

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Wireless Express, LLC.,)
Plaintiff,)
v.)
T-Mobile USA, Inc. d/b/a T-Mobile)
And Sprint Solutions, Inc. n/d/b/a)
T-Mobile,)
Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C. A. No: 2021-CP-10-05745

COMPLAINT
(Jury Trial Demanded)

Claimant Wireless Express LLC (“Wireless Express” or “Plaintiff”) files this Complaint seeking relief against Defendant T-Mobile USA, Inc. d/b/a T-Mobile (“T-Mobile”) and Sprint Solutions, Inc., n/d/b/a T-Mobile (“Sprint”) (T-Mobile and Sprint are each a “Defendant” and collectively “Defendants”), and alleges and says as follows:

INTRODUCTION

1. Wireless Express brings this action to recover for T-Mobile’s and Sprint’s predatory business practices that destroyed Wireless Express’s business as an authorized dealer of mobile services and products, ultimately forcing Wireless Express to sell its company to mitigate its damages after successfully running it for over 16 years.

2. Wireless Express is a Virginia limited liability company, with its principal office in Isle of Palms, South Carolina, and until recently it had locations and operations in South Carolina and other states, including Indiana, Ohio, Kentucky, Tennessee, Iowa, Illinois, Wisconsin, Minnesota, Missouri, New Mexico, North Carolina, and Texas.

3. Prior to May 2020, Wireless Express operated Sprint-branded wireless-services and accessories stores pursuant to an Authorized Representative Agreement with Sprint. After Sprint and T-Mobile merged, Sprint and T-Mobile used fraud, deception, and improper business

compulsion to force Wireless Express to become a dealer of T-Mobile services and products – on non-negotiable and unfair terms that T-Mobile wrongfully imposed and then leveraged to drive Wireless Express out of business.

4. Private and authorized dealers like Wireless Express commonly sell wireless products and services. These small to medium sized dealers are often family-owned businesses and businesses opened by friends and provide numerous employment opportunities in the communities in which they are located – a high percentage of which jobs employ minorities, persons of color, and residents of rural areas.¹

5. Unfortunately for Wireless Express and other comparably-situated dealers, upon information and belief, T-Mobile wanted Sprint's cellular network and customers, but not, as a general rule, Sprint's dealers. In fact, T-Mobile representative Doug Chartier admitted this on a call with legacy Sprint dealers on December 10, 2020 (after the merger and signing of contracts between Wireless Express and T-Mobile).

6. Contrary to its pre-merger and pre-contract representations, T-Mobile intended to work with legacy T-Mobile dealers with which it had existing relationships, and wanted to reduce the compensation, size, and market share of the legacy Sprint dealers like Wireless Express without paying full value for the store reductions and lost value T-Mobile caused, and indeed, mandated. In fact, John Collins, owner of Collins Communications, told Wireless Express on a phone call following the final round of T-Mobile store closures that T-Mobile had not ask Collins, a legacy T-Mobile dealer, to close a single store following the merger, even those located in the same location as Wireless Express's stores.

¹ T-Mobile touts its pro-diversity positions, but contrary to these representations (and the promises it made to be permitted to merge with Sprint), its post-merger decimation of legacy Sprint dealers has resulted in a disproportionately large loss of jobs held by minorities, persons of color, and residents of rural areas.

7. Accordingly, after the merger, T-Mobile forced Wireless Express and other dealers out of their existing Sprint contracts, which had more than two years remaining on their terms and which were more favorable than T-Mobile's contracts. Indeed, even though T-Mobile had acquired the Sprint contracts as a successor and was legally bound to follow them, T-Mobile wrongfully told the legacy Sprint dealers, including Wireless Express, that it did not have to and would not honor those contracts, and it would not permit them to sell any wireless products and services (thereby condemning their businesses) unless those dealers signed unfavorable one-sided contracts with T-Mobile replacing the still valid Sprint contracts T-Mobile assumed through the merger. If Wireless Express or other legacy Sprint dealers refused, T-Mobile told them they would still be bound by the restrictions and burdens under their Sprint contracts (although they would not be allowed to sell any products or services), including the non-compete provisions that forbid the dealers from leaving T-Mobile and going to another carrier.

8. T-Mobile was in possession of Wireless Express's (and other legacy Sprint dealers') financial information, strategic background information, and plans for the future, and was fully aware that T-Mobile's undisclosed plans to suppress Wireless Express's success and to close a completely unreasonable number of Wireless Express's stores would result in the destruction of Wireless Express's business. T-Mobile thus fraudulently concealed its plans from Wireless Express, and made affirmative representations to further mislead and conceal from Wireless Express T-Mobile's intention to dismantle its business, eliminate growth opportunities, and to not honor the letter and the spirit of the new T-Mobile Agreements in good faith, with the ultimate goal of driving Wireless Express (like other legacy Sprint dealers) out of business.

9. Wireless Express and other legacy Sprint dealers faced financial devastation if they did not agree to T-Mobile's take-it-or-leave-it terms. Because the Sprint contracts included harsh

non-competition clauses, Wireless Express lacked the ability to go to another carrier and continue operations. Because, like all dealers, Wireless Express faced significant, recurring monthly expenses for lease payments, payroll, taxes, and debt service, dealers could not afford to forego the income from selling wireless services and products. In Wireless Express's case, these recurring payments amounted to approximately \$2.2 million per month.

10. T-Mobile rushed Wireless Express and other legacy Sprint dealers into unlawfully hurried contracts² of adhesion that included unfair, unreasonable, and unconscionable terms, which were, in any event, the product of coercion, fraud, financial distress, and inequality created by T-Mobile. Those contracts included:

- a. A Wind Down Addendum to the Authorized Representative Agreement between Sprint and Wireless Express (“Wind Down Addendum”);³
- b. Numerous, separate, lengthy Retailer Services Agreements⁴ with T-Mobile, which in turn had numerous, lengthy exhibits – Agreements that were far less favorable than the Sprint Agreement they purported to replace; and

² Not only were the documents themselves lengthy, but they also included links to other documents and terms and conditions which were not set out in the documents themselves. No reasonable person—or even a reasonable lawyer representing a dealer—could have been fully familiar with all of the documents T-Mobile was pressuring Wireless Express to sign in a rushed fashion. Of course, it would have made little difference since dealers like Wireless Express had no choice but to sign and T-Mobile indicated that it would accept no edits from dealers whatsoever.

³ The Wind Down Addendum was horribly one-sided. It provided limited “door closing benefits” for stores (referred to in the business as “doors”) that Wireless Express did not want to close and disproportionately took away benefits for those stores that Wireless Express had always enjoyed under the Sprint Agreements. For example, the Wind Down Addendum robbed Wireless Express of continuing service awards (“CSAs” or “residuals”) for the doors, which were monthly amounts received by dealers for each wireless service agreement contract they sold to a customer. Under Sprint, Wireless Express received residuals for a customer sale at a location even after that location closed. Under T-Mobile, Wireless Express did not.

⁴ The parties executed fourteen Retailer Services Agreements, one for each market or “Area” where Wireless Express operated retail locations. All fourteen Retailer Service Agreements are virtually identical and are referred to collectively as the “Agreement.”

- c. A personal guarantee (which Sprint had not required) for Charles Goldfarb, Wireless Express's founder.

These documents are collectively referred to as the "Agreement Package."

11. Per its plan, T-Mobile then abused the putative commercial terms it imposed to suppress Wireless Express, impede its success, and to force the closures of a disproportionately high number of Wireless Express locations. These were the mechanisms T-Mobile employed (via the guise of exercising its purported rights under the fraudulently-obtained T-Mobile agreements) to carry out its ultimate scheme of financially crippling Wireless Express—and numerous other previously-thriving legacy Sprint dealers—to such an extent that Wireless Express was forced to sell its remaining business to a dealer approved by T-Mobile at an absurd discount.

