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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

WANLAND & ASSOCIATES, INC., individually and on behalf of all others similarly situated, Plaintiff, v. NORTEL NETWORKS LIMITED, NORTEL NETWORKS INC., QWEST COMMUNICATIONS INTERNATIONAL INC., THOMAS N. SALZANO, ALEXANDER L. WOLF and ROBERT J. FINE, Defendants.	Case No. 3:05-CV-01191-MLC-TJB Hon. Mary L. Cooper, U.S.D.J. **AMENDED CLASS ACTION COMPLAINT** ***JURY TRIAL DEMANDED***

Wanland & Associates, Inc. ("Plaintiff" or "Wanland") brings this action against Nortel Networks Limited and Nortel Networks Inc. (collectively, "Nortel"), Qwest Communications International, Inc. ("Qwest") and Thomas N. Salzano, Alexander L. Wolf and Robert J. Fine

(collectively "the Individual Defendants"), individually and on behalf of the class defined below. In support thereof, and on information and belief, Plaintiff alleges as follows:

INTRODUCTION

1. Plaintiff, a small business, brings this action against Nortel, Qwest and the Individual Defendants seeking redress for unfair and deceptive business practices.

2. Norvergence, Inc. ("NorVergence"), by and through the Individual Defendants, together with its business partners, Nortel and Qwest, defrauded thousands of small and medium sized businesses of millions of dollars by inducing them to purchase telecommunications service packages which required them to sign documents purporting to be "equipment leases." Those "equipment leases" required the "lessees," including Plaintiff, to pay thousands of dollars to lease equipment which was, in reality, worth very little. Worse, the "leases" purported to create an absolute obligation to pay. Thus, even though NorVergence has filed bankruptcy and stopped providing telecommunications services, thousands of businesses whose telephones have been shut off have been and are forced to continue making their "lease" payments.

3. Nortel and Qwest are sophisticated telecommunications entities that knew or should have known of the true nature of the scheme summarized above and described more fully below. Nortel and Qwest participated in and profited from the scheme by supplying products and services to NorVergence, and by permitting NorVergence to use their well-known names and trademarked logos to induce target businesses to become NorVergence customers.

4. A number of leasing companies, which purchased the "equipment leases" from NorVergence and continued to collect payment after telecommunications service had been shut off,

have reached private settlements and settlements with state attorneys general. Any payments and/or credits to Plaintiff or members of the class as a result of those settlements will mitigate, but not eliminate, the harm suffered by Plaintiff and the Class. Moreover, on information and belief, some class members will not be affected by any of the various settlements. Nortel, Qwest and the Individual Defendants remain liable to Plaintiff and the Class for any damages to which Plaintiff and the Class are entitled and have not recovered.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1334(b). This action is related to the NorVergence bankruptcy proceeding, within the meaning of 28 U.S.C. § 1334(b), because it could affect the rights and liabilities of NorVergence, a Chapter 7 debtor. NorVergence is contractually obligated to indemnify Nortel for claims and liabilities at issue in this suit. That indemnification liability arises from the Purchasing and Licensing Agreement ("PLA") attached hereto as Exhibit A.

6. Plaintiff first learned of the PLA, and the indemnification clause therein, upon receiving Nortel Networks Corporation's Notice of Removal, to which the PLA was attached. Plaintiff bases its assertion of federal jurisdiction solely on the bankruptcy implications of the indemnification clause. Plaintiff did not fraudulently join the Individual Defendants in an effort to defeat diversity jurisdiction, as alleged by Nortel Networks Corporation in its Notice of Removal. The Individual Defendants were and are proper defendants to this action, and the Court thus has no diversity jurisdiction over this action.

7. Venue properly lies in the District of New Jersey pursuant to 28 U.S.C. § 1391(b).

PARTIES

A. Plaintiff

8. Wanland & Associates, Inc., a small real estate brokerage and management business, is an Illinois corporation with its principal place of business located in Chicago, Illinois.

B. Defendants

9. Nortel Networks Limited is a Canadian corporation with its principal place of business in Brampton, Ontario. Nortel Networks Limited is the principal operating subsidiary of Nortel Networks Corporation, which was named in the original complaint in this action. Nortel Networks Limited owns the Nortel trademarked logo used in connection with the NorVergence logo, and licensed that logo to NorVergence for use in the United States.

10. Nortel Networks Inc. is a Delaware corporation with its principal places of business in North Carolina, Texas and Tennessee. Nortel Networks Inc. is a wholly owned subsidiary of Nortel Networks Limited, and a signatory to the contract granting NorVergence a license to use the trademarked Nortel logo.

