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*Attorneys for TracFone Wireless, Inc.*

15 **UNITED STATES DISTRICT COURT**  
 16 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

17	TRACFONE WIRELESS, INC.,	)	Case No.: CV08-01877GHK (FMOx)
18	a Delaware Corporation,	)	
19	Plaintiff,	)	<b>PLAINTIFF'S EX PARTE</b>
20	v.	)	<b>APPLICATION FOR EXPEDITED</b>
21	CALIFORNIA PRODUCTS	)	<b>DISCOVERY AND FOR ORDER TO</b>
22	INTERNATIONAL, INC., a	)	<b>PRESERVE EVIDENCE;</b>
23	California Corporation, d/b/a	)	<b>MEMORANDUM OF POINTS AND</b>
24	FASHION JEANS EXPORTS and	)	<b>AUTHORITIES</b>
25	d/b/a CPI COMPUTERS &	)	(Proposed Order; Declarations Of Jill
26	ELECTRONICS; MOHAMAD ALI	)	Garcia, Justin Chappell and Anita
27	KHALIL; KASEM MOHAMAD	)	Tourisia filed concurrently)
28	HARKOUS; and DOES 1-10,	)	
	Defendants.	)	Date: None Set
		)	Time: None Set
		)	Courtroom:

1 TO THIS HONORABLE COURT:

2 Plaintiff TRACFONE WIRELESS, INC. ("TracFone") hereby applies *ex*  
3 *parte* for an Order:

- 4 (1) Permitting TracFone to immediately compel Defendants, pursuant to  
5 Rule 34, to produce for inspection and copying within ten (10) days,  
6 the documents responsive to TracFone's Requests for Production  
7 attached hereto;
- 8 (2) Permitting TracFone to immediately compel Defendants, pursuant to  
9 Rule 30, to appear and testify within twenty (20) days, as requested in  
10 TracFone's Notices of Deposition attached hereto;
- 11 (3) Allowing TracFone to propound limited follow-up discovery on  
12 Defendants, if necessary, related to any discovery request within ten  
13 (10) days from the date responses to any such requests are served, and  
14 requiring Defendants to respond to any such follow-up discovery  
15 within ten (10) days;
- 16 (4) Requiring Defendants to preserve all evidence relating to the bulk  
17 purchase, sale, distribution and altering of TracFone/NET10 Prepaid  
18 Phones, including all information, items and documents responsive to  
19 TracFone's First Request for Production of Documents and Things,  
20 all TracFone/NET10 Prepaid Phones currently in Defendants'  
21 possession and/or subject to their control, all TracFone/NET10  
22 Prepaid Phone packaging currently in Defendants' possession and/or  
23 subject to their control, copies of any software or hardware used to  
24 modify or alter TracFone/NET10 Prepaid Phones, all records of  
25 transactions related to altered TracFone Prepaid Phones, and all  
26 communications with third parties on the subject of the sale or  
27  
28

1 alteration of TracFone/NET10 Prepaid Phones and the security  
2 measures contained therein;

3 (5) Requiring Defendants to provide Plaintiff with an inventory of all  
4 TracFone/NET10 Prepaid Phones and the location where the handsets  
5 are being preserved; and

6 (6) Granting such other and further relief as is just and proper.

7  
8 Good cause exists to grant this application, and to grant it without notice to  
9 Defendants, because Defendants are reasonably believed to be participating in a  
10 conspiracy to unlawfully purchase TracFone's phones, reprogram those phones, and  
11 sell them to users intending to use the phones on other networks and not through  
12 the purchase of TracFone's prepaid airtime cards. In order to identify the other  
13 participants in the conspiracy and to gather evidence sufficient to seek injunctive  
14 relief from this Court, TracFone must be able to conduct discovery immediately. If  
15 TracFone were to bring a noticed motion pursuant to Local Rule 7, this motion  
16 could not be determined before June 2008; hundreds, if not thousands, of  
17 TracFone's phones will be lost into the stream of national and international  
18 commerce by that date.

19 Additionally, good cause exists to grant this motion because TracFone is  
20 currently being substantially and irreparable harmed by the infringement of its  
21 trademarks and copyright and has a substantial interest in taking steps necessary to  
22 prevent more counterfeit phones from being disbursed. Further good cause exists  
23 to grant this application without notice to Defendants, because if Defendants were  
24 alerted to this application, they could (and likely would) take steps to destroy, sell,  
25 or otherwise conceal the cell phones that are at issue in this litigation. The facts  
26 demonstrating this good cause are detailed in the declarations of Jill C. Garcia,  
27 Justin Chappell and Anita Tourisia filed concurrently herewith.

28 In brief, and as explained in the accompanying Memorandum of Points and

1 Authorities, TracFone is the largest provider of prepaid wireless telephone service  
2 in the United States, and markets its service under both the TracFone and NET10  
3 brands. TracFone subsidizes the purchase price of its telephones by selling them at  
4 prices substantially less than TracFone's cost and recoups this investment by selling  
5 prepaid airtime cards that are required to operate the TracFone phones. Defendants  
6 are believed to be engaging in a conspiracy with unknown co-conspirators to  
7 purchase TracFone phones in bulk (in clear violation of the restrictions printed on  
8 the outside and included within the packaging of the TracFone phones), reprogram  
9 those phones so that they can be used on other wireless networks, and resell those  
10 phones (potentially abroad).


11 The balance of hardships weighs in TracFone's favor in this matter.  
12 Defendants are in the wrongful possession of a large quantity of TracFone's cellular  
13 phones. Absent this Court's intervention, all of TracFone's phones in Defendants'  
14 possession most likely will be secreted away long before this case can reach any  
15 ultimate judgment, thus severely prejudicing TracFone. Defendants, on the other  
16 hand, will not be prejudiced by merely being required to respond to properly  
17 propounded discovery somewhat earlier than normal and preserve evidence.

18 This application is based upon the accompanying memorandum of points and  
19 authorities, the declarations of Jill C. Garcia, Justin Chappell and Anita Tourisia,  
20 the accompanying exhibits, and all pleadings, records and papers on file herein and  
21 such further evidence and argument as may be presented at or before the hearing on  
22 the application.  
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DATED: April 2, 2008

KOHUT & KOHUT, LLP

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*Attorneys for TracFone Wireless, Inc.*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff, TRACFONE WIRELESS, INC. (“TracFone”) pursuant to Federal  
3 Rule of Civil Procedure 26(d), moves for entry of an order permitting TracFone to  
4 immediately propound limited discovery in this matter and directing the Defendants  
5 to appear for deposition pursuant to the notices of deposition attached hereto,  
6 respond to the specific requests for production of documents attached hereto within  
7 10 days, and answer any limited follow-up discovery request propounded by  
8 TracFone within ten (10) days of its service. TracFone further moves for entry of an  
9 order requiring the Defendants to preserve all physical evidence relating to this  
10 action including specifically, and without limitation, all TracFone and NET10  
11 prepaid wireless telephone handsets (“TracFone/NET10 Prepaid Phones”) in the  
12 Defendants’ possession, custody or subject to the Defendants’ control. The factual  
13 basis for TracFone’s request is as follows:

14 As set forth in TracFone’s Complaint and the Declaration of Jill C. Garcia  
15 (the “Garcia Declaration”) and Anita Tourisia (the “Tourisia Declaration”), both of  
16 which are incorporated herein by reference, TracFone’s service enables its customers  
17 to prepay for their wireless service by purchasing TracFone airtime cards and  
18 specially manufactured wireless phones (“TracFone/NET10 Prepaid Phones”).  
19 Customers load airtime into their TracFone/NET10 Prepaid Phones using codes  
20 generated from PIN numbers found on the airtime cards, or via TracFone’s website.  
21 TracFone/NET10 Prepaid Phones and airtime cards are sold through major national  
22 retailers such as Wal-Mart, Target, and Sam’s Club. (Compl. ¶ 18; Garcia Decl. ¶¶  
23 3-4.)

24 TracFone’s business model is based on TracFone’s ability to deliver  
25 affordable phones to the public, which it accomplishes by subsidizing the customer’s  
26 cost for purchasing the TracFone/NET10 Prepaid Phones by selling them for  
27 substantially less than they cost TracFone. (Garcia Decl. ¶ 6.) TracFone recoups its  
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1 investment by selling prepaid airtime cards that are required to load prepaid minutes  
2 into the TracFone/NET10 Prepaid Phones in order for the phones to be used. (Garcia  
3 Decl. ¶¶ 6-8.) The TracFone/NET10 Prepaid Phones are equipped with software that  
4 prevents them from being used unless airtime minutes purchased from TracFone are  
5 loaded onto the phone via a prepaid airtime card. (Garcia Decl. ¶ 9.)

6 Defendants, along with yet unidentified co-conspirators, are engaged in  
7 unauthorized and unlawful wireless telephone business enterprises dependent on the  
8 bulk purchasing, reselling, computer reflashing/unlocking and trafficking of  
9 infringing and counterfeit wireless telephones originally sold by TracFone under  
10 TracFone and NET10 trademarks (TracFone/NET10 Prepaid Phones). Defendants'  
11 misconduct has caused, and continues to cause, substantial and irreparable harm to  
12 TracFone, including, among other things, infringement and dilution of TracFone's  
13 trademarks, infringement of TracFone's copyrighted software installed in the  
14 TracFone/NET10 Prepaid Phones, and harm to TracFone's goodwill and business  
15 reputation.<sup>1</sup>

16 In order to stem the irreparable harm being caused to TracFone by  
17 Defendants' unlawful conduct, an order permitting expedited discovery and  
18 requiring the preservation of evidence is necessary.

