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11
12 **UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 TRACFONE WIRELESS, INC.,
16 a Delaware Corporation,

CASE NO. 3:09-CV-05287-JCS

17 Plaintiff,

18 **[PROPOSED] FINAL JUDGMENT AND**
19 **PERMANENT INJUNCTION AGAINST**
20 **DEFENDANT NOOR TRADERS**

21 v.

22 NOOR TRADERS,

23 Defendant.

24
25 Plaintiff, TRACFONE WIRELESS, INC. ("TracFone"), brought the above-captioned
26 lawsuit against Defendant NOOR TRADERS ("Noor Traders" or "Defendant"), alleging that
27 Noor Traders is engaged in an unlawful enterprise involving the acquisition, sale and alteration
28 of large quantities of TracFone, NET 10, SafeLink and/or Straight Talk branded prepaid wireless
telephones ("TracFone Prepaid Phones" or "Phones") purchased from various retail outlets such
as Wal-Mart, Target and Sam's Club, the solicitation and payment of others to bulk purchase
TracFone Prepaid Phones for Noor Traders' benefit, and computer hacking and erasing or
otherwise disabling the prepaid software ("TracFone Prepaid Software") installed in the Phones
and essential for consumers to access TracFone's prepaid wireless network. This unlawful
business practice involves the unauthorized and/or unlawful purchase, resale and/or trafficking of
TracFone Prepaid Phones, the unauthorized and/or unlawful unlocking and/or reflashing of

1 TracFone Prepaid Phones and/or alteration, copying, and/or accessing of TracFone's
2 copyrighted and proprietary software computer code installed in the Phones, or reselling the
3 Phones to others who disable the software, and ultimately sell the altered Phones as new to
4 unsuspecting consumers under the TracFone, NET 10, SafeLink and/or Straight Talk trademarks
5 for unauthorized use outside of the TracFone prepaid wireless system for profit (the "Illicit Bulk
6 Resale Scheme").

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8 TracFoneNET10 Prepaid Phones are sold subject to terms and conditions ("Terms and
9 Conditions") which conspicuously restrict and limit the sale and use of TracFone Prepaid
10 Phones. These Terms and Conditions are set forth in printed inserts that are included in the
11 packaging with every TracFone Prepaid Phone, and are also available to the public on
12 TracFone's website. The Terms and Conditions are also referenced in printed warnings that are
13 placed on the outside of the retail packaging of the Phones. The Terms and Conditions and
14 language on the packaging constitute a valid binding contract between Noor Traders and
15 TracFone.
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18 Pursuant to the Terms and Conditions and the language on the packaging, purchasers of
19 TracFone Prepaid Phones agree: (a) to use the Phones only in conjunction with the TracFone or
20 NET10 prepaid wireless service; (b) not to tamper with or alter TracFone Prepaid Phones or the
21 Phones' software, enter unauthorized PIN numbers in the Phones, engage in any other
22 unauthorized or illegal use of the Phones or the TracFone, NET10, SafeLink and/or Straight
23 Talk service, or assist others in such acts; and (c) not to export any TracFone Prepaid Phones
24 outside of the TracFone, NET10, SafeLink and/or Straight Talk wireless system coverage area
25 ("Coverage Area"). In violation of the Terms and Conditions, Noor Traders has, among other
26 things, unlawfully exported TracFone Prepaid Phones to foreign countries outside of the
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1 Coverage area or knowingly facilitated others who have done so; facilitated others to use the
2 Phones without the TracFone, NET10, SafeLink and/or Straight Talk prepaid wireless service;
3 and altered TracFone Prepaid Phones and the Phones' software or facilitated others who have
4 done so.

5
6 As a result of Noor Traders' involvement in the Illicit Bulk Resale Scheme, TracFone
7 asserted claims against Noor Traders for Federal Trademark Infringement in violation of 15
8 U.S.C. §1114; Federal Unfair Competition in violation of 15 U.S.C. §1125(A); Contributory
9 Trademark Infringement; Federal Copyright Infringement of the Prepaid Software;
10 Circumvention of Copyrighted Software Protection System, Trafficking in Circumvention
11 Technology; Common Law Breach of Contract; Common Law Tortious Interference with a
12 Contractual Right; Conspiracy to Induce Breach of Contract; and Common Law Unjust
13 Enrichment.
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15 Accordingly, it is hereby,

16 **ORDERED, ADJUDGED and DECREED** that:

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18 1. This Court has jurisdiction over all the parties and all of the claims set forth in
19 TracFone's Complaint.

