IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

PACE COMMUNICATIONS SERVICES CORPORATION, individually and as representative of a class of similarly situated persons, Plaintiff, v. SOUTHWESTERN BELL MOBILE SYSTEMS, INC. d/b/a CELLULAR ONE-CHICAGO, Defendant.	)	03 CH 0562 PLAINTIFF DEMANDS TRIAL BY JURY

COMPLAINT

Plaintiff, PACE COMMUNICATIONS SERVICES CORPORATION ("Pace"), individually and as representative of a class of similarly situated persons, by and through its attorneys, ANDERSON + WANCA and MACEY, CHERN & DIAB, for its Complaint against Defendant, SOUTHWESTERN BELL MOBILE SYSTEMS, INC. ("Defendant"), alleges and states as follows:

PRELIMINARY STATEMENT

1. Pace asserts claims against Defendant for breach of contract, common law fraud and for violation of the Illinois Consumer Fraud and Deceptive Business Practices Act and for the consumer fraud acts of each state in which Defendant does business.

2. Pace seeks class-wide relief for (1) Defendant's practice of charging its dealers a higher price for equipment to be sold at retail than it charges its company-owned stores, national retail chains such as Best Buy, Circuit City, and regional mass marketers such as ABT

Electronics, (2) Defendant's solicitation and conversion of Pace customers and failure to pay commissions, rebates, or residuals when Defendant subsequently sells a service or product to a Pace customer, (3) Defendant's practice of deleting customers from Pace's residual compensation schedule, (4) other schemes described herein and used by Defendant to avoid paying commissions, rebates, and residuals, and (5) use of an illegal franchise agreement.

PARTIES

3. Pace is an Illinois Corporation with its principal place of business at 1720 Grand Avenue, Waukegan, Illinois. Pace is a member of the putative class which is comprised of similarly-situated persons who entered into standard form "Authorized Dealer Agreements" with Defendants.

4. Southwestern Bell Mobile Systems, Inc. d/b/a Cellular One-Chicago is, on information and belief, a Delaware and Virginia Corporation with its principal place of business at 930 North National Parkway, Schaumburg, Illinois. Defendant is licensed to do business in Illinois and does business in Lake County, Illinois.

5. This court has jurisdiction to hear this matter because the parties do business in Illinois.

6. Venue is appropriate as the cause of action arose from transactions or some part thereof occurred in Lake County, Illinois.

FACTS COMMON TO ALL COUNTS

7. For a number of years, Defendant has provided cellular telephone services in Illinois.

8. For a number of years, Defendant's business practice was to utilize and encourage dealers/agents to market and sell its cellular telephone equipment, products, and services to the public.

9. Since 1988, Pace has been a dealer/agent of cellular telephone products, equipment, and services. In 1988, Pace executed an agreement with one of the Defendant's predecessors and became an authorized dealer. Pace has operated a sales and service center at 1720 Grand Avenue, Waukegan, Lake County, Illinois and 709 West Brink Street, Harvard, McHenry County, Illinois from which Pace marketed and sold Cingular cellular telephone equipment, products, and services.

10. On or about September 28, 1999, Pace and Defendant entered into an Authorized Agency Agreement between Southwestern Bell Mobile Systems, Inc. d/b/a Cellular One-Chicago and Pace Communications Services Corporation. A copy of the 1999 Agreement is attached hereto as Exhibit A.

11. The 1999 Agreement sets forth many of the terms by which Pace operated as an authorized sales and service center for Cingular. These Agreements also incorporate by reference an Administrative Procedures Manual. In addition, the parties engaged in a course of dealing which supplemented, clarified, and added to Defendant's duties and responsibilities with respect to this dealer/agency relationship.

12. As an authorized sales and service center for Defendant and its predecessors, Pace and other members of the class agreed, among other things, to market cellular telephone products and services on behalf of Cingular. Defendant agreed, among other things, to pay Pace and other members of the class in accordance with the terms of those Agreements, to

support Pace's and other class members' ability to market, sell, and provide cellular telephone equipment, products, and services, and to apply its business practices to Pace and other members of the class on a fair and non-discriminatory basis. By virtue of being a sales and service center, Pace and other members of the class were accorded various benefits, including but not limited to the cooperative marketing efforts of Defendant's corporate accounts group.

