls, Defendant utilized a computer software system that automatically selected and dialed Plaintiff's and the Class members' telephone numbers.

22. Plaintiff never provided Defendant with express written consent authorizing Defendant to transmit telephonic sales calls to Plaintiff's cellular telephone number utilizing an automated system for the selection or dialing of telephone numbers.

23. The text messages originated from telephone number 77841, a number which upon information and belief is owned and operated by Defendant or on behalf of Defendant.

24. The TCPA prohibits callers from telemarketing to a telephone subscriber without disclosing the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. 47 C.F.R. § 64.1200(d)(4).

25. Defendant's telephonic sales calls caused Plaintiff and the Class members harm, including statutory damages, inconvenience, invasion of privacy, aggravation, annoyance.

CLASS ALLEGATIONS

PROPOSED CLASS

26. Plaintiff brings this lawsuit as a class action on behalf of herself individually and on behalf of all other similarly situated persons as a class action pursuant to Florida Rule of Civil Procedure 1.220(b)(2) and (b)(3). The "Class" that Plaintiff seeks to represent is defined as:

No Consent Class: All persons in Florida who, (1) were sent a telephonic sales call regarding Defendant's goods and/or services, (2) using the same equipment or type of equipment utilized to call Plaintiff.

Seller Identification Class: All persons within the United States who, within the four years prior to the filing of this Complaint, were sent a text message from Defendant or anyone on Defendant's behalf, that did not disclose: (1) the name of the individual caller; or (2) the name of the person or entity on whose behalf the call is being made; or (3) a telephone number or address at which the person or entity may be contacted.

27. Defendant and its employees or agents are excluded from the Class. Plaintiff does not know the exact number of members in the Class but believes the Class members number in the several thousands, if not more.

NUMEROSITY

28. Upon information and belief, Defendant has placed telephonic sales calls to telephone numbers belonging to thousands of consumers listed throughout Florida without their prior express written consent and without properly disclosing the identification of the seller/sender. The members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

29. The exact number and identities of the Class members are unknown at this time and can be ascertained only 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

30. 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:

- [1] Whether Defendant initiated telephonic sales calls to Plaintiff and the Class members;
- [2] Whether Defendant can meet its burden of showing that it had prior express written consent to make such calls;
- [3] Whether Defendant violated 47 C.F.R. § 64.1200(d);
- [7] Whether Defendant's conduct was knowing and willful; and
- [8] Whether Defendant is liable for damages, and the amount of such damages.

31. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendant routinely transmits telephonic sales calls without prior express written consent is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

TYPICALITY

32. 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

33. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class and has retained competent counsel. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

SUPERIORITY

34. 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 Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class 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.

35. 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 FLA. STAT. § 501.059
(On Behalf of Plaintiff and the No Consent Class)

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

37. It is a violation of the FTSA to “make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.” Fla. Stat. § 501.059(8)(a).

38. A “telephonic sales call” is defined as a “telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.” Fla. Stat. § 501.059(1)(g).

39. “Prior express written consent” means an agreement in writing that:

1. Bears the signature of the called party;
2. Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection or dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail;
3. Includes the telephone number to which the signatory authorizes a telephonic sales call to be delivered; and
4. Includes a clear and conspicuous disclosure informing the called party that:

- a. By executing the agreement, the called party authorizes the person making or allowing the placement of a telephonic sales 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 or the playing of a recorded message when a connection is completed to a number called; and
- b. He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

Fla. Stat. § 501.059(1)(g).

40. Defendant failed to secure prior express written consent from Plaintiff and the Class members.

41. In violation of the FTSA, Defendant made and/or knowingly allowed telephonic sales calls to be made to Plaintiff and the Class members without Plaintiff's and the Class members' prior express written consent.

42. Defendant made and/or knowingly allowed the telephonic sales calls to Plaintiff and the Class members to be made utilizing an automated system for the selection or dialing of telephone numbers.

43. As a result of Defendant's conduct, and pursuant to § 501.059(10)(a) of the FTSA, Plaintiff and Class members were harmed and are each entitled to a minimum of \$500.00 in damages for each violation. Plaintiff and the Class members are also entitled to an injunction against future calls. *Id.*

COUNT II
VIOLATION OF 47 U.S.C. § 227(b)
(Individually and on behalf of the Seller Identification Class)

44. Plaintiff re-alleges and incorporates paragraphs 1-35 as if fully set forth herein.

45. Under 47 C.F.R. § 64.1200(d), "[n]o person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has

instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet certain minimum standards, including:

(4) **Identification of sellers and telemarketers.** A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted.

47 C.F.R. § 64.1200(d)(4).

46. Under 47 C.F.R § 64.1200(e) the rules set forth in 47 C.F.R. § 64.1200(d) are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers:

(e) The rules set forth in paragraph (c) and (d) of this section are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers to the extent described in the Commission's Report and Order, CG Docket No. 02-278, FCC 03-153, "Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991.

47 C.F.R. § 64.1200(e).

47. Pursuant to 47 C.F.R. § 64.1200(d)(4), Defendant's contact of Plaintiff's cellular phone without disclosing the name of the individual caller constitutes a violation of 47 U.S.C. § 227(c).

48. Pursuant to 47 C.F.R. § 64.1200(d)(4), Defendant's contact of Plaintiff's cellular phone without disclosing the name of the entity on whose behalf the call is being made constitutes a violation of 47 U.S.C. § 227(c).

49. Pursuant to 47 C.F.R. § 64.1200(d)(4), Defendant's contact of Plaintiff's cellular phone without providing a telephone number or address at which they may be contacted constitutes a violation of 47 U.S.C. § 227(c).

