

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

AW ACQUISITION CORP.,)	
an Illinois Corporation,)	
)	
Plaintiff,)	
)	No. 04 C 1448
v.)	
)	
SOUTHWESTERN BELL MOBILE)	JURY DEMANDED
SYSTEMS, LLC, d/b/a CINGULAR)	
WIRELESS,)	
)	
Defendant.)	

COMPLAINT FOR DAMAGES

AW Acquisitions Corp. (“AWA”), through its attorneys, states the following as its Complaint against defendant Southwestern Bell Mobile Systems LLC, d/b/a Cingular Wireless (“Cingular”):

The Parties

1. This action is to redress the wrongful, unconscionable, systematic and fraudulent practices engaged in by defendant at the expense of plaintiff, the successor to one of defendant’s former dealers. Cingular’s policies and practices toward their independent dealer, in contravention of its agreement and in violation of common law and state and federal statutes, ultimately caused its dealer to fail, costing dozens of people their jobs and destroying a once-viable business.

2. AWA is an Illinois Corporation with its principal place of business in Illinois.

3. Cingular is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Atlanta, Georgia. The sole member of defendant Cingular is SBC Wireless, LLC, which is a Delaware limited liability company with its principal place of business in Georgia. The sole member of SBC Wireless, LLC is Cingular Wireless LLC, a Delaware limited liability company with its principal place of business in Georgia. Cingular Wireless LLC has five members: Cingular Wireless Corporation, a Delaware corporation with its principal place of business in Georgia; SBC Alloy Holdings, Inc., a Delaware corporation with its principal place of business in Texas; BellSouth Corporation, a Georgia corporation with its principal place of business in Georgia; SBC Communications, Inc., a Delaware corporation with its principal place of business in Texas; and BLS Cingular Holdings, LLC, a Georgia limited liability company with its principal place of business in Georgia. BLS Cingular holdings, LLC has four members: RAM Broadcasting Corporation, a New York Corporation with its principal place of business in Georgia; BellSouth Mobile Data, Inc., a Georgia corporation with its principal place of business in Georgia; Wireless Telecommunications Investment Company, LLC, a Delaware limited liability company with its principal place of business in Georgia; and AB Cellular Holding, LLC, a Delaware limited liability company with its principal place of business in Georgia. The sole member of Wireless Telecommunications Investment Company, LLC is ACCC of Los Angeles, Inc., a California corporation with its principal place of business in Georgia. There are three members of AB Cellular Holding, LLC: ACCC of Los Angeles, Inc.; BSCC of Houston Holdings, Inc., a Delaware corporation with its principal place of business in Georgia; and BSCC of Houston, LLC a Texas limited liability company with

its principal place of business in Georgia. The sole member of BSCC of Houston, LLC is ACCC of Los Angeles, Inc. Prior to a merger of the wireless operations of SBC Communications and Bell South Corporation on or about January 14, 2001, Cingular was known as Southwestern Bell Mobile Systems, Inc. d/b/a Cingular One-Chicago.

Jurisdiction and Venue

4. Jurisdiction is proper pursuant to 28 U.S.C. § 1332 because this is an action between citizens of different states in which the matter in controversy exceeds \$75,000, exclusive of interest and costs.

5. Venue is proper in this Judicial District pursuant to 28 USC § 1391 (a) because a substantial part of the events giving rise to this cause of action occurred in this District.

ALLEGATIONS RELATED TO ALL COUNTS

6. Cingular has for several years and under various different corporate identities provided cellular telephone services in various parts of the United States, including the metropolitan Chicago area. In addition to company-owned and operated retail stores, Cingular historically utilized independent dealers to market and sell its cellular telephone products and services to consumers.

7. On or about October 1, 1997, Cingular, through its predecessor Southwestern Bell Mobile Systems, Inc., and Areawide Cellular, Inc. entered into an “Authorized Sale and Service Agreement” whereby Areawide Cellular became an authorized Cingular Wireless sales and service dealer (“the Agreement”). A true and correct copy of the Agreement is attached hereto as Exhibit A.

8. On or about April 7, 2003, Areawide Cellular Corporation filed for bankruptcy protection pursuant to Chapter 11 of the Bankruptcy Code. The bankruptcy filing was necessitated by egregious treatment Areawide Cellular received at the hand of Cingular, as described more fully herein. On or about July 3, 2003, AWA purchased the assets of Areawide Cellular Corporation pursuant to 11 U.S.C. § 343, including all causes of action that existed against Cingular.

