

CAUSE NO. _____

UNLIMITED ARENA, INC.

Plaintiff,

vs.

CELLULAR RECYLER, LLC,
ASSURANT, INC.,
ASSURANT SOLUTIONS, INC.,
BROADTECH, LLC AND REY BROWN

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURES

COMES NOW, Plaintiff, Unlimited Arena, Inc., and file its Original Petition and Request for Disclosures complaining of Cellular Recycler, LLC, Assurant, Inc., Assurant Solutions, Inc., Broadtech, LLC and Rey Brown and in support thereof would respectfully show unto the Court as follows:

NATURE OF CASE

1. This is a suit to recover damages arising from, including, without limitation, breach of contract (as to one Defendant), deceptive trade practices, fraud and fraudulent and/or negligent misrepresentations in connection with the sale of what was alleged to be "whitelisted" and "unlocked" cellular mobile phones to Plaintiff which, despite a contract and representations that such devices were "unlocked" and available for sale and use in the United States, were not. The Defendants then continued for months after the fact to claim that this would be remediated immediately and/or was already remediated which Plaintiff detrimentally relied on but no such remediation occurred in a timely fashion and, in fact, as to approximately 1600 phones, Defendants never succeeded with their unlocking efforts. As such, Plaintiff seeks relief under,

including, without limitation, both common law and statutory law including, without limitation, the Texas Deceptive Trade Practices Act.

DISCOVERY PLAN

2. Plaintiff intends to conduct discovery pursuant to Level 2 of Rule 190.4 of the Texas Rules of Civil Procedure.

PARTIES

3. Plaintiff, Unlimited Arena, Inc. (“Unlimited”), is a domestic for profit corporation authorized to do business in Harris County, Texas.

4. Defendant, Cellular Recycler, LLC (“Cellular Recycler”), is a foreign for profit limited liability company incorporated in Colorado who conducts business in this state but does not appear to maintain a designated agent for service of process in this state; however, as this cases arises out of the business conducted in this state and to which the defendant is a party including entry into a contract by mail or otherwise with a Texas resident; and, either or both parties were to perform the contract in whole or in part in this state; and/or, for which a tort was committed in whole or in part by this defendant in this state, among other things as set forth more specifically below, this defendant may be served with process via the state’s long-arm statute by service on the Texas Secretary of State under Sections 17.026 and 17.041, *et seq.* of the Texas Civil Practice & Remedies Code at Service of Process, Secretary of State, P.O. Box 12079, Austin, Texas 78711-2079. The Texas Secretary of State shall then forward a copy of the service of process and the Plaintiff’s Original Petition and Request for Disclosures (“Petition”) via certified mail, return receipt requested to the person in charge of the non-resident business, Brandon Greenhaw, at the following principal place of business or home office address: 4840 Sterling Dr Unit A, Boulder, CO 80301 or, upon information and belief, under the

Texas Rules of Civil Procedure by serving a copy of same on its attorney Jeffrey M. Quick of Quick Law Group PC at 1035 Pearl Street, Suite 403, Boulder, CO 80302 pursuant to an anticipated Waiver of Service to be executed by counsel.

5. Defendant, Assurant, Inc. (“Assurant”), is a foreign for profit corporation incorporated in Delaware engaging in business in this state but does not appear to maintain a designated agent for service of process in this state; however, as this cases arises out of the business conducted in this state and and/or for which a tort was committed in whole or in part by this defendant in this state, among other things as set forth more specifically below, this defendant may be served with process via the state’s long-arm statute by service on the Texas Secretary of State under Sections 17.026 and 17.041, *et seq.* of the Texas Civil Practice & Remedies Code at Service of Process, Secretary of State, P.O. Box 12079, Austin, Texas 78711-2079. The Texas Secretary of State shall then forward a copy of the service of process and Plaintiff’s Original Petition and Request for Disclosures (“Petition”) via certified mail, return receipt requested to The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801 or, upon information and belief, under the Texas Rules of Civil Procedure by serving a copy of same on its attorney Scott Michelmen of Shook, Hardy and Bacon, L.L.P at 600 Travis St #3400, Houston, TX 77002, pursuant to an anticipated Waiver of Service to be executed by counsel.

