

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

IT ASSET PARTNERS, INC.,

Plaintiff,

v.

SPRINT/UNITED MANAGEMENT
COMPANY,

Defendant.

Case No. 17-cv-2700

DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiff, IT Asset Partners, Inc. (“Plaintiff”), by its undersigned attorneys, as and for its complaint against Defendant, Sprint/United Management Company (“Defendant”), alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for breach of contract arising out of Plaintiff’s purchase of used inventory from Defendant.

JURISDICTION AND VENUE

2. This Court has diversity jurisdiction over the parties pursuant to 28 U.S.C. § 1332 as Plaintiff is a citizen of California and Defendant is a citizen of Kansas and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) because Defendant has its principal place of business within this district and the parties agreed to venue in this district.

PARTIES

4. Plaintiff is a California corporation with a principal place of business located at 8966 Mason Avenue, Los Angeles, California 91311.

5. Defendant is a Kansas corporation with a principal place of business located at 6200 Sprint Parkway, Overland Park, Kansas 66251.

SUBSTANTIVE ALLEGATIONS

6. Plaintiff specializes in electronic asset management, reverse logistics and recycling. As part of its business, Plaintiff purchases used mobile handsets and extracts the electronic parts and components inside the used handsets in order to re-integrate those electronics. Plaintiff then disposes of the unwanted portions of the handsets in an environmentally friendly manner.

7. Defendant is a wholly-owned subsidiary of Sprint Corporation.

8. Sprint Corporation is a holding company, with operations conducted by its subsidiaries, including Defendant. Sprint Corporation and its subsidiaries are a large wireless communications company providing wireless communication and related services to subscribers in the United States.

9. As part of Defendant's business of providing wireless communication services, Defendant maintains a large inventory of new and used handsets.

10. On or about December 21, 2016, Plaintiff and Defendant entered into a written Agreement for Purchase of Sprint Surplus Inventory (the "Sprint Agreement"), under which Plaintiff was permitted to bid on inventory that Defendant offered for sale after issuing an auction-based bid opportunity ("Bid Opportunity").

11. In connection with the Sprint Agreement, Defendant published Sprint Auction

Rules, which set forth the terms and conditions under which the auctions would be conducted. The Sprint Auction Rules supplemented, specified, and/or clarified the terms of the Sprint Agreement.

12. Each Bid Opportunity included, at a minimum, the following information for inventory to be covered by the bid: (1) auction participation information; (2) quantity of inventory available; (3) inventory descriptions; and (4) deadline for potential purchasers to submit a bid to Defendant.

13. According to Defendant's published Sprint Auction Rules, Defendant agreed to provide inventory descriptions of the goods offered for sale which included the item, condition and cosmetic grade ("Cosmetic Grade") of the inventory offered for sale.

14. In the Sprint Auction Rules, Defendant agreed and represented that the Cosmetic Grade of the inventory would be as follows:

- A – Like new
- B – Light wear & tear
- C – Light-to-Heavy wear & tear
- D – Heavy wear & tear w/ cracked glass
- E – Heavy wear & tear w/ cracked glass and damaged LCD

15. Thus, pursuant to the express terms of the Sprint Auction Rules, the inventory descriptions required by the Sprint Agreement had to include the Cosmetic Grade specified by the Sprint Auction Rules.

16. Defendant's Bid Opportunities, Plaintiff's bids, and Defendant's acceptances thereof were subject to the Sprint Auction Rules.

17. Plaintiff intended to purchase Defendant's used inventory in order to extract the electronics inside the handsets. Therefore, Plaintiff had no interest in purchasing any goods with an "E" Cosmetic Grade (or worse) because those goods could not be used in Plaintiff's business.

18. Pursuant to the Sprint Agreement, Plaintiff is responsible for any unauthorized disclosure, access or use of any Sprint customer data contained on the used inventory purchased from Defendant.