12. Specifically, T-Mobile unlawfully weaponized the commercial relationship and used agreement terms to unfairly disadvantage Wireless Express when it, without limitation:

- a. Initially closed Wireless Express's best stores, which accounted for approximately 30% of the entire company's profits;
- b. Continued to systematically close Wireless Express's stores at such high, unfair, and unforeseeable (to Wireless Express) rates that it effectively drove Wireless Express into financial hardship and out of business;
- c. Cut stores in large geographies in a manner that made it nearly impossible for Wireless Express's district managers to reasonably operate in those geographies;
- d. Took away Wireless Express's CSAs or residuals, which were a significant aspect of Wireless Express's compensation as a Sprint dealer;

- e. Re-classified Wireless Express's "rural store" designations, which reduced the number of Wireless Express stores classified as "rural" by 42%, and thereby resulted in significant loss to Wireless Express in bonus payments for operating stores in rural markets;
- f. Provided deficient signage for the stores after the merger, initially providing only a banner, which was far less effective than real signage at encouraging customer traffic;
- g. Took control of internet marketing for Wireless Express, but then impaired Wireless Express's search engine optimization so that internet searches for T-Mobile services only returned hits for legacy T-Mobile stores, but not Wireless Express (even if Wireless Express was closer), and only persons specifically searching for Sprint Services (which had been merged out of existence) would be directed to Wireless Express;
- h. Cut real-time sales reporting, one of the single most important sales drivers in the retail mobile services and accessories business, which impaired Wireless Express's ability to gauge its success in real time and its ability to prevent returns that undermined final sales;
- i. Changed the credit class for Wireless Express's upgrading legacy Sprint customers, which prevented Wireless Express from upgrading its own customers to new services or products;
- j. Created an atmosphere that depressed the sales value of dealer-dealer sales of stores, which:

(1) artificially reduced the prices that Wireless Express could receive for selling its locations to other dealers when T-Mobile's misconduct was driving Wireless Express out of the marketplace,

(2) improperly reduced the number of viable, successful dealers who could bid to purchase Wireless Express's assets, and

(3) encouraged dealers to offer artificially low prices for the remaining stores Wireless Express was forced to sell off as a result of T-Mobile's conduct;

- k. Engaged in other improper actions and inactions that demoralized Wireless Express's ownership, management, and staff; and
- l. Otherwise engaged in oppressive, fraudulent, and unconscionable conduct.

13. Further, Wireless Express was in a mislabeled and fraudulently disclaimed (by Sprint) franchise relationship with Sprint. T-Mobile unlawfully terminated that franchise relationship and required Wireless Express to enter into another mislabeled and fraudulently disclaimed (by T-Mobile) franchise relationship with T-Mobile. T-Mobile has acted unlawfully under franchise law.

14. Ultimately, and precisely according to T-Mobile's plan, T-Mobile's unlawful conduct forced Wireless Express to exit the business of being a T-Mobile dealer after the short and commercially abusive relationship by making a significantly de-valued sale of its remaining assets at the end of February 2021.

15. Before bringing this case, Wireless Express served notices of dispute on T-Mobile and tried to resolve these issues without resorting to litigation. T-Mobile offered only conclusory rejections of Wireless Express's valid concerns and refused to negotiate a reasonable resolution in good faith. Accordingly, Wireless Express has no choice but to bring this action to recover the value of the business it lost at the hands of T-Mobile's predatory and anti-competitive conduct.⁵

⁵ T-Mobile will attempt to normalize and justify its misconduct by describing it as sound business judgment. T-Mobile's conduct was neither sound nor legitimate. The business judgments T-Mobile made were to cheat, deceive,

PARTIES, JURISDICTION and VENUE

16. Plaintiff Wireless Express is a limited liability company organized and existing under the laws of Virginia and with a principal place of business in South Carolina.

17. Defendant T-Mobile is a corporation organized and existing under the laws of Delaware, with a headquarters in Bellevue, Washington.

18. Defendant Sprint is a Missouri corporation with its principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251.

19. Jurisdiction and venue are proper in Charleston County pursuant to S.C. Code Ann. § 15-7-30, because Wireless Express has its principal place of business in Isle of Palms, South Carolina and is registered to, and did, conduct business in this state. Wireless Express previously operated its principal office in Greenville, South Carolina, but moved that office to Isle of Palms following the fire-sale of its remaining stores when T-Mobile ran it out of business earlier this year.

20. T-Mobile also does business in South Carolina, and its actions at issue in this Complaint affected Wireless Express's stores in South Carolina (which were located in Simpsonville, Spartanburg, and Easley), as well as its stores in other states.

21. T-Mobile also specifically directed its contacts to Wireless Express in this state, including by making misrepresentations to Mr. Goldfarb, Wireless Express's principal, in South Carolina and sending the Agreement Package to Mr. Goldfarb for execution here.

CHOICE OF LAW

22. Although Section 18.6 of the T-Mobile Agreements provides that "[t]his Agreement and the rights and obligations of the parties under this Agreement will be construed in

mistreat, suppress, and intentionally shut down Wireless Express and other legacy Sprint dealers after representing that it would not take such actions to get its merger with Sprint approved.

accordance with and will be governed by the laws of the State of Washington, without regard to the conflict of laws or choice of law provisions,” if the T-Mobile Agreements are set aside as fraudulent (as they should be given T-Mobile’s fraud and unequal bargaining power as to not only the T-Mobile Agreements, but also as to the choice of law provision contained therein, and given the contracts at issue were signed by a South Carolina resident in South Carolina concerning activities taking place in South Carolina), the Washington law provision would not and should not apply. Wireless Express fully reserves (and hereby states in the alternative) the right to proceed on its claims under the companion laws of any state, including South Carolina, where Wireless Express had operations affected by T-Mobile’s conduct, in addition to pleading the applicable breaches of Washington law below.

FACTUAL BACKGROUND

A. Founding of Wireless Express.

23. Claimant Wireless Express LLC was formed by Charles “Chuck” Goldfarb more than sixteen years ago, originally operating five Sprint stores in Central, Indiana.

24. Mr. Goldfarb has worked in the telecommunications business for more than 35 years – effectively his entire adult life.

25. Mr. Goldfarb grew Wireless Express from the initial five Indiana stores to 115 stores in fourteen states at its peak, before the Sprint/T-Mobile merger.

26. Wireless Express was one of the top-five Sprint dealers before the Sprint/T-Mobile merger.

27. Unlike some other Sprint dealers, Wireless Express focused its business on underserved rural areas. Unfortunately for Wireless Express, these were exactly the stores T-Mobile targeted for closure, contrary to the representations it made to obtain approval for its merger with Sprint.

B. Wireless Express Exceeded as an Authorized Sprint Dealer and Expanded its Footprint at Sprint's Behest.

28. Wireless Express excelled as one of Sprint's top-performing dealers. In the eight to nine years preceding the Sprint/T-Mobile merger, Wireless Express was consistently one of the top five Sprint dealers and won numerous Platinum Partner Awards from Sprint.

29. In 2017, Sprint and T-Mobile explored a highly publicized potential merger. That merger ultimately did not happen, but immediately following the announcement that it would not go through Sprint contacted many of its dealers, including Wireless Express, and actively encouraged them to "open as many stores as possible." These statements were made by Sprint's then CEO Marcello Claure in phone calls and video conferences in 2017 with Mr. Goldfarb and other Sprint dealers. In reliance on Sprint's inducements, Wireless Express grew from 72 Sprint stores at the beginning of 2017 to 96 stores by the end of 2017.

30. Sprint's encouragement to Wireless Express and others to expand their locations continued right up until the new merger with T-Mobile was announced. At a dealer summit that took place during January 29-31, 2018, Sprint heavily encouraged dealers, including Wireless Express, to grow and add new locations, especially near competitors like T-Mobile. In light of Wireless Express's track record of success, Sprint encouraged Wireless Express to expand in markets that Sprint considered strategic or beneficial to Sprint. This included primarily rural areas, because unlike other wireless companies, Sprint focused on lower economic and underserved areas as a key part of its business model and strategy.

C. While Encouraging Wireless Express to Expand, Sprint Concealed Its Plans to Merge with T-Mobile.

31. Sprint knew that it would soon be acquired by T-Mobile, but told Wireless Express otherwise, assuring Wireless Express (and other legacy Sprint dealers) that Sprint would remain "a stand-alone company." Indeed, Sprint's CEO Marcelo Claure specifically made this statement.

Sprint concealed the truth about the merger from Wireless Express (and other dealers) and repeatedly encouraged Wireless Express to open and acquire new stores, and specifically encouraged Wireless Express (and other dealers) to open stores that were in close proximity to T-Mobile stores. Upon information and belief, these misrepresentations and concealments were made to protect Sprint's position in the merger as well as profit Sprint and its executives in the coming merger, from which they profited greatly based on the growth induced by the misrepresentations and concealments.