6. Defendant, Assurant Solutions, Inc. (“Assurant Solutions”), is a foreign for profit corporation incorporated in Delaware engaging in business in this state and has offices located in this state but does not appear to maintain a designated agent for service of process in this state; however, as this cases arises out of the business conducted in this state and/or for which a tort was committed in whole or in part by this defendant in this state, among other things as set forth

more specifically below, this defendant may be served with process via the state's long-arm statute by service on the Texas Secretary of State under Sections 17.026 and 17.041, *et seq.* of the Texas Civil Practice & Remedies Code at Service of Process, Secretary of State, P.O. Box 12079, Austin, Texas 78711-2079. The Texas Secretary of State shall then forward a copy of the service of process and Plaintiff's Original Petition and Request for Disclosures ("Petition") via certified mail, return receipt requested to Registered Agent Solutions, Inc., 9 E. Loockerman Street, Ste. 311, Dover, Delaware 19901 or, upon information and belief, under the Texas Rules of Civil Procedure by serving a copy of same on its attorney, Scott Michelmen of Shook, Hardy and Bacon, L.L.P at 600 Travis St #3400, Houston, TX 77002, pursuant to an anticipated Waiver of Service to be executed by counsel.

7. Defendant, Broadtech, LLC f/k/a Broadtech, Inc. ("Broadtech"), is a domestic limited liability company. Broadtech may be served by serving its registered agent for service of process Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, 211 E. 7th St., Ste. 620, Austin, Texas 78701-3218 or, upon information and belief, under the Texas Rules of Civil Procedure by serving a copy of same on its attorney, Scott Michelmen of Shook, Hardy and Bacon, L.L.P at 600 Travis St #3400, Houston, TX 77002, pursuant to an anticipated Waiver of Service to be executed by counsel.

8. Defendant, Rey Brown ("Brown"), is a natural person residing in the State of Texas and may be served with process at 1401 Lakeway Dr., Lewisville, Texas 75057 or wherever he may be found. Alternatively, upon information and belief, he may be served under the Texas Rules of Civil Procedure by serving a copy of the pleading on his attorney of record, Scott Michelmen of Shook, Hardy and Bacon, L.L.P. at 600 Travis St #3400, Houston, TX 77002, pursuant to an anticipated Waiver of Service to be executed by counsel.

STATEMENT OF MONETARY RELIEF

9. Pursuant to Texas Rule of Civil Procedure 47, Plaintiff states that it seeks monetary relief over \$200,000 but not more than \$1,000,000 including penalties, costs, expenses, pre-judgment interest and attorney fees.

JURISDICTION

10. This Court has jurisdiction over this matter as the underlying claim for damages is within the jurisdictional limits of this Court. The Defendants engage in the business of selling goods and services and, in particular, cellular phones, in the State of Texas and the causes of action arise out of Defendants' business activities in the State of Texas.

11. Additionally, the out of state Defendants have done business in the State of Texas within the meaning of Sections 17.041, *et seq.* of the Texas Civil Practices & Remedies Code; purposefully availed themselves of the privilege of conducting activities in the State of Texas; established minimum contacts sufficient to confer jurisdiction over said Defendants; the causes of actions stated herein arose out of purposeful acts done by said Defendants; and/or the assumption of jurisdiction over such Defendants will not offend traditional notions of fair play and substantial justice and is consistent with the constitutional requirements of due process.