Claim for Short Shipment Quantities

19. On or about February 3, 2017, Plaintiff participated in an auction and submitted a bid to purchase Lot 020317-K066 for \$19,608.75, which bid Defendant accepted.

20. In the Bid Opportunity it issued for that auction, Defendant represented that Lot 020317-K066 consisted of 135 units of used iPhone 6 128GB smartphones.

21. On or about February 9, 2017, Defendant sent Plaintiff Invoice No. AUC-0000716 that indicated Lot 020317-K066 consisted of 135 units.

22. Plaintiff promptly paid Defendant for Invoice No. AUC-0000716.

23. The shipment received by Plaintiff for Lot 020317-K066 contained only 132 units.

24. Because the shipment was short 3 units, Plaintiff requested that Defendant issue a partial refund in the amount of \$435.75 due to the short shipment.

25. Defendant refused to issue Plaintiff a refund for Lot 020317-K066.

26. On or about February 14, 2017, Plaintiff participated in an auction and submitted bids to purchase Lot 021417-DWFG561 for \$160,535.00, Lot 021417-DWFH568 for \$14,362.00, Lot 021417-DWFH569 for \$24,883.00, Lot 021417-DWFH570 for \$182,552.00, and Lot 021417-T684 for \$146,167.20, which bids Defendant accepted.

27. In the Bid Opportunity it issued for that auction, Defendant represented that Lot 021417-DWFG561 consisted of 1,655 units of the 64GB iPhone 6, Lot 021417-DWFH568 consisted of 86 units of the 16GB iPhone 6s, Lot 021417-DWFH569 consisted of 149 units of

the 16GB iPhone 6s, Lot 021417-DWFH570 consisted of 1,201 units of the 16GB iPhone 6s and Lot 021417-T684 consisted of 606 units of the 16GB iPhone 6s Plus.

28. On or about February 22, 2017, Defendant sent Plaintiff Invoice No. AUC-0000768 that indicated Lot 021417-DWFG561 consisted of 1,655 units, Lot 021417-DWFH568 consisted of 86 units, Lot 021417-DWFH569 consisted of 149 units, Lot 021417-DWFH570 consisted of 1,201 units, and Lot 021417-T684 consisted of 606 units.

29. Plaintiff promptly paid Defendant for Invoice No. AUC-0000768.

30. The shipment received by Plaintiff for Lot 021417-DWFG561 contained only 1,390 units, Lot 021417-DWFH568 contained only 81 units, Lot 021417-DWFH569 contained only 139 units, Lot 021417-DWFH570 contained only 1,191 units, and Lot 021417-T684 contained only 201 units.

31. Because Lot 021417-DWFG561 was short 265 units, Lot 021417-DWFH568 was short 5 units, Lot 021417-DWFH569 was short 10 units, Lot 021417-DWFH570 was short 10 units, and Lot 021417-T684 was short 405 units, Plaintiff requested that Defendant issue a partial refund in the amount of \$127,416.00.

32. Defendant refused to issue Plaintiff a refund for Lot 021417-DWFG561, Lot 021417-DWFH568, Lot 021417-DWFH569, Lot 021417-DWFH570, or Lot 021417-T684.

33. Because Defendant did not ship the quantity of goods Plaintiff agreed to purchase, Plaintiff suffered damages in the amount of \$127,416.00.

34. Additionally, pursuant to the Sprint Agreement, Plaintiff is purportedly responsible for any unauthorized disclosure, access or use of any Sprint customer data contained on the missing inventory even though Plaintiff never received all of the inventory it agreed to purchase.

Claim for Improper Cosmetic Grade

35. On or about February 24, 2017, Plaintiff participated in an auction and submitted bids to purchase Lot 022417-DWFAA164 for \$99,182.61 and Lot 022417-DWFAA181 for \$25,705.00, which bids Defendant accepted.

