

PARTIES

2. Plaintiff Telecom Cable LLC (“Telecom”) is a limited liability company organized under the laws of Texas. It is owned by a single member, Anthony Luna. At the time of the events stated herein, its principal place of business was in Cypress, Harris County, Texas.

3. Plaintiff Anthony Luna (“Mr. Luna”) is currently an individual resident of New York state, but at the time of the events described herein, he was a resident of Harris County, Texas.

4. Plaintiff Michelle Luna (“Mrs. Luna”) is currently an individual resident of New York state, but at the time of the events described herein, she was a resident of Harris County, Texas.

5. Defendant Comcast Cable Communications Management, LLC (“Comcast”) is a Delaware limited liability company with its principal place of business in Philadelphia, Pennsylvania. At all times material to this action, it has done business in Texas. Upon information and belief, its principal office in this state is in Harris County, Texas. It may be served through its registered agent for service of process, C T Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

6. Defendant Aspen Utility Company, LLC (“Aspen”) is a Texas limited liability company. Upon information and belief, its principal place of business is in Katy, Harris County, Texas. It may be served through its registered agent for service of process, National Registered Agents, Inc., 1999 Bryan St., Suite 900, Dallas, Texas 75201, or by serving its principal, Steven Pope, 3401 Bacor Road, Katy, Texas 77084.

7. Defendant A&A Cable Contractors, Inc. (“A&A”) is a Texas corporation with its principal place of business in Houston, Harris County, Texas. It may be served through its registered agent for service of process, Andres Cruz, 12506 Ann Lane, Houston, Texas 77064.

AGENCY AND RESPONDEAT SUPERIOR

8. Whenever it is alleged in this petition that Comcast, Aspen or A&A or their agents committed any act, omission or thing, it is meant that each of these Defendants or their agents,

adjusters, claims managers, section managers, officers, servants, employees, or representatives committed such act, omission or thing. Specifically, Aspen and A&A acted as the agents of Comcast, and A&A may also have acted as agent of Aspen and subagent of Comcast. Even though Aspen and A&A are also independently liable, they were hired by Comcast, acted as Comcast's agents on Comcast's authority, their actions were done on behalf of Comcast and for Comcast's benefit, and Comcast is equally liable for those actions.

9. Such acts, omissions or things were also done with the full authorization or ratification of these Defendants, or done in the normal routine, course, and scope of the agency or employment of each of their agents, adjusters, claims managers, section managers, officers, servants, employees or representatives.

10. These Defendants, each individually and collectively, are therefore each legally responsible and liable for their own acts and omissions as well as those of one another. They are jointly and severally liable.

CONDITIONS PRECEDENT

11. All conditions precedent to Plaintiffs' right to recover and to Defendants' liability have occurred and/or have been performed.

JURISDICTION AND VENUE

12. Jurisdiction is proper in this Court, because the amount of damages sought is within the jurisdictional limits of this Court.

13. Venue is proper in Harris County because Defendant A&A's principal office in this state is in Harris County. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 15.002. Accordingly, venue is proper as to all Defendants. TEX. CIV. PRAC. & REM. CODE ANN. § 15.005. Moreover, on information and belief, Comcast and Aspen likewise both have their principal office in this state in Harris County, and thus venue is proper for that reason also. TEX. CIV. PRAC. & REM. CODE ANN.

§§ 15.002, 15.005. In addition, venue is further proper because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in Harris County, Texas. TEX. CIV. PRAC. & REM. CODE ANN. § 15.002.

FACTUAL BACKGROUND

14. Plaintiffs incorporate the foregoing paragraphs by reference verbatim, as if fully set forth herein.

15. For over eight years starting May 21, 2007, Telecom, a single-member LLC owned entirely by Mr. Luna, provided high-quality cable television and Internet services in Weston Lakes, Fort Bend County, Texas, and Corrigan, Polk County, Texas. As of June 15, 2015, Telecom and Luna had 229 satisfied customers in Weston Lakes and Corrigan. But on June 15, 2015, Comcast started to destroy Telecom's cables, which within six weeks destroyed Telecom's business.

16. However, this was not the first contact that Telecom had with Comcast. Starting in summer 2013, Comcast expressed interest in acquiring Telecom's Weston Lakes operations. Comcast even sent three representatives from Denver to meet with Mr. Luna at the beginning of August 2013, and discussions continued into early 2014. Ultimately, Comcast was not willing to pay what Telecom's operations were worth, and the negotiations ended. Little did Telecom know that Comcast would adopt another method of taking control of its business.