20 2. The Court finds that TracFone owns all right, title, and interest in and to United
21 States Trademark Registration No. 2,114,692, for "TracFone," issued on November 18, 1997
22 and based on a first use date of June 30, 1996; United States Trademark Registration No.
23 2,761,017, for "TracFone," issued on September 9, 2003 and based on a first use date of
24 December 2000; United States Trademark Registration No. 3,224,929, for "TracFone," issued
25 on April 3, 2007 and based on a first use date of December 31, 2005; United States Trademark
26 Registration No. 3,222,623, for "TracFone," issued on March 27, 2007 and based on a first use
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1 date of December 31, 2005; United States Trademark Registration No. 3,118,250, for “NET10,”
2 on July 18, 2006 and based on a first use date of March 1, 2005; United States Trademark
3 Registration No. 3,255,754, for “NET10,” issued on June 26, 2007 and based on a first use date
4 of December 31, 2005; United States Trademark Registration No. 3,253,506, for “NET10,”
5 issued on June 19, 2007 and based on a first use date of December 31, 2005; United States
6 Trademark Registration No. 3,251,389, for “NET10,” issued on June 12, 2007 and based on a
7 first use date of December 31, 2005; United States Trademark Registration No. 3,630,321 for
8 “SafeLink Wireless” and Design, issued on June 2, 2009 and based on a first use date of
9 September 12, 2008; the Straight Talk and Straight Talk and Design Marks (collectively the
10 “TracFone/NET10/SafeLink/Straight Talk Trademarks”).
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13 3. The TracFone/NET10/SafeLink/Straight Talk Trademarks are valid, distinctive,
14 protectable, famous, have acquired secondary meaning and are associated exclusively with
15 TracFone. The Court finds that the trademark registered under Registration No. 2,114,692 is
16 incontestable.
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18 4. The Court further finds that TracFone holds a valid and enforceable copyright
19 registration, TX 6-515-894, on the TracFone Prepaid Software.

20 5. The Court finds that Noor Traders’ involvement in the Illicit Bulk Resale Scheme
21 constitutes Federal Trademark Infringement in violation of 15 U.S.C. §1114; Federal Unfair
22 Competition in violation of 15 U.S.C. §1125(A); Contributory Trademark Infringement; Federal
23 Copyright Infringement of the Prepaid Software; Circumvention of Copyrighted Software
24 Protection System; Trafficking in Circumvention Technology; Common Law Breach of
25 Contract; Common Law Tortious Interference with a Contractual Right; Conspiracy to Induce
26 Breach of Contract; and Common Law Unjust Enrichment.
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1 6. The Court finds that the Terms and Conditions constitute a valid binding contract
2 enforceable against Noor Traders. The Court finds that (a) facilitating others to use TracFone
3 Prepaid Phones in conjunction with service providers other than TracFone, (b) tampering with
4 or altering TracFone Prepaid Phones or the Phones' software, entering unauthorized PIN
5 numbers in the Phones for purposes of unlocking or reflashing the Phones, or facilitating others
6 in such acts, and/or (c) exporting TracFone Prepaid Phones outside of the Coverage Area, or
7 assisting others in such acts, respectively, constitute independent breaches of contract for which
8 TracFone is entitled to relief.
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10 7. The Court further finds that Noor Traders' participation in the Illicit Bulk Resale
11 Scheme has caused substantial and irreparable harm to TracFone, and will continue to cause
12 substantial and irreparable harm to TracFone unless enjoined.
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14 8. TracFone is entitled to injunctive relief and damages on the claims set forth in the
15 Complaint.
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17 9. On November 27, 2006, the Librarian of Congress, upon the recommendation of
18 the Register of Copyrights, issued a Final Rule setting forth six (6) classes of copyrighted works
19 that are exempt from the provisions of the DMCA, including:

20 Computer programs in the form of firmware that enable wireless telephone
21 handsets to connect to a wireless telephone communication network, when
22 circumvention is accomplished for the sole purpose of lawfully connecting to a
23 wireless telephone communication network.

24 71 Fed. Reg. 68472 (Nov. 27, 2006) (amending 37 C.F.R. §201.40(b)). The Court finds that this
25 exemption does not absolve Noor Traders of liability for its violations of the DMCA as alleged
26 in TracFone's Complaint, because Noor Traders' conduct as alleged in this case does not come
27 within the scope of the exemption. Noor Traders' purchase and resale of TracFone Prepaid
28 Phones was for the purpose of reselling those handsets for a profit, and not "for the sole purpose

1 of lawfully connecting to a wireless telephone communication network.” Because the
2 exemption does not apply to the conduct alleged in this case, there is no need for the Court to
3 address the validity of the exemption or the circumstances surrounding its enactment.