32. Despite Sprint's efforts to conceal its merger plans from dealers like Wireless Express, there were rumors that Sprint and T-Mobile might merge. When Wireless Express inquired whether there would be a merger, Sprint indicated that that there would not be, and again instructed Wireless Express to continue growing and opening new stores in close proximity to T-Mobile locations. Wireless Express followed Sprint's instructions and continued opening new locations.

33. Upon information and belief, Sprint knew its statements about the merger were false and that its repeated urging that Wireless Express (and other legacy Sprint dealers) continue growing and opening new stores would benefit Sprint and its executives in the upcoming merger, but would ultimately harm dealers like Wireless Express.

D. Sprint and T-Mobile Announced Their Merger and Promised Limited Post-Merger Closures.

34. On April 29, 2018, Sprint and T-Mobile announced that they had reached a definitive merger agreement. Wireless Express immediately asked Sprint about the implications of the merger on Wireless Express and sought merger protection in light of its recent and rapid expansion at Sprint's request.

35. Sprint provided Wireless Express with supposed “merger protection” in the form of tokens. Each token represented an agreement from Sprint that Wireless Express would be compensated a set amount for each post-merger store closure, along with payment of 80% of the balance of each store’s lease agreement.

36. Scott Keen, Sprint’s then-Director of Dealer Channels (and who later became a Director at T-Mobile), explicitly represented to Wireless Express that the new T-Mobile would only close 10% to 15% of Wireless Express’s stores (or approximately 10 to 15 stores).

37. Further, when asked on a conference call on or around February 14, 2020 what percentage of doors were initially targeted for closure, Cody Welker, then the Vice President of the Dealer Channel for Sprint, told Wireless Express: “Whatever number (of doors) you are thinking, it’s probably less than what you are thinking.”

38. Based on Sprint’s representations and the public statements by Mr. Legere and Mr. Claire (discussed below), Wireless Express reasonably anticipated that it would be permitted to continue growing and acquiring additional stores after the merger, and that the merger protection tokens could be used as necessary to address the closure of a small number of stores, consistent with the percentage of post-merger closures Sprint and T-Mobile were forecasting.

39. Wireless Express reasonably anticipated that while the tokens would be used to compensate it for specific store closures, it would be allowed to grow post-merger so that it would not experience a net loss in its number of stores.

40. Among other public appearances to promote the merger, Sprint’s CEO Marcelo Claire and T-Mobile’s CEO John Legere, jointly appeared on CNBC’s “Squawk on the Street” program on April 30, 2018. During that joint appearance, they stated that the new proposed merger would create thousands of jobs and would result in hundreds and hundreds of new stores being

opened. A link to the video of program where these statements was made is here - <https://www.cnn.com/video/2018/04/30/t-mobile-and-sprint-ceos-on-mega-merger.html>. Mr. Claude's and Mr. Legere's statements on that program are incorporated by reference.

41. Messrs. Claude and Legere made the same claims – that both jobs and stores would be added, not reduced, following the merger – during a Town Hall meeting with Sprint dealers, including Wireless Express, on October 22, 2018. The full transcript of their statements at that meeting is available here - <https://www.fiercewireless.com/wireless/full-transcript-here-s-what-t-mobile-s-john-legere-told-sprint-s-town-hall-meeting>, and is incorporated by reference.

42. Mr. Legere additionally stated that “The New T-Mobile will open **600 new stores to serve rural areas and small towns**” (emphasis in original) and that “we will offer a job with the New T-Mobile to every single employee of T-Mobile and Sprint working in one of our retail stores” following the merger during an April 4, 2019 posting to T-Mobile's website - <https://www.t-mobile.com/news/un-carrier/new-t-mobile-creating-jobs>, which statements are also incorporated herein.

43. Mr. Claude and Mr. Legere made these statements to induce Wireless Express, and other legacy Sprint dealers, to continue following Sprint's growth plan and to induce Wireless Express and other dealers to not oppose the merger or request that appropriate regulators deny or contest the merger.

44. Mr. Claude and Mr. Legere intended that Wireless Express and other Sprint dealers rely on these representations in executing post-merger agreements with T-Mobile so they could complete their merger and enrich themselves, to the detriment of legacy Sprint dealers like Wireless Express.

45. Mr. Claire and Mr. Legere also intended that Congress rely on these statements, as well as those made in other public appearances and interviews, because they knew the merger would be subject to scrutiny by Congress. In fact, Messrs. Claire and Legere reiterated their claims that the merger would not impact Sprint dealers and would in-fact result in more stores being opened, during joint testimony sessions to Congress on June 27, 2018 and February 19, 2019.

46. Further, to obtain the necessary approvals from the Department of Justice and regulatory agencies, T-Mobile made broad, sweeping promises to the government and to the public that the merger would increase competition for consumers, result in the opening of new stores, and create approximately 100,000 new jobs and that it would not produce anti-competitive behavior.

E. Sprint and T-Mobile Merged, and T-Mobile Coerced and Fraudulently Induced Wireless Express to Enter into New Agreements Based on False Promises of Growth and Limited Post-Merger Closures.

47. Sprint and T-Mobile finalized the merger on April 1, 2020.

48. In April 2020, Cody Welker and Scott Keen, both of whom now worked for T-Mobile, had a phone call with Wireless Express to present T-Mobile's post-merger dealer strategy as it pertained to Wireless Express. During this call, Welker and Keen informed Wireless Express that T-Mobile intended to close approximately 16 Wireless Express stores.

49. Mr. Welker and Mr. Keen also informed Wireless Express that T-Mobile would refuse to renew the subleases on an additional six corporate operated stores that Wireless Express sub-leased from Sprint. Sprint had encouraged Wireless Express to lease and operate these stores following the failed 2017 merger, and Wireless Express invested significant time and effort hiring and training staff to operate those stores.

50. Mr. Welker and Mr. Keen re-affirmed their earlier statements that there would be only one round of store closures and that they did anticipate any additional store closures. T-Mobile falsely represented that the store closures were based on extreme proximity to other T-Mobile

stores and that T-Mobile was instituting a similar number of closures for legacy Sprint and T-Mobile dealers alike.

51. The closures represented a 21% reduction of Wireless Express's locations, reducing its store count from 104 to 82.

52. Wireless Express reasonably believed that these closures were the only closures T-Mobile would institute, based on the earlier statements by Mr. Keen and Mr. Welker, and because T-Mobile's dealer strategy presentation to Wireless Express made no mention of further closures and was intentionally designed to give the impression there would be none.

53. Indeed, Wireless Express told T-Mobile that it was shocked and dismayed by the store closures and specifically explained that the stores T-Mobile decided to close would have a "material adverse" effect on Wireless Express as five of the stores to be closed were top performing Wireless Express stores and accounted for 30% of Wireless Express's profits. T-Mobile representatives Scott Keen and Cody Welker assured Wireless Express's principals that Wireless Express would be "a valued partner" of T-Mobile's, that Wireless Express was T-Mobile's "rural guys," and that there "would not be" another round of closures. Scott Keen and Cody Welker added that Wireless Express would be "one of the few chosen growth partners of T-Mobile," which they said was evidenced by T-Mobile offering the T-Mobile agreements as a 5-year contract, which, they stated, was not being offered to other dealers.

54. In addition, during these discussions, Mr. Welker and Mr. Keen also discussed with Wireless T-Mobile's plan for rural stores. Mr. Welker and Mr. Keen told Wireless Express that T-Mobile would pay a \$1,500/month rural bonus payment (or "spiff") for each store Wireless Express operated that was designated as being in a "rural" area.

55. In connection with these discussions, Mr. Keen sent Wireless Express a spreadsheet showing the number of Wireless Express stores designated as “rural.”

56. Per Mr. Keen’s spreadsheet, this was approximately 78 stores.

57. T-Mobile’s promise to pay the additional \$1,500/month rural spiff was a significant inducement for Wireless Express to execute the Agreement.

58. However, shortly after Wireless Express signed the Agreement, T-Mobile reneged on its promise to pay these bonuses by redesignating almost half of Wireless Express’s stores so that they were no longer considered “rural”.

