

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

JUAN GRIEBEN, individually
and on behalf of all others
similarly situated,

Plaintiff,

v.

FASHION NOVA, INC.,

Defendant.

Civil Action No. _____
(Removed from Circuit Court of the
11th Judicial Circuit (Miami-Dade Cty.),
No. 2021-021071-CA-01)

NOTICE OF REMOVAL

Defendant Fashion Nova, Inc. (“Fashion Nova”), by and through its undersigned counsel, pursuant to 28 U.S.C. §§ 1332(d), 1441(a), 1446, and 1453, hereby files this Notice 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, and states as follows:

I. THE PARTIES

1. The above-captioned matter was filed as a putative class action against Fashion Nova in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. 2021-021071-CA-01 on September 11, 2021 (the “State Court Action”).

2. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. §§ 1332, 1441 and 1453. Under 28 U.S.C. § 1441(a), this entire case may be removed to this Court.

3. Plaintiff Juan Grieben pleads in the Complaint that he is a citizen and resident of Miami-Dade County, Florida.

4. Defendant Fashion Nova is a California corporation with its principal place of

business and headquarters in Vernon, California.

II. PLAINTIFF'S CLASS ACTION COMPLAINT

5. True and correct copies of Plaintiff's Summons and Complaint in the State Court Action were served on Fashion Nova on September 17, 2021, and are collectively attached hereto as Exhibit "A."

6. True and correct copies of all other process, pleadings, and orders in the State Court Action are collectively attached hereto as Exhibit "B."

7. Plaintiff's Complaint is styled as a "Class Action Complaint" and alleges that Plaintiff brings this "lawsuit as a class action on behalf of himself 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)." Compl. ¶ 19. The purported class is defined by Plaintiff as "[a]ll 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." (the "Class"). *Id.* The Complaint alleges that the Class meets all class certification requirements including numerosity, common questions of law and fact, typicality, Plaintiff's adequacy as a representative to "fairly and adequately protect the interests of the Class," and superiority. *Id.* ¶¶ 21-27.

8. The Complaint alleges one claim: violation of Florida's Telephone Solicitation Act ("FTSA"), F.S.A. § 501.059. Compl. ¶¶ 29-36.

9. Plaintiff asserts that, in September 2021, Fashion Nova sent several text messages to his cellular telephone number. *Id.* ¶ 11. Plaintiff claims that he was in Florida when he received the complained-of text messages and that he is "the regular user of the telephone number that received" the texts. *Id.* ¶¶ 12, 15. Plaintiff alleges that he never provided Fashion Nova with express written consent to receive the complained-of text messages, and that Fashion Nova sent

the messages using “a computer software system that automatically selected and dialed Plaintiff’s and the Class members’ telephone numbers.” *Id.* ¶¶ 16-17.

10. Plaintiff alleges, on behalf of himself and the purported class, that Fashion Nova violated the FTSA because it “made and/or knowingly allowed telephonic sales calls to be made” both “to Plaintiff and the Class members without Plaintiff’s and the Class members’ prior express written consent” and “utilizing an automated system for the selection or dialing of telephone numbers.” *Id.* ¶¶ 30, 34-35.

11. Plaintiff seeks statutory damages and an injunction requiring Fashion Nova to “cease all telephonic sales calls made without express written consent, and to otherwise protect the interests of the Class.” *Id.* at Prayer for Relief.

12. The Complaint purports to seek “[a]n 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.” *Id.*

III. REMOVAL IS PROPER UNDER THE CLASS ACTION FAIRNESS ACT

13. The Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332, provides this Court with original jurisdiction of this case and permits Fashion Nova to remove the State Court Action from Florida state court to this Court. CAFA provides federal district courts with original jurisdiction over class actions where (1) the number of proposed class members is 100 or greater, (2) any member of the putative class of plaintiffs is a citizen of a state different from that of any defendant, and (3) the aggregate amount in controversy for all putative class members exceeds \$5,000,000 (exclusive of interest and costs). 28 U.S.C. § 1332(d).

A. This Case is a Class Action Within the Meaning of CAFA

14. CAFA defines “class action” as “any civil action filed under rule 23 of the Federal

Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action” 28 U.S.C. § 1332(d)(1)(B).

15. Plaintiff styled his Complaint as a “Class Action Complaint,” naming himself as the representative of a purported class of consumers. Thus, this action is a “class action” within the meaning of 28 U.S.C. § 1332(d)(1)(B) and 28 U.S.C. § 1453(a).

B. Minimal Diversity Exists Amongst the Parties

16. CAFA applies where “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). CAFA “gives federal courts original jurisdiction over class actions where the amount in controversy exceeds \$5,000,000 and there is minimal diversity between the parties (meaning at least one plaintiff and one defendant are from different states).” *Smith v. Marcus & Millichap, Inc.*, 991 F.3d 1145, 1148 (11th Cir. 2021).

17. Here, minimal diversity exists within the meaning of 28 U.S.C. § 1332(d)(2)(A) because Fashion Nova is not a citizen of the same state as Plaintiff.

