

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

JENNIFER ZUNIGA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

SPARC GROUP LLC d/b/a AEROPOSTALE,

Defendant.

Case No. 21-cv-

NOTICE OF REMOVAL

Defendant Sparc Group LLC d/b/a Aeropostale (“Defendant”), by and through its counsel of record, hereby gives notice of removal of this action from the Seventeenth Judicial Circuit Court in and for Broward County, Florida to the United States District Court for the Southern District of Florida, pursuant to 28 U.S.C. §§ 1332(d), 1441, and 1446. In support, Defendant respectfully states as follows:

PROCEDURAL HISTORY AND TIMELINESS OF REMOVAL

1. On November 9, 2021, Plaintiff Jennifer Zuniga (“Plaintiff”) commenced this putative class action, captioned as *Jennifer Zuniga v. Sparc Group LLC d/b/a Aeropostale*, Case Number CACE-21-020242, against Defendant in the Seventeenth Judicial Circuit Court in and for Broward County, Florida (“State Court Action”).

2. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of the operative complaint against Defendant (“Complaint” or “Compl.”) in the State Court Action is attached to this Notice as **Exhibit A**, and true and correct copies of all other process, pleadings, and orders purportedly served upon Defendant in the State Court Action are attached to this Notice as **Exhibit B**.

3. A true and correct copy of the Register of Actions from the State Court Action is

attached to this Notice as **Exhibit C**.

4. Plaintiff purportedly served Defendant with the Summons and the Complaint in the State Court Action on November 10, 2021. A true and correct copy of the Affidavit of Process Server is attached to this Notice as **Exhibit D**. This notice is therefore timely pursuant to 28 U.S.C. § 1446(b).

JOINDER

5. No other defendants have been named in this action, and therefore, no joinder of additional defendants to this removal is necessary.

RELEVANT ALLEGATIONS

6. Plaintiff's single-count Complaint seeks relief from Defendant, on behalf of herself and a putative class of similarly-situated persons, for allegedly making or causing to be made unlawful telephonic sales calls without prior express written consent in violation of the Florida Telephone Solicitation Act ("FTSA"), Fla. Stat. § 501.059. *See* Compl. ¶¶ 1, 4, 18-27.

7. More specifically, Plaintiff alleges, *inter alia*, that (i) "Defendant has placed telephonic sales calls to telephone numbers belonging to thousands of consumers listed throughout Florida without their prior express written consent" in violation of the FTSA; (ii) "Defendant made and/or knowingly allowed telephonic sales calls to be made" in this case; (iii) "the [putative] Class members number in the several thousands, if not more"; (iv) "Plaintiff's claims are typical of the claims of the Class members, as they are all based on the same factual and legal theories"; and (v) "the aggregate damages sustained by [Plaintiff and] the [putative] Class are in the millions of

dollars.” *Id.* ¶¶ 19, 20, 24, 26, 33-34. Plaintiff further alleges that she received sixteen text messages¹ sent by or on behalf of Defendant.

8. The Complaint seeks statutory damages in the amount of at least \$500.00 per violation, declaratory and injunctive relief and “any other available legal or equitable remedies.” Compl. ¶¶ 4, 35, Prayer. Furthermore, statutory damages may be trebled under the FTSA for willful or knowing violations, up to \$1,500 per violation. Fla. Stat. § 501.059(10)(b).

9. Defendant disputes Plaintiff’s allegations, believes the Complaint lacks merit, and denies that Plaintiff or the putative class has been harmed in any way or that this case is capable of or appropriate for class treatment. By seeking removal, Defendant does not waive any arguments with respect to the Complaint.

CAFA JURISDICTION

10. This Court has jurisdiction over this case pursuant to the Class Action Fairness Act (“CAFA”), specifically 28 U.S.C. § 1332(d)(2) & (5), which together provide, *inter alia*, that “district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which ... any member of a class of plaintiffs is a citizen of a State different from any defendant. . . .” and require that the proposed class must contain at least 100 persons. *See also Evans v. Walter Indus., Inc.*, 449 F.3d 1159, 1163 (11th Cir. 2006) (summarizing CAFA removal requirements); *Miedema v. Maytag Corp.*, 450 F.3d 1322, 1327 (11th Cir. 2006) (same), *abrogated on other grounds by Dudley v. Eli Lilly & Co.*, 778 F.3d 909 (11th Cir. 2014). As shown below, this case meets all of these requirements.