12. More specifically, the Court has general jurisdiction over Defendants because all Defendants regularly conduct business in Texas and, more specifically are authorized dealers of T-Mobile/MetroPCS products which are being sold in Texas. Defendants, Assurant, Assurant Solutions and Broadtech have offices in the State of Texas where they sell these products, among other products and services to, including, without limitation, Texas residents. Rey Brown is a resident of the State of Texas. Further, or alternatively, the Court has specific jurisdiction over the out of state Defendants because including, without limitation, Defendant Cellular Recycler

entered into an agreement with Plaintiff related to the sale of goods which were sold to Plaintiff, a Texas resident, in the State of Texas and, additionally, all Defendants committed tortious acts within Texas, communicated with Plaintiff regarding the agreement and the goods and/or services sold in Texas on multiple occasions within Texas and have engaged in substantial and not isolated activity in Texas.

VENUE

13. Venue is proper in Harris County as all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County. *See*, TEX. CIV. PRAC. & REM. CODE §§ 15.002(a)(1).

FACTS

14. On or about November 8, 2016, Cellular Recycler, LLC¹ (“Cellular Recycler”) advertised for sale ZTE Unlocked Factory Refurbished GSM phones (hereinafter referred to as the “Handsets”) as follows:

From: Brandon Greenhaw <brandon@cellularrecycler.com>
Date: November 8, 2016 at 6:25:53 AM CST
To: undisclosed-recipients::
Subject: ZTE_Unlocked_Factory Refurbished GSM

Z820 Obsidian

*Factory Refurbished
*GSM UNLOCKED
*Pictures Attached
*Pricing available upon
request
*8GB

¹ Cellular Recycler is, upon information and belief, an authorized R2/RIOS certified dealer of T-Mobile/MetroPCS products.

See, the Affidavit of Atif Khan attached hereto and incorporated herein in its entirety as Exhibit “A”.

15. Unlimited entered into a contract to purchase from Cellular Recycler 10,014 Handsets for \$260,364.00 (the “Transaction”) based on Cellular Recycler’s representations - both verbally and in writing - that the Handsets were unlocked with no restrictions for sale within the United States. *See*, Exhibit “A”. Unlimited also purchased batteries and doors for the Handsets from a separate vendor and entered into contracts with its own customers based on Cellular Recycler’s representations. *See*, Exhibit “A”.

16. The Handsets were shipped to Unlimited by Cellular Recycler; however, 8,800 of the 10,014 Handsets were not unlocked as represented. *See*, Exhibit “A”.

17. Soon thereafter Unlimited and/or its representatives notified Cellular Recycler of this fact; however, Cellular Recycler failed to remedy the problem and, in fact, became aggressive as if somehow this was Unlimited’s fault or problem. *See*, Exhibit “A”.

18. On or about December 14, 2016, Cellular Recycler did finally admit that the Handsets were sold “locked” when they weren’t supposed to be but stated that they would reach out to T-Mobile/MetroPCS² to get the problem resolved swiftly; however, this was not accomplished. *See*, Exhibit “A”.

19. On or about January 9, 2017, Unlimited did as it was asked by T-Mobile/MetroPCS in order to assist in resolving the problem by mailing some of the Handsets back for them to further investigate. Such Handsets were never returned to Unlimited. *See*, Exhibit “A”.

² T-Mobile sells wireless handsets under their brand MetroPCS for use with MetroPCS service on the T-Mobile wireless network.

20. On January 17, 2017, Cellular Recycler and Unlimited entered into an agreement in an effort by Unlimited to resolve the problem before it suffered further damages by both parties paying an outside third party vendor to unlock the phones. Unlimited was induced to enter this agreement based on fraud. Cellular Recycler made material representations to Unlimited that the problem was because T-Mobile's "unlocking application is not functioning properly" and failed to disclose that the phones were "blacklisted"³ and therefore that a third party vendor could not unlock the phones. Unlimited again relied on Cellular Recycler's untrue statements and paid the third party outside vendor Unlimited's portion of the cost associated with the unlocking attempt. *See*, Exhibit "A".

21. Throughout December 2016 and well into January 2017, the phones remained locked despite Unlimited's pleas for a resolution as it had lost its customers and the initial sale, its reputation in the industry and was suffering insurmountable damages. *See*, Exhibit "A".

