

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

BRITTANY STODDARD, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

UNDERLINING BEAUTY, LLC d/b/a
NAILBOO,

Defendant.

Case No. 21-cv-

NOTICE OF REMOVAL

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

PROCEDURAL HISTORY AND TIMELINESS OF REMOVAL

1. On August 23, 2021, Plaintiff Brittany Stoddard (“Plaintiff”) commenced this putative class action, captioned as *Stoddard v. Underlining Beauty, LLC d/b/a Nailboo*, Case Number 2021CA001499, against Defendant in the Nineteenth Judicial Circuit Court in and for Saint Lucie County, Florida (“State Court Action”).

2. Plaintiff purportedly served Defendant with the summons and the complaint (“Complaint” or “Compl.”) in the State Court Action on September 15, 2021. This notice is

therefore timely pursuant to 28 U.S.C. § 1446(b).

3. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders served upon Defendant in the State Court Action, including the operative Complaint, are attached to this Notice as **Exhibit A**.

4. A true and correct copy of the Register of Actions from the State Court Action is attached to this Notice as **Exhibit B**.

JOINDER

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

RELEVANT ALLEGATIONS

6. Plaintiff's single-count Complaint seeks relief from Defendant, on behalf of herself and a putative class of similarly-situated persons, for allegedly making unlawful telephonic sales calls (specifically, text messages) without prior express written consent in violation of the Florida Telephone Solicitation Act ("FTSA"), Fla. Stat. § 501.059. Compl. ¶¶ 1, 28-35.

7. More specifically, Plaintiff alleges, *inter alia*, that (i) "Defendant has placed telephonic sales calls to telephone numbers belonging to thousands of consumers listed throughout Florida without their prior express written consent" in violation of the FTSA; (ii) "Defendant made and/or knowingly allowed telephonic sales calls to be made" in this case; (iii) "the [putative] Class members number in the several thousands, if not more"; (iv) "Plaintiff's claims are typical of the claims of the Class members, as they are all based on the same factual and legal theories"; and (v) "the aggregate damages sustained by [Plaintiff and] the [putative] Class are in the millions of dollars." *Id.* ¶¶ 19, 20, 24, 26, 33-34. Plaintiff further alleges that she received seven text messages sent by or on behalf of Defendant. *Id.* ¶¶ 11, 33.

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

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

CAFA JURISDICTION

10. This Court has jurisdiction over this case pursuant to the Class Action Fairness Act (“CAFA”), specifically 28 U.S.C. § 1332(d)(2) & (5), which together provide, *inter alia*, that “district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which ... any member of a class of plaintiffs is a citizen of a State different from any defendant. . . .” and require that the proposed class must contain at least 100 persons. *See also Evans v. Walter Indus., Inc.*, 449 F.3d 1159, 1163 (11th Cir. 2006) (summarizing CAFA) and *Cappuccitti v. DirecTV, Inc.*, 623 F.3d 1118, 1122 (11th Cir. 2010). As shown below, this case meets all of these requirements.

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

12. Second, there is minimal diversity between Plaintiff and members of the proposed class, all of whom are allegedly Florida residents (Compl. ¶¶ 5, 18), on the one hand, and Defendant, which Plaintiff alleges is a “foreign corporation” (*id.* ¶ 7) and is incorporated in Delaware (*see Exhibit C*, attached hereto), on the other.¹ *See also McDaniel v. Fifth Third Bank*, 568 Fed. Appx. 729, 731 (11th Cir. 2014) (accepting Plaintiff’s allegations as true for purposes of the court’s jurisdictional analysis); *Cooper v. R.J. Reynolds Tobacco Co.*, 586 F. Supp. 2d 1312, 1315 (M.D. Fla. 2008) (minimal diversity existed because all plaintiffs were Florida citizens and defendant was a citizen of Virginia).

13. Third, the possible class number and amount in controversy exceed the requisite minimums from the face of the Complaint because, as noted above and demonstrated below, Plaintiff seeks a minimum of \$500.00 for each violation, and alleges that there are “several thousands” of class members, Defendant “knowingly” violated the FTSA (for treble statutory damages purposes), and aggregate damages are in the “millions of dollars.”

14. Assuming “several thousands” of class members means there are a minimum of 3,000 class members,² each class member would only have to have received an average of about 1.1 text messages for the amount in controversy threshold to be satisfied.³ Moreover, Plaintiff has included screenshots of seven text messages that she herself allegedly received in the Complaint.