9. The Agreement established many terms and conditions of the parties' relationship. For example, as an authorized sales and service center for Cingular, Areawide agreed, among other things, to market cellular telephone products and services on Cingular's behalf. Cingular agreed to compensate Areawide in accordance with the terms of the Agreement, to support Areawide's sales efforts, and to apply its business practices to Areawide on a fair and non-discriminatory basis.

10. Consistent with all contracts, the Agreement contained an implied covenant of good faith and fair dealing which required that Cingular act reasonably in its dealings with Areawide, and not act arbitrarily, capriciously or in a manner inconsistent with Areawide's reasonable expectations.

11. In exchange for providing services as Cingular's authorized dealer, Cingular agreed to pay Areawide a commission which, in part, was equal to not less than 5% of the total recurring monthly charges billed by Cingular to customers who were originated by Areawide. In addition to the 5% residual commission, Cingular was also obligated to pay Areawide "standard commissions" that, in some cases, could total more than \$250 per line if attainable sales goals were reached. Areawide relied on Cingular to

accurately determine the commission and maintain accurate records of those customers to whom Areawide had sold Cingular services.

12. Areawide also purchased products from Cingular. Indeed, Cingular required Areawide to purchase and maintain unreasonably large inventories that could not be resold within a commercially reasonable time.

13. During the term of the Agreement, Cingular did all that it could to ensure failure as an approved dealer. In direct violation of the covenant of good faith and fair dealing, and armed with all material information concerning Areawide's customer base, including customer's identities and plan information, Cingular directly solicited Areawide's customers, encouraging those customers to end their relationship with Areawide and, instead, forge a new relationship with Cingular's internal channels of distribution. Cingular even offered to ship telephones directly to Areawide customers if those customers chose to leave Areawide. In many instances, the incentives that Cingular offered Areawide's customers were not available to Areawide.

14. In March of 2003, Cingular officials met with officials from Areawide to discuss the framework of a new contract. During the course of the discussions, Areawide advised Cingular of the precarious financial position it was in and further inquired as to the status of an audit that was pending with Cingular to determine whether, and to what extent, Cingular had "shorted" Areawide on its standard and residual commissions. At that meeting, Cingular's representative, Brian Lettrich, advised that the audit would not be performed and no issues would be settled unless and until Areawide agreed to the non-negotiable terms of a new agreement. Given the patently unreasonable terms of the

proposed contract and the manner in which it was being treated, Areawide declined to enter into a new agreement. Its bankruptcy followed shortly thereafter.

COUNT I

Breach of Contract -- Commissions

15. Plaintiff realleges and reincorporates by reference the allegations contained in paragraphs 1 through 14 as if fully set forth herein.

16. On information and belief, Cingular has failed to account for and pay commissions due on hundreds of customer lines, totaling in excess of \$2,000,000. Despite providing research information to Cingular in order for Cingular to perform an audit, Cingular refused to perform the audit unless Areawide agreed to execute a new agreement.

17. Cingular's failure to pay all standard and residual commissions due Areawide is a material breach of the Agreement.

18. Areawide has performed all obligations required of it under the Agreement.

19. As a direct and proximate result of Cingular's breach, Areawide and AWA has been damaged in an amount in excess of \$2,000,000 to be proven at trial.

WHEREFORE, AWA prays that the Court enter judgment in its favor and against Cingular in an amount in excess of \$2,000,000 to be proven at trial, awards its cost of suit and attorneys' fees and grant such further relief as the Court deems just and proper.

COUNT II

Breach of Contract – Soliciting Customers

20. Plaintiff realleges and incorporates by reference its allegations contained in paragraphs 1 through 19 as if fully set forth herein.

21. By soliciting and encouraging Areawide's customers to leave Areawide and, instead, continue its relationship directly with Cingular, Cingular breached the implied duty of good faith and fair dealing present in the Agreement.

22. As a direct and proximate result of said breach, Areawide and, in turn, AWA, has been damaged in an amount believed to be in excess of \$2,000,000.

WHEREFORE, AWA prays that the Court enter judgment in its favor and against Cingular in an amount in excess of \$2,000,000 to be proven at trial, awards its cost of suit and attorneys' fees and grant such further relief as the Court deems just and proper.