59. Upon information and belief, T-Mobile never intended to honor its promise to pay the rural spiff for the stores it represented to Wireless Express it would receive these payments for, and always knew it would redesignate many of Wireless Express’s rural stores to disqualify them from receiving the rural spiff payments after Wireless Express executed the Agreement.

60. Following the April phone call with Keen and Welker, T-Mobile sent Wireless Express the Agreement Package on May 4, 2020, which required Wireless Express to wind down its existing agreements with Sprint, enter into fourteen Retailer Services Agreements with T-Mobile, enter a Branded Asset Acknowledgement Agreement, and submit an individual guaranty executed by Mr. Goldfarb. The Agreement Package consisted of more than 1,000 pages of legal documents. T-Mobile pressured Wireless Express to sign these documents quickly and repeatedly emphasized that all terms were non-negotiable and that to be a T-Mobile agent, Wireless Express must sign these agreements.”⁶

⁶ Wireless Express had no legitimate option of suing T-Mobile to avoid signing these Agreements, because, if it did not sign them, Wireless Express would lack the cash flow from selling wireless services and products that it would have needed to fund litigation against T-Mobile and Sprint, which were, conversely, well capitalized to resist a challenge (and draw it out and punish Wireless Express). Indeed, as set forth in this complaint and similar pleadings against T-Mobile, T-Mobile has a pattern and practice of unlawfully retaliating against dealers that stand up to it.

61. Contemporaneously with its transmission of the Agreement Package, T-Mobile falsely represented to Wireless Express that it did not have to honor and would not honor Sprint's obligations under Wireless Express's existing dealer agreements with Sprint, which obligations T-Mobile had assumed via the merger and by their terms were effective for approximately two more years. T-Mobile also disclaimed any obligation to honor the merger protection agreement and tokens for store closure reimbursements that were specifically intended to protect dealers like Wireless Express from rapid post-merger store closures.

62. T-Mobile also withheld Wireless Express's rightfully-earned CSAs for those 16 closed stores, yet at the same time wrongfully charged Wireless Express fees for deactivations and chargebacks for the closed locations.

63. T-Mobile further advised Wireless Express that, because Sprint no longer existed, T-Mobile was not obligated to provide any benefits under the existing contracts and would not allow Wireless Express to sell any T-Mobile phones or services unless it signed the Agreement Package. T-Mobile took the entirely opposite position with respect to Wireless Express's burdens under the existing Sprint contracts, stating it would continue to enforce those burdens against Wireless Express until it signed the T-Mobile Agreement Package.

64. T-Mobile also stated that if Wireless Express did not execute the Agreement Package by May 15, 2020, it would withhold store remodeling funds. T-Mobile required all legacy Sprint dealers, including Wireless Express, to remodel their stores under the new T-Mobile brand at a cost to the dealer of an undisclosed amount at the time, but which later information revealed would cost approximately \$130,000 per store. At the time, T-Mobile misrepresented that it would allocate cooperating legacy Sprint dealers \$15,000 to "refresh" their stores, which concealed the true cost of remodeling.

65. Wireless Express therefore had a short timeline to review and execute the 1,000+ pages of non-negotiable agreements to be eligible to receive the remodel funds and continue operating, or else lose its business entirely.

66. When Wireless Express communicated its concerns about the T-Mobile Agreements, and the Personal Guaranty in particular, T-Mobile stated that it does not entertain redlines and all documents were non-negotiable, effectively presenting contracts of adhesion that, due to T-Mobile's fraud and deceptive conduct, Wireless Express had no option but to sign.

67. As a practical matter, T-Mobile knew that Wireless Express had no choice but to sign the new T-Mobile agreements. T-Mobile would hold Wireless Express and other dealers to the restrictions in the Sprint contracts (e.g., non-competition clauses), but would not allow Wireless Express to sell T-Mobile branded products and services unless Wireless Express signed the new Agreement Package. This combination of circumstances would entirely deprive Wireless Express of the ability to meet its expenses of approximately \$2.2 million per month in lease payments, payroll, taxes, and debt service.

68. Prior to executing the Agreement Package, Wireless Express's principal, Mr. Goldfarb, spoke with Scott Keen, who at this point in time was in charge of communications with the dealer channel for T-Mobile, and directly asked Mr. Keen whether T-Mobile would institute any additional rounds of store closures.

69. Mr. Keen assured Wireless Express that T-Mobile would not engage in another round of closures.

70. Mr. Goldfarb repeatedly informed Mr. Keen of T-Mobile that another round of closures, if it occurred, would certainly have a "material adverse effect" on Wireless Express, particularly without growth (i.e., the ability to acquire more stores).

71. According to T-Mobile's representatives, the closures were part of a "shrink to grow" strategy, pursuant to which T-Mobile would close – on a fair and reasonable basis – stores that were in close proximity to one another and then allow dealers, like Wireless Express, to grow by adding new locations in new areas. Indeed, multiple T-Mobile representatives repeatedly assured Wireless Express that T-Mobile was going to facilitate expansion and growth by Wireless Express.

72. T-Mobile knew, but concealed from Wireless Express, that unless a dealer was a favored T-Mobile dealer, it would only be allowed (or more accurately, forced) to shrink, but never to grow. As Wireless Express was not a favored legacy T-Mobile dealer, Wireless Express experienced a mandated "shrink, but not grow" strategy forced by T-Mobile.

73. Upon information and belief, at that time T-Mobile knew that it would make multiple additional rounds of closures of Wireless Express stores, and T-Mobile fraudulently concealed this fact from Wireless Express, including by instructing personnel, like Scott Keen and Cody Welker, not to disclose this fact to Wireless Express and other dealers.

74. Upon information and belief, T-Mobile disregarded the advice of the real estate advisors upon which it normally relied in deciding which stores to slash and instead intentionally closed legacy Sprint stores because its intent was to drive the legacy Sprint dealers out of business.

75. Sprint's and T-Mobile's fraudulent misrepresentations and concealments were intended to, and did, induce Wireless Express to sign the T-Mobile contracts.

76. Faced with an immediate 21% reduction of its business after the merger and the direct threat of having its 82 remaining stores' operations grinding to a halt with nothing to sell, as well as the inability to negotiate terms and T-Mobile's false representations that there would be no further store closures (combined with Sprint and T-Mobile's pre-merger representations that

following the merger legacy Sprint dealers would be able to add employees and grow stores), Wireless Express executed the Agreement Package on May 14, 2020.

77. The adhesion RSAs and the Wind Down Addendum include provisions that were false and oppressive, including: provisions that reduced Wireless Express's compensation, releases that were induced by financial coercion and distress, and misrepresentations that Mr. Goldfarb wanted to provide a personal financial guarantee for the benefit of T-Mobile.

78. Wireless Express only agreed to these terms under extreme economic duress.

79. The terms of the Confidentiality Agreement were ridiculously one-sided and, as Wireless Express now realizes, intended by T-Mobile to enable T-Mobile to drive Wireless Express out of business.

F. T-Mobile Engaged in a Pattern and Practice of Anti-Competitive Behavior to Destroy Wireless Express and Instituted Additional Closures Despite Representations to the Contrary.

80. Shortly after the Sprint-T-Mobile merger, T-Mobile began engaging in a litany of anti-competitive, unfair and deceptive behavior aimed at driving Wireless Express and other legacy Sprint retailers out of the marketplace.

81. T-Mobile manipulated search engine results to divert internet traffic and potential business away from Wireless Express and instead to preferred legacy T-Mobile retailers and corporate stores. Specifically, T-Mobile was suppressing search engine results for Wireless Express locations so that they would not appear at the top of or at all in a search engine query even though the internet user was located in close or closest proximity to a Wireless Express store location.

82. T-Mobile also refused to approve Wireless Express's request to sell its stores under the guise of a purported company-wide acquisition freeze while, upon information and belief,

simultaneously approving substantially similar sales and acquisitions for T-Mobile-favored retailers.

83. Specifically, in August 2020, Wireless Express requested approval for the sale of its stores to PCS Mobile Solutions during a phone call with Mike Sentowski, the T-Mobile VP who was running the Dealer Channel at that time, and the owners of PCS Mobile Solutions. They were told all mergers and acquisitions were being put on hold. Upon information and belief, this representation was not true, T-Mobile was just selectively targeting dealers like Wireless Express for which it wanted to drive down the sale price.

