

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**
CASE NO.: _____

Zachary Rance,

Plaintiff,

v.

Earth Fare, Inc.,

Defendant.

_____ /

NOTICE OF REMOVAL

Defendant Earth Fare, Inc. (“Earth Fare”) pursuant to 28 U.S.C. § 1441, 28 U.S.C. §1331 and 28 U.S.C. §1446 hereby removes this case to the United States District Court for the Southern District of Florida, on the grounds that this Court has original federal-question jurisdiction. In support of removal, Earth Fare states:

I. FACTS RELEVANT TO REMOVAL

1. On December 3, 2019, Plaintiff Zachary Rance filed this lawsuit in the Circuit Court for Palm Beach County, Florida, under the caption *Zachary Rance v. Earth Fare, Inc.*, Case No. 50-2019-CA-015356-XXXXMB (AG).

2. On behalf of himself and a putative class, Plaintiff alleges a single claim for violation of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227. Plaintiff seeks declaratory and injunctive relief, as well as actual and statutory damages.

3. Through its registered agent for service of process, Earth Fare was served with the summons and complaint on December 10, 2019.

II. GROUNDS FOR REMOVAL

4. Federal district courts have “original jurisdiction of all civil actions arising under the Constitution, laws, or treatises of the United States.” 28 U.S.C. § 1331. Plaintiff TCPA presents to a federal question under § 1331. *See Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 377 (2012).

5. “[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a). Removal jurisdiction based upon a federal question exists when a federal question is presented on the face of a plaintiff’s complaint. *See Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987).

6. Plaintiff’s complaint is pending in the Circuit Court for Palm Beach County, Florida. Palm Beach County is located within the Southern District of Florida, West Palm Beach Division. Accordingly venue is proper in this Court. *See* 28 U.S.C. § 1441(a).

7. This Notice of Removal is timely, as it is being filed within 30 days of service of the summons and complaint upon Earth Fare’s registered agent for service of process. *See* 28 U.S.C. § 1446(b)(1).

8. As required by § 1441(a), a copy of all process, pleadings, and orders served upon Earth Fare are attached hereto as **Exhibit 1**.

9. As required by 28 U.S.C. § 1446(d), written notice of this removal has been provided to Plaintiff. A copy of this notice is being filed contemporaneously in the Circuit Court for Palm Beach County.

WHEREFORE, based on this Court's original federal-question jurisdiction, Defendant, Earth Fare, respectfully requests that this case proceed in this Court as an action properly

removed from the Circuit Court in and for Palm Beach County, Florida.

Dated: January 9, 2020

Respectfully submitted,

/s/ Devon A. Woolard

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Attorneys for Defendant Earth Fare, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 9, 2020, I filed the foregoing with the Clerk of Court via ECF and served a true and correct copy by electronic mail to the following counsel for

Plaintiff: Andrew J. Shamis, Esq., **Shamis & Gentile, P.A.**, 14 NE 1st Avenue, Suite 1205, Miami, FL 33132 (ashamis@shamisgentile.com) and Scott Edelsberg, Esq., **Edelsberg Law, PA**, 20900 NE 30th Ave., Suite 417, Aventura, FL 33180 (scott@edelsberglaw.com).

/s/ Devon A. Woolard

Devon A. Woolard, Esq.

Florida Bar Number: 112780

EXHIBIT “1”

Filing # 99717174 E-Filed 12/03/2019 02:35:42 PM

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 for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to section 25.075, Florida Statutes. (See instructions for completion.)

I. CASE STYLE

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA

Case No.: _____
Judge: _____

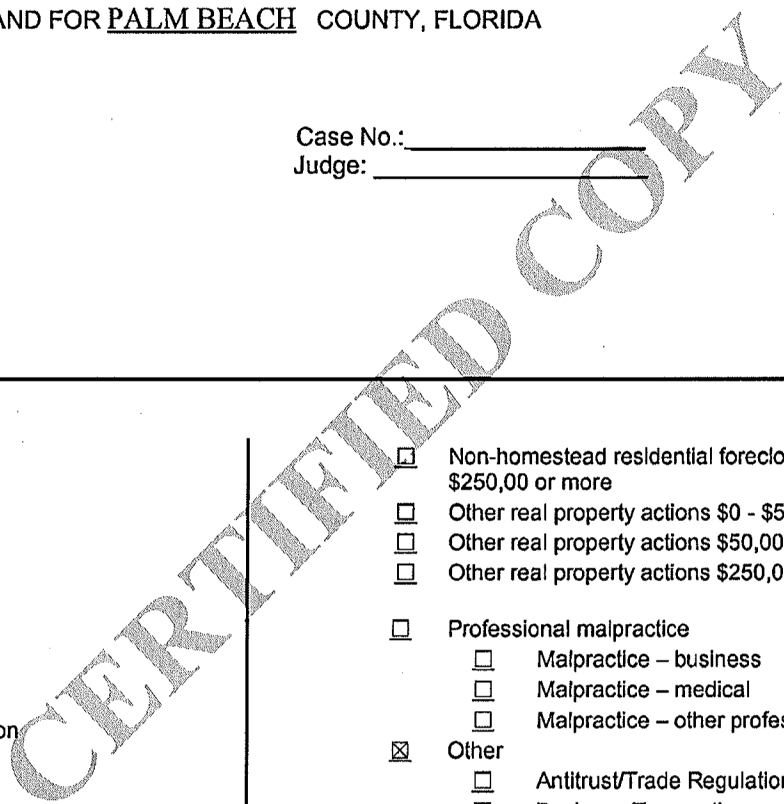
Zachary Rance
Plaintiff

vs.