17. Specifically, on June 15, 2015, Comcast, together with its affiliates and/or contractors Aspen and A&A, began destroying Telecom's infrastructure, upon information and belief under the guise of placing its cables and/or other equipment in utility easements owned by Telecom's customers. Defendants' conduct was a continuing tort in that it was a series of wrongful acts inflicted over several weeks. Telecom did not oppose Comcast's entry into Weston Lakes. In fact, when it learned that Comcast would be placing its equipment in the same easements as Telecom's equipment, Telecom made special efforts to mark its lines and equipment to prevent any inadvertent damage. Using an RF

modulated transmitter and inductive connection to the cable, Mr. Luna located Telecom's underground lines and marked the lines with industry standard orange paint, as well as "buried cable flags" for prompt and easy identification. Mr. Luna also mailed a map of Telecom's system to the Director of Construction at Comcast's Tidwell office. In fact, Comcast already had a map of Telecom's system; it had received one during the 2013 negotiations and had never returned it.

18. When Mr. Luna was first notified of service outages, he rushed to the job site, and found his severed mainline cable. He had difficulty communicating with the work crew because they did not speak English, but eventually a foreman from A&A appeared at the job site. The foreman acknowledged that Telecom's cables had been marked – freshly marked, in fact – but the crew had inexplicably ignored the markings, purportedly because they assumed that the fresh orange paint marked an "abandoned" cable plant. Mr. Luna repaired Telecom's mainline cable, and A&A's representative instructed Mr. Luna to contact Comcast, but provided no contact information, leaving Mr. Luna to try his luck with a generic "customer service" line.

19. Mr. Luna made several attempts to reach a responsible party at Aspen and Comcast, but those attempts were futile, and during the time Mr. Luna spent calling, the contractors had cut three additional cable lines. Defendants paid no notice to Telecom's markings and continued to destroy Telecom's lines, and Telecom's complaints fell on deaf ears. One would like to believe that the destruction was accidental, but the comprehensiveness of it – coupled with Comcast's prior interest in Telecom -- renders such a conclusion doubtful. Within six weeks, Defendants destroyed or damaged the lines servicing every single Telecom customer in Weston Lakes, and not one of those lines was ever repaired by Defendants.

20. Telecom attempted to keep up with this campaign of destruction and used over 4000 feet of cable repairing what Defendants had destroyed, but there was no way to obtain replacement

cable and re-install its entire system in time to keep its customer base. As Comcast well knows, cable television and Internet customers will not wait indefinitely for resumption of their service. Predictably, Telecom's customers deserted it. By August 1, 2015, Telecom had no customers in Weston Lakes. Upon information and belief, Comcast has now taken over the vast majority of Telecom's former customers in Weston Lakes.

21. Defendants' callous disregard – or intentional targeting – of Telecom's rights had far-reaching effects. Mr. Luna had intended to operate Telecom until he reached retirement age. Instead, faced with the rapid decimation of his business, Mr. Luna and his family were forced into a series of hurried, life-changing decisions. As the primary breadwinner for the family, Mr. Luna was forced to take a job far from Fort Bend County, Texas, and was thus unable to service his remaining customers in Polk County, Texas. Telecom died.

22. Mr. Luna accepted the best-paying job he could find – which paid substantially less than he earned through Telecom – and relocated his wife and three school-age children to upstate New York. Mrs. Luna was forced to resign her teaching position, at which she had been named Semi-Finalist as Texas Educator of the Year by the HEB Teacher Foundation, an award given annually to one outstanding and industry-recognized of the 324,000 Public School Professionals for their dedication and commitment to excellence. In New York, for a full school year, Mrs. Luna could only substitute teach – at a fraction of her Texas teacher's salary – due to the length of the application and certification process in New York. Then, she was provided only a one-year teaching certificate rather than the job security she possessed in Texas. The Luna children were forced to leave their friends, their schools and their extracurricular activities. In short, the actions of Defendants completely turned the Luna family's world upside down.

23. The rapid and wrongful destruction of Telecom had clearly foreseeable consequences,

and what befell the Luna family is the real tragedy in this story. Through no fault of their own, they were forced to say goodbye to the life they knew, uproot their three children, take lesser-paying jobs (and make ends meet in a place with a much higher cost of living), move 1500 miles, and cram into a 900 sq.ft. rental home while they sold their 4500 sq.ft. home back in Texas. Along with that hurried move came additional undesired consequences: because they were unable to secure their Texas home from New York, air conditioner compressors were stolen, and the Lunas were forced to sell their home and its furnishings under duress at a discount. They were also forced to sell their vehicles and purchase all-wheel-drive vehicles that could navigate upstate New York winters. They suffered mental anguish and loss of enjoyment of life.

24. Upon information and belief, Defendants' actions were conducted with malice, as that term is defined under Texas law.