50. As a result of Defendant's violations of 47 U.S.C. § 227(c) Plaintiff and the Seller Identification Class members are entitled to an award of \$500.00 in statutory damages, for each and every negligent violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

51. As a result of Defendant's violations of 47 U.S.C. § 227(c), Plaintiff and the Seller Identification Class members are entitled to an award of \$1,500.00 in statutory damages, for each and every knowing and/or willful violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

52. Plaintiff and the Seller Identification Class members are also entitled to and seek injunctive relief prohibiting Defendant's illegal conduct in the future, pursuant to 47 U.S.C. § 227(c)(5).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for the following relief:

- a) An order certifying this case as a class action on behalf of the Class as defined above, and appointing Plaintiff as the representative of the Class and Plaintiff's counsel as Class Counsel;
- b) An award of statutory damages for Plaintiff and each member of the Class;
- c) An order declaring that Defendant's actions, as set out above, violate the FTSA;
- d) An order declaring that Defendant's actions, set out above, violate the TCPA;
- e) An injunction requiring Defendant to cease all telephonic sales calls made without express written consent, and to otherwise protect the interests of the Class;
- f) Such further and other relief as the Court deems necessary.

JURY DEMAND

Plaintiff, individually and on behalf of the Class, 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 communications or transmittal of the calls as alleged herein.

Dated: December 16, 2021

Respectfully Submitted,

SHAMIS & GENTILE P.A.

/s/ Andrew Shamis

Andrew J. Shamis, Esq.
Florida Bar No. 101754
ashamis@shamisgentile.com

/s/ Garrett Berg

Garrett O. Berg, Esq.
Florida Bar No. 1000427
gberg@shamisgentile.com
14 NE 1st Ave., Suite 705
Miami, Florida 33132
Telephone: 305-479-2299

EDELSBERG LAW P.A.

/s/ Scott Edelsberg

Scott Edelsberg, Esq.
Florida Bar No. 0100537
20900 NE 30th Ave., Suite 417
Aventura, Florida 33180
Telephone: 305-975-3320
Email: scott@edelsberglaw.com

Counsel for Plaintiff and the Class.

COMPOSITE EXHIBIT B

FORM 1.997. CIVIL COVER SHEET

The civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other documents as required by law. This form must be filed by the plaintiff or petitioner with the Clerk of Court for the purpose of reporting uniform data pursuant to section 25.075, Florida Statutes. (See instructions for completion.)

I. CASE STYLE

IN THE CIRCUIT/COUNTY COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

Larissa Silveira
Plaintiff

Case # _____
Judge _____

vs.

Crete, LLC
Defendant

II. AMOUNT OF CLAIM

Please indicate the estimated amount of the claim, rounded to the nearest dollar. The estimated amount of the claim is requested for data collection and clerical processing purposes only. The amount of the claim shall not be used for any other purpose.

- \$8,000 or less
- \$8,001 - \$30,000
- \$30,001- \$50,000
- \$50,001- \$75,000
- \$75,001 - \$100,000
- over \$100,000.00

III. TYPE OF CASE (If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x on both the main category and subcategory lines.

CIRCUIT CIVIL

- Condominium
- Contracts and indebtedness
- Eminent domain
- Auto negligence
- Negligence—other
 - Business governance
 - Business torts
 - Environmental/Toxic tort
 - Third party indemnification
 - Construction defect
 - Mass tort
 - Negligent security
 - Nursing home negligence
 - Premises liability—commercial
 - Premises liability—residential
- Products liability
- Real Property/Mortgage foreclosure
 - Commercial foreclosure
 - Homestead residential foreclosure
 - Non-homestead residential foreclosure
 - Other real property actions
- Professional malpractice
 - Malpractice—business
 - Malpractice—medical
 - Malpractice—other professional
- Other
 - Antitrust/Trade regulation
 - Business transactions
 - Constitutional challenge—statute or ordinance
 - Constitutional challenge—proposed amendment
 - Corporate trusts
 - Discrimination—employment or other
 - Insurance claims
 - Intellectual property
 - Libel/Slander
 - Shareholder derivative action
 - Securities litigation
 - Trade secrets
 - Trust litigation

COUNTY CIVIL

- Small Claims up to \$8,000
- Civil
- Real property/Mortgage foreclosure

- Replevins
- Evictions
 - Residential Evictions
 - Non-residential Evictions
- Other civil (non-monetary)

COMPLEX BUSINESS COURT

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes No

IV. REMEDIES SOUGHT (check all that apply):

- Monetary;
- Nonmonetary declaratory or injunctive relief;
- Punitive

V. NUMBER OF CAUSES OF ACTION: []

(Specify)

1

VI. IS THIS CASE A CLASS ACTION LAWSUIT?

- yes
- no

VII. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- no
- yes If “yes,” list all related cases by name, case number, and court.

VIII. IS JURY TRIAL DEMANDED IN COMPLAINT?

- yes
- no

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief, and that I have read and will comply with the requirements of Florida Rule of Judicial Administration 2.425.

Signature: s/ Angelica Gentile Gentile
Attorney or party

Fla. Bar # 102630
(Bar # if attorney)

Angelica Gentile Gentile
(type or print name)

11/01/2021
Date

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

LARISSA SILVEIRA, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

CRETE, LLC,

Defendant.

CLASS ACTION

Case No.

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Larissa Silveira brings this class action against Defendant Crete, LLC and alleges as follows upon personal knowledge as to Plaintiff and Plaintiff's own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by Plaintiff's attorneys.

NATURE OF THE ACTION

1. This is a class action under the Florida Telephone Solicitation Act ("FTSA"), Fla. Stat. § 501.059, as amended by Senate Bill No. 1120.¹
2. Defendant is a cosmetics company that sells a variety of nail paint and nail polish products.
3. To promote its goods and services, Defendant engages in telephonic sales calls to consumers without having secured prior express written consent as required by the FTSA.

¹ The amendment to the FTSA became effective on July 1, 2021.

4. Defendant's telephonic sales calls have caused Plaintiff and the Class members harm, including violations of their statutory rights, statutory damages, annoyance, nuisance, and invasion of their privacy.

5. Through this action, Plaintiff seeks an injunction and statutory damages on behalf of herself and the Class members, as defined below, and any other available legal or equitable remedies resulting from the unlawful actions of Defendant.