Earth Fare Inc
Defendant

II. TYPE OF CASE

- 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 \$0 - \$50,000
 - Commercial foreclosure \$50,001 - \$249,999
 - Commercial foreclosure \$250,000 or more
 - Homestead residential foreclosure \$0 - 50,000
 - Homestead residential foreclosure \$50,001 - \$249,999
 - Homestead residential foreclosure \$250,000 or more
 - Non-homestead residential foreclosure \$0 - \$50,000
 - Non-homestead residential foreclosure \$50,001 - \$249,999
- Non-homestead residential foreclosure \$250,00 or more
- Other real property actions \$0 - \$50,000
- Other real property actions \$50,001 - \$249,999
- Other real property actions \$250,000 or more
- Professional malpractice
 - Malpractice -- business
 - Malpractice -- medical
 - Malpractice -- other professional
- Other
 - Antitrust/Trade Regulation
 - Business Transaction
 - Circuit Civil - Not Applicable
 - 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



COMPLEX BUSINESS COURT

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

III. REMEDIES SOUGHT (check all that apply):

- Monetary;
- Non-monetary declaratory or injunctive relief;
- Punitive

IV. NUMBER OF CAUSES OF ACTION: ()
(Specify)

1

V. IS THIS CASE A CLASS ACTION LAWSUIT?

- Yes
- No

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

- No
- Yes – If “yes” list all related cases by name, case number and court:

VII. IS JURY TRIAL DEMANDED IN COMPLAINT?

- Yes
- No

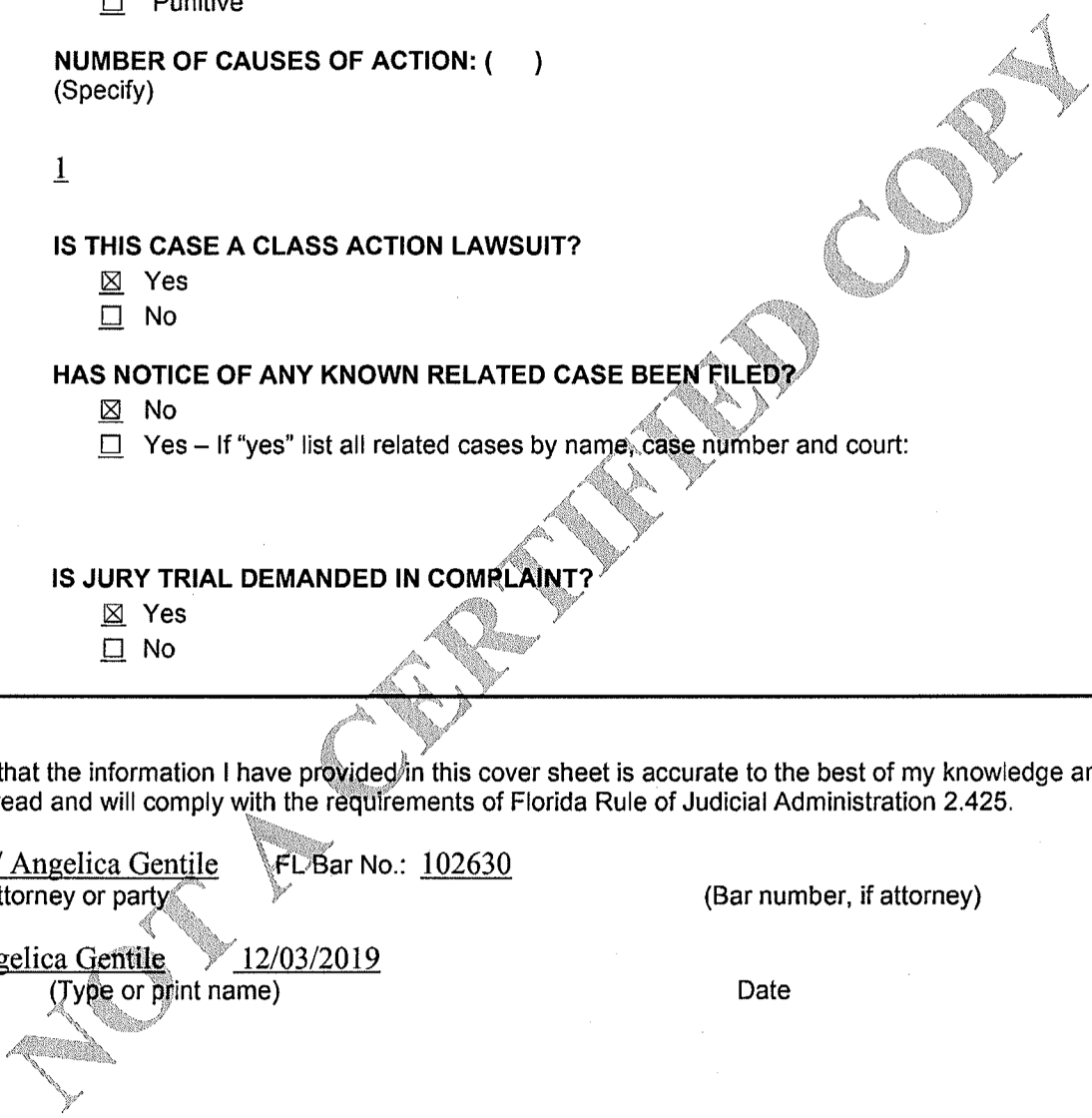
I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief, and that I have read and will comply with the requirements of Florida Rule of Judicial Administration 2.425.