13. Defendant established the relationship with Pace and the other class members as one of trust and confidence, not distrust and competition.

14. The Agreements require Defendant to comply with the implied covenant of good faith and fair dealing which require that Defendant act reasonably and with a proper motive, and not act arbitrarily, capriciously, or in a manner inconsistent with the reasonable expectations of Pace and other members of the class.

15. Defendant is also subject to an implied obligation to refrain from doing anything that would thwart the effectiveness of the agency. Defendant is required and subject to the duty of using care to prevent harm to Pace and other members of the class in the prosecution of the business enterprise, and Defendant is required to disclose facts which if unknown would likely subject Pace and other members of the class to loss.

16. In addition, Defendant has the duty not to prevent the fulfillment of the conditions on which the payment of compensation is based by unwarranted conduct which is also known as the implied covenant of reasonable cooperation. The agreements prevented any entity from opening a store or other sales location for the sale of Defendant's cellular telephone equipment, products, and services within a three-mile radius of the Pace store locations. In addition, Pace and the other members of the class were prohibited from opening a store or

other sales location within a three-mile radius of any other store that marketed and sold Defendant's cellular telephone equipment, products, and services. The purpose of this territorial restriction was and is to protect and encourage the investment of time and money in the establishment of new business locations and to permit and encourage the development of a customer base for dealers/agents.

17. Pace and the other members of the class developed customers for the purchase of Defendant's cellular telephone equipment, products, and services and provided those customers to Defendant pursuant to the Agreements. These customers would not have become available or known to Defendant but for the time and effort expended by Pace and the other members of the class. In marketing, soliciting, and ultimately contracting with customers for the benefit of Defendant, Pace and the other members of the class earned the right to residual compensation for the duration of that customer's affiliation with Defendant and developed a reasonable expectation of a continuing business relationship with those customers with which Defendant was obliged not to interfere, obstruct, pirate or hinder.

18. The Agreements included periodic addendums which set forth the compensation that Defendant would pay Pace and the other members of the class. Defendant represented, and Pace and the other members of the class relied on the representations, that these addendums were uniform and non-discriminatory as to compensation paid among all dealers/agents. The addendums provided for a monthly residual payment of no less than 5 percent of the revenue generated pursuant to customer service contracts for the duration of the customer relationship without interference from Defendant or any of its subsidiaries or affiliates.

19. Without any forewarning or notification to Pace and its other members of the class, and contrary to its obligations, express and implied, to Pace and the other members of the class, Defendant changed its distribution practices without regard to the rights of Pace and the other members of the class under the agreements, the course of dealing between the parties, or its obligation of good faith and fair dealing, by implementing a scheme and series of actions which has had and continues to have the effect of breaching the agreements, eroding the business of Pace and the other members of the class and, slowly but surely, pushing Pace and the other members of the class into insolvency. These actions include, but are not limited, to the following:

(a) Defendant intentionally and unjustifiably interfered with Pace's relationship with customers who had purchased Cingular cellular telephone equipment, products, or services and signed up for a Cingular telephone service through Pace and the other members of the class by soliciting, marketing, and contacting them while their separate contracts with Pace and the other class members were still in effect and offering to permit such customers to purchase, upgrade, or receive cellular telephone products, equipment, or services directly from Defendant without providing Pace and the other members of the class the opportunity to sell the equipment, products, or services to the customer on the same terms. When these customers upgraded or received their cellular telephone equipment, products, or services directly from Defendant, Defendant terminated Pace's and the other class members' monthly residuals for those customers and failed to pay those residuals.

(b) Defendant charged back commissions paid to Pace and other class members for customers who were still active with Defendant, improperly claiming disconnects, and unjustifiably placed them on a credit watch list denying earned commission and residual to Pace and other class members.

(c) Through a method described as "non-vesting," Defendant demanded a repayment of commissions, rebates, and residuals, when Defendant terminated service to one of Pace's or the other class members' customers for nonpayment or untimely payment. Then when it reinstated the same customer's service, Defendant failed to reinstate the commissions, rebates, and residuals previously taken back from Pace and the other class members in the form of a charge back.