PARTIES

6. Plaintiff is, and at all times relevant hereto was, an individual and a "called party" as defined by Fla. Stat. § 501.059(1)(a) in that she was the regular user of telephone number 786-***-7907 (the "7907 Number") that received Defendant's telephonic sales calls.

7. Defendant is, and at all times relevant hereto was, a Delaware limited liability company and a "telephone solicitor" as defined by Fla. Stat. § 501.059(f). Defendant maintains its primary place of business and headquarters in Passaic, New Jersey. Defendant directs, markets, and provides business activities throughout the State of Florida.

JURISDICTION AND VENUE

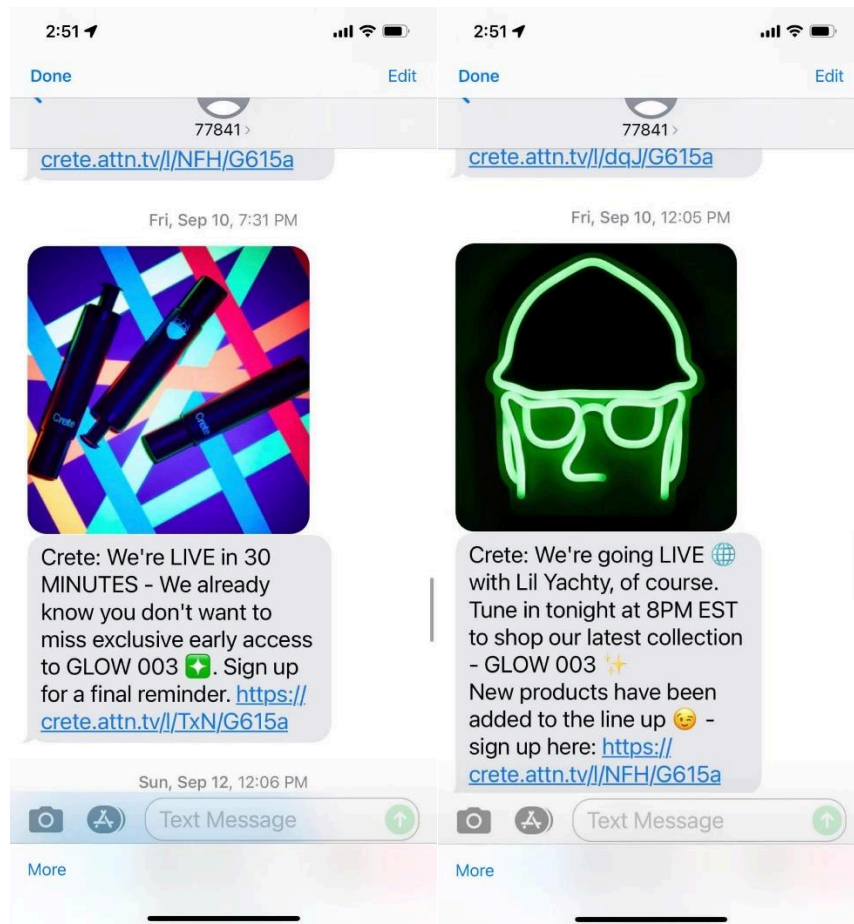
8. This Court has subject matter jurisdiction pursuant to Florida Rule of Civil Procedure 1.220 and Fla. Stat. § 26.012(2). The matter in controversy exceeds the sum or value of \$30,000 exclusive of interest, costs, and attorney's fees.

9. Defendant is subject to personal jurisdiction in Florida because this suit arises out of and relates to Defendant's contacts with this state. Defendant made or caused to be made telephonic sales calls into Florida without the requisite prior express written consent in violation of the FTSA. Plaintiff received such calls while residing in and physically present in Miami-Dade County, Florida.

10. Venue for this action is proper in this Court pursuant to Fla. Stat. § 47.051 because Defendant (1) is a foreign company doing business in this state; and (2) all facts giving rise to this complaint occurred within this judicial circuit.

FACTS

11. Over the past several months preceding the filing of this action, Defendant sent numerous telephonic sales calls to Plaintiff's cellular telephone number including but not limited to the following sent on September 10, 2021:



12. As demonstrated by the above screenshots, the purpose of Defendant's telephonic sales calls was to solicit the sale of consumer goods and/or services.

13. Upon information and belief, Defendant caused similar telephonic sales calls to be sent to other individuals residing in Florida.

14. Plaintiff is the regular user of the telephone number that received the above telephonic sales calls.

15. To transmit the above telephonic sales calls, Defendant utilized a computer software system that automatically selected and dialed Plaintiff's and the Class members' telephone numbers.

16. Plaintiff never provided Defendant with express written consent authorizing Defendant to transmit telephonic sales calls to Plaintiff's cellular telephone number utilizing an automated system for the selection or dialing of telephone numbers.

17. Defendant's telephonic sales calls caused Plaintiff and the Class members harm, including statutory damages, inconvenience, invasion of privacy, aggravation, annoyance.

CLASS ALLEGATIONS

PROPOSED CLASS

18. Plaintiff brings this lawsuit as a class action on behalf of herself individually and on behalf of all other similarly situated persons as a class action pursuant to Florida Rule of Civil Procedure 1.220(b)(2) and (b)(3). The "Class" that Plaintiff seeks to represent is defined as:

All persons in Florida who, (1) were sent a telephonic sales call regarding Defendant's goods and/or services, (2) using the same equipment or type of equipment utilized to call Plaintiff.

19. Defendant and its employees or agents are excluded from the Class. Plaintiff does not know the exact number of members in the Class but believes the Class members number in the several thousands, if not more.

NUMEROSITY

20. Upon information and belief, Defendant has placed telephonic sales calls to telephone numbers belonging to thousands of consumers listed throughout Florida without their

prior express written consent. The members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

21. The exact number and identities of the Class members are unknown at this time and can be ascertained only 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

22. 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: [1] Whether Defendant initiated telephonic sales calls to Plaintiff and the Class members; [2] Whether Defendant can meet its burden of showing that it had prior express written consent to make such calls; and [3] Whether Defendant is liable for damages, and the amount of such damages.

23. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendant routinely transmits telephonic sales calls without prior express written consent is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

TYPICALITY

24. 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

25. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class and has retained competent counsel. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

SUPERIORITY

26. 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 Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class 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.

27. 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 FLA. STAT. § 501.059
(On Behalf of Plaintiff and the Class)

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

29. It is a violation of the FTSA to "make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party." Fla. Stat. § 501.059(8)(a).

30. A “telephonic sales call” is defined as a “telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.” Fla. Stat. § 501.059(1)(g).

31. “Prior express written consent” means an agreement in writing that:

1. Bears the signature of the called party;
2. Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection or dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail;
3. Includes the telephone number to which the signatory authorizes a telephonic sales call to be delivered; and
4. Includes a clear and conspicuous disclosure informing the called party that:
 - a. By executing the agreement, the called party authorizes the person making or allowing the placement of a telephonic sales 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 or the playing of a recorded message when a connection is completed to a number called; and
 - b. He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

Fla. Stat. § 501.059(1)(g).

32. Defendant failed to secure prior express written consent from Plaintiff and the Class members.

33. In violation of the FTSA, Defendant made and/or knowingly allowed telephonic sales calls to be made to Plaintiff and the Class members without Plaintiff's and the Class members' prior express written consent.

34. Defendant made and/or knowingly allowed the telephonic sales calls to Plaintiff and the Class members to be made utilizing an automated system for the selection or dialing of telephone numbers.

35. As a result of Defendant's conduct, and pursuant to § 501.059(10)(a) of the FTSA, Plaintiff and Class members were harmed and are each entitled to a minimum of \$500.00 in damages for each violation. Plaintiff and the Class members are also entitled to an injunction against future calls. *Id.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for the following relief:

- a) An order certifying this case as a class action on behalf of the Class as defined above, and appointing Plaintiff as the representative of the Class and Plaintiff's counsel as Class Counsel;
- b) An award of statutory damages for Plaintiff and each member of the Class;
- c) An order declaring that Defendant's actions, as set out above, violate the FTSA;
- d) An injunction requiring Defendant to cease all telephonic sales calls made without express written consent, and to otherwise protect the interests of the Class;
- e) Such further and other relief as the Court deems necessary.

JURY DEMAND

Plaintiff, individually and on behalf of the Class, 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 communications or transmittal of the calls as alleged herein.

Dated: November 1, 2021

Respectfully Submitted,

SHAMIS & GENTILE P.A.

/s/ Andrew Shamis

Andrew J. Shamis, Esq.
Florida Bar No. 101754
ashamis@shamisgentile.com

/s/ Garrett Berg

Garrett O. Berg, Esq.
Florida Bar No. 1000427
gberg@shamisgentile.com
14 NE 1st Ave., Suite 705
Miami, Florida 33132
Telephone: 305-479-2299

EDELSBERG LAW P.A.

/s/ Scott Edelsberg

Scott Edelsberg, Esq.
Florida Bar No. 0100537
20900 NE 30th Ave., Suite 417
Aventura, Florida 33180
Telephone: 305-975-3320
Email: scott@edelsberglaw.com

Counsel for Plaintiff and the Class.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2021-024229-CA-01

LARISSA SILVEIRA, individually and on behalf of
all others similarly situated,

CLASS ACTION

Plaintiff,

JURY TRIAL DEMANDED

vs.

CRETE, LLC,

Defendant.

_____ /

SUMMONS

THE STATE OF FLORIDA:

To Each Sheriff/Certified Process Server of the State:

YOU ARE COMMANDED to serve this summons and a copy of the Complaint, in this action on Defendant:

CRETE, LLC
Attn: Angeline Kazakis- Registered Agent
346 Evelyndale Drive
Dover, DE 19901

Each Defendant is required to serve written defenses to the Complaint or petition on: **Andrew Shamis, Esq, Shamis & Gentile, P.A., 14 NE 1st Ave STE 705, Miami, Florida 33132**, within **twenty (20) days** after service of this summons on that Defendant, exclusive of the date of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the complaint or petition.

Dated this _____ day of _____, 2021.

As Clerk of the Court

By: _____
As Deputy Clerk

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2021-024229-CA-01

LARISSA SILVEIRA, individually and on behalf of
all others similarly situated,

CLASS ACTION

Plaintiff,

JURY TRIAL DEMANDED

vs.

CRETE, LLC,

Defendant.

_____ /

SUMMONS

THE STATE OF FLORIDA:
To Each Sheriff/Certified Process Server of the State:

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**Andrew Shamis, Esq, Shamis & Gentile, P.A., 14 NE 1st Ave STE 705, Miami, Florida
33132**, within **twenty (20) days** after service of this summons on that Defendant, exclusive of
the date of service, and to file the original of the defenses with the Clerk of this Court either
before service on Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a
default will be entered against that Defendant for the relief demanded in the complaint or
petition.

Dated this _____ day of _____, 2021.

Harvey Ruvim, As Clerk of the Court
Clerk of Courts

By: 217043
Juan Bethel
As Deputy Clerk



IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2021-024229-CA-01

LARISSA SILVEIRA, individually and on behalf of
all others similarly situated,

CLASS ACTION

Plaintiff,

JURY TRIAL DEMANDED

vs.

KINETIC BRANDS LLC d/b/a
CRETE

Defendant.

_____ /

SUMMONS

THE STATE OF FLORIDA:
To Each Sheriff/Certified Process Server of the State:

YOU ARE COMMANDED to serve this summons and a copy of the Complaint, in this action on Defendant:

Kinetic Brands LLC dba Crete
Attn: Justin Geer- Registered Agent
115 Hamilton Place 51
New York, NY 10031

Each Defendant is required to serve written defenses to the Complaint or petition on: **Andrew Shamis, Esq, Shamis & Gentile, P.A., 14 NE 1st Ave STE 705, Miami, Florida 33132**, within **twenty (20) days** after service of this summons on that Defendant, exclusive of the date of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the complaint or petition.