¹ Text messages are expressly included in the definition of “telephonic sales call” under the FTSA. Fla. Stat. § 501.059(1)(j).

11. First, the State Court Action is a “class action” under 28 U.S.C. § 1332(d)(2), because Plaintiff seeks to represent a class of similarly situated individuals pursuant to Florida Rules of Civil Procedure 1.220(b)(2) and (b)(3). Compl. ¶¶ 1, 4, 18-27; *see also Senger Bros. Nursery, Inc. v. E.I. Dupont de Nemours & Co.*, 184 F.R.D. 674, 682 (M.D. Fla. 1999) (“Florida Rule of Civil Procedure 1.220 is patterned after Federal Rule of Civil Procedure 23.”).

12. Second, there is minimal diversity between Plaintiff and members of the proposed class, all of whom are allegedly Florida residents (Compl. ¶¶ 5, 18), on the one hand, and Defendant, which Plaintiff alleges is a “foreign corporation” with its principal place of business in Lyndhurst, New Jersey (*id.* ¶ 6), on the other. *See, e.g., McDaniel v. Fifth Third Bank*, 568 F.App’x. 729, 731 (11th Cir. 2014) (accepting Plaintiff’s allegations as true for purposes of the court’s jurisdictional analysis); *Cooper v. R.J. Reynolds Tobacco Co.*, 586 F. Supp. 2d 1312, 1315 (M.D. Fla. 2008) (minimal diversity existed because all plaintiffs were Florida citizens and defendant was a citizen of Virginia).

13. Third, the possible class number and amount in controversy exceed the requisite minimums under CAFA based on the face of Plaintiff’s Complaint alone. *See, e.g., Roe v. Michelin N. Am., Inc.*, 613 F.3d 1058, 1061-62 (11th Cir. 2010) (“[C]ourts may use their judicial experience and common sense in determining whether the case stated in a complaint meets federal jurisdictional requirements” and may make “reasonable deductions, reasonable inferences, or other reasonable extrapolations from the pleadings to determine whether it is facially apparent that a case is removable.”); *Williams v. Best Buy Co., Inc.*, 269 F.3d 1316, 1319 (11th Cir. 2001) (allowing district courts to consider whether it is “facially apparent” from a complaint that the amount in controversy is met); *Fox v. Ritz-Carlton Hotel Co., L.L.C.*, 977 F.3d 1039, 1045 (11th Cir. 2020) (“If the jurisdictional amount is either stated clearly on the face of the documents before the court,

or readily deducible from them, then the court has jurisdiction.”) (quoting *Cappuccitti v. DirecTV, Inc.*, 623 F.3d 1118, 1122 n.8 (11th Cir. 2010)).²

14. In particular, as noted above, Plaintiff alleges that (i) Defendant unlawfully contacted “thousands of consumers” in violation of the FTSA; (ii) “the [putative] Class members number in the several thousands, if not more”; and (iii) her claim (*i.e.*, that she allegedly received at least sixteen violative text messages that were “knowingly” made by or behalf of Defendant) are “typical” of the putative class members’ claims. Compl. ¶¶ 19, 20, 24. Conservatively assuming that “thousands” of class members as Plaintiff alleges means at least 2,000 persons, the potential number of class members easily exceeds the CAFA threshold of 100. *See* 28 U.S.C. § 1332(d)(5).

15. Further, based on the allegations in the Complaint and reasonable deductions and inferences to be drawn thereon, the alleged amount in controversy in this case easily exceeds \$5,000,000. *See Roe*, 613 F.3d at 1061-1062; *Williams*, 269 F.3d at 1319; *Fox*, 977 F.3d at 1045. For example, conservatively estimating that the putative class members received more than one violative text like Plaintiff allegedly did (*i.e.*, that Plaintiff’s claims are truly “typical” of the putative class), and that each putative class member would be entitled to up to \$1,500 in trebled statutory damages under the FTSA for each of these alleged “knowing” violations, it is plausible

