

LAW OFFICES OF GARY R. CARLIN, APC

GARY R. CARLIN, CSBN: 44945

gary@garycarlinlaw.com

STEVEN T. ROMEYN, CSBN: 304535

steven@garycarlinlaw.com

301 East Ocean Blvd., Suite 1550

Long Beach, California 90802

Telephone: (562) 432-8933

Facsimile: (562) 435-1656

Attorneys for Plaintiffs:

DINNERMAN, FEINBERG, PACIFIC INFORMATION

TECHNOLOGIES, and PACIFIC BUSINESS KK, and

TECHNOLOGY DESIGN SYSTEMS, LTD.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Civil Docket No.:

JOSHUA DAVID DINNERMAN,
individually and on behalf of all others
similarly situated; PAUL FEINBERG,
individually and on behalf of all others
similarly situated; PACIFIC
INFORMATION TECHNOLOGIES, an
Arizona corporation; PACIFIC
BUSINESS KK, a Tokyo Japan
corporation; and TECHNOLOGY
DESIGN SYSTEMS, LTD., a Hong Kong
corporation,

Plaintiffs,

vs

DATTO, INC., a Connecticut corporation,
as such has a regional office in Irvine,
CA; and OPEN MESH, INC., an Oregon
corporation,

Defendants.

CLASS ACTION COMPLAINT

- (1) Breach of the Magnuson-Moss Warranty Act [15 U.S.C. 2301 et seq.]
- (2) False Advertising – California Business and Professions Code §17200 et seq.;
- (3) Violations of Unfair Business Practice Act – California Business and Professions Code §17200 et seq.;
- (4) Violation of Consumer Legal Remedies Act;
- (5) Breach of Contract;
- (6) Breach of Implied Covenant of Good Faith and Fair Dealing
- (7) Breach of Implied Warranty of Merchantability;
- (8) Intentional Misrepresentation; and
- (9) Negligence;

[Plaintiffs Demand a Trial by Jury]

LAW OFFICES OF GARY R. CARLIN APC
301 EAST OCEAN BOULEVARD, SUITE 1550
LONG BEACH, CALIFORNIA 90802

1 Plaintiffs, by their undersigned attorneys, for their Class Action Complaint (Complaint)
2 against Defendants, alleges as follows:

3 **JURISDICTION AND VENUE**

4
5 1. Jurisdiction of this Court is based on 28 USC § 1332, diversity of citizenship,
6 and 28 USC § 1603 (a) and (b).

7
8 2. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C.
9 § 1332(a)(d)(2)(B)(4) and 28 USC § 1603 (a) and (b). The aggregate value of the claims of all
10 members of the proposed class and subclass(es) are in excess of ten million dollars , exclusive
11 of interest and costs. Many members of the proposed class are citizens of a state and/or country
12 different from Defendant.

13
14 3. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action
15 because a substantial part of the events, omissions, and acts giving rise to the claims herein
16 occurred in this District where DEFENDANTS and each of them, distributed, marketed,
17 advertised, and sold the trading devices which are the subject of the present complaint. Venue is
18 also appropriate in this District pursuant to 28 USC § 1391(b)(2) because a substantial part of
19 the acts and omissions that gave rise to this Complaint occurred in or emanated from this
20 District.

21
22 4. DEFENDANT DATTO is authorized to do business and does conduct business
23 in California and has specifically marketed, advertised, and made substantial sales in California.

24
25 5. DEFENDANT OPEN MESH has sufficient minimum contacts with this state and
26 avails itself of the laws of the District and state of California by marketing its products,
27 advertising them, and selling them within this District. The exercise of jurisdiction does not
28

LAW OFFICES OF GARY R. CARLIN APC
301 EAST OCEAN BOULEVARD, SUITE 1550
LONG BEACH, CALIFORNIA 90802

1 “offend the traditional notions of fair play and substantial justice” (*International Shoe Co. v.*
2 *Washington (1945) 326 U.S. 310*).

3
4 6. DEFENDANT DATTO has a place of business in the District from an office at
5 400 Spectrum Center Dr., Ste. 2100, Irvine, CA 92618.

6
7 **SUMMARY OF THE ACTION**

8 7. Users of Defendants' devices were promised a “lifetime cloud license”,
9 “automatic firmware updates” and other features. Plaintiffs allege that the Defendants promoted
10 false advertising upon purchasing OPEN MESH devices and in fact did not provide the features
11 that were promised unless consumers agreed to pay a monthly maintenance fee for a cloud
12 license to continue receiving the promised benefits and features. Without the cloud license the
13 devices are rendered useless. Plaintiffs and Class members lost economic gain and suffered
14 financial loss due to Defendants' false advertising and deception. Plaintiffs and Class members
15 seek special, compensatory, punitive damages, and an injunction.