36. In the Bid Opportunity it issued for that auction, Defendant represented that Lot 022417-DWFAA164 consisted of 783 units of the Samsung Galaxy S7 Edge with a “D” Cosmetic Grade and Lot 022417-DWFAA181 consisted of 1388 units of the Samsung Galaxy S7 Edge with a “D” Cosmetic Grade.

37. On or about February 28, 2017, Plaintiff participated in an auction and submitted a bid to purchase Lot 022817-DWFFF081 for \$57,105.00, which bid Defendant accepted.

38. In the Bid Opportunity it issued for that auction, Defendant represented that Lot 022817-DWFFF081 consisted of 450 units of the Samsung Galaxy S7 with a “D” Cosmetic Grade.

39. On or about March 10, 2017, Defendant sent Plaintiff Invoice No. AUC-0000917 for Lot 022417-DWFAA164, Lot 022417-DWFAA181, and Lot 022817-DWFFF081.

40. Plaintiff promptly paid Defendant for Invoice No. AUC-0000917.

41. Although Defendant represented in the Bid Opportunity for that auction that Lot 022417-DWFAA164, Lot 022417-DWFAA181, and Lot 022817-DWFFF081 had a “D” Cosmetic Grade, the goods received by Plaintiff were not Cosmetic Grade “D,” but instead were Cosmetic Grade “E” or worse, as the inventory was burned, bent and had damaged LCDs. In fact, some of the “phones” received by Plaintiff were nothing more than the back cover of the phone and the actual phone was not included in the shipment Plaintiff received.

42. On or about March 14, 2017, Plaintiff participated in an auction and submitted

bids to purchase Lot 031417-DWFNN103 for \$14,890.20, Lot 031417-H094 for \$8,818.20 and Lot 031417-DWFNN102 for \$149,795.60, which bids Defendant accepted.

43. In the Bid Opportunity it issued for that auction, Defendant represented that Lot 031417-DWFNN103 consisted of 130 units of the 64GB Samsung Note 5 with a “D” Cosmetic Grade, Lot 031417-H094 consisted of 108 units of the 32GB Samsung S6 Edge with a “D” Cosmetic Grade, and Lot 031417-DWFNN102 consisted of 1,448 units of the 32GB Samsung Note 5 with a “D” Cosmetic Grade.

44. On or about March 20, 2017, Defendant sent Plaintiff Invoice No. AUC-0000978 for Lot 031417-DWFNN103, Lot 031417-H094 and Lot 031417-DWFNN102.

45. Plaintiff promptly paid Defendant for Invoice No. AUC-0000978.

46. Although Defendant represented in the Bid Opportunity that Lot 031417-DWFNN103, Lot 031417-H094, and Lot 031417-DWFNN102 had a “D” Cosmetic Grade, the goods received by Plaintiff were not Cosmetic Grade “D” but were Cosmetic Grade “E” or worse, as the inventory was burned, bent, and had damaged LCDs. In fact, some of the “phones” received by Plaintiff were nothing more than the back cover of the phone and the actual phone was not included in the shipment Plaintiff received.

47. On or about March 16, 2017, Plaintiff participated in an auction and submitted bids to purchase Lot 031617-DWFO134 for \$32,130.14, Lot 031617-DWFO136 for \$5,325.60, Lot 031617-DWFP139 for \$11,682.99, Lot 031617-DWFP151 for \$12,123.72, Lot 031617-DWFQ158 for \$198,240.84 and Lot 031617-DWFQ160 for \$36,050.00, which bids Defendant accepted.

