

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

COTTON PATCH CAFÉ *

Plaintiff *

v. *

Civil Action No. 1:09-CV-03242-MJG

MICROS SYSTEMS, INC. *

Defendant *

* * * * *

**DEFENDANT MICROS SYSTEMS, INC'S
ANSWER TO SECOND AMENDED COMPLAINT**

Defendant, MICROS Systems, Inc. ("MICROS"), by Steven A. Allen and Hodes, Pessin & Katz, P.A., its attorneys, submits this Answer to the Second Amended Complaint of Cotton Patch Café, Inc. ("Cotton Patch") and says:

JURISDICTION AND VENUE

1. The statements set forth in Paragraph 1 of the Second Amended Complaint are statements and/or conclusions of law for which no answer is required. To the extent, however, that the statements are construed to be factual allegations, MICROS admits that each of the parties are citizens of different states and that the amount in controversy exceeds the sum of Seventy Five Thousand Dollars (\$75,000), exclusive of interest and costs.

2. The statements set forth in Paragraph 1 of the Second Amended Complaint are statements and/or conclusions of law for which no answer is required.

To the extent, however, that the statements are construed to be factual allegations, MICROS admits the factual allegations set forth in Paragraph 2 of the First Amended Complaint.

THE PARTIES

3. MICROS admits the factual allegations set forth in Paragraph 3 of the Second Amended Complaint.

4. MICROS admits the factual allegations set forth in Paragraph 4 of the Second Amended Complaint.

FACTUAL BACKGROUND

5. In answer to Paragraph 5 of the Second Amended Complaint, MICROS admits that Plaintiff owns and operates a restaurant chain consisting of a group of restaurants with locations in Texas and New Mexico and that one of the restaurants is located in Nacogdoches, Texas. MICROS does not have sufficient personal knowledge and information to admit or deny that the Nacogdoches, Texas restaurant serves as a popular eating establishment for local residents, as alleged by the Plaintiff. MICROS denies the remaining factual allegations set forth in the paragraph.

6. In answering the first sentence of Paragraph 6 of the Second Amended Complaint, MICROS admits that it is involved in providing point-of-sale hardware and software to the hospitality industry and that Cotton Patch, as part of a planned integrated, transaction, project and set of transactions relating to the same project (“planned integrated set of transactions relating to the project”) of outfitting all of the

existing and future stores in its restaurant chain with MICROS Point-Of-Sale Systems ("POS System"), purchased a POS System for use in the Cotton Patch store in Nacogdoches, Texas. MICROS denies the remaining allegations in the first sentence. In answering the second sentence of Paragraph 6 of the Second Amended Complaint, MICROS admits that the POS System which was purchased by Cotton Patch for its Nacogdoches restaurant, as part of Cotton Patch's planned integrated set of transactions relating to the project of outfitting all of the existing and future stores in the Cotton Patch restaurant chain with MICROS POS Systems, was installed by MICROS and consisted of hardware and software, and that from time to time thereafter at the specific request of Cotton Patch, that MICROS provided service for that hardware and software, although, MICROS states that after the purchase of a one year service agreement in 2001, Cotton Patch declined to purchase annual service agreements in connection with that hardware and software after the initial one-year service agreement purchased by Cotton Patch expired in or about 2002, and that Cotton Patch declined to purchase annual software enhancement licenses for the system in the Nacogdoches restaurant after the one-year software enhancement license it purchased in 2002 expired, and that service that was provided by MICROS to Cotton Patch in connection with the POS System in the Nacogdoches, Texas restaurant after the expiration of the service contract was provided each time as a result of a specific request for service by Cotton Patch pursuant to individual contracts/agreements and was not provided pursuant to an on-going service contract/agreement between the parties. MICROS denies the remaining

