

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

JASON BRAVO, individually and on behalf of all
others similarly situated,

Plaintiff,

vs.

STRAX WELLNESS CENTER, LLC d/b/a/ STRAX
REJUVENATION, a Florida limited liability
company

Defendant

CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

1. Plaintiff, JASON BRAVO brings this action against Defendant, STRAX WELLNESS CENTER, LLC d/b/a/ STRAX REJUVENATION to secure redress for violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.

2. Specifically, Plaintiff brings a claim pursuant to 47 U.S.C. § 227(b), for unsolicited text messages made by Defendant, or at Defendant’s direction, to the cellular telephones of Plaintiff and others using an autodialer.

JURISDICTION AND VENUE

3. This is an action for damages in excess of \$15,000, exclusive of interest, costs and attorneys’ fees, arising from Defendant’s violations of the TCPA.

4. This Court has personal jurisdiction over Defendant and venue is proper because (1) Defendant does business in this District, and (2) a substantial part of the events giving rise to Plaintiff’s claims occurred here, including the unwanted text messages that Defendant sent or caused to be sent to Plaintiff’s cellular telephone using an automatic telephone dialing system.

PARTIES

5. Plaintiff JASON BRAVO is a natural person and resident of Miami Dade County, Florida.

6. Defendant STRAX WELLNESS CENTER, LLC d/b/a/ STRAX REJUVENATION is a Florida corporation with its principle place of business at 4300 N University Drive, Suite E200, Fort Lauderdale, FL 33351. Defendant's registered agent for service of process in Florida is Mark C. Perry Esq., System, 2400 East Commercial Blvd., Suite 511, Fort Lauderdale, FL 33308.

THE TELEPHONE CONSUMER PROTECTION ACT OF 1991

7. The TCPA was passed into law in 1991. The TCPA regulates and restricts the use of automatic telephone equipment.

8. The TCPA protects consumers from unwanted calls and text messages that are made with autodialers and with prerecorded messages.

9. Specifically, 47 U.S.C. § 227(b) provides:

(1) **Prohibitions** It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system ... (iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

10. The Federal Communications Commission ("FCC") is empowered to issue rules and regulations implementing the TCPA.

11. The FCC has issued rulings and clarified that in order to obtain an individual's consent, a clear, unambiguous, and conspicuous written disclosure must be provided to the individual. *See* 2012 FCC Order, 27 FCC Rcd. at 1839 ("[R]equiring prior written consent will better protect consumer privacy because such consent requires conspicuous action by the consumer — providing permission in writing — to authorize autodialed or prerecorded telemarketing calls....").

12. Further, the FCC has issued rulings and clarified that consumers are entitled to the same consent-based protections for text messages as they are for calls to wireless numbers. *See Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 952 (9th Cir. 2009) (The FCC has determined that a text message falls within the meaning of “to make any call” in 47 U.S.C. § 227(b)(1)(A)); *Toney v. Quality Res., Inc.*, 75 F. Supp. 3d 727, 734 (N.D. Ill. 2014) (Defendant bears the burden of showing that it obtained Plaintiff’s prior express consent before sending her the text message).

13. According to findings by the Federal Communication Commission (“FCC”), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

14. The FCC has “repeatedly acknowledged the existence of vicarious liability under the TCPA.” *See Gomez v. Campbell-Ewald Co.*, 768 F.3d 871, 878 (9th Cir. 2014) (citing *In re Joint Petition Filed by Dish Network, LCC*, 28 FCC. Rcd. 6574, 6574 (2013)). Principles of apparent authority and ratification may also provide a basis for vicarious seller liability for violations of section 227(b). *See Thomas v. Taco Bell Corp.*, 582 F. App’x 678 (9th Cir. 2014) (citing 28 F.C.C. Rcd. at 6590 n. 124). A ratification occurs when the benefits of the purportedly unauthorized acts are accepted with full knowledge of the facts under circumstances demonstrating the intent to adopt the unauthorized arrangement. *Stalley v. Transitional Hosps. Corp. of Tampa, Inc.*, 44 So. 3d 627, 631 (Fla. 2d DCA 2010).

FACTS

15. Defendant is a Florida cosmetic surgery center.

16. At all times relevant, Plaintiff was a citizen of the State of Florida. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (39).

