

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

JOHN LOWRY, an Ohio resident,)	
individually and as the representative of a)	
class of similarly-situated persons,)	
)	
Plaintiff,)	Civil Action No.:
v.)	
)	CLASS ACTION
SHIPLEY ENERGY COMPANY, a)	
Pennsylvania corporation, and SHIPLEY)	
CHOICE, LLC d/b/a SHIPLEY ENERGY,)	
and SHIPLEY FUELS MARKETING, LLC,)	
Pennsylvania limited liability companies,)	
)	
Defendants.)	

CLASS ACTION COMPLAINT

Plaintiff, JOHN LOWRY (“Plaintiff”), bring this action on behalf of himself and all others similarly situated, through his attorneys, and except as to those allegations pertaining to Plaintiff or his attorneys, which allegations are based upon personal knowledge, allege the following upon information and belief against Defendants, SHIPLEY ENERGY COMPANY, SHIPLEY CHOISE, LLC d/b/a SHIPLEY ENERGY and SHIPLEY FUELS MARKETING, LLC (collectively “Shiple Energy” or “Defendants”):

I. NATURE OF THE ACTION

1. Shiple Energy is a group of affiliated companies headquartered in York, Pennsylvania that provides energy to residential and commercial customers in the Mid-Atlantic region of the United States in the form of heating oil, propane and natural gas.
2. In the effort to market its products and services, Shiple Energy made, or directed to be make on its behalf, calls to the wireless telephones of Plaintiff and each of the members of

the Class without prior express written consent¹ in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”).

3. Neither Plaintiff nor the other Class members ever consented in writing, authorized, desired, or permitted Shipley Energy to make the calls alleged herein to their wireless telephones.

4. By making such unauthorized calls, Shipley Energy caused Plaintiff and each of the Class members harm, including the aggravation and nuisance that necessarily accompanies the receipt of unsolicited calls, and the monies paid to their wireless carriers for the receipt of such calls.

5. In order to redress these injuries, Plaintiff seeks an injunction requiring Shipley Energy to cease all unsolicited calling activities, an award of statutory damages to the Class members under the TCPA.

II. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 47 U.S.C. § 227.

7. This court has personal jurisdiction over Shipley Energy because Shipley Energy’s principal place of business is in York, Pennsylvania and its officers, directors, members and managers are located in York, Pennsylvania.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to this action occurred in this District and because Shipley Energy’s principal place of business is within this District.

¹ As of October 16, 2013, prior express **written** consent is required. *See In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order (FCC Feb. 15, 2012) (amending 47 C.F.R. 64.1200(a)(2)).

III. PARTIES

9. Plaintiff, JOHN LOWRY, is an individual who resides in Cincinnati, Ohio.

10. Plaintiff is the owner of his wireless telephone, which is assigned to a wireless telephone service provided by Verizon.

11. Defendant, SHIPLEY ENERGY COMPANY, is a Pennsylvania corporation with its principal place of business at 500 E. King Street, York, PA.

12. Defendants, SHIPLEY CHOICE, LLC and SHIPLEY FUELS MARKETING, LLC, are Pennsylvania limited liability companies. SHIPLEY ENERGY is the registered fictitious name of Shipley Choice, LLC. Shipley Choice, LLC's principal place of business is at 415 Norway Street, York, PA. Shipley Fuels Marketing, LLC's principal place of business is at 100 Kindig Lane, Hanover, PA.

13. Each of the above entities are privately held and controlled by William Shipley

III.

IV. FACTS

14. Companies have employed advanced technologies that make it easier to market their products and services. According to a report examining class actions under the TCPA in the Northern District of Illinois:

Autodialers (also known as robocalls) automatically deliver a prerecorded message to a list of telephone numbers, and thus remove the need for human representatives. These predictive dialers were developed to find better pacing (scheduling for dialing attempts) by collecting and analyzing data on the proportion of call attempts that are answered, durations of time from call initiation to answer, and durations of service. The technology was designed to minimize both the time that telemarketers must spend waiting between conversations and amount of abandoned calls experienced by consumers.²

² Institute for Consumer Antitrust Studies, Loyola University Chicago School of Law, The Telephone Consumer Protection Act of 1991; Adapting Consumer Protection to Changing Technology 7 (Fall 2013)

Defendants' Call to Plaintiff

15. On June 29, 2016, Plaintiff received an autodialed call delivering a prerecorded advertisement to his wireless telephone from Shipley Energy.