18. Plaintiff asserts that he is a citizen and resident of Miami-Dade County, Florida. Compl. ¶ 5.

19. Fashion Nova, in turn, is a California corporation with its primary place of business and headquarters in Vernon, California. *Id.* ¶ 7. A corporation is a citizen of any state where it is incorporated and the state where it has its principal place of business. 28 U.S.C. § 1332(c)(1); *Weinberger v. Aetna Health, Inc.*, No. 06-20249-CIV, 2008 WL 11333422, at *10 & n.5 (S.D. Fla. Apr. 15, 2008).

C. CAFA’s Amount in Controversy Requirement is Satisfied

20. Subject matter jurisdiction under CAFA for class action diversity applies where

“the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” *See* 28 U.S.C. § 1332(d)(2). Pursuant to 28 U.S.C. § 1332(d)(6), “[i]n any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.”

21. This “amount in controversy” requirement is based on the amount that the plaintiff has placed in controversy, not the amount that the plaintiff is likely to recover. *Anderson v. Wilco Life Ins. Co.*, 943 F.3d 917, 927 (11th Cir. 2019) (in CAFA amount in controversy analysis, “the pertinent issue is not how much the plaintiffs are likely to ultimately recover, ‘it is an estimate of the amount that will be put at issue in the course of the litigation.’”).

22. To satisfy this requirement, “a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold; the notice need not contain evidentiary submissions.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 81 (2014); *Anderson*, 943 F.3d at 925. However, although not required, “Defendants may introduce their own affidavits, declarations, or other documentation” to demonstrate that CAFA’s jurisdictional amount in controversy has been met. *Gillinov v. Hillstone Rest. Grp.*, 92 F. Supp. 3d 1251, 1254 (S.D. Fla. 2015) (internal quotation marks omitted) (citation omitted); *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 755 (11th Cir. 2010). In assessing whether the \$5 million CAFA amount in controversy threshold has been met, courts “may rely on evidence put forward by the removing defendants, as well as reasonable inferences and deductions drawn from that evidence. *Anderson*, 943 F.3d at 925 (citing *S. Fla. Wellness, Inc. v. Allstate Ins. Co.*, 745 F.3d 1312, 1315 (11th Cir. 2014)).

23. Although Fashion Nova disputes liability and denies that Plaintiff or any putative class members are entitled to any monetary relief, in this case, Plaintiff seeks damages which

exceed the minimum jurisdictional amount of \$5,000,000 under CAFA. *See* Comp. ¶ 36; Oct. 14, 2021 Decl. of Todd Berman (“Berman Decl.”) ¶ 2 (attached hereto as Exhibit “C”).

24. Specifically, Plaintiff seeks relief for himself and the proposed class members in the form of statutory damages and an injunction. Compl. at Prayer for Relief. The FTSA provides for the recovery of “actual damages or \$500, whichever is greater.” F.S.A. § 501.059(10)(a)(2). Those damages may be trebled if a court finds that the defendant “willfully or knowingly violate[s]” the FTSA. *Id.* § 501.059(10)(b).

25. Plaintiff’s Complaint and the Berman Declaration submitted herewith provide sufficient grounds to find that the alleged total amount in controversy exceeds the statutory minimum for removal.

26. Specifically, Plaintiff alleges that the proposed class numbers “in the several thousands, if not more,” and that Fashion Nova “has placed telephonic sales calls to telephone numbers belonging to thousands of consumers listed throughout Florida without their prior written consent.” Compl. ¶¶ 20-21. Nowhere in the Complaint does Plaintiff assert that the amount in controversy is less than the \$5,000,000 jurisdiction threshold under CAFA.

27. Further, the business records of Attentive Mobile, Inc. (“Attentive”), Fashion Nova’s text messaging vendor, reflect that, since July 1, 2021 when the FTSA’s amendments, which provided for a private right of action, became enforceable, more than 10,000 Fashion Nova marketing text messages were sent to consumers with Florida area codes. Berman Decl. ¶ 2. Because Plaintiff seeks statutory damages of \$500 per violation for himself and each putative class member, the aggregated sum of the alleged statutory damages alone exceeds \$5,000,000. His request for attorneys’ fees further increase the “sum or value” that his Complaint places in controversy and, added to the statutory damages alleged, yields an amount that easily satisfies

CAFA's jurisdictional amount in controversy. See 28 U.S.C. § 1332(d)(2); *Oscar v. Noble Sales Co., Inc.*, No. 21-CV-60759-RAR, 2021 WL 3600037, at *2 (S.D. Fla. Aug. 14, 2021) ("the Eleventh Circuit has held that '[w]hen a statute authorizes the recovery of attorney's fees, a reasonable amount of those fees is included in the amount in controversy.'") (citations omitted).

