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	)	

Shields Submission For The Record on the Reply Comments of United Healthcare Services Inc.

United Healthcare Services Inc. filed reply comments with the Commission on March 24th, 2014. In those reply comments United Healthcare Services Inc. stated:

> The FCC should be aware that the commenters who argue in favor of such unnecessary and ineffective measures are, overwhelmingly, self-interested TCPA plaintiffs who have a strong financial incentive in maintaining as many paths to potential TCPA damages as possible, even when callers are fully compliant with both the spirit and the letter of the statute.[33]
>
> [33] For example, Robert Biggerstaff appears to have filed at least ten TCPA cases since 1997. Gerald Roylance similarly appears to have filed at least nine state TCPA lawsuits between 2003 and 2009, and has been the plaintiff in at least two federal TCPA actions; he also appears to have filed multiple cases in small claims court since 2004. Joe Shields appears to have filed at least five TPCA actions since June 2012. On her personal website, Diana Mey lists four pending TCPA class action lawsuits in which she is the named plaintiff, refers to herself as a "private attorney[] general," and notes that she has been interviewed regarding her TCPA lawsuits on the Today Show and Dateline NBC, and profiled by USA Today and People Magazine. *See* http://www.dianamey.com/ (last accessed Mar. 19, 2014).

This statement, as far as it pertains to me, is not only a lie that slanders my good name it is typical of those that have no reservations in viciously retaliating against an elderly victim of blatantly illegal conduct.

As a threshold matter each and every defendant I filed a claim against blatantly and **repeatedly** violated one or another federal consumer protection law. I use the term

"another" as in their rush to condemn and slander my good name United Healthcare Services Inc. failed to note that one of the cases I filed wasn't even a TCPA case. That case dealt with repeated violations of the Drivers Privacy Protection Act. In Shields v. NAVISS LLC et al, Case No. 04:13-cv-02312, US District Court, Southern District of Texas, Houston Division the Defendant **not once but twice** received a written notice that their conduct violated a federal consumer protection statute. Despite receiving such written notices the defendant blatantly continued to violate the statute.

The remainder of the filed cases also dealt with **repeated** and blatant violations of the TCPA. For example in Shields v. Sears, Roebuck and Company et al, Case No. 4:13-cv-02426, US District Court for the Southern District of Texas, Houston Division the defendants intentionally made automatically dialed calls to my cell number without my prior express consent. These calls were made despite multiple attempts, **including a written notice,** to stop violating the TCPA. The defendants in that case purchased leads from an Indian call center that had made unauthorized automatically dialed calls to my cell number.

Every defendant in that case, without any attempt to scrub against cell numbers or numbers on the National and State do not call list, or any attempt to verify the legitimacy of the purchased lead, targeted plaintiff's cell number with repeated calls from their automatic dialer. In response to my notices that the calls violated the TCPA, I was malicious and repeatedly verbally abused by the defendants in that case including being told by one caller, an Ali B Zare of Colony Builders Inc. to "…go fuck yourself!" One defendant, Home Improvement Leads Inc., continued to make automatically dialed calls

to my cell number despite several verbal notices **and a written notice** to stop the unauthorized automatically dialed calls to my cell number.

Another case I filed, Shields v. Smiley Media Inc., Case No. 4:12-cv-01687, US District Court for the Southern District of Texas, Houston Division, that United Healthcare Services Inc. refers to dealt with the $1,000.00 Walmart and Best Buy gift card spam text messages initiated by the same entity the sister agency of the Commission, the Federal Trade Commission, went after, All Square Marketing LLC and Threadpoint LLC. The case was filed in federal court due to the fact that a small claims court judge, where the case was originally filed, had incorrectly ruled that a Texas law governing small claims required that the case be litigated where the defendant resides and not where the violations occurred. Obviously, letting the text spammer escape liability because a local judge had erred in applying state law to a federal consumer protection law was not an option. The defendant resoundingly lost their same venue argument in federal court. The judge held that the violations of the TCPA occurred in the area code where the spam text messages were received and not where they originated.

Another case, Shields v Ben Hall, Case No. 4:13-cv-02872, US District Court for the Southern District of Texas, Houston Division that United Healthcare Services Inc. refers also dealt with text spam. This particular case stems from a politician using the services of the same text spammer, Preston Harper Media Group a/k/a Politicast that President Obama used in his 2012 campaign. The defendant's representative, Julia Smekaline, threatened to continue transmitting unauthorized text messages to my cell number unless I opted out. That threat was made despite my pointing out that I had my cell number for more than 8 years. My claim was an appropriate response to their threats.