16
17 **PARTIES**

18 8. Plaintiff Paul Feinberg (“FEINBERG”) was and is a citizen of the United States,
19 and a permanent residence in Japan.

20
21 9. Joshua David Dinnerman (“DINNERMAN”) was and is a citizen of the United
22 States.

23
24 10. Pacific Information Technologies, Inc is an Arizona corporation with its principal
25 place of business at 916 E. Baseline Rd., #106, Mesa, Arizona.

26
27 11. Pacific Business KK is a Tokyo Japan corporation with its principal place of
28 business at Mukai Building, 5th Floor, 1-13-14 Sekiguchi, Bunkyo-ku, Tokyo 112-0014.

LAW OFFICES OF GARY R. CARLIN APC
301 EAST OCEAN BOULEVARD, SUITE 1550
LONG BEACH, CALIFORNIA 90802

1 19. OPEN MESH advertised a “lifetime cloud license” along with other features. A
2 true and correct copy of the warranty advertised on the box is attached and labeled as **Exhibit**
3 **“A”**.

4
5 20. DATTO and OPEN MESH devices use CLOUDTRAX, a cloud-based network
6 controller. Without CLOUDTRAX and the “lifetime cloud license”, the devices cannot and do
7 not operate properly absent payment of a monthly maintenance fee hereinafter referenced.

8
9 21. In or about late 2016 DATTO acquired OPEN MESH. Once DATTO acquired
10 OPEN MESH, it adopted a new pricing model which required all users to have to pay a monthly
11 fee to maintain CLOUDTRAX and continue receiving the benefits of the “lifetime cloud
12 license”. This model leaves former users with the option to pay the monthly fee or
13 completely/partially replace their hardware and switch to another provider. This model
14 contradicts the basis on when the devices were purchased, which was that there would be no
15 monthly fee.

16
17 22. On or about November 3rd, 2016 FEINBERG purchased multiple OPEN MESH
18 devices, including but not limited to 6 (six) OM5 P-AC-NA access points priced at \$120.15 per
19 unit; 1 (one) Cloud Managed Switch priced at \$269.10; and 11 (eleven) OM5 P-AC-PS access
20 points. The total purchase price was \$2,366.65.

21
22 23. On or about January 31st, 2017 DATTO announced their acquisition of OPEN
23 MESH to the public.

24
25 24. On or about March 15th, 2017 FEINBERG entered into an International
26 Distributor Agreement with OPEN MESH, allowing him to receive units of OPEN MESH
27 devices, but no written agreement was executed.

28 ///

LAW OFFICES OF GARY R. CARLIN APC
301 EAST OCEAN BOULEVARD, SUITE 1550
LONG BEACH, CALIFORNIA 90802

1 25. In or about the middle of 2021 one of FEINBERG’s OPEN MESH devices failed
2 and disconnected from the Wi-Fi. FEINBERG had a spare OPEN MESH device that he wanted
3 to use, but it was set up on another network. To remove the device from the old network and
4 make it usable, he had to contact OPEN MESH and DATTO.

5
6 26. FEINBERG contacted OPEN MESH’s customer support multiple times through
7 phone calls and emails, but was never able to reach OPEN MESH and never received a response
8 to his numerous attempts to contact OPEN MESH.

9
10 27. FEINBERG then contacted DATTO’s customer support to no avail. DATTO
11 claimed that because the devices were not from their company they couldn’t provide
12 FEINBERG with much assistance. The DATTO customer support agent mentioned to
13 FEINBERG that if he purchased a monthly subscription from DATTO for CLOUDTRAX, that
14 it could bring his devices back online.

15
16 28. On or about October 2nd, 2021 DINNEMAN purchased four (4) OPEN MESH
17 access points. DINNEMAN encountered the same problem with the devices as FEINBERG.
18 DINNEMAN’s OPEN MESH devices could not be disconnected from the previous user’s
19 network unless he paid a monthly fee to DATTO.

20
21 29. At all times mentioned hereto, DATTO has not allowed for their devices to be
22 unlocked and used with another network platform.

23
24 30. Plaintiffs are informed and believe that DATTO issued an “End of Life” and
25 “End of Support” statement to all its users informing them that their lifetime cloud license and
26 customer support would be cut off by December 31st, 2021, absent their agreement to pay a
27 monthly maintenance fee.

28 ///

1 31. DATTO contacted OPEN MESH distributor’s clients to persuade them to switch
2 to DATTO.

3
4 32. Plaintiff FEINBERG is informed and believes and thereon alleges that in or
5 about early 2017 DATTO cut off OPEN MESH’s customer support.

6
7 33. Plaintiff FEINBERG is informed and believes and thereon alleges that in or
8 about early 2017 DATTO began ending support and automatic updates for OPEN MESH
9 devices.

