

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TRUE WIRELESS, INC.,

Plaintiff,

v.

HTH COMMUNICATIONS, LLC,

Defendant.

Civil Action No. _____

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff True Wireless, Inc. (“True Wireless” or “Plaintiff”) sets out its complaints against Defendant HTH Communications, LLC (“HTH”).

NATURE OF THE ACTION

1. This an action for breach of contract and declaratory judgment arising from HTH’s breaches of a management services agreement dated June 26, 2020 between HTH and True Wireless (the “Management Agreement”) that, among other things, required HTH to pay invoices from True Wireless’s suppliers and other creditors.

2. Three days after executing the Management Agreement, True Wireless transferred to HTH \$237,331 in federal funds that True Wireless had received so that HTH could pay True Wireless’s invoices. Instead of paying the invoices as agreed, however, HTH diverted the funds for other uses without True Wireless’s permission. HTH also improperly rejected and failed to pay several other business-related invoices, causing True Wireless to go into debt to its vendors.

3. After True Wireless discovered HTH’s self-dealing and failure to comply with its contractual obligation to timely pay True Wireless’s vendors, True Wireless notified HTH of its

breach and was, ultimately, forced to terminate the Management Agreement less than two weeks after its execution.

4. Plaintiff now seeks monetary damages of no less than \$237,331 for HTH's breaches of the Management Agreement and a declaration that the Management Agreement has been validly terminated.

THE PARTIES

5. True Wireless is an Oklahoma corporation with its principal place of business in Bartlett, Tennessee. True Wireless is a subsidiary of Surge Holdings, Inc. ("Surge").

6. HTH is a Texas limited liability company with its principal place of business in Houston, Texas. Based on filings with the Texas Secretary of State's office and other available records, it is believed that the members of HTH are Hung Duy Do and Henry Hung Do. Hung Duy Do and Henry Hung Do both reside in and are domiciled in the State of Texas and are citizens of the State of Texas. HTH may be served with process by serving its registered agent, Hung Duy Do, at 9918 Brooklet, Houston, Texas 77099, or wherever else he may be found.

7. Other records reflect that other "principals" of HTH include Marilyn Nguyen, Hien Vo and Leslie Williams. Upon information and belief, these individuals are not members of HTH but, in any event, they are believed to be citizens of the State of Texas.

JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction over this case based on 28 U.S.C. § 1332(a)(1) because the parties are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

9. The Court also has personal jurisdiction over HTH under Texas Civil Practice & Remedies Code § 17.042 because (a) HTH is a Texas limited liability company and Plaintiff's

causes of action arise from the transaction of business in Texas, and the making and failure to perform a contract substantially connected to the State of Texas; and (b) the Court's exercise of jurisdiction over HTH would not violate due process.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (2) because Defendant's principal place of business is located in Harris County, Texas; because a substantial part of the events or omissions giving rise to the claim occurred in this District; and because the parties agreed that any dispute arising out of the contract at issue would be brought in Harris County, Texas.

FACTUAL BACKGROUND

True Wireless's Business

11. True Wireless is a telecommunications carrier that provides discounted and subsidized wireless services to eligible low-income subscribers primarily through the federally funded Lifeline program. The Lifeline program was established by the federal government to ensure that all Americans have the opportunities and securities that voice and broadband services bring, including being able to connect to jobs, family and emergency services.

12. Lifeline typically provides up to a \$9.25 monthly discount on service for eligible low-income subscribers. To participate, Americans must either have an income that is at or below 135% of the Federal Poverty Guidelines or participate in certain federal assistance programs, such as the Supplemental Nutrition Assistance Program (formerly known as "Food Stamps"), Medicaid, Supplemental Security Income, Federal Public Housing Assistance, Veterans Pension and Survivors Benefit or Tribal Programs (and live on tribal lands).

13. The Lifeline program is operated by the Federal Communications Commission and is available to eligible subscribers in every state, territory, commonwealth and on tribal lands.

True Wireless currently provides Lifeline services in Texas, Oklahoma, Arkansas, Maryland and Rhode Island.

14. The Lifeline program is administered by the Universal Service Administrative Company (“USAC”). USAC reimburses providers such as True Wireless through a monthly payment of funds representing subsidies for past services provided to Lifeline customers.

15. In the ordinary course of business, True Wireless relies on a variety of suppliers, vendors and service providers, through which it purchases certain products and services necessary to conduct its business. True Wireless uses federal funds received from USAC to pay its suppliers and vendors for goods provided and services performed in connection with the Lifeline program.

True Wireless Contracts with HTH to Provide Management Services

16. HTH is in the business of handset distribution, device fulfillment and refurbishing. Henry Hung Do (“Do”) is HTH’s Chief Executive Officer and one of its members.

17. On March 25, 2020, Do agreed to acquire True Wireless pursuant to a Transfer of Control and Purchase Agreement dated March 25, 2020, and subsequently amended on March 31, 2020, May 15, 2020 and June 26, 2020 (the “Purchase Agreement”) between Do, Surge, True Wireless and Brian Cox (“Mr. Cox”).

18. On June 26, 2020, HTH, True Wireless and Mr. Cox entered into the Management Agreement. A true and correct copy of the Management Agreement is attached hereto as Exhibit 1. Do executed the Management Agreement on behalf of HTH. Subject to its terms, the Management Agreement required HTH to provide certain management services for True Wireless pending certain conditions precedent to the Purchase Agreement, including regulatory approval of the closing of the Purchase Agreement by the Oklahoma Corporation Commission.

19. These services include an obligation to pay amounts owed to True Wireless's suppliers, independent agents and other creditors in accordance with the terms and provisions of True Wireless's business.

20. Specifically, Section 2(a)(ii) of the Management Agreement provides that:

Without limiting the generality of any provision of the Purchase Agreement, during the Management Period (as defined below) and subject to Section 1, [HTH] shall:

...

(ii) be involved in the performance of [True Wireless's] obligations under any contracts regarding its business and the maintenance of [True Wireless's] relationships with its customers, agents, providers and suppliers, including, but not limited to, by providing, supervising and/or directing telecommunications service, provisioning, billing, collection, cash and back [sic] account distributions, treatment of complaints and coordination of third party contact; bill and collect amounts owed by [True Wireless's] customers and *pay amounts owed to its suppliers, providers, independent agents and other creditors in accordance with the terms and provisions of the contracts of [True Wireless's] business*[:.]

Ex. 1, § 2(a)(ii) (emphasis added).

21. After executing the Management Agreement, on June 29, 2020, True Wireless transferred \$237,331 in federal Lifeline funds received from USAC from True Wireless's bank account to HTH (the "USAC Funds") with the expectation that HTH would pay True Wireless's invoices for services provided in May and June 2020.

22. In addition, in connection with the Management Agreement, True Wireless transferred control of its domain name, www.gotruewireless.com, and its social media accounts (Facebook, LinkedIn and Twitter) to HTH.

HTH's Breaches of the Management Agreement

23. Instead of paying True Wireless's invoices, however, upon information and belief, HTH used the USAC Funds to pay itself and another Do-controlled entity called TX Mobile, LLC ("TX Mobile") without authorization from True Wireless. Do is the "C.E.O." of TX Mobile.

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