48. In the Bid Opportunity it issued for that auction, Defendant represented that Lot 031617-DWFO134 consisted of 257 units of the 32 GB Samsung Note 5 with a “B” Cosmetic

Grade, Lot 031617-DWFO136 consisted of 56 units of the 32 GB Samsung S6 Edge+ with a “B” Cosmetic Grade, Lot 031617-DWFP139 consisted of 99 units of the 64 GB Samsung Note 5 with a “C” Cosmetic Grade, Lot 031617-DWFP151 consisted of 126 units of the 32 GB Samsung S6 Edge+ with a “C” Cosmetic Grade C, Lot 031617-DWFQ158 consisted of 1,622 units of the Samsung Galaxy S7 Edge with a “D” Cosmetic Grade, and Lot 031617-DWFQ160 consisted of 350 units of the 32 GB Samsung Note 5 with a “D” Cosmetic Grade. In fact, some of the “phones” received by Plaintiff were nothing more than the back cover of the phone and the actual phone was not included in the shipment Plaintiff received.

49. On or about March 23, 2017, Defendant sent Plaintiff Invoice No. AUC-0000999 for Lot 031617-DWFO134, Lot 031617-DWFO136, Lot 031617-DWFP139, Lot 031617-DWFP151, Lot 031617-DWFQ158, and Lot 031617-DWFQ160.

50. Plaintiff promptly paid Defendant for Invoice No. AUC-0000999.

51. Although Defendant represented in the Bid Opportunity for that auction that Lot 031617-DWFO134 and Lot 031617-DWFO136 had a “B” Cosmetic Grade, Lot 031617-DWFP139, and Lot 031617-DWFP151 had a “C” Cosmetic Grade and Lot 031617-DWFQ158 and Lot 031617-DWFQ160 had a “D” Cosmetic Grade, the goods received by Plaintiff were not Cosmetic Grade “B”, “C,” or “D” but were Cosmetic Grade “E” or worse, as the inventory was burned, bent, and had damaged LCDs. In fact, some of the “phones” received by Plaintiff were nothing more than the back cover of the phone and the actual phone was not included in the shipment Plaintiff received.

52. Because Defendant misrepresented the Cosmetic Grade of the Lots identified above, Plaintiff sought to return the goods to Defendant in return for a refund in the amount of \$806,090.26.

53. Defendant refused to allow Plaintiff to return the goods or refund the purchase price to Plaintiff.

54. As a result of Defendant's misrepresentations of the cosmetic grade of the goods identified above, Plaintiff suffered damages in the amount of \$806,090.26.

55. Additionally, pursuant to the Sprint Agreement, Plaintiff is purportedly responsible for any unauthorized disclosure, access or use of any Sprint customer data contained on the missing inventory even though Plaintiff never received all of the inventory it agreed to purchase.

COUNT I
BREACH OF CONTRACT (SHORT SHIPMENT)

56. Plaintiff repeats each and every allegation contained above as if fully set forth herein.

57. The number of units received by Plaintiff was not the number of units Defendant had specified in the Bid Opportunities for the auctions on February 3 and 14, 2017.

58. Defendant breached the Sprint Agreement by failing to deliver the number of units which Plaintiff offered and agreed to purchase on February 3 and 14, 2017, as alleged above.

59. Before it knew that Defendant breached the Sprint Agreement in the manner alleged herein, Plaintiff paid for the goods it offered to purchase.

60. Plaintiff has otherwise fully performed all of its duties and obligations under the Sprint Agreement.

61. Despite notice of the short shipments, Defendant has failed and refused to issue Plaintiff a partial refund for the goods purchased by Plaintiff but not delivered by Defendant.

62. By reason of the facts and circumstances alleged above, Plaintiff has been

damaged by Defendant in the amount of \$127,416.00.

63. Additionally, pursuant to the Sprint Agreement, Plaintiff is purportedly responsible for any unauthorized disclosure, access or use of any Sprint customer data contained on the missing inventory even though Plaintiff never received all of the inventory it agreed to purchase.

COUNT II
BREACH OF CONTRACT (MISREPRESENTED COSMETIC GRADE)

64. Plaintiff repeats each and every allegation contained in paragraphs 1 through 55 above as if fully set forth herein.

65. The goods received by Plaintiff were not the Cosmetic Grade Defendant had represented in the Bid Opportunities for the auctions on February 24, 2017, February 28, 2017, March 14, 2017, and March 16, 2017.

