

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY, PENNSYLVANIA

CHERYL SHASTEEN, INDIVIDUALLY, §  
CAROLYN LIBERTY, INDIVIDUALLY; §  
THE ESTATE OF §  
MARYLOU SCHWARTZ; §  
THE ESTATE OF §  
JAMES WILLIAM SCHWARTZ §

Plaintiffs, §

v. §

ABC PHONES OF NORTH, INC. §  
CAROLINA, INC., D/B/A A WIRELESS §

Defendant §

CIVIL DIVISION

Case No: 10679-2016

**SECOND AMENDED COMPLAINT  
IN CIVIL ACTION**

Filed on behalf of:

Plaintiffs:

Cheryl Shasteen, Individually;  
Carolyn Liberty, Individually;  
The Estate of MaryLou Schwartz;  
The Estate of James William Schwartz

Counsel of record for Plaintiff:

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JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY, PENNSYLVANIA

CHERYL SHASTEEN, INDIVIDUALLY,	§	CIVIL DIVISION
CAROLYN LIBERTY, INDIVIDUALLY;	§	
THE ESTATE OF	§	
MARYLOU SCHWARTZ;	§	
THE ESTATE OF	§	
JAMES WILLIAM SCHWARTZ	§	
	§	
Plaintiffs,	§	
	§	Case No: 10679-2016
v.	§	
	§	
ABC PHONES OF NORTH	§	<b>SECOND AMENDED COMPLAINT</b>
CAROLINA, INC., D/B/A A WIRELESS	§	<b>IN CIVIL ACTION</b>
	§	
Defendant	§	

**NOTICE TO DEFEND**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take prompt action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed against you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

**IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

**BEAVER COUNTY BAR ASSOCIATION  
LAWYER REFERRAL SERVICE  
788 TURNPIKE ST.  
BEAVER, PENNSYLVANIA 15009  
TELEPHONE: (724) 728- 4888**

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY, PENNSYLVANIA

CHERYL SHASTEEN, INDIVIDUALLY,	§	CIVIL DIVISION
CAROLYN LIBERTY, INDIVIDUALLY;	§	
THE ESTATE OF	§	
MARYLOU SCHWARTZ;	§	
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Plaintiffs,	§	
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ABC PHONES OF NORTH, INC.	§	<b>SECOND AMENDED COMPLAINT</b>
CAROLINA, INC., D/B/A A WIRELESS	§	<b>IN CIVIL ACTION</b>
	§	
Defendant	§	

**COMPLAINT IN CIVIL ACTION**

AND NOW, come the Plaintiffs, Cheryl Shasteen, Individually, Carolyn Liberty, Individually, the Estate of MaryLou Schwartz and the Estate of James William Schwartz, and through their attorney of record, Robert M. Davant, III, Esquire of the Law Firm of Davant & Associates, and submits this Complaint against Defendant, ABC Phiones of North Carolina, Inc. d/b/a A Wireless, and in support thereof avers the following:

**PARTIES**

1. Plaintiff, Carolyn Liberty, Individually, is an adult individual, and a surviving biological daughter of Mary Lou Schwartz and James William Schwartz, residing at 120 Allen Street, Beaver Falls, Pennsylvania 15010.

2. Plaintiff, Cheryl Shasteen, Individually, is an adult individual, and a surviving biological daughter of Mary Lou Schwartz and James William Schwartz, residing at 173 Winterburn Road, Beaver Falls, Pennsylvania 15010.
3. The Estate of MaryLou Schwartz has been filed for probate in Beaver County, Pennsylvania, and remains pending (File No. 04-16-00292). MaryLou Schwartz died on March 8, 2016 in Beaver County.
4. James William Schwartz died intestate, and the Estate of James William Schwartz consists of, and seeks survival damages, by and through the Estate of MaryLou Schwartz. James William Schwartz died on February 20, 2016 in Beaver County.
5. Defendant, ABC PHONES OF NORTH CAROLINA, INC. D/B/A A WIRELESS is a Foreign For Profit Corporation incorporated in the State of North Carolina, headquartered in the State of Minnesota, with a principle address of 775 Prairie Center Drive, Suite 420, Eden Prairie, MN 55344. At all relevant time hereto, Defendant, ABC PHONES OF NORTH CAROLINA, INC. D/B/A A WIRELESS has been doing business within the Commonwealth of Pennsylvania.
6. Defendant, ABC PHONES OF NORTH CAROLINA, INC. D/B/A A WIRELESS has a registered agent for service of process identified as RASI, 4054 Sawyer Rd., Sarasota, Florida 34233. Plaintiffs are requesting issuance of citation for service of process at this time.