(d) In order for Pace and other members of the class to receive earned commissions, rebates and residuals, Defendant required them to submit "research" proving they submitted customer applications, that Defendant approved the customers, and that cellular phones were accordingly activated, when Defendant possessed the information as a means of denying compensation already owed.

(e) On average, Defendant has failed to pay between 18% to 22% of the commissions, rebates and residuals owed to Pace and the other members of the class in any given month. Defendant claimed this was caused by "errors." The frequency and pervasiveness of these "errors" caused Pace to assign two employees on a full-time basis to "research" Defendant's errors and to create, submit and follow up on Defendant's failures and "errors."

(f) By creating such "make-work" for Pace and other members of the class, Defendant wrongfully delays the processing of the customer contracts for purposes of paying commissions, rebates, and residuals that Pace and other members of the class have earned, yet Defendant activates the cellular telephones for those same customers referred by Pace and other members of the class, begins service and bills the customers monthly, while denying earned commission and residual payments to Pace and other members of the class due to a supposed lack of adequate or accurate research.

(g) The pattern of demanding immediate payment for equipment or products while simultaneously inventing reasons to not pay or delay commissions, rebates and residuals to Pace and other members of the class was a deliberate scheme to deny Pace and other members of the class compensation they were owed and to force them out of business.

(h) Defendant solicited customers of Pace and the other class members, whose contracts had not yet expired, to re-sign, renew, or upgrade directly with Defendant, and then Defendant failed to pay residuals for those customers to Pace and the other class members.

(i) Defendant has used ruses to disqualify customer agreements for commissions, rebates, and residuals submitted by Pace and the other class members, citing insignificant typographical errors or other minor technicalities while simultaneously collecting monthly service fees pursuant to those "disqualified" customers.

(j) After providing Defendant with the registration numbers of the cellular telephones of new customers, Pace and the other class members have been denied commissions, rebates, and residuals when Defendant claimed that there was no record of the telephone and equipment identified by Pace and the other class members, even though Defendant sold those very same telephones and equipment to Pace and the other class members in the first place.

(k) Prior to opening each new location, Defendant required Pace and the other class members to be no less than three miles from an existing dealer's agency store. Then, Defendant permitted other agents, dealers, and unauthorized dealers to sell Defendant's products and services using the Cingular trade names and marks near Pace's and the other class members' existing locations, cannibalizing their business.

(l) In violation of the three-mile limitation, Defendant permitted other competitors to offer Cingular Wireless services, products, or equipment such as Best Com at the Belvidere Mall on Belvidere Road and Lewis Avenue and also at Grand Avenue and McAree, Direct Communications at Grand Avenue and Green Bay Road, Cellular Concepts at Grand Avenue and Lewis, Radio Shack at Lewis and Glenflora, Belvidere and Green Bay Roads, two currency exchanges at Lewis and Glenflora and Belvidere and Green Bay Roads, and Jewel Food Stores at Sunset and Lewis, and Yorkhouse and Lewis, all in violation of the three-mile exclusive territory for the Waukegan store, and at a currency exchange on Ayer Street and Leddy's Fashions on Ayer Street in Harvard, Illinois, in violation of the three-mile exclusive territory for the Harvard location.

(m) Despite representations to the contrary, Defendant charged an inflated price for the equipment it sold to Pace and the other class members for resale at retail that was higher than the price Defendant sold to national or regional discounters such as Best Buy, Circuit City, ABT Electronics, and Defendant's company-owned stores. In short, Defendant secretly discriminates in the sales price of its equipment and products. The effect of this inflated price is to increase Pace's and the other class members' costs and reduce their margins and require Pace and the other class members to advertise higher prices than a customer could purchase directly from Defendant. As a result, Pace and the other class members lost business and consumers.