Signature s/ Angelica Gentile FL Bar No.: 102630
Attorney or party

(Bar number, if attorney)

Angelica Gentile 12/03/2019
(Type or print name)

Date



Filing # 99717174 E-Filed 12/03/2019 02:35:42 PM

ZACHARY RANCE
Plaintiff,

vs.

EARTH FARE, INC.
Defendant,

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.:

SUMMONS

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

TO: EARTH FARE, INC.

CT Corporation System- Registered Agent
4400 Easton Commons Way, Suite 125
Columbus, OH 43219

Each Defendant is required to serve written defenses to the Complaint or petition on: **Andrew Shamis, Esq, Shamis & Gentile, P.A., 14 NE 1st Ave STE 1205, Miami, Florida 33132**, within **twenty (20) days** after service of this summons on that Defendant, exclusive of the date of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the complaint or petition.

Dated this day of Dec 05 2019 , 2019.

As Clerk of the Court



By: Blake Smith
As Deputy Clerk
BLAKE SMITH

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.

ZACHARY RANCE,
individually and on behalf of all
others similarly situated,

Plaintiff,

v.

EARTH FARE, INC.,

Defendant.

CLASS REPRESENTATION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Zachary Rance, brings this class action against Defendant, Earth Fare, Inc., and alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

NATURE OF THE ACTION

1. This is a putative class action under the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, ("TCPA"), arising from Defendant's violations of the TCPA.

1. Defendant is an American health and wellness supermarket with dozens of locations in at least ten states.

2. To solicit new paying customers, Defendant engages in unsolicited marketing with no regard for privacy rights of the recipients of those messages.

3. Defendant caused thousands of unsolicited text messages to be sent to the cellular telephones of Plaintiff and Class Members, causing them injuries, including invasion of their privacy,

aggravation, annoyance, intrusion on seclusion, trespass, and conversion.

4. Through this action, Plaintiff seeks injunctive relief to halt Defendant's illegal conduct. Plaintiff also seeks statutory damages on behalf of himself and Class Members, as defined below, and any other available legal or equitable remedies resulting from the illegal actions of Defendant.

PARTIES, JURISDICTION, AND VENUE

5. Plaintiff is a *sui juris* resident of Palm Beach County, Florida.

6. Defendant is a North Carolina corporation with a principal place of business in Henderson County, North Carolina. Defendant directs, markets, and/or provides substantial business activities throughout the State of Florida.

7. This Court has subject matter jurisdiction pursuant to Florida Rule of Civil Procedure 1.220 and Section 26.012(2), Florida Statutes. The matter in controversy exceeds the sum or value of \$15,000 exclusive of interest, costs, and attorney's fees.

8. Venue for this action is proper in this Court because Defendant provides and markets its services within Palm Beach County, thereby establishing sufficient contacts to subject it to personal jurisdiction. Further, Defendant's tortious conduct against Plaintiff occurred within Palm beach County.

9. All facts giving rise to this action occurred in the State of Florida.

THE TCPA

10. The TCPA prohibits: (1) any person from calling a cellular telephone number; (2) using an automatic telephone dialing system; (3) without the recipient's prior express consent. 47 U.S.C. § 227(b)(1)(A).

11. The TCPA defines an "automatic telephone dialing system" ("ATDS") as "equipment that has the capacity - (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." 47 U.S.C. § 227(a)(1).

12. The TCPA exists to prevent communications like the ones described within this Complaint. *See Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

13. In an action under the TCPA, a plaintiff must show only that the defendant “called a number assigned to a cellular telephone service using an automatic dialing system or prerecorded voice.” *Breslow v. Wells Fargo Bank, N.A.*, 857 F. Supp. 2d 1316, 1319 (S.D. Fla. 2012), *aff’d*, 755 F.3d 1265 (11th Cir. 2014).

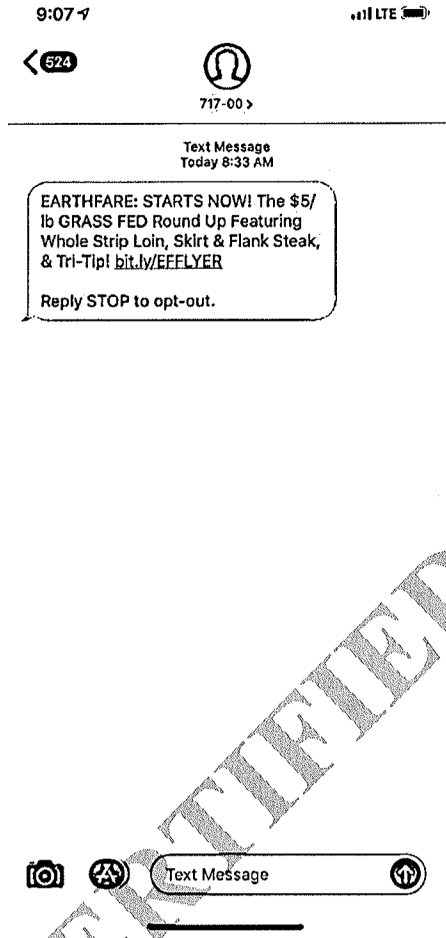
14. The Federal Communications Commission (“FCC”) is empowered to issue rules and regulations implementing the TCPA. According to the FCC’s findings, calls in violation of the TCPA are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion 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.