25. For these reasons, and as set forth more specifically herein, the Plaintiffs bring suit against the Defendants.

CAUSES OF ACTION

NEGLIGENCE/GROSS NEGLIGENCE

26. Plaintiffs incorporate the foregoing paragraphs by reference verbatim, as if fully set forth herein.

27. At best, Defendants' actions constitute negligence. Defendants owed legal duties to Telecom and to the Luna family, including the general duty to exercise reasonable care to avoid a foreseeable risk of injury. Defendants breached those duties, and proximately caused Plaintiffs' actual damages.

28. In fact, Defendants' conduct constituted gross negligence, in that the conduct involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiffs. Furthermore, Defendants had actual, subjective awareness of the risk but proceeded with conscious

indifference to the rights, safety and welfare of Plaintiffs.

NEGLIGENT HIRING/NEGLIGENT ENTRUSTMENT

29. Plaintiffs incorporate the foregoing paragraphs by reference verbatim, as if fully set forth herein.

30. Comcast owed Plaintiffs the legal duty to hire, supervise and train competent employees and/or contractors. Comcast retained the services of Aspen and A&A, but then turned them loose on Telecom's facilities without proper supervision and training. Comcast thereby breached its duties, and those breaches proximately caused Plaintiffs' actual damages.

TORTIOUS INTERFERENCE WITH CONTRACT

31. Plaintiffs incorporate the foregoing paragraphs by reference verbatim, as if fully set forth herein.

32. Telecom possessed valid contracts with its customers. Defendants willfully and intentionally interfered with these contracts by cutting Telecom's lines and interrupting service to Telecom's customers. Defendants had actual knowledge of Telecom's contractual relations based on the negotiations between Comcast and Telecom in 2013. Defendants also had knowledge of facts and circumstances that would lead a reasonable person to believe that there was a contract in which Telecom had an interest. Telecom marked its lines, Defendants were able to observe the lines when it cut them, and Telecom complained (fruitlessly) about the lines that were cut.

33. Upon information and belief, even the initial acts of cutting Telecom's lines were intentional; Comcast desired to interfere with Telecom's ability to service its customers so that Comcast could ultimately take them for itself. However, even if the initial acts were not intentional, Defendants' pattern of continuing to cut Telecom's lines after being notified, and their refusal to repair the damage they caused, indicates conduct that was clearly willful and intentional.

34. Defendants intentionally interfered with Telecom's contracts, by preventing performance and/or by making the performance impossible or more burdensome or difficult. Defendants' interference proximately caused Plaintiffs' actual damages.

AIDING AND ABETTING

35. Plaintiffs incorporate the foregoing paragraphs by reference verbatim, as if fully set forth herein.

36. Aspen and/or A&A tortiously cut Telecom's lines and damaged Telecom's property. Comcast knew that Aspen and/or A&A's conduct in cutting the lines constituted a tort. Upon information and belief, Comcast substantially assisted or substantially encouraged the tortious cutting of Telecom's lines. Comcast's assistance or encouragement was a substantial factor in causing the tort.

37. The actions of Aspen and/or A&A in cutting Telecom's lines accomplished a tortious result. Upon information and belief, Comcast provided substantial assistance to Aspen and/or A&A in accomplishing the tortious result, and Comcast's own conduct constituted a breach of duty to Telecom. Comcast's participation was a substantial factor in causing the tort.

38. For these reasons, Comcast is liable for aiding and abetting, and Plaintiffs bring suit and seek to recover any and all damages herein.

CIVIL CONSPIRACY

39. Plaintiffs incorporate the foregoing paragraphs by reference verbatim, as if fully set forth herein.

40. Upon information and belief, Defendants, individually and collectively, engaged in a civil conspiracy to damage Telecom, including a meeting of the minds to: (1) accomplish an unlawful purpose; and/or (2) accomplish a lawful purpose by unlawful means. Upon information and belief, Defendants, individually and collectively, sought to violate Texas law by destroying Telecom's

property and interfering with its contracts with its customers, and did, in fact, commit numerous unlawful, overt acts as part of their civil conspiracy, including, but not limited to, cutting Telecom's cable lines.

41. For this reason, Plaintiffs bring suit and seeks to recover any and all damages herein.

DAMAGES

42. Plaintiffs incorporate the foregoing paragraphs by reference verbatim, as if fully set forth herein.

43. As required by Rule 47(b), Texas Rules of Civil Procedure, Plaintiff pleads that the damages sought are within the jurisdictional limits of this Court.