19 **ARGUMENT**

20 **A. TracFone is Entitled to Expedited Discovery**

21 The Federal Rules of Civil Procedure generally prohibit a party from seeking  
22 discovery until the parties have engaged in a discovery conference. Fed. R. Civ. P.  
23

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24 <sup>1</sup> In this action, TracFone seeks an award of damages and injunctive relief against  
25 Defendants as a result of, *inter alia*, Defendants' federal trademark infringement, contributory  
26 trademark infringement and unfair competition under the Trademark Act of 1946, as amended 15  
27 U.S.C. § 1051, *et seq.*, copyright infringement under Title 17 of the United States Code,  
28 circumvention of technological measures that control access to copyrighted software and  
trafficking in services that circumvent technological measures protecting copyrighted software  
under 17 U.S.C. § 1201, *et seq.*

1 26(d) & (f) (2007). However, discovery may commence earlier if ordered by the  
2 Court. *Id.* In this regard, District Courts are afforded broad discretion in the  
3 scheduling of discovery, *Hallet v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002), which  
4 includes the discretion to order expedited discovery. An order granting a request for  
5 expedited discovery is appropriate where good cause is shown by the movant.  
6 *Semitoool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275 (N.D. Cal. 2002)  
7 (granting motion for expedited discovery and holding *no* showing of irreparable  
8 harm is required by movant to grant such relief).

9 Good cause is shown “where the need for expedited discovery, in  
10 consideration of the administration of justice, outweighs the prejudice to the  
11 responding party.” *Id.* (recognizing that “good cause is frequently found in cases  
12 involving claims of infringement and unfair competition”); *see also Capitol Records,*  
13 *Inc. v. Doe*, 2007 WL 2429830, at 1 (S.D. Cal. Aug. 24, 2007) (granting expedited  
14 discovery in copyright infringement case); *UMG Recordings, Inc. v. Does*, 2006 WL  
15 1343597, at 1-2 (N.D. Cal. Mar. 6, 2006) (good cause shown for expedited discovery  
16 in copyright infringement case found where identities of defendants were unknown,  
17 and holding “copyright infringement claims necessarily involve irreparable harm to  
18 [plaintiff], as copyright holder is presumed to suffer irreparable injury as a matter of  
19 law when his right to the exclusive use of copyrighted material is invaded”) (quoting  
20 *Health Ins. Ass’n of Am. v. Nevelli*, 211 F. Supp. 2d 23, 28 (D.D.C. 2002)); *cf.*  
21 *Wakefield v. Thompson*, 177 F.3d 1160, 1163 (9th Cir. 1999) (“plaintiff should be  
22 given an opportunity through discovery to identify the unknown defendants, unless it  
23 is clear that discovery would not uncover the identities, or that the complaint would  
24 be dismissed on other grounds”).

25 Expedited discovery is particularly appropriate in this case because  
26 Defendants’ misconduct involves the infringement of TracFone’s trademark and  
27 copyrights and trafficking of the infringing goods. *See Semitoool*, 208 F.R.D at 275  
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1 (“Expedited discovery should be granted when some unusual circumstances or  
2 conditions exist that would likely prejudice the party if he were required to wait the  
3 normal time. Such prejudice is frequently the case where a well-known trademark  
4 ... has been counterfeited and the sources or purchasers of the counterfeit products  
5 are unknown to plaintiff.”). Expedited discovery is also necessary so that TracFone  
6 may prevent Defendants from altering, reselling, distributing, destroying or  
7 concealing the infringing TracFone/NET10 Prepaid Phones at issue in this case. *See*  
8 *Pod-Ners, LLC v. N. Feed & Bean of Lucerne, LLC*, 204 F.R.D. 675, 676 (D. Colo.  
9 2002) (expedited discovery is appropriate in cases where physical evidence may be  
10 consumed or destroyed with the passage of time, thereby disadvantaging one or more  
11 parties to the litigation). *See also* Section B, *infra*.

12       Specifically, like plaintiff in *Semitoool* and *Pod-Ners*, TracFone must quickly  
13 determine the extent of the Defendants’ unlawful activities with respect to  
14 counterfeit TracFone/NET10 Prepaid Phones, the quantity of phones in the  
15 Defendants’ possession, and number and identity of unknown co-conspirators  
16 involved in Defendants’ unlawful activities. If TracFone can quickly learn these  
17 facts, it can take corrective and preventive measures to stem its damage, including  
18 proceeding against as-yet unidentified co-defendants and eliminating the channels of  
19 production and distribution used by Defendants and their co-conspirators to carry out  
20 unlawful conduct. *See UMG Recordings*, 2006 WL 1343597, at 1; *Twentieth*  
21 *Century Fox Film Corp. v. Mow Trading Corp.*, 749 F. Supp. 473, 475 (S.D.N.Y.  
22 1990) (granting plaintiff expedited discovery in copyright infringement case so that  
23 factual inquiries could be made to avoid further irreparable harm).

24       If TracFone is required to wait for the normal discovery process to take its  
25 course, many more infringing and counterfeit TracFone/NET10 Prepaid Phones will  
26 be irretrievably lost in the marketplace, and TracFone will continue to lose additional  
27 goodwill and be otherwise damaged.

28

1 Granting TracFone's request for relief will not prejudice Defendants, as the  
2 specific information and documents requested by TracFone are already in  
3 Defendants' possession or are easily accessible to Defendants, and Defendants would  
4 simply be responding to discovery requests slightly sooner than normal. Conversely,  
5 TracFone will be prejudiced if the relief requested is not granted. Like the plaintiff  
6 in *UMG Recordings*, TracFone is seeking discovery of, among other things, the  
7 identities of Defendants' as-yet unidentified co-conspirators; further, TracFone's  
8 claims for copyright and trademark infringement "necessarily involve[] irreparable  
9 harm to" TracFone. *See id.* Thus TracFone has not only shown "good cause" for the  
10 expedited discovery it seeks to propound, it has also shown it will be irreparably  
11 harmed if the relief requested is not granted. *See id.*

12 TracFone has attached hereto its First Requests for Production of Documents  
13 and Things to Defendants and Notices of Deposition to Defendants related to  
14 Defendants' misconduct as **Composite Exhibit A**. TracFone requests that this Court  
15 allow TracFone to serve the attached discovery requests and any follow-up discovery  
16 requests thereto on an expedited basis, and order Defendants to respond to same on  
17 an expedited basis.

18 **B. Defendants Should Be Required to Preserve Evidence**

19 A party has a duty under federal law to preserve evidence which it knows or  
20 reasonably should know is relevant to the action. *AmeriPride Servs., Inc. v. Valley*  
21 *Indus. Serv., Inc.*, 2006 WL 2308442, at 4 (E.D. Cal. Aug. 9, 2006); *see also*  
22 *Kronisch v. United States*, 150 F.3d 112, 126 (2d Cir. 1998) (the "obligation to  
23 preserve evidence arises when the party has notice that the evidence is relevant to  
24 litigation --most commonly when suit has already been filed, providing the party  
25 responsible for the destruction with express notice, but also on occasion in other  
26 circumstances, as for example when a party should have known that the evidence  
27 may be relevant to future litigation."); *Silvestri v. Gen. Motors Corp.*, 271 F.3d 583,  
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1 590 (4th Cir. 2001) (same); *Phillips v. Netblue, Inc.*, 2007 WL 174459, at 2 (N.D.  
2 Cal. Jan. 22, 2007) (same); *Fire Ins. Exchange v. Zenith Radio Corp.*, 747 P.2d 911  
3 (Nev. 1987) (stating “even where an action has not been commenced and there is  
4 only a potential for litigation, the litigant is under a duty to preserve evidence which  
5 it knows or reasonably should know is relevant to the action”).

6 Here, TracFone alleges that Defendants are engaged in an unauthorized and  
7 unlawful scheme involving the bulk purchasing, reselling, computer unlocking, and  
8 fraudulent international trafficking of TracFone/NET10 Prepaid Phones. The  
9 Defendants have been observed the past few weeks receiving, daily, TracFone/NET  
10 10 Prepaid Phones from “runners” and other co-conspirators. (*See* Tourisia Decl.)

11 Once the TracFone/NET 10 Prepaid Phones are sold by Defendants to  
12 unknown purchasers potentially outside the United States, they will be beyond the  
13 jurisdiction of the Court and, for all intents and purposes, gone forever.

14 Further, each TracFone/NET10 Prepaid Phone is programmed by the  
15 manufacturer with a unique International Mobile Equipment Identity number (or  
16 IMEI). Examination and analysis of the Phones by qualified TracFone/NET10  
17 technicians can yield essential information about the origin of the Phones, their  
18 place of purchase, and the manner in which (and possibly by whom) they were  
19 “unlocked.” Consequently, a loss of these Phones would mean the loss of critical  
20 information and evidence. Since Defendants, it is believed, are in direct possession,  
21 custody and/or control of hundreds or thousands of TracFone/NET10 Prepaid  
22 Phones, they alone have the ability to maintain the evidence and halt the bulk resale  
23 scheme. Accordingly, the TracFone/NET10 Prepaid Phones in Defendants’  
24 possession constitute critical evidence in the case which must be preserved, and not  
25 sold, transferred or destroyed.

26 Further good cause for granting this application can be found in the  
27 Declaration of Justin Chappell (“Chappell Declaration”), which is incorporated  
28

1 herein by reference. Mr. Chappell is an investigator who was assigned to perform  
2 surveillance and investigation on Defendants' unlawful activities, as set forth in the  
3 Complaint. During a recent surveillance operation at the business office of  
4 Defendant CPI, Mr. Chappell was subjected to a violent assault. Specifically,  
5 Defendant Khalil purposely drove his vehicle into Mr. Chappell's vehicle, while  
6 Mr. Chappell was in it, at a high rate of speed. (See Chappell Declaration) After  
7 this incident, Defendant Khalil stated to the California Highway Patrol, who  
8 investigated the incident at the scene, that he had observed Mr. Chappell taking  
9 photographs of Defendants' business. (Id.) It is thus apparent that Defendants have  
10 become aware of the ongoing investigation being conducted by TracFone, and are  
11 thus even more likely to conceal or dispose of relevant evidence. Accordingly, it is  
12 imperative that this Court order Defendants to preserve such evidence.