allegations in the second sentence. In answering the third sentence of Paragraph 6 of the Second Amended Complaint, MICROS admits that Cotton Patch accepted credit cards from customers at its various restaurants, including at the restaurant owned and operated by Cotton Patch located in Nacogdoches, Texas. MICROS denies the remaining allegations in the sentence. In answer to the fourth sentence of Paragraph 6 of the Second Amended Complaint, MICROS admits that some Cotton Patch customers paid for meals at the Cotton Patch restaurants which had MICROS POS Systems by way of credit and/or debit card. MICROS denies the remaining allegations in the fourth sentence. In answering the fifth sentence of Paragraph 6 of the Second Amended Complaint, MICROS admits that there are other point-of-sale systems sold and/or used in the restaurant industry which are used in connection with transactions by customers paying for products and services using a credit and/or or debit card. MIROS denies the remaining allegations in the sentence. MICROS denies the allegation in the sixth sentence of Paragraph 6 of the Second Amended Complaint and states that Cotton Patch had sole and exclusive responsibility, of which it was advised, aware and accepted, for the security of all of its POS System, and all data contained in the systems, in all of Cotton Patch's stores, including the POS System and the data contained therein in the Cotton Patch Nacogdoches, Texas restaurant. MICROS denies the allegations set forth in the seventh sentence of Paragraph 6 of the Second Amended Complaint. In answering the eight sentence of Paragraph 6 of the Second Amended Complaint, MICROS admits that Cotton Patch purchased some service from MICROS,

but such services were only purchased from MICROS when Cotton Patch decided that it wanted to purchase such services from MICROS, as opposed to from others. MICROS denies the remaining allegations in the eighth sentence. In answer to the allegations in the ninth sentence of Paragraph 6 of the Second Amended Complaint, MICROS admits that services purchased by Cotton Patch from MICROS were part of the transaction and related group of transactions between MICROS and Cotton Patch relating to using MICROS' point-of-sale systems in all of Cotton Patch's existing and new restaurants. MICROS denies the remaining allegations in the ninth sentence of the paragraph. In answer to the tenth sentence of Paragraph 6 of the Second Amended Complaint, MICROS states that it provided services to Cotton Patch for the system in Nacogdoches, as specifically requested by Cotton Patch and denies the remaining allegations in the sentence. MICROS denies all of the remaining factual allegations set forth in Paragraph 6 of the Second Amended Complaint, including each factual allegation which has not been specifically admitted above.

7. MICROS denies the allegations in the first, second, third and fourth sentences of paragraph 7 of the Second Amended Complaint. In answering to the allegations in the fifth sentence of the paragraph, MICROS admits that at the request of Cotton Patch it provided services in connection with the system at the Cotton Patch Nacogdoches restaurant. MICROS denies the remaining allegations in the sentence. In answer to the allegations in the sixth sentence of the Paragraph, MICROS admits that in 2006, at the request of Cotton Patch, it sold to Cotton Patch a new server for use in

Cotton Patch's Nacogdoches restaurant and that at the time the server was installed it contained the most current upgraded version of MICROS 3700 software that was in general release. MICROS denies the remaining allegations in the sentence. MICROS denies the allegations in the seventh and eighth sentence of the paragraph and each of the other factual allegations set forth in Paragraph 7 of the Second Amended Complaint which have not been specifically admitted.

8. MICROS denies that it made the representations asserted by Cotton Patch in Paragraph 8 of the Second Amended Complaint and denies that the POS system in Cotton Patch's Nacogdoches restaurant transmitted unencrypted data. MICROS also denies that the POS system in the Nacogdoches Cotton Patch Restaurant stored full track data during the period March 17, 2006 to May 28, 2007 and states that to the extent the System stored full track data on or after May 28, 2007, that was the result of a third party gaining access to the system due to Cotton Patch's failure to maintain the security of the system which was Cotton Patch's sole and exclusive responsibility and that the person(s) who gained access to the Cotton Patch Nacogdoches POS system altered the software to cause the system, which was not storing full track data, to begin storing full track data, which was thereafter stored for a period of approximately ninety days. MICROS further states that it is not aware of evidence that full track data was stolen prior to May 28, 2007, and therefore denies that occurred. MICROS admits that Cotton Patch has stated that it was first advised that there had been a breach on August 23, 2007. In further answering the paragraph, MICROS states that it does not have

sufficient personal knowledge or information to admit or deny the remaining factual allegations set forth in the paragraph.