28. These purported damages, which Fashion Nova disclaims, do not include the "benefit that would flow to the plaintiff if the injunction [he seeks] were granted," which also is appropriate for inclusion in calculating the total alleged aggregate amount in controversy. *Fastcase, Inc. v. Lawriter, LLC*, 907 F.3d 1335, 1343-44 (11th Cir. 2018) (explaining that injunctive relief may be included in the amount in controversy so long as the value of the injunctive relief is calculated from the plaintiff's perspective, meaning the "monetary value of the benefit that would flow to the plaintiff if the injunction were granted").

29. Accordingly, under any reading of Plaintiff's Complaint, the alleged damages and/or amounts sought to be recovered and, therefore, the amount in controversy for purposes of 28 U.S.C. §§ 1332(d)(2) and 1332(d)(6), are well in excess of the required \$5,000,000 CAFA threshold.

D. CAFA's Numerosity Requirement Is Met

30. Removal under CAFA is appropriate with respect to numerosity so long as the number of all proposed class members in the aggregate is not less than 100. 28 U.S.C. § 1332(d). That requirement is easily satisfied here based on Plaintiff's allegation that the purported class consists of "several thousands" of class members. Compl. ¶ 20.

IV. PROCEDURAL REQUIREMENTS FOR REMOVAL

A. The Notice of Removal is Timely

31. Plaintiff served Fashion Nova's registered agent on September 17, 2021. See Exh.

B at Return of Service.

32. Pursuant to 28 U.S.C. § 1446(b) and Fed. R. Civ. P. 6(a)(1)(C), this Notice of Removal is timely because it is filed within thirty days after Plaintiff served the Summons and Complaint.

B. Venue is Proper for Removal

33. The Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida is located within the Southern District of Florida. Therefore, venue is proper in this District pursuant to 28 USC §§ 1441(a) and 1446(a).

C. Notice of Filing

34. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the clerk of the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida and served upon counsel for Plaintiff.

35. Fashion Nova has not filed a responsive pleading in the State Court Action, and no other proceedings have transpired in that action. By filing this Notice of Removal, Fashion Nova expressly preserves and does not waive any defenses that may be available to it. Moreover, by seeking to demonstrate that the amount in controversy is greater than the minimum jurisdictional amount, Fashion Nova does not concede any liability or admit that the jurisdictional amount is recoverable. Rather, Fashion Nova specifically denies that any amount is recoverable by Plaintiff or the putative class.

36. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11 as required by 28 U.S.C. § 1446(a).

V. **CONCLUSION**

Wherefore, Fashion Nova prays that this cause proceed in this Court as an action properly removed thereto pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

Dated: October 18, 2021

Respectfully submitted,

/s/ Aaron S. Blynn

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Facsimile: (202) 344-8300

Attorneys for Defendant Fashion Nova, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of October 2021, the foregoing Defendant Fashion Nova, Inc.'s Notice of Removal was filed electronically. I hereby further certify that I caused to be served a copy of the foregoing Notice of Removal on the following parties by United States First Class mail, postage prepaid:

Manuel S. Hiraldo
Hiraldo P.A.
401 E. Las Olas Boulevard
Suite 1400
Ft. Lauderdale, Florida 33301

/s/ Aaron Blynn
Aaron S. Blynn

An Attorney for Defendant Fashion Nova, Inc.

EXHIBIT A

<input checked="" type="checkbox"/> IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA. <input type="checkbox"/> IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.		
DIVISION <input checked="" type="checkbox"/> CIVIL <input type="checkbox"/> DISTRICTS <input type="checkbox"/> OTHER	SUMMONS 20 DAY CORPORATE SERVICE (a) GENERAL FORMS	CASE NUMBER 2021-021071-CA-01
PLAINTIFF(S) JUAN GRIEBEN	VS. DEFENDANT(S) FASHION NOVA, INC.	SERVICE

THE STATE OF FLORIDA:

To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and copy of the complaint or petition in this action on defendant(s): Fashion Nova, Inc.

Registered Agent: C T Corporation System

1200 S Pine Island Rd #250, Plantation, FL 33324

Each defendant is required to serve written defense to the complaint or petition on

Plaintiff's Attorney: Manuel S. Hiraldo

whose address is: 401 E Las Olas Blvd., Ste. 1400, Fort Lauderdale, FL 33301

CLOCK IN

within 20 days " **Except when suit is brought pursuant to s. 768.28, Florida Statutes, if the State of Florida, one of its agencies, or one of its officials or employees sued in his or her official capacity is a defendant, the time to respond shall be 40 days. When suit is brought pursuant to. 768.28, Florida Statutes, the time to respond shall be 30 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 Clerk 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.

HARVEY RUVIN CLERK of COURTS	217043  DEPUTY CLERK	DATE 9/15/2021
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**AMERICANS WITH DISABILITIES ACT OF 1990
ADA NOTICE**

"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Alean Simpkins, the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1st Avenue, Suite 2400, Miami, FL 33128; Telephone (305) 349-7175; TDD (305) 349-7174, Email ADA@jud11.flcourts.org; or via Fax at (305) 349-7355, at least seven (7) days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than seven (7) days; if you are hearing or voice impaired, call 711."