## **JURISDICTION**

7. Defendant ABC PHONES OF NORTH CAROLINA, INC. D/B/A A WIRELESS does, and at all material times in this Complaint did, conduct business within the Commonwealth of Pennsylvania by and through a number of retail outlets engaged in the sale of wireless telephone service and equipment.
8. The amount in controversy exceeds the minimum jurisdictional requirements of this Honorable Court.

## **VENUE**

9. The injuries and damages caused to Plaintiffs, by and through the acts and omissions of Defendant, ABC PHONES OF NORTH CAROLINA, INC. D/B/A A WIRELESS occurred in whole or in part in Beaver County, Pennsylvania.
10. The transactions at issue, that are the subject matter of this lawsuit, occurred in whole or in part in Beaver County, Pennsylvania.

## **STATEMENT OF FACTS APPLICABLE TO ALL COUNTS**

11. On February 19, 2016, the Verizon cellular telephone service of MaryLou Schwartz, was compromised by, through, and with the assistance of Defendant, ABC Phones of North Carolina, Inc. d/b/a A Wireless, at a retail store owned and operated by said Defendant in Orlando, Florida. This retail store is located at 11325 University Blvd, Orlando

Florida. Despite the fact that at all relevant times MaryLou Schwartz account had a billing address located in the Commonwealth of Pennsylvania where Mr. and Mrs. Schwartz lived, ABC Phones of North Carolina d/b/a A Wireless facilitated fraud against her in Orlando, Florida. The fact that changes to her account were being made at a store in Florida, in and of itself, should have raised significant red flags requiring due diligence, and the implementation of fraud prevention measures. Various simple security measures would have prevented the fraud, which ultimately caused the death of James William Schwartz.

12. Additionally, it is our understanding that no date of birth was verified during the transaction at issue, which would indicate that Defendants failed to even confirm that any identification provided by third party identity thieves was connected to the account of MaryLou Schwartz. This demonstrates that even the most basic information was not verified against information and the account associated with MaryLou Schwartz. Instead, Defendants recklessly allowed the account to be compromised, which ultimately caused the death of James William Schwartz. While Plaintiffs have repeatedly requested that documentation regarding the transaction at issue, none has been provided to date. It should be noted that Plaintiffs have propounded pending extensive discovery to Defendant seeking the truth regarding Defendant's acts and omissions during the transaction at issue.

13. According to Verizon Wireless (the wireless service provider of MaryLou Schwartz), an unknown third party was allowed to purchase three new telephones (Apple i-Phone 6s) using cash as a down payment, and then charging the remainder of the purchase price to the Verizon Wireless account of MaryLou Schwartz. According to Verizon Wireless,

these telephones were personally delivered to said unidentified third party at the store in Orlando, Florida, owned and operated by Defendant, ABC Phones of North Carolina d/b/a A Wireless.

14. Defendant, ABC Phones of North Carolina d/b/a A Wireless was not the provider of cellular telephone service to MaryLou Schwartz. Rather, Defendant is a “Premium Authorized Dealer” for Verizon Wireless. In fact, ABC Phones of North Carolina d/b/a A Wireless is a separate distinct entity from Verizon Wireless. In repeated unrequited requests for documentation related to this transaction, Verizon was quick to note this separation of interests and responsibilities.