15. A defendant must demonstrate that it obtained the plaintiff’s prior express consent. *See In the Matter of Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 30 FCC Rcd. 7961, 7991-92 (2015) (requiring express consent “for non-telemarketing and non-advertising calls”).

16. 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)”).

FACTS

17. On or about September 25, 2019 at 8:33 am, Defendant sent the following text message to Plaintiff’s cellular telephone number ending in 3401 (“3401 Number”):



18. Plaintiff was in Palm Beach Gardens, Florida when he received Defendant's text message.

19. Thus, Defendant's tortious conduct against Plaintiff occurred in part within this judicial circuit and, on information and belief, Defendant sent the same text message complained of by Plaintiff to other individuals within this judicial circuit.

20. At no point in time did Plaintiff provide Defendant with his express consent to be contacted by automated text message.

21. Plaintiff is the sole user and/or subscriber of the 3401 Number.

22. The number used by or on behalf of Defendant (717-00) is known as a "short code," a standard 5-digit phone number that enabled Defendant to send SMS text messages en masse, while

deceiving recipients into believing that the message was personalized and sent from a telephone number operated by an individual.

23. Short codes work as follows: Private companies known as SMS gateway providers have contractual arrangements with mobile carriers to transmit two-way SMS traffic. These SMS gateway providers send and receive SMS traffic to and from the mobile phone networks' SMS centers, which are responsible for relaying those messages to the intended mobile phone. This allows for the transmission of a large number of SMS messages to and from a long code.

24. Further, the impersonal and generic nature of Defendant's text message demonstrates that Defendant utilized an ATDS in transmitting the messages.

25. To send the text message, Defendant used a messaging platform (the "Platform") that permitted Defendant to transmit thousands of automated text messages without any human involvement.

26. The Platform has the capacity to store telephone numbers.

27. The Platform has the capacity to generate sequential numbers.

28. The Platform has the capacity to dial numbers in sequential order.

29. The Platform has the capacity to dial numbers from a list of numbers.

30. The Platform has the capacity to dial numbers without human intervention.

31. The Platform has the capacity to schedule the time and date for future transmission of text messages.

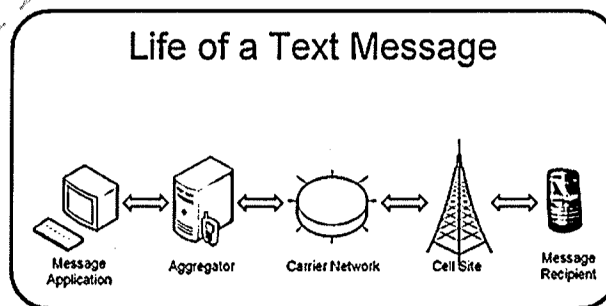
32. To transmit the messages at issue, the Platform automatically executed the following steps:

- (1) The Platform retrieved each telephone number from a list of numbers in the sequential order the numbers were listed;

- (2) The Platform then generated each number in the sequential order listed and combined each number with the content of Defendant's message to create "packets" consisting of one telephone number and the message content;
- (3) Each packet was then transmitted in the sequential order listed to an SMS aggregator, which acts an intermediary between the Platform, mobile carriers (e.g. AT&T), and consumers.
- (4) Upon receipt of each packet, the SMS aggregator transmitted each packet – automatically and with no human intervention – to the respective mobile carrier for the telephone number, again in the sequential order listed by Defendant. Each mobile carrier then sent the message to its customer's mobile telephone.

33. The above execution of Defendant's instructions occurred seamlessly, with no human intervention, and almost instantaneously. Indeed, the Platform is capable of transmitting thousands of text messages following the above steps in minutes, if not less.

34. The following graphic summarizes the above steps and demonstrates that the dialing of the text messages at issue was done by the Platform automatically and without any human intervention:



35. Defendant's unsolicited text message caused Plaintiff actual harm. Specifically, Plaintiff estimates that he wasted approximately 10 minutes reviewing Defendant's unwanted message and investigating Defendant's solicitation. Plaintiff was at work when he received the message and had

to stop what he was doing to look down at his phone to review the message causing substantial interruption to his workday.

36. In all, Defendant's violations of the TCPA caused Plaintiff to waste his time in addressing Defendant's solicitations. This time was spent while Plaintiff was at work and could have been pursuing other personal activities.

37. Furthermore, Defendant's text messages took up memory on Plaintiff's cellular phone. The cumulative effect of unsolicited text messages like Defendant's poses a real risk of ultimately rendering the phone unusable for text messaging purposes as a result of the phone's memory being take up. *See* <https://www.consumer.ftc.gov/articles/0350-text-message-spam#text> (finding that text message solicitations like the ones sent by Defendant present a "triple threat" of identity theft, unwanted cell phone charges, and slower cell phone performance).