22. In fact, it was almost three (3) months after the Transaction closed on February 2, 2017 when T-Mobile/MetroPCS sought the IMEIs from Unlimited so they could get the Handsets unlocked. On February 3, 2017, T-Mobile/MetroPCS informed Unlimited that their "reverse logistics" team was looking into this. *See*, Exhibit "A".

23. Eight (8) days later, on February 10, 2017, T-Mobile/MetroPCS indicated that the request to unlock was submitted and would be accomplished within 24 hours and that the issue was escalated to the "appropriate team" for resolution. *See*, Exhibit "A".

24. Upon information and belief, the "appropriate team" and "reverse logistics" team that the issue was "escalated" to was Assurant, Inc. and/or Assurant Solutions, Inc. ("Assurant") as on February 12, 2017, Rey Brown of Assurant, contacted Unlimited in writing indicating he

³ Blacklisted means the IMEIs are deleted from the T-Mobile/MetroPCS database so the Handsets cannot be activated. These are typically sold in the industry as scrap at \$4.00/lb.

may have found a solution to unlock the Handsets. On or about that same date, Rey Brown verbally represented to Unlimited over the telephone that Assurant handled the auction of the T-Mobile/MetroPCS Handsets, the Handsets were sold as “unlocked” and that it was no big deal as the Handsets are unlockable and will be unlocked so that Unlimited could sell them in the secondary market. Unlimited detrimentally relied on this representation. *See*, Exhibit “A”.

25. On or about February 13, 2017, Mr. Brown told Unlimited during a telephone call the “phones had already been unlocked”. This is not the only time he represented this. Unlimited detrimentally relied on these false statements as Unlimited relayed this information to Unlimited’s customers. When Unlimited informed Mr. Brown both in writing and on the telephone that the Handsets remained locked, Rey Brown surprisingly wanted Unlimited to provide the names of outside unlocking companies and on February 13, 2017 again asked in writing for the IMEIs so he could provide them to T-Mobile/MetroPCS. This is despite the fact that Unlimited had already provided the IMEIs on one or more occasions prior to this communication and had already been told by Rey Brown the IMEIs had already been processed and the Handsets were already unlocked. This was not a true statement. *See*, Exhibit “A”.

26. On or about February 14, 2017, Rey Brown again said the Handsets were working. Again, this was not a true statement. In fact, on or about February 15, 2017, Unlimited learned on a conference call with several T-Mobile/MetroPCS people that the exact opposite was true. Unlimited was informed that all the IMEIs were blacklisted and that is why the Handsets could not be unlocked. Unlimited was told that T-Mobile/MetroPCS would have to re-whitelist all the IMEIs and it would take no more than three (3) days. Unlimited was again asked for the IMEIs so they could be processed. *See*, Exhibit “A”.

27. Throughout February 2017, Mr. Brown informed Unlimited that the IMEIs for Unlimited's customer's Handsets were whitelisted and unlocked; and throughout this time, to Unlimited's detriment, it relayed this untrue information to customers or potential customers and after the fact, learned the representations were not true. Unlimited was told by T-Mobile/MetroPCS as of February 16, 2017, all Handsets would be unlocked but this was also not true. *See*, Exhibit "A".

28. Throughout the remainder of February through May 1, 2017, Unlimited was assured that the remaining 1600 locked phones would be unlocked by ZTE, the manufacturer, but this never happened. When Unlimited informed Rey Brown that other vendors/sellers in the industry had received a solution from ZTE, Unlimited never heard another thing from Rey Brown, T-Mobile/MetroPCS or any other Defendant. More specifically, the last communication between Rey Brown and Unlimited was when Mr. Brown asked Unlimited if he had permission from Unlimited to tell T-Mobile/MetroPCS about the solution being provided and Plaintiff's response was "I don't care [as long] as I get my devices unlocked". *See*, Exhibit "A".

