

NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

MECKLENBURG COUNTY 2016 DEC 28 AM 10:37

Case No: 16 CVS 22072

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|--|--------------------------------------|
| <p><b>ELLA MATTHEWS</b>, individually and on behalf of all others similarly situated,</p>                  | <p>Case No.:</p>                     |
| <p>Plaintiff,</p>  |                                      |
| <p>vs.</p>   | <p><b>CLASS ACTION COMPLAINT</b></p> |
| <p><b>TCL COMMUNICATION INC.</b><br/>25 Edelman, Suite 200<br/>Irvine, CA 92618</p>                        |                                      |
| <p>and,</p>  |                                      |
| <p><b>TCT MOBILE (US) INC.</b><br/>25 Edelman, Suite 200<br/>Irvine, CA 92618</p>                          |                                      |
| <p>and,</p>  |                                      |
| <p><b>TCT MOBILE, INC.</b><br/>25 Edelman, Suite 200<br/>Irvine, CA 92618</p>                              |                                      |
| <p>and,</p>  |                                      |
| <p><b>TCT MOBILE (US) HOLDINGS INC.</b><br/>2710 Gateway Oaks Dr., Suite 150N<br/>Sacramento, CA 95833</p> |                                      |
| <p>Defendants.</p>   |                                      |

Plaintiff, complaining of Defendants, alleges as follows:

**INTRODUCTION**

Plaintiff Ella Matthews, individually and on behalf of all others similarly situated, by her attorneys, files this class action Complaint against Defendants TCL Communication Inc., TCT Mobile (US) Inc., TCT Mobile, Inc., and TCT Mobile (US) Holdings Inc. (collectively

the Idol 3 Smartphones.

6. Plaintiff's claims revolve around Defendants' removal of LTE Band 12 compatibility, which was a key feature of the Idol 3 Smartphones.

### PARTIES

7. At all times relevant herein, Plaintiff Ella Matthews was a citizen of the United States, residing in Charlotte, North Carolina.

8. Defendant TCL Communication Inc. is a Chinese corporation formed under the laws of the State of Delaware with its headquarters in Irvine, California.

9. Defendant TCT Mobile (US) Inc. is a Chinese corporation formed under the laws of the State of Delaware with its headquarters in Irvine, California.

10. TCT Mobile, Inc. is a Chinese corporation formed under the laws of the State of Delaware with its headquarters in Irvine, California.

11. TCT Mobile (US) Holdings Inc. is a Chinese corporation formed under the laws of the State of Delaware with its headquarters in Irvine, California.

### JURISDICTION AND VENUE

12. The subject matter jurisdiction over this cause and personal jurisdiction over the Defendants is conferred upon and vested in this Court under and by virtue of N.C.G.S. §§ 1-75.4, 7A-240 and 7A-243 because the amount in controversy, exclusive of interest and costs, exceeds the minimal jurisdiction of this Court and Defendants transact business in the State of North Carolina. In addition, Defendants contract to supply their Idol 3 Smartphones goods in North Carolina and as alleged herein, have injury by an act or omission in North Carolina. Further, Defendants regularly do or solicit business or engage in any other persistent course of conduct of marketing and selling their Idol 3 Smartphones in North Carolina, and/or derive substantial

frequencies, such as LTE Band 4, which operates on 1700 and 2100 mhz. Thus LTE Band 12 can improve cellular reception indoors and in built-up urban areas. Moreover, LTE Band 12 offers much greater range, and can provide for coverage in rural and less populated areas.

18. Throughout the proposed Class Period, Defendants uniformly marketed, advertised and warranted that Idol 3 Smartphones possessed compatibility with LTE Band 12 as detailed in the below chart from the Idol 3 Smartphones' user manual: <http://media.alcatelonetouch.us/pub/media/wysiwyg/product-support/pdf/D2u5X0B9MfS.pdf> (last visited on December 20, 2016)

|                           |  |
|---------------------------|--|
| <b>Processor</b>          | Qualcomm® 8939 Quad 1.5GHz + Quad 1GHz   |
| <b>Platform</b>           | Android™ L   |
| <b>Memory</b>             | ROM: 16 GB<br>RAM: 2 GB  |
| <b>Dimensions (LxWxT)</b> | 152.7*75.14*7.4 mm   |
| <b>Weight</b>             | Around 140.7 grams with battery  |
| <b>Display</b>            | 5.5-inch FHD touchscreen with (1920×1080) resolution   |
| <b>Network</b>            | LTE FDD:<br>B2/4/12(3/5/7/20)<br>UMTS:<br>Quad-band 850/1900/AWS MHz<br>GSM:<br>Quad-band 850/900/1800/1900 MHz<br>(Band frequency and data speed are operator dependent.) |
| <b>GPS</b>                | Assisted GPS/Glonass GPS   |
| <b>Connectivity</b>       | <ul style="list-style-type: none"> <li>• Bluetooth BT4.1 LE</li> <li>• Wi-Fi IEEE 802.11 a/b/g/n</li> <li>• 3.5 mm audio jack</li> <li>• Micro-USB</li> </ul>              |