44. Telecom seeks recovery for damages to its business. Under Texas law, Telecom is entitled to the market value of the business before it was destroyed. In this context, the Texas Supreme Court has authorized the "sale of assets" method as the appropriate measure of market value. Before it was destroyed, Telecom had two primary assets – its customers and its physical plant. The telecommunications industry commonly values subscribers on a per-subscriber basis, and as Comcast is well aware, there is an established market for cable customers. For example, in 2014, Comcast agreed to sell a large group of customers for slightly over \$5,214 per customer. At the time of its destruction, Telecom had 229 satisfied customers. Measured at a value of \$5,214 per customer, Telecom's customer base was an asset worth just over \$1,194,000.00. However, Plaintiffs note that a higher pre-customer value – thus a higher total value of the customer base -- may be appropriate.

45. Telecom's customers were not the only asset of the business. Telecom also owned its cable lines, pedestals, amplifiers, power supplies, and subscriber terminals – before it was destroyed, a functioning cable-system infrastructure. Telecom also owned the cable lines and associated transmission equipment in Corrigan, Polk County, Texas. These non-customer assets were worth at least \$625,000.00. To the extent that the value of Telecom's assets is determined not to be an

appropriate measure of its damages, Plaintiffs hereby plead all alternative measures of damages for harm to a business recognized by Texas law.

46. Over its years of operations, Telecom also had built up a reservoir of goodwill as a responsive, customer-friendly provider. Telecom's goodwill, though not quantified at this time, is compensable.

47. In addition, upon information and belief, Comcast has now taken over many if not most of Telecom's former customers. As an additional measure of damages, Telecom should be entitled to recover all profits that Comcast has realized from Telecom's former customers, under a remedial theory of unjust enrichment or constructive trust.

48. The Luna family suffered various harms due to the actions of Defendants. Mr. and Mrs. Luna lost income in that they had to move across the country and accept lower-paying jobs. They sold their house and furniture, under duress, and suffered at least a \$75,000 loss. They lost the value of the air-conditioner compressors stolen from the home that they could not adequately secure from 1500 miles away. They lost money when they had to sell their vehicles to acquire vehicles that could withstand New York winters. The unjust loss of their happy Texas life caused them substantial mental anguish and loss of enjoyment of life. All of these harms are compensable.

49. Including actual damages, non-economic damages, exemplary damages, mental anguish damages, and costs, Plaintiffs plead that they seek monetary relief over \$1,000,000. Accordingly, this matter is not subject to Rule 169 of the Texas Rules of Civil Procedure.

50. The amount of monetary relief actually awarded, however, will ultimately be determined by a jury.

EXEMPLARY DAMAGES

51. Plaintiffs incorporate the foregoing paragraphs by reference verbatim, as if fully set forth herein.

52. Defendants' conduct involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiffs, harm which has now been realized. Furthermore, Defendants had actual, subjective awareness of the risk but proceeded with conscious indifference to the rights, safety and welfare of Plaintiffs. There is clear and convincing evidence of gross negligence, and Plaintiffs' substantial harm resulted from Defendants' gross negligence. See TEX. CIV. PRAC. & REM. CODE § 41.003.

53. Defendants' conduct also constitutes malice. See TEX. CIV. PRAC. & REM. CODE § 41.003. There is clear and convincing evidence, including circumstantial evidence, of such malice. See *id.*; see, e.g., *Bennett v. Reynolds*, 242 S.W.3d 866, 885 (Tex. App.—Austin 2007), *rev'd on other grounds*, 315 S.W.3d 867 (Tex. 2010) (under Texas law, malice may be proven by circumstantial evidence). Plaintiffs' substantial harm resulted from Defendants' malice. See TEX. CIV. PRAC. & REM. CODE § 41.003.

54. Plaintiffs therefore seek and are entitled to an award of exemplary damages against all Defendants to the fullest extent of the law. If such damages are capped by statute, they will amount to a maximum of twice the amount of economic damages, plus up to \$750,000.00 of non-economic damages. TEX. CIV. PRAC. & REM. CODE § 41.008. If Defendants' conduct is determined to be exempt from the statutory cap, Plaintiffs will seek exemplary damages subject to no cap but solely in the discretion of the jury.

JURY DEMAND

55. Plaintiffs demand a trial by jury and hereby tender the appropriate fee to the clerk of the Court.

PRAYER FOR RELIEF

WHEREFORE PREMISES CONSIDERED, Plaintiffs pray that, upon final trial and hearing

hereof:

- a. Judgment be entered against the Defendants to recover actual economic damages, non-economic damages and mental anguish damages;
- b. Judgment be entered against Defendants for appropriate exemplary damages;
- c. Judgment be entered against Defendants for attorney's fees, costs and expenses incurred by Plaintiffs through all appeals;
- d. Pre-judgment and post-judgment interest be awarded to the Plaintiffs at the maximum rate permitted by law;
- e. Costs of suit be awarded to the Plaintiffs; and
- f. Any and all such other and further relief to which the Plaintiffs may be justly entitled.

Respectfully submitted,

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