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SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

OREN ROSENTHAL, individually and as
the representative of a class of similarly-
situated persons,

Plaintiff,

v.

T-MOBILE, USA, INC., a Washington
corporation,

Defendant.

NO.

COMPLAINT FOR NEGLIGENCE,
BREACH OF CONTRACT AND
VIOLATION OF CPA

CLASS ACTION

PLAINTIFF OREN ROSENTHAL brings this action on his behalf and on behalf of a class of similarly situated consumers of DEFENDANT T-MOBILE USA, INC., who purchased a "Sidekick" device and lost data on or about October 8, 2009 or thereafter, through the date of this Complaint, due to a failure of the "Sidekick" and/or data management, storage and retrieval service provided by Danger, Inc., a subsidiary of Microsoft Corporation.

I. PARTIES

1. Plaintiff Oren Rosenthal is a citizen of the State of Texas and a customer of Defendant T-Mobile USA, Inc.

1 16. T-Mobile used a common advertising campaign to sell its “Sidekick”
2 device and its services nationwide. The common advertising campaign used print
3 media advertising and in-store advertising to advertise the “Sidekick” device and
4 services.

5 17. None of this advertising disclosed the risk of loss of data from a failure of
6 the “Sidekick” device and/or a disruption of the service in the manner it occurred on or
7 about October 8, 2009.

8 18. None of this advertising disclosed that T-Mobile had no backup or other
9 retrieval system to recover data if there was a failure of the “Sidekick” device and/or a
10 disruption of the service in the manner it occurred on or about October 8, 2009.

11 19. There are thousands of T-Mobile consumers in Washington and tens of
12 thousands nationwide who lost their personal data on or about October 8, 2009 and
13 thereafter through a failure of the “Sidekick” device and/or disruption of the service.
14

15 20. Like Plaintiff Rosenthal these consumers will be unable to retrieve their
16 personal data because T-Mobile has no backup or other service or device to ensure
17 that personally stored data through the “Sidekick” device can be retrieved in the case
18 of a failure of the device or disruption of the service.
19

20 21. On or about October 10, 2009, T-Mobile issued a statement via the
21 internet taking responsibility for the loss of its customer’s data through a failure of the
22 “Sidekick” device and/or a disruption of the service.
23

24 22. A true and accurate copy of the T-Mobile statement is attached as
25 Exhibit A to this Complaint and incorporated by reference.
26

1 23. In the statement, T-Mobile acknowledges that some form of
2 compensation or remuneration is owed its customers for the loss of their data.

3 21. There exists a class of all T-Mobile customers who purchased the
4 “Sidekick” device and lost data on or about October 8, 2009 and thereafter due to a
5 failure of the device and/or disruption of the service.

6 22. This Class is so numerous and geographically dispersed that individual
7 joinder is impracticable.

8 23. This Class alleges common claims for compensation or remuneration.

9 24. Plaintiff Rosenthal’s claim is typical of the claims for compensation or
10 remuneration of the members of the Class who lost data on or about October 8, 2009
11 and thereafter due to the failure of the “Sidekick” device and/or disruption of the
12 service as described in Exhibit A.

13 25. Common issues of fact and law exist with regard to the claims of the
14 Class including:
15

16 a. Whether T-Mobile breached its service agreement with customers
17 by losing their data.

18 b. Whether T-Mobile was negligent in losing their data.

19 c. Whether T-Mobile was negligent in not having a backup or other
20 retrieval service that would ensure that the customer’s data was not lost if their was a
21 failure of the “Sidekick” device and/or disruption of the service.
22

23 d. Whether T-Mobile’s advertising of the “Sidekick” device was deceptive
24 because it failed to disclose in a clear and conspicuous manner the risk of loss of data
25 by the customer in the manner that it occurred on or about October 8, 2009.
26

1 e. Whether T-Mobile's advertising of the "Sidekick" service was
2 deceptive because it failed to disclose that T-Mobile did not have a backup or retrieval
3 system to ensure that customers would not lose their data in the event of a failure of
4 the "Sidekick" device and/or disruption of the service.

5 f. Whether T-Mobile's conduct violated the Washington Consumer
6 Protection Act, RCW 19.86 et seq.

7 g. What if any compensation or remuneration is due customers for
8 their loss of data.

9
10 26. The common issues described above predominate over issues affecting
11 only individual members of the class.

12 27. Plaintiff Rosenthal is an adequate representative of the proposed Class.
13 His interests do not conflict with the interests of the Class and Plaintiff's counsel is
14 competent to prosecute the Class claims and protect the interests of the Class.