38. Defendant's text messages also can slow cell phone performance by taking up space on the recipient phone's memory. *See* <https://www.consumer.ftc.gov/articles/0350-text-message-spam#text> (finding that spam text messages can slow cell phone performance by taking up phone memory space).

CLASS ALLEGATIONS

PROPOSED CLASS

39. Plaintiff brings this action pursuant to Florida Rule of Civil Procedure 1.220(b)(2) and (b)(3) on behalf of the following "Class" (including "Class Members" and "Members")

All persons within the United States who, within the four years prior to the filing of this Complaint, were sent a text message using the same type of equipment used to text message Plaintiff, from Defendant or anyone on Defendant's behalf, to said person's cellular telephone number.

40. Defendant and their employees or agents are excluded from the Class.

41. Plaintiff does not know the number of members in the Class but believes the Class members number in the several thousands, if not more.

NUMEROSITY

42. Upon information and belief, Defendant has placed automated calls to cellular telephone numbers belonging to thousands of consumers throughout the United States 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.

43. 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

44. 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 made non-emergency calls to Plaintiff and Class members' cellular telephones using an ATDS;
- (2) Whether Defendant can meet its burden of showing that it obtained prior express consent to make such calls;
- (3) Whether Defendant conduct was knowing and willful;
- (4) Whether Defendant are liable for damages, and the amount of such damages;
and
- (5) Whether Defendant should be enjoined from such conduct in the future.

45. The common questions in this case are capable of having common answers. If Plaintiff's

claim that Defendant routinely transmits text messages to telephone numbers assigned to cellular telephone services is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

TYPICALITY

46. 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

47. 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

48. 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 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.

49. 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
Violations of the TCPA, 47 U.S.C. § 227(b)
(On Behalf of Plaintiff and the Class)

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

51. It is a violation of the TCPA 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 ... to any telephone number assigned to a ... cellular telephone service” 47 U.S.C. § 227(b)(1)(A)(iii).

52. The TCPA defines an “automatic telephone dialing system” (hereinafter “ATDS”) as “equipment which has the capacity – (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.” *Id.* at § 227(a)(1).

53. Defendant – or third parties directed by Defendant – used equipment having the capacity to store telephone numbers, using a random or sequential generator, and to dial such numbers and/or to dial numbers from a list automatically, without human intervention, to make non-emergency telephone calls to the cellular telephones of Plaintiff and the other members of the Class.

54. These calls were made without regard to whether Defendant had first obtained express permission from the called party to make such calls. In fact, Defendant did not have prior express consent to call the cell phones of Plaintiff and the other members of the putative Class when its calls were made.

55. Defendant violated § 227(b)(1)(A)(iii) of the TCPA by using an automatic telephone dialing system to make non-emergency telephone calls to the cell phones of Plaintiff and the other members of the putative Class without their prior express consent.

56. As a result of Defendant's conduct and pursuant to § 227(b)(3) of the TCPA, Plaintiff and the other members of the putative Class were harmed and are each entitled to a minimum of \$500.00 in damages for each violation. Plaintiff and the class are also entitled to an injunction against future calls.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Zachary Rance, on behalf of himself and the other members of the Class, prays for the following relief:

- a. A declaration that Defendant's practices described herein violate the Telephone Consumer Protection Act, 47 U.S.C. § 227;
- b. A declaration that Defendant's violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, were willful and knowing;
- c. An injunction prohibiting Defendant from using an automatic telephone dialing system to call telephone numbers assigned to cellular telephones without the prior express consent of the called party;
- d. An award of actual, statutory damages, and/or trebled statutory damages; and
- e. Such further and other relief the Court deems reasonable and just.

JURY DEMAND

Plaintiff and Class Members 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 Defendant and the calls as alleged herein.

Dated: December 3, 2019

SHAMIS & GENTILE, P.A.

/s/ Andrew J. Shamis

Andrew J. Shamis, Esq.

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EDELSBERG LAW, PA

/s/ Scott Edelsberg

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Telephone: 305-975-3320

Counsel for Plaintiff and the Class

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.

ZACHARY RANCE,
individually and on behalf of all
others similarly situated,

Plaintiff,

v.
EARTH FARE, INC.,

Defendant.

CLASS REPRESENTATION

JURY TRIAL DEMANDED

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION TO DEFENDANT

Plaintiff Zachary Rance, pursuant to Rule 1.350, Florida Rules of Civil Procedure, hereby requests Defendant Earth Fare, Inc. to produce the following documents and things for inspection and copying, subject to any outstanding objections, within 30 days from date of service hereof.

DEFINITIONS

As used herein, the terms listed below are defined as follows:

- A. "You" or "Your" shall mean Defendant Earth Fare, Inc.
- B. "Subject Text Message" shall mean the text message sent to Plaintiff as identified in Plaintiff's operative Complaint.
- C. "Text Message(s)" shall mean a text message sent to a mobile telephone by You or on Your behalf for the purpose of marketing or promoting Your college services, that was sent using the same type of equipment used to send the Subject Text Message.
- D. "Person" shall mean any natural person, entity, corporation, partnership, association, joint venture, trust, government unit, agency, branch, or office or any subdivision or department thereof.