15. Unbeknownst to Mrs. Schwartz, her telephone service was then disconnected by, through and at the request of Defendant, ABC Phones of North Carolina d/b/a A Wireless. Prior to disabling her cellular telephone, Defendant, ABC Phones of North Carolina d/b/a A Wireless failed to advise her of any change in her service, failed to verify purchases and changes to the account with her, and negligently allowed a breach in security, leading up to these events.

16. On February 20, 2016, James William Schwartz suffered a heart attack while at home alone with his wife, MaryLou Schwartz. Significantly, Mrs. Schwartz was in the end stages of Endometrial Cancer, and was not physically mobile without assistance due to this debilitating disease. During this traumatic event, Mrs. Schwartz repeatedly attempted to utilize her Verizon Wireless cellular telephone to no avail; this included

multiple attempted calls to her relative, who was in training for the local volunteer fire department. Even though she had paid for this cellular service, she was unable to call anyone during this emergency. It should be noted that this telephone did not indicate or provide any warning as to whether or not emergency calls were available.

17. Despite her severely disabled and elderly condition, MaryLou Schwartz was finally able to retrieve her husband's cellular telephone using a mechanical arm. This monumental, determined and desperate endeavor to reach her husband's working telephone took Mrs. Schwartz approximately forty (40) minutes to achieve due to her condition. This vital delay in reaching emergency help proved to be fatal.

18. After finally being notified by MaryLou Schwartz, her Grandson, Michael (who called 911), and Daughter, Carolyn Liberty, arrived in approximately five (5) minutes. Upon arrival, they were forced to break down the door of the Schwartz home due to the debilitated medical condition of Mrs. Schwartz. Upon gaining entry, they performed CPR until paramedics arrived, approximately seven (7) minutes later. Their other Daughter, and Plaintiff herein, reached her Parent's home at approximately the same time as when paramedics arrived. Mr. Schwartz was then declared deceased. Sadly, MaryLou Schwartz also died seventeen days later, on March 8, 2016.

19. On April 14, 2016, the account of MaryLou Schwartz was a gain compromised and a tablet was also acquired.

20. The death of James William Schwartz was caused in whole or in part, as a direct result of the acts and omissions of Defendant, ABC Phones of North Carolina d/b/a A Wireless, a company with whom Plaintiff had no business relationship nor privity of contract.

21. As a direct and proximate result of Defendant ABC Phones of North Carolina d/b/a A Wireless's bad faith, fraud, negligence, gross negligence deceptive practices, and negligent security in failing the telephone of MaryLou Schwartz was disabled and disconnected without any authority, and without her permission, thereby causing the death of James William Schwartz.

22. Plaintiffs suffered severe and permanent damages as a direct result of the acts and omissions of Defendant, ABC Phones of North Carolina d/b/a A Wireless.

23. Despite repeated requests, Defendant, ABC Phones of North Carolina d/b/a A Wireless, and Verizon Wireless have failed to provide any documentation or evidence to Plaintiffs related to the transactions at issue.

### **COUNT I**

### **NEGLIGENCE**

24. The foregoing paragraphs are incorporated herein by reference as though fully set forth below, at length.

25. Defendant assumed multiple duties when in deciding, unilaterally, and without even basic consents or safeguards to make fraudulent changes to the account of MaryLou Schwartz.
26. By doing so Defendant assumed responsibility for preventing fraud, and owed Plaintiffs a fiduciary duty.
27. Defendant owed Plaintiff a duty to employ a rigorous process to identify and address threats and vulnerabilities to their system before making changes to the account of MaryLou Schwartz.
28. Defendant had a duty to insure that Network controls were in place to prevent fraudulent transactions, especially under the facts of this case where what transpired was a known fraudulent scheme.. These include firewalls, perimeter alarms, automatic logging, encryption (storage and transmission), user verification, password management, access controls, and patch maintenance procedures (applications and operating system). These controls should be tested periodically and log reports reviewed to identify anomalies.
29. Defendant had a duty to implement human controls before making unauthorized changes to the account of MaryLou Schwartz. Verification of information through such basic review of such things as date of birth, account address, multiple forms of identification, geographic location, cash transactions, and other red flags for fraud were apparently blindly and recklessly ignored by the Defendant in this case.
30. By recklessly ignoring social engineering fraud prevention practices Defendant breached its duty owed to MaryLou Schwartz while making unauthorized changes to her account.
31. Defendant had a duty to exercise ordinary and reasonable care before making, authorizing or facilitating changes made to the Verizon Wireless account of MaryLou Schwartz.