29. In summary, after the Transaction and throughout 4Q 2016 as well as 1Q and 2Q 2017, some or all Defendants as well as T-Mobile/Metro PCS, continued making false representations to Unlimited, claiming that they were addressing this matter swiftly and that all the Handsets either were unlocked or would be unlocked within 24 hours or within three (3) days, but none of this was true. The actions and/or omissions of Cellular Recycler, Assurant, T-Mobile/MetroPCS, Broadtech⁴ and/or Rey Brown which occurred after the closing of the Transaction caused further significant damages to Unlimited to, including, without limitation, its reputation in the industry not to mention the severe financial losses suffered by Unlimited as a

⁴ Plaintiff learned that the contract regarding the sale of the Handsets may have been between Broadtech and Cellular Recycler and that Broadtech is a d/b/a of Assurant and/or subsidiary or affiliate of Assurant authorized by T-Mobile/MetroPCS and/or Assurant to sell the Handsets.

result of this Transaction and the aftermath of the Transaction. All the while, upon information and belief, solutions were being provided to other sellers/vendors to the detriment of Unlimited. *See*, Exhibit “A”.

30. Almost a year and a half has passed since the date of the sale and, while it took several months to finally unlock 7,200 phones by Defendants, 1600 phones were never unlocked by Defendants despite representations otherwise. *See*, Exhibit “A”.

31. Among many other damages that Plaintiff has incurred and is entitled to reimbursement for, including, without limitation, reputational damage in the industry, Plaintiff lost a sale for \$48.00/unit as a result of the Defendants’ actions and/or omissions. Plaintiff has also incurred an inordinate amount of other out of pocket and unexpected expenses including, without limitation, expenses associated with attempting to unlock the phones via a third party due to the fraudulent representations of the Defendants and the continued delays caused by Defendants as well as late fees/penalties and higher interests rates charged by creditors among other consequential damages. Plaintiff, therefore, seeks recompense for the losses Plaintiff has suffered due to the actions and/or omissions of the Defendants.

32. Plaintiff sent a demand to Defendants (as well as T-Mobile and Metro PCS) seeking including, but not necessarily limited to, reimbursement for its actual and consequential damages; however, Defendants failed to make a reasonable offer, or for that matter, any offer, to reimburse Plaintiff for its damages. Instead, Defendants alleged they had no liability in connection with this matter and/or began placing the blame with the other Defendants despite their own role in the process and their believed principle/agency relationships. Defendants did this despite having been supplied with evidence of their conduct; despite Defendants’ acknowledgement that the Handsets were not, in fact, unlocked and whitelisted when sold to

Plaintiff even though they were supposed to be; despite their delays for months to remediate the matter causing even more damages to Plaintiff; despite their further false representations and promises regarding their remediation efforts; and, despite the fact that 1600 of the Handsets were never unlocked by Defendants.

33. In summary, Defendant, Cellular Recycler, breached its contract with Plaintiff, violated the DTPA, committed fraud and/or made fraudulent and/or negligent misrepresentations to Plaintiff in connection with the sale of the Handsets and/or were negligent in the Transaction. Moreover, the remaining Defendants, are responsible in their own right for the below itemized conduct and/or under including, without limitation, the doctrine of respondeat superior and/or principle-agency relationships, for the illegal conduct of Cellular Recycler. Rey Brown made representations that may be proven at trial to be outside his scope and his conduct caused even further damage to Plaintiff.

34. Furthermore, upon information and belief, Plaintiff's experience regarding its claims may not be an isolated case. The actions and omissions of Defendants committed in connection with the sale to Plaintiff, or similar acts and omissions, may occur with such frequency that they constitute the general business practice of the Defendants⁵. Plaintiff seeks exemplary damages to deter these Defendants and similar Defendants from violations of the DTPA in the future such as the ones set forth herein assuming such unconscionable conduct is proven at trial.

⁵ Plaintiff learned a few days ago that the owner of Cellular Recycler plead guilty to a felony this last week in connection with the sale and distribution of cellular mobile phones.

CONDITIONS PRECEDENT

35. All conditions precedent to recovery have been met, have occurred or have been waived. Pre-suit notice was sent to Defendants to the extent required under the DTPA or other state or federal law.