Dated this _____ day of _____, 2021.

As Clerk of the Court

By: _____
As Deputy Clerk

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2021-024229-CA-01

LARISSA SILVEIRA, individually and on behalf of
all others similarly situated,

CLASS ACTION

Plaintiff,

JURY TRIAL DEMANDED

vs.

KINETIC BRANDS LLC d/b/a
CRETE

Defendant.

_____ /

SUMMONS

THE STATE OF FLORIDA:
To Each Sheriff/Certified Process Server of the State:

YOU ARE COMMANDED to serve this summons and a copy of the Complaint, in this action on Defendant:

Kinetic Brands LLC dba Crete
Attn: Justin Geer- Registered Agent
115 Hamilton Place 51
New York, NY 10031

Each Defendant is required to serve written defenses to the Complaint or petition on: **Andrew Shamis, Esq, Shamis & Gentile, P.A., 14 NE 1st Ave STE 705, Miami, Florida 33132**, within **twenty (20) days** after service of this summons on that Defendant, exclusive of the date of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the complaint or petition.

12/17/2021

Dated this _____ day of _____, 2021.

As Clerk of the Court

By:  307967
As Deputy Clerk



RETURN OF SERVICE

State of Florida

County of Miami-Dade

Circuit Court

Case Number: 2021-024229-CA-01

Plaintiff:

**LARISSA SILVEIRA, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED**

vs.

Defendant:

CRETE, LLC

For:

Andrew J. Shamis, Esq.
Shamis & Gentile, P.A.
14 NE 1ST Avenue, Suite 400
Miami, FL 33132

Received by Global Process Services Corp on the 29th day of November, 2021 at 11:31 pm to be served on **CRETE, LLC, 90 DAYTON AVE. BUILDING 18, SUITE 1-0, PASSAIC, NJ 07055.**

I, Anabela Pinto, do hereby affirm that on the **8th day of December, 2021 at 12:10 pm, I:**

served a **CORPORATION** by delivering a true copy of the **Summons and Class Action Complaint** with the date and hour of service endorsed thereon by me, to: **ERIC** as **FOREMAN** for **CRETE, LLC**, at the address of: **835 RINGWOOD AVE., HASKLE, NJ 07420**, and informed said person of the contents therein, in compliance with state statutes.

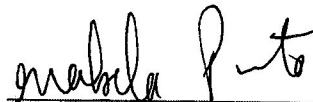
Additional information pertaining to this Service:

12/3/2021 9:50 am Attempted Service 90 Dayton Ave., Building 18, Suite 1-0, Passaic, NJ 07055 this is a very large industrial complex with over 100 units (many unmarked),I spoke to several people at building 18 but no one was familiar with this business.

I found the following information for them online, I called 201-445-3500 and spoke to the receptionist who gave me an address of 835 Ringwood Ave., Haskle, New Jersey 07420

Description of Person Served: Age: 50, Sex: M, Race/Skin Color: White, Height: 5'11", Weight: 285, Hair: Salt & Pepper, Glasses: N

I certify that I am over the age of eighteen, and that I have no interest in the above action. Per F.S.92.525(2) Under penalties of perjury, I declare that I have read the foregoing Return of Service and the facts stated in it are true.



Anabela Pinto
Process Server

Global Process Services Corp
P.O. Box 961556
Miami, FL 33296
(786) 287-0606

Our Job Serial Number: GER-2021002570
Ref: S&G



IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2021-024229-CA-01

LARISSA SILVEIRA, individually and on behalf of
all others similarly situated,

CLASS ACTION

Plaintiff,

JURY TRIAL DEMANDED

vs.

CRETE, LLC,

Defendant.

SUMMONS

THE STATE OF FLORIDA:

To Each Sheriff/Certified Process Server of the State:

YOU ARE COMMANDED to serve this summons and a copy of the Complaint, in this
action on Defendant:

CRETE, LLC

Attn: ~~Angeline Kazakis~~ Registered Agent

346 Evelyndale Drive

Dover, DE 19901

*90 Dayton Ave, Bldg 18, suite 10
Passaic, NJ 07055*

Each Defendant is required to serve written defenses to the Complaint or petition on:
**Andrew Shamis, Esq, Shamis & Gentile, P.A., 14 NE 1st Ave STE 705, Miami, Florida
33132**, within **twenty (20) days** after service of this summons on that Defendant, exclusive of
the date of service, and to file the original of the defenses with the Clerk of this Court either
before service on Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a
default will be entered against that Defendant for the relief demanded in the complaint or
petition.

Dated this _____ day of ^{11/2/2021} _____, 2021.

Harvey Ruvin, As Clerk of the Court
Clerk of Courts

By: *217043*
Avram Bethel
As Deputy Clerk



AFFIDAVIT OF SERVICE

Case: 2021-024229-CA-01	Court: In the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida	Job: 6520973 (22-0018)
Plaintiff / Petitioner: Larissa Silveira individually and on behalf of all others similarly situated		Defendant / Respondent: Kinetic Brands LLC d/b/a Crete
Received by: Harris Investigations, LLC		For: Global Process Services
To be served upon: Kinetic Brands, LLC attn: Harvard Business Services, Inc. c/o Registered Agent		

I, Don Oliphant, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: Kinetic Brands, LLC attn: Harvard Business Services, Inc. c/o Registered Agent, 16192 Coastal Hwy, Lewes, DE 19958


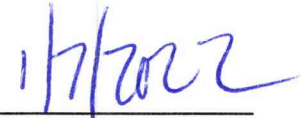
Manner of Service: Registered Agent, Jan 6, 2022, 4:48 pm EST

Documents: Summons, First Amended Class Action Complaint (Received Jan 4, 2022 at 11:10am EST)

Additional Comments:

1) Unsuccessful Attempt: Jan 4, 2022, 4:35 pm EST at 16192 Coastal Hwy, Lewes, DE 19958
The business was still closed due to snow storm on Monday

2) Successful Attempt: Jan 6, 2022, 4:48 pm EST at 16192 Coastal Hwy, Lewes, DE 19958 received by Kinetic Brands, LLC attn: Harvard Business Services, Inc. c/o Registered Agent. Age: 30's; Ethnicity: Caucasian; Gender: Male; Weight: 160; Height: 5'6"; Hair: Brown; Left with Gary Damaini mail room specialist

Don Oliphant

Date

Harris Investigations, LLC
PO Box 304
Lansdale, Pa 19446
1-302-841-4951

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2021-024229-CA-01

LARISSA SILVEIRA, individually and on behalf of
all others similarly situated,

CLASS ACTION

Plaintiff,

JURY TRIAL DEMANDED

vs.