84. Finally, after Wireless Express executed the Agreement Package, T-Mobile began reducing or eliminating revenue streams that previously existed under the Sprint contracts and that T-Mobile never represented would be impacted or changed under the new Agreement Package. Specifically, T-Mobile reduced or eliminated residual payments, rural spiffs, and other forms of payment to Wireless Express, making it virtually impossible for Wireless Express to retain employees. T-Mobile also inequitably determined chargebacks and took an inordinate amount of time to resolve chargeback issues, which hamstrung Wireless Express's ability to accurately document/forecast cash flow.

85. T-Mobile also began "double charging" for chargebacks. In light of the COVID-19 pandemic, Sprint provided Wireless Express with a revenue commission check, which was based on a six-month average gross revenue minus chargebacks, and amounted to approximately \$2.2 million, in order to maintain employment and prevent store layoffs. Following the merger, in addition to deducting the chargebacks from gross revenue in determining the monthly average that Wireless Express would receive, T-Mobile then deducted the chargebacks a second time from the

average, thus double charging for chargebacks and reducing the overall amount that Wireless Express was paid each month.

86. Upon information and belief, T-Mobile planned to institute these changes prior to the execution of the Agreement Package but concealed this fact from Wireless Express to induce it to execute the Agreement Package.

87. Against this backdrop, on November 17, 2020, approximately five months after T-Mobile assured Wireless Express that it would not be subject to additional closures, T-Mobile then announced that it was instituting a second round of store closures and would be closing at least 28 more of Wireless Express's remaining stores over the next 12 to 24 months. T-Mobile also hinted that an additional 6 stores may be in jeopardy of closure during yet a third round of closures.

88. T-Mobile's announcement was contrary to its explicit representations via its Director Scott Keen in May 2020 that there would be no further Wireless Express store closures after the initial round of closures.

89. T-Mobile stated that the additional closures were related to business judgment. However, the basis for any judgments T-Mobile made were its own improper and anti-competitive behavior, which prevented Wireless Express from performing to its potential, deflated its performance metrics, impeded its ability to operate existing stores optimally, and precluded any realistic opportunity for expansion or growth.

90. According to T-Mobile's announcement, Wireless Express's store count would be reduced from 82 stores at the time it executed the Agreement Package in May 2020 to a meager 48 stores, or a 41% elimination (and down 54% from its pre-merger store count of 104), within the first two years of signing the new Agreement. Upon information and belief, T-Mobile disproportionately imposed the majority of closures upon legacy Sprint dealers as part of its plan

to eliminate, and have its preferred legacy T-Mobile dealers subsume, the unwanted Sprint dealers it acquired via the merger.

91. In short, T-Mobile relied on the Agreement (which it coerced and fraudulently induced Wireless Express to sign) to eliminate almost all of Wireless Express's stores while simultaneously prohibiting Wireless Express from opening new locations or opening stores for a competing carrier. Consistent with its intent and design, T-Mobile's anti-competitive, unfair, and deceptive conduct also ensured that Wireless Express's remaining stores would not operate at the levels they did prior to the Sprint/T-Mobile merger.

92. Prior to Wireless Express executing the Wind Down Addendum and Agreements with T-Mobile, T-Mobile and Sprint stated that a dealer's performance would be "the number 1 factor" for T-Mobile's future plans. But once T-Mobile's fraudulently-induced and one-sided Agreements with Wireless Express (and other legacy Sprint dealers) were in place, T-Mobile representative Doug Chartier admitted the truth in a December 10, 2020 call with another legacy Sprint dealer, stating: "T-Mobile only acquired Sprint for its network assets, not real estate or dealer distribution." This was a new, completely different, and contradictory message than any that T-Mobile or Sprint had previously communicated.

93. Throughout its relationship with Wireless Express (and other legacy Sprint dealers), T-Mobile engaged in a pattern and practice of anti-competitive, unscrupulous, and unethical conduct, which it then sought to cure with unfairly induced releases which were the product of misrepresentations, treachery, lack of consideration, and financial duress created by T-Mobile.

G. T-Mobile's Unlawful Conduct Forced Wireless Express to Exit a Business in Which it Had Flourished For 16 Years.

94. Before he was forced to do business with T-Mobile, Mr. Goldfarb intended to grow and either maintain Wireless Express as a closely-held, essentially family business or to grow the business and sell it for a profit. T-Mobile ruined either path for Wireless Express's future.

95. Once it became clear that T-Mobile's actions would make it difficult and virtually impossible for Wireless Express to survive, let alone succeed or grow, Wireless Express had little choice but to exit the marketplace and sell its remaining business.

96. On January 21, 2021, Wireless Express signed an asset purchase agreement with a Buyer (the "Buyer"). By that time, Wireless Express only had 76 stores remaining, with 20 of those set for forced closure by T-Mobile on or before October 31, 2021. An additional eight stores were designated as "high risk" for closure. Accordingly, the Buyer would only pay for 48 of the stores (at a steeply discounted price).

97. Notably, the sale to the Buyer was for an amount that is far less than the value of Wireless Express before T-Mobile effectively destroyed Wireless Express's business and reduced Wireless Express from a top dealer to a company whose principals have no legitimate choice aside from exiting the business. For context, the sale price to the Buyer was approximately one-third of the amount stated in an LOI Wireless Express had executed with another potential buyer prior to the merger.

H. Sprint, and Then T-Mobile, Maintained a Mislabeled Franchise Arrangement with Wireless Express.

98. Prior to the Sprint-T-Mobile merger, Sprint's relationship with Wireless Express was a mislabeled franchise relationship.

99. Sprint's agreement with Wireless Express included a false statement that the relationship was not a franchise.

100. After acquiring Sprint in the merger, T-Mobile unlawfully terminated the franchise with Sprint.

101. Thereafter, T-Mobile's relationship with Wireless Express was a mislabeled franchise relationship.

102. T-Mobile's agreement with Wireless Express included a false statement that the relationship was not a franchise.

103. Both Sprint and T-Mobile engaged in unlawful conduct directed at Wireless Express that violated applicable franchise law, including the Washington Franchise Act.

104. Both Sprint and T-Mobile granted Wireless Express and its locations the right to offer, sell, or distribute goods and services – specifically Sprint and T-Mobile wireless services and associated cellular phone products – under a marketing plan or system prescribed in substantial part by Sprint and T-Mobile.

105. That marketing plan included, without limitation, sales of Sprint and T-Mobile-branded goods and services through a network of independent authorized retailers, of which Wireless Express was one, established by Sprint and T-Mobile in territories established by Sprint and T-Mobile to create a distribution grid for Sprint and T-Mobile. Wireless Express and other dealers were required to invest and take on substantial risk to commit them to the retailer and distribution programs established by Sprint and T-Mobile. Further, after the merger, T-Mobile forbade Wireless Express from making independent sales of accessories, which reduced Wireless Express's profitability by hundreds of thousands of dollars (approximately \$325,000) on a monthly basis.

106. Wireless Express's operation was substantially associated with the trademarks, service marks, trade names, advertising, or other commercial symbols designating, owned by, or

licensed by Sprint, T-Mobile, and their affiliates. Indeed, to a customer visiting a Wireless Express store, the store appeared to be a Sprint- or T-Mobile-owned store because of the extensive Sprint or T-Mobile signage and their logos appearing on the employee uniforms – all of which were mandated by Sprint and T-Mobile.

107. Wireless Express was required to pay to Sprint, and then to T-Mobile, directly or indirectly, franchise fees. Those fees included, without limitation:

- a. improper and unauthorized chargebacks against Wireless Express's commissions due from Sprint and T-Mobile;
- b. the improper withholding of Wireless Express's earned CSAs or residuals post-merger;
- c. the forced-purchase of furniture, uniforms, services, phones, and accessories from Sprint and T-Mobile-selected vendors, including Granite Communications and Brightstar, which vendors, upon information and belief, provided these goods and services to Wireless Express at a substantial mark-up that was directly passed on to Sprint or T-Mobile;
- d. the assessment of charges labeled as "penalties" or "fines" for items such as missed training for employees, staff shortages, or findings in audits conducted by or on behalf of Sprint or T-Mobile;
- e. the required surrender of returned phones to Sprint or T-Mobile without any refund to Wireless Express for any portion of the phones;
- f. whenever there was a loss of goods (phones or accessories), which is a guaranteed occurrence in any retail business due to damage, loss in transit, theft, and other causes, T-Mobile required Preferred Wireless to pay it the full **retail**

price for the lost goods, which was considerably more than T-Mobile had paid for those goods – this alone represented thousands of dollars in disguised franchise payments to T-Mobile;

- g. Sprint's and T-Mobile's receipt of funds from vendors in return for allowing those vendors to advertise in Wireless Express stores;
- h. charges for Wireless Express's sales of accessories (which did not reflect mere wholesale sales of accessories to Wireless Express by Sprint and T-Mobile);
- i. markups on shipping fees; and
- j. backend charges for co-op parts.