COUNT III

Fraud – Pricing and Commissions

23. Plaintiff realleges and incorporates by reference its allegations contained in paragraphs 1 through 22 as if fully set forth herein.

24. Beginning in or about 1998 and continuing throughout the course of their relationship, Cingular representatives, including Bob Nelson, Shelly Boersma, and Brian Lettrich repeatedly told Areawide that it was selling equipment to Areawide at "cost," i.e., the price Cingular paid to the equipment manufacturers for the equipment.

Cingular's intent in so representing was to ensure that Areawide, and other local Cingular dealers, purchased wireless equipment directly from Cingular, instead of from another source.

25. Specifically, the false statements that Cingular made to Areawide also included the following:

- A. Cingular falsely represented to Areawide that Areawide had access to the same level of pricing and equipment discounts as Cingular's internal channels of distribution;
- B. Cingular falsely represented to Areawide that it was selling equipment to Areawide at cost;
- C. Cingular falsely represented to Areawide that the terms offered in joint promotional advertising required by the Agreement would be available to Areawide's customers.
- D. Cingular falsely represented that residual commissions paid to Areawide from existing customers would not be effected if Cingular directly sold a replacement phone to one of Areawide's customers through direct solicitation.

26. The Cingular representatives who made the representations to Areawide knew at the time that the representations were made that they were false. The Cingular representatives identified herein made these false statements to Areawide in order to induce Areawide to refrain from exercising its right to purchase equipment from other providers, and to conceal from Areawide the fact that it had breached the Agreement.

27. Areawide reasonably relied on the statements by refraining from purchasing equipment from other sources.

28. Areawide has been damaged as a result of Cingular's misrepresentations.

29. Cingular's actions were calculated, intentional and malicious, entitling Areawide to an award of punitive damages.

WHEREFORE, AWA prays that the Court enter judgment in its favor and against Cingular in an amount in excess of \$2,000,000 to be proven at trial, award punitive damages in an amount in excess of \$1,000,000, awards its cost of suit and attorneys' fees and grant such further relief as the Court deems just and proper.

COUNT IV

Violation of Illinois Franchise Disclosure Act

30. Plaintiff realleges and incorporates by reference its allegations contained in paragraphs 1 through 29 as if fully set forth herein.

31. Areawide's agreement with Cingular constituted the sale of a franchise to Areawide.

32. Areawide was granted the right to engage in business of offering, selling or distributing goods or services under a marketing plan or system prescribed or suggested in substantial part by Cingular.

33. The operation of Cingular's business pursuant to this plan or system was substantially associated with Cingular's trademark service, trade name, logo or other commercial symbols designating Cingular.

34. Areawide was granted the right to engage in this business and was required to pay directly and indirectly a sum in excess of \$500.00 by, among other things, purchasing inventory in excess of what was reasonably required and purchasing inventory at inflated prices.

35. Cingular further violated the Act by falsely representing to Areawide that Cingular would assist Areawide in growing its business when it actually intended to steal Areawide's customers, while using Areawide's own information to do so. Had Cingular made this disclosure to Areawide, Areawide would not have become a franchisee. Further, Cingular violated the act by falsely representing that Areawide would be able to purchase equipment "at cost," when in fact Cingular sold equipment to Areawide at a price higher than it sold the same equipment to company-owned stores.

36. As a result of Cingular's conduct, Areawide and, in turn, AWA, has been damaged in that Areawide expended great sums of money to develop its business base, only to have those customers misappropriated by Cingular. Further, Areawide, and in turn AWA, is entitled to damages for Cingular's false representations concerning the prices Areawide was to pay for equipment. As a direct result, Areawide's business diminished greatly, the value of the business was lost and Areawide was forced to file bankruptcy.

37. Pursuant to 815 ILCS 705/26, plaintiff is entitled to recover its costs and reasonable attorneys' fees.

WHEREFORE, AWA prays that the Court enter judgment in its favor and against Cingular in an amount in excess of \$2,000,000 to be proven at trial, awards its cost of suit and attorneys' fees and grant such further relief as the Court deems just and proper.

COUNT V

(RICO)

38. Plaintiff realleges and incorporates by reference its allegations contained in paragraphs 1 through 37 as if fully set forth herein.