¹ Under Fed. R. Evid. 201, “[t]he court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” *See also Coleman v. Bos. Sci. Corp.*, 2020 WL 7090701, at *1 (S.D. Ala. Sept. 22, 2020) (taking judicial notice of secretary of state website identifying place of incorporation for jurisdictional purposes).

² *See, e.g., Laboratoires Perouse, S.A.S. v. W.L. Gore & Assocs., Inc.*, 528 F. Supp. 2d 362, 390 (S.D.N.Y. 2007) (explaining “several” means “more than two”).

³ This calculation is as follows: \$5,000,000 threshold, divided by \$1500 in trebled statutory damages, divided by at least 3,000 class members, equals approximately 1.1 text messages.

Assuming Plaintiff's claims are "typical" of the putative class as she alleged, it is plausible that each class member may have received more than one text message and may have received at least 2 text messages, if not more, and could be entitled to up to \$1,500 in trebled statutory damages if the violation was willful/knowing. Therefore, based on the allegations in the Complaint and reasonable deductions and inferences to be made based thereon, the alleged class easily exceeds 100 persons and the alleged amount in controversy easily exceeds \$5,000,000.⁴ Thus, all CAFA removal requirements are met in this case. *See also Roe v. Michelin N. Am., Inc.*, 613 F.3d 1058, 1061-1062 (11th Cir. 2010) ("[C]ourts may use their judicial experience and common sense in determining whether the case stated in a complaint meets federal jurisdictional requirements" and may make "reasonable deductions, reasonable inferences, or other reasonable extrapolations from the pleadings to determine whether it is facially apparent that a case is removable."⁵

⁴ For example, assuming at least 3,000 class members, multiplied by 2 text messages each, multiplied by \$1500 in trebled statutory damages for each text, equals \$9 million possibly in controversy. Moreover, CAFA "tells the District Court to determine whether it has jurisdiction by adding up the value of the claim of each person who falls within the definition of [the] proposed class and determine whether the resulting sum exceeds \$5 million." *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 592 (2013). "[W]hen a defendant seeks federal-court adjudication, the defendant's amount-in-controversy allegation should be accepted when not contested by the plaintiff or questioned by the court." *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 87-88 (2014) (defendants may simply allege that the jurisdictional threshold has been met).

⁵ Defendant does not concede Plaintiff is entitled to damages, nor is it required to do so for present purposes. *See, e.g., Anderson v. Witco Life Ins. Co.*, 943 F.3d 917, 924 (11th Cir. 2019) ("A defendant seeking to remove a case to federal court must file a notice of removal that includes 'a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.'" (citing *Dart*, 574 U.S. at 89); *Mangano v. Garden Fresh Rest. Corp.*, 2015 WL 5953346, at *1 (M.D. Fla. Oct. 13, 2015) ("A Notice of Removal must plausibly allege the jurisdictional amount, not prove the amount.") (citing *Dart*, 574 U.S. at 89); *Dudley v. Eli Lilly & Co.*, 778 F.3d 909, 913 (11th Cir. 2014) ("[A] removing defendant is not required to prove the amount in controversy beyond all doubt or to banish all uncertainty about it.' [] Moreover, at the jurisdictional stage, 'the pertinent question is what is in controversy in the case, not how much the plaintiffs are ultimately likely to recover.'" (quoting *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 751, 754 (11th Cir. 2010)).

CONCLUSION

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

WHEREFORE, Defendant hereby removes this civil action to this Court

DATED: October 15, 2021

Respectfully submitted,

MARK MIGDAL & HAYDEN
80 S.W. 8th Street, Suite 1999
Miami, Florida 33130
Telephone: (305) 374-0440

By: s/ Yaniv Adar

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*Attorneys for Defendant Underlining
Beauty, LLC dba Nailboo*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of October 2021, a true and correct copy of the foregoing was served by e-mail upon all counsel of record.

By: s/ Yaniv Adar

Yaniv Adar Esq.

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS BRITTANY STODDARD, individually and on t DEFENDANTS UNDERLINING BEAUTY, LLC d/b/a NAILBO

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Mark Migdal and Hayden, 80 S.W. 8th Street, Suite 1999 Miami, Floric Hiraldo P.A., 401 E. Las Olas Blvd., Suite 1400, Ft. Lauderdale, FL

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

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

Grid for Basis of Jurisdiction and Citizenship of Principal Parties with checkboxes for U.S. Government Plaintiff/Defendant, Federal Question, Diversity, Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF, DEF, etc.