E. The word “document” shall include any written or graphic matter or any other means of preserving thought or expression, and all tangible things from which information can be processed or transcribed in your actual or constructive possession, custody, care or control, which pertain directly or indirectly, in whole or in part, either to any of the subjects listed below or to any other matter relevant to the issues in this action, or which are themselves listed below as specific documents, including, but not limited to: correspondence, memoranda, notes, messages, letters, telegrams, teletype messages, bulletins, diaries, chronological data, minutes, books, reports, charts, ledgers, invoices, worksheets, receipts, computer printouts, computer disks, electronic mail (e-mail), schedules, affidavits, contracts, transcripts, surveys, graphic representation of any kind, photographs, graphs, microfilms, videotapes, tape recordings, electronically stored material, motion pictures or other films. Further, the word “Documents” shall be deemed to include the original and any draft thereof, and any copy of an original or a draft which differs in any respect from such original or draft.

F. “Identify” means, with respect to any “person,” or any reference to the “identity” of any “person,” to provide the name, home address, telephone number, business name, business address, business telephone number and a description of each such person’s connection with the events in question.

G. “Identify” means, with respect to any “document,” or any reference to stating the “identification” of any “document” provide the title and date of each such document, the name and address of the party or parties responsible for the preparation of each such document, the name and address of the party who requested or required the preparation and on whose behalf it was prepared, the name and address of the recipient or recipients to each such document and the present location of any and all copies of each such document, and the names and addresses of any and all persons who have custody or control of each such document or copies thereof.

TIME FRAME

Unless otherwise stated, the time period covered by these requests is four (4) years prior to the filing of the Complaint in this case.

FIRST REQUEST FOR PRODUCTION TO DEFENDANT

1. Every insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment against you in this action or to indemnify you reimburse for payments made to satisfy the judgment irrespective of whether you have, or intend to make such a claim.
2. Documents sufficient to identify the hardware, software, and/or methodology used to store Plaintiff's telephone number.
3. Documents sufficient to identify the hardware, software, and/or methodology used to transmit the Subject Text Message.
4. Documents sufficient to identify the hardware, software, and/or methodology used to transmit Text Messages.
5. Documents sufficient to identify the content of the Subject Text Message.
6. Documents sufficient to identify the content of Text Messages.
7. Documents sufficient to identify the following information regarding recipients of Text Messages: (1) their name, address, email, and phone numbers; and (2) the source(s) where you obtained the telephone numbers called.
8. Documents sufficient to identify the total number of Text Messages sent.
9. Documents sufficient to identify the method or process by which Text Messages were sent.
10. Documents sufficient to identify the method or process by which the Subject Text Message was sent.
11. All documents regarding or referring to Plaintiff.
12. All documents you reviewed and/or relied upon in formulating your responses to Plaintiff's Interrogatories.
13. Documents sufficient to identify your document or record retention and disposal policies.

14. All communications between you and Plaintiff.
15. All formal or informal complaints received by you regarding Text Messages.
16. Documents sufficient to identify the target name and/or phone number for every Text Message sent.
17. All documents supporting your contention that you obtained express written consent to send the Subject Text Message.
18. All documents supporting your contention that you obtained express consent to send the Subject Text Message.
19. All documents supporting your contention that you obtained express written consent to send Text Messages.
20. All documents supporting your contention that you obtained express consent to send Text Messages.
21. All policies and procedures pertaining in any way TCPA compliance by you and/or your employees.
22. All communications regarding or incorporating any of the following words: "autodialer," "autodial," "Telephone Consumer Protection Act," "TCPA," "marketing text" "text message campaign," and "FCC petition."
23. Documents sufficient to identify the creation, content and/or transmission of Text Messages.
24. Documents sufficient to identify the creation, content and/or transmission of the Subject Text Message.
25. All documents pertaining to transmission of the Subject Text Message to Plaintiff.
26. All communications pertaining to transmission of the Subject Text Message to Plaintiff.
27. All documents pertaining to the transmission of Text Messages.
28. Documents sufficient to identify the computer and/or other device use to transmit the Subject Text Messages.
29. Documents sufficient to identify the computer and/or other device use to transmit Text Messages.
30. Documents sufficient to identify the telephone numbers to which Text Messages were transmitted, including, but not limited to, transmission reports or logs.

31. Documents sufficient to identify the criteria used to select and/or obtain the list of telephone numbers to which Text Messages were sent.

32. All documents pertaining to the type of consent or permission, if any, you obtained from Plaintiff to send the Subject Text Messages prior to sending the message.

33. All documents pertaining to the type of consent or permission, if any, you obtained from recipients of Text Messages prior to sending the Text Messages.

34. Documents sufficient to identify the manner in which the list(s) of telephone numbers to which Text Messages were sent was compiled or acquired, and identify the source(s) of the telephone numbers and the persons who compiled them.

35. Documents sufficient to identify the reason(s) why the Subject Text Message was sent to Plaintiff.

36. Documents sufficient to identify the reason(s) why Text Messages were sent.

37. All documents pertaining to the marketing or promotion of your business through Text Messages.

38. All communications pertaining to the criteria used to select and/or obtain the telephone numbers to which Text Messages were transmitted.

39. Documents sufficient to identify your policies, practices, and/or procedures for transmitting Text Messages.

40. All documents pertaining to consent to transmit Text Messages.

41. All documents or communications you have received claiming that you have violated the Telephone Consumer Protection Act.

42. All contracts and documents pertaining to any agreement between you and any third party regarding the Subject Text Message.

