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**VIA ECF**

Honorable Robert Kirsch, U.S.D.J.
United States District Court for the District of New Jersey
Clarkson S. Fisher Bldg. & U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608

**Re: *Cambridge Mobile Telematics, Inc. v. Sfara, Inc.*, Case No. 3:23-cv-01368-RK-RLS**

Dear Judge Kirsch,

Sfara writes in response to CMT's letter dated October 3, 2024, seeking permission to file a motion to dismiss Counts III-VI of Sfara's Amended Counterclaims directed to CMT's breach of contract. The Court's granted CMT's original motion to dismiss both the contract claims and Sfara's count for inequitable conduct (Dkt. 127 and 128), *without prejudice to replead*. Sfara did just that on September 19, filing a 70-page, 180-paragraph pleading addressing all of the deficiencies noted by the Court in its Opinion (Dkt. 127). Notably, CMT no longer seeks to dismiss Sfara's Count VIII seeking a declaration of unenforceability of one of CMT's two asserted patents. Instead, CMT now argues that the four separate breach of contract claims now pleaded are barred under a three-year statute of limitations because they are "associated" with —and therefore disallowed by—CMT's original September 2016 violation of the NDA, and that Count V fails to state a claim for relief. CMT is wrong on all counts.

**Regardless of whether a three-year (Delaware) or six-year (New Jersey or Massachusetts) statute of limitations applies, Sfara has pleaded breaches falling within both time periods**. *First,* while the NDA indeed states that it shall be governed by and construed under Delaware law, it is well settled that "choice of law provisions in contracts do not apply to statutes of limitations, unless the reference is express *Jackson v. Chevron Corp. Long-Term Disability Org.*, No. 05-CV-3590 (WJM), 2006 U.S. Dist. LEXIS 3590, *11 n.6 (D.N.J. Jan. 30, 2006) (citing *Gluck v. Unisys Corp.*, 960 F.2d 1168, 1179-80 (3d Cir.)). A forum will apply its own statute of limitations permitting a claim unless: (a) maintenance of the claim would serve no substantial interest of the forum; and (b) the claim would be barred under the statute of limitations of a state having a more significant relationship to the parties and the occurrence. Restatement

(Second) of Conflict of Laws § 142(2). In its amended pleading, Sfara stated, among other things, (i) "no activity relating to any of the breaches of contract alleged herein occurred in Delaware," (ii) "Delaware does not have a more significant relationship to the parties and the occurrences than other forums, including New Jersey," and (iii) "New Jersey has a substantial interest in the contract claims asserted herein by Sfara, a resident of New Jersey." Dkt. 138, ¶ 128.

*Second*, it is telling that rather than referring to the amended pleading, CMT quotes the Court's opinion concluding that TrueMotion "used the confidential information by September 6, 2016 at the latest—well outside the statute of limitations period." Dkt. 127 at 9. But in repleading, Sfara specifically alleged "Sfara was not aware of the [September 6, 2016] video at the time TrueMotion launched its product and for many years thereafter. Nor was Sfara aware of the technology contained in TrueMotion's new product." Dkt 138, ¶ 34. On a motion to dismiss, those allegations must be accepted as true and cannot form the basis for establishing when a statute of limitations began to run. Moreover, under the discovery rule, "the point at which the complaining party should reasonably be aware that he has suffered an injury is a factual issue 'best determined by the collective judgment, wisdom and experience of jurors.'" *Crouse v. Cyclops Indus.*, 745 A.2d 606, 611 (Pa. 2000) (emphasis added) (quoting *White v. Owens-Corning Fiberglas, Corp.*, 447 Pa. Super. 5, 668 A.2d 136, 144 (Pa. Super. Ct. 1995)); *Schmidt v. Skolas*, 770 F.3d 241, 251 (3d Cir. 2014). "[O]nly where the facts are so clear that reasonable minds cannot differ may the commencement of the limitations period be determined as a matter of law." *Id.* (emphasis in original). Thus, CMT's arguments that all of the breaches should be disallowed because they are not disassociated from the original September 2016 breach lack merit.