10
11 34. As a direct and proximate result of DATTO’s business model change, Plaintiffs
12 and Class Members, like so many others, lost out on significant investments and prospective
13 profits to their damage.

14
15 **CLASS ACTION ALLEGATIONS**

16 35. Plaintiffs bring claims pursuant to Federal Rules of Civil Procedure Rule 23 (a)
17 and (b)(3) on behalf of the following Class, as defined below: All PLAINTIFFS and each of
18 them, consumers who bought OPEN MESH devices that require a connection to CLOUDTRAX
19 to function during 2007 through and including the present.

20
21 36. Additionally, Plaintiffs brings claims pursuant to Federal Rules of Civil
22 Procedure Rule 23 (a) and (c)(5) on behalf of the following Subclass, as defined below: All
23 DISTRIBUTORS and each of their customers who bought OPEN MESH devices that require a
24 connection to CLOUDTRAX to function during 2007 through and including the present.

25 ///

26 ///

27 ///

28

LAW OFFICES OF GARY R. CARLIN APC
301 EAST OCEAN BOULEVARD, SUITE 1550
LONG BEACH, CALIFORNIA 90802

LAW OFFICES OF GARY R. CARLIN, APC
301 EAST OCEAN BOULEVARD, SUITE 1550
LONG BEACH, CALIFORNIA 90802

1 37. This action has been brought and may properly be maintained as a class action
2 against ALL DEFENDANTS and each of them, pursuant to the provisions of Federal Rules of
3 Civil Procedure Rule 23 (b) and (c)(4).

4
5 38. **Numerosity:** The precise number of members of the proposed Class is unknown
6 to Plaintiffs at this time, but, based on information and belief, Class members are so numerous
7 that their individual joinder herein is impracticable. Based on information and belief and
8 publicly available reports, Class members number in the hundreds of thousands. Subclass
9 members are likely in the hundreds. All Class and Subclass members may be notified of the
10 pendency of this action by reference to DEFENDANTS and each of their records or by other
11 alternative means.

12
13 39. **Commonality:** Numerous questions of law or fact are common to Plaintiffs'
14 claims and members of the proposed Class. These common questions of law and fact exist as to
15 all Class members and predominate over questions affecting only individual Class members.
16 These common legal and factual questions include, but are not limited to the following:

17
18 a. Whether DEFENDANTS and each of them made a practice of knowingly selling
19 the OPEN MESH CLOUDTRAX supported devices under the pretense of providing lifetime
20 cloud license and support, nevertheless knowing that they were going to end the lifetime cloud
21 license and support, unless and until consumers agreed to pay a monthly maintenance fee;

22
23 b. Whether DEFENDANTS and each of them made a practice of selling the OPEN
24 MESH CLOUDTRAX supported devices purposefully with the intent to gain more customers
25 that would have to eventually pay the monthly maintenance fees;

26
27 c. Whether in doing so, DEFENDANTS and each of them regularly, routinely and
28 with impunity violated the Magnuson-Moss Warranty Act.

LAW OFFICES OF GARY R. CARLIN APC
301 EAST OCEAN BOULEVARD, SUITE 1550
LONG BEACH, CALIFORNIA 90802

1 d. Whether in doing so, DEFENDANTS and each of them made a practice of
2 violating consumer protection laws in failing to disclose their changes in the cloud license and
3 support policy;

4
5 e. Whether in doing so, DEFENDANTS and each of them were in multiple
6 breaches of their contracts and the implied covenant of good faith and fair dealing in connection
7 with their failure to continue to provide lifetime cloud license and support;

8
9 f. Whether DEFENDANTS and each of them regularly and as a practice were
10 negligent or grossly negligent by failing to continue to provide lifetime cloud license for
11 customers who had already purchased the OPEN MESH devices;

12
13 g. Whether DEFENDANTS and each of them regularly and as a practice breached
14 their fiduciary duties to customers by failing to provide adequate access to customer support;

15
16 h. Whether Plaintiffs and the other Class members suffered damages by
17 DEFENDANTS' practices, and if so, the appropriate class-wide measure of damages,
18 restitution, and other appropriate relief, including injunctive relief;

19
20 i. Whether Plaintiffs and the other Class members are entitled to injunctive
21 equitable and declaratory relief.

22
23 40. **Typicality:** The claims of the named Plaintiffs are typical of the proposed Class's
24 claims in that the named Plaintiffs were customers and/or distributors during the class period
25 and are unable to connect devices to Wi-Fi and/or networks, and unable to maintain their
26 lifetime warranty as a result of DEFENDANTS, and each, of their wrongful conduct.

