



Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

NewLife Digital Inc.

Plaintiff

and

MMI-CPR, LLC, and Assurant, Inc.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.  
The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date August 21, 2023 Issued by \_\_\_\_\_  
Local Registrar

Address of court office: London Courthouse  
80 Dundas Street  
London ON N6A 6A3

**TO:** MMI-CPR  
7100 East Pleasant Valley Road  
Suite 300  
Independence, Ohio, USA  
44131

**AND TO:** Assurant, Inc.  
28 Liberty Street  
41<sup>st</sup> Floor  
New York, New York, USA  
10005

## CLAIM

### DEFINED TERMS

1. The following definitions apply for the purposes of this Statement of Claim:
  - a) “**Class**” and/or “**Class Member(s)**” All persons, corporations or other entities resident in Canada who are current or former Cell Phone Repair franchisees;
  - b) “**Class Proceedings Act**” means the *Class Proceedings Act, 1992*, SO 1992, c.6, as amended;
  - c) “**Courts of Justice Act**” means the Ontario *Courts of Justice Act*, RSO 1990, c.C-43, as amended;
  - d) “**Defendants**” means collectively MMI-CPR, LLC, and Assurant, Inc.;
  - e) “**Excluded Person(s)**” means the Defendants and their officers, directors, and their respective heirs, successors, and assigns;
  - f) “**Provincial Franchise Legislation**” means collectively the Ontario *Arthur Wishart Act (Franchise Disclosure) 2000*, S.O. 2000, c. 3; Alberta *Franchises Act*, R.S.A. 2000, c. F-23; British Columbia *Franchises Act*, S.B.C. 2015, c. 35; Manitoba *The Franchises Act*, C.C.S.M. c. F156; New Brunswick *Franchises Act*, R.S.N.B. 2014, c. 111; and Prince Edward Island *Franchises Act*, R.S.P.E.I. 1988, c. F-14.1.
  - g) “**Rules of Civil Procedure**” means the Ontario *Rules of Civil Procedure*, RRO 1990, Reg 194; and

## RELIEF CLAIMED

2. The Plaintiff on its own behalf and on behalf of Class Members, seeks:
- (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff of the Class pursuant to the *Class Proceedings Act*;
  - (b) a declaration that the common law duty of honesty applies in provinces without Provincial Franchise Legislation, and across all provinces as applicable;
  - (c) general damages and special damages in the amount of \$75,000,000 for breaches of the Provincial Franchise Legislation, the common law duty of honesty, and breach of contract;
  - (d) punitive damages in the amount of \$25,000,000;
  - (e) a declaration that the Defendants are jointly and severally liable for any and all damages awarded;
  - (f) disgorgement of the Defendants' profits and other equitable relief;
  - (g) a reference to decide any issues not decided at the trial of the common issues;
  - (h) costs of administration and notice, plus applicable taxes, pursuant to s. 26(9) of the *Class Proceedings Act*;
  - (i) costs of this action pursuant to the *Class Proceedings Act*, the *Courts of Justice Act*, and the *Rules of Civil Procedure*;
  - (j) prejudgment interest compounded and post-judgement interest in accordance with ss. 128 and 129 of the *Courts of Justice Act*; and
  - (k) such further and other relief as to this Honourable Court may seem just.

## THE PARTIES

### The Plaintiff

3. The Plaintiff, NewLife Digital Inc. (the "**Plaintiff**" or "**NewLife**"), is a corporation registered pursuant to the laws of Ontario with its head office in Toronto, Ontario. NewLife is the owner of a Cell Phone Repair franchise in Toronto, Ontario.

4. The Plaintiff entered into a franchise agreement with the Defendant CPR in or around 2012 (“**Franchise Agreement**”). The Plaintiff has spent tens of thousands of dollars in connection with opening and operating of its franchise.

### **The Class**

5. The Plaintiff seeks to represent the following Class of which it is a member:

All persons, corporations or other entities resident in Canada who are current or former Cell Phone Repair franchisees.