(n) Defendant's predecessors, through their course of conduct provided a daily information sheet which identified any customer who cancelled. That information was critical to Pace and the other class members since Pace's and the other class members' commissions, rebates, and residuals would only be paid if the customer maintained continuous service for 181 days. Pace and the other class members would be able to contact the customers so identified in order to troubleshoot or solve any problems. Defendant has eliminated the daily information sheet and now provides no information, notice, or warning to Pace of its customer cancellations in violation of its course of conduct and obligation of good faith and fair dealing.

(o) Despite a contractual provision to the contrary, Defendant eliminated payment of residuals after 181 days if a customer of Pace or the other class members was in default and the customer cured the default. Defendant eliminated and stopped paying residuals to Pace and the other class members when those customers cured the

default under the Pace contract and on information and belief, transferred these customers to its company-owned stores or "house account."

(p) Defendant advertised a national price for dealers for equipment and service, and required their dealers to provide the equipment and service for the advertised price, while at the same time, advertising the same product for lower prices on Defendant's website. In short, Defendant direct marketed to the public and to the customers of Pace and other class members at prices less than Pace and the other class members could offer or were permitted to offer.

(q) Defendant failed to deliver to Pace and the other class members the same level of pricing and equipment discounts that Defendant offered its company-owned stores, and which Defendant offered through its website despite making affirmative representations to the contrary to Pace and the other class members. Defendant failed to pay Pace and the other class members the commissions, rebates, and monthly residual payments due under the agreements and failed to make the payments within the time periods established by the agreements.

(r) Defendant intentionally deleted the payment of residuals on certain of the customers of Pace and the other class members without explanation or warning.

(s) If a customer of Pace or the other class members subsequently purchased any equipment, products, or services from Defendant, Defendant would eliminate payment of royalties and residuals to Pace and the other class members without warning and without their knowledge and approval.

(t) Defendant represented to Pace and the other class members that when Defendant's telemarketer contacted their customers, Pace and the other class members would not lose the customer. Defendant repeatedly failed to comply with that representation, converted customers to Defendant's sole customers, and stopped paying residuals.

(u) Defendant advised Pace and the other class members that customers terminated or canceled when in fact the customers changed their telephone numbers but retained Defendant's cellular service.

(v) Unilaterally, without notice and approval of Pace and the other class members, Defendant reduced the service areas for the customers of Pace and the other class members to avoid the charges Defendant was required to pay FCC license holders.

(w) Defendant permitted the customers of Pace and the other class members to cancel because of alleged service problems, refused to take back the customers' cellular telephones, and left Pace and the other class members to pay for the telephone equipment and refused to give Pace and the other class members credit for the equipment.

(x) Defendant manipulated the billing and breakdown of how it identified the cost of the family plan and bulk plans on the customers' bills of Pace and the other class members in order to reduce the commissions and residuals owed to Pace and the other class members. Defendant excluded home charges and monthly service charges

from the payment of residuals in an effort to reduce its federal tax liability at the expense of Pace and the other class members.

(y) Defendant has eliminated approximately 2,500 customers of Pace from the payment of commissions to Pace without explanation. These 2,500 customers were not deleted or eliminated due to default or non-payment but have vanished without explanation by Defendant. On information and belief, these customers have been transferred to Defendant's company owned stores or "house accounts."

(z) On September 4, 2002, Defendant requested that Pace and the other class members acquire each customer's e-mail address for entry into Defendant's database. Defendant failed to advise Pace and the other class members that Defendant intended to use these e-mail addresses to solicit those customers directly as part of its scheme to avoid paying commissions and residuals to Pace and the other class members and to pirate and steal away their customers. See attached Exhibit B.

(aa) Defendant directly solicited customers of Pace and the other class members with promotions on monthly bills sent to customers of Pace and the other class members without warning, approval, or prior notice given to Pace and the other class members, motivated by Defendant's intent to steal and pirate away Pace's and the other class members' customers and deprive them of commissions and residuals Defendant owed.

(bb) Defendant offered promotions, special pricing, and features through direct mail to existing customers of Pace and the other class members which were not

available to Pace and the other class members, motivated by an intent to steal and pirate customers and deprive Pace and the other class members of commissions and residuals.