15 28. A Class action is a preferable method for adjudicating the claims of the
16 members of the Class to thousands of individual lawsuits, because the claims of the
17 Class members are small and there is little incentive for individual class members to
18 control the prosecution of their own claims. Absent a class action, there is no effective
19 means for individual class members in Washington and nationwide to obtain
20 compensation or remuneration for their loss.

21 29. Concentrating the litigation in this court promotes judicial economy
22 because T-Mobile's headquarters is located in King County, as well as Microsoft's
23 headquarters, and the people with knowledge concerning the failure of the "Sidekick"
24 device and/or service likely reside in King County.
25
26

1 **IV. CLAIMS AND CAUSES OF ACTION**

2 30. In setting out the following individual and Class claims, Plaintiff re-alleges
3 and incorporates by this reference all facts set forth above in paragraphs 1– 29 above.

4 **A. Breach of Contract**

5 31. T-Mobile breached the contract with Plaintiff the members of the Class
6 by losing their data.

7
8 32. Plaintiff and the Class are entitled to recover reasonable compensation
9 or remuneration as contract damages because T-Mobile cannot place them in the
10 position they would have been in had the contract been properly performed.

11 33. In addition to or in lieu of actual damages, Plaintiff and the Class are also
12 entitled to nominal damages for T-Mobile’s breach.

13 **B. Negligence**

14 34. T-Mobile failed to act with reasonable care in offering the “Sidekick”
15 device and service by not ensuring that there was an adequate means to backup or
16 retrieve the data in the event of a failure of the device and/or disruption of the service.

17
18 35. T-Mobile’s failure to act with reasonable care caused Plaintiff and the
19 members of the Class to loose their data.

20 36. The loss of data that occurred caused Plaintiff and the members of the
21 Class tort like economic damages for loss of personal property, as well as damages
22 for emotional distress and upset.

23 **C. Violation of the Washington Consumer Protection Act**

24 37. T-Mobile’s practice of advertising the “Sidekick” device and service
25 without disclosing the risk of loss of data in the manner that it occurred on or about
26

1 October 8, 2009 and thereafter was a deceptive practice that had the capacity to
2 deceive consumers into believing that the service was safe from loss of their data.

3 38. T-Mobile's practice of advertising the "Sidekick" device and service
4 without disclosing that it had no backup or retrieval system in the event of a failure of
5 the device and/or a disruption of the service was a deceptive practice because
6 consumers would reasonably expect that T-Mobile had such a backup or retrieval
7 system so their data would not be permanently lost.
8

9 39. T-Mobile's deceptive practices occurred in trade and commerce and
10 affected the public interest.

11 40. T-Mobile's deceptive practices were a proximate cause of injury to the
12 business and/or property of the Plaintiff and the members of the class who lost their
13 data due to a failure of the "Sidekick" device and/or disruption of the service they had
14 purchased from T-Mobile.
15

16 41. T-Mobile's practices were a proximate cause of injury and damages to
17 consumers because they lost their data and relied upon T-Mobile having an adequate
18 backup or retrieval system to ensure that their data was not permanently lost.
19

20 **V. DAMAGES**

21 42. In setting out the following individual and Class damages, Plaintiff re-
22 alleges and incorporates by this reference all facts set forth above in paragraphs 1 –
23 41 above.

24 43. As a direct and proximate cause of Defendant's wrongful conduct set
25 forth above, Plaintiff and the members of the Class have suffered damages for loss of
26

1 use their property, destruction of their property, emotional distress and upset and out
2 of pocket expenses in amounts to be established at trial.

3 **V. RELIEF REQUESTED**

4 Plaintiff and the Class seek entry of a judgment individually and as a Class
5 against T-Mobile that provides the following relief:

- 6 1. Awards Plaintiff and the Class damages for Defendant's wrongful
7 conduct in amounts to be established at trial.
8
9 2. Awards Plaintiff and the Class exemplary damages under the
10 Washington Consumer Protection Act of three times their actual damages.
11 3. Awards Plaintiff and the Class nominal damages for Defendant's
12 wrongful conduct in addition to or as an alternative to their actual and exemplary
13 damages.
14 4. Awards Plaintiff and the Class their reasonable attorney's fees and costs
15 under the Washington Consumer Protection Act.
16
17 5. Awards Plaintiff and the Class such further legal and equitable relief as
18 may be appropriate and just.

19 DATED this October 12, 2009

20 BRESKIN JOHNSON TOWNSEND, PLLC

21
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