11. Qwest Communications International Inc. ("Qwest") is a Delaware corporation with its principal place of business at 1801 California Street, Denver, Colorado 80202. Qwest touts itself as a leader in reliable, scalable and secure broadband Internet-based data, voice and image communications for businesses and consumers. Qwest owns the trademarked logo used in connection with the NorVergence logo.

12. Thomas N. Salzano ("Salzano") is the Chief Managing Officer of NorVergence and a member of the NorVergence board of directors. On information and belief, Salzano is a citizen of the State of New Jersey residing at 1 River Court #1504, Jersey City, New Jersey 07310. Salzano

was served with the initial Complaint in this action at that address on October 8, 2004. Salzano has not appeared in this action, and Plaintiff intends to seek entry of default and default judgment from this Court.

13. Alexander L. Wolf ("Wolf") is both a former Nortel executive and the Chief Operating Officer of NorVergence. On information and belief, Wolf is residing at 6 Points of View, Warwick, New York 10990. Plaintiff have been unable to effect personal service on Wolf despite diligent efforts, and plan to move the Court for an order permitting service by publication.

14. Robert J. Fine ("Fine") was NorVergence's Director of Bank Relations, and was president of NorVergence Capital, Inc., a wholly owned subsidiary of NorVergence which purchased some of the "equipment leases" from NorVergence. Fine established the connections between NorVergence and the banks and equipment leasing companies that purchased the "leases" from NorVergence. On information and belief, Fine is a citizen of the State of New Jersey residing at 481 Beech Street, Haworth, New Jersey 07641. Abode service was made at that address on October 7, 2004, and Fine has appeared in this action through counsel.

SPECIFIC ALLEGATIONS

A. *Nortel and Qwest Join Forces With NorVergence*

1) Nortel

15. In 2001, several key Nortel executives left Nortel to form NorVergence, Inc. NorVergence leadership originating at Nortel included Alexander L. Wolf, NorVergence Chief Operating Officer, and other senior NorVergence management in engineering, technical training, and area management.

16. Nortel formed a co-marketing partnership with NorVergence soon after NorVergence was founded. Nortel engineers collaborated with NorVergence in the development and marketing of MATRIX™ technology, which technology purportedly was used in a piece of equipment generally referred to as a "Matrix box" or, depending upon the model, a "Matrix SoHo box."

17. In furtherance of that partnership, Nortel Networks Inc. entered into a Purchase and License Agreement ("PLA") with NorVergence on September 27, 2001.

18. Under the terms of the PLA, Nortel supplied products and services to NorVergence, and Nortel enrolled NorVergence in its Services Partner Initiative Co-Marketing Program for the purpose of "promoting joint sales of Nortel Networks/[NorVergence] solutions" by NorVergence.

19. Nortel and NorVergence agreed to "work together and take the appropriate steps" for NorVergence to makes sales to "Small and Medium Enterprise customers." The co-marketing activities contemplated by the "Statement of Work" attached to the Nortel/NorVergence PLA included endorsement of NorVergence by Nortel during a national sales "Road Show," as well as joint Nortel/NorVergence sales calls.

20. The PLA also incorporates trademark licensing terms and conditions. Attachment B to Supplement #3 to the PLA (the "Trademark License Agreement") is an agreement between Nortel Networks Limited and NorVergence wherein Nortel Networks Limited grants NorVergence the right to use its "Solutions by Nortel Networks" trademark, along with the logo referred to as the "globemark," in the United States.

21. Nortel's partnership with NorVergence lasted for two years, and Nortel continued to do business with NorVergence after the partnership was terminated on December 31, 2003.

2) Qwest

22. Sometime after NorVergence was formed, Qwest, itself and through its subsidiaries, formed a partnership with NorVergence. Qwest not only agreed to provide wholesale telecommunications services to NorVergence, but also included NorVergence in its Business Partner Program.

23. In connection with its Business Partner Program, Qwest permitted NorVergence to use its logo in conjunction with the NorVergence logo on sales brochures and business forms.

B. The Nortel/Qwest/NorVergence "Matrix" Leasing Scheme

24. Shortly after senior Nortel management founded NorVergence in 2001, NorVergence began soliciting the telecommunications business of small and medium-sized businesses.

25. Using forms prominently featuring the Nortel and Qwest logos together with the NorVergence logo, and sometimes other logos, as well, NorVergence requested telephone billing records from its target demographic: small and medium sized businesses, many of which did not have a telecommunications expert on staff.

26. NorVergence then submitted proposals to prospective customers. The proposals typically promised to provide unlimited calling and high-speed internet access while reducing the customer's total monthly telecommunications costs by approximately 30 percent.