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions

Large grid for Nature of Suit with categories: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only) 1 Original Proceeding 2 Removed from State Court 3 Re-filed (See VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation Transfer 7 Appeal to District Judge or Magistrate Judgment 8 Multidistrict Litigation - Direct File 9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case YES NO b) Related Cases YES NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): CAFA, 28 U.S.C. § 1332 LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 5,000,000 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE 10/15/2021 SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment)”.

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked. Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

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

V. Origin. Place an “X” in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge’s decision.

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

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
 Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an “X” in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT A

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 COURT OF THE NINETEENTH JUDICIAL CIRCUIT,
IN AND FOR ST. LUCIE COUNTY, FLORIDA

Brittany Stoddard
Plaintiff

Case # 2021CA001499
Judge Laurie E Buchanan .

vs.

Underlining Beauty LLC
Defendant

II. AMOUNT OF CLAIM

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

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

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

CIRCUIT CIVIL

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

COUNTY CIVIL

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

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

COMPLEX BUSINESS COURT

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

IV. REMEDIES SOUGHT (check all that apply):

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

V. NUMBER OF CAUSES OF ACTION: []

(Specify)

1

VI. IS THIS CASE A CLASS ACTION LAWSUIT?

- yes
- no

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

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

VIII. IS JURY TRIAL DEMANDED IN COMPLAINT?

- yes
- no

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

Signature: s/ Manuel S Hiraldo
Attorney or party

Fla. Bar # 30380
(Bar # if attorney)

Manuel S Hiraldo
(type or print name)

08/23/2021
Date

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR SAINT LUCIE COUNTY, FLORIDA**

CASE NO. 562021CA001499AXXHC

BRITTANY STODDARD,
individually and on behalf of all,
others similarly situated,

Plaintiff,

CLASS ACTION

JURY TRIAL DEMANDED

v.

UNDERLINING BEAUTY, LLC d/b/a
NAILBOO,

Defendant.

CLASS ACTION COMPLAINT

Plaintiff Brittany Stoddard brings this class action against Defendant Underlining Beauty, LLC d/b/a Nailboo, and alleges as follows upon personal knowledge as to Plaintiff and Plaintiff's own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by Plaintiff's attorneys.

NATURE OF THE ACTION

1. This is a class action under the Florida Telephone Solicitation Act ("FTSA"), Fla. Stat. § 501.059, as amended by Senate Bill No. 1120.¹
2. Defendant engages in telephonic sales calls to consumers without having secured prior express written consent as required by the FTSA.
3. Defendant's telephonic sales calls have caused Plaintiff and the Class members harm, including violations of their statutory rights, statutory damages, annoyance, nuisance, and invasion of their privacy.

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

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

PARTIES

5. Plaintiff is, and at all times relevant hereto was, a citizen and resident of Saint Lucie 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 she was the regular user of cellular telephone number that received Defendant’s telephonic sales calls.

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

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 Saint Lucie County.

FACTS

11. Since at least on or about July 1, 2021, Defendant sent the following telephonic sales calls to Plaintiff's cellular telephone number:

30618 >

Text Message
Thu, Jul 1, 2:41 PM

NAILBOO: Don't miss our 4th of July sale! Up to 50% off nail shades & 25% kits w/ "4TH50" <https://nailboo.via.store/rLL7tRk>

Sat, Jul 3, 2:19 PM

24 hrs left! 📱 Up to -55% #1 nail shades for July 4! 30+ manis as low as \$6 w/ "FREEDOM" <https://nailboo.via.store/rLMetN3>

Fri, Jul 16, 1:51 PM

Nailboo: 5 NEW nail shades launching now! 25% off when buying multiple. Limited inventory. Grab yours before they're sold out! <https://nailboo.via.store/rLML32E>

Sat, Jul 17, 6:16 PM

Nailboo: Hey Boo, new nail

30618 >

Sat, Jul 17, 6:16 PM

Nailboo: Hey Boo, new nail shades selling out quick! Save 35% when buying 4+ with code "NEWNEW". Limited inventory left. <https://nailboo.via.store/rLMSFxc>