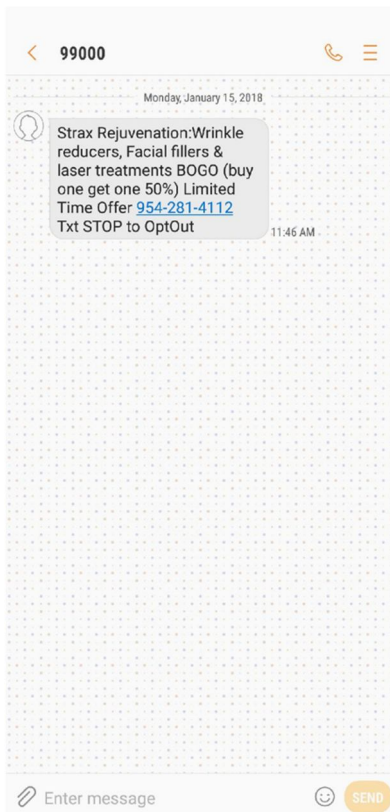
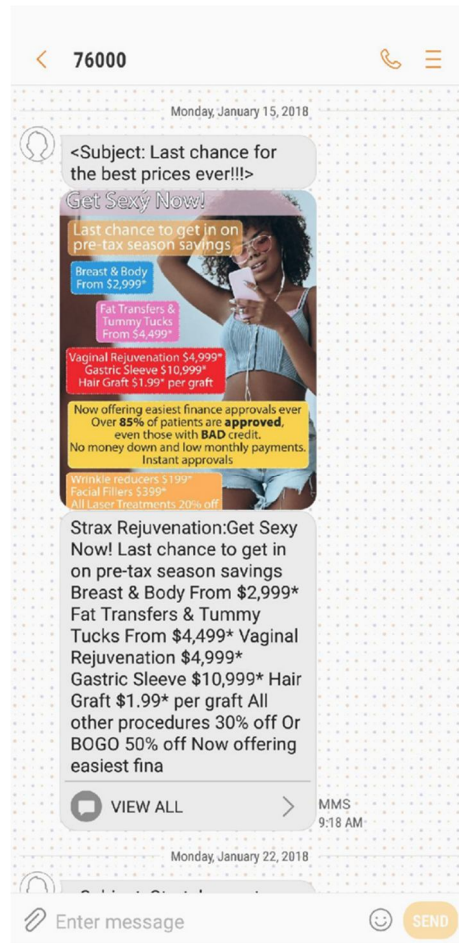
17. On information and belief, Defendant, in order to drive people to visit its location and drum up business, surreptitiously obtained the cellular telephone number of Plaintiff and others, then proceeded to send or cause others to send unsolicited telemarketing text messages to those individuals, using automatic telephone dialing equipment.

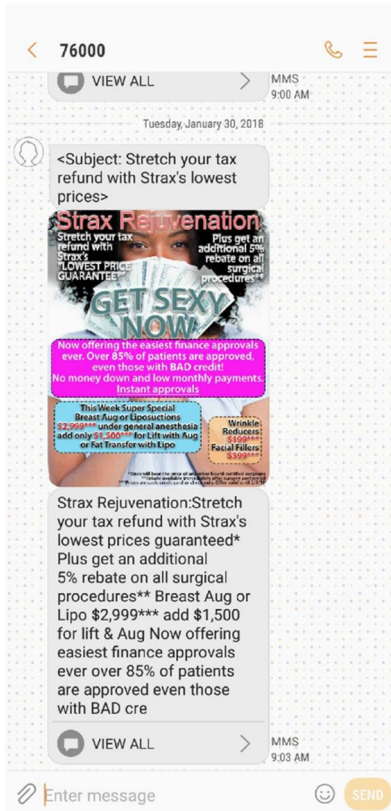
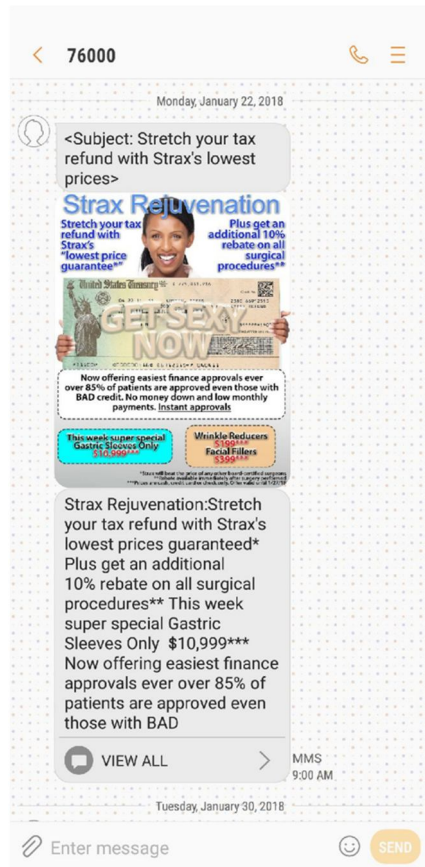
18. The purpose of the unsolicited telemarketing text messages was to convince consumers like Plaintiff to come to Defendant’s office to purchase cosmetic surgery procedures from them.