27. NorVergence assured potential customers that they could trust NorVergence by invoking the well-known name of its business partners, Nortel and Qwest. With the knowledge and permission of Nortel and Qwest, NorVergence featured the Nortel and Qwest logos on full-color brochures and on many of the forms that they presented to potential customers.

28. NorVergence salespeople were also required to memorize scripts and recite those scripts on sales calls. Those scripts included multiple references to NorVergence's partnership with Nortel and the "Nortel engineered" Matrix boxes.

29. After making a successful scripted sales pitch, NorVergence presented an "equipment lease" or "equipment rental" agreement to the customer amid various other forms which usually included a service application and a hardware application. Many of those forms featured the Nortel and Qwest logos in addition to the NorVergence logo.

30. Although the NorVergence proposals typically reduced a customer's monthly telecommunications costs by approximately 30%, NorVergence did not reduce each line item in the customer's bill by 30 percent. Instead, the proposal would drastically reduce or completely eliminate most line fees, access costs, per-minute costs, cellular charges and other service-related costs and instead concentrate nearly all of the cost of the NorVergence plan in the monthly "lease" payment for the Matrix box.

31. Customers were told that technological advances contained in the "Nortel engineered" Matrix boxes allowed for the elimination of per-minute telecommunications charges. In fact, depending on the model, the Matrix boxes were actually common, inexpensive "integrated access devices" or "firewall" devices. In reality, there was no technological relationship whatsoever between the Matrix devices and the "free unlimited" calling promised to customers.

32. As sophisticated telecommunications providers, Nortel and Qwest knew or should have known that the Matrix boxes could not perform the functions attributed to them in the brochures, scripts and sales calls which prominently featured their corporate names and trademarked logos.

33. Because the telecommunications packages co-marketed by Nortel, Qwest and NorVergence included unlimited calling, and because the Matrix boxes themselves had little to no value - a former NorVergence salesman told the bankruptcy court that the boxes "serve no purpose, they're worthless" – it is clear that the "lease" payments contemplated in NorVergence's proposals were actually monthly fees for telecommunications services.

34. Despite the fact that the Matrix box had little to no value, NorVergence required customers to sign four- or five-year leases with monthly payments ranging from several hundred to several thousand dollars. For example, the Wanland lease required "monthly rental payments" of $270.01 for the Matrix box, totaling more than $16,000 over the course of five years.

35. Given their experience and expertise in the telecommunications field, Nortel and Qwest knew or should have known that the true value of the Matrix boxes did not approach the sums of money contemplated in the "equipment leases" that bore their trademarked logos.

36. Each lease contains terms purporting to make the customer's obligation to pay absolute. In other words, the lease purports to base the obligation to pay solely on the customer's acceptance of the Matrix box, and purports to effect a waiver of all defenses that would be available to the customer.

37. NorVergence, Nortel and Qwest failed to disclose to prospective customers that the value of the Matrix box was minimal or that they would pay thousands or tens of thousands of dollars more than the value of the Matrix box over the course of their leases.

38. NorVergence, Nortel and Qwest failed to disclose to prospective customers that they intended to assign the Matrix box "lease" to a third party leasing company shortly after the lease was executed, nor did NorVergence, Nortel and Qwest disclose that the terms of the lease were intended

to force customers to continue paying even after their telecommunications services had been shut down.

39. A typical Matrix box lease contained provisions such as: "your duty to make the rental payments is unconditional despite equipment failure, damage, loss or any other problem;" and "if the equipment does not work as represented by the vendor, or if the vendor or if the vendor or any other person fails to provide any service . . . you will make any such claim solely against the vendor or other person and will make no claim against us."

40. Moreover, a typical Matrix box lease prohibited the customer from assigning or transferring the equipment lease, but permitted NorVergence to assign the lease and provided: "You agree that if we sell, assign or transfer this Rental, the new owner will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that the rights of the new owner will not be subject to any claims, defenses or set offs that you may have against us."

41. NorVergence, in fact, in accordance with Defendants' scheme, assigned virtually all of the Matrix box "leases" to banks and equipment leasing companies. For example, Wanland was instructed to begin making payments to a company called G.E. Capital on the very day that Wanland's service was switched to NorVergence.

42. The banks and leasing companies to whom the leases were assigned aggressively pursued payment despite the fact that NorVergence customers lost service since NorVergence on or around the time when NorVergence was forced into bankruptcy on June 30, 2004.

43. Nortel, Qwest and NorVergence endeavored to make their telecommunications service contracts look as much like an equipment lease as possible, because Uniform Commercial

Code Article 2A ("Article 2A") equipment lease provisions are significantly more favorable to creditors than the provisions relating to non-lease finance contracts. Contracts for telecommunications services cannot qualify as Article 2A equipment leases.

