

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of the)
)
Rules and Regulations Implementing)
) **CG Docket No. 02-278**
the Telephone Consumer Protection)
)
Act of 1991)

**Joe Shields Submission For The Record on The U.S. Chamber of Commerce in
conjunction with the U.S. Chamber Institute for Legal Reform Ex Parte Letter**

I hereby respectfully file this Submission for the Record in reference to the Ex Parte letter filed by The U.S. Chamber of Commerce in conjunction with the U.S. Chamber Institute for Legal Reform (hereinafter “Chamber”) with the Commission on June 11th, 2015. In the Ex Parte Presentation Chamber made several unfounded and serious accusations against those aggrieved by TCPA violations:

“...many attorneys and individual consumers making their livings through suing companies for any text, call, or facsimile placed to numbers that had been provided to those companies for such communication purposes.” Chamber Ex Parte Para. 4

“And in a growing number of instances, persons who make a living from TCPA demands and lawsuits take advantage of this situation by acquiring new telephone numbers in the hopes of receiving a telephone call or text from a deep-pocket company trying to reach a customer at the customer-provided number.” Chamber Ex Parte I Para. 1

“Further, the Chamber notes it has heard from several members that lawsuits are now being brought where a wrong number appears to have been purposefully provided by a new customer, in order to generate calls to a non-customer friend or family member who then brings a TCPA action against the company.” Chamber Ex Parte I Para. 5

There is no truth to any of Chambers accusations. It is typical of those that seek to neuter the TCPA and/or defend against legitimate TCPA claims to stoop to using

fabrications before the Commission and the courts. That is exactly what we have here with Chambers Ex parte Presentation. The Chamber is committing fraud before the Commission!

I am submitting to the Commission an excruciating similar and very real example by a group of TCPA defendants engaging in the same kind of fraud before a federal court.

I am class representative in *Shields v. Ultimate Vacation Group LLC et al*, Case No.: 3:14-cv-00285, (S.D. TX, Galveston Div.). The case deals with the exact same type of sham political survey prerecorded calls to cell phone numbers as in *Birchmeier et al. v. Caribbean Cruise Line Inc.*, Case No. 12-cv-04069 (N.D. Ill.) and *F.T.C. v Caribbean Cruise Line Inc.*, Case No.: 0:15-cv-60423, (S.D. FL)¹.

Similar to the Chamber's fraudulent claims the defendant(s) in *Shields* assert the following answers, defenses and arguments:

"Ultimate denies that Plaintiff never provided his cell phone number to an entity. In fact, Plaintiff provided his telephone number through his navigation on webpages and, therefore, provided consent to receive telephone calls to that cell phone number." Answer at #33

"Plaintiff's status as a professional plaintiff who welcomes and even encourages telemarketing calls to his residence as a means of developing TCPA class action claims where none legitimately exists for his own pecuniary benefit, raises defenses that are unique and applicable only to his claims, such that Plaintiff is incapable of being an adequate representative of the putative class." Answer at #120

"Ultimate asserts a defense of entrapment to Plaintiff's claims, to the extent the alleged call or calls described in the FAC, the SAC, and the TAC were encouraged by Plaintiff in order to entrap the defendants into alleged

¹ See also *Bank v. Caribbean Cruise Line Inc.*, Case No.: 1:12-cv-05572 (E.D. N.Y.); *Cunningham v. Caribbean Cruise Line Inc.*, Case No.: 3:14-cv-01040 (M.D. Ten.); *Espinoza v. Caribbean Cruise Line Inc.*, Case No.: 5:14-cv-01814 (C.D. Ca. Eas. Div.); *Gholson v. Caribbean Cruise Line Inc.*, Case No.: 1:14-cv-08405 (N.D. Il. Eas. Div.); *Izsak v. Caribbean Cruise Line Inc.*, Case No.: 0:14-cv-62231 (S.D. Fl. Fort Lauderdale Div.); *Lively v. Caribbean Cruise Line Inc.*, Case No.: 2:14-cv-00953 (E.D. Ca. Sacramento Div.)

violations of the TCPA as part of Plaintiff's scheme to manufacture a class action TCPA case to use as leverage to extract a large settlement for his own personal benefit only." Answer at #126

"Plaintiff's inequitable conduct in seeking to entrap defendants into alleged violations of the TCPA as a means of manufacturing a class action lawsuit to use as leverage to extract a settlement for his personal benefit in an amount exceeding any damages he could claim for his individual claims." Answer at #134

"Plaintiff's claims are barred by the doctrine of estoppel and consent based on his actions encouraging telemarketing calls for the purposes of creating TCPA litigation." Case Management Plan, Item 3 Bullet #5