4 10. Final judgment is hereby entered against Defendant, Noor Traders, and in favor
5 of Plaintiff, TracFone Wireless, Inc., a Delaware corporation, on all of the claims set forth in
6 TracFone’s Complaint and TracFone Wireless, Inc., a Delaware corporation, is awarded
7 damages from Noor Traders in the principal amount of FIVE MILLION DOLLARS AND
8 ZERO CENTS (\$5,000,000.00), which shall bear interest at the legal rate, and for which let
9 execution issue forthwith.
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11 11. Noor Traders and each and all of Noor Traders’ respective officers, directors,
12 successors, assigns, parents, subsidiaries, affiliates, related companies, predecessors-in-interest,
13 principals, agents, employees, attorneys, accountants, investigators, consultants, representatives,
14 agents, independent contractors, associates, servants, heirs, personal representatives,
15 beneficiaries, relatives, and all other persons or entities acting or purporting to act for Noor
16 Traders or on Noor Traders’ behalf, including but not limited to any corporation, partnership,
17 proprietorship or entity of any type that is in any way affiliated or associated with Noor Traders
18 or in active concert and participation with any Noor Traders, are hereby PERMANENTLY
19 ENJOINED from:
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- 22 a. purchasing and/or selling any wireless mobile handset that they
23 know, or should know, bears, or at one time bore, any of the
24 TracFone/NET10/SafeLink/Straight Talk Trademarks, any other
25 trademark owned or used by TracFone, or any other model of
26 wireless mobile phone sold or marketed by TracFone (“TracFone
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1 Handsets”). Specifically, Noor Traders is enjoined from
2 purchasing and/or selling all models of wireless phones currently
3 offered for sale by TracFone, or that may be offered for sale in the
4 future, as listed and updated from time to time on TracFone’s,
5 NET10’s, Straight Talk’s and SafeLink’s websites,
6 www.tracfone.com, www.net10.com, www.safelink.com and
7 www.straighttalk.com, respectively, and including without
8
9 limitation the following TracFone Handsets:

10	Kyocera K126C	Motorola C343	Nokia 1100
11	LG 1500	Motorola V170	Nokia 1112
12	LG 200C	Motorola V171	Nokia 1600
13	LG 200CM	Motorola RAZR V3a	Nokia 2126
14	LG 300G	Motorola V176	Nokia 2126i
15	LG 3280	Motorola W175g	Nokia 2285
16	LG 400G	Motorola W260g	Nokia 2600
17	LG 410G	Motorola W326g	Nokia 3390
18	LG 600G	Motorola W370	Samsung T101G
19	LG CG225	Motorola W375	Samsung T201G
20	Motorola C139	Motorola W376g	Samsung T301G
21	Motorola C155	Motorola W377g	
22	Motorola C261	Motorola W385	

- 23 b. rekitting, reflashing and/or unlocking of any TracFone Handset;
- 24 c. accessing, altering, erasing, tampering with, deleting or otherwise
- 25 disabling TracFone’s proprietary prepaid cellular software
- 26 contained within any model of TracFone Handsets;
- 27 d. facilitating or in any way assisting other persons or entities who
- 28 Noor Traders knows or should know are engaged in rekitting,
reflashing and/or unlocking TracFone Handsets and/or hacking,

1 altering, erasing, tampering with, deleting or otherwise disabling
2 the software installed in TracFone Handsets;

3 e. facilitating or in any way assisting other persons or entities who
4 Noor Traders knows or should know are engaged in any of the
5 acts prohibited under this Permanent Injunction including, without
6 limitation, the buying and/or selling of unlocked TracFone
7 Handsets; and,

8 f. knowingly using the TracFone/NET10/SafeLink/Straight Talk
9 Trademarks or any other trademark owned or used by TracFone,
10 or that is likely to cause confusion with
11 TracFone/NET10/SafeLink/Straight Talk Trademarks, without
12 TracFone's prior written authorization.

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15 12. The Court retains jurisdiction over this matter and the parties to this action in
16 order to enforce any violation of the terms of this Permanent Injunction. If Defendant violates
17 the terms of this Permanent Injunction, the Court will, upon TracFone's filing of an Affidavit or
18 Declaration of Violation, order the payment of compensatory damages to TracFone in the
19 amount of Five Thousand Dollars and No Cents (\$5,000.00 (U.S.)) for each TracFone/NET10
20 Handset purchased, sold, unlocked, reflashed, altered, rekitting, advertised, solicited and/or
21 shipped in violation of the Permanent Injunction, or a single damages award of One Million
22 Dollars and No Cents (\$1,000,000.00 (U.S.)), whichever is greater. The Court finds that these
23 amounts are compensatory and reasonable estimations of the minimum damages suffered by
24 TracFone for such a breach and will serve to compensate TracFone for its losses in the event
25 Defendant violates the terms of this Permanent Injunction.
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1 13. The last known address of Defendant Noor Traders is 1555 Thomas Avenue, San
2 Francisco, California 94124.

3 14. The address of Plaintiff, TracFone Wireless, Inc. is 9700 Northwest 112th
4 Avenue, Miami, Florida 33178.

5 **DONE AND ORDERED** in San Francisco, California, this 14th day of
6 December
7 _____, 2009.

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9 _____
10 Hon. Joseph C. Spero
11 **UNITED STATES MAGISTRATE JUDGE**

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