(cc) Defendant offered promotions, special pricing, and features through company-owned stores and "big box" retailers such as Best Buy and Circuit City before releasing the same programs to Pace and the other class members with the intent to minimize the amount of new business that Pace and the other class members could acquire. On information and belief, Defendant believed that Best Buy and Circuit City customers would become customers of Defendant and its company-owned stores, rather than customers of Pace and the other class members.

(dd) Defendant offered promotions, special pricing, and features through "big box" retailers such as Best Buy and Circuit City for better terms than they would permit Pace and the other class members to offer, with the intent to minimize the amount of new business that Pace and the other class members could acquire. On information and belief, Defendant believed that Best Buy and Circuit City customers would become customers of Defendant and its company-owned stores, rather than customers of Pace and the other class members.

20. Pace did not discover its damages and that Defendant wrongfully caused them until sometime after May 2002.

21. Pace is still learning and discovering the extent and frequency of Defendant's misconduct.

22. Pace and the other class members have fully performed all of their legally required obligations under the 1999 Agreement.

23. On January 28, 2003, Pace served Defendant with a Notice of Default, a copy of which is attached hereto and labeled Exhibit C pursuant to the provisions of Paragraphs 1 and 20.

24. Defendant has failed to cure any of these defaults and material breaches.

CLASS ALLEGATIONS

25. Pace brings this action pursuant to 735 ILCS 5/2-801 on behalf of the followi persons (class):

> All persons who have entered into Authorized Dealer Agreements since 1999, who have purchased equipment from Defendant or its affiliates, and who have not received commissions, rebates, and residuals that they are entitled to pursuant to the Authorized Agency Agreements.

26. A class action is proper in that:

(a) On information and belief, the class consists of hundreds of persons wh reside throughout Illinois and other states and, thus, is so numerous that joinder of all members is impracticable.

(b) There are questions of fact or law common to the class, of which common questions predominate over all questions affecting only individual class members. Among the questions of law and fact common to the class are whether Plaintiff and the class are entitled to declaratory relief, whether Defendant breached their contracts, whether Defendant is liable to the class for common law fraud, and whether Plaintiff and members of the class are entitled to damages or other relief.

(c) Pace will fairly and adequately protect the interests of the class. Pace has retained counsel to represent it in this action who are experienced in class-action litigation.

(d) A class action is an appropriate method for the fair and efficient resolution of the controversy.

COUNT I – BREACH OF CONTRACT

1-26. Pace realleges, reasserts, and incorporates by reference Paragraphs 1 through 26 as and for Paragraphs 1 through 26 of Count I as if each were fully set forth herein.

27. Pace brings this Count I against Defendant on behalf of the class for breach of contract.

28. The Agreements and addenda concerning commissions provided for the payment of commissions, rebates, and residuals to Pace and the other class members. Commissions and rebates are owed and to be paid within 15 days of activation, residuals are owed and to be paid within 45 days after the end of each calendar month. On information and belief, Defendant has breached the Agreements by not paying commissions or residuals until 62 days after a customer receives activation.

29. Defendant has repeatedly breached the Agreement as described above.

30. Pace and the other class members have demanded payment of sums due and owing. Defendant has failed and refused to pay said amounts and intentionally and willfully continues to provide erroneous accounting in a blatantly transparent attempt to avoid and delay paying monies due Pace and other class members under the Agreements.

31. Pace and other class members have been damaged by Defendant's willful and continuous breaches of the Agreements. The class is unable to determine the full extent of its losses without an honest, bonafide accounting from Defendant of monies due. On information and belief, Pace and the other class members have been damaged in an amount in excess of $50,000 and are entitled to pre-judgment interest pursuant to 815 ILCS 205/2.

WHEREFORE, Plaintiff, PACE COMMUNICATIONS SERVICES CORPORATION, individually and on behalf of all others similarly situated, demands judgment against Defendant, SOUTHWESTERN BELL MOBILE SYSTEMS, INC., in an amount in excess of $50,000, an award of pre-judgment interest at the rate of 5 percent per annum pursuant to 815 ILCS 205/2, costs, and for such further relief that is appropriate in the premise.

COUNT II – ACCOUNTING

1-26. Pace realleges, reasserts, and incorporates by reference Paragraphs 1 through 26 as and for Paragraphs 1 through 26 of Count II as if each were fully set forth herein.