108. Both Sprint and T-Mobile failed to properly register as required for franchise relationships and abused the franchise relationship. Further, Defendants unlawfully terminated the Sprint franchise to Wireless Express when they forced the less favorable T-Mobile franchise relationship upon Wireless Express.

I. T-Mobile is Liable for Sprint's Unlawful Conduct.

109. T-Mobile (or a parent company of T-Mobile) is the successor entity or parent of Sprint.

110. As the acquiring entity, T-Mobile is liable for action or inactions of Sprint occurring before or in connection with the Sprint/T-Mobile merger.

111. Further, as between Sprint and T-Mobile, there was a commingling of property rights or interests, and it was apparent that they were intended to function as one, and, further, to regard them as separate would aid the consummation of a fraud or wrong upon others.

112. Moreover, Sprint and T-Mobile conspired together and aided and abetted one another to perpetrate the unlawful and wrongful actions and inactions that are the subject of this Complaint.

J. The Putative Releases Contained in the Sprint and T-Mobile Contracts are Unenforceable.

113. The putative releases, (1) paragraph 8 of the May 14, 2020 Wind Down Addendum to the Authorized Representative Agreement between Sprint and Wireless Express and section 18.15 of the T-Mobile Agreements (“2020 releases”), and (2) paragraph 5 of the Assignment and Assumption Agreement between Wireless Express, the Buyer, and T-Mobile (the “APA”) effective January 1, 2021 (“2021 release”), were fraudulently or unlawfully obtained and are unenforceable.

114. All releases lack consideration. For the 2020 releases, T-Mobile compelled Wireless Express to forego its existing Sprint contractual benefits and granted Wireless Express nothing in return beyond what Wireless Express was already entitled to receive. For the 2021 release, T-Mobile had already given verbal and written approval of the APA. The last-minute purported releases were unilaterally imposed on the APA by T-Mobile, were not proper or authorized requirements for the APA process, and in exchange for executing them Wireless Express received nothing to which it was not already entitled.

115. Separately, T-Mobile acquired the purported releases through unlawful coercion and duress it imposed on Wireless Express, which independently renders the releases unenforceable. For the 2020 releases, T-Mobile threatened the destruction of Wireless Express’s business if it did not sign, while simultaneously claiming Wireless Express was still bound by its non-compete, chargeback, and other obligations under the Sprint dealer agreement. Wireless Express had millions of dollars in recurring obligations for lease payments, personal guarantees, wages, operating expenses, and debt service, and it faced a simple choice: sign T-Mobile’s rushed, non-negotiable adhesion contracts or go bankrupt. Similarly, for the 2021 release, T-Mobile waited until the eleventh hour before the closing of the APA to produce the 2021 release and demand

Wireless Express sign it, knowing full well that Wireless Express could not afford to lose the APA or delay the APA's closing while it challenged T-Mobile's improper demand for a release. T-Mobile's modus operandi was to (1) first verbally approve dealers' sale of assets, like it did with Wireless Express, and (2) wait until the last minute to spring the release, at which point T-Mobile knew Wireless Express would be in no position to stop the sale because it had made extensive final decisions such as employee terminations or transitions and lease arrangements, and Wireless Express would face a buyer who had rights against it if it halted the transaction. Like the initial release, here too, Wireless Express's choices were insolvency or fold to T-Mobile's unfair demands.

116. T-Mobile also induced all releases by fraud. T-Mobile affirmatively misrepresented its intentions (and concealed its true intentions) regarding store closures, lease renewals, growth, and support from the outset. Then, after intentionally devastating the businesses of dealers like Wireless Express, T-Mobile fraudulently represented it had approved the dealers' sales of their remaining assets to another T-Mobile dealer, but knew it intended to threaten to retract its approval at the last minute unless the selling dealer released all claims against T-Mobile. In short, T-Mobile acquired all the releases through unfair and deceptive practices, improper coercion and fraud, and without giving valid consideration, which renders the releases void as a matter of law.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF: FRAUD AND FRAUDULENT INDUCEMENT

117. Wireless Express realleges, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

118. T-Mobile knowingly made the false representations to Wireless Express that it would not subject Wireless Express to another significant reduction of its stores after the initial round of store closures and would allow Wireless Express to expand and grow.

119. T-Mobile further concealed its plans to massively cut Wireless Express's number of locations, suppress its ability to succeed, and stifle its growth.

120. These representations and concealments were material and false.

121. Wireless Express entered into the Agreement based on T-Mobile's representations that it would not subject Wireless Express to additional store closures, that Wireless Express would be allowed to acquire new stores and grow its number of locations following the merger, and T-Mobile would pay a bonus/spiff for Wireless Express's rural stores.

122. T-Mobile knew that the representations were false and it acted in reckless disregard as to the truth or falsity of the representations.

123. T-Mobile knew at the time it made the representations that it intended to close far more of Wireless Express's stores than it represented, and that it would do so within the first two years of the Agreement.

124. T-Mobile made these misrepresentations and concealments of material facts with the intent to deceive Wireless Express, and they were made as material inducements to Wireless Express to enter into the Agreement.

125. Wireless Express was deceived by the misrepresentations and would not have entered into the Agreement but for the misrepresentations.

126. Wireless Express could not have learned the true facts through reasonable diligence, and as a result, its reliance on T-Mobile's misrepresentations was justified and reasonable.

127. T-Mobile's fraudulent misrepresentations and concealments of material fact induced Wireless Express to forego the more beneficial terms of the Sprint contract and cheated

Wireless Express out of compensation to which Wireless Express was entitled under the Sprint contract.

128. As a direct and proximate result of T-Mobile's fraudulent misrepresentations, Wireless Express has suffered damages in an amount to be determined at the final hearing, but certainly in excess of \$50 million.

**SECOND CLAIM FOR RELIEF: NEGLIGENT MISREPRESENTATION
(IN THE ALTERNATIVE)**

129. Wireless Express realleges, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

130. Wireless Express pleads negligent misrepresentation in the alternative to fraud and fraudulent inducement.

131. As alleged herein, T-Mobile supplied misinformation (by direct statement and concealment that misled Wireless Express concerning the nature of the T-Mobile-Wireless Express relationship), including regarding future growth and store closures and rural bonus/spiff payments, which information was material, false, and misleading.

132. T-Mobile knew that supplying this information to Wireless Express would induce Wireless Express to execute the new Agreement package, and in supplying this information T-Mobile intended to induce Wireless Express to do so.

133. T-Mobile was negligent in obtaining and communicating this false information to Wireless Express.

134. Wireless Express reasonably relied on this false information in deciding whether to execute the Agreement package.

135. T-Mobile's false information proximately caused damages to Wireless Express.

136. As a result of T-Mobile's negligent misrepresentations, Wireless Express has suffered damages in an amount to be determined at trial, but certainly in excess of \$50 million.

THIRD CLAIM FOR RELIEF: DECLARATORY JUDGMENT

137. Wireless Express realleges, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

138. There is an actual and justiciable controversy among the parties regarding the matters set forth in this Complaint.

139. The law, justice, and equity require a determination and declaration that, as a result of Sprint's and T-Mobile's fraudulent inducement of the Agreements, they are invalid, void, and of no effect, and Wireless Express therefore remains in contract with Sprint and is entitled to the rights, privileges, and payments, and has only the obligations set out in the Authorized Representative Agreement between Sprint and Wireless Express.

140. The law, justice, and equity require a determination and declaration that, as a result of Sprint's and T-Mobile's fraudulent inducement of the T-Mobile Agreements and unequal bargaining power, the choice of law provisions contained therein are void and without effect.