*Third,* Sfara has pleaded four separate counts of breaches under a variety of provisions in the NDA—none of which are associated with any breach outside of the statute of limitations period—and all of which were discovered much later by Sfara. As to Count III, Sfara alleges that TrueMotion breached Section 3 of the NDA by "allowing Sfara's confidential information to be disseminated to, and used by, CMT when CMT acquired TrueMotion ***in 2021***." Dkt. 138, ¶ 101. As to Count IV, Sfara alleges that TrueMotion breached Section 4 of the NDA by "disclosing Sfara's confidential information to CMT when CMT acquired TrueMotion ***in 2021***." *Id.*, ¶ 109. And to these two Counts, Sfara pled that it "did not know of the aforementioned breaches until the filing of this litigation began ***in 2023***, nor could it have reasonable known about the breach, Sfara's injury, or any of TrueMotion's/CMT's activities and conduct underlying the breaches. *Id.*, ¶¶ 103, 111. CMT's 2021 acquisition of TrueMotion is, of course, within either a 3-year or a 6-year statute of limitations. As to Count V, Sfara alleges that TrueMotion and CMT breached Section 3 by "allowing Sfara's confidential information

to be published to the world in conjunction with TrueMotion/CMT's '368 patent. The confidential information now contained in the '368 patent was published as US 2021/0264690 ***on August 6, 2021***." *Id.*, ¶ 118. August 2021 is, of course, within either a 3-year or a 6-year statute of limitations. And moreover, Sfara pled that it "did not know of the aforementioned breaches until after the issuance of the ''368 patent ***in 2023***." *Id.*, ¶ 120. Finally, as to Count VI, Sfara alleges that TrueMotion and CMT breached Section 4 by "using Sfara's confidential information . . . in commercial products, while commercializing crash detection products, and to plan and conduct completive businesses" and that "[e]ach new product release, version, and SDK relying on Sfara confidential information constitutes a separate use and violation of the NDA." *Id.*, ¶¶ 126-127.

*Finally*, Sfara alleges "[t]he aforementioned breaches are all different, independent, and distinct breaches, which are entitled to their own analysis with respect to any applicable statute of limitations. For example, if a particular use is deemed outside of the applicable limitations period, actions related to other, later breaches within the limitations period would not be barred as a result." *Id.*, ¶ 131. And Sfara goes on to allege, "[t]o the extent that any of the activities are viewed together, they constitute a continuing violation. Each use constitutes an affirmative act and the affirmative unauthorized use of Sfara's technology continue[s] to date." *Id.*, ¶ 132. Weighed against these allegations, all of which were added to address the issues identified by the Court in granting the previous motion, Sfara's counterclaims are not amenable to dismissal under Rule 12(b)(6).

**Count V states a plausible claim for relief.** The breach in Count V arises from the publication of Sfara's confidential information in CMT's application US 2021/0264690 on August 6, 2021." Dkt. 138, ¶ 118. In an apparent "gotcha" attempt, CMT states that Sfara has pled itself out of court by admitting that Sfara's '952 patent "discloses all of the limitations of [the asserted claims] of the ''368 Patent." Dkt. 148 at 3. But CMT is conflating two very different disclosures. The fact that Sfara asserts that its patent discloses the limitations of the asserted ***claims*** of CMT's patent (844 words spanning three columns), as required to invalidate those claims under 35 U.S.C. § 102, is far different from CMT's patent disclosing, over the course of twenty columns of specification and seventeen sheets of figures, detailed information it learned in confidence from Sfara pursuant to the NDA. (*Compare* '368 patent, Dkt. 1, Ex. 1, claims 1-4, 7, 9-13, 16-17, and 19-20 with columns 1-20 and sheets 1-17). Sfara did not and does not allege that its confidential information that CMT caused to be published was publicly known by 2015.. Moreover, CMT disputes that Sfara's patent even disclosed the claim limitations of the '368 patent and, if that fact had any effect on Sfara's breach

of contract claim (and it does not) Sfara is entitled to plead in the alternative without "pleading itself out of court."

Accordingly, Sfara respectfully submits that there is no basis for dismissing any of its amended breach of contract counterclaims.

Respectfully submitted,

Tedd W. Van Buskirk
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cc: All counsel of record via ECF