13 Accordingly, TracFone respectfully requests that this Court issue an order:

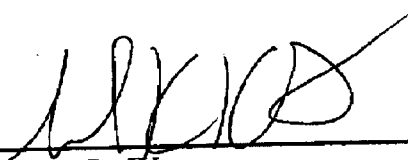
- 14 (1) Permitting TracFone to immediately compel Defendants, pursuant to  
15 Rule 34, to produce for inspection and copying within ten (10) days,  
16 the documents responsive to TracFone's Requests for Production  
17 attached hereto;
- 18 (2) Permitting TracFone to immediately compel Defendants, pursuant to  
19 Rule 30, to appear and testify within twenty (20) days, as requested in  
20 TracFone's Notices of Deposition attached hereto;
- 21 (3) Allowing TracFone to propound limited follow-up discovery on  
22 Defendants, if necessary, related to any discovery request within (10)  
23 days from the date responses to any such requests are served, and  
24 requiring Defendants to respond to such requests within ten (10) days;  
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- 1 (4) Allowing TracFone to propound limited follow-up discovery on  
2 Defendants, if necessary, related to any discovery request within ten  
3 (10) days from the date responses to any such requests are served, and  
4 requiring Defendants to respond to any such follow-up discovery  
5 within ten (10) days;
- 6 (5) Requiring Defendants to preserve all evidence relating to the bulk  
7 purchase, sale, distribution and altering of TracFone/NET10 Prepaid  
8 Phones, including all information, items and documents responsive to  
9 TracFone's First Request for Production of Documents and Things,  
10 all TracFone/NET10 Prepaid Phones currently in Defendants'  
11 possession and/or subject to their control, all TracFone/NET10  
12 Prepaid Phone packaging currently in Defendants' possession and/or  
13 subject to their control, copies of any software or hardware used to  
14 modify or alter TracFone/NET10 Prepaid Phones, all records of  
15 transactions related to altered TracFone Prepaid Phones, and all  
16 communications with third parties on the subject of the sale or  
17 alteration of TracFone/NET10 Prepaid Phones and the security  
18 measures contained therein;
- 19 (6) Requiring Defendants to provide Plaintiff with an inventory of all  
20 TracFone/NET10 Prepaid Phones and the location where the handsets  
21 are being preserved; and
- 22 (7) Granting such other and further relief as is just and proper.
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# **EXHIBIT A**

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 14 *Attorneys for TracFone Wireless, Inc.*

15  
 16 **UNITED STATES DISTRICT COURT**  
 17 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

18 TRACFONE WIRELESS, )  
 INC., a Delaware Corporation, )  
 19 Plaintiff, )  
 20 v. )  
 21 CALIFORNIA PRODUCTS )  
 INTERNATIONAL, INC., a )  
 22 California Corporation, d/b/a )  
 23 FASHION JEANS EXPORTS )  
 and d/b/a CPI COMPUTERS & )  
 24 ELECTRONICS; MOHAMAD )  
 ALI KHALIL; KASEM )  
 25 MOHAMAD HARKOUS; and )  
 DOES 1-10, )  
 26 Defendants. )  
 27 )  
 28 )

Case No.: CV08-1877 GHK (FMOx)  
  
**PLAINTIFF'S FIRST REQUEST  
 FOR PRODUCTION OF  
 DOCUMENTS AND THINGS TO  
 DEFENDANT CALIFORNIA  
 PRODUCTS INTERNATIONAL,  
 INC.**



1 Plaintiff, TRACFONE WIRELESS, INC. ("TracFone"), by and through its  
2 undersigned counsel, and pursuant to Rule 34 of the Federal Rules of Civil Proce-  
3 dure, requests that Defendant, CALIFORNIA PRODUCTS INTERNATIONAL,  
4 INC. d/b/a FASHION JEANS EXPORTS and d/b/a CPI COMPUTERS &  
5 ELECTRONICS ("Defendant"), respond to these requests for production fully and  
6 in writing, and that Defendant produce for inspection and copying the documents  
7 and things described herein, in accordance with the definitions and instructions set  
8 forth below, at the office of **KOHUT & KOHUT, LLP, 600 Anton Boulevard,**  
9 **Suite No. 1075, Costa Mesa, California 92626.**

10 **I. SUPPLEMENTATION**

11 Pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, Plaintiff  
12 states that Defendant is under a duty seasonably to supplement their responses to  
13 these requests with respect to any request directly addressed to: (1) the identity or  
14 location of persons having knowledge of discoverable matters, or (2) the identity of  
15 each person expected to be called as an expert witness at trial, the subject matter on  
16 which he or she is expected to testify, and the substance of his or her testimony. In  
17 addition, Defendant is under a duty seasonably to amend a prior response if any  
18 Defendant or its representatives or agents obtain information on the basis of which  
19 Defendant knows that a prior response was incorrect when made, or Defendant  
20 knows that the response, although correct when made, is no longer true and the  
21 circumstances are such that a failure to amend the response is, in substance, a  
22 knowing concealment.

23 **II. DEFINITIONS**

24 Except as defined below, all words used in these requests for production shall  
25 be construed according to their ordinary accepted meanings, unless some other  
26 meaning is clear from the context.

27  
28 **Exhibit A**  
**Page 11**

1           1.     “You” and “your” shall mean and include Defendant as well as any  
2 and all affiliates, predecessors, successors, agents, employees and other persons  
3 acting on his behalf with regard to the subject matter of the case.

4           2.     “Document” or “documentation” shall mean each and every written,  
5 recorded, or graphic matter of any kind, type, nature, or description that is or has  
6 been in your possession, custody, or control or of which you have knowledge,  
7 including, but not limited to, correspondence, memoranda, tapes, stenographic, or  
8 handwritten notes, written forms of any kind, charts, blueprints, drawings, sketches,  
9 graphs, plans, articles, specifications, diaries, letters, telegraphs, photographs,  
10 minutes, contracts, agreements, reports, surveys, computer printouts, data  
11 compilations of any kind, teletypes, telexes, invoices, order forms, checks, drafts,  
12 statements, credit memos, reports, summaries, books, ledgers, notebooks,  
13 schedules, transparencies, recordings, catalogs, advertisements, promotional  
14 materials, films, video tapes, audio tapes, brochures, or pamphlets, or any written or  
15 recorded materials of any other kind, however stored, recorded, produced, or  
16 reproduced, and also including, but not limited to, drafts or copies of any of the  
17 foregoing that contain any notes, comments, or markings of any kind not found on  
18 the original documents or are otherwise not identical to the original documents, as  
19 well as any affidavits, statements, summaries, opinions, reports, studies, analyses,  
20 computer print-outs, data processing input/output, microfilms, e-mails and all other  
21 records kept by electronic means, photographs or mechanical means, and other things  
22 similar to any of the foregoing.

23           3.     To “identify” a document means to provide the following information  
24 irrespective of whether the document is deemed privileged or subject to any claim  
25 of privilege:

- 26                   (a)    the title or other means of identification of the document;
- 27                   (b)    the date of the document;
- 28                   (c)    the author of the document;

Exhibit A  
Page 12

- 1 (d) the recipient or recipients of the document;  
2 (e) the subject matter of the document;  
3 (f) the present location of any and all copies of the document;  
4 and  
5 (g) the names and current addresses of any and all persons  
6 who have possession, custody or control of the document or copies  
7 thereof.

8 4. "Person" means natural persons, individuals, firms, corporations,  
9 partnerships, proprietorships, joint ventures, unincorporated associations,  
10 government agencies, and all other organizations or entities of any type.

11 5. To "identify" a person means to state the person's full name, present or  
12 last known address and telephone number, and present or last known business  
13 affiliation and title.

14 6. The phrase "contact or communication" includes all instances in which  
15 information has been transmitted from one person or entity to another, including,  
16 but not limited to, telephone conversations, meetings, conferences, correspondence,  
17 other mailings, telexes, cables, telecopied transmissions, or other data transmissions  
18 of any type or nature, whether oral, electronic, or written.

19 7. To "identify" a contact or communication means to state the date of  
20 the contact or communication, the person or persons involved in, participating in, or  
21 present at the contact or communication, and the nature or type of the contact or  
22 communication.

23 8. The term "entity" means corporations, companies, businesses,  
24 partnerships, proprietorships, or fictitious or trade names.

25 9. The singular and masculine form of any word shall embrace, and shall  
26 be read and applied as embracing, the plural, the feminine, and the neuter.

27 10. The use of a verb in any tense shall be construed as the use of the verb  
28 in all other tenses, wherever necessary to bring within the scope of the interrogatory

1 or request for production all responses which might otherwise be construed to be  
2 outside the scope.

3 11. The term "each" includes the word "every" and "every" includes the  
4 word "each." The term "any" includes the word "all" and "all" includes the word  
5 "any." The terms "and" as well as "or" shall be construed either disjunctively or  
6 conjunctively so as to bring within the scope of the interrogatory or request for  
7 production responses that which might otherwise be construed to be outside the  
8 scope.

9 12. "Customers" includes, but is not limited to, all individuals, companies,  
10 entities, resellers or third parties to whom you (or any other entity that you are  
11 affiliated with) have sold TracFone/NET10 handsets.

12 13. "TracFone/NET10 product" means any product, good, or service  
13 manufactured, distributed, sold, or offered for sale by TracFone including, without  
14 limitation, TracFone prepaid wireless phones and NET10 prepaid wireless phones.

15 14. "TracFone/NET10 handset" means a TracFone or NET10 prepaid  
16 cellular phone, and any other branded wireless telephones sold by TracFone, either  
17 in its original condition or after having been reprogrammed or otherwise altered or  
18 tampered with.

19 15. "Alter" means to modify, reflash, unlock, reprogram or change in any  
20 way, or to attempt to modify, reflash, unlock, reprogram or change in any way, any  
21 TracFone handset.

22 16. The term "relate to" shall be construed as to include indicating,  
23 referring to, mentioning, reflecting, pertaining to, evidencing, involving, describing,  
24 discussing, supporting, or contradicting.

### 25 **III. CLAIMS OF PRIVILEGE**

26 If you contend that you are entitled on the basis of any claim of privilege to  
27 withhold any information in your responses to these requests or to withhold  
28 production of documents requested herein, you must comply with Fed. R. Civ. P.

1 34(c) and Fed. R. Civ. P. 26(b)(5).

2 **IV. TIME FRAME**

3 Unless otherwise indicated, these requests for production cover the time  
4 period from January 1, 2003 up to and including the date of your response hereto.

5 **V. REQUESTS FOR PRODUCTION**

6 1. All documents identifying or evidencing all TracFone/NET10 handsets  
7 currently in your possession, custody, or control.