27 ///

28 ///

LAW OFFICES OF GARY R. CARLIN APC
301 EAST OCEAN BOULEVARD, SUITE 1550
LONG BEACH, CALIFORNIA 90802

1 41. **Adequate Representation:** Plaintiffs will fairly and adequately represent the
2 Class's interests in that he has no conflicts with any other Class members. Plaintiffs have
3 retained competent counsel experienced in prosecuting complex class actions, including those
4 involving financial services, and they will vigorously litigate this class action.

5
6 42. **Predominance and Superiority:** There is no plain, speedy, or adequate remedy
7 other than maintaining this class action. A class action is superior to other available means, if
8 any, for the fair and efficient adjudication of this controversy. Prosecution of separate actions by
9 individual Class members would create the risk of inconsistent or varying adjudications,
10 establishing incompatible standards of conduct for the Defendant. Additionally, given the
11 relatively modest damages sustained by most individual members, few, if any, proposed Class
12 members could or would sustain the economic burden of pursuing individual remedies for
13 DEFENDANTS and each of their wrongful conduct. Treatment as a class action will achieve
14 substantial economies of time, effort, and expense and provide comprehensive and uniform
15 supervision by a single court. This class action presents no material difficulties in management.

16
17 43. Class action certification is warranted under Fed. R. Civ P. 23(b)(1)(A) because
18 the prosecution of separate actions by individual members of the proposed Class would create a
19 risk of inconsistent or varying adjudications with respect to individual Class members, which
20 may produce incompatible standards of conduct for Defendants.

21
22 44. Class action certification is warranted under Fed. R. Civ P. 23(b)(1)(B) because
23 the prosecution of separate actions by individual members of the proposed Class would create a
24 risk of adjudications with respect to individual Class members, which may, as a practical matter,
25 be dispositive of the interests of the other members not parties to the adjudications or
26 substantially impair or impede their ability to protect their interests.

27 ///

28 ///

1 50. Plaintiffs and members of the Class purchased various devices from OPEN
2 MESH.

3
4 51. DEFENDANTS are the warrantors who made a written warranty.

5
6 52. DEFENDANTS’ products failed to perform as warranted.

7
8 53. DEFENDANTS and each of their conduct caused Plaintiffs and Class members
9 harm, loss, and damages and continue to expose them to harm. These losses reflect damages
10 to Plaintiffs and Class members in an amount to be determined at trial or separate proceedings
11 as necessary.

12
13 **CAUSE OF ACTION II**
FALSE ADVERTISING – CALIFORNIA BUSINESS AND PROFESSIONS CODE
§17200 et seq.
14 **AGAINST DEFENDANTS**

15 54. Plaintiffs hereby incorporate by reference the allegations in the above
16 paragraphs of this Complaint as though fully set forth herein.

17
18 55. California Business & Professions Code § 17500 et seq., also known as
19 California False Advertising Law, makes it “unlawful for any person, ... corporation or
20 association, or any employee thereof with intent directly or indirectly to dispose of ...
21 personal property ... or anything of any nature whatsoever ... to make or disseminate or cause
22 to be made or disseminated from this state before the public in any state, in any newspaper or
23 other publication, or any advertising device, or by public outcry or proclamation, or in any
24 other manner or means whatsoever, including over the internet, any statement, concerning that
25 ... personal property ... or concerning any circumstance or matter of fact connected with the
26 proposed performance or disposition thereof, which is untrue or misleading, and which is
27 known, or which by the exercise of reasonable case should be known, to be untrue or
28 misleading...”

LAW OFFICES OF GARY R. CARLIN APC
301 EAST OCEAN BOULEVARD, SUITE 1550
LONG BEACH, CALIFORNIA 90802

LAW OFFICES OF GARY R. CARLIN APC
301 EAST OCEAN BOULEVARD, SUITE 1550
LONG BEACH, CALIFORNIA 90802

1 56. As alleged above, DEFENDANTS disseminated or caused to be disseminated
2 deceptive advertising of OPEN MESH devices to the general public. Such advertising,
3 including but not limited to, product packaging, advertising and marketing represented OPEN
4 MESH devices to come with a lifetime cloud access and support. These advertisements were
5 false and misleading because DEFENDANTS are now switching over to a monthly fee policy,
6 forcing existing OPEN MESH users to pay the monthly fee, or switch their devices and
7 networks to another company.

8
9 57. Upon Plaintiffs information and belief DEFENDANTS continue to disseminate
10 or cause to be disseminated such deceptive promises as alleged herein.

11
12 58. The false and deceptive statements regarding the lifetime cloud access and
13 support is likely to deceive the consuming public.

14
15 59. While disseminating or causing to be disseminated the false and deceptive
16 statements regarding the lifetime cloud access and support, as alleged above, the
17 DEFENDANTS knew or should have known that the statements were false or misleading.

