

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

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

Attorney Demands Half A Million Dollars for Comments Filed With the FCC

I respectfully submit the attached frivolous demand letter I received today in regard to my comments filed with the Commission on June 30th, 2015.

The documents filed with the FCC were not marked as confidential and therefore were not afforded confidential treatment according to the Agreed Protective Order filed with the court on 01/22/15 (Doc. #29)¹.

Further, the comments were true statements supported by incontrovertible evidence. I was not assigned the telephone number at the time in question clearly proving the evidence of consent was fabricated. More importantly, the frivolous entrapment and encouragement allegations cannot be proven since they are not based on any facts.

My comment(s) filed with the FCC were an exercise of my constitutional rights to participate in a federal proceeding. It is a shame that commentors like me are subjected to such harassment and attempts to silence participation.

The submission is another example of how low the telemarketing industry will stoop to protect their illegal behavior and punish commentors that dare to file comments opposing the telemarketing industry.

Respectfully submitted,

/s/

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

¹ *Shields v. Ultimate Vacation Group LLC et al*, Case No.: 3:14-cv-00285, (S.D. TX, Galveston Div.).

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November 24, 2015

FEDERAL EXPRESS

Joe Shields
16822 Stardale Lane
Friendswood, Texas 77546

Re: *Ultimate Vacation Group, LLC, et. al. v. Joe Shields
and Private Citizen, Inc.*

Dear Mr. Shields:

We represent Ultimate Vacation Group, LLC, Blake Curtis, Jason Wagner and Wagner Sáenz Dority, L.L.P. in regard to their respective claims against you arising out of your breach of that certain Confidential Settlement Agreement and Release, as well as defamatory statements that you published pertaining to them.

Breach of Settlement Agreement.

As you are aware, you recently settled litigation with Ultimate Vacation Group, LLC ("UVG") by entering into a certain Confidential Settlement Agreement and Release dated July 30, 2015. The Agreement was the result of extensive negotiations and was ultimately executed by you and your counsel.

Section 5.3.1 of the Agreement provides:

Plaintiff and Defendant Released Parties acknowledge that there is a mutual benefit to the Parties hereto in maintaining the confidentiality of all monies paid, in the provision of information and/or documentation as required by the Settlement Agreement and Release in settlement of the Litigation, and in the provision of responses to requests for admission, responses to requests for production, and answers to interrogatories in the Litigation ("Confidential Information") [emphasis added].

Section 5.3.3 of the Agreement provides that:

Plaintiff and his attorneys jointly agree, promise, warrant, and covenant that, prior to the payment under Paragraph 4, they have not disseminated, distributed, shown, or otherwise shared any Confidential Information with anyone for any reason at any time, save and except for those persons within the law offices of Plaintiff's attorney and any persons hired and/or retained by Plaintiff's attorney to provide services in the Litigation.

Finally, Section 5.3.7 of the Agreement provides that:

Any breach of this provision is a material breach of this Agreement and may be enforced by injunction, including a temporary restraining order and a temporary injunction. In addition, should any provision of Paragraph 5.3. be found to be violated, Plaintiff shall pay liquidated damages in the amount of Forty-Five Thousand Dollars and No Cents (\$45,000.00). Such liquidated damages shall be deemed to be a genuine estimate of the foreseeable damages incurred by Defendant due to Plaintiff's failure to performance [sic] under the provisions of Paragraph 5.3.

In short, by executing the Agreement, you warranted that you had not shared any information or documentation (i.e., Confidential Information) that was produced to you or your attorney in the Litigation with any third parties. In fact, by signing the Agreement, you acknowledged that any breach of this obligation shall be deemed to be a material breach of the Agreement, and it was this warranty of yours which was necessary to induce UVG to enter into the Agreement with you. This warranty was effectively made by you as of July 30, 2015, the date on which you executed the Agreement.