KINETIC BRANDS LLC d/b/a
CRETE

Defendant.

SUMMONS

THE STATE OF FLORIDA:
To Each Sheriff/Certified Process Server of the State:

YOU ARE COMMANDED to serve this summons and a copy of the Complaint, in this
action on Defendant:

Kinetic Brands LLC dba Crete
~~Attn: Justin Geer - Registered Agent~~
~~115 Hamilton Place 51~~
~~New York, NY 10031~~

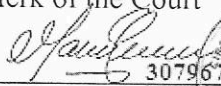
Kinetic Brands LLC
Attn: Harvard Business Services, Inc. c/o
Registered Agent
16192 Coastal HWY
Lewes, Delaware 19958

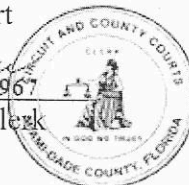
Each Defendant is required to serve written defenses to the Complaint or petition on:
**Andrew Shamis, Esq, Shamis & Gentile, P.A., 14 NE 1st Ave STE 705, Miami, Florida
33132**, within **twenty (20) days** after service of this summons on that Defendant, exclusive of
the date of service, and to file the original of the defenses with the Clerk of this Court either
before service on Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a
default will be entered against that Defendant for the relief demanded in the complaint or
petition.

12/17/2021

Dated this _____ day of _____, 2021.

As Clerk of the Court

By:  307967
As Deputy Clerk



IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

LARISSA SILVEIRA, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

KINETIC BRANDS LLC d/b/a CRETE,

Defendant.

CLASS ACTION

Case No. 2021-024229-CA-01

JURY TRIAL DEMANDED

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiff Larissa Silveira brings this class action against Defendant, Kinetic Brands LLC d/b/a Crete and alleges as follows upon personal knowledge as to Plaintiff and Plaintiff's own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by Plaintiff's attorneys.

NATURE OF THE ACTION

1. This is a class action under the 47 U.S.C. § 227 et seq., the Telephone Consumer Protection Act ("TCPA") and under the Florida Telephone Solicitation Act ("FTSA"), Fla. Stat. § 501.059, as amended by Senate Bill No. 1120.¹

2. Defendant is a cosmetics company that sells a variety of nail paint and nail polish products.

¹ The amendment to the FTSA became effective on July 1, 2021.

3. To promote its goods and services, Defendant engages in aggressive telephonic sales calls to consumers without having secured prior express written consent as required under the FTSA, and with no regards for consumers' rights under the TCPA.

4. Defendant's telephonic sales calls have caused Plaintiff and the Class members harm, including violations of their statutory rights, statutory damages, annoyance, nuisance, and invasion of their privacy.

5. Through this action, Plaintiff seeks an injunction and statutory damages on behalf of herself and the Class members, as defined below, and any other available legal or equitable remedies resulting from the unlawful actions of Defendant.

PARTIES

6. Plaintiff is, and at all times relevant hereto was, an individual and a "called party" as defined by Fla. Stat. § 501.059(1)(a) in that she was the regular user of telephone number 786-***-7907 (the "7907 Number") that received Defendant's telephonic sales calls.

7. Defendant is, and at all times relevant hereto was, a New York limited liability company and a "telephone solicitor" as defined by Fla. Stat. § 501.059(f). Defendant maintains its primary place of business and headquarters in New York County, NY. Defendant directs, markets, and provides business activities throughout the State of Florida and the United States.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to Florida Rule of Civil Procedure 1.220 and Fla. Stat. § 26.012(2). The matter in controversy exceeds the sum or value of \$30,000 exclusive of interest, costs, and attorney's fees.

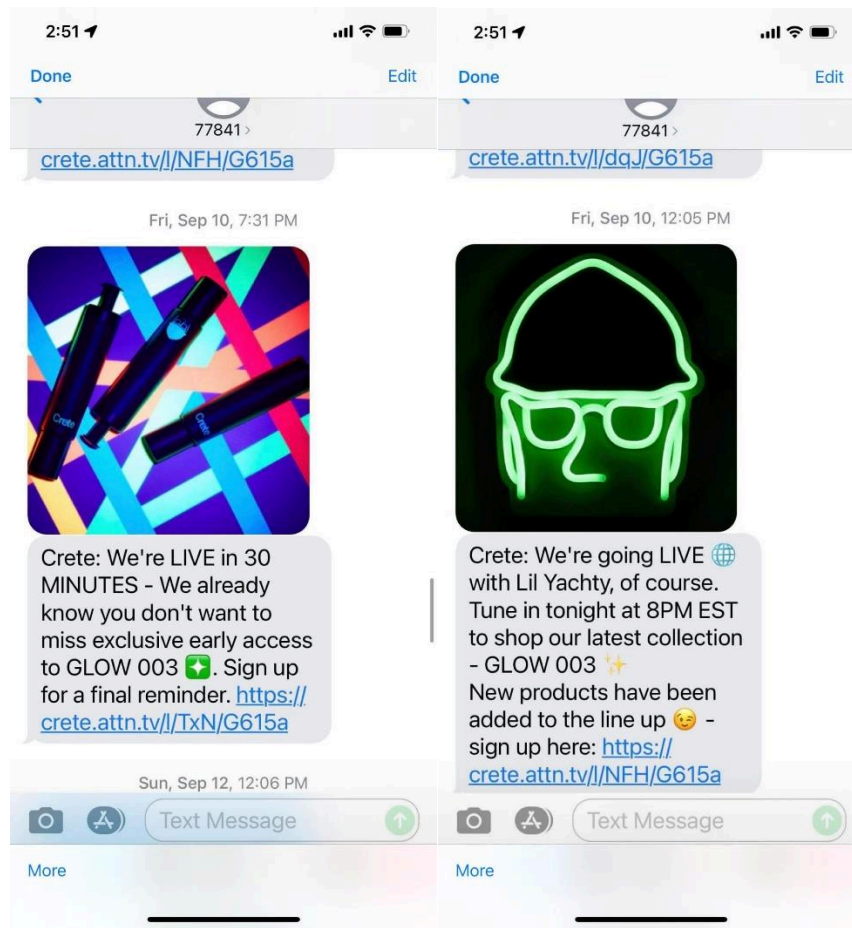
9. Defendant is subject to personal jurisdiction in Florida because this suit arises out of and relates to Defendant's contacts with this state. Defendant made or caused to be made