39. The RICO Enterprise (“the Enterprise”) is comprised of SBC Wireless, LLC, which is a Delaware limited liability company with its principal place of business in Georgia and the sole member of Cingular. Further, the Enterprise also consists of Cingular Wireless LLC, a Delaware limited liability company with its principal place of business in Georgia and the sole member of SBC Wireless LLC.

40. Members of the Enterprise maintain their own bank accounts, trademarks, service marks, employees and personal property.

41. The Enterprise began and expanded its cellular telephone subscriber base by using the resources of a series of independently owned sales locations, many of which were independent owners like Areawide. A common purpose of the members of the Enterprise was to eventually force Independent Dealers out of business in favor of direct channels of distribution.

42. The Enterprise enjoys the ability to control Cingular in its actions and relationships with its Independent Dealers. As set forth more fully below, through the control of the Enterprise, Cingular engaged in a pattern of racketeering activity to control and eventually force independent agents, like Areawide, out of business, thereby converting to itself through its expanding network of company owned channels of distribution all of the value created by the independent owners, including Areawide. This pattern of racketeering activity includes fraudulent representations concerning service

and equipment pricing, fraud in the delivery of payments of independent owners, threats of economic destruction and through the threat of the imposition of draconian contract terms.

43. Areawide, as independent owner, was compensated by Cingular in the following ways: a) direct commissions on sales to customers of cellular telephone service offered through Cingular; b) direct commissions on the sale to customers of cellular telephone equipment purchased by Areawide and other independent owners from the Cingular; c) additional commissions, rebates and economic incentives on the sale to consumers of cellular telephone service and equipment; and d) residual commissions on an on-going basis for each consumer signed up to Cingular's cellular telephone service by an independent owners for the duration of the time such customer used Cingular's cellular telephone service.

44. Cingular fraudulently and deliberately failed as part of its regular business practice to properly pay each and every element of compensation due to Areawide and the other independent owners.

45. Cingular fraudulently and deliberately as part of its regular business practice made it near impossible Areawide to investigate and recover the improperly withheld payments through Cingular's control of all relevant records and its flawed research process.

46. Cingular utilized these fraudulent schemes in paying its independent owners with the intent to economically weaken the independent owners and facilitate the Enterprise's plan to force the owners out of business in favor of company-owned channels of distribution.

47. Cingular controlled the independent owners, including Areawide, through the use of Dealer Contracts. The terms of the Dealer Contract became more and more draconian and more and more favorable to Cingular.

48. The Dealer Contract were conceived and manipulated as part of the Cingular's fraudulent scheme to drive out the independent owners and usurp for the benefit of Cingular the years of work, good will and investment made and achieved by the independent owners, including Areawide.

49. Each step in Cingular's pattern of activity involved a regular pattern of interstate travel, use of interstate telephone and telecopy services, and use of the U.S. mails by Cingular and its agents.

Pattern of Activity – Predicate Acts

Mail and Wire Fraud – Equipment Pricing

50. On numerous occasions, Cingular assured the independent owners both in writing through the U.S. Mails and orally over interstate telephone wires that the independent owners were purchasing equipment at the same prices as Cingular owned and controlled channels of distribution.

51. The assurances of equal equipment pricing were false and were made with the knowledge of their falsity.

52. The only apparent consistency in Cingular's pricing was that its internal channels of distribution received equipment at prices at appreciably less cost than Areawide and other independent dealers.

Mail and Wire Fraud – Pricing of Services

53. Cingular assured Areawide and the other independent owners orally over interstate telephone wires that the independent owners were always able to offer customers the same pricing for cellular telephone service as Cingular owned and controlled channels of distribution.

54. Todd Flack, on behalf of Cingular, assured Areawide on numerous occasions that Areawide was able to offer the same levels of pricing for services that the direct channels of distribution were able to offer.

55. Similar representations had been repeatedly made to Areawide by representatives of Cingular throughout the course of their relationship. These representations were made orally through interstate telephone lines.

Mail and Wire Fraud – Payment of Commissions

56. Cingular fraudulently and deliberately failed as part of its regular business practice to properly pay the independent owners, including Areawide, the full amount of all commissions due them.

57. Each month Cingular maintained a practice of sending to the independent owners, including Areawide, through U.S. Mail, reports that detailed the sales made by the independent owner the proceeding month. The Sales Reports included: a) Cellular Activation Report – Base Payments for New Line Activation; b) Rebate/Solution Payment Detail Report – base Payment for Replacement Phone Sales; and c) Rebate Solution On Line Adjustment Detail Report.