66. Defendant breached the Sprint Agreement by failing to deliver the stated number of units meeting the stated Cosmetic Grade of “B,” “C,” or “D” which Plaintiff offered and agreed to purchase on February 24, 2017, February 28, 2017, March 14, 2017, and March 16, 2017, as alleged above.

67. Before it knew that Defendant breached the Sprint Agreement in the manner alleged herein, Plaintiff paid for the goods it offered to purchase from Defendant.

68. Plaintiff has otherwise fully performed all of its duties and obligations under the Sprint Agreement.

69. Defendant failed to deliver the goods to Plaintiff as agreed because Defendant misrepresented the Cosmetic Grade of the goods.

70. Defendant has refused to allow Plaintiff to return the goods identified above or refund the purchase price of those goods.

71. By reason of the facts and circumstances stated above, Plaintiff has been damaged by Defendant in the amount of \$806,090.26.

72. Additionally, pursuant to the Sprint Agreement, Plaintiff is purportedly responsible for any unauthorized disclosure, access or use of any Sprint customer data contained on the missing inventory even though Plaintiff never received all of the inventory it agreed to purchase.

COUNT III
NEGLIGENT MISREPRESENTATION

73. Plaintiff repeats each and every allegation contained in paragraphs 1 through 55 above as if fully set forth herein.

74. Defendant supplied false Cosmetic Grades in the Bid Opportunities for the lots Plaintiff purchased identified above.

75. Defendant failed to exercise reasonable care in the preparation of the Bid Opportunities provided to Plaintiff prior to each auction because Defendant did not independently verify the accuracy of the Cosmetic Grades and allowed third-party vendors to make such determinations.

76. Plaintiff reasonably relied upon the false Cosmetic Grades contained in the Bid Opportunities prior to submitting bids to Defendant.

77. The false Cosmetic Grades contained in the Bid Opportunities were supplied to Plaintiff for its benefit and guidance.

78. Plaintiff suffered damages in the amount of \$806,090.26 as a result of relying on Defendant's false Cosmetic Grades in the Bid Opportunities.

79. Additionally, pursuant to the Sprint Agreement, Plaintiff is purportedly responsible for any unauthorized disclosure, access or use of any Sprint customer data contained

on the missing inventory even though Plaintiff never received all of the inventory it agreed to purchase.

PRAYER FOR RELIEF

Plaintiff requests relief and judgment as follows:

- (a) a judgment against Defendant in the sum of \$127,416.00, plus interest on Count I of the Complaint;
- (b) a judgment against Defendant in the sum of \$806,090.26, plus interest on Count II of the Complaint;
- (c) a judgment against Defendant in the sum of \$806,090.26, plus interest on Count III of the Complaint;
- (d) costs and disbursements; and
- (e) any other relief the Court finds to be just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: December 12, 2017

Respectfully submitted:

By: /s/ Barrett J. Vahle

Barrett J. Vahle (D. Kan. No. 78300)
C. Curtis Shank (KS Bar No. 26306)
Norman E. Siegel (D. Kan. No. 70354)
STUEVE SIEGEL HANSON, LLP
460 Nichols Road, Suite 200
Kansas City, MO 64112
Telephone: (816) 714-7100
Facsimile: (816) 714-7101
vahle@stuevesiegel.com
shank@stuevesiegel.com

Randall S. Newman
(*Pro Hac Vice* to be filed)
Mark C. Rifkin
(*Pro Hac Vice* to be filed)
Kevin G. Cooper
(*Pro Hac Vice* to be filed)
WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
270 Madison Avenue
New York, NY 10016
Telephone: (212) 545-4600
Facsimile: (212) 686-0114
rifkin@whafh.com
newman@whafh.com
kcooper@whafh.com

*Attorneys for Plaintiff IT Asset Partners,
Inc.*