44. In fact, Nortel, Qwest and NorVergence actually inserted into their contracts paragraphs invoking Article 2A. For example, the Wanland lease provides that "if Article 2A-Rentals of the Uniform Commercial Code is deemed to apply to this Rental, this Rental will be considered a finance Rental as that term is defined in Article 2A."

45. In sum, Nortel, Qwest and NorVergence targeted businesses too small to have a telecommunications expert for telecommunications contracts masquerading as equipment leases. They virtually never explained the terms of those contracts to their customers, knowing that even if the customers read every word of the fine print it was unlikely that the customer would understand or appreciate the rights and remedies that the contract attempted to take away from them.

46. As a result, thousands of small and medium sized businesses have lost thousands of dollars apiece in "lease" payments for virtually worthless equipment, and those businesses are entitled to treble damages under the New Jersey Consumer Fraud Act. While the damages of Plaintiff and some class members may be mitigated by settlements reached with the equipment leasing companies by various state attorneys general and private plaintiffs, those damages are not eliminated. Moreover, on information and belief, some class members will not be affected by any such settlement.

CLASS ACTION ALLEGATIONS

47. This action is brought pursuant to Federal Rule of Civil Procedure 23 ("Rule 23"), on behalf of:

all persons, including businesses, which signed documents purporting to be "equipment leases" for one or more Matrix boxes, Matrix SoHo boxes, or other network equipment units provided by NorVergence, Inc. (the "Class").

Excluded from the Class are Defendants and their agents and employees.

48. The Class satisfies the numerosity, commonality, adequacy, predominance and appropriateness requirements of Rule 23.

49. The Class is sufficiently numerous. It is estimated that at least ten thousand businesses signed Matrix box "equipment leases" and are members of the Class.

50. Upon information and belief, the Class is also composed of persons geographically dispersed throughout the United States, such that joinder of each Class member in one action is impracticable.

51. This case involves issues of law or fact common to the Class such that judicial determination of these common legal or factual issues would be far more efficient and economical than piecemeal individual determinations. These common questions include:

a. whether Defendants violated the New Jersey Consumer Fraud Act and other state consumer fraud protection statutes;

b. whether Defendants and their agents concealed and suppressed material facts from Plaintiff and Class members when such facts should have been disclosed;

c. whether Defendants and their agents made affirmative misrepresentations to Plaintiff and Class members, knowing that the representations were false, and concealed material facts from Plaintiff and Class members, and made the

misrepresentations in order to induce Plaintiff and Class members to uniformly rely on those misrepresentations;

d. whether Plaintiff and Class members have sustained damages and, if so, the proper measure of their damages; and

e. whether Defendants were unjustly enriched by the scheme perpetrated by them.

52. These common questions of law or fact predominate over any questions or issues affecting individual Class members. Any questions affecting individual Class members, such as their individual amount of damages, should be easy to resolve once the common questions of law or fact have been adjudicated.

53. Plaintiff's claims are typical of the claims of the other members of the Class. Moreover, the defenses, if any, that will be asserted against Plaintiff's claims are typical of the defenses that will be asserted against the claims of the other Class members.

54. A class action is most appropriate for the adjudication of the claims asserted in this litigation, rather than individual actions. The Class members have no plain, speedy or adequate remedy other than by maintenance of this class action because the damages suffered by each Class member are relatively small thereby making it economically impractical for them to pursue remedies individually. In addition, the prosecution of separate actions by individual Class members, even if theoretically possible, would create a risk of inconsistent or varying adjudications with respect to individual Class members.

55. No unusual problems in managing this case as a class action are likely to be encountered.

56. Plaintiff is unaware of any other litigation asserting the claims of the Class as defined herein against Defendants.

57. Plaintiff will fairly and adequately protect the interests of the Class members. Plaintiff has retained counsel who are highly experienced in complex and class action litigation and who successfully have prosecuted many other consumer class actions, including actions against large telecommunications providers.

58. Class action treatment is the most appropriate method for the fair and efficient adjudication of this controversy, since such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of evidence, effort and expense that numerous individual actions would engender. The benefits of proceeding with a class action, including providing injured persons or entities with a method for obtaining redress for claims that would not be practicable to pursue individually, substantially outweigh any difficulties that may arise in the management of this class action.