141. The law, justice, and equity require a determination that the putative releases contained in the Wind Down Addendums, Retailer Service Agreements, and the Assignment and Assumption Agreements were procured through fraud, and/or unfair and deceptive business practices, and/or improper coercion and economic duress, and/or are not supported by valid consideration, and are therefore void and without effect.

142. The law, justice, and equity require a determination and declaration that the relationships between Sprint and Wireless Express, and then T-Mobile and Wireless Express, were franchise relationships, such that Sprint and T-Mobile are entitled to the benefits of a franchisee under applicable law.

FOURTH CLAIM FOR RELIEF: BREACH OF SPRINT CONTRACT

143. Wireless Express realleges, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

144. If the Court determines that the Sprint contract remains in place, T-Mobile's and Sprint's conduct as alleged herein breached that contract.

145. T-Mobile's and Sprint's conduct is the actual and proximate cause of damages to Wireless Express.

146. Wireless Express has suffered damages in an amount to be determined at trial, but certainly in excess of \$50 million.

FIFTH CLAIM FOR RELIEF: BREACH OF THE T-MOBILE AGREEMENTS AND WIND DOWN ADDENDUM

147. Wireless Express realleges, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

148. If the Court determines that the Wind Down Addendum and T-Mobile Agreements remains in place, T-Mobile's and Sprint's conduct as alleged herein breached those contracts.

149. T-Mobile's and Sprint's conduct is the actual and proximate cause of damages to Wireless Express.

150. Wireless Express has suffered damages in an amount to be determined at the final hearing, but certainly in excess of \$50 million.

SIXTH CLAIM FOR RELIEF: BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

151. Wireless Express realleges, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

152. To the extent the Agreement is deemed to be a valid contract that was not fraudulently induced, then T-Mobile is obligated by contract and common law to act in good faith and to not do anything to deprive Wireless Express of the fruits and benefit of the Agreement.

153. T-Mobile breached this implied covenant of good faith and fair dealing and injured Wireless Express's right to receive the benefits of the Agreement by engaging in the conduct described herein, including, without limitation:

- a. Systematically eliminating a disproportionate share of Wireless Express's stores within the first two years of the Agreement;
- b. Refusing to approve additional Wireless Express stores and building corporate stores in proximity to existing Wireless Express locations; and
- c. Otherwise suppressing Wireless Express's ability to succeed as described herein.

154. T-Mobile's actions are contrary to Wireless Express's reasonable and justified expectations under the Agreement.

155. T-Mobile's sweeping reduction of Wireless Express's stores and refusal to approve additional stores frustrate the essential purpose of the Agreement and Wireless Express is unable to obtain its full and expected benefits of the Agreement, including without limitation, operating as a dealer of T-Mobile services and goods.

156. T-Mobile used the Termination of Locations provision to constructively gut the essential purpose of the Agreement and to bind Wireless Express and its owners to a non-compete agreement where they could not compete in the marketplace all while T-Mobile continued to systematically eliminate Wireless Express stores, refused to allow it to open new stores, and

engaged in anti-competitive, unfair, and deceptive trade practices to guarantee that Wireless Express's remaining stores failed.

157. T-Mobile never intended to work with Wireless Express. It only wanted signed Agreements that would constrain Wireless Express and hopefully obviate Wireless Express's ability to defend itself. Further, as T-Mobile possessed Wireless Express's financial information, it knew before Wireless Express signed the Agreement that its actions would effectively close down Wireless Express.

158. T-Mobile's abrupt and systematic reduction of Wireless Express's stores, refusal to approve additional store acquisitions, and anti-competitive conduct to destroy Wireless Express's remaining stores have already caused and will continue to cause Wireless Express to suffer damages in an amount to be determined at the final hearing, but certainly in excess of \$50 million.

SEVENTH CAUSE OF ACTION: VIOLATION OF WASHINGTON UNFAIR BUSINESS PRACTICES—CONSUMER PROTECTION ACT, RCW §§ 19.86.010 ET SEQ.

159. Wireless Express realleges, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

160. T-Mobile engaged in unfair and deceptive trade practices including, among other things, the following:

- a. Making false representations to induce Wireless Express to sign the Agreement and coercing Wireless Express to do so or else forego the ability to sell any T-Mobile phones or services;
- b. Engaging in anti-competitive conduct to disadvantage and drive out Wireless Express (and other legacy Sprint dealers) while not subjecting legacy T-Mobile dealers to such conduct;

- c. Weaponizing the commercial relationship and knowingly applying contractual terms in an unfair and improper manner contrary to the language and spirit of the contracts, for the specific purpose of suppressing Wireless Express and driving it out of business; and
- d. Representing in the Agreement that no franchise relationship would be created but in fact, creating such a franchise relationship with Wireless Express, thereby manipulating the contractual relationship and abusing Wireless Express as a franchisee.

161. T-Mobile's unfair and deceptive trade practices affect trade and/or commerce given that T-Mobile is engaged in the sale of assets, services, and commerce that directly or indirectly affect the people of Washington state.

162. T-Mobile's unfair and deceptive trade practices affect the public because:

- a. T-Mobile committed its anti-competitive acts in the course of its business;
- b. T-Mobile's actions were part of a pattern or generalized course of conduct which involved the intentional devastation of dealers like Wireless Express;
- c. T-Mobile's conduct is not isolated – it has engaged in a pattern and practice of committing the wrongful actions and inactions addressed in this Demand – and is harmful to wireless dealers, employees, and customers;
- d. T-Mobile has driven several viable and successful businesses out of the marketplace;
- e. T-Mobile has not complied with the letter and spirit of the representations that it made to state and federal authorities to obtain approval of the Sprint-T-Mobile merger;

- f. Given T-Mobile's pattern, there exists an ongoing potential for T-Mobile to continue its unlawful conduct; and
- g. T-Mobile's actions have affected and continue to affect a large number of consumers.

163. T-Mobile's unfair and deceptive conduct is the actual and proximate cause of injury to Wireless Express and has caused damages to Wireless Express in an amount to be determined at the final hearing, but certainly in excess of \$50 million.

164. Wireless Express is entitled to an award of damages caused by T-Mobile's unlawful conduct, including reasonable attorneys' fees and statutory treble damages as provided by RCW 19.86.090.

EIGHTH CAUSE OF ACTION: VIOLATION OF WASHINGTON FRANCHISE INVESTMENT PROTECTION ACT, RCW §§ 19.100.010 ET SEQ.

165. Wireless Express realleges, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

166. Sprint was a franchisor and unlawfully sold an unregistered franchise in the State of Washington in contravention of RCW 19.100. Upon information and belief, Sprint failed to file a Notice of Claim for Exemption under WAC 460-80-100 and, in any event, was not exempt from registration requirements.

167. Likewise, T-Mobile is a franchisor and T-Mobile unlawfully sold an unregistered franchise in the State of Washington in contravention of RCW 19.100. Upon information and belief, T-Mobile has failed to file a Notice of Claim for Exemption under WAC 460-80-100 and, in any event, is thus not exempt from registration requirements.

168. As the acquiring entity, T-Mobile assumed Sprint's liabilities.

169. T-Mobile's business model and mode of operation is in fact a "franchise" as defined in RCW 19.100.010(6)(a) in that:

- a. T-Mobile granted Wireless Express rights to engage in the business of offering, selling, and distributing goods and services under marketing plans pre-designed by T-Mobile;
- b. the business opportunity granted to Wireless Express was substantially associated with a trademark, trade name, and other commercial symbols owned by T-Mobile; and
- c. T-Mobile collected disguised franchise fees from Wireless Express, which included, *inter alia*, forcing Wireless Express into a consignment model whereby Wireless Express was forced to buy accessories from a particular vendor and then sell at T-Mobile's prices with substantially reduced margins and forcing Wireless Express to buy phones from T-Mobile and no other source.