27. Pace brings this Count II against Defendant on behalf of the class pursuant to their right to an accounting under the Agency Agreements and by reason of the Principal and Agent relationship established thereunder.

28. The Agreements and the addendums provide for the payment of commissions, rebates, and residuals to Pace and the other class members. Commissions and rebates are to be paid within 15 days of activation, residuals are to be paid within 45 days after the end of each calendar month.

29. The relationship between Pace and the other class members and Defendant is that of a principal/agency relationship. Such relationship is a fiduciary relationship as a matter of law.

30. In addition, there are complicated accounts involved and Defendant possesses and controls the accounting software and computer files containing the information regarding what Pace and the other class members are owed under the Agreements. Discovery of this accounting software and computer files is necessary. Pace has made numerous requests for an accounting for research of monies due and owing.

WHEREFORE, Plaintiff, PACE COMMUNICATIONS SERVICES CORPORATION, individually and on behalf of all others similarly situated, prays that this court enter an order ordering Defendant, SOUTHWESTERN BELL MOBILE SYSTEMS, INC., to provide a full and complete accounting to Pace of all of these monies due and owing under the Agreements, awarding pre-judgment interest at the rate of 5 percent per annum on all amounts due, awarding attorney's fees and costs, and for such further relief that is appropriate in the premises.

COUNT III – FRAUD

1-26. Pace realleges, reasserts, and incorporates by reference Paragraphs 1 through 26 as and for Paragraphs 1 through 26 of Count III as if each were fully set forth herein.

27. Defendant, from 1988 to the present, through its representatives, Robert Penuel, James Moen, Brian Klamer, Scott Grotebach, and LeAnh Blanchard advised Pace and the other class members that they received the same pricing and equipment discounts as Cingular's company-owned stores and other distributors, and that all distribution had the same pricing.

28. Defendant regularly sent written materials to Pace and the other class members setting forth uniform prices for all distribution. Copies are attached as Exhibit D.

29. Consistent with the aforementioned uniform oral and written representations, Laren Whiddon, Vice President and General Manager, in a letter to another Chicago market dealer, represented that "all dealers have access to the same level of service pricing as the internal team." A true and correct copy of this letter is attached as Exhibit E.

30. Said statements were and are false when made and Defendant's representatives knew that the representations were false. The statements were made and the truth was omitted in order to fraudulently conceal Defendant's strategy to put the dealers out of business and steal and pirate customers to develop Defendant's company stores.

31. The representations made to Pace and the other class members were made to induce Pace and the other class members to refrain from expanding their businesses by offering cellular telephone products, equipment, and services from other providers, and to conceal from Pace and the other class members the fact that Defendant was breaching, and intended to breach, the Agreements and to raid, solicit, and take Pace's and the other class members' customers.

32. Pace and the other class members relied on the statements of Defendant's representatives and refrained from expanding their businesses by offering cellular telephone products, equipments, and services of other competitors.

33. The actions of Defendant were and are intentional, willful, and malicious

34. Pace and the other class members have been damaged as a result of the fraudulent actions and statements herein alleged and the value of Pace's and the other class members' businesses have been rendered worthless.

35. Pace and the other class members have been damaged in an amount in excess of $50,000. In addition, Pace and the other class members are entitled to exemplary damages in amounts sufficient to punish Defendant.

WHEREFORE, Plaintiff, PACE COMMUNICATIONS SERVICES CORPORATION, individually and on behalf of all others similarly situated, demands judgment against the Defendant, SOUTHWESTERN BELL MOBILE SYSTEMS, INC., in an amount in excess of $50,000.00, for an award of exemplary damages in amounts sufficient to punish Defendant, an award of pre-judgment interest at 5 percent per annum, costs, and for such further relief as the court deems appropriate.

COUNT IV – INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

1-26. Pace realleges, reasserts, and incorporates by reference Paragraphs 1 through 26 as and for Paragraphs 1 through 26 of Count IV as if each were fully set forth herein.

27. Pace brings this Count IV against Defendant on behalf of the class for redress of Defendant's actions to interfere with Pace's and the other class members' prospective economic advantage.