Fri, Aug 13, 4:15 PM

Nailboo: We've released 5 new STUNNING shades & they're selling out fast! Save 25% when buying multiple. Get yours! -> <https://nailboo.via.store/rLOkzzt>

Sun, Aug 15, 4:09 PM

**Brittany! Save 40% on new nail shades when buying 4+ or 15% off 1 with "BOODROP". Limited time sale. <https://nailboo.via.store/rLOrgGB>
STOP to unsubscribe.**

Tuesday 2:28 PM

30618 >

nailboo.via.store/rLOkzzt

Sun, Aug 15, 4:00 PM

Brittany! Save 40% on new nail shades when buying 4+ or 15% off 1 with "BOODROP". Limited time sale. <https://nailboo.via.store/rLORgGB> STOP to unsubscribe.

Tuesday 2:28 PM

Nailboo: 45% off ALL nail shades (& new ones) when buying multiple with "VIPSHADES"! 24 HRS LEFT. New shades almost gone! <https://nailboo.via.store/rLOzZUr>

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

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

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

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

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

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

CLASS ALLEGATIONS

PROPOSED CLASS

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

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

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

NUMEROSITY

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

21. The exact number and identities of the Class members are unknown at this time and can be ascertained only through discovery. Identification of the Class members is a matter capable of ministerial determination from Defendant's call records.

COMMON QUESTIONS OF LAW AND FACT

22. There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual members of the Class. Among the questions of law and fact common to the Class are: [1] Whether Defendant initiated telephonic sales calls to Plaintiff and the Class members; [2] Whether Defendant can meet its burden of showing that it had prior express written consent to make such calls; and [3] Whether Defendant is liable for damages, and the amount of such damages.

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

TYPICALITY

24. Plaintiff's claims are typical of the claims of the Class members, as they are all based on the same factual and legal theories.

PROTECTING THE INTERESTS OF THE CLASS MEMBERS

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

SUPERIORITY

26. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are in the millions of dollars, the individual damages incurred by each member of the

Class resulting from Defendant's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

27. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example, one court might enjoin Defendant from performing the challenged acts, whereas another may not. Additionally, individual actions may be dispositive of the interests of the Class, although certain class members are not parties to such actions.

COUNT I
VIOLATION OF FLA. STAT. § 501.059
(On Behalf of Plaintiff and the Class)

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

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

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

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

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

Fla. Stat. § 501.059(1)(g).

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

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

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

35. As a result of Defendant's conduct, and pursuant to § 501.059(10)(a) of the FTSA, Plaintiff and Class members were harmed and are each entitled to a minimum of \$500.00 in

damages for each violation. Plaintiff and the Class members are also entitled to an injunction against future calls. *Id.*

PRAYER FOR RELIEF

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

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

JURY DEMAND

Plaintiff, individually and on behalf of the Class, hereby demand a trial by jury.

DOCUMENT PRESERVATION DEMAND

Plaintiff demands that Defendant take affirmative steps to preserve all records, lists, electronic databases or other itemization of telephone numbers associated with the communications or transmittal of the calls as alleged herein.

DATED: August 23, 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

DAPEER LAW, P.A.

Rachel N. Dapeer, Esq.
20900 NE 30th Avenue, Ste. 417
Aventura, Florida 333180
Email: rachel@dapeer.com
Telephone: 305-610-5223

Counsel for Plaintiff

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR SAINT LUCIE COUNTY, FLORIDA**

CASE NO. 2021CA001499

Judge Laurie E Buchanan

BRITTANY STODDARD,
individually and on behalf of all,
others similarly situated,

Plaintiff,

CLASS ACTION

JURY TRIAL DEMANDED

v.

UNDERLINING BEAUTY, LLC d/b/a
NAILBOO,

Defendant.

_____ /

SUMMONS

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

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

UNDERLINING BEAUTY, LLC d/b/a NAILBOO
Registered Agent: AIDAN COLE
322 6TH STREET, APT 13
SAN FRANCISCO, CA 94103

Each defendant is required to serve written defenses to the complaint or petition on **MANUEL S. HIRALDO, HIRALDO P.A., Plaintiff's attorney, whose address is 401 E. Las Olas Blvd., Ste. 1400, Fort Lauderdale, FL 33301, Tel: (954) 400-4713**, within twenty (20) days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

DATED on _____

As Clerk of the Court

BY: _____
As Deputy Clerk

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR SAINT LUCIE COUNTY, FLORIDA**

CASE NO. 2021CA001499

Judge Laurie E Buchanan

BRITTANY STODDARD,
individually and on behalf of all,
others similarly situated,

Plaintiff,

CLASS ACTION

JURY TRIAL DEMANDED

v.