18
19 60. As a direct and proximate result of DEFENDANT’S false and misleading
20 advertising, Plaintiff and the members of the class have been injured in fact, in that they
21 purchased OPEN MESH devices with cloud access and support until December 31st, 2021 and
22 not lifetime cloud access and support as advertised. Plaintiff and members of the class would
23 not have purchased said devices if they had known the “lifetime” policy would change.

24
25 61. DEFENDANTS’ false and misleading advertising as alleged above presents a
26 continuing harm to Plaintiff, the Class, and members of the public because DEFENDANTS
27 persist and continue to disseminate false and misleading advertising.

28 ///

1 62. DEFENDANTS and each of their conduct caused Plaintiffs and Class members
2 harm, loss, and damages and continue to expose them to harm. These losses reflect damages
3 to Plaintiffs and Class members in an amount to be determined at trial or separate proceedings
4 as necessary.

5
6 **CAUSE OF ACTION III**
7 **VIOLATIONS OF UNFAIR BUSINESS PRACTICE ACT- CALIFORNIA BUSINESS**
8 **AND PROFESSIONS CODE §17200 et seq.**
9 **AGAINST DEFENDANTS**

10
11 63. Plaintiffs hereby incorporate by reference the allegations in the above
12 paragraphs of this Complaint as though fully set forth herein.

13 64. California Business & Professions Code § 17200 at seq., also known as the
14 California Unfair Competition Law (“UCL”), prohibits acts of “unfair competition,” including
15 any unlawful, unfair, fraudulent, or deceptive business act or practice as well as “unfair,
16 deceptive, untrue or misleading advertng.”

17 65. By engaging in the false, deceptive, and misleading conduct alleged above,
18 DEFENDANTS have engaged in unlawful business acts and practices in violation of the UCL
19 by violating state and federal laws including but limited to Business & Professions Code §
20 17500 et seq., which makes false and deceptive advertising unlawful.

21 66. In addition to being unlawful, DEFENDANTS’ acts, conduct and practices as
22 alleged above are unfair. DEFENDANTS, through deceptive and misleading advertising and
23 representations, induced Plaintiff and class members to purchase OPEN MESH devices
24 believing them to have lifetime cloud access and support.

25
26 67. As a direct and proximate result of DEFENDANTS’ unlawful, unfair and
27 fraudulent business practices, Plaintiff and members of the class have been injured in fact.
28 They purchased OPEN MESH devices in reliance on DEFENDANTS’ false and misleading

LAW OFFICES OF GARY R. CARLIN APC
301 EAST OCEAN BOULEVARD, SUITE 1550
LONG BEACH, CALIFORNIA 90802

1 advertising and representations to the general public regarding the lifetime cloud access and
2 support. Plaintiffs and the members of the class would have purchased the devices had they
3 known they were going to change their lifetime policy.

4
5 68. DEFENDANTS' false and misleading advertising as alleged above presents a
6 continuing harm to Plaintiffs, the Class, and members of the public because DEFENDANTS
7 persist and continue to disseminate false and misleading advertising.

8
9 69. DEFENDANTS and each of their conduct caused Plaintiffs and Class members
10 harm, loss, and damages and continue to expose them to harm. These losses reflect damages
11 to Plaintiffs and Class members in an amount to be determined at trial or separate proceedings
12 as necessary.

13
14 **CAUSE OF ACTION IV**
15 **VIOLATION OF CONSUMERS LEGAL REMEDIES ACT- ESSENTIAL FACTUAL**
16 **ELEMENTS (CIV CODE §1770)**
17 **AGAINST DEFENDANTS**

18
19 70. Plaintiffs hereby incorporate by reference the allegations in the above
20 paragraphs of this Complaint as though fully set forth herein.

21 71. Plaintiffs and Class members bought various OPEN MESH devices.

22 72. That DEFENDANTS and each of them advertised their devices with the intent
23 to switch their lifetime cloud license to a monthly fee; making false or misleading statements
24 of fact concerning the lifetime cloud license policy.

25 73. Plaintiffs and Class members were harmed.

26
27 74. Plaintiffs' and Class members' harm directly and proximately resulted from the
28 DEFENDANT and each of their conduct.

LAW OFFICES OF GARY R. CARLIN APC
301 EAST OCEAN BOULEVARD, SUITE 1550
LONG BEACH, CALIFORNIA 90802

1 harm, loss, and damages and continue to expose them to harm. These losses reflect damages
2 to Plaintiffs and Class members in an amount to be determined at trial or separate
3 proceedings as necessary.

4
5 **CAUSE OF ACTION VI**
6 **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
7 **AGAINST DEFENDANTS**

8 84. Plaintiffs hereby incorporate by reference the allegations in the above
9 paragraphs of this Complaint as though fully set forth herein.