32. Defendant had a duty to exercise ordinary and reasonable care to verify the identity of MaryLou Schwartz, before making changes to the account of Mary Lou Schwartz.
33. Defendant has a duty to exercise ordinary and reasonable care before making changes to an out of state account, involving a cash transaction, to verify that such changes were not the product of fraud.
34. Defendant had a duty to exercise ordinary and reasonable care to get authorization from MaryLou Schwartz, before making changes to her Verizon Wireless account.
35. Defendant failed to exercise ordinary and reasonable care before making, authorizing or facilitating changes made to the Verizon Wireless account of MaryLou Schwartz.
36. Defendant failed to exercise ordinary and reasonable care to verify the identity of MaryLou Schwartz, before making changes to the account of Mary Lou Schwartz.
37. Defendant failed to exercise ordinary and reasonable care before making changes to an out of state account, involving a cash transaction, to verify that such changes were not the product of fraud.
38. Defendant failed to exercise ordinary and reasonable care to get authorization from MaryLou Schwartz, before making changes to her Verizon Wireless account.
39. Defendant owed Plaintiffs duties to protect and safeguard confidential information and to protect customers' information, including with regard to the account of MaryLou Schwartz. Defendant's breach of these duties, and proximately caused significant harm to all Plaintiffs.
40. Defendant violated the Breach of Personal Information Notification Act (the "Act"), went into effect on June 20, 2006, and is codified at 73 P.S. §§ 2301, et seq., and as such is negligent per se.

41. Defendant failed to notify Plaintiffs regarding the fraud on the account at issue as required by law.
42. Defendant, ABC Phones of North Carolina d/b/a A Wireless. Is vicariously liable for the negligent acts and omissions of its agents, ostensible agents, servants, and/or employees, as described herein.
43. Plaintiffs suffered severe and permanent damages as a direct result of the acts and omissions of Defendant, ABC Phones of North Carolina d/b/a A Wireless.

WHEREFORE, Plaintiffs demand judgment in their favor and against Defendant, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL IS DEMANDED

## COUNT II

### GROSS NEGLIGENCE

44. The foregoing paragraphs are incorporated herein by reference as though fully set forth below, at length.
45. Defendant had a duty to exercise ordinary and reasonable care before making, authorizing or facilitating changes made to the Verizon Wireless account of MaryLou Schwartz.
46. Defendant had a duty to exercise ordinary and reasonable care to verify the identity of MaryLou Schwartz, before making changes to the account of Mary Lou Schwartz.

47. Defendant has a duty to exercise ordinary and reasonable care before making changes to an out of state account, involving a cash transaction, to verify that such changes were not the product of fraud.
48. Defendant had a duty to exercise ordinary and reasonable care to get authorization from MaryLou Schwartz, before making changes to her Verizon Wireless account.
49. Defendant failed to exercise ordinary and reasonable care before making, authorizing or facilitating changes made to the Verizon Wireless account of MaryLou Schwartz.
50. Defendant failed to exercise ordinary and reasonable care to verify the identity of MaryLou Schwartz, before making changes to the account of Mary Lou Schwartz.
51. Defendant failed to exercise ordinary and reasonable care before making changes to an out of state account, involving a cash transaction, to verify that such changes were not the product of fraud.
52. Defendant failed to exercise ordinary and reasonable care to get authorization from MaryLou Schwartz, before making changes to her Verizon Wireless account.
53. Defendant violated the Breach of Personal Information Notification Act (the "Act"), 73 P.S. §§ 2301, et seq., and as such is negligent per se.
54. Defendant failed to notify Plaintiffs regarding the fraud on the account at issue as required by law.
55. Plaintiffs suffered severe and permanent damages as a direct result of the acts and omissions of Defendant, ABC Phones of North Carolina d/b/a A Wireless.
56. Defendant, ABC Phones of North Carolina d/b/a A Wireless knew or should have known that the changes, which they facilitated, were the product of fraud.