### **The Defendants**

6. MMI-CPR, LLC (“**CPR**”) is a corporation incorporated pursuant to the laws of Delaware. It has its principal place of business in Independence, Ohio. CPR is the franchisor of the Plaintiff’s franchise.

7. Assurant, Inc. (“**Assurant**”) is a corporation incorporated pursuant to the laws of Delaware. It has its principal place of business in New York, New York. Assurant is the parent company of CPR.

## **FACTS**

### **The Franchise System**

8. The Defendants operate a franchise network of mobile device repair shops. CPR was founded in 1997 and began franchising in the early 2010s. There are currently eighteen CPR franchises operating in Canada.

9. CPR has developed methods of marketing and operations for businesses providing repair services for smart phones, cell phones, laptops, game systems and other electronic devices and

selling certain devices and accessories. CPR has a system for promoting, advertising, managing and selling such businesses.

10. Prior to entering into a franchise relationship, CPR provides prospective franchisees a disclosure document (“**Disclosure Document**”). The Disclosure Document purportedly contains disclosures required under the Provincial Franchise Legislation and common law.

11. The franchise relationship is governed by a Franchise Agreement, which is drafted solely by CPR and is presented to prospective franchisees without any opportunity for negotiation of terms.

12. To open a new CPR franchise, prospective franchisees must pay, *inter alia*, an initial franchise fee of \$19,900, a training fee of \$15,000, royalty fees of the greater of 5.8% of gross volume of the franchise business or \$600 twice monthly, National Advertising Fund fees of \$285 monthly, and technology fees of \$125 monthly. Canadian franchisees are required to pay the royalty fees, National Advertising Fund fees and technology fees in American dollars, increasing the cost to franchisees after adjusting for the exchange rate.

### **Acquisition by Assurant**

13. CPR was acquired by Assurant in 2019 (the “**Acquisition**”). Assurant is a Fortune 500 company that provides cell phone insurance. It has significant financial strength and infrastructure, including contractual relationships with major cell phone manufacturers.

14. The Plaintiff and Class Members were advised that CPR would continue to operate as a standalone company and its management team would remain in charge of day-to-day operations

and support of the business after the Acquisition. The Plaintiff and Class Members were advised that the Acquisition would be beneficial for their franchises.

15. Since the Acquisition, the Defendants have implemented policies and programs which have had widespread negative consequences for franchisees.

*Apple IRP Program*

16. In or around February 2021, CPR informed franchisees that a new program called Apple Independent Repair Providers would be implemented in CPR franchises in the United States and that it would be introduced in Canadian CPR franchises shortly afterwards.

17. Under this program, all CPR franchisees were to become Apple Independent Repair Providers. CPR advised that franchisees would benefit by gaining access to genuine Original Equipment Manufacturer (OEM) parts immediately from Apple, gaining access to Apple repair and program training, access to Apple tools and fixtures, and receiving permission from Apple to market their franchises as using genuine parts and having certified technicians.

18. In anticipation of the introduction of Apple IRP in Canada, the Plaintiff purchased some of the required equipment, at a significant cost. Despite the correspondence in February 2021 indicating that Apple IRP would be introduced in Canada shortly after the United States, CPR has not introduced Apple IRP in its Canadian franchises and has not communicated to franchisees any further timelines as to when it may be introduced.

19. The Plaintiff has lost a significant amount of business due to CPR failure to implement Apple IRP in Canada. The Plaintiff had relationships with other businesses to do Apple repairs. In 2021, one of these businesses, Likewise, advised the Plaintiff that they wanted repair providers to

use only Apple original screens and batteries for repairs. The Plaintiff lost this business because CPR failed to deliver on the Apple IRP status. The Plaintiff suffered significant losses in revenues from lost Apple business because it was not able to offer the services associated with the Apple IRP program.

### **Lack of Support for Franchisees**

20. CPR promises ongoing support to businesses for potential and current franchisees. The Disclosure Document states that CPR may “conduct ongoing training through electronic media or otherwise” at no cost to franchisees. The Disclosure Document also states that “ongoing assistance by telephone is included” with the franchisee’s purchase of a franchise. The Franchise Agreement states that CPR will “promptly provide such advice and information as we consider reasonably appropriate to assist you with all methods and procedures associated with the system marketing and advertising; management and administration, the use of the Image or any changes to it and the use and application of Products and Services.”