43. All contracts and documents pertaining to any agreement between you and any third party regarding Text Messages.

44. Documents sufficient to identify the number of Text Messages that you or anyone on your behalf have sent.

45. All documents pertaining to any third party transmitting Text Messages on your behalf.

46. All documents concerning internal investigation conducted by you concerning complaints regarding violations of the TCPA.

47. All documents referred to in, identified in, or that provide part or all of the basis for Defendant's responses to Plaintiff's Interrogatories.

48. Copies of all documents, materials, business plans, memoranda, and/or minutes that reference using telemarketing or automatic dialing systems to contact persons and/or entities to promote Defendant's products, goods, or services.

49. All documents, records, data, recordings and other materials relating to Plaintiff.

Dated: December 3, 2019

SHAMIS & GENTILE, P.A.

/s/ Andrew J. Shamis

Andrew J. Shamis, Esq.

Florida Bar No. 101754

ashamis@shamisgentile.com

14 NE 1st Avenue, Suite 1205

Miami, FL 33132

Telephone: 305-479-2299

Counsel for Plaintiff and the Class

NOT A CERTIFIED COPY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on Defendant with the original service of process of the Complaint.

SHAMIS & GENTILE, P.A.

/s/ Andrew J. Shamis

Andrew J. Shamis, Esq.

Florida Bar No. 101754

ashamis@shamisgentile.com

14 NE 1st Avenue, Suite 1205

Miami, FL 33132

Telephone: 305-479-2299

Counsel for Plaintiff and the Class

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Filing # 99717174 E-Filed 12/03/2019 02:35:42 PM

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.

ZACHARY RANCE,
individually and on behalf of all
others similarly situated,

Plaintiff,

v.

EARTH FARE, INC.,

Defendant.

CLASS REPRESENTATION

JURY TRIAL DEMANDED

PLAINTIFF'S NOTICE OF SERVICE OF INTERROGATORIES

Plaintiff Zachary Rance, pursuant to Rule 1.340, Florida Rules of Civil Procedure, hereby propounds the attached interrogatories to Defendant Earth Fare, Inc. to be answered under oath in writing.

Dated: December 3, 2019

SHAMIS & GENTILE, P.A.
/s/ Andrew J. Shamis
Andrew J. Shamis, Esq.
Florida Bar No. 101754
ashamis@shamisgentile.com
14 NE 1st Avenue, Suite 1205
Miami, FL 33132
Telephone: 305-479-2299

Counsel for Plaintiff and the Class

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on Defendant with the original service of process of the Complaint.

SHAMIS & GENTILE, P.A.

/s/ Andrew J. Shamis

Andrew J. Shamis, Esq.

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Counsel for Plaintiff and the Class

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
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ZACHARY RANCE,
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others similarly situated,

Plaintiff,

v.

EARTH FARE INC.

Defendant.

CLASS REPRESENTATION

JURY TRIAL DEMANDED

PLAINTIFF'S REQUEST FOR INSPECTION OF PROPERTY

Plaintiff Zachary Rance, pursuant to Rule 1.350, Florida Rules of Civil Procedure, hereby requests Defendant Earth Fare, Inc. to produce for inspection the equipment utilized by Defendant to transmit the text messages alleged in Plaintiff's operative Complaint, at a mutually agreed-upon date, time and location.

Dated: December 3, 2019

SHAMIS & GENTILE, P.A.

/s/ Andrew J. Shamis

Andrew J. Shamis, Esq.

Florida Bar No. 101754

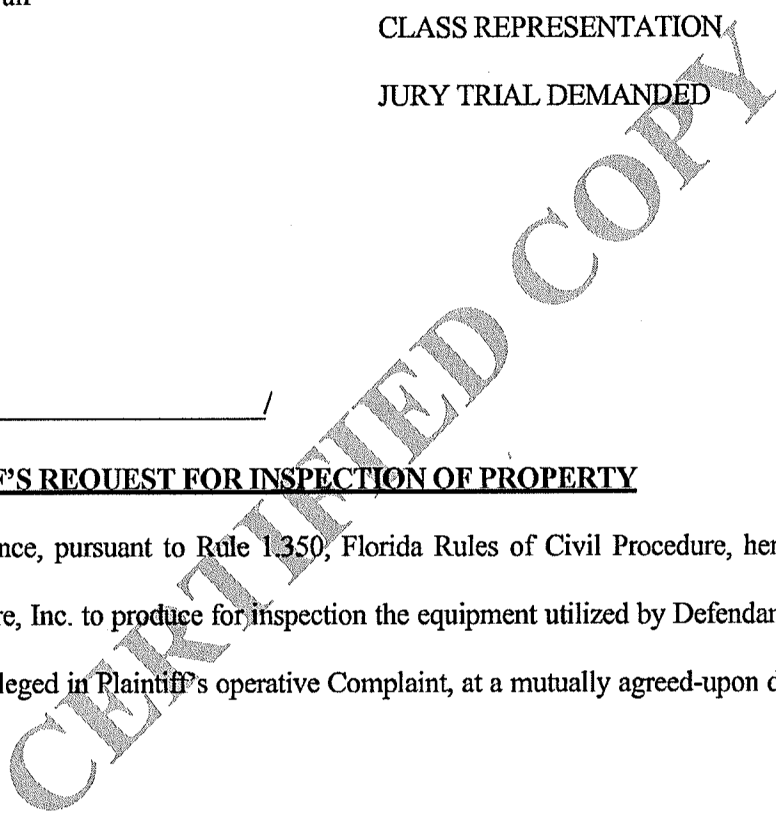
ashamis@shamisgentile.com

14 NE 1st Avenue, Suite 1205

Miami, FL 33132

Telephone: 305-479-2299

Counsel for Plaintiff and the Class



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on Defendant with the original service of process of the Complaint.