16. During this call, Shipley Energy delivered a prerecorded or artificial message lasting approximately 32 seconds to Plaintiff's wireless telephone that stated:

“Hey friend this is Heather calling. I'm calling with a big announcement. Shipley Energy is now a trusted supplier of electricity and the Duke energy market. And we have a great offer that you shouldn't pass on. We are now offering a low fixed electricity rate that beats the utilities rates and protects you for 12 months. If you want to save money, ask us about the 2 minute switch. Who are we, you ask? Find out more at shipleyenergy.com or call 888-459-3799. We make energy easy.”

17. Shipley Energy made the calls in order to promote and offer the sale of electricity to be supplied by Shipley Energy.

18. Shipley Energy made, or had made on its behalf, the same or substantially the same calls *en masse* to a list of thousands of wireless telephone numbers or randomly generated phone numbers.

19. Upon information and belief, Shipley Energy made these calls to Plaintiff and the Class members using equipment that had the capacity to store or produce telephone numbers to be called using a random or sequential number generator, and to dial such numbers.

20. Shipley Energy made these calls for the purpose of promoting its goods and services.

21. Shipley Energy made these calls without Plaintiff's prior express written consent, which is defined at 47 C.F.R. 64.1200(f)(8).

(emphasis added). The report “was made possible through a *cy pres* distribution from a class action involving the TCPA in the Northern District of Illinois under the supervision of Senior Judge William Hart and Magistrate Judge Morton Denlow.” *Id.* at 2.

V. CLASS ALLEGATION

22. Plaintiff brings this action, as set forth below, on behalf of himself and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class defined as:

All persons in the United States whose wireless telephone number Shipley Energy, or someone acting on its behalf, called using an automatic telephone dialing system or an artificial or prerecorded voice without the prior express written consent of the called party.

Excluded from the Class are the Defendants, their parents, affiliates and subsidiaries, all persons who make a timely election to be excluded from the Class, governmental entities, and the Judge to whom this case is assigned and any immediate family members thereof. Plaintiff seeks to certify a class which includes the June 29, 2016 prerecorded voice call and all other prerecorded voice calls made by or on behalf of Defendants to promote and offer the sale of its good or services during the four years prior to the filing of this action through the present, whether made to Plaintiff's wireless telephone number or not.

Plaintiff reserves the right to amend the class definition upon completion of class certification discovery.

23. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of his claims on a class-wide basis using the same evidence as would be used to provide those elements in individual actions alleging the same claims.

24. Numerosity (F. R. Civ. P. 23(a)(1)): The members of the Class are so numerous that individual joinder of all Class members is impracticable. Upon information and belief, there are thousands of consumers who have been damaged by Shipley Energy's wrongful conduct as alleged herein. The precise number of Class members and their addresses is presently unknown to Plaintiff, but may be ascertained from Shipley Energy's books and records. Class members

may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

25. Commonality and Predominance (F. R. Civ. P. 23 (a)(2) and 23(b)(3)): This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

- a) The manner in which Shipley Energy compiled and called the list of wireless telephone numbers including Plaintiff's number;
- b) Whether Shipley Energy, or someone on its behalf, was soliciting the sale of goods or services;
- c) Whether the equipment that Shipley Energy, or someone on its behalf, used to make the calls in question was an automatic telephone dialing system as contemplated by the TCPA;
- d) Whether the equipment that Shipley Energy, or someone on its behalf, used to make the calls in question involved the use of a prerecorded or artificial voice as contemplated by the TCPA;
- e) Whether Shipley Energy's conduct constitutes a violation of the TCPA;
- f) Whether Plaintiff and the Class are entitled to actual, statutory, or other forms of damages, and other monetary relief and, in what amount(s);
- g) Whether Plaintiff and the Class are entitled to treble damages under the TCPA based on the willfulness of Shipley Energy's conduct; and;
- h) Whether Plaintiff and the Class are entitled to equitable relief, including but not limited to injunctive relief and restitution.