On or about November 3, 2015, UVG became aware of a document entitled: "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" ("Letter"). The Letter, signed by you and dated June 15, 2015, was filed by you with the Federal Communications Commission ("FCC") in its 02-287 docket for viewing by the Commission and the general public. I have attached a copy of the Letter for your review. Aside from containing incorrect and defamatory statements regarding my clients as further explained below, you attached to the Letter several documents that were provided to you by UVG during the course of the Litigation and which constitute Confidential Information under the Agreement. This Confidential Information appears on pages 4, 5 and 6 of the Letter. The fact that these documents were provided to you during the course of the Litigation -- and therefore constitute Confidential Information -- is undeniable as they contain the Bates numbering that UVG placed on them prior to production. Despite this filing, you nevertheless promised, warranted and covenanted to UVG that you had

not "disseminated, distributed, shown, or otherwise shared any Confidential Information" with anyone for any reason. Accordingly, you are in breach of Section 5.3.3 the Agreement.

As a result of your breach, UVG hereby demands payment from you in the amount of Forty Five Thousand Dollars (\$45,000.00) pursuant to Section 5.3.7 of the Agreement. Such payment must be received by me at the address above within ten (10) days of the date of this letter or UVG shall pursue all legal and equitable remedies available to it. Furthermore, also within ten (10) days of the date of this letter, you must take all necessary steps to ensure that the FCC removes the Letter from the public record or redacts all Confidential Information contained therein.

Defamation.

Furthermore, the Letter contained actionable defamatory statements pertaining to UVG, Blake Curtis, Jason Wagner and Wagner Sáenz Dority, L.L.P. As you may be aware, pursuant to Texas common law, defamation is "the invasion of a person's interest in her reputation and good name." *Hancock v. Variyam*, 400 S.W.3d 59, 63 (Tex. 2013); *see also Pitts & Collard, L.L.P. v. Schechter*, 369 S.W.3d 301 (Tex. App.—Houston [1st Dist.] 2011, no pet). Speech that "injures a person in her office, profession, or occupation" is defamatory *per se*, and entitles the victim to compensation even absent direct proof of actual damage. *Id.* at 64. A statement injures professionals if it accuses them "of lacking a peculiar or unique skill that is necessary for the proper conduct of the profession". *Id.* at 67. In this regard, the Letter contained multiple defamatory statements directed at my clients.

For example, on page 2 of the Letter, you accuse my clients of "engaging in ...fraud before a federal court." More specifically and egregiously, on pages 3 and 7 of the Letter, you strongly imply that my clients fabricated evidence and that Mr. Wagner lied to a federal judge. As you may be aware, Jason Wagner and Wagner Sáenz Dority, L.L.P. engage in an active legal practice in state and federal courts inside and outside Texas. Their practice before these courts as well as the ethical obligations imposed upon them require that they act with the utmost candor and professionalism. Any court, federal or otherwise, requires acting with the utmost candor. Applicable ethical rules further require that attorneys be truthful in their dealings. Your reckless and inaccurate statement and suggestion that Mr. Wagner and his firm have defrauded a court calls into question their honesty, truthfulness and professionalism which directly impacts and affects their fitness to practice law as well as their professional reputations and, as such, were defamatory *per se*. They are therefore entitled to recover damages from you even absent direct proof of actual damage.

The Letter also defamed UVG and Blake Curtis, UVG's agent, in their professions. In order to engage in their professions, Mr. Curtis and UVG are frequently required to submit to government regulators in order to obtain the licenses necessary to operate legally. An accusation that Mr. Curtis and UVG engage in fraud before tribunals jeopardizes their abilities to receive these licenses that are necessary for them to engage in their professions. As a result of your defamatory statements, my clients have suffered incalculable damage to their individual

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reputations. Further, the content and context of the communications establishes that such statements were made with malice, thereby entitling my clients to exemplary damages.

In addition to the damages sought for your breach of the Agreement described above, each of my clients hereby demand the sum of One Hundred Twenty Five Thousand Dollars (\$125,000.00) from you for a total sum of \$500,000.00.

If the payments demanded above are not received, and corrective action required above is not taken, within ten (10) days of the date of this letter, my clients will pursue any and all remedies available to them under the law. Please contact me with any questions that you may have.

Very truly yours,



Mitchell N. Roth

MNR:mlm
Enclosure