telephonic sales calls into Florida without the requisite prior express written consent in violation of the FTSA. Plaintiff received such calls while residing in and physically present in Miami-Dade County, Florida.

10. Venue for this action is proper in this Court pursuant to Fla. Stat. § 47.051 because Defendant (1) is a New York limited liability company doing business in this judicial circuit; and (2) all facts giving rise to this action occurred within this circuit.

FACTS

11. Over the past several months preceding the filing of this action, Defendant sent numerous telephonic sales calls to Plaintiff's cellular telephone number including but not limited to the following sent on September 10, 2021:



12. As demonstrated by the above screenshot, the purpose of Defendant's telephonic sales call was to solicit the sale of consumer goods and/or services. The messages contained language such as "We already know you don't want to miss exclusive early access..."

13. Defendant's call was not made for an emergency purpose or to collect on a debt pursuant to 47 U.S.C. § 227(b)(1)(B).

14. Defendant's call was transmitted to Plaintiff's cellular telephone, and within the time frame relevant to this action.

15. Defendant's calls constitute telemarketing because they encouraged the future purchase or investment in property, goods, or services, i.e., selling Plaintiff cosmetic products.

16. Defendant's calls did not disclose the name of the individual caller in violation of 47 C.F.R. § 64.1200(d)(4).

17. Defendant's calls did not disclose the legal name of the entity on whose behalf the call was being made in violation of 47 C.F.R. § 64.1200(d)(4).

18. Defendant's calls did not provide a telephone number or address at which they may be contacted in violation of 47 C.F.R. § 64.1200(d)(4).

19. At no point in time did Plaintiff provide Defendant with her express written consent to be contacted.

20. Upon information and belief, Defendant caused similar telephonic sales calls to be sent to individuals residing in Florida and throughout the United States.

21. To transmit the above telephonic sales calls, Defendant utilized a computer software system that automatically selected and dialed Plaintiff's and the Class members' telephone numbers.

22. Plaintiff never provided Defendant with express written consent authorizing Defendant to transmit telephonic sales calls to Plaintiff's cellular telephone number utilizing an automated system for the selection or dialing of telephone numbers.

23. The text messages originated from telephone number 77841, a number which upon information and belief is owned and operated by Defendant or on behalf of Defendant.

24. The TCPA prohibits callers from telemarketing to a telephone subscriber without disclosing the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. 47 C.F.R. § 64.1200(d)(4).

25. Defendant's telephonic sales calls caused Plaintiff and the Class members harm, including statutory damages, inconvenience, invasion of privacy, aggravation, annoyance.

CLASS ALLEGATIONS

PROPOSED CLASS

26. Plaintiff brings this lawsuit as a class action on behalf of herself individually and on behalf of all other similarly situated persons as a class action pursuant to Florida Rule of Civil Procedure 1.220(b)(2) and (b)(3). The "Class" that Plaintiff seeks to represent is defined as:

No Consent Class: All persons in Florida who, (1) were sent a telephonic sales call regarding Defendant's goods and/or services, (2) using the same equipment or type of equipment utilized to call Plaintiff.

Seller Identification Class: All persons within the United States who, within the four years prior to the filing of this Complaint, were sent a text message from Defendant or anyone on Defendant's behalf, that did not disclose: (1) the name of the individual caller; or (2) the name of the person or entity on whose behalf the call is being made; or (3) a telephone number or address at which the person or entity may be contacted.

27. Defendant and its employees or agents are excluded from the Class. Plaintiff does not know the exact number of members in the Class but believes the Class members number in the several thousands, if not more.

NUMEROSITY

28. Upon information and belief, Defendant has placed telephonic sales calls to telephone numbers belonging to thousands of consumers listed throughout Florida without their prior express written consent and without properly disclosing the identification of the seller/sender. The members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

29. The exact number and identities of the Class members are unknown at this time and can be ascertained only 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

30. 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:

- [1] Whether Defendant initiated telephonic sales calls to Plaintiff and the Class members;
- [2] Whether Defendant can meet its burden of showing that it had prior express written consent to make such calls;
- [3] Whether Defendant violated 47 C.F.R. § 64.1200(d);
- [7] Whether Defendant's conduct was knowing and willful; and
- [8] Whether Defendant is liable for damages, and the amount of such damages.

31. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendant routinely transmits telephonic sales calls without prior express written consent is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

TYPICALITY

32. 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

33. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class and has retained competent counsel. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

SUPERIORITY

34. 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 Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class 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.

35. 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 FLA. STAT. § 501.059
(On Behalf of Plaintiff and the No Consent Class)

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

37. It is a violation of the FTSA to “make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.” Fla. Stat. § 501.059(8)(a).

38. A “telephonic sales call” is defined as a “telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.” Fla. Stat. § 501.059(1)(g).