8 2. All documents, including, but not limited to, communications and e-  
9 mail correspondence between you and any other person evidencing, showing, or  
10 discussing any purchase, sale, alteration, reflashing, unlocking, or shipping of any  
11 TracFone/NET10 product.

12 3. All documents evidencing, showing, or otherwise relating to the  
13 advertising of any TracFone/NET10 product by you.

14 4. All purchase orders, receipts, sales orders, invoices, statements,  
15 communications, and other documents evidencing all purchases or sales of  
16 TracFone/NET10 handsets.

17 5. All documents identifying or evidencing any person who purchased or  
18 received a TracFone/NET10 handset or other TracFone/NET10 product from you at  
19 any time during the last four years.

20 6. All documents identifying or evidencing any person, agent, employee,  
21 and/or "runner" or independent contractor who purchased, sold, distributed, or  
22 altered a TracFone/NET10 handset on your behalf, at your request, or from which  
23 you profited.

24 7. All screenshot printouts and other documents showing or evidencing  
25 any website or domain name registered, operated, owned or used by you that: (i)  
26 depicts or depicted any TracFone/NET10 product, (ii) uses or used the TracFone/  
27 NET10 name in part or whole, or (iii) is or was used to sell any TracFone/NET10  
28 product in the past four years.

1           8. All lists identifying, evidencing, or relating to your customer(s) and  
2 competitor(s) with regard to the purchase, sale, alteration, reflashing, unlocking,  
3 shipping, or advertising of any TracFone/NET10 product.

4           9. All documents evidencing the shipment of any TracFone/NET10  
5 handset to or from you, including but not limited to, FedEx, DHL, UPS, U.S. Mail  
6 and other shippers' shipping documents, shipping labels, invoices, and records.

7           10. All materials, e-mails, brochures and other documents you used to  
8 recruit persons to purchase new TracFone/NET10 handsets in retail stores for resale  
9 by you.

10           11. All advertising and marketing materials, e-mails, brochures and other  
11 documents you created or used to advertise the sale of any TracFone/NET10  
12 handset to any prospective buyer.

13           12. Copies of the hard drives, back-up tapes, and disks for the computers  
14 you used in connection with the purchase and sale of any TracFone/NET10 handset  
15 or other TracFone/NET10 product.

16           13. All business plans or other documents that explain or otherwise  
17 evidence your business activities, including but not limited to the purchase, sale,  
18 alteration, shipping, or advertising of any TracFone/NET10 handset.

19           14. All of your general ledgers, check registers, accounts, books of  
20 account, financial statements, balance sheets, profit and loss statements, canceled  
21 checks, electronic or credit card charge receipts and similar  
22 accounting/bookkeeping records relative to the purchase, sale, alteration, shipping  
23 or advertising of any TracFone/NET10 handset.

24           15. All sales agreements, joint venture agreements, distributorship  
25 agreements, partnership agreements, or other contracts entered into for the  
26 purchase, sale, alteration, shipping, or advertising of any TracFone/NET10 handset.

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1 16. Copies of all devices, computers, software, or other instruments used  
2 to access, disable, erase, unlock, alter, or modify in any way any TracFone/NET10  
3 handset.

4 17. All cellular labels, cellular logo labels, tracking labels, and/or ESN  
5 Printer and Software products used for creating such labels.

6 18. All invoices, statements, bills of sales, purchase orders, and other  
7 documents that refer, relate, or pertain to the purchase of ESN or other tracking  
8 labels, and cellular logo labels.

9 19. All documents that constitute or evidence any correspondence between  
10 you and TracFone or NET10 or any other Defendant.

11 20. All documents and correspondence between you and any state or  
12 federal law enforcement agency, customs agency or other state or federal  
13 investigative agency or department, relating to or evidencing the purchase, sale,  
14 alteration, shipping or advertising of any TracFone/NET10 product or other  
15 wireless handset.

16 21. All documents and correspondence relating to or evidencing your  
17 involvement in any lawsuit relating to the purchase, sale, alteration, shipping or  
18 advertising of any wireless handset.

19 22. All written and electronic communications with any supplier of ESN,  
20 tracking, or cellular logo labels, including, without limitation, all letters,  
21 memoranda, facsimiles, e-mails and other documents.

22 23. All invoices, statements, bills of sales, purchase orders, and other  
23 paper or electronic documents that refer, relate or pertain to any and all items  
24 purchased from any person or company that sells cellular phone unlocking  
25 equipment, software and/or peripherals.

26 24. All written and electronic communications with any person and/or  
27 company that sells cellular phone unlocking equipment, software and/or  
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1 peripherals, including, without limitation, all letters, memoranda, facsimiles, e-  
2 mails and other documents.

3 25. All products purchased from any person and/or company that sells  
4 cellular phone unlocking equipment, software and/or peripherals, including, without  
5 limitation, all unlocking boxes, cables, software and other equipment and peripheral  
6 items you have purchased from any source.

7  
8 Dated: April 2, 2008

KOHUT & KOHUT, LLP

9  
10 By: 

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18 Telephone: (561) 659-7070; Facsimile: (561) 659-7368  
19 *Attorneys for TracFone Wireless, Inc.*

20  
21 **UNITED STATES DISTRICT COURT**  
22 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

23 TRACFONE WIRELESS, INC., a	)	Case No.: CV08-1877 GHK (FMOx)
24 Delaware Corporation,	)	
25 Plaintiff,	)	<b>PLAINTIFF'S FIRST REQUEST</b>
26 v.	)	<b>FOR PRODUCTION OF</b>
27 CALIFORNIA PRODUCTS	)	<b>DOCUMENTS AND THINGS TO</b>
28 INTERNATIONAL, INC., a	)	<b>DEFENDANT MOHAMAD ALI</b>
California Corporation, d/b/a	)	<b>KHALIL</b>
FASHION JEANS EXPORTS and	)	
d/b/a CPI COMPUTERS &	)	
ELECTRONICS; MOHAMAD	)	
ALI KHALIL; KASEM	)	
MOHAMAD HARKOUS; and	)	
DOES 1-10,	)	
Defendants.	)	

1 Plaintiff, TRACFONE WIRELESS, INC. ("TracFone"), by and through its  
2 undersigned counsel, and pursuant to Rule 34 of the Federal Rules of Civil Proce-  
3 dure, requests that Defendant, MOHAMAD ALI KHALIL ("Defendant"), respond  
4 to these requests for production fully and in writing, and that Defendant produce for  
5 inspection and copying the documents and things described herein, in accordance  
6 with the definitions and instructions set forth below, at the office of **KOHUT &**  
7 **KOHUT, LLP, 600 Anton Boulevard, Suite No. 1075, Costa Mesa, California**  
8 **92626.**

9 **I. SUPPLEMENTATION**

10 Pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, Plaintiff  
11 states that Defendant is under a duty seasonably to supplement their responses to  
12 these requests with respect to any request directly addressed to: (1) the identity or  
13 location of persons having knowledge of discoverable matters, or (2) the identity of  
14 each person expected to be called as an expert witness at trial, the subject matter on  
15 which he or she is expected to testify, and the substance of his or her testimony. In  
16 addition, Defendant is under a duty seasonably to amend a prior response if any  
17 Defendant or its representatives or agents obtain information on the basis of which  
18 Defendant knows that a prior response was incorrect when made, or Defendant  
19 knows that the response, although correct when made, is no longer true and the  
20 circumstances are such that a failure to amend the response is, in substance, a  
21 knowing concealment.

22 **II. DEFINITIONS**

23 Except as defined below, all words used in these requests for production shall  
24 be construed according to their ordinary accepted meanings, unless some other  
25 meaning is clear from the context.  
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1. "You" and "your" shall mean and include Defendant as well as any and all affiliates, predecessors, successors, agents, employees and other persons acting on his behalf with regard to the subject matter of the case.

2. "Document" or "documentation" shall mean each and every written, recorded, or graphic matter of any kind, type, nature, or description that is or has been in your possession, custody, or control or of which you have knowledge, including, but not limited to, correspondence, memoranda, tapes, stenographic, or handwritten notes, written forms of any kind, charts, blueprints, drawings, sketches, graphs, plans, articles, specifications, diaries, letters, telegraphs, photographs, minutes, contracts, agreements, reports, surveys, computer printouts, data compilations of any kind, teletypes, telexes, invoices, order forms, checks, drafts, statements, credit memos, reports, summaries, books, ledgers, notebooks, schedules, transparencies, recordings, catalogs, advertisements, promotional materials, films, video tapes, audio tapes, brochures, or pamphlets, or any written or recorded materials of any other kind, however stored, recorded, produced, or reproduced, and also including, but not limited to, drafts or copies of any of the foregoing that contain any notes, comments, or markings of any kind not found on the original documents or are otherwise not identical to the original documents, as well as any affidavits, statements, summaries, opinions, reports, studies, analyses, computer print-outs, data processing input/output, microfilms, e-mails and all other records kept by electronic means, photographs or mechanical means, and other things similar to any of the foregoing.

3. To "identify" a document means to provide the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:

- (a) the title or other means of identification of the document;
- (b) the date of the document;
- (c) the author of the document;

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- (d) the recipient or recipients of the document;
- (e) the subject matter of the document;
- (f) the present location of any and all copies of the document;

and

- (g) the names and current addresses of any and all persons who have possession, custody or control of the document or copies thereof.

4. "Person" means natural persons, individuals, firms, corporations, partnerships, proprietorships, joint ventures, unincorporated associations, government agencies, and all other organizations or entities of any type.

5. To "identify" a person means to state the person's full name, present or last known address and telephone number, and present or last known business affiliation and title.

6. The phrase "contact or communication" includes all instances in which information has been transmitted from one person or entity to another, including, but not limited to, telephone conversations, meetings, conferences, correspondence, other mailings, telexes, cables, telecopied transmissions, or other data transmissions of any type or nature, whether oral, electronic, or written.

7. To "identify" a contact or communication means to state the date of the contact or communication, the person or persons involved in, participating in, or present at the contact or communication, and the nature or type of the contact or communication.

8. The term "entity" means corporations, companies, businesses, partnerships, proprietorships, or fictitious or trade names.

9. The singular and masculine form of any word shall embrace, and shall be read and applied as embracing, the plural, the feminine, and the neuter.

10. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, wherever necessary to bring within the scope of the interrogatory

1 or request for production all responses which might otherwise be construed to be  
2 outside the scope.

3 11. The term “each” includes the word “every” and “every” includes the  
4 word “each.” The term “any” includes the word “all” and “all” includes the word  
5 “any.” The terms “and” as well as “or” shall be construed either disjunctively or  
6 conjunctively so as to bring within the scope of the interrogatory or request for  
7 production responses that which might otherwise be construed to be outside the  
8 scope.

9 12. “Customers” includes, but is not limited to, all individuals, companies,  
10 entities, resellers or third parties to whom you (or any other entity that you are  
11 affiliated with) have sold TracFone/NET10 handsets.

12 13. “TracFone/NET10 product” means any product, good, or service  
13 manufactured, distributed, sold, or offered for sale by TracFone including, without  
14 limitation, TracFone prepaid wireless phones and NET10 prepaid wireless phones.

15 14. “TracFone/NET10 handset” means a TracFone or NET10 prepaid  
16 cellular phone, and any other branded wireless telephones sold by TracFone, either  
17 in its original condition or after having been reprogrammed or otherwise altered or  
18 tampered with.

19 15. “Alter” means to modify, reflash, unlock, reprogram or change in any  
20 way, or to attempt to modify, reflash, unlock, reprogram or change in any way, any  
21 TracFone handset.

22 16. The term “relate to” shall be construed as to include indicating,  
23 referring to, mentioning, reflecting, pertaining to, evidencing, involving, describing,  
24 discussing, supporting, or contradicting.

### 25 **III. CLAIMS OF PRIVILEGE**

26 If you contend that you are entitled on the basis of any claim of privilege to  
27 withhold any information in your responses to these requests or to withhold  
28 production of documents requested herein, you must comply with Fed. R. Civ. P.

1 34(c) and Fed. R. Civ. P. 26(b)(5).

2 **IV. TIME FRAME**

3 Unless otherwise indicated, these requests for production cover the time  
4 period from January 1, 2003 up to and including the date of your response hereto.

5 **V. REQUESTS FOR PRODUCTION**

6 1. All documents identifying or evidencing all TracFone/NET10 handsets  
7 currently in your possession, custody, or control.

8 2. All documents, including, but not limited to, communications and e-  
9 mail correspondence between you and any other person evidencing, showing, or  
10 discussing any purchase, sale, alteration, reflashing, unlocking, or shipping of any  
11 TracFone/NET10 product.

12 3. All documents evidencing, showing, or otherwise relating to the  
13 advertising of any TracFone/NET10 product by you.

14 4. All purchase orders, receipts, sales orders, invoices, statements,  
15 communications, and other documents evidencing all purchases or sales of  
16 TracFone/NET10 handsets.

17 5. All documents identifying or evidencing any person who purchased or  
18 received a TracFone/NET10 handset or other TracFone/NET10 product from you at  
19 any time during the last four years.

20 6. All documents identifying or evidencing any person, agent, employee,  
21 and/or "runner" or independent contractor who purchased, sold, distributed, or  
22 altered a TracFone/NET10 handset on your behalf, at your request, or from which  
23 you profited.

24 7. All screenshot printouts and other documents showing or evidencing  
25 any website or domain name registered, operated, owned or used by you that: (i)  
26 depicts or depicted any TracFone/NET10 product, (ii) uses or used the TracFone/  
27 NET10 name in part or whole, or (iii) is or was used to sell any TracFone/NET10  
28 product in the past four years.

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8. All lists identifying, evidencing, or relating to your customer(s) and competitor(s) with regard to the purchase, sale, alteration, reflashing, unlocking, shipping, or advertising of any TracFone/NET10 product.

9. All documents evidencing the shipment of any TracFone/NET10 handset to or from you, including but not limited to, FedEx, DHL, UPS, U.S. Mail and other shippers' shipping documents, shipping labels, invoices, and records.

10. All materials, e-mails, brochures and other documents you used to recruit persons to purchase new TracFone/NET10 handsets in retail stores for resale by you.

11. All advertising and marketing materials, e-mails, brochures and other documents you created or used to advertise the sale of any TracFone/NET10 handset to any prospective buyer.

12. Copies of the hard drives, back-up tapes, and disks for the computers you used in connection with the purchase and sale of any TracFone/NET10 handset or other TracFone/NET10 product.

13. All business plans or other documents that explain or otherwise evidence your business activities, including but not limited to the purchase, sale, alteration, shipping, or advertising of any TracFone/NET10 handset.

14. All of your general ledgers, check registers, accounts, books of account, financial statements, balance sheets, profit and loss statements, canceled checks, electronic or credit card charge receipts and similar accounting/bookkeeping records relative to the purchase, sale, alteration, shipping or advertising of any TracFone/NET10 handset.

15. All sales agreements, joint venture agreements, distributorship agreements, partnership agreements, or other contracts entered into for the purchase, sale, alteration, shipping, or advertising of any TracFone/NET10 handset.

1           16. Copies of all devices, computers, software, or other instruments used  
2 to access, disable, erase, unlock, alter, or modify in any way any TracFone/NET10  
3 handset.

4           17. All cellular labels, cellular logo labels, tracking labels, and/or ESN  
5 Printer and Software products used for creating such labels.

6           18. All invoices, statements, bills of sales, purchase orders, and other  
7 documents that refer, relate, or pertain to the purchase of ESN or other tracking  
8 labels, and cellular logo labels.

9           19. All documents that constitute or evidence any correspondence between  
10 you and TracFone or NET10 or any other Defendant.

11           20. All documents and correspondence between you and any state or  
12 federal law enforcement agency, customs agency or other state or federal  
13 investigative agency or department, relating to or evidencing the purchase, sale,  
14 alteration, shipping or advertising of any TracFone/NET10 product or other  
15 wireless handset.

16           21. All documents and correspondence relating to or evidencing your  
17 involvement in any lawsuit relating to the purchase, sale, alteration, shipping or  
18 advertising of any wireless handset.

19           22. All written and electronic communications with any supplier of ESN,  
20 tracking, or cellular logo labels, including, without limitation, all letters,  
21 memoranda, facsimiles, e-mails and other documents.

22           23. All invoices, statements, bills of sales, purchase orders, and other  
23 paper or electronic documents that refer, relate or pertain to any and all items  
24 purchased from any person or company that sells cellular phone unlocking  
25 equipment, software and/or peripherals.

26           24. All written and electronic communications with any person and/or  
27 company that sells cellular phone unlocking equipment, software and/or  
28

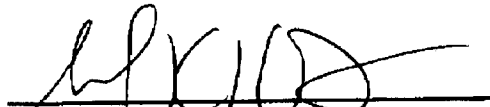


1 peripherals, including, without limitation, all letters, memoranda, facsimiles, e-  
2 mails and other documents.

3 25. All products purchased from any person and/or company that sells  
4 cellular phone unlocking equipment, software and/or peripherals, including, without  
5 limitation, all unlocking boxes, cables, software and other equipment and peripheral  
6 items you have purchased from any source.

7  
8 Dated: April 2, 2008

KOHUT & KOHUT, LLP

9  
10 By: 

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Sarah K. Kohut  
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21 *Attorneys for TracFone Wireless, Inc.*

22 **UNITED STATES DISTRICT COURT**

23 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

24 TRACFONE WIRELESS, INC.,  
25 a Delaware Corporation,

26 Plaintiff,

27 v.

28 CALIFORNIA PRODUCTS  
INTERNATIONAL, INC., a  
California Corporation, d/b/a  
FASHION JEANS EXPORTS  
and d/b/a CPI COMPUTERS &  
ELECTRONICS; MOHAMAD  
ALI KHALIL; KASEM  
MOHAMAD HARKOUS; and  
DOES 1-10,

Defendants.

) Case No.: CV08-1877 GHK (FMOx)

) **PLAINTIFF'S FIRST REQUEST**  
) **FOR PRODUCTION OF**  
) **DOCUMENTS AND THINGS TO**  
) **DEFENDANT KASEM MOHAMAD**  
) **HARKOUS**

1 Plaintiff, TRACFONE WIRELESS, INC. (“TracFone”), by and through its  
2 undersigned counsel, and pursuant to Rule 34 of the Federal Rules of Civil Proce-  
3 dure, requests that Defendant, KASEM MOHAMAD HARKOUS (“Defendant”),  
4 respond to these requests for production fully and in writing, and that Defendant  
5 produce for inspection and copying the documents and things described herein, in  
6 accordance with the definitions and instructions set forth below, at the office of  
7 **KOHUT & KOHUT, LLP, 600 Anton Boulevard, Suite No. 1075, Costa Mesa,**  
8 **California 92626.**

9 **I. SUPPLEMENTATION**

10 Pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, Plaintiff  
11 states that Defendant is under a duty seasonably to supplement their responses to  
12 these requests with respect to any request directly addressed to: (1) the identity or  
13 location of persons having knowledge of discoverable matters, or (2) the identity of  
14 each person expected to be called as an expert witness at trial, the subject matter on  
15 which he or she is expected to testify, and the substance of his or her testimony. In  
16 addition, Defendant is under a duty seasonably to amend a prior response if any  
17 Defendant or its representatives or agents obtain information on the basis of which  
18 Defendant knows that a prior response was incorrect when made, or Defendant  
19 knows that the response, although correct when made, is no longer true and the  
20 circumstances are such that a failure to amend the response is, in substance, a  
21 knowing concealment.

22 **II. DEFINITIONS**

23 Except as defined below, all words used in these requests for production shall  
24 be construed according to their ordinary accepted meanings, unless some other  
25 meaning is clear from the context.  
26  
27  
28

Exhibit A  
Page 29

1           1.     “You” and “your” shall mean and include Defendant as well as any  
2 and all affiliates, predecessors, successors, agents, employees and other persons  
3 acting on his behalf with regard to the subject matter of the case.