SHAMIS & GENTILE, P.A.

/s/ Andrew J. Shamis

Andrew J. Shamis, Esq.

Florida Bar No. 101754

ashamis@shamisgentile.com

14 NE 1st Avenue, Suite 1205

Miami, FL 33132

Telephone: 305-479-2299

Counsel for Plaintiff and the Class

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.

ZACHARY RANCE,
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others similarly situated,

Plaintiff,

v.

EARTH FARE, INC.,

Defendant.

CLASS REPRESENTATION

JURY TRIAL DEMANDED

NOTICE OF E-MAIL COMPLIANCE FOR SERVICE

Plaintiff Zachary Rance, hereby gives Notice of Compliance with Florida Rule of Judicial Administration 2.516, requiring service of pleadings by electronic mail, and respectfully provides the following information:

1. Primary email: ashamis@shamisgentile.com

Dated: December 3, 2019

SHAMIS & GENTILE, P.A.

/s/ Andrew J. Shamis

Andrew J. Shamis, Esq.

Florida Bar No. 101754

ashamis@shamisgentile.com

14 NE 1st Avenue, Suite 1205

Miami, FL 33132

Telephone: 305-479-2299

Counsel for Plaintiff and the Class

Case No. 17 JMC. CV. Palm Beach County, Florida CASE # _____
(NAME OF COURT)

PLAINTIFF/ Zachary Rance

DEFENDANT/ Earth Fare, Inc. VS.

I Rev. Tom Hodge , being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service.

Service: I served Summons and Complaint to CT Corp
NAME OF PERSON/ENTITY BEING SERVED

With (list documents) Summons & Complaint

By leaving with Shelli Sullenger Seen
NAME RELATIONSHIP

[] Residence _____
ADDRESS CITY/STATE

Business 4400 Gaston Comm Way #125 Col., Oh. 43219
ADDRESS CITY/STATE

On 12-10-19 At 1:45pm
DATE TIME

Thereafter copies of the documents were mailed by prepaid, first class mail on _____
DATE

From _____ Active Military [] YES [] NO
CITY STATE ZIP Marital Status [] []

Manner of Service:
[] Personal: By personally delivering copies to the person being served.
[] Substituted at Residence: By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of _____ and explaining the general nature of the papers.
 Substituted at Business: By leaving, during office hours, copies at the office of the person/entity be served with the person apparently in charge thereof.
[] Posting: By posting copies in a conspicuous manner to the up front door of the person/entity be served.
[] Non-Service: After due search, carefully inquiry and diligent attempts at the address (es) listed above, I have been unable to effect process upon the person/entity served because of the following reason (s):
[] Unknown at address [] Moved, Left no Forwarding [] Service Cancelled by Litigant [] Unable the Serve in timely fashion [] Address does not exist [] Other _____

Service Attempts: Service: (1) _____ (2) _____ (3) _____
DATE TIME DATE TIME DATE TIME
(4) _____ (5) _____ (6) _____
DATE TIME DATE TIME DATE TIME

Description: Age 30 Sex F Race W Height 5'8" Weight 150 Hair Blonde Beard 0 Glasses 0

Rev. Tom Hodge
Signature of Process Server

www.godbrother.com
www.processserviceohio.com
earthtemple.org
Cleveland: (216) 906-9444
Columbus: (614) 231-5595
Fax: (614) 258-8903
Wash. D.C. Toll Free: (877) LAW-TONY
godbrothercom@sbcglobal.net

C.O.P.S., Div. of Dr. A. T. Hodge Legal Services/Ltd.
1695 Franklin Ave. (All Ohio 24/7)
Columbus OH 43205



Filing # 99717174 E-Filed 12/03/2019 02:35:42 PM

ZACHARY RANCE

Plaintiff,

vs.

EARTH FARE, INC.

Defendant,

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.:

SUMMONS

THE STATE OF FLORIDA:

To Each Sheriff/Certified Process Server of the State

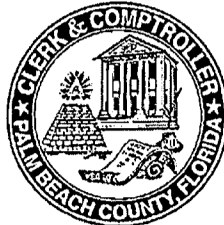
TO: EARTH FARE, INC.

CT Corporation System- Registered Agent
4400 Easton Commons Way, Suite 125
Columbus, OH 43219

Each Defendant is required to serve written defenses to the Complaint or petition on: Andrew Shamis, Esq, Shamis & Gentile, P.A., 14 NE 1st Ave STE 1205, Miami, Florida 33132, within twenty (20) days after service of this summons on that Defendant, exclusive of the date of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the complaint or petition.

Dated this _____ day of _____ Dec 05 2019 _____, 2019.

As Clerk of the Court



By: Blake Smith
As Deputy Clerk
BLAKE SMITH

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 Earth Fare Sent Illegal Spam Texts Without Recipients' Consent](#)