28. Pace and the other class members solicited, originated and directly contracted with their customers. Although they shared these customers with Defendant, the customers were their customers.

29. At all times, Pace and the other class members have a reasonable expectation o maintaining continuous business relationships with their customers, and of an economic advantage derived from those relationships that they solicited, originated, and contracted with for cellular telephone equipment, products, and services provided by Defendant.

30. Defendant has intentionally, willfully, maliciously, and unjustifiably interfered with Pace's and the other class members' relationships with their customers in a manner that has induced or caused the breach or termination of Pace's and the other class members' expectancy as alleged above.

31. Defendant knows about Pace's and the other class members' continuing interest in and relationship with the customers they originated and contracted within the Agreements.

32. Defendant's intentional, willful, and unjustifiable actions have damaged Pace and the other class members and interfered with their reasonable expectation of prospective economic advantage. Among other things, they have lost residuals, commissions, and rebates that they would otherwise be paid.

33. Defendants actions were willful, intentional, and malicious. Pace and the other class members seek an award of exemplary damages to punish Defendant and deter future misconduct.

WHEREFORE, Plaintiff, PACE COMMUNICATIONS SERVICES CORPORATION, individually and on behalf of all others similarly situated, demands judgment against the Defendant, SOUTHWESTERN BELL MOBILE SYSTEMS, INC., in an amount in excess of $50,000, for an award of exemplary damages in an amount to be determined, costs, and for such further relief as this court deems just and appropriate.

COUNT V – UNJUST ENRICHMENT IN THE ALTERNATIVE

1-26. Pace realleges, reasserts, and incorporates by reference Paragraphs 1 through 2 as and for Paragraphs 1 through 26 of Count V as if each were fully set forth herein.

27. This claim is being made in the alternative to Count I, pursuant to 735 ILCS 5/2-613.

28. Defendant has been unjustly enriched as a result of its breach of contract when collecting various sums of money, portions of which were collected in trust for Pace and for other members of the class, and in stealing and converting customers from Pace and other members of the class.

29. Defendant has money belonging to Pace and other members of the class and has refused to tender to Pace and other members of the class monies which Defendant has received.

30. Defendant has refused to disgorge the money collected by Defendant, earned by Pace and other members of the class, including the interest Defendant has earned on such amounts intentionally withheld by Defendant.

31. Defendant's retention of money due Pace and other members of the class violates fundamental principles of justice, equity and good conscience.

32. Pace and other members of the class have no adequate remedy at law.

33. Pace and other members of the class have been damaged in an amount in excess of $50,000.

WHEREFORE, Plaintiff, PACE COMMUNICATIONS SERVICES CORPORATION, individually and on behalf of all others similarly situated, demands judgment against

Defendant, SOUTHWESTERN BELL MOBILE SYSTEMS, INC., in an amount in excess of $50,000, pre-judgment interest at the rate of 5 percent per annum, costs, and for such further relief in the premises.

COUNT VI – CONVERSION

1-26. Pace realleges, reasserts, and incorporates by reference Paragraphs 1 through 26 as and for Paragraphs 1 through 26 of Count VI as if each were fully set forth herein.

26. Defendant assumed ownership, dominion or control over funds belonging to Pace and other members of the class wrongfully and without authorization.

27. Pace and other members of the class have the right to the funds and immediate right to possession of the funds being held by Defendant.

28. Pace and other members of the class have demanded possession.

29. Pace and other members of the class have been damaged in an amount in excess of $50,000 because the actions of Defendant have been and are willful and intentional. Pace and other members of the class are entitled to exemplary damages in an amount to be determined.

WHEREFORE, Plaintiff, PACE COMMUNICATIONS SERVICES CORPORATION, individually and on behalf of all others similarly situated, demands judgment against Defendant, SOUTHWESTERN BELL MOBILE SYSTEMS, INC., in an amount in excess of $50,000, exemplary damages in an amount to be determined, costs, and for such further relief in the premises.

COUNT VII – DECLARATORY JUDGMENT

1-26. Pace realleges, reasserts, and incorporates by reference Paragraphs 1 through 26 as and for Paragraphs 1 through 26 of Count VII as if each were fully set forth herein.