4           2.     “Document” or “documentation” shall mean each and every written,  
5 recorded, or graphic matter of any kind, type, nature, or description that is or has  
6 been in your possession, custody, or control or of which you have knowledge,  
7 including, but not limited to, correspondence, memoranda, tapes, stenographic, or  
8 handwritten notes, written forms of any kind, charts, blueprints, drawings, sketches,  
9 graphs, plans, articles, specifications, diaries, letters, telegraphs, photographs,  
10 minutes, contracts, agreements, reports, surveys, computer printouts, data  
11 compilations of any kind, teletypes, telexes, invoices, order forms, checks, drafts,  
12 statements, credit memos, reports, summaries, books, ledgers, notebooks,  
13 schedules, transparencies, recordings, catalogs, advertisements, promotional  
14 materials, films, video tapes, audio tapes, brochures, or pamphlets, or any written or  
15 recorded materials of any other kind, however stored, recorded, produced, or  
16 reproduced, and also including, but not limited to, drafts or copies of any of the  
17 foregoing that contain any notes, comments, or markings of any kind not found on  
18 the original documents or are otherwise not identical to the original documents, as  
19 well as any affidavits, statements, summaries, opinions, reports, studies, analyses,  
20 computer print-outs, data processing input/output, microfilms, e-mails and all other  
21 records kept by electronic means, photographs or mechanical means, and other things  
22 similar to any of the foregoing.

23           3.     To “identify” a document means to provide the following information  
24 irrespective of whether the document is deemed privileged or subject to any claim  
25 of privilege:

- 26                   (a)    the title or other means of identification of the document;  
27                   (b)    the date of the document;  
28                   (c)    the author of the document;

Exhibit A  
Page 30

- 1 (d) the recipient or recipients of the document;  
2 (e) the subject matter of the document;  
3 (f) the present location of any and all copies of the document;  
4 and  
5 (g) the names and current addresses of any and all persons  
6 who have possession, custody or control of the document or copies  
7 thereof.

8 4. "Person" means natural persons, individuals, firms, corporations,  
9 partnerships, proprietorships, joint ventures, unincorporated associations,  
10 government agencies, and all other organizations or entities of any type.

11 5. To "identify" a person means to state the person's full name, present or  
12 last known address and telephone number, and present or last known business  
13 affiliation and title.

14 6. The phrase "contact or communication" includes all instances in which  
15 information has been transmitted from one person or entity to another, including,  
16 but not limited to, telephone conversations, meetings, conferences, correspondence,  
17 other mailings, telexes, cables, telecopied transmissions, or other data transmissions  
18 of any type or nature, whether oral, electronic, or written.

19 7. To "identify" a contact or communication means to state the date of  
20 the contact or communication, the person or persons involved in, participating in, or  
21 present at the contact or communication, and the nature or type of the contact or  
22 communication.

23 8. The term "entity" means corporations, companies, businesses,  
24 partnerships, proprietorships, or fictitious or trade names.

25 9. The singular and masculine form of any word shall embrace, and shall  
26 be read and applied as embracing, the plural, the feminine, and the neuter.

27 10. The use of a verb in any tense shall be construed as the use of the verb  
28 in all other tenses, wherever necessary to bring within the scope of the interrogatory

1 or request for production all responses which might otherwise be construed to be  
2 outside the scope.

3 11. The term “each” includes the word “every” and “every” includes the  
4 word “each.” The term “any” includes the word “all” and “all” includes the word  
5 “any.” The terms “and” as well as “or” shall be construed either disjunctively or  
6 conjunctively so as to bring within the scope of the interrogatory or request for  
7 production responses that which might otherwise be construed to be outside the  
8 scope.

9 12. “Customers” includes, but is not limited to, all individuals, companies,  
10 entities, resellers or third parties to whom you (or any other entity that you are  
11 affiliated with) have sold TracFone/NET10 handsets.

12 13. “TracFone/NET10 product” means any product, good, or service  
13 manufactured, distributed, sold, or offered for sale by TracFone including, without  
14 limitation, TracFone prepaid wireless phones and NET10 prepaid wireless phones.

15 14. “TracFone/NET10 handset” means a TracFone or NET10 prepaid  
16 cellular phone, and any other branded wireless telephones sold by TracFone, either  
17 in its original condition or after having been reprogrammed or otherwise altered or  
18 tampered with.

19 15. “Alter” means to modify, reflash, unlock, reprogram or change in any  
20 way, or to attempt to modify, reflash, unlock, reprogram or change in any way, any  
21 TracFone handset.

22 16. The term “relate to” shall be construed as to include indicating,  
23 referring to, mentioning, reflecting, pertaining to, evidencing, involving, describing,  
24 discussing, supporting, or contradicting.

### 25 **III. CLAIMS OF PRIVILEGE**

26 If you contend that you are entitled on the basis of any claim of privilege to  
27 withhold any information in your responses to these requests or to withhold  
28 production of documents requested herein, you must comply with Fed. R. Civ. P.

1 34(c) and Fed. R. Civ. P. 26(b)(5).

2 **IV. TIME FRAME**

3 Unless otherwise indicated, these requests for production cover the time  
4 period from January 1, 2003 up to and including the date of your response hereto.

5 **V. REQUESTS FOR PRODUCTION**

6 1. All documents identifying or evidencing all TracFone/NET10 handsets  
7 currently in your possession, custody, or control.

8 2. All documents, including, but not limited to, communications and e-  
9 mail correspondence between you and any other person evidencing, showing, or  
10 discussing any purchase, sale, alteration, reflashing, unlocking, or shipping of any  
11 TracFone/NET10 product.

12 3. All documents evidencing, showing, or otherwise relating to the  
13 advertising of any TracFone/NET10 product by you.

14 4. All purchase orders, receipts, sales orders, invoices, statements,  
15 communications, and other documents evidencing all purchases or sales of  
16 TracFone/NET10 handsets.

17 5. All documents identifying or evidencing any person who purchased or  
18 received a TracFone/NET10 handset or other TracFone/NET10 product from you at  
19 any time during the last four years.

20 6. All documents identifying or evidencing any person, agent, employee,  
21 and/or "runner" or independent contractor who purchased, sold, distributed, or  
22 altered a TracFone/NET10 handset on your behalf, at your request, or from which  
23 you profited.

24 7. All screenshot printouts and other documents showing or evidencing  
25 any website or domain name registered, operated, owned or used by you that: (i)  
26 depicts or depicted any TracFone/NET10 product, (ii) uses or used the TracFone/  
27 NET10 name in part or whole, or (iii) is or was used to sell any TracFone/NET10  
28 product in the past four years.

1           8. All lists identifying, evidencing, or relating to your customer(s) and  
2 competitor(s) with regard to the purchase, sale, alteration, reflashing, unlocking,  
3 shipping, or advertising of any TracFone/NET10 product.

4           9. All documents evidencing the shipment of any TracFone/NET10  
5 handset to or from you, including but not limited to, FedEx, DHL, UPS, U.S. Mail  
6 and other shippers' shipping documents, shipping labels, invoices, and records.

7           10. All materials, e-mails, brochures and other documents you used to  
8 recruit persons to purchase new TracFone/NET10 handsets in retail stores for resale  
9 by you.

10           11. All advertising and marketing materials, e-mails, brochures and other  
11 documents you created or used to advertise the sale of any TracFone/NET10  
12 handset to any prospective buyer.

13           12. Copies of the hard drives, back-up tapes, and disks for the computers  
14 you used in connection with the purchase and sale of any TracFone/NET10 handset  
15 or other TracFone/NET10 product.

16           13. All business plans or other documents that explain or otherwise  
17 evidence your business activities, including but not limited to the purchase, sale,  
18 alteration, shipping, or advertising of any TracFone/NET10 handset.

19           14. All of your general ledgers, check registers, accounts, books of  
20 account, financial statements, balance sheets, profit and loss statements, canceled  
21 checks, electronic or credit card charge receipts and similar  
22 accounting/bookkeeping records relative to the purchase, sale, alteration, shipping  
23 or advertising of any TracFone/NET10 handset.

24           15. All sales agreements, joint venture agreements, distributorship  
25 agreements, partnership agreements, or other contracts entered into for the  
26 purchase, sale, alteration, shipping, or advertising of any TracFone/NET10 handset.

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1           16. Copies of all devices, computers, software, or other instruments used  
2 to access, disable, erase, unlock, alter, or modify in any way any TracFone/NET10  
3 handset.

4           17. All cellular labels, cellular logo labels, tracking labels, and/or ESN  
5 Printer and Software products used for creating such labels.

6           18. All invoices, statements, bills of sales, purchase orders, and other  
7 documents that refer, relate, or pertain to the purchase of ESN or other tracking  
8 labels, and cellular logo labels.

9           19. All documents that constitute or evidence any correspondence between  
10 you and TracFone or NET10 or any other Defendant.

11           20. All documents and correspondence between you and any state or  
12 federal law enforcement agency, customs agency or other state or federal  
13 investigative agency or department, relating to or evidencing the purchase, sale,  
14 alteration, shipping or advertising of any TracFone/NET10 product or other  
15 wireless handset.

16           21. All documents and correspondence relating to or evidencing your  
17 involvement in any lawsuit relating to the purchase, sale, alteration, shipping or  
18 advertising of any wireless handset.

19           22. All written and electronic communications with any supplier of ESN,  
20 tracking, or cellular logo labels, including, without limitation, all letters,  
21 memoranda, facsimiles, e-mails and other documents.

22           23. All invoices, statements, bills of sales, purchase orders, and other  
23 paper or electronic documents that refer, relate or pertain to any and all items  
24 purchased from any person or company that sells cellular phone unlocking  
25 equipment, software and/or peripherals.

26           24. All written and electronic communications with any person and/or  
27 company that sells cellular phone unlocking equipment, software and/or  
28

1 peripherals, including, without limitation, all letters, memoranda, facsimiles, e-  
2 mails and other documents.

3 25. All products purchased from any person and/or company that sells  
4 cellular phone unlocking equipment, software and/or peripherals, including, without  
5 limitation, all unlocking boxes, cables, software and other equipment and peripheral  
6 items you have purchased from any source.

7 Dated: April 2, 2008

KOHUT & KOHUT, LLP

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14 Attorneys for TracFone Wireless, Inc.

15  
16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

18 TRACFONE WIRELESS,  
19 INC., a Delaware Corporation,

20 Plaintiff,

21 v.