57. Defendant, ABC Phones of North Carolina d/b/a A Wireless intentionally, carelessly, and recklessly chose to ignore an obvious scheme to defraud MaryLou Schwartz.
58. Defendant, ABC Phones of North Carolina d/b/a A Wireless chose to ignore normal standards of behavior, which Defendant knew or should have known would cause injury.
59. Defendant, ABC Phones of North Carolina d/b/a A Wireless recklessly ignored the rights of MaryLou Schwartz, causing her, and others, severe and permanent damages.
60. Plaintiffs suffered severe and permanent damages as a direct result of the acts and omissions of Defendant, ABC Phones of North Carolina d/b/a A Wireless.
61. Defendant, ABC Phones of North Carolina d/b/a A Wireless. Is vicariously liable for the reckless and negligent acts and omissions of its agents, ostensible agents, servants, and/or employees, as described herein.
62. Plaintiffs hereby seek an award of punitive damages for the intentional, careless and or reckless behavior of Defendant, ABC Phones of North Carolina d/b/a A Wireless.

WHEREFORE, Plaintiffs demand judgment in their favor and against Defendant, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

**JURY TRIAL IS DEMANDED**

### COUNT III

#### NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

63. The foregoing paragraphs are incorporated herein by reference as though fully set forth below, at length.
64. Defendant owed a duty to exercise ordinary and reasonable care.
65. Defendant failed to exercise ordinary and reasonable care.
66. Plaintiff, MaryLou Schwartz was located at the scene where the incident took place.
67. Plaintiff Cheryl Shasteen and Carolyn Liberty were located close to the scene at the time of the incident and arrived at the scene just after the death of James William Schwartz.
68. Severe emotional distress was caused to MaryLou Schwartz (whose claims are brought herein through her Estate), as well as to Plaintiffs Cheryl Shasteen and Carolyn Liberty from the contemporaneous and sensory observation of the incident and accident at issue.
69. MaryLou Schwartz (whose claims are brought herein through her Estate), as well as to Plaintiffs Cheryl Shasteen and Carolyn Liberty were closely related to James William Schwartz.
70. MaryLou Schwartz (whose claims are brought herein through her Estate), as well as to Plaintiffs Cheryl Shasteen and Carolyn Liberty suffered physical manifestation of emotional distress.
71. MaryLou Schwartz suffered severe emotional distress and related physical trauma, compounding her frail medical condition, including severe depression and anxiety, intense headaches, uncontrollable shaking, involuntary hyperventilation, shortness of breath, frequent nightmares, inability to control bowels, upset stomach, and intense

tightening of the muscles of the neck, back, and chest, and body, which produce severe pain lasting the final seventeen (17) days of her life.

72. Plaintiff Cheryl Shasteen suffered severe emotional distress and related physical trauma,, including severe depression and anxiety, intense headaches, uncontrollable shaking (during the week following her Father's passing), involuntary hyperventilation (during the week following her Father's passing),, shortness of breath, severe continuing insomnia, upset stomach, and intense tightening of the muscles of the neck, back, and chest, and body, which produce severe physical and emotional pain lasting for days at a time, and which continue to this day.