19. Throughout the proposed Class Period, Defendants uniformly marketed, advertised and warranted that Idol 3 Smartphones possessed compatibility with LTE Band 12 (700 Mhz) as stated on the packaging of the phone:

21. In a software update automatically distributed to all Idol 3 Smartphones, Defendants surreptitiously removed LTE Band 12 compatibility which reduced the functionality of the Idol 3 Smartphones.

22. Numerous Idol 3 Smartphone owners have complained about the removal of LTE Band 12 compatibility, including as follows:

- a. False Advertising! T-Mobile Users Beware! I purchased two of these phones (The first in June 2015 from Amazon and the second one in Sep 2015 directly from Alcatel who used Amazon to fulfill the order). My Primary reason for the purchases was support for T-Mobile Band 12 and the price point. Well, for the last couple of months, the signal quality has been noticeably worse,...missing calls, texts etc. I tried to think back to what changed and I remembered an OTA update in January (sic) from Alcatel. After some research, I discovered that Alcatel's January (sic) OTA firmware update REMOVED support for T-Mobile band 12! They actually took away the feature that was my primary reason for purchase. No warnings, no communications. It was done secretly and now I have two phones that perform very poorly. When I contacted them their response was basically "Screw you...too bad." I have read they have no plans to update it and make it work. It's bringing your new car to the dealer for an oil change and them removing your transmission without telling you leaving you with a useless hunk of metal. Shame on you Alcatel/TCL and Amazon! I would hope that you would make this right somehow, but not holding my breath.
- b. Stay away from Alcatel products. They do not do updates but when they do it us not for your benefit. The only real update was forced onto the idol 3 phone and it removed band 12 from the phone. This is a BIG deal if you use TMobile. Alcatel advertised it band 12 capable, it is now not.
- c. Don't buy if you use T-Mobile or there 4g towers Alcatel removed band 12 without warning. And they won't help me contacted several times.

See [https://www.amazon.com/ALCATEL-One-Touch-Unlocked-Smartphone-Display/product-reviews/B013T5ISN8/ref=cm\\_cr\\_dp\\_qt\\_hist\\_one?ie=UTF8&filterByStar=one\\_star&showViewpoints=0](https://www.amazon.com/ALCATEL-One-Touch-Unlocked-Smartphone-Display/product-reviews/B013T5ISN8/ref=cm_cr_dp_qt_hist_one?ie=UTF8&filterByStar=one_star&showViewpoints=0) (last accessed September 4, 2016).

### CLASS ACTION ALLEGATIONS

23. Plaintiff brings this class action pursuant to North Carolina Rule of Civil Procedure 23 and case law there under on behalf of herself and all others similarly situated.

Smartphones possessed LTE Band 12 compatibility;

- e. Whether Defendants surreptitious removal of LTE Band 12 compatibility is unfair, false, misleading, or deceptive acts in the conduct of any trade or commerce;
- f. Whether Defendants made any fraudulent or negligent misrepresentations regarding whether the Idol 3 Smartphones possessed LTE Band 12 compatibility to induce purchase;
- g. Whether Plaintiff and the Class are entitled to compensatory damages, including, among other things: (i) compensation for all out-of-pocket monies expended by members of the Class for replacement of the Idol 3 Smartphones; (ii) the failure of consideration in connection with and/or difference in value arising out of the variance between the Idol 3 Smartphones as warranted as possessing LTE Band 12 compatibility and as without possessing LTE Band 12 compatibility; and, (iii) whether Plaintiff and the Class are entitled to all costs associated with replacement of their Idol 3 Smartphones;
- h. Whether Plaintiff and the Class are entitled to restitution and/or disgorgement;
- i. Whether Plaintiff and the Class are entitled to equitable relief; and
- j. Whether Plaintiff and Class Members would have purchased their Idol 3 Smartphones, or whether they would have paid a lower price for them, had they known that Defendants would remove LTE Band 12 compatibility.

27. *Typicality*: Plaintiff's claims are typical of the claims of the members of the Class, as all such claims arise out of Defendant's conduct in designing, manufacturing, marketing, advertising, warranting, and selling the Idol 3 Smartphones and removing LTE Band 12 compatibility from Idol 3 Smartphones.