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

Juan Grieben
Plaintiff

Case # _____
Judge _____

vs.

Fashion Nova Inc
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/ Manuel S Hiraldo
Attorney or party

Fla. Bar # 30380
(Bar # if attorney)

Manuel S Hiraldo
(type or print name)

09/14/2021
Date

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

CASE NO.

JUAN GRIEBEN,
individually and on behalf of all,
others similarly situated,

Plaintiff,

CLASS ACTION

JURY TRIAL DEMANDED

v.

FASHION NOVA, INC.,

Defendant.

CLASS ACTION COMPLAINT

Plaintiff Juan Grieben brings this class action against Defendant Fashion Nova, Inc., 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. To promote its products and goods, 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 himself 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 Miami-Dade 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 California corporation and a “telephone solicitor” as defined by Fla. Stat. § 501.059(f). Defendant maintains its primary place of business and headquarters in Vernon, California. Defendant directs, markets, and provides business activities throughout the State of Florida.

JURISDICTION AND VENUE

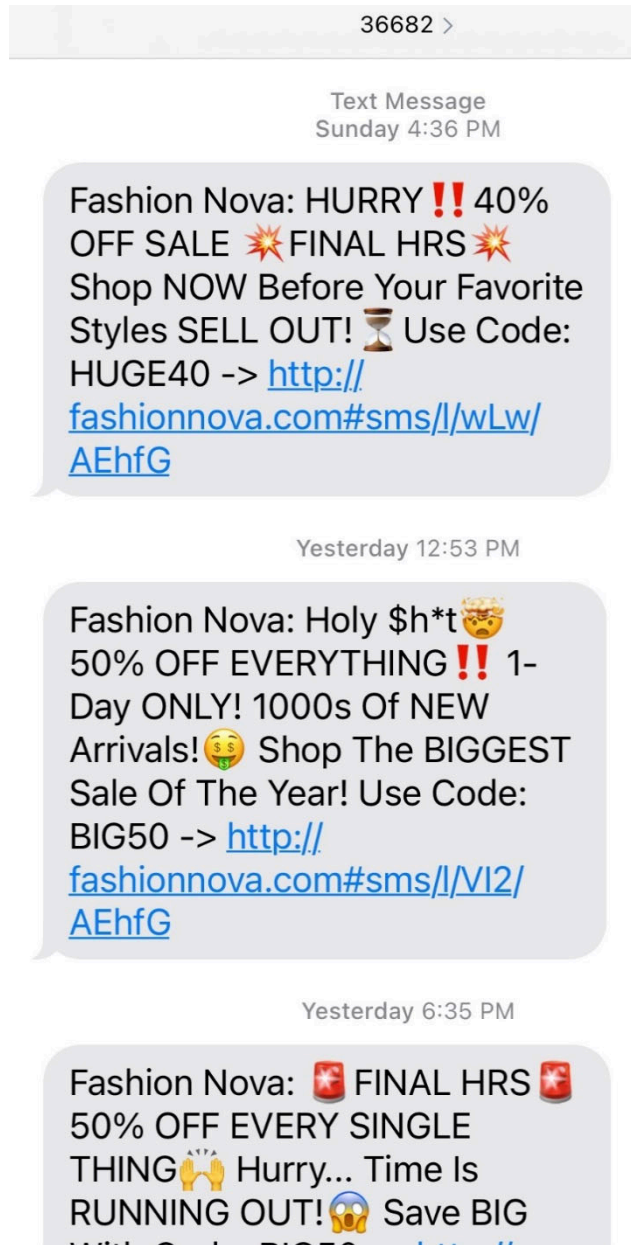
8. This Court has subject matter jurisdiction pursuant to Florida Rule of Civil Procedure 1.220 and Fla. Stat. § 26.012(2). The matter in controversy exceeds the sum or value of \$30,000 exclusive of interest, costs, and attorney’s fees.

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 Florida.

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

FACTS

11. On or about September 5, 2021, September 6, 2021, and September 7, 2021, Defendant sent telephonic sales calls to Plaintiff's cellular telephone number. The following are screenshots of the messages received by Plaintiff:



36682 >

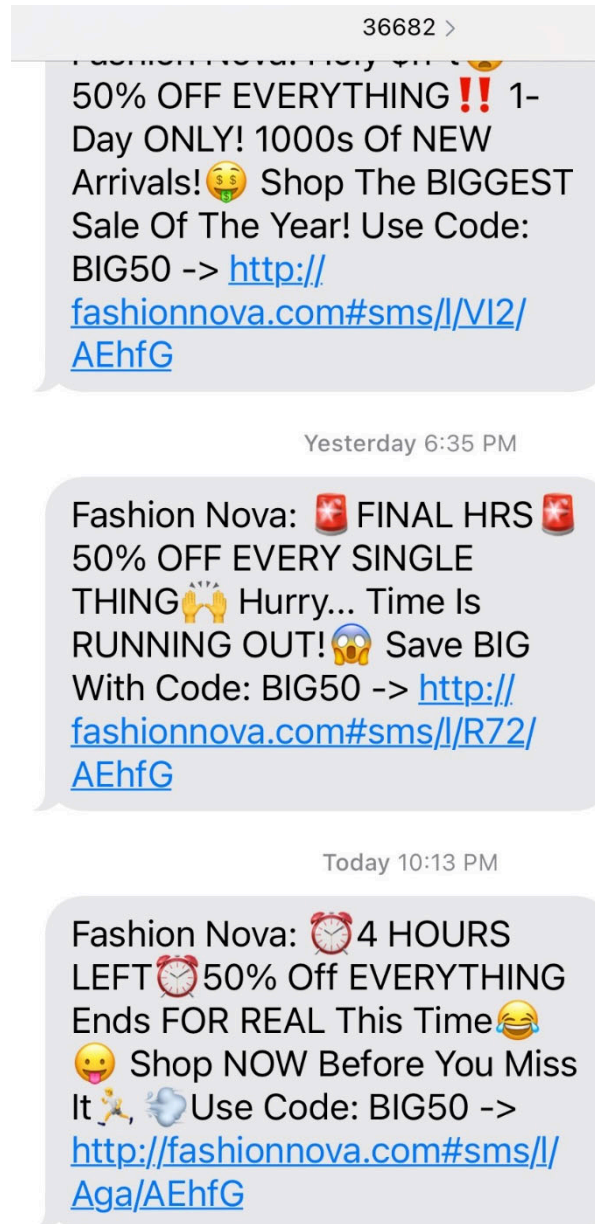
OFF SALE 🌟 FINAL HRS 🌟
Shop NOW Before Your Favorite
Styles SELL OUT! ⌚ Use Code:
HUGE40 -> [http://
fashionnova.com#sms/l/wLw/
AEhfG](http://fashionnova.com#sms/l/wLw/AEhfG)

Yesterday 12:53 PM

Fashion Nova: Holy \$h*t 🤪
50% OFF EVERYTHING !! 1-
Day ONLY! 1000s Of NEW
Arrivals! 💰 Shop The BIGGEST
Sale Of The Year! Use Code:
BIG50 -> [http://
fashionnova.com#sms/l/VI2/
AEhfG](http://fashionnova.com#sms/l/VI2/AEhfG)

Yesterday 6:35 PM

Fashion Nova: 🚨 FINAL HRS 🚨
50% OFF EVERY SINGLE
THING 🙌 Hurry... Time Is
RUNNING OUT! 🤯 Save BIG
With Code: BIG50 -> [http://
fashionnova.com#sms/l/R72/
AEhfG](http://fashionnova.com#sms/l/R72/AEhfG)



12. Plaintiff was in Florida when he received the above referenced calls.

13. 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.

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

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

16. 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.

17. 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.

18. 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

19. Plaintiff brings this lawsuit as a class action on behalf of himself 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.

20. 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

21. 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.

22. 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

23. 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.

24. 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

25. 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

26. 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

27. 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.

28. 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)

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

30. 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).

31. 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).

32. “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).

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

34. 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.

35. 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.

36. 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: September 11, 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@hirdolaw.com
Telephone: 954.400.4713

Counsel for Plaintiff

EXHIBIT B

<input checked="" type="checkbox"/> IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA. <input type="checkbox"/> IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.		
DIVISION <input checked="" type="checkbox"/> CIVIL <input type="checkbox"/> DISTRICTS <input type="checkbox"/> OTHER	SUMMONS 20 DAY CORPORATE SERVICE (a) GENERAL FORMS	CASE NUMBER 2021-021071-CA-01
PLAINTIFF(S) JUAN GRIEBEN	VS. DEFENDANT(S) FASHION NOVA, INC.	SERVICE

THE STATE OF FLORIDA:

To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and copy of the complaint or petition in this action on defendant(s): Fashion Nova, Inc.

Registered Agent: C T Corporation System

1200 S Pine Island Rd #250, Plantation, FL 33324

Each defendant is required to serve written defense to the complaint or petition on

Plaintiff's Attorney: Manuel S. Hiraldo

whose address is: 401 E Las Olas Blvd., Ste. 1400, Fort Lauderdale, FL 33301

CLOCK IN

within 20 days " **Except when suit is brought pursuant to s. 768.28, Florida Statutes, if the State of Florida, one of its agencies, or one of its officials or employees sued in his or her official capacity is a defendant, the time to respond shall be 40 days. When suit is brought pursuant to. 768.28, Florida Statutes, the time to respond shall be 30 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 Clerk 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.

HARVEY RUVIN CLERK of COURTS	DEPUTY CLERK	DATE
---	--------------	------

AMERICANS WITH DISABILITIES ACT OF 1990
ADA NOTICE

"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Alean Simpkins, the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1st Avenue, Suite 2400, Miami, FL 33128; Telephone (305) 349-7175; TDD (305) 349-7174, Email ADA@jud11.flcourts.org; or via Fax at (305) 349-7355, at least seven (7) days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than seven (7) days; if you are hearing or voice impaired, call 711."