AGENCY/RESPONDEAT SUPERIOR

36. All acts by Defendants were done by their officers, agents, servants, employees, or representatives and were done with the full authorization or ratification of Defendants or, perhaps with exception of Rey Brown, were done in the normal and routine course and scope of their employment with Defendants or pursuant to their principle/agency relationship, under their general authority, and/or for the accomplishment of the objectives for which such employee or agent was retained.

CAUSES OF ACTION

First Cause of Action – Breach of Contract

37. Plaintiff incorporates the preceding paragraphs in support of this cause of action as if fully pled herein. Defendant Cellular Recycler's actions and/or omissions, through its employees and/or agents acting within the scope of their actual, apparent or inherent authority, as set forth herein constitute a breach of the contract entered into with Plaintiff. Such breach proximately caused Plaintiff's actual and consequential damages in an amount exceeding \$350,000.00 plus such costs, attorney's fees, expert fees and pre and post-judgment interest as are allowed under Texas law and/or as much as the Court and jury may award in accordance with applicable law but not exceeding in the aggregate \$1,000,000.00. Such damages are within the jurisdictional limits of the Court.

Second Cause of Action – Violations of the Texas Business & Commerce Code

38. Plaintiff incorporate the preceding paragraphs in support of this cause of action as if fully pled herein. The Defendants, through their employees and/or agents acting within the scope of their actual, apparent or inherent authority, are guilty of violations of the Texas Deceptive Trade Practices Act as set forth below:

- Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- Representing the goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;
- Advertising goods or services with intent not to sell them as advertised;
- Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;
- Misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;
- Failing to disclose information concerning goods or services which was known at the time of the transaction and such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed; and,
- Engaging in an unconscionable course of conduct.

39. Therefore, as such conduct by the Defendants has been a producing cause of Plaintiff's damages, the Defendants are liable, jointly and severally, for the amount of Plaintiff's claims in an amount exceeding \$350,000.00 as well as, including, without limitation, such costs, attorneys' fees, expert fees, statutory penalty interest, treble damages, damages for mental anguish, if any, and pre and post-judgment interest as are allowed under Texas law and/or as much as the Court and jury may award in accordance with applicable law but not exceeding in the aggregate \$1,000,000.00. Such damages are within the jurisdictional limits of the Court.

Third Cause of Action – Negligence

40. Plaintiff incorporates the preceding paragraphs in support of this cause of action as if fully pled herein. The Defendants, through their employees and/or agents acting within the scope of their actual, apparent or inherent authority, were negligent in the sale of the goods. Defendants' breach of their duty to Plaintiff proximately caused Plaintiff's actual and consequential damages in an amount exceeding \$350,000.00 plus such costs, attorney's fees, expert fees and pre and post-judgment interest as are allowed under Texas law and/or as much as the Court and jury may award in accordance with applicable law but not exceeding in the aggregate \$1,000,000.00. Such damages are within the jurisdictional limits of the Court.

Fourth Cause of Action - Fraud

41. Plaintiff incorporates the preceding paragraphs in support of this cause of action as if fully pled herein. The Defendants, through their employees and/or agents acting within the scope of their actual, apparent or inherent authority, committed fraud when they (1) made materially false representations (or failed to disclose facts to Plaintiff they had a duty to disclose), (2) which were either known to be false when made or which were recklessly made as a positive assertion without knowledge of its truth and, (3) which were made with intent that such representations be acted upon. Plaintiff took action in reliance upon the misrepresentations of the Defendants suffered injury as a result in an amount exceeding \$350,000.00 as well as, including, without limitation, such costs, attorneys' fees, expert fees, pre and post-judgment interest which is allowed under Texas law and/or as much as the Court and jury may award in accordance with applicable law but not exceeding in the aggregate \$1,000,000.00. Such damages are within the jurisdictional limits of the Court.