28. *Adequate Representation*: Plaintiff will fairly and adequately protect the interests of the members of the Class and has no interests antagonistic to those of the Class. Plaintiff has retained counsel experienced in the prosecution of complex class actions including, but not limited to, consumer class actions involving, *inter alia*, breach of warranties, product liability, and product design defects.

and because Plaintiff and the Class Members therefore could not reasonably have known that the Idol 3 Smartphones were defective, Defendants are estopped from relying on any statutes of limitations and/or repose that might otherwise be applicable to the claims asserted herein.

34. Due to the manifestation of the defects in the Idol 3 Smartphone, Plaintiff contacted Defendants to file a warranty claim, and to date, has not received an offer from Defendants to repair or replace her inherently defective Idol 3 Smartphone.

**FIRST CAUSE OF ACTION**  
**(Violation of the North Carolina Consumer Protection Act,  
N.C. Gen. Stat. § 75-1.1, et. seq.)**

35. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

36. Plaintiff brings this claim individually and on behalf of the Class.

37. Plaintiff and the Class Members are consumers who purchased Idol 3 Smartphones, which are consumer goods.

38. Plaintiff and the Class Members are entitled to the protections of the Consumer Protection Act, N.C. Gen. Stat. § 75-1.1, et. seq. (the "Act") and may recover damages pursuant to the provisions of the Act.

39. N.C. Gen. Stat. § 75-1.1 makes unlawful, "Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce."

40. Defendants engaged unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, through their advertisements and packaging of Idol 3 Smartphones, by representing to Plaintiff and the Class that the products as LTE Band 12 compatible and then surreptitiously removing that compatibility through a

economic losses in purchasing another smartphone that possesses LTE Band 12 compatibility; and (d) suffered and will suffer additional economic losses incidental to the loss of LTE Band 12 compatibility.

49. As a direct and proximate result of these unfair, deceptive and unconscionable commercial practices, Plaintiffs and the Class Members have been damaged in an amount in excess of \$25,000, and are entitled pursuant to N.C. Gen. Stat. § 75-16 to recover treble damages as well as attorneys' fees and costs.

**SECOND CAUSE OF ACTION**  
**(Breach of Contract)**

50. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

51. Plaintiff bring this claim individually and on behalf of the Class.

52. Plaintiff and each member of the Class formed a contract with Defendants at the time Plaintiff and the other Class Members purchased the Idol 3 Smartphones. The terms of that contract include the promises and affirmations of fact made by Defendants on the Idol 3 Smartphones' website specifications, user manual, packaging and advertising, as described above. These promises and affirmations became part of the basis of the bargain, and are part of the standardized contract between Plaintiff and the members of the Class and Defendants.

53. Defendants purport through their advertising and packaging to create a contract that the Idol 3 Smartphones possessed LTE Band 12 compatibility because purchasers of the Idol 3 Smartphones were the intended beneficiaries of Defendants' representations.

54. All conditions precedent to Defendants' liability under this contract were performed by Plaintiff and the Class when they purchased the Product and used it as directed.

64. Plaintiff and members of the Class would not have purchased the phones or would have paid less for them had they known the true nature of the Idol 3 Smartphones insofar as Defendants would strip them of LTE Band 12 compatibility.

65. As a result of Defendants' breach of warranty, Plaintiff and the Class have been damaged in the amount of the purchase price or in the alternative diminished value of the Idol 3 Smartphones and any consequential damages resulting from the purchases.

**FOURTH CAUSE OF ACTION**  
**(Breach of Express Warranty)**

66. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

67. Plaintiff bring this claim individually and on behalf of the Class.

68. Prior to purchase of the Idol 3 Smartphones, Defendants made affirmations of fact and promise that constitute express warranties that became part of the basis of the bargain when Plaintiff and Class Members purchased the Idol 3 Smartphones.

69. Specifically, on their website, in their marketing materials, on their packaging, Defendants made express warranties that, at all times, the Idol 3 Smartphones possessed LTE Band 12 compatibility.

70. Plaintiff and Class Members relied on Defendants' express warranties in purchasing the Idol 3 Smartphones.

71. However, Defendants breached their express warranties because the Idol 3 Smartphones do not possess LTE Band 12 compatibility.

72. Defendants breached their express warranties about the Idol 3 Smartphones when they surreptitiously removed LTE Band 12 compatibility through a software update.

82. Further, Defendants actively concealed and/or omitted material facts regarding the fact that the Idol 3 Smartphones would not be compatible with LTE Band 12.

83. These representations were made by Defendants with the intent of defrauding and deceiving Plaintiff, the Class members and the consuming public.

84. At the time the aforesaid representations were made by Defendants, Plaintiff and the Class members were unaware of the falsity of said representations and reasonably believed them to be true.

85. In reliance upon said representations, Plaintiff and Class Members purchased the Idol 3 Smartphones thereby sustaining damages.