² Defendant does not concede Plaintiff, or any putative class member is entitled to damages, nor is it required to do so for present purposes. *See, e.g., Anderson v. Witco Life Ins. Co.*, 943 F.3d 917, 925 (11th Cir. 2019) (“A defendant seeking to remove a case to federal court must file a notice of removal that includes ‘a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.’”) (citation omitted); *Mangano v. Garden Fresh Rest. Corp.*, 2015 WL 5953346, at *1 (M.D. Fla. Oct. 13, 2015) (“A Notice of Removal must plausibly allege the jurisdictional amount, not prove the amount.”); *Dudley v. Eli Lilly & Co.*, 778 F.3d 909, 913 (11th Cir. 2014) (“[A] removing defendant is not required to prove the amount in controversy beyond all doubt or to banish all uncertainty about it.’ [] Moreover, at the jurisdictional stage, ‘the pertinent question is what is in controversy in the case, not how much the plaintiffs are ultimately likely to recover.’”) (quoting *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 751, 754 (11th Cir. 2010)).

that the amount in controversy alleged in this Complaint exceeds the CAFA minimum threshold (*i.e.*, 2,000 putative class members, multiplied by two (2) texts each, multiplied by \$1,500 per text in trebled damages equals \$6 million). If each class member “typically” received the same number of texts as Plaintiff, the alleged amount in controversy significantly exceeds \$5 million (*i.e.*, 2,000 putative class members, multiplied by sixteen (16) texts each, multiplied by \$1,500 per text in trebled damages equals \$48 million). Courts in the Eleventh Circuit and elsewhere routinely calculate the amount in controversy for removal purposes in this fashion.³ *See, e.g., Doss v. Am. Fam. Home Ins. Co.*, 47 F. Supp. 3d 836, 840 (W.D. Ark. 2014) (“Using the named Plaintiffs as ‘typical’ class members and multiplying their claims by the number of persons estimated in a class is precisely how courts generally determine the estimated amount in controversy” under CAFA); *Torres v. Countrywide Home Loans, Inc.*, 2014 WL 3742141, at *2 (S.D. Fla. July 29, 2014) (calculating amount in controversy under CAFA in this manner, holding that “if every member of the proposed class has a claim worth the same amount as Plaintiff’s, the amount in controversy is easily satisfied”); *Bayberry Lakes Homeowners Ass’n, Inc. v. Boeneman*, 2018 WL 6680993, at *1–2 (M.D. Fla. Sept. 28, 2018) (concluding multiplying the amount of damages of one plaintiff across the putative class clearly shows the damages meet the CAFA jurisdictional threshold) (citing *Pretka*, 608 F.3d at 769)); *Bankhead v. Castle Parking Sols., LLC*, 2017 WL 10562976, at *3 (N.D. Ga. Dec. 1, 2017) (determining amount in controversy based on allegations in the complaint alone, using plaintiff’s estimates regarding damages and potential class size as a “base amount”); *Scott v. Ing*

³ Defendant acknowledges that, in *Pretka*, the Eleventh Circuit held that “[t]he typicality element of a class action, by itself, does not allow us to infer that the *amounts* of the named plaintiffs’ claims are similar to those of other class members.” 608 F.3d at 769 (emphasis in original). Here, the Court need not infer any amounts and need only look to the Complaint. Indeed, according to the Complaint, each putative class member would be entitled to \$500 or \$1,500 per unlawful text, would had to have received at least one such text to be in the class, possibly (and more than likely) received more than one text like Plaintiff supposedly did, and may have received as many as sixteen texts assuming Plaintiff’s claim is truly “typical” as alleged.

Clarion Partners, LLC, 2006 WL 3191184, at *4 (N.D. Ga. Oct. 31, 2006), *aff'd*, 262 F. App'x 983 (11th Cir. 2008) (calculating the amount in controversy for the class by multiplying amount of plaintiff's alleged damages by size of class).⁴ Thus, all the CAFA requirements are met here.

CONCLUSION

16. Defendant, having satisfied all requirements for removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, respectfully submits this Notice of Removal, requests that the State Court Action be removed to this Court, and requests that the Court assume full jurisdiction over the case herein as provided by law.

WHEREFORE, Defendant hereby respectfully removes this civil action to this Court.