19. Those people whose cellular telephones were text messaged by Defendant or at Defendant’s direction never actually consented to receive such marketing text messages.

20. On information and belief, Defendant and/or its agent lacks a sufficiently adequate system for limiting autodialed text messages to cellular phones for which it does not have prior express permission to call. These are unsolicited text messages sent for the purpose of marketing to potential customers.

21. On January 15, 2018 at approximately 9:18 am, January 15, 2018 at approximately 11:46 am, January 22, 2018 at approximately 9:00 am, and January 30, 2018 at approximately 9:03 am, Defendant, or Defendant’s agent, text messaged Plaintiff using an autodialer for purposes of selling goods or services:





22. Plaintiff has never given Defendant permission to contact his cellular telephone, whether through the use of an autodialer or otherwise.

23. Plaintiff was damaged by Defendant's text message. His privacy was wrongfully invaded, and Plaintiff has become understandably aggravated with having to deal with the frustration of unwanted text messages forcing him to divert attention away from his work and other activities.

24. Defendant's violations of the TCPA were knowing and willful.

25. Defendant's unsolicited text message caused Plaintiff actual harm, including invasion of his privacy, aggravation, annoyance, intrusion on seclusion, trespass, and conversion.

26. Further, the generic nature of Defendant's text messages, combined with the large number of messages sent by Defendant, demonstrates that Defendant utilizes an automatic telephone dialing system ("ATDS") in transmitting the messages.

27. Specifically, upon information and belief, Defendant utilizes a combination of hardware and software systems to send the text messages at issue in this case. The systems utilized by Defendant have the capacity to store, produce, and dial random or sequential numbers, and/or receive and store lists of telephone numbers, and to dial such numbers, *en masse*, in an automated fashion without human intervention.

CLASS ALLEGATIONS

28. Plaintiff brings this case on behalf of a Class defined as follows:

All persons in the United States who, within four years prior to the filing of this action, Defendant or some person on Defendant's behalf sent a text message to their cell phone using a device with the capacity to dial numbers without human intervention, where the recipient did not give the cell phone number to Defendant for purposes of receiving automated marketing calls.

29. Upon information and belief, Defendant or its affiliates called more than 30 non-customers in the four years preceding the filing of this action using an automatic dialer, where Defendant obtained the phone numbers from sources other than directly from the call recipients.

30. Common questions of law or fact exist as to all members of the putative Class and predominate over any question solely affecting any individual member, including Plaintiff. Such questions common to the Class include but are not limited to:

- a. Whether Defendant used an “automatic telephone dialing system” as such term is defined or understood under the TCPA and applicable FCC regulations and orders;
- b. Whether Defendant had prior express permission to contact Plaintiff and the other members of the putative Class when it sent text messages, or caused text messages to be sent, to their cell phones using an automatic telephone dialing system; and
- c. Damages, including whether Defendant’s violations were performed willfully or knowingly such that Plaintiff and the members of the putative Class are entitled to trebled damages.

31. Plaintiff’s claims are typical of the claims of the other members of the putative Class. The factual and legal bases of Defendant’s liability to Plaintiff and the other members of the putative Class are the same: Defendant violated the TCPA by causing the cellular telephone number of each member of the putative Class, including Plaintiff, to be text messaged using an automatic telephone dialing system without prior express permission.

32. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has no interests that might conflict with the interests of the Class. Plaintiff is interested in pursuing his claim vigorously, and has retained counsel competent and experienced in class and complex litigation, including with regards to the claim alleged herein.

33. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions

would entail. There are, on information and belief, thousands of members of the putative Class, such that joinder of all members is impracticable.

34. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy.

35. Defendant has acted and failed to act on grounds generally applicable to Plaintiff and the other members of the Class, thereby making relief appropriate with respect to the Class as a whole. Prosecution of separate actions by individual members of the putative Class, should they even realize that their rights have been violated, would likely create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct.

36. The identity of the Class is, on information and belief, readily identifiable from the records of Defendant and/or any affiliated marketers.

COUNT I

KNOWING AND/OR WILLFUL VIOLATIONS OF THE TCPA, 47 U.S.C. § 227(b)

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

38. Defendant violated the TCPA by sending unsolicited text messages to Plaintiff and the Class members on their cellular phones without first obtaining their prior express consent and using equipment which constitutes an automatic telephone dialing system for the express purpose of marketing Defendant's goods and/or services.

39. Defendant's text messages caused Plaintiff and the Class members actual harm including, but not limited to, invasion of their personal privacy, aggravation, nuisance and disruption in their daily lives, reduction in cellular telephone battery life, messaging charges, and loss of use of their cellular telephones.

40. As a result of the aforementioned violations of the TCPA, Plaintiff and the Class are entitled to an award of \$500.00 in statutory damages for each call in negligent violation of the TCPA,

or up to \$1,500 in statutory damages for each call in willful violation of the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B).

41. Additionally, Plaintiff and the Class are entitled to and seek injunctive relief prohibiting such future conduct

WHEREFORE, Plaintiff and members of the Class demand a jury trial on all claims so triable, and judgment against Defendant for the following:

- a. Injunctive relief prohibiting violations of the TCPA by Defendant in the future;
- b. Statutory damages of \$500.00 for each and every text message made in negligent violation of the TCPA or \$1,500 for each and every call made in willful violation of the TCPA, pursuant to 47 U.S.C. § (b)(3)(B); and
- c. Such other relief as this Court deems just and proper.

COUNT II

VIOLATIONS OF THE TCPA, 47 U.S.C. § 227(c)

42. Plaintiff re-alleges and incorporates paragraphs 1-37 as if fully set forth herein.

43. Plaintiff and members of the Class received more than one telephone call within a 12-month period, by or on behalf of Defendant, for the express purpose of marketing Defendant's goods and/or services without their written prior express consent.

44. Defendant's text messages caused Plaintiff and members of the Class actual harm including, but not limited to, invasion of their personal privacy, aggravation, nuisance and disruption in their daily lives, reduction in cellular telephone battery life, messaging charges, and loss of use of their cellular telephones.

45. As a result of the aforementioned violations of the TCPA, Plaintiff and the Class are entitled to an award of up to \$1,500.00 for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(c)(5).

46. Additionally, Plaintiff and members of the Class are entitled to and seek injunctive relief prohibiting such future conduct.

WHEREFORE, Plaintiff and members of the Class demand a jury trial on all claims so triable, and judgment against Defendant for the following:

- a. Injunctive relief prohibiting violations of the TCPA by Defendant in the future;
- b. Statutory damages of \$500.00 for each and every text message made in negligent violation of the TCPA or \$1,500 for each and every call made in willful violation of the TCPA, pursuant to 47 U.S.C. § (b)(3)(B); and
- c. Such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiff and Class Members hereby demand trial by jury.

Dated: February 2, 2018

Respectfully submitted,

SHAMIS & GENTILE, P.A.

14 NE 1st Ave., Suite 400

Miami, FL 33132

Telephone (305) 479-2299

Facsimile (786) 623-0915

Email: efilings@shamisgentile.com

By: /S/Andrew J. Shamis
ANDREW J. SHAMIS, ESQ
Florida Bar # 101754

*Attorneys for Plaintiff JASON BRAVO and all others
similarly situated*

JS 44 (Rev. 06/17) FLSD Revised 06/01/2017

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.)