COUNT I

Violation of New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*, and Other State Consumer Fraud Protection Statutes

59. Plaintiff alleges and incorporates by reference each of the preceding paragraphs as if alleged in this paragraph.

60. Plaintiff and the Class are consumers within the meaning and coverage of the New Jersey Consumer Fraud Act ("NJCFA"), N.J.S.A. 56:8-1, *et seq*. Plaintiff and the Class are also consumers within the meaning and coverage of materially and substantially similar consumer fraud

and deceptive business practices statutes in other states ("Other State Consumer Fraud Protection Statutes").

61. The NJCFA prohibits the use or employment of "any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise[.]" N.J.S.A. 56:8-2.

62. Other State Consumer Fraud Protection Statutes have materially and substantially similar provisions to N.J.S.A. 56:8-2.

63. All Defendants were under a duty to disclose all known material facts in connection with the Matrix box transactions, and to refrain from engaging in any unconscionable commercial practice, deception, fraud, false pretense, false promise or misrepresentation.

64. The Nortel Defendants, as owners, primary users and beneficiaries of the "Solutions by Nortel Networks" trademark and globemark logo, were also under a duty to ensure that their licensees did not use their mark in such manner as to deceive the public, and are liable for any fraudulent use of their mark by its licensees, including licensee NorVergence.

65. Defendants' actions as alleged herein are unfair and deceptive, and constitute misrepresentation and concealment, suppression and omission of material facts with the intent that Plaintiff and the Class would rely upon the misrepresentation, concealment, suppression and omission of such material facts, all in violation of the New Jersey Consumer Fraud Act and the Other State Consumer Fraud Protection Statutes.

66. Moreover, by misrepresenting, *inter alia*, the value of the Matrix box, and concealing known facts regarding the actual value of the Matrix boxes and the Nortel/NorVergence business plan, Defendants engaged in an unconscionable commercial practice as prohibited by the NJCFA.

67. As a result of Defendants' unlawful act or practice, Plaintiff has been injured in an amount to be proven at trial, and Defendants must be ordered to reimburse this amount to Plaintiff.

68. As required by N.J.S.A. Section 56:8-20, a copy of this Complaint is being mailed to the New Jersey Attorney General.

COUNT II

Negligent Misrepresentation

69. Plaintiff alleges and incorporates by reference each of the preceding paragraphs as if alleged in this paragraph.

70. All Defendants were under a duty to be truthful in their business dealings, and the Nortel Defendants were under a duty to ensure that their licensees do not use their mark in such manner as to deceive the public, but Defendants nonetheless made false statements of material fact to Plaintiff and the Class, including false statements regarding the value of the Matrix box, and omitted material information from Plaintiff regarding the Nortel/NorVergence business plan.

71. Defendants were careless or negligent in ascertaining the truth or falsity of statements made to Plaintiff and the Class and in omitting material information.

72. Defendants made the statements and omissions alleged above with the intent that Plaintiff and the Class rely upon them, and Plaintiff and the Class did rely on Defendants' statements and omissions in signing documents purporting to be Matrix box "leases."

73. Plaintiff and the Class have been damaged by the conduct alleged herein and are entitled the relief prayed for in this complaint.

COUNT III

Restitution, Disgorgement and Constructive Trust for Unjust Enrichment of Defendants

74. Plaintiff alleges and incorporates by reference each of the preceding paragraphs as if alleged in this paragraph.

75. Defendants have benefitted unjustly from profits earned by the "leasing" of Matrix boxes.

76. Defendants' financial benefits result from their unlawful and inequitable conduct and are traceable to Plaintiff's and the Class' overpayments for Matrix boxes and payments for telecommunications services that were not provided.

77. Plaintiff and the Class have conferred upon Defendants an economic benefit, in the nature of profits resulting from the leasing of Matrix boxes, to the economic detriment of Plaintiff and the Class.

78. The financial benefits derived by Defendants rightfully belong to Plaintiff and the Class, as Plaintiffs and the Class paid for services that were not provided, inuring to the benefit of Defendants.

79. It would be inequitable for Defendants to be permitted to retain any of the payments described above.

80. Defendants should be compelled to disgorge to Plaintiff and the Class all unlawful or inequitable proceeds received by them.

PRAYER FOR RELIEF

Plaintiff, individually and on behalf of all others similarly situated, prays for judgment and relief against Defendants as follows:

1. For compensatory damages in an amount to be proven at trial, multiplied where permitted by law;

2. For punitive damages in an amount to be determined at trial, where permitted by law;

3. For disgorgement and restitution in an amount to be proven at trial;

4. For interest at the legal rate of interest on the foregoing sum;

5. For attorneys' fees herein incurred;

6. For costs of suit herein incurred; and

7. For such other and further relief as the Court may deem proper.

Dated: March 24, 2005

Respectfully Submitted,

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