UNDERLINING BEAUTY, LLC d/b/a
NAILBOO,

Defendant.

SUMMONS

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


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

UNDERLINING BEAUTY, LLC d/b/a NAILBOO
Registered Agent: AIDAN COLE
322 6TH STREET, APT 13
SAN FRANCISCO, CA 94103

Each defendant is required to serve written defenses to the complaint or petition on **MANUEL S. HIRALDO, HIRALDO P.A., Plaintiff's attorney, whose address is 401 E. Las Olas Blvd., Ste. 1400, Fort Lauderdale, FL 33301, Tel: (954) 400-4713**, within twenty (20) days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

DATED on 24 August 2021

MICHELLE R. MILLER, CLERK AND COMPTROLLER

BY:  _____
As Deputy Clerk

RETURN OF SERVICE

State of Florida

County of Saint Lucie

Circuit Court

Case Number: 2021CA001499

Plaintiff:

BRITANNY STODDARD, individually and on behalf of all, other similarly situated,

vs.

Defendant:

UNDERLINING BEAUTY,LLC d/b/a NAILBOO

For:

Manuel Hiraldo

Hiraldo P.A.

401 E. Las Olas Blvd.

Ste 1400

Fort Lauderdale, FL 33301

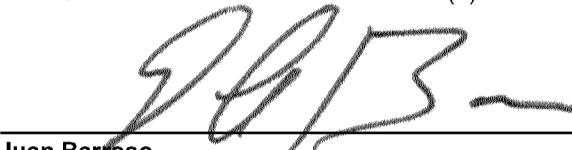
Received by L & L Process, LLC. on the 24th day of August, 2021 at 3:52 pm to be served on **UNDERLINING BEAUTY, LLC d/b/a NAILBOO AIDAN COLE/ REGISTERED AGENT, 322 6TH STREET, APT 13, SAN FRANCISCO, CA 94103.**

I, Juan Barroso, do hereby affirm that on the **17th day of September, 2021 at 3:45 pm, I:**

served a **CORPORATION** by delivering a true copy of the **Summons and Class Action Complaint** with the date and hour of service endorsed thereon by me, to: **AIDAN COLE** as **REGISTERED AGENT/AUTHORIZED** for **UNDERLINING BEAUTY, LLC d/b/a NAILBOO**, at the address of: **1100 BISCAYNE BLVD UNIT 4605, MIAMI, FL 33132**, and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 35, Sex: M, Race/Skin Color: WHITE, Height: 5'8", Weight: 170, Hair: BROWN, Glasses: N

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)



Juan Barroso
Certified Process Server #2148

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

Our Job Serial Number: LLP-2021002944

IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
IN AND FOR SAINT LUCIE COUNTY, FLORIDA

BRITTANY STODDARD,
individually and on behalf of all,
others similarly situated,

Plaintiff,

v.

UNDERLINING BEAUTY, LLC d/b/a
NAILBOO,

Defendant.

CASE NO.: 2021CA001499
Judge Laurie E. Buchanan

CLASS ACTION

**DEFENDANT'S MOTION FOR EXTENSION OF TIME
TO FILE RESPONSE TO PLAINTIFF'S COMPLAINT**

Defendant, UNDERLINING BEAUTY, LLC d/b/a NAILBOO ("Defendant"), by and through their undersigned counsel, hereby move this Court for a thirty (30) day extension of the deadline to file a response to Plaintiff, BRITTANY STODDARD ("Plaintiff")'s Class Action Complaint, and states as follows:

1. Defendant was served with the Class Action Complaint on September 16, 2021.
2. The current deadline for Defendant to respond to Plaintiff's Class Action Complaint is October 6, 2021.
3. Defendant is requesting a thirty (30) day extension of the deadline to respond to the Class Action Complaint, through November 5, 2021.
4. This motion is made in good faith and not for the purpose of delay. No party to this action will be unduly prejudiced by the granting of the requested extension of time.