I. (a) PLAINTIFFS JASON BRAVO, individually and on behalf of all others similarly situated DEFENDANTS STRAX WELLNESS CENTER, LLC d/b/a/ STRAX REJUVENATION,

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

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Shamis & Gentile, P.A. 14 NE 1st Ave, Ste. 400 Miami, FL 33132 (305-479-2299)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

(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)

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

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

- Citizen of This State PTF DEF 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State PTF DEF 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

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

Click here for: Nature of Suit Code Descriptions

- 110 Insurance
120 Marine
130 Miller Act
140 Negotiable Instrument
150 Recovery of Overpayment & Enforcement of Judgment
151 Medicare Act
152 Recovery of Defaulted Student Loans (Excl. Veterans)
153 Recovery of Overpayment of Veteran's Benefits
160 Stockholders' Suits
190 Other Contract
195 Contract Product Liability
196 Franchise
PERSONAL INJURY
310 Airplane
315 Airplane Product Liability
320 Assault, Libel & Slander
330 Federal Employers' Liability
340 Marine
345 Marine Product Liability
350 Motor Vehicle
355 Motor Vehicle Product Liability
360 Other Personal Injury
362 Personal Injury - Med. Malpractice
PERSONAL INJURY
365 Personal Injury - Product Liability
367 Health Care/Pharmaceutical Personal Injury Product Liability
368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
370 Other Fraud
371 Truth in Lending
380 Other Personal Property Damage
385 Property Damage Product Liability
625 Drug Related Seizure of Property 21 USC 881
690 Other
422 Appeal 28 USC 158
423 Withdrawal 28 USC 157
375 False Claims Act
376 Qui Tam (31 USC 3729 (a))
400 State Reapportionment
410 Antitrust
430 Banks and Banking
450 Commerce
460 Deportation
470 Racketeer Influenced and Corrupt Organizations
480 Consumer Credit
490 Cable/Sat TV
850 Securities/Commodities/Exchange
890 Other Statutory Actions
891 Agricultural Acts
893 Environmental Matters
895 Freedom of Information Act
896 Arbitration
899 Administrative Procedure Act/Review or Appeal of Agency Decision
950 Constitutionality of State Statutes
210 Land Condemnation
220 Foreclosure
230 Rent Lease & Ejectment
240 Torts to Land
245 Tort Product Liability
290 All Other Real Property
440 Other Civil Rights
441 Voting
442 Employment
443 Housing/Accommodations
445 Amer. w/Disabilities - Employment
446 Amer. w/Disabilities - Other
448 Education
Habeas Corpus:
463 Alien Detainee
510 Motions to Vacate Sentence
Other:
530 General
535 Death Penalty
540 Mandamus & Other
550 Civil Rights
555 Prison Condition
560 Civil Detainee - Conditions of Confinement
710 Fair Labor Standards Act
720 Labor/Mgmt. Relations
740 Railway Labor Act
751 Family and Medical Leave Act
790 Other Labor Litigation
791 Empl. Ret. Inc. Security Act
861 HIA (1395ff)
862 Black Lung (923)
863 DIWC/DIWW (405(g))
864 SSID Title XVI
865 RSI (405(g))
870 Taxes (U.S. Plaintiff or Defendant)
871 IRS-Third Party 26 USC 7609
462 Naturalization Application
465 Other Immigration Actions

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 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 JUDGE:

b) Related Cases [] YES [X] NO DOCKET NUMBER:

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): Telephone Consumer Protection Act, 47 U.S.C. § 227

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 \$ CHECK YES only if demanded in complaint:

JURY DEMAND: [X] Yes [] No

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

DATE February 2, 2018

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY RECEIPT #

AMOUNT

IFP

JUDGE

MAG JUDGE

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

JASON BRAVO, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

STRAX WELLNESS CENTER, LLC d/b/a/ STRAX
REJUVENATION, a Florida limited liability company
Defendant.

Case No.

CLASS ACTION

SUMMONS

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* STRAX WELLNESS CENTER, LLC d/b/a/ STRAX REJUVENATION
Registered Agent:
Mark C. Perry, Esq.
2400 East Commercial Boulevard, Suite 511
Fort Lauderdale, FL 33308

A lawsuit has been filed against you.

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

Shamis & Gentile, P.A.
Andrew J. Shamis, Esq.
14 NE 1st Ave, STE 400
Miami, FL 33132
305-479-2299

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

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Strax Rejuvenation Facing Another TCPA Class Action](#)