Sixth Cause of Action – Fraudulent and/or Negligent Misrepresentations

42. Plaintiff incorporates the preceding paragraphs in support of this cause of action as if fully pled herein. The Defendants, through their employees and/or agents acting within the scope of their actual, apparent or inherent authority, made material misrepresentations to Plaintiff regarding the cellular phones' characteristics, use and/or benefits when, including, without limitation, Defendants represented that the goods were unlocked and authorized to be sold and/or used in the United States. Defendants clearly did not use reasonable care or diligence in their communications with the Plaintiff regarding the goods they sold to Plaintiff. Plaintiff justifiably relied on the information supplied by Defendants and Defendants' fraudulent and/or negligent representations proximately caused damages to Plaintiff in an amount exceeding \$350,000.00 as well as, including, without limitation, such costs, attorneys' fees, expert fees, pre and post-judgment interest which is allowed under Texas law and/or as much as the Court and jury may award in accordance with applicable law but not exceeding in the aggregate \$1,000,000.00. Such damages are within the jurisdictional limits of the Court.

Seventh Cause of Action – Breach of Warranty

43. Plaintiff incorporates the preceding paragraphs in support of this cause of action as if fully pled herein. The Defendants, through their employees and/or agents acting within the scope of their actual, apparent or inherent authority, breached express and/or implied warranties including, without limitation, the implied warranty of fitness for a particular use. Such actions and/or omissions by Defendants proximately caused damages to Plaintiff in an amount exceeding \$350,000.00 as well as, including, without limitation, such costs, attorneys' fees, expert fees, pre and post-judgment interest which is allowed under Texas law and/or as much as the Court and

jury may award in accordance with applicable law but not exceeding in the aggregate \$1,000,000.00. Such damages are within the jurisdictional limits of the Court.

Eighth Cause of Action – Tortious Interference with Existing and/or Prospective Contracts

44. Plaintiff incorporates the preceding paragraphs in support of this cause of action as if fully pled herein. The Defendants, upon information and belief, have willfully and intentionally interfered with Plaintiff's existing contract to sell the Handsets into the secondary market. While the Defendants were not parties to the contract, each Defendant is charged with actual knowledge of the contract as, including, without limitation, the Defendants were aware of Unlimited's contract to resell the Handsets and/or are charged with actual knowledge at law as such includes knowledge of all those facts which a reasonable inquiry would have disclosed. As a proximate cause of Defendants' interference, Plaintiff has suffered and/or will continue to suffer injury including direct and consequential damages, lost profits, lost corporate opportunity, loss of use, and/or other incidental out of pocket damages in an amount exceeding \$350,000.00 as well as, including, without limitation, such costs, attorneys' fees, expert fees, pre and post-judgment interest which is allowed under Texas law and/or as much as the Court and jury may award in accordance with applicable law but not exceeding in the aggregate \$1,000,000.00. Such damages are within the jurisdictional limits of the Court.

45. Moreover, upon information and belief, Defendants - being charged with and accordingly having actual knowledge of the contract either because they were in fact familiar with its terms or they are charged with knowledge of same or they failed to take such action to ascertain facts which a reasonable inquiry would have disclosed the terms of same - have willfully and intentionally interfered with the formation of valid and ongoing business relationships which had yet to be formalized by and/or reduced down to a written contract with a

third party regarding the Handsets. This is clear as not only did Plaintiff inform Defendants of said contract(s) but also a reasonable person and/or entity in the industry should know of the formation of said contract(s) as such was reasonably probable considering all of the facts and circumstances surrounding the Transaction. The Defendants either acted with a conscious desire to prevent the relationship from occurring or knew the interference was certain or substantially certain to occur as a result of the conduct. Such interference proximately caused Plaintiff to suffer damages including direct and consequential damages, lost profits, lost corporate opportunity, loss of use, and/or other incidental out of pocket damages in an amount exceeding \$350,000.00 as well as, including, without limitation, such costs, attorneys' fees, expert fees, pre and post-judgment interest which is allowed under Texas law and/or as much as the Court and jury may award in accordance with applicable law but not exceeding in the aggregate \$1,000,000.00. Such damages are within the jurisdictional limits of the Court.