Dated: December 9, 2021

Respectfully Submitted,

/s/ Yaniv Adar

Josh Migdal, Esq. (FBN 19136)
Yaniv Adar, Esq. (FDN 63804)
MARK MIGDAL & HAYDEN
80 S.W. 8th Street, Suite 1999
Miami, Florida 33130
Telephone: (305) 374-0440
josh@markmigdal.com
yaniv@markmigdal.com
eservice@markmigdal.com

*Attorneys for Defendant Sparc Group LLC
d/b/a Aeropostale*

⁴ See also *Napoli v. HSBC Mortg. Servs. Inc.*, 2012 WL 3715936, at *2 (D.N.J. Aug. 27, 2012) (“Because Plaintiffs’ claims are alleged to be typical of the class, it is reasonable for this Court to simply multiply their purported damages amount by the number of foreclosures alleged in the Complaint.”) (collecting cases); *Alper v. Select Portfolio Servicing, Inc.*, 2019 WL 3281129, at *3 (D. Mass. July 19, 2019) (“Because named plaintiffs purport to represent a class, their alleged damages provide an appropriate basis on which to calculate the damages of a typical class member.”); *In re Blackbaud, Inc.*, 2021 WL 1940581, at *5 (D.S.C. May 14, 2021) (ruling similarly).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day, December 9, 2021, I electronically filed the foregoing with the Court using the CM/ECF system.

By: /s/ Yaniv Adar
Yaniv Adar, Esq.

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

JENNIFER ZUNIGA, individually and on behalf

DEFENDANTS

SPARC GROUP LLC d/b/a AEROPOSTALE,

(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)

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

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

Attorneys (If Known)

Hiraldo P.A., 401 E. Las Olas Blvd., Suite 1400, Ft. Lauderdale, FL 33301 Mark Migdal and Hayden, 80 SW 8 Street, Suite 1999, Miami, FL 33136

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

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

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

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

Grid of categories: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes items like 110 Insurance, 210 Land Condemnation, 310 Airplane, 440 Other Civil Rights, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (See VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation Transfer
7 Appeal to District Judge or 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 NO b) Related Cases YES 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):

CAFA, 28 U.S.C. § 1332

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 DEMAND \$ 5,000,000 CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

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

DATE 12/09/2021 SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature

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 SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

CASE NO.

JENNIFER ZUNIGA,
individually and on behalf of all,
others similarly situated,

Plaintiff,

v.

SPARC GROUP, LLC d/b/a AEROPOSTALE,

Defendant.

CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Jennifer Zuniga brings this class action against Defendant SPARC Group, LLC d/b/a Aeropostale, 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 engages in telephonic sales calls to consumers without having secured prior express written consent as required by the FTSA.
3. 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.

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

4. 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

5. Plaintiff is, and at all times relevant hereto was, a citizen and resident of Broward County, Florida.

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 he was the regular user of cellular telephone number that received Defendant’s telephonic sales calls.

7. Defendant is, and at all times relevant hereto was, a foreign corporation and a “telephone solicitor” as defined by Fla. Stat. § 501.059(f). Defendant maintains its primary place of business and headquarters in Lyndhurst, New Jersey.

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 Florida.

10. Venue for this action is proper in this Court pursuant to Fla. Stat. § 47.051 because the cause of action accrued in this County.

FACTS

11. Starting on or about September 13, 2021, Defendant sent the following telephonic sales calls to Plaintiff's cellular telephone number:

49823

Text Message
Mon, Sep 13, 1:05 PM

Aero: Hi from our new number! Look out for exclusive promos and new launches.

**If you need help with anything or have questions, email us at customerservice@aeropostale.com
Msg frequency varies. Reply STOP to stop.**

Wed, Sep 15, 1:11 PM

Aero: Buy 1 jean, get 1 FREE! Time to upgrade your denim drawer: <https://aeropostale.attn.tv/l/a99/QEYq5>

Sat, Sep 18, 1:29 PM



Aero.vcf

Aero: Let's keep in touch! Save our

49823

Sat, Sep 18, 1:29 PM



Aero.vcf

Aero: Let's keep in touch! Save our contact card for all the status updates.

Thu, Sep 23, 1:12 PM

Aero: New season, new savings! Treat yourself to new arrivals. You deserve it. Shop now: <https://aeropostale.attn.tv//whN/QEYq5>

Mon, Sep 27, 1:30 PM



49823

Aero: Hey there, Aero fam. Prep for the year ahead with our incoming class of varsity-inspired styles. Shop now & save big. XOXO Aero: <https://aeropostale.attn.tv//xq7/QEYq5>

Fri, Oct 1, 1:22 PM

Aero: Fall Sale STARTS NOW! Take 50-70% OFF + shop new clearance styles \$9.99 & under! <https://aeropostale.attn.tv//CLK/QEYq5>

Mon, Oct 4, 1:12 PM

Aero: ICYMI: our graphics are going fast. Buy 1 tee, get 2 FREE! <https://aeropostale.attn.tv//s68/QEYq5>