"Plaintiff's claims are barred by the doctrine of ratification based, in part, by his encouraging the alleged telemarketing call and making outbound calls to Ultimate." Case Management Plan, Item 3 Bullet #14

"Plaintiff's claims are barred by the doctrines of laches and/or waiver. Plaintiff knowingly relinquished his right to bring the claims in his Complaint by his actions in encouraging the alleged telemarketing call and making outbound calls to defendants" Case Management Plan, Item 3 Bullet #17

"CCL has asserted that Plaintiff, as a professional plaintiff, welcomed and even encouraged telemarketing calls to his residence as a means of developing TCPA class action claims where none legitimately exists for his own pecuniary benefit." Memorandum in Opposition to Class Cert., Section B, para. 3

The defendant's above answers, defenses and arguments are predicated entirely on fabricated evidence!

Defendants have produced a PDF document of an alleged web page log containing the name "Joe Shields", the cell phone number 281-704-XXXX and an IP address 172.2.8.222. Defendants have produced a 2 page PDF document of an email string also containing the name "Joe Shields", the cell phone number 281-704-XXXX and an IP address 172.2.8.222.

Joe Shields

Phone number: 281-704-[REDACTED]

Site: start.appteka.org

IP: 172.2.8.222

Date Visited Site: 06/25/14 15:15

Survey date: 08/25/14 19:02

Ultimate00010

From: "Blake Curtis" <blake@rbcruiseline.com>
Sent: Thursday, April 09, 2015 1:30 PM
To: "<eric@netleadsinternational.com>" <eric@netleadsinternational.com>
Subject: Re: Need Opt In!!

I agree... It's beyond frivolous.

Thank you Eric

On Apr 9, 2015, at 12:10 PM, <eric@netleadsinternational.com> <eric@netleadsinternational.com> wrote:

It seems this consumer has registered on multiple site across the internet. I beleive he is a professional plaintiff and is intentially opting into offers in hopes he will get called or emailed so he can file complaints. I did lookup and here is the website information and Ip that he used which generated a survey call in August.

Joe Shields

Phone number: 281-704- [REDACTED]

Site: start.appteka.org

IP: 172.2.8.222

Date Visited Site: 06/25/14 15:15

Survey date: 08/25/14 19:02

On Thu, 9 Apr 2015 11:48:20 -0400, Blake Curtis <blake@rbcruiseline.com> wrote:

Eric is that correct? I had an email that had other info for him, and I can't find it anywhere

On Apr 8, 2015, at 8:52 AM, <carolina@netleadsinternational.com>
<carolina@netleadsinternational.com> wrote:

Here is info, you requested opt in info for this guy back in 2014 too.

Ultimate00204

On Wed, 8 Apr 2015 02:01:10 -0400, Blake Curtis <blake@rbcruiseline.com> wrote:

Please supply the opt in for :

281-704-██████

This is Joe Shields doing a stupid class act

Ultimate00205

According to the produced PDF documents Shields allegedly visited the web site start.appteka.org on 06/25/14 and submitted Shields's cell phone number 281-704-XXXX on that web site. The email string asserts that Shields allegedly did the same on several other web sites.

There are serious and blatant inaccuracies in the produced PDF documents.

A check of Shields' browser log indicates that Shields never visited the start.appteka.org web site. A web site "who is" check of appteka.org indicates the web site is registered to a Russian software developer². The "Terms" page linked to on the auto insurance web page at start.appteka.org refers to an online video service.

² The web site netleadsinternational.com of the Belize telemarketer that alleged made the sham political survey robocall on behalf of the defendant's is registered under the name

Further, Shields has a “Static” IP address assigned to him i.e. one that never changes. Shields’ IP number has been the same for the last eight years and it has never been 172.2.8.222 The IP number 172.2.8.222 was never assigned to Shields.

But the most startling and outrageous revelation is that Shields was not assigned the 281-704-XXXX cell phone number until 07/17/14 by Shields’ wireless carrier! See attached carrier bill pages establishing that the 281-704-XXXX number wasn’t assigned to Shields until 07/17/14.

Shields could not foresee what cell phone number his carrier would assign to him 22 days later. **Therefore, the PDF documents produced by the defendants in the Shields case are clearly fabrications!**³

Even when the fabrication is pointed out to the defendant’s attorney the defendants continue to insist the evidence is not fabricated: “...its alleged outright fabrication of evidence in this case are categorically untrue.” Letter to Judge Hanks 6/29/15.