WHEREFORE, Defendant, UNDERLINING BEAUTY, LLC d/b/a NAILBOO, respectfully requests that the Court enter an order granting this Motion for Extension of Time to

File Response to Plaintiff's Class Action Complaint, extending the deadline through November 5, 2021, and granting such other relief as the Court deems just and proper.

DATED: October 5, 2021

Respectfully submitted,

MARK MIGDAL & HAYDEN
80 S.W. 8th Street, Suite 1999
Miami, Florida 33130
Telephone: (305) 374-0440

By: s/ Yaniv Adar

Josh A. Migdal, Esq.
Florida Bar No. 19136
josh@markmigdal.com
Yaniv Adar, Esq.
Florida Bar No. 63804
yaniv@markmigdal.com
eservice@markmigdal.com

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on October 5, 2021, a copy of the foregoing was electronically filed through the Florida Courts E-Filing Portal which will send electronic notification of the above filing to all registered users.

s/ Yaniv Adar
Yaniv Adar, Esq.

EXHIBIT B

2021CA001499 - STODDARD, BRITTANY vs. UNDERLINING BEAUTY LLC

SUMMARY		
Judge: BUCHANAN, LAURIE E	Case Type: OTHER COMPLAINT	Status: OPEN
Case Number: 2021CA001499	Uniform Case Number: 562021CA001499AXXXHC	
Clerk File Date: 8/24/2021	Status Date: 8/24/2021	
SAO Case Number:	Total Fees Due: 0.00	
Agency:	Agency Report #:	Custody Location:

PARTIES		
TYPE	PARTY NAME	ATTORNEY
PLAINTIFF	STODDARD, BRITTANY	 HIRALDO, MANUEL SANTIAGO (Main Attorney)
DEFENDANT	UNDERLINING BEAUTY LLC	

EVENTS				
DATE	EVENT	JUDGE	LOCATION	RESULT
No Events on Case				

CASE HISTORY						
CASE NUMBER	CHARGE DESCRIPTION	CASE STATUS	DISPOSITION	OUTSTANDING AMOUNT	NEXT EVENT	ALERTS
No Additional Cases						







CASE DOCKETS			
IMAGE	DIN	DATE	ENTRY
	2	11	10/5/2021 MOTION FOR EXTENSION OF TIME (V)
	1	10	9/17/2021 SUMMONS RETURNED SERVED (V)
		8	8/24/2021 "RECIPIENTS: MANUEL S HIRALDO - SUBJECT: SERVICE OF COURT DOCUMENT - 2021CA001499, STODDARD, BRITTANY VS. UNDERLINING BEAUTY LLC - ATTACHMENT COUNT: 1 - EMAIL DOCKET DESCRIPTIONS: SUMI-8/24/2021"
	1	7	8/24/2021 SUMMONS ISSUED (V)
		6	8/24/2021 CIRCUIT JUDGE BUCHANAN, LAURIE E: ASSIGNED
		2	8/24/2021 PLAINTIFF ATTORNEY: HIRALDO, MANUEL SANTIAGO ASSIGNED
		1	8/24/2021 CASE FILED 08/24/2021 CASE NUMBER 2021CA001499
		9	8/24/2021 PAYMENT \$410.00 RECEIPT #2021000066579 RECEIVED FOR FILING NUMBER 133238758 VIA FILINGPAYMENTS20210824235959.TXT.
	1	5	8/23/2021 SUMMONS TO BE ISSUED BY CLERK (V)
	3	3	8/23/2021 CIVIL COVER SHEET (V)
	11	4	8/23/2021 COMPLAINT (V)

EXHIBIT C



Department of State: Division of Corporations

[Allowable Characters](#)

HOME

Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

File Number:	5932929	Incorporation Date / Formation Date:	5/20/2021 (mm/dd/yyyy)
Entity Name:	UNDERLINING, INC.		
Entity Kind:	Corporation	Entity Type:	General
Residency:	Domestic	State:	DELAWARE

REGISTERED AGENT INFORMATION

Name:	CORPORATION SERVICE COMPANY		
Address:	251 LITTLE FALLS DRIVE		
City:	WILMINGTON	County:	New Castle
State:	DE	Postal Code:	19808
Phone:	302-636-5401		

Additional Information is available for a fee. You can retrieve Status for a fee of \$10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of \$20.00.

Would you like Status Status, Tax & History Information

For help on a particular field click on the Field Tag to take you to the help area.

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ClassAction.org

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