9. In answer to the first sentences of Paragraph 9 of the Second Amended Complaint, MICROS states that the security of the POS System at each of the Cotton Patch restaurants, including the Cotton Patch restaurant in Nacogdoches, Texas , was solely and exclusively the responsibility of Cotton Patch, of which Cotton Patch was fully and repeatedly advised, both in writing and orally by MICROS and which responsibility Cotton Patch assumed and accepted and that responsibility included, among other things, that Cotton Patch had the sole and exclusive responsibility to provide and maintain a properly configured firewall, to maintain up to date and current anti-virus software and protection, to change passwords each time after the system was accessed over the Internet and to not enable PCAnywhere or permit PCAnywhere to be enabled 24/7 and/or at any time it was not actually being used and accessed by an authorized person for a permitted and authorized purpose, use and maintain appropriate passwords for the POS System, and that there were no representations by MICROS to the Cotton Patch to the contrary and that MICROS did not make the representations asserted by Cotton Patch in the paragraph, and MICROS denies the remaining allegations in the sentence. In answering the allegations set forth in the fifth sentence of the paragraph, MICROS states that Cotton Patch has advised it that Cotton Patch was subjected to charges and fines from credit card companies and further states that MICROS does not have sufficient information and knowledge to

admit or deny that there was a theft of credit card data from the POS System in Cotton Patch's Nacogdoches, Texas restaurant, or that the alleged fines and charges were appropriate, should have been accessed, were reasonable and/or whether Cotton Patch took appropriate and/or adequate steps and/or actions to prevent the alleged fines and charges from being imposed and in what amounts. MICROS denies all of the remaining factual allegations set forth in Paragraph 9 of the Second Amended Complaint.

10. In answer to Paragraph 10 of the Second Amended Complaint, MICROS admits the allegations, in the first sentence of the paragraph, except to say the contract pursuant to which the server was sold to Cotton Patch was dated January 23, 2007. The remaining allegations contained in the paragraph are denied.

11. MICROS denies the factual allegations set forth in Paragraph 11 of the Second Amended Complaint.

12. MICROS denies the factual allegations set forth in Paragraph 12 of the Second Amended Complaint.

PERFORMANCE AND CONDITIONS PRECEDENT

13. The statements made in Paragraph 13 of the Second Amended Complaint are statements and/or conclusions of law to which no response is required. To the extent, however, that the allegations are construed as being factual in nature, MICROS denies those actual allegations.

14. The statements made in Paragraph 14 of the Second Amended Complaint are statements and/or conclusions of law to which no response is required. To the extent, however, that the allegations are construed as being factual in nature, MICROS denies those factual allegations.

**COUNT I - VIOLATIONS OF THE TEXAS
DECEPTIVE TRADE PRACTICES ACT**

15. In answer to Paragraph 15 of the Second Amended Complaint, MICROS reasserts and incorporates by reference each of its answers to the allegations in Paragraphs 1 through 14 of the Second Amended Complaint as if fully set forth herein.

16. MICROS denies the factual allegations set forth in Paragraph 16 of the Second Amended Complaint.

17. MICROS denies the factual allegations set forth in Paragraph 17 of the Second Amended Complaint.

18. MICROS denies the factual allegations set forth in Paragraph 18 of the Second Amended Complaint.

19. MICROS denies the factual allegations set forth in Paragraph 19 of the Second Amended Complaint.

COUNT II - NEGLIGENCE

20. In answer to Paragraph 20 of the Second Amended Complaint, MICROS reasserts and incorporates by reference each of its answers to the allegations in Paragraphs 1 through 19 of the Second Amended Complaint as if fully set forth herein.