73. Plaintiff Carolyn Liberty suffered severe emotional distress and related physical trauma,, including severe depression and anxiety, intense headaches, uncontrollable shaking, involuntary hyperventilation, shortness of breath, frequent nightmares, upset stomach, and intense tightening of the muscles of the neck, back, and chest, and body, which produce severe pain lasting for days at a time, and which continue to this day. Plaintiff Carolyn Liberty has sought, and continues to receive psychological treatment as a direct result of the incident and accident that are the subject matter of this lawsuit.

74. Defendant, ABC Phones of North Carolina d/b/a A Wireless. Is vicariously liable for the negligent acts and omissions of its agents, ostensible agents, servants, and/or employees, as described herein.

75. Plaintiffs suffered severe and permanent damages as a direct result of the acts and omissions of Defendant, ABC Phones of North Carolina d/b/a A Wireless.

WHEREFORE, Plaintiffs demand judgment in their favor and against Defendant, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL IS DEMANDED

**COUNT IV**

**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

76. The foregoing paragraphs are incorporated herein by reference as though fully set forth below, at length.

77. The Defendant's conduct was extreme and outrageous.

78. The Defendant knew or should have known that the transaction at issue was the product of fraud yet it allowed it to happen in reckless disregard of Plaintiffs' rights.

79. The Defendant's conduct was intentional and or reckless.

80. The Defendants conduct caused Plaintiffs to suffer emotional distress.

81. The emotional distress suffered by Plaintiffs was severe.

82. Defendant, ABC Phones of North Carolina d/b/a A Wireless. Is vicariously liable for the intentional and negligent acts and omissions of its agents, ostensible agents, servants, and/or employees, as described herein.

83. Plaintiffs suffered severe and permanent damages as a direct result of the acts and omissions of Defendant, ABC Phones of North Carolina d/b/a A Wireless.

WHEREFORE, Plaintiffs demand judgment in their favor and against Defendant, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL IS DEMANDED

### COUNT V

#### VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW (PA. UTPCPL)

84. The Defendant violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. 201, et seq. (hereinafter referred to “UTPCPL”).
85. Defendant engaged in unfair and deceptive business practices in violation of 73 P.S. 201-9.2.
86. Defendant violated the Breach of Personal Information Notification Act (the “Act”), 73 P.S. §§ 2301, et seq., and as such is liable to Plaintiffs under the Pa. UTPCPL.
87. Defendant allowed, supported and facilitated obvious fraud and engaged in same in efforts to profit from such fraud by and through what is known as a “cramming” scheme whereby Plaintiffs bill would contain a small monthly charge which is incorporated in the monthly bill of the consumer, which is not reasonably or readily recognizable without scrutiny of same.
88. Plaintiffs suffered an ascertainable loss, as a result of the use or employment by Defendant of a method, act or practice declared unlawful by the UTPCPL.
89. Plaintiff was damaged by Defendant’s bad faith violations of UTPCPL.

90. Defendant, ABC Phones of North Carolina d/b/a A Wireless. Is vicariously liable for the deceptive trade practices and negligent acts and omissions of its agents, ostensible agents, servants, and/or employees, as described herein.

91. Plaintiff seeks an award up to three times the actual damages sustained, and any such other or further additional relief as the Court or a jury deems necessary or proper.

WHEREFORE, Plaintiff demands judgment in their favor and against Defendant, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL IS DEMANDED

## **COUNT VI**

### **FRAUD**

92. The foregoing paragraphs are incorporated herein by reference as though fully set forth below, at length.

93. The Defendant fraudulently concealed and interfered with the quality, coverage, wireless service and other aspects of the wireless telephone service at issue in this lawsuit.

94. The Plaintiff detrimentally relied upon Defendant to properly verify any changes made to the wireless account of MaryLou Schwartz before making any such changes to her account.

95. The Defendant made material fraudulent misrepresentations with regard to authority, and verification of same, to make changes to the wireless account of MaryLou Schwartz with the intent of misleading MaryLou Schwartz to rely upon same.