39. “Prior express written consent” means an agreement in writing that:

1. Bears the signature of the called party;
2. Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection or dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail;
3. Includes the telephone number to which the signatory authorizes a telephonic sales call to be delivered; and
4. Includes a clear and conspicuous disclosure informing the called party that:

- a. By executing the agreement, the called party authorizes the person making or allowing the placement of a telephonic sales 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 or the playing of a recorded message when a connection is completed to a number called; and
- b. He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

Fla. Stat. § 501.059(1)(g).

40. Defendant failed to secure prior express written consent from Plaintiff and the Class members.

41. In violation of the FTSA, Defendant made and/or knowingly allowed telephonic sales calls to be made to Plaintiff and the Class members without Plaintiff's and the Class members' prior express written consent.

42. Defendant made and/or knowingly allowed the telephonic sales calls to Plaintiff and the Class members to be made utilizing an automated system for the selection or dialing of telephone numbers.

43. As a result of Defendant's conduct, and pursuant to § 501.059(10)(a) of the FTSA, Plaintiff and Class members were harmed and are each entitled to a minimum of \$500.00 in damages for each violation. Plaintiff and the Class members are also entitled to an injunction against future calls. *Id.*

COUNT II
VIOLATION OF 47 U.S.C. § 227(b)
(Individually and on behalf of the Seller Identification Class)

44. Plaintiff re-alleges and incorporates paragraphs 1-35 as if fully set forth herein.

45. Under 47 C.F.R. § 64.1200(d), “[n]o person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has

instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet certain minimum standards, including:

(4) Identification of sellers and telemarketers. A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted.

47 C.F.R. § 64.1200(d)(4).

46. Under 47 C.F.R § 64.1200(e) the rules set forth in 47 C.F.R. § 64.1200(d) are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers:

(e) The rules set forth in paragraph (c) and (d) of this section are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers to the extent described in the Commission's Report and Order, CG Docket No. 02-278, FCC 03-153, "Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991.

47 C.F.R. § 64.1200(e).

47. Pursuant to 47 C.F.R. § 64.1200(d)(4), Defendant's contact of Plaintiff's cellular phone without disclosing the name of the individual caller constitutes a violation of 47 U.S.C. § 227(c).

48. Pursuant to 47 C.F.R. § 64.1200(d)(4), Defendant's contact of Plaintiff's cellular phone without disclosing the name of the entity on whose behalf the call is being made constitutes a violation of 47 U.S.C. § 227(c).

49. Pursuant to 47 C.F.R. § 64.1200(d)(4), Defendant's contact of Plaintiff's cellular phone without providing a telephone number or address at which they may be contacted constitutes a violation of 47 U.S.C. § 227(c).

50. As a result of Defendant's violations of 47 U.S.C. § 227(c) Plaintiff and the Seller Identification Class members are entitled to an award of \$500.00 in statutory damages, for each and every negligent violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

51. As a result of Defendant's violations of 47 U.S.C. § 227(c), Plaintiff and the Seller Identification Class members are entitled to an award of \$1,500.00 in statutory damages, for each and every knowing and/or willful violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

52. Plaintiff and the Seller Identification Class members are also entitled to and seek injunctive relief prohibiting Defendant's illegal conduct in the future, pursuant to 47 U.S.C. § 227(c)(5).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for the following relief:

- a) An order certifying this case as a class action on behalf of the Class as defined above, and appointing Plaintiff as the representative of the Class and Plaintiff's counsel as Class Counsel;
- b) An award of statutory damages for Plaintiff and each member of the Class;
- c) An order declaring that Defendant's actions, as set out above, violate the FTSA;
- d) An order declaring that Defendant's actions, set out above, violate the TCPA;
- e) An injunction requiring Defendant to cease all telephonic sales calls made without express written consent, and to otherwise protect the interests of the Class;
- f) Such further and other relief as the Court deems necessary.

JURY DEMAND

Plaintiff, individually and on behalf of the Class, 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 communications or transmittal of the calls as alleged herein.

Dated: December 16, 2021

Respectfully Submitted,

SHAMIS & GENTILE P.A.

/s/ Andrew Shamis

Andrew J. Shamis, Esq.

Florida Bar No. 101754

ashamis@shamisgentile.com

/s/ Garrett Berg

Garrett O. Berg, Esq.

Florida Bar No. 1000427

gberg@shamisgentile.com

14 NE 1st Ave., Suite 705

Miami, Florida 33132

Telephone: 305-479-2299

EDELSBERG LAW P.A.

/s/ Scott Edelsberg

Scott Edelsberg, Esq.

Florida Bar No. 0100537

20900 NE 30th Ave., Suite 417

Aventura, Florida 33180

Telephone: 305-975-3320

Email: scott@edelsberglaw.com

Counsel for Plaintiff and the Class.

EXHIBIT C

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

LARISSA SILVEIRA, individually and
on behalf of all others similarly situated,

Plaintiff,

CASE NO: 2021-024229-CA-01

Judge: Migna Sanchez-Llorens

v.

KINETIC BRANDS LLC, dba CRETE,

Defendant.

_____ /

NOTICE OF FILING NOTICE OF REMOVAL

PLEASE TAKE NOTICE that on January 26, 2022, Defendant Kinetic Brands LLC filed its Notice of Removal, a copy of which is attached as Exhibit 1 hereto, removing this action in its entirety to the United States District Court for the Southern District of Florida.

Dated: January 26, 2022.

/s/ Irene Oria

Irene Oria, Esq.

FL Bar No. 484570

FISHERBROYLES, LLP

199 E. Flagler St. #550

Miami, FL 33131

Tel.: (305) 536-2838

Facsimile: (305) 536-2838

Email: irene.oria@fisherbroyles.com

Counsel for Defendant

Kinetic Brands LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 26, 2022, I filed a copy of the foregoing via the Florida Courts ePortal and thereby caused the same to be served via email upon all counsel of record identified on the Service List below.

/s/ Irene Oria
Irene Oria, Esq.

SERVICE LIST

Andrew J. Shamis, Esq.
Garrett O. Berg, Esq.
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Counsel for Plaintiff

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lil Yachty-Linked Crete Nail Paint Company Hit with Class Action Over Allegedly Unsolicited Text Messages](#)