RETURN OF SERVICE

State of Florida

County of Miami-Dade

Circuit Court

Case Number: 2021-021071-CA-01

Plaintiff:

JUAN GRIEBEN

vs.

Defendant:

FASHION NOVA, INC.

For:

Manuel Hiraldo

Hiraldo P.A.

401 E. Las Olas Blvd.

Ste 1400

Fort Lauderdale, FL 33301

Received by L & L Process, LLC. on the 16th day of September, 2021 at 10:14 am to be served on **NOVA FASHION, INC CT CORPORATION SYSTEM - REGISTERED AGENT, 2801 E. 46TH STREET, VERNON, CA 90058.**

I, Jeffrey Buan, do hereby affirm that on the **17th day of September, 2021** at **12:39 pm, I:**

served a **CORPORATION** by delivering a true copy of the **Summons 20 Day Corporate Service and Class Action Complaint** with the date and hour of service endorsed thereon by me, to: **JOHN MONTIJO AS INTAKE SPECIALIST FOR CT CORPORATION SYSTEM as REGISTERED AGENT for NOVA FASHION, INC**, at the address of: **330 N BRAND BLVD., #700, GLENDALE, CA 91203**, and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 20, Sex: M, Race/Skin Color: HISPANIC, Height: 5'6", Weight: 150, Hair: BLACK, Glasses: -

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served. Under penalty of perjury, I declare that I have read the foregoing documents, and that the facts stated in it are true. NO NOTARY REQUIRED PURSUANT TO F.S.92.525(2)



Jeffrey Buan
Process Server

L & L Process, LLC.
13876 SW 56 Street
Suite 200
Miami, FL 33175
(305) 772-8804

Our Job Serial Number: LLP-2021003235

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

CASE NO: 2021-021071-CA-01

SECTION: CA43

JUDGE: Michael Hanzman

Juan Grieben

Plaintiff(s)

vs.

Fashion Nova Inc

Defendant(s)

_____ /

**ORDER ON MOTIONS AND MEMO REQUIREMENTS AND MANDATORY ORDER
TO CONFER AND CERTIFICATION REQUIREMENT**

This case is pending in the Complex Business Litigation Division and must follow the Complex Business Litigation rules. In addition, it is **ORDERED** and **ADJUDGED**:

MOTION CALENDAR

The Court conducts an open motion calendar (3 business days' notice required) on Tuesday and Wednesdays at 9:00 a.m. (during the pandemic motion calendars commence at 10:00 a.m. via Zoom). As a general rule, ten-minute Motion Calendar hearings do not require memoranda of law. Copies of motions and any response shall be filed with courtMAP in accordance with the Court's motion calendar procedures posted on its website. The movant shall also bring hard copies to the hearing.

MOTIONS REQUIRING A SPECIAL SET HEARING

Hearings must be set using the Court's special set through courtMAP. Motions may be scheduled or ruled upon without a hearing, in the Court's discretion, anytime more than twenty days after the motion is filed, by which time briefing should be completed under this order. Special set hearings are limited to one hour absent leave of court. In the event a movant (or responding party) believes more than one hour is needed, the case shall be set on the motion calendar so the Court may be advised of the nature of the motion and determine whether additional time will be allotted.

Content of motions shall state with particularity the grounds therefore, cite any statute or rule of procedure relied upon, shall set forth the relief sought and shall include the required certification of conferral. The Court will not consider issues at a hearing that were not specifically addressed in the motion and memoranda in support of and in opposition to the motion. Nor will the Court entertain any matter not set for hearing. *See Miami-Dade County Bd. of County Com'rs v. An Accountable Miami-Dade*, 208 So. 3d 724 (Fla. 3d DCA 2016) ("[i]t is well established that 'the granting of relief, which is not sought by the notice of hearing or which expands the scope of a hearing and decides matters not noticed for hearing, violates due process'").

MEMORANDA REQUIREMENTS

These requirements and deadlines may not be waived or altered except by court order.

Failure to File and Serve Motion Materials:

A motion or opposition not supported by a memorandum of law (which may be incorporated into the motion) may be summarily rejected or denied. Failure to timely file a memorandum in opposition to a motion may result in the pending motion being considered uncontested.

Motion briefing deadlines are court orders.

Motion	Memoranda of law	Page limit	Time deadline	
Motion filed by movant	As required by CBL rules	30	At time of filing the motion	Memos which are not filed with the motion will be disregarded.
Opposition to motion	At time of filing opposition, if needed	30	10 days after service of motion as computed in the Fla. R. Civ. P. 1.090	If no response is timely filed, the Court will proceed and may grant the motion as unopposed.
Reply	If needed, limited to matters raised in the opposition	10	5 days after service of opposition as computed in the Fla. R. Civ. P. 1.090	If no reply is timely filed, the Court will proceed
Sur-reply	With Court permission only			

Motions Decided on Papers and Memoranda:

Motions may be considered and decided by the Court without a hearing. **A hearing is at the discretion of the Court unless a hearing is required by the Rules of Civil Procedure.**

SEALED AND CONFIDENTIAL DOCUMENTS

Sealed or confidential documents should be efiled pursuant to the instructions on the Clerk's efilings portal. In Camera inspections shall be conducted as instructed by the Court.