Thu, Oct 7, 1:18 PM

Aero: Loungewear made for living. Shop ultra-soft and easy styles that take you from on-the-couch to on-the-go in under 60 seconds <https://aeropostale.attn.tv//epq/QEYq5>

Tue, Oct 12, 1:16 PM

49823

Tue, Oct 12, 1:16 PM

Aero: STARTS NOW: select jeans \$19.99 + 60% off sitewide! Srsly, this is a big deal. Shop now <https://aeropostale.attn.tv//Elj/QEYq5>

Fri, Oct 15, 1:17 PM

Aero: ICYMI: our graphics are going fast. Buy 1 tee, get 2 FREE! <https://aeropostale.attn.tv//jcT/QEYq5>

Mon, Oct 18, 1:30 PM

Aero: Happy International Leggings Day! We dropped new styles to celebrate. Shop now: <https://aeropostale.attn.tv//hCH/QEYq5>

Thu, Oct 21, 1:23 PM

Aero: New cozy now in & 50-70% OFF! Our (early) gift to you. Shop now: <https://aeropostale.attn.tv//q3r/QEYq5>

Sun, Oct 24, 1:21 PM

49823

Sun, Oct 24, 1:21 PM

Aero: Our most giftable jeans: buy 1, gift 1 free + free shipping! Shop now: <https://aeropostale.attn.tv/l/eE2/QEYq5>

Thu, Oct 28, 1:11 PM

Aero: New jackets just dropped. Warm up to chilly weather with 50-70% off! Shop now: <https://aeropostale.attn.tv/l/OZC/QEYq5>

Sun, Oct 31, 1:19 PM

Aero: Happy Halloween! Treat yourself to these bone-a-fide chilly-weather staples. Shop now: <https://aeropostale.attn.tv/l/3V7/QEYq5>

Wednesday 1:24 PM

Aero: Holiday Mode: Activated. Enjoy 50-70% Off Sitewide! Including Gifts That Never Miss. Shop Now: <https://aeropostale.attn.tv/l/1lf/QEYq5>

12. The purpose of Defendant's telephonic sales calls was to solicit the sale of Defendant's goods and/or services.

13. Given the volume of Defendant's solicitations, use of generic text messages to solicit consumers, and use of a short-code (49823), Plaintiff is informed and believes that

Defendant caused similar telephonic sales calls to be sent to at least 50 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)(i).

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 9, 2021

Respectfully Submitted,

HIRALDO P.A.

/s/ Manuel S. Hiraldo

Manuel S. Hiraldo, Esq.

Florida Bar No. 030380

401 E. Las Olas Boulevard

Suite 1400

Ft. Lauderdale, Florida 33301

Email: mhiraldo@hiral dolaw.com

Telephone: 954.400.4713

Counsel for Plaintiff

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 SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

Jennifer Zuniga
Plaintiff

Case # _____
Judge _____

vs.

SPARC Group LLC dba Aeropostale
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.

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

JENNIFER ZUNIGA,
individually and on behalf of all,
others similarly situated,

CASE NO.: CACE-21-020242

Plaintiff,

CLASS ACTION

v.

SPARC GROUP, LLC d/b/a AEROPOSTALE,

Defendant.

_____ /

**DEFENDANT’S NOTICE OF LIMITED APPEARANCE AND MOTION FOR
EXTENSION OF TIME TO FILE RESPONSE TO PLAINTIFF’S COMPLAINT¹**

Defendant SPARC GROUP, LLC d/b/a AEROPOSTALE (“Defendant”), by and through their undersigned counsel, hereby move this Court for a thirty (30) day extension of the deadline to file a response to Plaintiff, JENNIFER ZUNIGA (“Plaintiff”)’s Class Action Complaint (“Complaint”), and states as follows:

1. On November 11, 2021, a Return of Service (the “Return of Service”) was filed noting that Defendant was served on November 10, 2021. Defendant’s response is currently due on November 30, 2021.

2. Defendant only recently retained counsel. Accordingly, the undersigned respectfully requests a thirty (30) day extension of time to assess Plaintiff’s claim and prepare Defendant’s response to the Complaint, as well as to explore the potential for extra-judicial

¹ Nothing in this Motion should be construed as a waiver of any rights including, but not limited to, the right to compel arbitration, remove this action to federal court, and to assert the defenses of lack of subject-matter jurisdiction, lack of personal jurisdiction, improper venue, insufficient process, insufficient service of process, lack of standing, failure to state a claim upon which relief can be granted, and any other defenses to the purported claims alleged in Plaintiff’s Complaint.

