

May 25, 2018

VIA ECFS

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Notice of Ex Parte Presentation*; CG Docket No. 02-278

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. 1.1206, this letter provides notice¹ that on May 23, 2018, Mr. Eugene Kalsky ("Gene Kalsky"), President of Gen-Kal Pipe & Steel Corp. ("Gen-Kal"), along with the undersigned counsel, met separately with:

- (1) Amy Bender, Legal Advisor, Wireline, to Commissioner O'Rielly;
- (2) Kurt Schroeder, Rebecca Hirselj and Kristi Thornton of the Consumer & Governmental Affairs Bureau;
- (3) Zenji Nakazawa, Public Safety and Consumer Protection Advisor to Chairman Pai, and
- (4) Travis Litman, Chief of Staff and Senior Legal Advisor, Wireline and Public Safety, to Commissioner Rosenworcel.

During each of these meetings it was explained that Gene Kalsky and Gen-Kal are the victims of predatory litigation initiated under the guise of the Telephone Consumer Protection Act ("TCPA")² by a serial litigant in Pope County, Arkansas.³ New Jersey corporation Gen-Kal did not answer or respond to the complaint through counsel, and New Jersey resident Gene Kalsky did not personally answer or respond to the complaint. Nonetheless, through a series of truly disconcerting due process violations and conspicuous legal errors, the court in rural Pope County,

¹ This filing is made out of an abundance of caution as the issues discussed do not relate directly to any ongoing proceeding but may ultimately result in a filing assigned to the above-referenced docket.

² See Pub. L. No. 102-243, 105 Stat. 2394 (codified, as amended, at 47 U.S.C. § 227).

³ See *M.S. Wholesale Plumbing, Inc. v. Gen-Kal Pipe & Steel Co.*, Case No. 58CV-2015-440, Order Granting Plaintiff's Motion for Summary Judgment, filed Mar. 17, 2017 (Ark. Cir. Ct., Pope County). Appeal of the Arkansas decision is currently pending. *Gen-Kal Pipe & Steel Co. v. M.S. Wholesale Plumbing, Inc.*, Case No. CV 17-970 (Ark. App. filed Nov. 16, 2017).

Arkansas imposed a baseless, crippling \$12.5 million judgment against both Gen-Kal and Gene Kalsky, jointly and severally.

Following domestication of the absurd Arkansas judgment in New Jersey, Gen-Kal was forced to file petitions under Chapter 11 of the U.S. Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*⁴ One week after Gen-Kal's bankruptcy filing, the serial plaintiff filed a motion in New Jersey for the levy and sale of Gene Kalsky's home. This motion was granted, and Gene Kalsky is now at imminent risk of losing his family home.⁵

Gene Kalsky and counsel explained their intent to file with the Commission a petition for declaratory ruling, relative to the one solicited fax advertisement cited as the basis for the Arkansas complaint. More specifically, the request would seek, *inter alia*, clarification that in light of the *Bais Yaakov* decision,⁶ which vacated Section 64.1200(a)(4)(iv) of the FCC's rules (the "Solicited Fax Rule"), the fax advertisement sent by Gen-Kal to M.S. Wholesale Plumbing Inc. did not violate the TCPA even if the fax may not have satisfied every one of the various technical requirements of the now-vacated Solicited Fax Rule.

It was also explained that Gene Kalsky intends to ask the Commission to clarify that in cases such as this, where no facts were presented or found to support a veil-piercing claim, individuals such as Gene Kalsky should not incur personal liability for an actual corporate TCPA violation. Finally, it was noted that to the extent the FCC does not grant the request for declaratory ruling, the Commission may be asked, in the alternative, to grant a retroactive waiver of the Solicited Fax Rule with respect to the solicited fax message transmitted to M.S. Wholesale Plumbing Inc.

Please contact the undersigned relative to this matter.

Respectfully submitted,

/s/ Andrew M. Klein
Andrew M. Klein
Susan Goldhar Ornstein

cc: (all via email)
Amy Bender
Kurt Schroeder

⁴ *Re: Gen-Kal Pipe & Steel Corp.*, Case No. 17-31527-ABA (Bankr. D.N.J. filed October 24, 2017) and Case No. 18-10376 ABA (Bankr. D.N.J. filed January 8, 2018).

⁵ The Order for the sale of Gene Kalsky's home was issued in error, and is now on appeal before the Superior Court of New Jersey, Appellate Division, although the Order has not at this time been stayed or held in abeyance. (Docket No. A-002502-17).

⁶ *See Bais Yaakov of Spring Valley v. FCC*, 852 F.3d 1078, 1079 (D.C. Cir. 2017).

Rebecca Hirselj
Kristi Thornton
Zenji Nakazawa
Travis Litman