

Texas 78711-2887, who then shall immediately mail a copy of the process by registered mail or certified mail, return receipt requested, to Defendant's principal place of business:

Gateway, Inc.
7565 Irvine Center Drive
Irvine, California 92618

III.
JURISDICTION AND VENUE

4. This Court has jurisdiction over this case because the amount in controversy is within the jurisdictional limits of this Court.

5. Venue is proper in this county because all or a substantial part of the events or omissions giving rise to FWA's claims occurred in Tarrant County, Texas.

IV.
FACTS

6. In 2006, FWA determined to explore the possibility of utilizing notebook or tablet portable computers for use by its teachers and students in fifth through eighth grades. FWA envisioned using the computers to transmit information between students and teachers, including sending e-mails and posting homework assignments and teaching material, and to allow students to take class notes and complete and transmit homework.

7. As part of its investigation of the potential for using computers to further its educational mission, FWA spoke with a sales representative from Gateway. FWA fully informed that sales representative of its needs and requirements.

8. In these preliminary discussions, the sales representative represented which particular computer model would be appropriate for FWA's needs. Just as importantly, he represented that Gateway would promptly service the computers. In this regard, the representative promised FWA "end to end" and "Cadillac" service. He promised next-day

on-site service such that if a computer malfunctioned or broke for any reason and in any respect, a qualified service representative and spare parts would be dispatched to FWA the next business day such that the computers would then be fixed. Consistent with these representations, FWA received documents describing Gateway's product, service, and repair commitment as the "Total Protection Plan," which included a four-year commitment for next-business-day on-site parts and labor and technical support. FWA understood from the sales representative that it would have computers suitable for its intended use and prompt, effective, next-business-day repair service. FWA would not have acquired the computers without these promises and commitments.

9. Because of these representations, FWA agreed to acquire the computers from Gateway for its teachers and students. It acquired approximately 135 computers. The computers were delivered to FWA just before the start of the 2007-2008 school year. At the recommendation of Gateway, the transaction was structured as a finance lease, with FWA leasing the computers from a finance entity. Under its agreement with that entity, FWA became obligated to pay that finance entity approximately \$251,000 over four years, "come hell or high water," meaning that FWA would owe the entity that amount even if the computers became unusable or unfit for their purpose.

10. In fact, as the 2007-2008 school year progressed, the computers suffered a cascading series of failures, including broken parts. Making matters worse, and particularly by fall 2007, the next-business-day on-site repair service was nonexistent. The service and repair response deteriorated at an ever-increasing rate. At times, dozens of computers were out of service, waiting on repair by Gateway. Gateway could not or would not arrange to have these computers timely repaired despite numerous telephone calls, e-mails, and letters from FWA.

The problems became so acute, it required an FWA employee to devote a substantial portion of his work time in a vain attempt to obtain Gateway's fulfillment of its commitments.

11. Because of the substantial and increasing number of broken computers that were not being timely repaired and serviced, FWA was compelled to purchase new computers from Lenovo for the 2008-2009 school year. Nonetheless, due to its lease with the finance entity, FWA has paid or owes that entity approximately \$188,000 for the Gateway computers, covering the 2008-2009, 2009-2010, and 2010-2011 school years, even though FWA will not get any use of those computers.

V.

CAUSE OF ACTION: BREACH OF CONTRACT

12. The foregoing facts are incorporated by reference. As part of its contractual commitments to FWA, Gateway promised to provide computers that worked and promised next-business-day on-site repair service. Gateway breached those contractual obligations, thereby causing FWA to be damaged in an amount greater than the minimum jurisdictional limits of this Court.

13. FWA is entitled to recover its reasonable and necessary attorneys' fees expended in proving this matter pursuant to TEX. CIV. PRAC. & REM. CODE § 38.001 *et seq.*

VI.

CAUSE OF ACTION: BREACH OF WARRANTIES

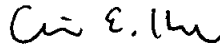
14. The foregoing facts are incorporated by reference. Gateway's conduct constitutes breach of warranties, including an express warranty for goods, an implied warranty of fitness for a particular purpose, an express warranty for services, and an implied warranty of good and workmanlike services. Because of Gateway's breach, FWA suffered injury, including but not limited to consequential damages.

PRAYER

WHEREFORE, Plaintiff Fort Worth Academy for the Education of Children and Youth requests that Defendant Gateway, Inc. be cited to appear and answer herein, and that at the final trial of this matter, FWA be awarded judgment for:

- i. Damages within the jurisdictional limits of this Court;
- ii. Reasonable and necessary attorneys' fees;
- iii. Prejudgment and postjudgment interest as allowed by law;
- iv. Costs of suit; and
- v. All other relief the Court deems appropriate.

Respectfully submitted,



Chris E. Howe
State Bar No. 10089400
KELLY HART & HALLMAN LLP
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Telephone: (817) 332-2500
Facsimile: (817) 878-9280

**ATTORNEY FOR PLAINTIFF
FORT WORTH ACADEMY FOR THE
EDUCATION OF CHILDREN AND YOUTH**

KELLY HART & HALLMAN LLP

201 MAIN STREET, SUITE 2500
FORT WORTH, TEXAS 76102

Telephone: (817) 332-2500
Telecopy: (817) 878-9280
Writer's Direct Dial: 817-878-3568
Email Address: chris.howe@khh.com

352 233914 08

301 Congress, Suite 2000
Austin, Texas 78701
1000 Louisiana, Suite 4700
Houston, Texas 77002

November 14, 2008

VIA HAND-DELIVERY

Mr. Thomas A. Wilder
Tarrant County District Clerk
Civil District Courts File Desk
Tarrant County Justice Center
Third Floor, 401 West Belknap
Fort Worth, Texas 76196-0402

FILED
TARRANT COUNTY
2008 NOV 14 PM 2:34
THOMAS A. WILDER
DISTRICT CLERK

Re: *Fort Worth Academy for the Education of Children and Youth v. Gateway, Inc.*

Dear Mr. Wilder:

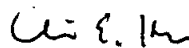
Enclosed please find the original and three copies of Plaintiff's Original Petition to be filed in connection with the above-referenced matter. Please return one file-marked copy to the waiting courier and forward the additional copies to the citation desk for preparation of the citation to be served on Defendant Gateway, Inc., by serving the Texas Secretary of State, The Honorable Hope Andrade, P.O. Box 12887, Austin, Texas 78711-2887, by certified mail, return receipt requested, who shall then serve the Defendant, Gateway, Inc., 7565 Irvine Center Drive, Irvine, CA 92618, by registered or certified mail, return receipt requested.

Also enclosed is this firm's check in the amount of \$292.70 for payment of the filing fee, citation-preparation fee, and fee for serving the Secretary of State by certified mail, return receipt requested.

We are also enclosing a separate check in the amount of \$55.00, payable to the Secretary of State, as that agency's fee for serving the Defendant by registered or certified mail, return receipt requested.

Thank you for your attention to this matter.

Very truly yours,



Chris E. Howe

CEH/pdo
Enclosures