21. Despite the contractual obligations, CPR has continually failed to provide adequate levels of support to franchisees. CPR has not consistently provided updated training or instructional material on franchise operations or technical repairs. When representatives of the Plaintiff has raised concerns with CPR, they has consistently been advised by CPR that there is nothing they can do.

22. Additionally, CPR is owned by Assurant, Inc., a multi-national insurance company that provides insurance for cell phone repairs. In the US, when Assurant insureds need cell phone repair, Assurant sends at least some portion of that insurance work to CPR franchisees. In Canada, however, Assurant does not send any insurance claims to CPR franchisees. Instead, Assurant sends



its insurance claims to CPR's competitors, such as Mobile Klinik. CPR and Assurant have other programs in the US, such as the consignment parts and device purchasing programs, which were never introduced into Canada.

23. CPR has neglected Canadian franchisees by failing to provide any local support. While CPR franchises in the US are assigned regional managers to provide support, training and assistance, in Canada a general manager deals with all franchises. Canadian franchisees do not have their concerns dealt with in a prompt manner and have difficulty communicating with CPR and the assigned general manager.

24. CPR also promises support for franchisees through its National Advertising Fund ("NAF"). The Plaintiff and Class Members are required to pay \$285 each month towards the NAF. In the Franchise Agreement, the NAF is described as intending "to maximize recognition of the Marks and the CPR Franchise Businesses in the United States and Canada."

25. The Disclosure Document states that the NAF is used to promote CPR's business through "creation, production and distribution of marketing, advertising, public relations and other materials in any medium, including the Internet (e.g., pay-per-click advertising); administration expenses; brand/image campaigns; media; national, regional and other marketing programs; activities to promote current and/or future CPR Franchise Businesses and the Marks; agency and consulting services; research; and any expenses approved by us and associated with any franchisee advisory council or other advisory groups and committees formed by us."

26. Despite paying approximately \$3,420 per year towards the NAF, the Plaintiff and Class Members have not received the benefits which they were promised in the Franchise Agreement and Disclosure Document would be provided by the NAF.

27. Specifically, CPR's former owner, John Davies, acquired an ownership interest in a US-based company, Front Porch Solutions. After that, Mr. Davies caused CPR to pay the vast majority of the NAF budget to Front Porch Solutions. Assurant has continued this policy until very recently.

28. For several years, the NAF has paid Front Porch Solutions millions of dollars. The NAF paid Front Porch those sums without receiving specific information on what Front Porch was doing with the money. Front Porch charged excessive hourly rates and submitted monthly invoices that stated only the time spent, with no description of what services were provided or what the time was spent on.

29. In exchange for these extraordinary monthly payments, Front Porch provided minimal services, primarily focused on search engine optimization ("SEO").

30. In or around June 2022, CPR representatives on a network update call explained that a detailed analysis of NAF payments showed that out of each franchisee's NAF payment, almost 70% went to "Website management & optimization."

31. CPR has one primary website, [www.cellphonerepair.com](http://www.cellphonerepair.com); the individual franchisees have largely similar sites within the primary website.

32. The primary website is not optimized or well designed. In or around June 2022, a CPR representative admitted that the primary website required a refresh, including a complete re-design of the back end coding. The primary had not been updated in over five years, and its out-dated design affected search engine rankings.

33. The primary website is also not optimized for customer use. An internal CPR test showed that of the 54% of people who used the website to obtain a repair estimate, only 1.7% of visitors scheduled an appointment at a CPR franchise.

34. Putting its purported website management aside, Front Porch did not provide much value to franchisees. It periodically sent marketing emails to CPR customers, generated generic social media posts, and updated franchisees' hours on Google and social media listings. In fact, in early 2022, Assurant took over the creation of social media posts but CPR continued to pay Front Porch. Front Porch stopped facilitating CPR franchisees' Google Adwords advertising in 2019 based on purported Google policy changes, even though CPR's competitors were able to use Adwords to maximize search results.