As can be seen from the above example scofflaws will attempt anything including fabricating evidence to avoid being held liable for violating the TCPA. Most if not all of industry petitioners and commentors before the Commission are guilty to some degree of the same conduct.

For example the petitions filed by ACA International, United Healthcare Services, Consumers Banking Association, Rubio’s Restaurant⁴ and Stage Stores and industry

“Matt Jones” using a Washington DC address and phone number. That phone number has never been assigned to Netleads International. The number is assigned to an individual whose name is not “Matt Jones”. The phone number is for personal use and the subscriber to that number has no idea why his phone number was used to register the web site.

³ The attorney for the defendants could have easily vetted his client’s claims by serving a subpoena on Shields’ wireless carrier and/or internet service provider. He did not do so.

comments supporting the petitions cite to cases that have nothing to do with reassigned cell phone numbers, fabricate claims that courts are “split” on the definition of called party and blatantly ignore the voluminous case law⁵ that refutes the arguments for an “intended” called party exemption or safe harbor.

What is even more egregious is the failure to acknowledge the infallible method of removing disconnected numbers before they are reassigned that will eliminate most automatically dialed or prerecorded message/text calls to reassigned cell numbers.

Industry fabrications of controversy’s or uncertainties with the Commission are rampant. For example the Citizens Bank N.A. petitions states: “Without clarification, serial plaintiffs and their counsel will be free to **entrap** not only debt collectors but other corporate or civic institutions...” Sound familiar? See above Page 3 Answer at #134.

Industry fabrication that all TCPA claims are frivolous is customary with most if not all petitions and comments. For example in its reply comments Stage Stores Inc. states:

“Over twelve hundred (1,200) frivolous class action suits premised on the TCPA were filed in 2013 alone.”

Similarly, Vibes accuses the Manning Law Firm of engaging in fraud:

“For instance, the Manning Law Office in Newport Beach, CA, routinely sends demand letters to companies for alleged TCPA violations. The purported “plaintiffs” appear to be attorneys, paralegals and other staff of the law office who initiate the text messages by affirmatively signing up to receive offers. They wait for multiple texts to arrive and then the Manning Law Office sends a letter with unsupported and inaccurate allegations of TCPA violations.” Vibes Ex Parte Presentation Footnote 6

⁴ “...courts grapple with how to define “called party.”” Rubio’s petition. Page 2, last para.

⁵ 32 Federal courts and 2 Federal appellate courts have been unified in the definition of called party.

Subsequently, the alleged plaintiff/attorney actions and alleged cases that Chamber complains about are fabrications. Industry will continue to file petitions and comments based on fabrications unless the Commission addresses the fabrications.

“It has always been understood - the inference, indeed, is one of the simplest in human experience - that a party’s falsehood or other fraud in the preparation and presentation of his cause, his fabrication or suppression of evidence by bribery or spoliation, and all similar conduct is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and from that consciousness may be inferred the fact itself of the cause’s lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause.” Wigmore, Evidence §278, at 133 (Chadbourn ed. 1979)

The Commission must admit that fabrication of controversies and/or uncertainties, fabrications that all TCPA claims are frivolous, fabrications that courts are divided on a legal issue, fabrications that victims of illegal behavior are trying to entrap companies are made because of lack of merit of a petitioners or commentors cause. The Commission must set an example to deter future fabrications and one way the Commission can do so is by striking the Chamber Ex Parte letter for fraud before the Commission.

Respectfully submitted,

_____/s/_____

Joe Shields
Texas Government & Public Relations Spokesperson for Private Citizen Inc.
16822 Stardale Lane
Friendswood, Texas 77546

Account Service Detail for Subscriber 281-468-

Address at which this line is primarily used:
 16822 STAR DALE LN
 FRIENDSWOOD TX 77546-4243



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|------------|------------|------------|------------|------------|------------|------------|
| [REDACTED] |
| [REDACTED] |
| [REDACTED] |
| [REDACTED] |
| [REDACTED] |
| [REDACTED] |
| [REDACTED] |
| [REDACTED] |
| [REDACTED] |
| [REDACTED] |

Monthly Recurring Charges

Item

Enhanced Voicemail from 6/17/14 to 7/16/14
 SC 3GB Data & SMHS from 6/17/14 to 7/16/14

Old number 281-468-XXX assigned through 7/16/14.

Monthly Recurring Charges

Adjustments to Bill

Item

Amount

State and Local Tax Adj.

Adjustment to Bill

Other Charges

Item

Amount

Communications Related

Regulatory Programs Fee* from 6/17/14 to 7/16/14

Other Charges

*Fee we collect and retain to help cover our costs related to funding and complying with government mandates, programs and obligations.