Finally, the last case, Shields v. Pac-West Telecomm Inc., Case No. 4:13-cv-518, US District Court for the Southern District of Texas, Houston Division that United Healthcare Services Inc. refers to dealt with a common carrier running defense for the entity responsible for multiple unauthorized robocalls to my cell number. The defendant, instead of complying with Texas robocall laws, repeatedly and intentionally interfered with my attempts to identify their client.

Given the true representations of the cases it is clear that I was not left with very much choice in the matter. Since the defendants continued to violate federal consumer protection laws despite repeated verbal and written notices the only choice I had was to file on those thumbing their nose at the law. And I did so as a private attorney general as the legislature intended.

United Healthcare Services Inc. clearly has a problem with private attorney generals. Congress created a unique three-pronged enforcement mechanism in the TCPA. See *In the Matter of Fax.com, Notice of Apparent Liability for Forfeiture*, ¶ 20, 17 FCC Rcd 15927, n.10 (FCC 02-226 Aug. 7, 2002. "Under the statute, the Commission, state attorneys general or aggrieved consumers may initiate actions to enforce certain prohibitions and restrictions contained in section 227 of the Act…" In *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402, 88 S.Ct. 964, 966, 19 L.Ed.2d 1263 (1968), the United States Supreme Court noted that when a plaintiff brings an action under the Civil Rights Act and obtains an injunction, he does so not for himself alone but also as a private attorney general, vindicating a policy that Congress considered of the highest priority.

The Supreme Court has held that it and other federal courts have repeatedly held that individual litigants, acting as private attorneys general, have standing as "representatives of the public interest." *Flast v. Cohen*, 392 U.S. 83, 120 (1968). The court in *Red Bull Ass'n v. Best Western Int'l*, 686 F.Supp. (S.D. N.Y. 1988) noted in the context of the fair housing law, that "the person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is ... the whole community." See, also, *Vietnamese Fishermen's Ass'n v. Knights of the Ku Klux Klan*, 543 F.Supp. 198, 211 (S.D. Tex. 1982) ("It is well settled under Texas common law that individuals have standing to seek enforcement of public statutes ... if the right to sue is specifically conferred by statute, ..." [citing *Scott v. Board of Adjustment*, 405 S.W.2d 55, 56 (Tex. 1966) and *San Antonio v. Stumberg*, 70 Tex. 366, 7 S.W. 754, 755 (Tex. 1888); among others]).

See also See *Erienet, Inc. v. Velocity Net, Inc.*, 156 F.3d 513 (3rd Cir. 1998) ("private enforcement provision ... puts teeth into the statute ..."). Texas courts have recognized the principle of a private attorney general. See *Dillard Department Stores, Inc. v. Owens*, 951 S.W.2d 915, 918 (Tex.App.--Corpus Christi 1997, no writ) (in passing the Truth In Lending Act, Congress intended to create a system of private attorneys general who will be able to aid the effective enforcement of the Act); *Holguin v. Yeleta Del Sur Pueblo*, 954 S.W.2d 843, 852 (Tex.App.--El Paso 1997, writ denied) (in passing the Texas Dram Shop Act, the legislature intended for private plaintiffs to serve a private attorneys general function); *Mancorp, Inc. v. Culpepper*, 802 S.W.2d 226, 229 (Tex. 1990) (the doctrine of alter ego liability is designed to give incentives to those using the corporate form to follow state laws concerning corporate formalities by allowing a claimant to recover as a

sort of private attorney general).

Further, Shields has credibility with and the respect of a half dozen State Attorney Generals including the Texas Attorney General. Shields provided evidence of American Blastfax Inc.'s violations of the TCPA to the Texas Attorney General which lead to the successfully shutting down of the biggest junk fax operation in the country at the time. Further, Shields has credibility with many state and federal agencies - the FCC has issued nine (9) Official Citations and one (1) Forfeiture Order based on Shields' complaints filed with the FCC[1]

Acting as a private attorney general **as congress intended** I have obtained dozens of injunctions against violators of the TCPA[2]. The entire community has benefited from my actions in protecting my family and our home from unwanted and unauthorized calls to our landline and wireless telephone numbers.