35. Front Porch also did not provide advertisements on Facebook or on any other major social media site. The National Advertising Fund—contrary to its name—purchases no “advertising,” such as print, radio, or television ads.

36. In or around June 2022, a CPR representative acknowledged that people have a lot of concerns with Front Porch and promised that CPR was evaluating other providers. In late 2022, CPR announced that it would stop using Front Porch's services and change to another provider.

### **Losses Suffered by Franchisees**

37. The Plaintiff and Class Members have suffered serious losses due to the conduct of the Defendants. In particular, losses suffered by the Plaintiff and Class Members include but are not limited to the following:

- (a) decrease in revenue from returns and further repairs associated with the requirement to purchase inferior repair parts from Mobile Defenders;
- (b) lost revenue from the failure to implement the Apple IRP Program;
- (c) contributing monthly payments towards the NAF without receiving any of the promised benefits; and
- (d) business interruption, administrative expenses and special costs associated with the lack of support provided by CPR.

### **The Defendants' Misconduct**

38. The Defendants breached the statutory and common law duty of fair dealing to the Plaintiff and class members by instituting policies and programs that hurt franchisees and failing to provide adequate levels of support to franchisees as represented by the Defendants in the Disclosure Document.

## **CAUSES OF ACTION**

### **Breach of Provincial Franchise Legislation**

#### *Duty of Fair Dealing*

39. The corresponding sections of the Provincial Franchise Legislation referred to below are set out in Appendix A.

40. Under s. 3(1) of the *Arthur Wishart Act*, and corresponding sections of the Provincial Franchise Legislation, every franchise agreement imposes on each party a duty of fair dealing in the performance and enforcement of the agreement, including in relation to the exercise of rights under the franchise agreement. The duty of fair dealing includes a duty to act in good faith and in

accordance with reasonable commercial standards. Under s. 3(2) of the *Arthur Wishart Act*, and corresponding sections of the Provincial Franchise Legislation, a party to a franchise agreement has a right of action for damages against another party to the franchise agreement who breaches the duty of fair dealing.

41. Under s. 5 of the *Arthur Wishart Act*, and corresponding sections of the Provincial Franchise Legislation, a franchisor shall provide a prospective franchisee with a disclosure document and the prospective franchisee shall receive the disclosure document not less than 14 days before the earlier of (a) the signing by the prospective franchisee of the franchise agreement or any other agreement relating to the franchise and (b) the payment of any consideration by or on behalf of the prospective franchisee to the franchisor or the franchisor's associate relating to the franchise.

42. Under s. 8(1) of the *Arthur Wishart Act*, and corresponding sections of the Provincial Franchise Legislation, all or any one or more of the parties to a franchise agreement who are found to be liable in an action under subsection 3(2) or who accept liability with respect to an action brought under that subsection are jointly and severally liable.

43. Under s. 9 of the *Arthur Wishart Act*, and corresponding sections of the Provincial Franchise Legislation, the rights conferred under the Act are in addition to and do not derogate from any other right or remedy any party to a franchise agreement may have at law.

44. Under s. 12 of the *Arthur Wishart Act*, and corresponding sections of the Provincial Franchise Legislation, the rights conferred by the Act cannot be waived and any purported waiver or release by a franchisee is void.

45. As described above, the Defendants have breached their duty of fair dealing to the Plaintiff and class members in the performance and enforcement of the Franchise Agreement. As such, the Plaintiff and Class Members are entitled to statutory damages under s. 3(2) of the *Arthur Wishart Act*, and corresponding sections of the Provincial Franchise Legislation, in the full amounts of their losses.

#### *Misrepresentation*

46. Under s. 7(1) of the *Arthur Wishart Act*, and corresponding sections of the Provincial Franchise Legislation, if a franchisee suffers a loss because of a misrepresentation contained in the disclosure document, the franchisee has a right of action for damages against the franchisor, the franchisor's agent, the franchisor's broker (if applicable), the franchisor's associate and every person who signed the disclosure document.