21. MICROS denies the allegations set forth in Paragraph 21 of the Second Amended Complaint.

COUNT III - NEGLIGENT MISREPRESENTATION

22. In answer to Paragraph 22 of the Second Amended Complaint, MICROS reasserts and incorporates by reference each of its answers to the allegations in Paragraphs 1 through 21 of the Second Amended Complaint as if fully set forth herein.

23. MICROS denies the allegations set forth in Paragraph 23 of the Second Amended Complaint.

24. MICROS denies the allegations set forth in Paragraph 24 of the Second Amended Complaint.

COUNT IV - GROSS NEGLIGENCE

25. In answer to Paragraph 25 of the Second Amended Complaint, MICROS reasserts and incorporates by reference each of its answers to the allegations in Paragraphs 1 through 24 of the Second Amended Complaint as if fully set forth herein.

26. MICROS denies the allegations set forth in Paragraph 26 of the Second Amended Complaint.

COUNT V - FRAUD BY NONDISCLOSURE

27. In answer to Paragraph 27 of the Second Amended Complaint, MICROS reasserts and incorporates by reference each of its answers to the allegations in Paragraphs 1 through 26 of the Second Amended Complaint as if fully set forth herein.

28. MICROS denies the allegations set forth in Paragraph 28 of the Second Amended Complaint.

29. MICROS denies the allegations set forth in Paragraph 29 of the Second Amended Complaint.

30. MICROS denies the allegations set forth in Paragraph 30 of the Second Amended Complaint.

FIRST AFFIRMATIVE DEFENSE

The Second Amended Complaint fails to state of claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The claims set forth in the Plaintiff's Second Amended Complaint are barred by the express terms of the written agreements and contracts between the parties.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of waiver.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of accord and satisfaction.

SEVENTH AFFIRMATIVE DEFENSE

At all times MICROS has acted in good faith in its dealings with Cotton Patch and has also not breached any contractual obligations owed to Cotton Patch to Cotton Patch and/or any duties of any type or kind.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint is barred by the doctrine of laches.

NINTH AFFIRMATIVE DEFENSE

Plaintiff lacks standing to assert a claim under the Texas Deceptive Trade Practices Act.

TENTH AFFIRMATIVE DEFENSE

The Texas Deceptive Trade Practices Act does not apply in this case.

ELEVENTH AFFIRMATIVE DEFENSE

Cotton Patch is not a consumer within the meaning of the Texas Deceptive trade Practices Act.

TWELFTH AFFIRMATIVE DEFENSE

The Texas Deceptive Trade Practices Act does not apply in this case because this case arises from a transaction, a project, or a set of transactions relating to the same project, involving total consideration paid by Cotton Patch of more than \$500,000.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by contributory negligence.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by comparative negligence.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by assumption of risk.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to punitive damages in this case.

SEVENTEENTH AFFIRMATIVE DEFENSE

MICROS did not have and/or did not breach any of the duties alleged by Cotton Patch in the Second Amended Complaint.

EIGHTEENTH AFFIRMATIVE DEFENSE

Cotton Patch is not entitled to the recovery of attorneys fees in this case.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by res judicata

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by collateral estoppel.

Wherefore having fully answered each of the claims, counts and causes of actions asserted by the Plaintiff in its Second Amended Complaint, Defendant MICROS Systems, Inc. requests and prays that the Second Amended Complaint, and each of the claims, counts and causes of action set forth therein be denied and dismissed with prejudice, that Defendant MICROS Systems, Inc. be awarded the costs of this action, including reasonable attorneys fees, and that the Court grant such other and further relief as this cause may require.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I HEREBY certify that on this 16th day of May, 2011, a true and correct copy of Defendant's Answer to Second Amended Complaint was served by certified mail, return receipt requested on:

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/s/

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