Ninth Cause of Action – Promissory Estoppel

46. Plaintiff incorporates the preceding paragraphs in support of this cause of action as if fully pled herein. Alternatively, Plaintiff alleges that the Defendants (1) made a promise, (2) Defendants could foresee the Plaintiff would rely on that promise, and (3) the Plaintiff substantially relied on the promise made by the Defendants to its detriment. Such actions proximately caused damages to Plaintiff in an amount exceeding \$350,000.00 as well as, including, without limitation, such costs, attorneys' fees, expert fees, pre and post-judgment interest which is allowed under Texas law and/or as much as the Court and jury may award in accordance with applicable law but not exceeding in the aggregate \$1,000,000.00. Such damages are within the jurisdictional limits of the Court.

Tenth Cause of Action – Unjust Enrichment

47. Plaintiff incorporates the preceding paragraphs in support of this cause of action as if fully pled herein. Alternatively, Plaintiff pleads unjust enrichment. A person or entity is unjustly enriched when he obtains a "benefit from another by fraud, duress, or the taking of an undue advantage." Plaintiff prays the Court and/or jury will award whatever is deemed equitable and right as well as costs and attorneys' fees incurred by Plaintiff and pre and post-judgment interest as are allowed under Texas law. To allow Defendants to keep their profits while Plaintiff suffered damages as a result of the Transaction would constitute unjust enrichment.

ATTORNEYS' FEES

48. Plaintiff is entitled to reasonable and necessary attorney's fees pursuant to including, without limitation, TEX. CIV. PRAC. & REM. CODE ANN. § 38.001(8) and the TEX. BUS. & COMM. CODE § 17.50(d).

ADDITIONAL DAMAGES & PENALTIES

49. Upon information and belief, Defendants' conduct may have been committed knowingly and intentionally. Accordingly, if so, Defendants are liable for additional damages under including, without limitation, TEX. BUS. & COMM. CODE § 17.50(b)(1). Moreover, in the alternative, Plaintiff pleads for consequential damages and/or contractual and/or extra-contractual damages for loss of income resulting from the inability to resell the cellular Handsets, that do not come within the contract and/or under any law allowing for same due to the failure by Defendants to comply with state or federal law and/or Defendant, Cellular Recycler's failure to comply with the terms of the contract entered into with Plaintiff.

EXEMPLARY/PUNITIVE DAMAGES

50. Upon information and belief, discovery may show that some or all of the Defendants committed these wrongful acts knowingly, willfully, intentionally, with actual awareness and with the specific and predetermined intention of enriching themselves at the expense of Plaintiff and, if such is proven at trial, Plaintiff seeks and is entitled to recover exemplary or punitive damages as allowed by applicable Texas law.

JURY DEMAND

51. Plaintiff requests that this case be decided by a jury as allowed by TEX. R. CIV. P. 216. The appropriate jury fee will be tendered by Plaintiff prior to the deadline for same.

REQUEST FOR DISCLOSURE

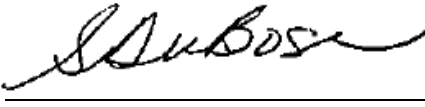
52. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants are hereby requested to disclose within fifty (50) days of service of this request, the information and/or material set forth in Rule 194.2(a)(b)(c)(d)(e)(f)(g)(h)(i)(j)(k) and (1).

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to answer and appear herein and that upon final hearing Plaintiff be awarded a judgment over and against Defendants, jointly and severally, for actual damages, general or special damages, attorney's fees, costs of court, pre and post judgment interest at the appropriate allowable rates, statutory treble and/or exemplary damages as warranted and for any and all other relief at law or in equity to which Plaintiff may show itself to be justly entitled.

Respectfully submitted,

DuBose Law Offices, PLLC

By: 

Suzanne J. DuBose

State Bar No: 24047521

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