10 85. Plaintiffs and Class members entered into a contract.

11
12 86. Plaintiffs and Class members did all, or substantially all off the significant
13 things that the contract required them to do. In purchasing, Plaintiffs and Class members
14 were guaranteed a onetime purchase with no extra added costs to keep the devices
15 functioning.

16
17 87. All conditions required for DEFENDANTS' performance had occurred.

18
19 88. DEFENDANTS ended their lifetime policy and breached the lifetime warranty
20 contract it had with its consumers who purchased the OPEN MESH devices.

21
22 89. By doing so, DEFENDANTS did not act fairly and in good faith.

23
24 90. As a direct and proximate result of DEFENDANTS' conduct, Plaintiffs and
25 members of the Class were harmed.

26
27 91. DEFENDANTS and each of their conduct caused Plaintiffs and Class members
28 harm, loss, and damages and continue to expose them to harm. These losses reflect damages

1 to Plaintiffs and Class members in an amount to be determined at trial or separate
2 proceedings as necessary.

3 **CAUSE OF ACTION VII**
4 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
5 **AGAINST DEFENDANTS**

6 92. Plaintiffs hereby incorporate by reference the allegations in the above
7 paragraphs of this Complaint as though fully set forth herein.

8 93. Plaintiffs and members of the Class bought OPEN MESH devices from
9 distributors of DEFENDANTS.

10 94. At the time of purchase DEFENDANTS were in the business of selling the
11 devices to distributors for the general public's use.

12 95. The devices did not measure up to the promises or facts stated on the box.

13 96. Plaintiffs and class members were harmed.

14 97. DEFENDANTS' breach of the implied warranty was a substantial factor in
15 causing Plaintiffs and the members of the Class' harm.

16 98. DEFENDANTS and each of their conduct caused Plaintiffs and Class members
17 harm, loss, and damages and continue to expose them to harm. These losses reflect damages
18 to Plaintiffs and Class members in an amount to be determined at trial or separate proceedings
19 as necessary.

20 99. In doing the acts herein alleged, DEFENDANTS, and each of them, acted with
21 oppression, fraud, malice, and conscious disregard of Plaintiffs' and members of the Class
22
23
24
25
26
27
28

1 rights, and Plaintiffs and members of the Class are therefore entitled to punitive damages in
2 an amount to be determined at trial according to proof.

3
4 **CAUSE OF ACTION VIII**
5 **INTENTIONAL MISREPRESENTATION**
6 **AGAINST DEFENDANTS**

7 100. Plaintiffs hereby incorporate by reference the allegations in the above
8 paragraphs of this Complaint as though fully set forth herein.

9 101. DEFENDANTS represented in writing and advertisement to Plaintiffs and
10 Class members that with their onetime purchase of the device(s), their cloud license and
11 customer support would work for the lifetime of the product. A true and correct copy of
12 OPEN MESH's website is attached and labeled as **Exhibit "B"**.

13
14 102. DEFENDANTS' representations were false. In or about late 2016 DATTO
15 acquired OPEN MESH and changed the lifetime warranty policy to consumers paying a
16 monthly fee to maintain CLOUDTRAX.

17
18 103. DEFENDANTS knew that the lifetime cloud access and support representations
19 they made were false when they advertised OPEN MESH devices.

20
21 104. DEFENDANTS intended for Plaintiffs and Class members to rely on their
22 lifetime cloud access and support representations in order to induce Plaintiffs and Class
23 members to purchase the devices.

24
25 105. Plaintiffs and Class members reasonably and justifiably relied to their detriment
26 on said representations.

27
28 106. As a direct and proximate result, Plaintiffs and Class members lost monies,

1 business, devices, etc.

2

3 107. Plaintiffs and Class members detrimental and justifiable reliance on
4 DEFENDANTS' false representations was a substantial factor in causing them harm.

5

6 108. DEFENDANTS and each of their conduct caused Plaintiffs and members of the
7 Class and Subclass harm, loss, and damages. These losses reflect damages to Plaintiffs and
8 members of the Class and Subclass in an amount to be determined at trial or separate
9 proceedings as necessary.

10

11 109. In doing the acts herein alleged, DEFENDANTS, and each of them, acted with
12 oppression, fraud, malice, and conscious disregard of Plaintiffs' and members of the Class
13 rights, and Plaintiffs and members of the Class are therefore entitled to punitive damages in
14 an amount to be determined at trial according to proof.

15 **CAUSE OF ACTION IX**
16 **NEGLIGENCE**
17 **AGAINST DEFENDANTS**

18

19 110. Plaintiffs hereby incorporate by reference the allegations in the above
20 paragraphs of this Complaint as though fully set forth herein.