58. Cingular fraudulently and deliberately as part of its regular business practice failed to report substantial commissions and other payments due an independent owner, including Areawide.

59. Indeed, Cingular's representative finally admitted to Areawide in March of 2003 that Cingular had underpaid commissions due to Areawide, but that Cingular would not investigate the extent unless and until Areawide executed a new dealer agreement.

60. Cingular, as part of its regular business practice, fraudulently and deliberately made it near impossible to investigate and recover the improperly held payments.

61. In addition to those commissions, Cingular regularly made available to channels of distribution controlled by Cingular special commissions, special pricing and other incentives not available to the independent owners.

62. Cingular assured the independent owners that they were always entitled to the same special incentives, special pricing and other incentives offered to the Cingular-controlled channels of distribution.

63. The representations were resoundingly false.

64. In addition, Cingular paid to independent owners, including Areawide, residual commissions. Residuals were paid on a monthly basis and were based on the service usage by customers who signed up for Cingular's service by the independent owners.

65. Cingular assured the independent owners, including Areawide, that they were entitled to residuals for as long as a customer remained an active user of the

Enterprise's cellular service. Cingular assured the independent owners, including Areawide, that the Cingular-controlled channels of distribution would never take any action with respect to a customer that would interfere with an independent owner's entitlement to a residual commission.

66. The representations were resoundingly false.

67. The foregoing conduct is a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § § 1961-1968. Cingular, in association with and under the control of the Enterprise, participated in the conduct of the Enterprise's affairs through the foregoing pattern of racketeering activity.

68. As a direct and proximate result of Cingular's pattern of racketeering activity, Areawide and, in turn, AWA, has suffered injury to its business and property in an amount in excess of \$2,000,000. Plaintiff is entitled to treble damages, costs and attorneys' fees.

WHEREFORE, AWA prays that the Court enter judgment in its favor and against Cingular in an amount in excess of \$2,000,000 to be proven at trial, which amount shall be trebled pursuant to statute, awards its cost of suit and attorneys' fees and grant such further relief as the Court deems just and proper.

COUNT VI

Tortious Interference with Commercial Expectation

69. Plaintiff realleges and incorporates by reference its allegations contained in paragraphs 1 through 68 as if fully set forth herein.

70. At all times, Areawide had a reasonable expectation of maintaining a continuing business relationship with its customers for whom it originated cellular telephone services, including deriving a continued economic advantage.

71. Cingular intentionally and unjustifiably interfered with Areawide's relationship with its customers in a manner that induced or caused a termination of the expectancy.

72. Areawide has been damaged by the intentional and unjustified interference of Cingular with its expectation of prospective advantage because it has lost residual income that it would otherwise be paid in an amount to be determined.

73. Cingular acted intentionally and maliciously, entitling plaintiff to punitive damages to punish Cingular and deter others from similar conduct in the future.

WHEREFORE, AWA prays that the Court enter judgment in its favor and against Cingular in an amount in excess of \$2,000,000 to be proven at trial, awards its cost of suit and attorneys' fees and grant such further relief as the Court deems just and proper.

COUNT VII

Defamation

74. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 73 as if fully set forth herein.

75. Shortly prior to and after Areawide filed for bankruptcy, Cingular, through its agents, began falsely representing to Areawide customers who called Cingular with questions regarding service, that Areawide was deficient in its financial or business practices and or mismanagement. Specifically, Cingular representatives falsely told

Areawide customers that Areawide a) “had terrible customer service,” b) was going out of business due to financial mismanagement; and c) that its “stores had closed” and as a result Areawide would not be honoring customer insurance contracts.

76. The false statements that Cingular published assailed Areawide’s financial position and business methods and accused it of misconduct.

77. The foregoing statements are defamatory *per se* and severely damaged Areawide’s reputation among its customers.

78. The damage to Areawide’s reputation is presumed from the egregious and false nature of the defamatory statements.

79. As a direct and proximate result of Cingular’s defamatory statements, Areawide, and in turn AWA, has suffered substantial damages in excess of the jurisdictional requirement.

WHEREFORE, AWA prays that the Court enter judgment in its favor and against Cingular in an amount in excess of \$75,000 to be proven at trial, awards its cost of suit and grant such further relief as the Court deems just and proper.

AW ACQUISITION CORP.

By: _____
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