96. Defendant allowed, supported and facilitated obvious fraud and engaged in same in

efforts to profit from such fraud by and through what is known as a “cramming” scheme whereby Plaintiffs bill would contain a small monthly charge which is incorporated in the monthly bill of the consumer, which is not reasonably or readily recognizable without close scrutiny of same.

97. Defendant intentionally allowed, supported and facilitated fraud with knowledge that the transactions at issue occurred at Defendants store located in Orlando Florida, with a cash down payment, when MaryLou Schwartz had a residence and billing address located in Beaver County, Pennsylvania.

98. Defendant intentionally allowed, supported and facilitated a fraudulent scheme, which it had actual and or constructive knowledge of.

99. MaryLou Schwartz justifiably relied upon material misrepresentations of authority and verification by the Defendant to her detriment.

100. Defendant, ABC Phones of North Carolina d/b/a A Wireless. Is vicariously liable for the fraudulent and negligent acts and omissions of its agents, ostensible agents, servants, and/or employees, as described herein.

101. Plaintiffs were proximately caused damages as a direct result of her detrimental reliance upon Defendant’s material misrepresentations of authority and verification to act on behalf of MaryLou Schwartz to act on her behalf.

WHEREFORE, Plaintiff demands judgment in their favor and against Defendant, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

**JURY TRIAL IS DEMANDED**

**COUNT VII**  
**WRONGFUL DEATH**

102. The foregoing paragraphs are incorporated herein by reference as though fully set forth below, at length.
103. Plaintiffs bring this Wrongful Death Action pursuant to the Pennsylvania Wrongful Death Act, Pa. C.S.A. 8301 and Pa.R.C.P.  $\beta$  2202(a).
104. Defendant's acts and omissions proximately caused the death of James William Schwartz.
105. As a direct and proximate result of the conduct, acts and omissions of Defendant, ABC Phones of North Carolina d/b/a A Wireless, as described herein, the Wrongful Death Beneficiaries, and the surviving daughters of James William Schwartz suffered, and continue to suffer.
106. Defendant, ABC Phones of North Carolina d/b/a A Wireless. Is liable for the within described injuries and damages, and the following:
- a. Funeral expenses for the Decedent, James William Schwartz;
  - b. Expenses related to Administration related to Decedent James William Schwartz's estate by and through the Estate of MaryLou Schwartz;
  - c. Expenses related thereto;
  - d. Loss of Support;
  - e. Loss of Friendship and Companionship;

107. Defendant, ABC Phones of North Carolina d/b/a A Wireless. Is vicariously liable for the negligent acts and omissions of its agents, ostensible agents, servants, and/or employees, as described herein.

108. Plaintiffs were proximately caused damages as a direct result of her detrimental reliance upon Defendant's material misrepresentations of authority and verification to act on behalf of MaryLou Schwartz to act on her behalf.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendant, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL IS DEMANDED

**COUNT VIII**

**SURVIVAL ACTION**

109. The foregoing paragraphs are incorporated herein by reference as though fully set forth below, at length.

110. Plaintiffs bring this Survival Action under 20 Pa.C.S.A. § 3373 and 42 Pa. C.S.A. § 8307.

111. Defendant, ABC Phones of North Carolina d/b/a A Wireless was negligent and acted in a fraudulent manner in the following particulars:

- a. Defendant acted with reckless disregard for the rights of Plaintiff;

- b. Defendant failed to exercise ordinary and reasonable care to verify the identity of MaryLou Schwartz, before making changes to the account of Mary Lou Schwartz.
  - c. Defendant failed to exercise ordinary and reasonable care before making changes to an out of state account, involving a cash transaction, to verify that such changes were not the product of fraud.
  - d. Defendant failed to exercise ordinary and reasonable care to get authorization and or verification from MaryLou Schwartz, before making changes to her Verizon Wireless account.
  - e. Defendant intentionally allowed, supported and facilitated fraud with knowledge that the transactions at issue occurred at Defendants store located in Orlando Florida, with a cash down payment, when MaryLou Schwartz had a residence and billing address located in Beaver County, Pennsylvania.
  - f. Defendant allowed, supported and facilitated obvious fraud and engaged in same in efforts to profit from such fraud by and through what is known as a “cramming” scheme whereby Plaintiffs bill would contain a small monthly charge which is incorporated in the monthly bill of the consumer, which is not reasonably or readily recognizable without close scrutiny of same.
  - g. Defendant intentionally allowed, supported and facilitated a fraudulent scheme, which it had actual and or constructive knowledge of.
112. Defendant, ABC Phones of North Carolina d/b/a A Wireless. Is vicariously liable for the negligent acts and omissions of its agents, ostensible agents, servants, and/or employees, as described herein.