21

22 111. DEFENDANTS and each of them have a duty to exercise reasonable care due
23 and cautious care in their packaging, labeling, advertising, and marketing towards their
24 consumers.

25

26 112. DEFENDANTS and each of them unlawfully breached its duties by, among
27 other things, marketing the devices with false promises that were negligently made.

28

113. As outlined in this Complaint, DEFENDANTS and each of their conduct were

LAW OFFICES OF GARY R. CARLIN APC
301 EAST OCEAN BOULEVARD, SUITE 1550
LONG BEACH, CALIFORNIA 90802

1 negligent in that they lacked due and cautious care, and their individual and collective conduct
2 is and continues to be a departure from the ordinary standard of conduct. Their actions breach
3 any duty of due cautious care to their customers.

4
5 114. DEFENDANTS and each of them negligently marketed the devices with
6 including but not limited to “lifetime cloud license” and “automatic updates”, even though it
7 was not true.

8
9 115. DEFENDANTS and each of them intentionally, negligently, and wrongfully
10 breached their duties owed to Plaintiffs, and members of the Class and Subclass, thereby
11 proximately caused losses and damages that would not have occurred but for DEFENDANTS
12 and each of their gross breaches of their duty of due and cautious care. These losses reflect
13 special compensatory and general damages to Plaintiffs and members of the Class and
14 Subclass in an amount to be determined at trial or separate proceedings as necessary.

15
16 **REQUEST FOR RELIEF:**

- 17
- 18 1. Enter an immediate injunction requiring DEFENDANTS to reinstate their Lifetime
19 warranty and bar their public advertising of the subject devices until said warranties are
20 reinstated;
 - 21 2. Certify a Class of Plaintiffs similarly situated to the named representative;
 - 22 3. Compensatory damages in excess of \$75,000;
 - 23 4. Enter an award for attorneys fees and costs;
 - 24 5. Enter an award for punitive damages for the willful, wanton, and reckless behavior of
25 Defendants; and,
 - 26 6. Any other relief this Court deems just and fit.
- 27
28


LAW OFFICES OF GARY R. CARLIN APC
301 EAST OCEAN BOULEVARD, SUITE 1350
LONG BEACH, CALIFORNIA 90802

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully Submitted,

Dated: October 22, 2021

LAW OFFICES OF GARY R. CARLIN, APC

By: 
Gary R. Carlin,
Steven T. Romeyn
Attorneys for Plaintiffs and Class members

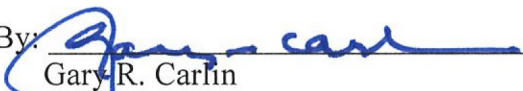
DEMAND FOR JURY TRIAL

Plaintiffs hereby respectfully demand a jury trial.

Respectfully Submitted,

Dated: October 22, 2021

LAW OFFICES OF GARY R. CARLIN, APC

By: 
Gary R. Carlin
Steven T. Romeyn
Attorneys for Plaintiffs and Class members

LAW OFFICES OF GARY R. CARLIN APC
301 EAST OCEAN BOULEVARD, SUITE 1550
LONG BEACH, CALIFORNIA 90802

EXHIBIT A

Smarter, Simpler WiFi

Open Mesh helps professionals deploy intelligent WiFi networks that build and heal themselves. It's easy to scale from small networks with one access point to large sites and thousands of locations—all from a single cloud-based dashboard.

System requirements:

1. A broadband Internet connection
2. The CloudTrax app on a device with iOS 7 and up, Android 4.0 and up, or a modern web browser pointed to cloudtrax.com

Cloud management:

Includes lifetime cloud license. Single point of configuration for one access point or thousands.

Installation:

Includes mounting kit to install indoors (desktop, ceiling, wall or Ethernet jack) and outdoors (wall or pole). Power supply and PoE injector sold separately.

Security and network services:

Built-in cloud management, automatic firmware upgrades, WPA/WPA2 Personal and Enterprise, captive portal/splash pages, roaming, mesh, Facebook Wi-Fi, user management capabilities, and much more.

Warranty:

1 year limited warranty. See openmesh.com/warranty.

Wireless connectivity:

Tri-Band 802.11ac Wave 2. Single 2.4GHz 2x2, Dual 5GHz 2x2

Power and environment:

PoE Ethernet 1 :
802.3af/at or Passive 48-54V --- 0.6A
PoE Ethernet 2 :
Passive 18-24V --- 1.34-1A (mode A, B, A+B)
Operating temperature: 0 - 50°C

EXHIBIT B

Open Mesh is now Datto Networking. For technical support, visit the [Help Center](#).

Open Mesh Is Now Datto Networking



We've combined everything you know and love about Open Mesh with additional services and pricing designed specifically for Managed Service Providers.