27. Defendant provided Pace a new Agency Agreement designed and intended to take effect April 1, 2003. A copy of said Agency Agreement is attached hereto as Exhibit F.

28. On information and belief, Defendant and its affiliates (all doing business as "Cingular Wireless") use this Agency Agreement throughout the United States.

29. Pace has declined to enter into the new Agency Agreement because (a) it is a non-negotiable adhesion contract and (b) it purports to establish a franchise relationship illegal under Illinois law and the substantially-similar laws of Michigan, Indiana, Wisconsin and the laws of the other registration states since no registration was done with the Illinois Attorney General (as required by 815 ILCS 705/5[1]) or with the other registration states.

30. Pace and the other class members are entitled to refuse to enter into the new Agency Agreement because it sets up a franchise in that:

(a) Pace and the other class members are granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed or suggested in substantial part by Defendant; and

(b) The operation of the business of Pace and the other class members, pursuant to the plan or system was substantially associated with Defendant's trademark, service mark, trade name, logo, advertising or other commercial symbols designating Defendant; and

(c) Pace was granted the right to engage in the business and was required to pay to Defendant a sum in excess of $500 by, among other things, purchasing equipment and goods from Defendant which were marked up over the cost of goods being sold to Defendant's company owned stores or by Defendant itself or to "big box" retailers like Best Buy, Circuit City, and ABT Electronics.

31. Defendant's effort to enter into a new Agency Agreement was not preceded by providing to Pace and the other class members a Uniform Franchise Offering Circular registered with the State of Illinois or the other states requiring registration pursuant to state franchise laws such as 815 ILCS 705/1, et seq. and the Federal Trade Commission.

32. Defendant should not be permitted to deprive, cut off, or eliminate Pace's or the other class members' rights to residuals by requiring them to execute an illegal Agency Agreement.

33. Defendant violated 815 ILCS 705/6 by, among other things, (1) falsely representing to Pace and the other class members that Pace and the other class members had a three-mile protected territory, (2) by falsely representing that all of Defendant's distributors were paying the same price for goods, equipment and services, and failing to advise them that Defendant was in fact selling goods and services at different price levels to Defendant's company-owned stores and "big box" retailers such as Best Buy, Circuit City, and ABT Electronics, and (3) by failing to disclose that Defendant intended to steal and pirate away as many customers of Pace and the other class members and drive them out of business, to further to benefit Defendant's development of company-owned stores.

34. Pursuant to 815 ILCS 705/5(2), Defendant would be required to make the aforementioned disclosures, to disclose all of its business practices and the details regarding th operation of its business system or format being licensed as well as a list of all dealers who closed, terminated or went out of business over the past three years.

35. Defendant has hidden these facts because it knows that persons possessing information would refuse to enter into the new Agency Agreements.

36. Defendant believes its new Agency Agreement is valid, legal, and in compliance with federal and state law.

37. Pace and the other class members believe that the new Agency Agreement is illegal, invalid, and violates Illinois law, Federal Trade Commission Act, and the franchise disclosure and registration laws of other states to be discovered during this litigation.

38. An actual case or controversy exists between or among the parties which requires adjudication by this court pursuant to 735 ILCS 5/2-701.

39. Pace and the other class members request an adjudication of their rights and a declaration that the new Agency Agreement constitutes a franchise agreement, that the new Agency Agreement is illegal, and that a failure to execute the new Agency Agreement cannot be used as the reason to fail to, terminate, or deny Pace and the other class members residuals due under the 1999 Agreement.

WHEREFORE, PACE COMMUNICATIONS SYSTEMS CORPORATION, prays that this court enter an order declaring (1) the new Agency Agreement constitutes a franchise agreement, (2) that the new Agency Agreement is illegal, and (3) that Defendant cannot use the

refusal to execute the new illegal Agency Agreement as a basis for denying or terminat

and the other class members and their rights to residuals due under the 1999 Agreemen

JURY DEMAND

Plaintiff, PACE COMMUNICATIONS SYSTEMS CORPORATION, demands

jury on all legal issues.

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