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

CASE NO. CACE21020242 DIVISION 25 JUDGE Carol-lisa Phillips

Jennifer Zuniga

Plaintiff(s) / Petitioner(s)

v.

SPARC Group, LLC

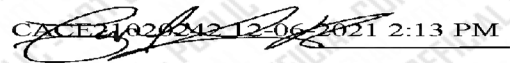
Defendant(s) / Respondent(s)

**ORDER ON SPARC GROUP, LLC D/B/A AEROPOSTALE'S REQUEST FOR
EXTENSION OF TIME TO RESPOND TO COMPLAINT**

THIS CAUSE came before the Court on SPARC Group, LLC d/b/a Aeropostale's Request for Extension of Time to Respond to Complaint and the Court having reviewed the file and the pleadings, and being fully advised in the premises, it is hereby ORDERED and ADJUDGED that:

1. The Motion is **GRANTED**.
2. Defendant, SPARC Group, LLC d/b/a Aeropostale is to respond to Plaintiff's Complaint by December 30, 2021.

DONE and **ORDERED** in Chambers, at Broward County, Florida on 12-06-2021.

CACE21020242 12-06-2021 2:13 PM


CACE21020242 12-06-2021 2:13 PM

Hon. Carol-lisa Phillips

CIRCUIT JUDGE

Electronically Signed by Carol-lisa Phillips

Copies Furnished To:

Jibrael S. Hindi , E-mail : bryon@jibraellaw.com

Jibrael S. Hindi , E-mail : jibrael@jibraellaw.com

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN
AND FOR BROWARD COUNTY, FLORIDA

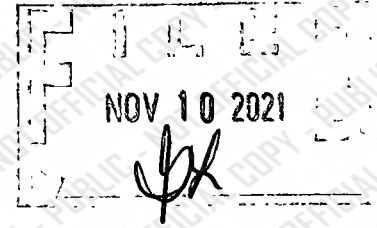
Jennifer Zuniga
Plaintiff

Case No: LAE-21-020242

Judge Division: 25

VS

SPARC Group, LLC
Defendant



CLERK'S CERTIFICATE OF COMPLIANCE

I hereby certify that pursuant to Administrative Order, No. 2020-73Civ/2020-74-UFC:
"ADMINISTRATIVE ORDER DIRECTING CLERK OF COURTS WITH REGARD TO
DISMISSED CIVIL OR FAMILY CASES",

The Clerk has conducted a search for all previous existing civil cases related to
these two parties.

Listed below are all the aforementioned related cases: NONE

Brenda D. Forman
Circuit and County Courts

By: [Signature]

Deputy Clerk

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

CASE NO.

JENNIFER ZUNIGA,
individually and on behalf of all,
others similarly situated,

Plaintiff,

v.

SPARC GROUP, LLC d/b/a AEROPOSTALE,

Defendant.

CLASS ACTION

JURY TRIAL DEMANDED

SUMMONS

THE STATE OF FLORIDA:
To Each Sheriff of the State:

YOU ARE COMMANDED to serve this Summons and a copy of the complaint or petition in this action on defendant:

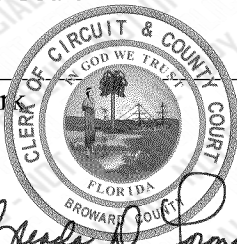
SPARC GROUP, LLC d/b/a AEROPOSTALE
Registered Agent: THE CORPORATION TRUST COMPANY
CORPORATION TRUST CENTER 1209 ORANGE ST
WILMINGTON, DE 19801

Each defendant is required to serve written defenses to the complaint or petition on **MANUEL S. HIRALDO, HIRALDO P.A., Plaintiff's attorney, whose address is 401 E. Las Olas Blvd., Ste. 1400, Fort Lauderdale, FL 33301, Tel: (954) 400-4713**, within twenty (20) days after service of this summons on that defendant, exclusive of the day 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 on NOV 10 2021

As Clerk of the Court

BY: _____
As Deputy Clerk


Brenda D. Forman
BRENDA D. FORMAN

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Filed Over Alleged Aeropostale Telemarketing Text Messages](#)