86. Defendants knew and were aware, or should have been aware, that the Idol 3 Smartphones were defective and not fit for their customary and normal use.

87. Defendants knew, or should have known, that the Idol 3 Smartphones did not conform to their representations which had been made to induce purchase.

88. Defendants brought the Idol 3 Smartphones to the market and acted fraudulently, wantonly, and maliciously to the detriment of Plaintiff and the Class members.

89. Defendants engaged in fraudulent misrepresentations through their advertisements and packaging of Idol 3 Smartphones, by representing to Plaintiff and the Class that the products as LTE Band 12 compatible and then surreptitiously removing that compatibility through a software update. Such pattern of conduct was uniform in nature with respect to the marketing and sale of the Product.

90. Defendants also knowingly and fraudulently concealed, suppressed and consciously omitted material facts from Plaintiff and other members of the Class knowing that

that Idol 3 Smartphones would be free from defects and fit for its customary and normal use and would be compatible with LTE Band 12.

98. Those representations made by Defendants were, in fact, incorrect.

99. When said representations were made by Defendants, upon information and belief, they knew or should have known those representations to be false and they negligently disregarded whether the representations were true.

100. Further, Defendants knew or should have known that the omitted material facts regarding the fact that the Idol 3 Smartphones would not be compatible with LTE Band 12, but did not disclose this to Plaintiff and Class Members.

101. These representations were negligently made by Defendants.

102. At the time the aforesaid negligent misrepresentations were made by Defendants, Plaintiff and the Class members were unaware of the falsity of said misrepresentations and reasonably believed them to be true.

103. In reliance upon said misrepresentations, Plaintiff and Class Members purchased the Idol 3 Smartphones thereby sustaining damages.

104. Defendants knew and were aware, or should have been aware, that the Idol 3 Smartphones were defective and not fit for their customary and normal use as alleged in their marketing and representations.

105. Defendants knew, or should have known, that the Idol 3 Smartphones did not conform to their representations which had been made to induce purchase.

106. Defendants brought the Idol 3 Smartphones to the market and acted negligently to the detriment of Plaintiff and the Class members.

**SEVENTH CAUSE OF ACTION**

**(Violation of the Magnuson-Moss Consumer Products Liability Act)**

113. Plaintiff, individually and on behalf of all others similarly situated, realleges and incorporates by reference all foregoing allegations as though fully set forth herein.

114. The Magnuson-Moss Consumer Products Liability Act, 15 U.S.C §2301, et seq. ("MMCPLA" or the "Act") provides a private right of action to purchasers of consumer products against retailers who, *inter alia*, fail to comply with the terms of a written warranty, express warranty and/or implied warranty. As demonstrated herein, Defendants have failed to comply with the terms of their warranties, written, express and implied, with regard to the Idol 3 Smartphones that they advertised, distributed, marketed and/or sold.

115. Plaintiff and the members of the Class are "consumers" under the MMCPLA.

116. Defendants have been given a reasonable opportunity by Plaintiff and other Class members to cure such failures to comply and has repeatedly failed to do so.

117. By virtue of the foregoing, Plaintiff and other members of the Class are entitled to an award of damages and other appropriate relief, including attorneys' fees.

**EIGHTH CAUSE OF ACTION**

**(Unjust Enrichment)**

**(In the Alternative)**

118. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

119. Plaintiff brings this claim individually and on behalf of the Class.

120. Plaintiff and Class Members have conferred a benefit on Defendants by purchasing their Idol 3 Smartphones.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment as follows:

1. Plaintiff and Class Members have and recover against Defendants, jointly and severally, an amount in excess of \$25,000.00, said amount to be proven at the trial of this action;
2. For an order certifying the proposed Class and appointing Plaintiff and his counsel to represent the classes;
3. For an order awarding Plaintiff and Class Members actual, statutory, punitive, and/or any other form of damages provided by and pursuant to the statutes cited above;
4. For an order awarding Plaintiff and the class members restitution, disgorgement and/or other equitable relief provided by and pursuant to the statutes cited above or as the Court deems proper;
5. For an order or orders requiring Defendants to adequately disclose and remediate the removal of LTE Band 12 compatibility from the Idol 3 Smartphones and enjoining Defendants from removing LTE Band 12 compatibility in the future;
6. For an order awarding Plaintiff and the Class Members pre-judgment and post-judgment interest;
7. For an order awarding Plaintiff and the Class Members treble damages and attorneys' fees as provided in N.C. Gen. Stat. §§ 75-16 and 75-16.1;
8. For an order awarding Plaintiff and the Class Members reasonable attorneys' fees and costs of suit, including expert witness fees;
9. For punitive damages;
10. For equitable or injunctive relief; and
11. For an order awarding such other and further relief as this Court may deem just