113. Plaintiffs were proximately caused damages as a direct result of her detrimental reliance upon Defendant's material misrepresentations of authority and verification to act on behalf of MaryLou Schwartz to act on her behalf.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendant, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL IS DEMANDED

### **COUNT III**

#### **CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY**

114. The foregoing paragraphs are incorporated herein by reference as though fully set forth below, at length.

115. Plaintiffs and Defendants shared a relationship whereby:

- a. Plaintiffs reposed trust and confidence in the Defendants to prevent fraud by and through its system and the Verizon system (with who Plaintiffs' Decedent subscribed), and
- b. Defendants undertook such trust and assumed a duty to advise, counsel and/ or protect the Plaintiffs' interests and properties from fraud in making changes to the account at issue.

116. The Defendant breached their duty to act in the best interest of Plaintiff, and to take basic steps to prevent fraud tyo the account of MaryLou Schwartz.

117. The Plaintiffs suffered damages, including the death of James William Schwartz as a proximate foreseeable result.
118. A relationship of confidence and trust existed between the Plaintiffs and Defendant (as an Authorized Premium Dealer of Verizon Wireless) whereby Defendants had a duty to Plaintiffs to place Plaintiffs' interest in fraud prevention ahead of their own individual interests.
119. The Defendants failed to exercise reasonable care with regard to Plaintiffs, which the Defendants either knew or should have known would result in damage to the Plaintiffs.
120. The Defendants' failure to act solely for the Plaintiffs' benefit was a real factor in bringing about, and proximately causing Plaintiffs' damages.
121. Defendants failed to act in good faith and solely for the benefit of Plaintiffs in all matters for which they were responsible.
122. Defendants have repeatedly refused to provide documentation, and failed to provide notice of fraud as required by law.
123. The Defendants had fiduciary duties and obligations to Plaintiffs.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendant, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

**JURY TRIAL IS DEMANDED**

## **DEMAND FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Plaintiff seeks an amount in excess of the minimum jurisdictional limits of this Court, and respectfully prays for judgment against Defendant and seeks the following:

- a. Treble Damages
- b. Actual Damages;
- c. Consequential Damages;
- d. Past Damages;
- e. Future Damages;
- f. Economic Loss;
- g. Compensatory Damages;
- h. Pre and Post Judgment interest,
- i. Delay Damages,
- j. Pain and Suffering and Mental Anguish Damages,
- k. Punitive Damages;
- l. Attorney's Fees;
- m. Costs of Suit;
- n. All Other Relief to which they may be justly entitled.

Respectfully submitted,

By: \_\_\_\_\_  
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Telephone: (412) 519- 2274  
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PA I.D. #310250

**VERIFICATION**

I verify that the averments contained in the foregoing SECOND AMENDED COMPLAINT IN CIVIL ACTION are true and correct to the best of my knowledge, information and belief. I understand that said averments are made subject to the penalties of 18 Pa. C. S. § 4904 relating to unsworn falsification to authorities.

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Cheryl Shasteen, Plaintiff

I verify that the averments contained in the foregoing SECOND AMENDED COMPLAINT IN CIVIL ACTION are true and correct to the best of my knowledge, information and belief. I understand that said averments are made subject to the penalties of 18 Pa. C. S. § 4904 relating to unsworn falsification to authorities.

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Carolyn Liberty, Plaintiff