What you need to know:

01

The Open Mesh product line has been merged into the Datto Networking product line and is now available exclusively from Datto.

02

Open Mesh Products purchased previously will continue to work as always, with included cloud management and email-based support.

03

Eligible partners are encouraged to transition to Datto where they will benefit from a partner-centric pricing model that includes a lifetime warranty and 24/7/365 Direct-to-Tech support.

Questions? Continue reading or reach out directly

CONTACT US

Ready to get started with Datto Networking?

BECOME A PARTNER

What is Datto Networking?

Datto Networking is everything you love about Open Mesh:



Networks that just work



Simple, powerful cloud-management



Low total cost of ownership



...Plus added benefits to help your business grow:



24/7/365 Direct-to-Tech support



Lifetime warranty with advanced replacement



Pricing designed for service providers



More products such as LTE-enabled routers and managed power

Frequently Asked Questions

What is the news?

We're starting the next chapter in the Open Mesh story: Open Mesh is now Datto Networking. The Open Mesh product line is being merged into the Datto Networking product line and will be available exclusively from Datto beginning January 1, 2019. Eligible partners are encouraged to become a Datto partner and experience the benefits of a partner-centric networking line that includes 24/7/365 direct to tech support, lifetime product warranty, MSP-friendly pricing and more.

Why is Datto making this change?

Open Mesh was acquired by Datto, a technology solutions provider exclusively focused on the IT channel, in late 2016. Datto is driven to empower the world's small and medium sized businesses with the best in enterprise-level technology, delivered through managed services providers. With that, Datto has combined the best of Open Mesh with pricing and additional services designed specifically for MSPs. The network landscape is evolving and Datto's partner model allows for more focus on product development and faster innovation. Along with this comes a lifetime warranty and 24/7 support and exclusive access to a growing suite of products designed to help partners grow their businesses.

What will happen to my Open Mesh products?

We commit that existing Open Mesh networks will continue to operate like they always have and will be supported through the life of the product. Some products may be eligible to upgrade to Datto Networking, which includes 24/7 support, a lifetime warranty and much more. **Contact us** to inquire about upgrading.

Moving forward, those that become Datto partners will have the ability to receive all product/feature enhancements, as well as access to new products, software management tools, and new product categories that have yet to be announced.

The end of life policy and product matrix is available [here](#).

Can I still buy under the one-time sales model?

The one-time sales model will be available through the end of 2018 on openmesh.com and through select distributors and resellers. Availability after January 1, 2019 will be limited to any remaining inventory on hand through distribution and online resellers.

What is the Datto Networking pricing model?

Datto Networking pricing aligns with how a managed services provider sells its service, on a month by month basis. There are low up-front costs, no contracts to sign, no long-term commitments, and products are billed only if the devices are active. [Contact us](#) to learn more and a representative will review your specific needs.

Will Open Mesh start charging a monthly fee on devices I've already purchased?

No, customers will not be charged a monthly fee on devices already purchased. Any device previously purchased from Open Mesh includes a free cloud license for the life of the product. Many products may be eligible to upgrade to Datto Networking, which includes 24/7 support, a lifetime warranty and much more. [Contact us](#) to inquire about upgrading.

Some customers who use custom features such as APIs or custom branding may see a charge as noted in our technical documentation. We will be reaching out to these customers directly.

I'm an MSP: how can I buy?

Become a Datto partner! Datto offers the most MSP-centric networking line in the world. Datto partners will have access to our complete line of access points, switches, firewalls and routers, managed power and a suite of complementary products designed to help your business grow. Not a Datto partner yet? [Apply here.](#)

I'm an end user: how can I buy?

Open Mesh products will be available to end-users through openmesh.com through the end of 2018 and from distributors and online resellers as long as inventory remains. As of January 1, 2019, Datto Networking products will be available exclusively through an authorized Datto partner. For assistance finding a local Datto Networking partner, click [here](#).

I'm an ecosystem partner or software vendor: how can I buy?

Ecosystem, software and OEM partners (such as location-based marketing, point-of-sale, IoT and managed security services providers) will continue to have access to custom services and products. For more information, [contact us](#).

I still have questions. Can I speak with someone?

Of course! We're here to help. [Contact us](#) about the transition here and we'll be in touch shortly.

Still have questions?

[CONTACT US](#)

Ready to get started with Datto Networking?

[BECOME A PARTNER](#)



[Datto.com](#)

[CloudTrax Login](#)

[Help Center](#)

[Privacy Policy](#)

[Cookies Settings](#)

© 2019 Open Mesh, Inc. All Rights Reserved.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Datto, Open Mesh Falsely Advertised Cloud-Managed Network Devices, Class Action Alleges](#)