26. Typicality (F. R. Civ. P. 23 (a) (3)): Plaintiff's claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured through the uniform prohibited conduct described above.

27. Fair and Adequate Representation (F. R. Civ. P. 23 (a) (4)): Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the other Class members he seeks to represent; he has retained counsel competent and experienced in complex commercial and class action litigation; and Plaintiff intends to prosecute this action vigorously. The interests of the Class members will be fairly and adequately protected by Plaintiff and his counsel

28. Declaratory and Injunctive Relief – F. R. Civ. P. 23(b)(2): Shipley Energy has acted or refused to act on grounds generally applicable to Plaintiff and the other Class members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class as a whole.

29. Superiority – F. R. Civ. P. 23(b)(3): A class action is superior to any and all other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Shipley Energy, so it would be impracticable for Class members to individually seek redress for Shipley Energy's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and

provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

VI. CLAIM FOR RELIEF FOR VIOLATION OF THE TCPA, 47 U.S.C. § 227

30. Shipley Energy and/or its agents made phone calls to the wireless telephone numbers of Plaintiff and the other Class members *en masse* without their prior express written consent.

31. Shipley Energy made the calls, or had them made on its behalf, using equipment that had the capacity to store or produce telephone numbers to be called using a random or sequential number generator, and to dial such numbers.

32. Shipley Energy, or someone on its behalf, utilized equipment that made the calls to Plaintiff's and other Class members' wireless telephones simultaneously and without human intervention.

33. Shipley Energy made the calls, or had them made on its behalf, using an artificial and/or prerecorded voice.

34. By making the calls to Plaintiff and the Class, Shipley Energy violated 47 U.S.C. § 227(b)(1)(a)(iii). As a result of Shipley Energy's unlawful conduct, the Class members suffered actual damages in the form of monies paid to receive the calls on their wireless phones and, under section 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of \$500.00 in statutory damages for each such violation of the TCPA.

35. Should the Court determine that Shipley Energy's conduct was willful or knowing, the Court may, pursuant to section 227(b)(3)(C), treble the amount of statutory damages recoverable by Plaintiff and the other Class members.

VII. JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of all claims in this Complaint so triable.

VIII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff, John Lowry, individually and on behalf of the Class, requests that the Court enter an Order as follows:

- A. Certifying the TCPA Class as defined above, appointing Plaintiff as the representative of the Class, and appointing his counsel as Class Counsel;
- B. Awarding of statutory damages, jointly and severally;
- C. Requiring Shipley Energy, its agents, and its affiliates to cease all wireless phone call activities initiated without prior express written consent, and otherwise protecting the interests of the Class; and
- D. Awarding of reasonable attorneys' fees and costs; and
- E. Awarding such other and further relief that the Court deems reasonable and just.

Respectfully submitted,

JOHN LOWRY, individually and as the representative of a class of similarly-situated persons,

By: s/ Ann M. Caldwell
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CIVIL COVER SHEET

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.)

I. (a) PLAINTIFFS
John Lowry, an Ohio resident, individually and as the representative of a class of similarly-situated persons
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)
Caldwell Law Office LLC 108 W. Willow Grove Ave., Suite 300 Philadelphia, PA 19118 (215) 248-2030

DEFENDANTS
Shipley Energy Company, Shipley Choice, LLC d/b/a Shipley Energy, Shipley Fuels Marketing, LLC
County of Residence of First Listed Defendant York
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1 Incorporated or Principal Place of Business In This State 4 4
Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
47 U.S.C. Section 227
Brief description of cause:
Violation of the Telephone Consumer Protection Act

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

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 04/09/2018 SIGNATURE OF ATTORNEY OF RECORD s/ Ann M. Caldwell

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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.Cv.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; **NOTE: 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.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- 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.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. 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
- VII. 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 actual dollar amount 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.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Shipley Energy Accused of Placing Unlawful Robocalls to Consumers' Cell Phones](#)