47. Pursuant to s. 7(2) of the *Arthur Wishart Act*, and corresponding sections of the Provincial Franchise Legislation, if the disclosure document contains a misrepresentation, the franchisee is deemed to have relied on the misrepresentation.

48. As set out above, the Defendants made misrepresentations regarding the levels of support that would be provided to franchisees in the Disclosure Document. As such, the Plaintiff and class members are entitled to statutory damages under s. 7(1) of the *Arthur Wishart Act*, and corresponding sections of the Provincial Franchise Legislation, in the full amount of their losses.

#### **Breach of Contract and Duty of Good Faith**

49. The Franchise Agreement is a contract between the Defendants and the franchisees, including the Plaintiff and Class Members. Parties to a contract owe one another a duty of good

faith in contractual performance. As such, the Defendants owed the Plaintiff and Class Members a duty of good faith in the performance of the Franchise Agreement.

50. As described above, the Defendants have breached their duty of good faith to the Plaintiff and Class Members. The Defendants have not behaved reasonably or honestly in dealing with the Plaintiff and Class Members. The Defendants have failed to fulfil obligations and provide proper support to franchisees, causing harm to the Plaintiff and class members.

51. The Plaintiff and Class Members are entitled to be put in the position they would have been in had the Defendants fulfilled their duties, in the full amount of their losses.

## **DAMAGES**

52. As a result of the Defendants' conduct described above, the Plaintiff and Class Members have suffered damages and losses and continue to do so. The Plaintiff therefore claims against the Defendants, on its own behalf and on behalf of the Class, the relief more particularly set forth in paragraph 1 above.

53. The Defendants are jointly and severally liable for the actions of and the damage allocable to each and any of them.

## **PLACE OF TRIAL**

54. The Plaintiff proposes that this action be tried in London, Ontario.

## **SERVICE OUTSIDE ONTARIO WITHOUT LEAVE**

55. Pursuant to rule 17.02(f) and (p) of the *Rules of Civil Procedure*, this originating process may be served outside Ontario without a court order because the proceeding consists of a claim or

claims, in respect of a contract that provides it is to be governed by or interpreted in accordance with the law of Ontario; and, against a person ordinarily resident or carrying on business in Ontario.

August 21, 2023

**MCKENZIE LAKE LAWYERS LLP**

140 Fullarton Street, Suite 1800

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**Daniel So** (LSO # 43838A)

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Lawyers for the Plaintiff



APPENDIX A

Province	Statute	Definitions	Fair Dealing	Disclosure Obligations	Right of Action – Disclosure Obligations	Joint and Several Liability	No Derogation of Other Rights	No waiver of Rights
Ontario	<i>Arthur Wishart Act, 2000, S.O. 2000, c. 3</i>	s. 1	s. 3	s. 5	s. 7	s. 8	s. 9	s. 12
British Columbia	<i>Franchises Act, S.B.C. 2015, c. 35</i>	s. 1	s. 3	s. 5	s. 7	s. 10	s. 11	s. 13
Prince Edward Island	<i>Franchises Act, R.S.P.E.I. 1988, c. F-14.1</i>	s. 1	s. 3	s. 5	s. 7	s. 9	s. 10	s. 12

<b>Province</b>	<b>Statute</b>	<b>Definitions</b>	<b>Fair Dealing</b>	<b>Disclosure Obligations</b>	<b>Right of Action – Disclosure Obligations</b>	<b>Joint and Several Liability</b>	<b>No Derogation of Other Rights</b>	<b>No waiver of Rights</b>
Alberta	<i>Franchises Act</i> , R.S.A. 2000, c F-23	s. 1	s. 7	s. 4	s. 9	s. 12	s. 15	s. 18
Manitoba	<i>The Franchises Act</i> , C.C.S.M., c F156	s. 1	s. 3	s. 5	s. 7	s. 8	s. 9	s. 11
New Brunswick	<i>Franchises Act</i> , R.S.N.B. 2014, c. 111	s. 1	s. 3	s. 5	s. 7	s. 9	s. 10	s. 12

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Plaintiff

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