MANDATORY ORDER TO CONFER AND CERTIFICATION REQUIREMENT

This case is subject to the Complex Business Litigation Rules. The rules require that parties meet and confer prior to filing any motion to determine if issues can be narrowed, the appropriate amount of time required for hearing if hearing is requested, and any other issues such as the completion of related discovery. Meet and Confer under these rules requires **an actual effort** between attorneys, not staff.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 28th day of September, 2021.



2021-021071-CA-01 09-28-2021 7:53 PM

Hon. Michael Hanzman

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

Jibrael S. Hindi, jibrael@jibraellaw.com

Jibrael S. Hindi, bryon@jibraellaw.com

Manuel S Hiraldo, mhiraldo@hiral dolaw.com

Thomas J. Patti, tom@jibraellaw.com

Physically Served:

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

CASE NO: 2021-021071-CA-01

SECTION: CA43

JUDGE: Michael Hanzman

Juan Grieben

Plaintiff(s)

vs.

Fashion Nova Inc

Defendant(s)

_____ /

**ORDER REQUIRING COMPLIANCE WITH COMPLEX BUSINESS LITIGATION
SECTION PROCEDURES AND ORDER ON CASE MANAGEMENT CONFERENCES**

The Complex Business Litigation Rules shall apply to all actions in the Complex Business Litigation Section except to the extent that they are superseded by court Order. The rules are located on the circuit website at <http://www.jud11.flcourts.org/About-the-Court/Our-Courts/Civil-Court/Complex-Business-Litigation> and on the Judge's webpage.

These Procedures shall be construed and enforced to avoid technical delay, encourage civility, permit just and prompt determination of all proceedings, and promote the efficient administration of justice.

All motions pertaining to cases within the Complex Business Litigation Section must adhere to Complex Business Litigation Rules.

INITIAL CASE MANAGEMENT CONFERENCE

NOTICE IS HEREBY GIVEN that on **November 8, 2021 at 10:30 a.m.** via Zoom, undersigned shall convene an Initial Case Management Conference ("ICMC") in this cause.

Lead Trial Counsel, each individual party, and a representative of any entity party shall appear in person for the ICMC unless other arrangements are approved in advance by the Judge. The other option includes appearance by telephone where appropriate. Requests to appear telephonically should be sent through courtMap. If telephone appearance is allowed at an ICMC, subsequent CMC, or any hearing or proceeding, it shall be conducted through CourtCall.

Failure of any party to attend, including the insurance carrier representative, [\[1\]](#) shall subject that party to sanctions. Lead Counsel shall meet no less than 20 days in advance of the ICMC to discuss the matters identified in Rule 1.201(b) and shall, no less than fourteen (14) days before the scheduled Case Management

Conference, file and deliver to Chambers a hard copy of the Joint Case Management Report in compliance with Rule 1.201(b)(1).

THE DEADLINES FOR SUBMISSIONS PRIOR TO THE INITIAL CMC MAY NOT BE ALTERED OR WAIVED BY COUNSEL

PLEASE MAKE APPROPRIATE ARRANGEMENTS TO COMPLY

All counsel and parties are responsible for filing a Joint Case Management Report in full compliance with this Order. Plaintiff's counsel shall have the primary responsibility to coordinate the meeting of Lead Trial Counsel and unrepresented parties in person, and the filing of the Joint Case Management Report. If counsel is unable to coordinate such compliance, counsel shall timely notify the Court. Counsel shall file the report and note any parties' nonparticipation. **Failure to provide the required case management report may subject the violating party(ies) to sanctions.**

Pursuant to the provisions of Fla. R. Civ. P. 1.201(b)(3), and notwithstanding rule 1.440, the Court will set the case management plan and trial date at the ICMC. Because this ICMC occurs near the outset of the case, the trial date will be confirmed at the subsequent Scheduling Case Management Conference to assure reasonable case management progress. Once set at the Scheduling Case Management Conference, the *trial date will be a firm date*. THE COURT ANTICIPATES REAL TRIAL SETTINGS, AND COUNSEL SHOULD MAKE APPROPRIATE SCHEDULING DECISIONS AT THE TIME OF THE CMC, including blocking necessary time with expert witnesses and mediators. **As provided in the rule, continuance of the trial of a complex action, once scheduled at the Scheduling Conference, will rarely be granted, and then only upon good cause shown. Failure to complete discovery, dispositive motions, or mediation in violation of the case management plan is not good cause.** Parties may *not* continue a case by agreement.

Plaintiff is required to provide a full set of all materials regarding pending motion(s), including all responses and replies, and all memoranda no later than three (3) days prior to the initial case management conference.