22 CALIFORNIA PRODUCTS  
INTERNATIONAL, INC., a  
California Corporation, d/b/a  
23 FASHION JEANS EXPORTS  
and d/b/a CPI COMPUTERS &  
24 ELECTRONICS; MOHAMAD  
ALI KHALIL; KASEM  
25 MOHAMAD HARKOUS; and  
DOES 1-10,

26 Defendants.  
27

Case No.: CV08-0877 GHK (FMOx)

**PLAINTIFF'S NOTICE OF  
TAKING 30(b)(6) DEPOSITION OF  
DEFENDANT CALIFORNIA  
PRODUCTS INTERNATIONAL,  
INC.**

1           **PLEASE TAKE NOTICE** that pursuant to Federal Rule of Civil Procedure  
2 30(b)(6) and this Court’s Order Granting Motion for Expedited Discovery, the  
3 undersigned counsel for Plaintiff, TRACFONE WIRELESS, INC. (“TracFone”),  
4 will take the deposition of Defendant, **CALIFORNIA PRODUCTS**  
5 **INTERNATIONAL, INC. d/b/a FASHION JEANS EXPORTS and d/b/a CPI**  
6 **COMPUTERS & ELECTRONICS**, (“CPI”), upon oral examination at a date and  
7 time to be determined by the parties at the office of **KOHUT & KOHUT, LLP,**  
8 **600 Anton Boulevard, Suite No. 1075, Costa Mesa, California 92626,**  
9 **Telephone No. (714) 384-4130.**

10           Pursuant to Fed. R. Civ. P. 30(b)(6), CPI is to designate one or more officers,  
11 directors, managing agents or other persons knowledgeable of the subject areas  
12 described in **Exhibit “A”** attached hereto and who shall testify as to matters known  
13 or reasonably available to CPI.

14           The Deposition will take place before a court reporter, notary public or other  
15 officer authorized to administer oaths and will continue from day to day until  
16 completed, subject to such adjournment as may be agreed upon by counsel. The  
17 Deposition is being taken for the purpose of discovery, for use at trial, or for such  
18 other purposes as permitted under the United States District Court, Federal Rules of  
19 Civil Procedure. You are invited to attend and participate in the manner provided  
20 for in the Federal Rules of Civil Procedure.

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Dated: April 2, 2008

KOHUT & KOHUT, LLP

By: 

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*Attorneys for TracFone Wireless, Inc.*

**EXHIBIT "A"**

The Definitions set forth in TracFone's First Request for Production of Documents and Things to Defendant CPI are incorporated herein by reference.

1. All TracFone/NET10 handsets currently in your possession, custody, or control.

2. All communications between you and any other person regarding any purchase, sale, alteration, reflashing, unlocking, or shipping of any TracFone/NET10 product.

3. All advertising of any TracFone/NET10 product by you.

4. All purchases or sales of TracFone/ NET10 handsets by you.

5. All persons who purchased or received a TracFone/NET10 handset or other TracFone/NET10 product from you at any time during the last four years.

6. Any person, agent, employee, and/or "runner" or independent contractor who purchased, sold, distributed, or altered a TracFone/NET10 handset on your behalf, at your request, or from which you profited.

7. Any website or domain name registered, operated, owned or used by you that: (i) depicts or depicted any TracFone/NET10 product, (ii) uses or used the TracFone/ NET10 name in part or whole, or (iii) is or was used to sell any TracFone/NET10 product in the past four years.

8. All of your customer(s) and competitor(s) with regard to the purchase, sale, alteration, reflashing, unlocking, shipping, or advertising of any TracFone/NET10 product.

9. Any shipment of any TracFone/NET10 hand-set to or from you.

10. All materials you used to recruit persons to purchase new TracFone/NET10 handsets in retail stores for resale by you.

11. All advertising and marketing you used to advertise the sale of any TracFone/NET10 handset to any prospective buyer.

1           12. Information stored on any hard drives, back-up tapes, and disks for the  
2 computers you used in connection with the purchase and sale of any  
3 TracFone/NET10 handset or other TracFone/NET10 product.

4           13. All business plans that explain your business activities, including but  
5 not limited to the purchase, sale, alteration, shipping, or advertising of any  
6 TracFone/NET10 handset.

7           14. All of your general ledgers, check registers, accounts, books of  
8 account, financial statements, balance sheets, profit and loss statements, canceled  
9 checks, electronic or credit card charge receipts and similar accounting/bookkeep-  
10 ing records relative to the purchase, sale, alteration, shipping or advertising of any  
11 TracFone/NET10 handset.

12           15. All sales agreements, joint venture agreements, distributorship agree-  
13 ments, partnership agreements, or other contracts entered into for the purchase, sale,  
14 alteration, shipping, or advertising of any TracFone/NET10 handset.

15           16. All devices, computers, software, or other instruments used to access,  
16 disable, erase, unlock, alter, or modify in any way any TracFone/NET10 handset.

17           17. All cellular labels, cellular logo labels, tracking labels, and/or ESN  
18 Printer and Software products used for creating such labels.

19           18. The purchase of ESN or other tracking labels, and cellular logo labels.

20           19. All communications between you and TracFone or NET10 or any  
21 other Defendant.

22           20. All communications between you and any state or federal law  
23 enforcement agency, customs agency or other state or federal investigative agency  
24 or department, relating to the purchase, sale, alteration, shipping or advertising of  
25 any TracFone/NET10 product or other wireless handset.

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1           21. All communications relating to or evidencing your involvement in any  
2 lawsuit relating to the purchase, sale, alteration, shipping or advertising of any  
3 wireless handset.

4           22. All communications with any supplier of ESN, tracking, or cellular  
5 logo labels.

6           23. All items purchased from any person or company that sells cellular  
7 phone unlocking equipment, software and/or peripherals.

8           24. All communications with any person and/or company that sells cellular  
9 phone unlocking equipment, software and/or peripherals.

10          25. All products purchased from any person and/or company that sells  
11 cellular phone unlocking equipment, software and/or peripherals.

12          26. The insurance policies that may provide coverage for the allegations  
13 raised in this complaint.

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*Attorneys for TracFone Wireless, Inc.*

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

TRACFONE WIRELESS, INC., a  
Delaware corporation,

Plaintiff,

v.

CALIFORNIA PRODUCTS  
INTERNATIONAL, INC., a  
California Corporation, d/b/a  
FASHION JEANS EXPORTS and  
d/b/a CPI COMPUTERS &  
ELECTRONICS; MOHAMAD ALI  
KHALIL; KASEM MOHAMAD  
HARKOUS; and DOES 1-10,

Defendants.

Case No. CV08-0877 GHK (FMOx)

**PLAINTIFF'S NOTICE OF  
TAKING VIDEOTAPED  
DEPOSITION DUCES TECUM OF  
DEFENDANT MOHAMAD ALI  
KHALIL**

1

1 PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure  
2 30(b) and this Court's Order Granting Motion for Expedited Discovery, the  
3 undersigned counsel for Plaintiff, TRACFONE WIRELESS, INC., will take the  
4 videotaped deposition of **MOHAMAD ALI KHALIL**, upon oral examination at a  
5 date and time to be determined by the parties at the office of **KOHUT & KOHUT,**  
6 **LLP, 600 Anton Boulevard, Suite No. 1075, Costa Mesa, California 92626,**  
7 **Telephone No. (714) 384-4130.**

8 PLEASE TAKE FURTHER NOTICE that **MOHAMAD ALI KHALIL** is  
9 required to produce, at the deposition, all of the items listed in the attached Exhibit  
10 "A".

11 The deposition shall be upon oral examination before a certified shorthand  
12 reporter duly authorized to administer oaths and will be recorded through  
13 stenographic and audiovisual (videotape) means.

14 The Deposition will continue from day to day until completed, subject to  
15 such adjournment as may be agreed upon by counsel.

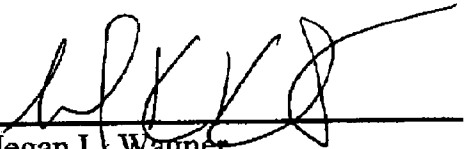
16 The Deposition is being taken for the purpose of discovery, for use at trial, or  
17 for such other purposes as permitted under the United States District Court, Federal  
18 Rules of Civil Procedure.

19 You are invited to attend and participate in the manner provided for in the  
20 Federal Rules of Civil Procedure.

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Dated: April 2, 2008

KOHUT & KOHUT, LLP

By: 

Megan L. Wagner  
(California Bar No. 130752)  
Sarah K. Kohut  
(California Bar No. 197655)  
KOHUT & KOHUT, LLP  
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James B. Baldinger, Trial Counsel  
Florida Bar Number 869899  
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Maria Montenegro  
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Email: jbaldinger@carltonfields.com  
mmontenegro@carltonfields.com

*Attorneys for TracFone Wireless, Inc.*

**EXHIBIT "A"**

The Definitions set forth in TracFone's First Request for Production of Documents and Things to Defendant Mohamad Ali Khalil are incorporated herein by reference.

1. All documents identifying or evidencing all TracFone/NET10 handsets currently in your possession, custody, or control.

2. All documents, including, but not limited to, communications and e-mail correspondence between you and any other person evidencing, showing, or discussing any purchase, sale, alteration, reflashing, unlocking, or shipping of any TracFone/NET10 product.

3. All documents evidencing, showing, or otherwise relating to the advertising of any TracFone/NET10 product by you.

4. All purchase orders, receipts, sales orders, invoices, statements, communications, and other documents evidencing all purchases or sales of TracFone/NET10 handsets.

5. All documents identifying or evidencing any person who purchased or received a TracFone/NET10 handset or other TracFone/NET10 product from you at any time during the last four years.

6. All documents identifying or evidencing any person, agent, employee, and/or "runner" or independent contractor who purchased, sold, distributed, or altered a TracFone/NET10 handset on your behalf, at your request, or from which you profited.

7. All screenshot printouts and other documents showing or evidencing any website or domain name registered, operated, owned or used by you that: (i) depicts or depicted any TracFone/NET10 product, (ii) uses or used the TracFone/NET10 name in part or whole, or (iii) is or was used to sell any TracFone/NET10 product in the past four years.

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8. All lists identifying, evidencing, or relating to your customer(s) and competitor(s) with regard to the purchase, sale, alteration, reflashing, unlocking, shipping, or advertising of any TracFone/NET10 product.