The costs to obtain these injunctions are devastating. One defendant, Michael Patrick Sullivan, used their autodialer to make automated pager calls to M D Anderson Cancer Center employees that in responding to the pages using my telephone numbers made 139 calls to our home. These calls went on for 2-3 hours every night for a 2 week period beginning on December 20th, 2001. These calls were made even during Christmas Eve of 2001. The same defendant subscribed me to dozens of magazine subscriptions during the same time period. The case, styled as Shields v. Kenneth Dale Hensley et al,

[1] FCC citations EB-TC-01-065, EB-02-TC-062, EB-02-TC-064, EB-02-TC-065, EB-02-TC-122, EB-02-TC-132, EB-02-TC-257, EB-02-TC-259, EB-04-TC-082 and FCC Forfeiture Order on EB-00-TC-011

[2] Joe Shields v R&B Home Security Inc. et al, Cause No. 47,596, Galveston County Civil Court, April 2, 2001; Joe Shields v. Lone Star Utility Savers Inc., Cause No. 759,971, Civil Court of Law No 1, Harris County; Joe Shields v. Kenneth Dale Hensley et al, Cause No. 2001-32094, 280th District Court, Harris County; Joe Shields v. Chiarello Investments Inc. et al, Cause No. 784998, County Civil Court at Law # 1, Harris County; Joe Shields v. Kevin Derrick Lee, Cause No. 790350, County Civil Court at Law # 1; Joe Shields v. GTE Southwest Inc., Cause No. 822794, County Civil Court at Law # 2, Harris County

Cause No. 2001-32094, 280th District Court, Harris County, that the defendant was named in dealt with 39 DirecTV and Dish Network robocalls.

In the same case, an attorney by the name of Juanita Barner filed a criminal complaint against me for my efforts in enforcing the TCPA. The client represented by Mrs. Barner was responsible for 3 of those 39 DirecTV and Dish Network robocalls to our home. See attached letter from Mrs. Barner.

Further, I was laid off from my 22 year job with NASA due to my age in 2001. My family and I now live off of a meager SSA retirement which is barely above the national poverty level. Our 50+ year old home of 1,500 square feet desperately needs a new roof and other maintenance items which we simply cannot afford. The washer is on its last legs and the dryer screeches like a cat whose tail is stepped on. If as United Healthcare Services Inc. claims I gain financially from enforcing the TCPA then where is all this money? My family and I certainly haven't seen it.

Consequently, I challenge United Healthcare Services Inc. to provide any evidence for its false and libelous accusations. If United Healthcare Services Inc. cannot provide any evidence, which they cannot, then I demand that United Healthcare Services Inc. apologize in this public forum to me. If United Healthcare Services Inc. cannot provide any supporting evidence and fails to apologize then I submit to the Commission that United Healthcare Services Inc. has lost all credibility before the Commission. Additionally, I request that if United Healthcare Services Inc. cannot provide any supporting evidence, which they cannot, and fails to apologize or offer a retraction that United Healthcare Services Inc. and the attorneys and the law firm representing them be

disbarred and forever prohibited from engaging in the petition and comment process of the Commission in the future.

Respectfully submitted,

_____/s/_____

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

November 28, 2000

Via Certified Mail
RR # 7000 0520 0017 4805 3233

Mr. Joe Shields
16822 Stardale Lane
Friendswood, TX 77546

Re: **New Age Satellite and Security**

Dear Mr. Shields:

I represent Mr. Robert Robinson and New Age Satellite and Security. I am writing in response to your letters dated June 9, 2000 and October 15, 2000 in which you threaten to file suit against New Age Systems for allegedly violating the Telephone Consumer Protection Act. **This letter serves as notice to cease and desist your attempt to elicit money from New Age Satellite and Security, Robert Robinson, or any other company using telephone solicitation in the State of Texas.**

Although I applaud your attempt to interpret the law in your favor, I strongly suggest that in the future when you attempt to interpret the law, you read the entire statute and the corresponding state law. 47 USCA §227(e)(1) specifically states that nothing in the federal statute shall preempt state law. Therefore, since Texas does have a state law that gives the guidelines for telephone solicitation, the state law governs. Texas Business & Commerce Code Chapters 37 and 38 specifically address telephone solicitation and none of the actions of New Age Systems is in violation of Texas law. (Copy enclosed).

After contacting the Office of the Attorney General, we are aware that you have also filed similar complaints against over 20 companies. Attempting to make money off others lack of knowledge of the law is theft by deception and a violation of the Texas Penal Code § 31.01 et.al. (Copy enclosed). Be advised that we have contacted the Harris County District Attorney-Consumer Fraud Division. Although Assistant District Attorney Russell Turbeville was very interested in your actions, he has currently decided not to pursue criminal actions against you because it may be difficult to prove that you knew that your impression of the law was false.

Therefore, in the event that you continue to attempt to coerce money from business owners, this letter serve as proof that you are aware that any similar future behavior is done with knowledge and intent. **Be aware that any future complaints regarding your actions may result in criminal charges.**

Sincerely,

Juanita J. Barner

Juanita J. Barner

Encl.(2)

cc: Robert Robinson
Office of the Attorney General- Consumer Protection Division
Harris County District Attorney- Consumer Fraud Division