COURTESY COPIES, HEARING BINDERS, AND HEARING REQUEST PROCEDURES FOR ALL HEARINGS

The Judge requires a paper copy/complete hearing binder with all materials, from each involved party (motions, memos, opposition, replies, case law, record and document excerpts) that any party requests to be included, delivered to chambers at least 3 days prior to the scheduled hearing. (Due to pandemic all materials shall be uploaded through courtMap on the hearing date scheduled.) It shall be the responsibility of the movant to provide a single comprehensive binder. Parties shall not submit competing binders.

Parties are hereby noticed that the Court may consider any non-dispositive pending motion at any Case Management Conference and should prepare accordingly, and that the Court may engage in any of the actions authorized under Fla. R. Civ. P. 1.200 and 1.201. The Court will also review the parties' periodic progress and completion of case management milestones under the case management plan in order to assure timely progress towards trial. Parties should not agree to extensions of milestone deadlines anticipating that the trial will be delayed. It is the parties' responsibility to complete case preparation in sufficient time in advance of the trial date to allow for pretrial hearing on Daubert Motions, Dispositive Motions, and for the completion of mediation, etc.

PROPOSED ORDERS

Proposed Orders, ex parte, agreed and otherwise, shall be submitted by courtMAP in Word format as indicated on the Judge's webpage. Parties shall promptly review and propose any edits to a proposed order. If the parties are unable to agree to the language of an order, the movant shall gather all versions of the order with proposed changes red-lined and submit them together to the Court for its review and execution. Delivery of the order shall be prompt in accord with the CBL Rules.

Counsel for Plaintiff(s) and Third-Party Plaintiff(s) is/are ORDERED: to confirm all parties subsequently named or appearing herein have been served copies of this Notice and Order. If any subsequently served or named party has not been served with a copy of this notice, Plaintiff and Third-Party Plaintiff *shall* provide the party with a copy of this Notice.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 28th day of September, 2021.



2021-021071-CA-01 09-28-2021 7:53 PM

Hon. Michael Hanzman

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

Jibrael S. Hindi, jibrael@jibraellaw.com

Jibrael S. Hindi, bryon@jibraellaw.com

Manuel S Hiraldo, mhiraldo@hirdolaw.com

Thomas J. Patti, tom@jibraellaw.com

Physically Served:

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

CIRCUIT CIVIL DIVISION

CASE NO.: 2021-021071-CA-01

SECTION: CA43

Juan Grieben
Plaintiff(s),

vs.

Fashion Nova Inc
Defendant(s)

LIVE/IN-PERSON
NOTICE OF SPECIAL SET HEARING
Initial Case Management Conference

YOU ARE HEREBY NOTIFIED that, a Special Set hearing on the above cause is scheduled for **30 min** on **11-08-2021 at 10:30 AM** in Room **416** at the Miami-Dade County Courthouse, 73 West Flagler Street, Miami Florida 33130.

CERTIFICATE OF SERVICE

A true and correct copy of the above notice was delivered to the parties below on **09-29-2021**.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Aliean Simpkins, the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1st Ave., Suite 2400, Miami, FL 33128, Telephone (305) 349-7175; TDD (305) 349-7174, Fax (305) 349-7355, Email: ADA@jud11.flcourts.org at least seven (7) days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than seven (7) days; if you are hearing or voice impaired, call 711.

Copies Furnished to:
Electronically Served

Thomas J. Patti, tom@jibraellaw.com
Manuel S Hiraldo, mhiraldo@hiral dolaw.com
Jibrael S. Hindi, jibrael@jibraellaw.com
Jibrael S. Hindi, bryon@jibraellaw.com

EXHIBIT C

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

JUAN GRIEBEN, individually)
and on behalf of all others)
similarly situated,)

Plaintiff,

v.

FASHION NOVA, INC.,)

Defendant.

Civil Action No. _____
(Removed from Circuit Court of the
11th Judicial Circuit (Miami-Dade Cty.)
No. 2021-021071-CA-01)

DECLARATION OF TODD BERMAN

I, Todd Berman, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I am the Vice President of Engineering at Attentive Mobile Inc. (“Attentive”), a position I have held since September 2020. As Vice President of Engineering, I oversee and have access to records pertaining to text messages sent through Attentive’s platform by its clients. I am of legal age, mentally competent to provide this Declaration, and offer it voluntarily. The information set forth in this Declaration is true and accurate, and is based on my personal knowledge of the facts set forth herein or on my review of business records maintained by Attentive in the ordinary course of its business pertaining to text messages sent by Fashion Nova, Inc. (“Fashion Nova”) through the Attentive platform. If called as a witness, I could and would testify competently under oath to such facts.

2. A review of the Attentive database relating to text messages sent by Fashion Nova from July 1, 2021 to October 7, 2021 through the Attentive platform shows more than 10,000 text messages sent to subscribers with a Florida area code during that time period.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 14, 2021

Todd Berman
Todd Berman

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Alleged Fashion Nova Text Ads Were Unlawful](#)