9. All documents evidencing the shipment of any TracFone/NET10 handset to or from you, including but not limited to, FedEx, DHL, UPS, U.S. Mail and other shippers' shipping documents, shipping labels, invoices, and records.

10. All materials, e-mails, brochures and other documents you used to recruit persons to purchase new TracFone/NET10 handsets in retail stores for resale by you.

11. All advertising and marketing materials, e-mails, brochures and other documents you created or used to advertise the sale of any TracFone/NET10 handset to any prospective buyer.

12. Copies of the hard drives, back-up tapes, and disks for the computers you used in connection with the purchase and sale of any TracFone/NET10 handset or other TracFone/NET10 product.

13. All business plans or other documents that explain or otherwise evidence your business activities, including but not limited to the purchase, sale, alteration, shipping, or advertising of any TracFone/NET10 handset.

14. All of your general ledgers, check registers, accounts, books of account, financial statements, balance sheets, profit and loss statements, canceled checks, electronic or credit card charge receipts and similar accounting/bookkeeping records relative to the purchase, sale, alteration, shipping or advertising of any TracFone/NET10 handset.

15. All sales agreements, joint venture agreements, distributorship agreements, partnership agreements, or other contracts entered into for the purchase, sale, alteration, shipping, or advertising of any TracFone/NET10 handset.

1           16. Copies of all devices, computers, software, or other instruments used  
2 to access, disable, erase, unlock, alter, or modify in any way any TracFone/NET10  
3 handset.

4           17. All cellular labels, cellular logo labels, tracking labels, and/or ESN  
5 Printer and Software products used for creating such labels.

6           18. All invoices, statements, bills of sales, purchase orders, and other  
7 documents that refer, relate, or pertain to the purchase of ESN or other tracking  
8 labels, and cellular logo labels.

9           19. All documents that constitute or evidence any correspondence between  
10 you and TracFone or NET10 or any other Defendant.

11           18. All documents and correspondence between you and any state or  
12 federal law enforcement agency, customs agency or other state or federal investi-  
13 gative agency or department, relating to or evidencing the purchase, sale, alteration,  
14 shipping or advertising of any TracFone/NET10 product or other wireless handset.

15           19. All documents and correspondence relating to or evidencing your  
16 involvement in any lawsuit relating to the purchase, sale, alteration, shipping or  
17 advertising of any wireless handset.

18           20. All written and electronic communications with any supplier of ESN,  
19 tracking, or cellular logo labels, including, without limitation, all letters, memo-  
20 randa, facsimiles, e-mails and other documents.

21           21. All invoices, statements, bills of sales, purchase orders, and other  
22 paper or electronic documents that refer, relate or pertain to any and all items pur-  
23 chased from any person or company that sells cellular phone unlocking equipment,  
24 software and/or peripherals.

25           22. All written and electronic communications with any person and/or  
26 company that sells cellular phone unlocking equipment, software and/or peripher-

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1 als, including, without limitation, all letters, memoranda, facsimiles, e-mails and  
2 other documents.

3 23. All products purchased from any person and/or company that sells  
4 cellular phone unlocking equipment, software and/or peripherals, including, without  
5 limitation, all unlocking boxes, cables, software and other equipment and peripheral  
6 items you have purchased from any source.

7 24. Copies of all insurance policies that may provide coverage for the  
8 allegations raised in this complaint.

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*Attorneys for TracFone Wireless, Inc.*

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

TRACFONE WIRELESS, INC., a  
Delaware corporation,

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v.

CALIFORNIA PRODUCTS  
INTERNATIONAL, INC., a  
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FASHION JEANS EXPORTS and  
d/b/a CPI COMPUTERS &  
ELECTRONICS; MOHAMAD ALI  
KHALIL; KASEM MOHAMAD  
HARKOUS; and DOES 1-10,

Defendants.

) Case No. CV08-0877 GHK (FMOx)

)  
) **NOTICE OF TAKING**  
) **VIDEOTAPED DEPOSITION OF**  
) **DEFENDANT KASEM**  
) **MOHAMAD HARKOUS AND**  
) **REQUEST FOR PRODUCTION**  
) **OF DOCUMENTS**



1           **PLEASE TAKE NOTICE** that pursuant to Federal Rule of Civil Procedure  
2 30(b) and this Court's Order Granting Motion for Expedited Discovery, the  
3 undersigned counsel for Plaintiff, TRACFONE WIRELESS, INC., will take the  
4 videotaped deposition of **KASEM MOHAMAD HARKOUS**, upon oral  
5 examination at a date and time to be determined by the parties at the office of  
6 **KOHUT & KOHUT, LLP, 600 Anton Boulevard, Suite No. 1075, Costa Mesa,**  
7 **California 92626, Telephone No. (714) 384-4130.**

8           **PLEASE TAKE FURTHER NOTICE** that **Kasem Mohamed Harkous** is  
9 required to produce, at the deposition, all of the items listed in the attached Exhibit  
10 "A".

11           The deposition shall be upon oral examination before a certified shorthand  
12 reporter duly authorized to administer oaths and will be recorded through  
13 stenographic and audiovisual (videotape) means.

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15 such adjournment as may be agreed upon by counsel.

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17 for such other purposes as permitted under the United States District Court, Federal  
18 Rules of Civil Procedure.

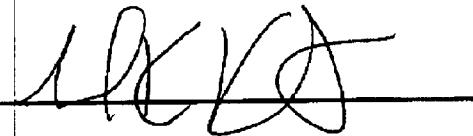
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Dated: April 2, 2008

KOHUT & KOHUT, LLP

By: 

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(California Bar No. 130752)  
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Email: jbbaldinger@carltonfields.com  
mmontenegro@carltonfields.com

Attorneys for TracFone Wireless, Inc.

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2. All documents, including, but not limited to, communications and e-mail correspondence between you and any other person evidencing, showing, or discussing any purchase, sale, alteration, reflashing, unlocking, or shipping of any TracFone/NET10 product.

3. All documents evidencing, showing, or otherwise relating to the advertising of any TracFone/NET10 product by you.

4. All purchase orders, receipts, sales orders, invoices, statements, communications, and other documents evidencing all purchases or sales of TracFone/NET10 handsets.

5. All documents identifying or evidencing any person who purchased or received a TracFone/NET10 handset or other TracFone/NET10 product from you at any time during the last four years.

6. All documents identifying or evidencing any person, agent, employee, and/or “runner” or independent contractor who purchased, sold, distributed, or altered a TracFone/NET10 handset on your behalf, at your request, or from which you profited.

7. All screenshot printouts and other documents showing or evidencing any website or domain name registered, operated, owned or used by you that: (i) depicts or depicted any TracFone/NET10 product, (ii) uses or used the TracFone/NET10 name in part or whole, or (iii) is or was used to sell any TracFone/NET10 product in the past four years.

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9. All documents evidencing the shipment of any TracFone/NET10 handset to or from you, including but not limited to, FedEx, DHL, UPS, U.S. Mail and other shippers' shipping documents, shipping labels, invoices, and records.

10. All materials, e-mails, brochures and other documents you used to recruit persons to purchase new TracFone/NET10 handsets in retail stores for resale by you.

11. All advertising and marketing materials, e-mails, brochures and other documents you created or used to advertise the sale of any TracFone/NET10 handset to any prospective buyer.

12. Copies of the hard drives, back-up tapes, and disks for the computers you used in connection with the purchase and sale of any TracFone/NET10 handset or other TracFone/NET10 product.

13. All business plans or other documents that explain or otherwise evidence your business activities, including but not limited to the purchase, sale, alteration, shipping, or advertising of any TracFone/NET10 handset.

14. All of your general ledgers, check registers, accounts, books of account, financial statements, balance sheets, profit and loss statements, canceled checks, electronic or credit card charge receipts and similar accounting/bookkeeping records relative to the purchase, sale, alteration, shipping or advertising of any TracFone/NET10 handset.

15. All sales agreements, joint venture agreements, distributorship agreements, partnership agreements, or other contracts entered into for the purchase, sale, alteration, shipping, or advertising of any TracFone/NET10 handset.

1 16. Copies of all devices, computers, software, or other instruments used  
2 to access, disable, erase, unlock, alter, or modify in any way any TracFone/NET10  
3 handset.

4 17. All cellular labels, cellular logo labels, tracking labels, and/or ESN  
5 Printer and Software products used for creating such labels.

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7 documents that refer, relate, or pertain to the purchase of ESN or other tracking  
8 labels, and cellular logo labels.

9 19. All documents that constitute or evidence any correspondence between  
10 you and TracFone or NET10 or any other Defendant.

11 20. All documents and correspondence between you and any state or  
12 federal law enforcement agency, customs agency or other state or federal investi-  
13 gative agency or department, relating to or evidencing the purchase, sale, alteration,  
14 shipping or advertising of any TracFone/NET10 product or other wireless handset.

15 21. All documents and correspondence relating to or evidencing your  
16 involvement in any lawsuit relating to the purchase, sale, alteration, shipping or  
17 advertising of any wireless handset.

18 22. All written and electronic communications with any supplier of ESN,  
19 tracking, or cellular logo labels, including, without limitation, all letters, memo-  
20 randa, facsimiles, e-mails and other documents.

21 23. All invoices, statements, bills of sales, purchase orders, and other  
22 paper or electronic documents that refer, relate or pertain to any and all items pur-  
23 chased from any person or company that sells cellular phone unlocking equipment,  
24 software and/or peripherals.

25 24. All written and electronic communications with any person and/or  
26 company that sells cellular phone unlocking equipment, software and/or peripher-  
27 als, including, without limitation, all letters, memoranda, facsimiles, e-mails and  
28 other documents.

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25. All products purchased from any person and/or company that sells cellular phone unlocking equipment, software and/or peripherals, including, without limitation, all unlocking boxes, cables, software and other equipment and peripheral items you have purchased from any source.

26. Copies of all insurance policies that may provide coverage for the allegations raised in this complaint.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I filed the foregoing with the Clerk of the Court and that correct copies of the foregoing are being served upon Defendants.

*Ayrika S. Fernandes*  
Ayrika S. Fernandes