

CAUSE NO. \_\_\_\_\_

UNLIMITED ARENA, INC.

Plaintiff,

vs.

CELLULAR RECYCLER, LLC,  
ASSURANT, INC.,  
ASSURANT SOLUTIONS, INC.,  
AND REY BROWN

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

**AFFIDAVIT OF ATIF KHAN**

STATE OF TEXAS

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COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Atif Khan,  
who, being duly sworn by me, deposed and stated under oath as follows:

1. My name is Atif Khan. I am over the age of twenty-one (21) years. I am the President of Unlimited Arena, Inc. ("Plaintiff" or "Unlimited"). I have never been convicted of a felony or crime of moral turpitude and I am competent and duly authorized to make this Affidavit based upon my personal knowledge of the facts stated herein.
2. On or about November 8, 2016, Cellular Recycler, LLC<sup>1</sup> ("Cellular Recycler") advertised for sale ZTE Unlocked Factory Refurbished GSM phones (hereinafter referred to as the "Handsets") as follows:

Z820 Obsidian

\*Factory Refurbished

\*GSM UNLOCKED

\*Pictures Attached

\*Pricing available upon request

\*8GB

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

*See*, the Advertisement attached hereto and incorporated herein in its entirety as Attachment "1".

3. 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*, the Purchase Order and two invoices attached hereto and incorporated herein as Attachments "2-4", respectively. 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.
4. The Handsets were shipped to Unlimited by Cellular Recycler; however, 8,800 of the 10,014 Handsets were not unlocked as represented.
5. 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.
6. 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/MetroPCS<sup>2</sup> to get the problem resolved but the problem was not resolved at this time.
7. 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 which were never returned to Unlimited.
8. On January 17, 2017, Cellular Recycler and Unlimited enter into an agreement to resolve the problem by both parties paying an outside third party vendor to unlock the phones. Unlimited entered into this agreement with Cellular Recycler based on additional representations to Unlimited that the problem was because T-Mobile's "unlocking application is not functioning properly"; however, Cellular Recycler failed to inform Unlimited that the phones were "blacklisted"<sup>3</sup> 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.

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

<sup>3</sup> 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.

9. 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.
10. 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 me that their "reverse logistics" team was looking into this.
11. 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.
12. 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")<sup>4</sup> as on February 12, 2017, Rey Brown of Assurant, contacted Unlimited in writing indicating he may have found a solution to unlock the Handsets. On or about that same date, Rey Brown verbally represented to me 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.
13. On or about February 13, 2017, Mr. Brown told me 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 I relayed this information to Unlimited's customers. When I informed him 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. I was disturbed to see this request again since Unlimited had already provided the IMEIs on one or more occasions prior to this communication and I 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.


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<sup>4</sup> Upon information and belief, Assurant is an authorized dealer of T-Mobile/MetroPCS products via contractual relationships.

14. 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, I joined a conference call with several T-Mobile/MetroPCS people wherein I was told the opposite. I was told all the IMEIs were blacklisted and that is why the Handsets could not be unlocked. I was told that T-Mobile/MetroPCS would have to re-whitelist all the IMEIs and it would take no more than three (3) days. I was again asked for the IMEIs so they could be processed.
15. Throughout February 2017, I was told by Rey Brown that the IMEIs for my customer's Handsets were whitelisted and unlocked; and throughout this time, to Unlimited's detriment, I relayed this untrue information to customers or potential customers and after the fact, learned the representations were not true. I was told by T-Mobile/MetroPCS as of February 16, 2017, all Handsets would be unlocked but this was also not true.
16. Throughout the remainder of February through May 1, 2017, I was assured that the remaining 1600 locked phones would be unlocked by ZTE, the manufacturer, but this never happened. When I informed Rey Brown that other vendors/sellers in the industry had received a solution from ZTE, I never heard another thing from Rey Brown, T-Mobile/MetroPCS or any other Defendant. More specifically, the last time I communicated with Rey Brown he asked me if he could tell T-Mobile/MetroPCS about the solution being provided and I responded "I don't care [as long] as I get my devices unlocked". He said "ok" and that was the last time I ever heard from him.
17. 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 and 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 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.
18. 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. As aforementioned, Unlimited lost a major sale and customers and suffered many other consequential damages as a result of the Defendants' conduct.

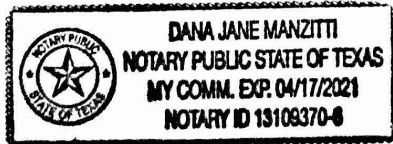
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19. This is not a complete detailing of the events that led up to this litigation or intended to be a complete itemization of the communications between the parties either verbally or in writing.
20. I am one of the custodians of records for Unlimited and the records attached hereto are kept by me in the regular course of business, and it was the regular course of business for me or an employee, agent and/or representative of mine with knowledge of the act, event, condition, opinion, or diagnosis recorded to make the records or to transmit information thereof to be included in such records; and, the records were made at or near the time or reasonably soon thereafter. The records attached hereto are the originals or exact duplicates of the originals.
21. I have read the foregoing Affidavit and all the facts stated herein are true and correct and within my personal knowledge to the best of my recollection.



Atif Khan  
Unlimited Arena, Inc.

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for the State of  
Texas on this 9<sup>th</sup> day of March, 2018.



NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

My Commission Expires: 04-17-2021