170. Specifically, and without limitation, T-Mobile acted unfairly and deceptively and engaged in an unfair method of competition in violation of RCW 19.100.180, by:

- a. Failing to deal with Wireless Express in good faith;
- b. Requiring Wireless Express to purchase goods or services from T-Mobile or from an approved source of supply in the absence of any lawful purpose justified on business grounds;
- c. Unreasonably and arbitrarily discriminating between legacy T-Mobile dealers and legacy Sprint dealers, such as Wireless Express, in business dealings;
- d. Requiring Wireless Express to assent to a release or waiver which would relieve T-Mobile from liability imposed by RCW 19.100.180;

- e. Unreasonably and unnecessarily imposing on Wireless Express standards of conduct such as forcing Wireless Express to purchase security equipment that complied with only T-Mobile's specifications, mandating that new hires be approved by T-Mobile, and mandating a minimum number of people on sales floors at all times;
- f. Refusing to renew without fairly compensating Wireless Express for the fair market value and good will;
- g. Threatening to and actually terminating Wireless Express's stores before the expiration of their terms without good cause; and
- h. Acting inconsistent with representations made to federal and state authorities concerning commitments not to shut down productive stores or reduce employment.

171. As a result of T-Mobile's violations of franchise law, Wireless Express has suffered damages in an amount to be determined at the final hearing, but certainly in excess of \$50 million.

172. Wireless Express has suffered damages by reason of T-Mobile's violation of RCW 19.100 and is entitled to an award of damages thereof, including statutory treble damages as provided by RCW 19.100.190(3).

NINTH CAUSE OF ACTION: UNJUST ENRICHMENT, QUANTUM MERUIT, OR DISGORGEMENT

173. Wireless Express realleges, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

174. To the extent that the Court determines a valid contractual relationship did not exist between Defendants and Wireless Express (because the Sprint contract expired and the T-Mobile contracts were invalid), Defendants should be required to compensate Wireless Express for its

services, and the loss of its stores under the theories of unjust enrichment, quantum meruit, and disgorgement.

175. Defendants received a benefit from the operation of stores and sales of Defendants' goods and services and in forcing Wireless Express to close its stores.

176. These benefits were conferred at Wireless Express's expense.

177. Under the circumstances, it would be unjust for Defendants to retain the benefit without fairly compensating Wireless Express.

178. Further, T-Mobile should have to disgorge benefits flowing from its fraud.

179. Wireless Express is entitled to compensation or disgorgement in an amount to be determined at the final hearing, but certainly in excess of \$50 million.

TENTH CAUSE OF ACTION: VIOLATION OF ILLINOIS'S CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT, 815 ILL. COMP. STAT. 505/2

180. Wireless Express realleges, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

181. T-Mobile engaged in deceptive acts and practices, including, among other things, the following:

- a. Making false representations to induce Wireless Express to sign the Agreement and coercing Wireless Express to do so or else forego the ability to sell any T-Mobile phones or services;
- b. Engaging in anti-competitive conduct to disadvantage and drive out Wireless Express (and other legacy Sprint dealers) while not subjecting legacy T-Mobile dealers to such conduct;
- c. Weaponizing the commercial relationship and using contractual terms to state misrepresentations and to reading and applying terms to improperly operate in an

unfair fashion and contrary to the language and spirit of the contracts, read completely in context, to cheat Wireless Express, suppress it, and effectively drive it out of business; and

- d. Representing in the Agreement that no franchise relationship would be created but in fact, creating such a franchise relationship with Wireless Express, thereby manipulating the contractual relationship and abusing Wireless Express as a franchisee.

182. T-Mobile intended that Wireless Express rely on its false and misleading misrepresentations.

183. T-Mobile engaged in the deceptive acts in the course of trade or commerce;

184. T-Mobile's deceptive acts and practices affect the market generally and implicate consumer protection concerns, as illustrated by the following conduct:

- a. T-Mobile's actions were part of a pattern or generalized course of conduct which involved the intentional devastation of dealers like Wireless Express;
- b. T-Mobile's conduct is not isolated – it has engaged in a pattern and practice of committing the wrongful actions and inactions addressed in this Demand – and is harmful to wireless dealers, employees, and customers;
- c. T-Mobile has driven several viable and successful businesses out of the marketplace;
- d. T-Mobile has not complied with the letter and spirit of the representations that it made to state and federal authorities to obtain approval of the Sprint-T-Mobile merger;

- e. Given T-Mobile's pattern, there exists an ongoing potential for T-Mobile to continue its unlawful conduct; and
- f. T-Mobile's actions have affected and continue to affect a large number of consumers.

185. T-Mobile's conduct, as alleged above impacted Wireless Express business, operations, locations, employees, and consumers in Illinois, and are subject to Illinois's Consumer Fraud and Deceptive Business Practices Act.

186. T-Mobile's deceptive acts are the actual and proximate causes of injury to Wireless Express in Illinois and have caused damage to Wireless Express in an amount to be determined at trial.

ELEVENTH CAUSE OF ACTION: VIOLATION OF IOWA'S CONSUMER FRAUD ACT, IOWA CODE § 714H.3

187. Wireless Express realleges, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

188. T-Mobile actions, as alleged above, were unfair, fraudulent, and deceptive.

189. T-Mobile knew or reasonably should have known that their unfair, fraudulent, and deceptive conduct, misrepresentations, and omissions constituted fraud, unfair practices, deception, fraud, false pretenses, or false promises.

190. T-Mobile's unfair, fraudulent, and deceptive practices and acts caused substantial and unavoidable injury to consumers not outweighed by any consumer or competitive benefits.

191. T-Mobile engaged in these unfair, fraudulent, and deceptive practices, and made misrepresentations and omissions of material facts, with the intent that Wireless Express rely upon its unfair, fraudulent, and deceptive practices, misrepresentations, and omissions in connection with the advertisement, sale, or lease of consumer merchandise.

192. T-Mobile's deceptive, fraudulent and unfair acts, misrepresentations, and omissions related to material facts.

193. T-Mobile's conduct, as alleged above impacted Wireless Express business, operations, locations, employees, and consumers in Iowa, and are subject to Iowa Consumer Fraud Act.

194. T-Mobile's deceptive, fraudulent, and unfair conduct is the actual and proximate cause of injury to Wireless Express in Illinois in an amount to be determined at trial.

TWELFTH CAUSE OF ACTION: VIOLATION OF NEW MEXICO'S CONSUMER FRAUD ACT, N.M. STAT. §§ 57-12-2(D)-(E), 57-12-3, 57-12-10.

195. Wireless Express realleges, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

196. T-Mobile's actions, as alleged above, were unfair, deceptive, and unconscionable trade practices and T-Mobile knowingly made oral and written statements that were false or misleading to Wireless Express and to consumers, including in New Mexico where Wireless Express had locations and operations.

197. T-Mobile took these actions and made these misrepresentations in connection with the sale of goods or services.

198. T-Mobile's representations occurred in the regular course of T-Mobile's business.

199. T-Mobile's representations may, tended to, and did deceive or mislead Wireless Express and consumers in New Mexico.

200. T-Mobile's conduct, as alleged above impacted Wireless Express business, operations, locations, employees, and consumers in New Mexico, and are subject to New Mexico's Consumer Fraud Act.

201. T-Mobile's unfair and deceptive conduct is the actual and proximate cause of injury to Wireless Express in New Mexico in an amount to be determined at trial.

THIRTEENTH CAUSE OF ACTION: VIOLATION OF NORTH CAROLINA'S UNFAIR AND DECEPTIVE TRADE PRACTICES ACT, N.C. GEN. STAT. § 75-1.1(a).

202. Wireless Express realleges, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

203. T-Mobile's actions alleged above were unfair and deceptive.

204. T-Mobile's unfair and deceptive trade practices were in and affected commerce in North Carolina, where Wireless Express had operations and conducted business during the relevant time period.

205. T-Mobile's unfair and deceptive conduct is the actual and proximate cause of injury to Wireless Express in North Carolina in an amount to be determined at trial, which amount Wireless Express is entitled to have trebled pursuant to N.C. Gen. Stat. § 75-16.

PRAYER FOR RELIEF

Accordingly, Wireless Express respectfully requests that the Court grant it the following relief:

- A. Enter an award in favor of Wireless Express and against Defendants on each of Wireless Express's causes of action;
- B. Award Wireless Express its actual damages, which exceed \$50 million, plus statutory treble damages, punitive damages, pre and post-judgment interest, attorneys' fees, and costs as allowed by law;
- C. Grant Wireless Express such other and further relief as is just and proper.

Respectfully submitted this 23rd day of December 2021.

/s/ Alexander M. Bullock

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