

1 Daniel M. Gilleon (SBN 195200)
The Gilleon Law Firm
2 1320 Columbia Street, Suite 200
San Diego, CA 92101
3 Tel: 619.702.8623
Fax: 619.702.6337
4 dmg@mglawyers.com

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
07/14/2014 at 09:37:37 AM
Clerk of the Superior Court
By Melissa Reyes, Deputy Clerk

5 Attorneys for Plaintiff Charlotte Kaufman

6
7
8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**
9 **(Central Division)**

10
11 CHARLOTTE KAUFMAN,
12 Plaintiff,

CASE NO. 37-2014-00023230-CU-PQ-CTL

13 vs.

**COMPLAINT FOR DAMAGES AND
DECLARATORY RELIEF**

14 WHENEVER COMMUNICATIONS, LLC,
a Nevada limited liability company, dba
15 SatellitePhoneStore.com; ERIC KAUFMAN
(nominal defendant); STATE OF
16 CALIFORNIA (nominal defendant);
UNITED STATES OF AMERICA (nominal
17 defendant); and DOES 1 to 20,
18 Defendants.

19
20 Plaintiff Charlotte Kaufman alleges:

21 1. Plaintiff Charlotte Kaufman ("Charlotte") is an adult who resides in San Diego
22 County, California. Charlotte has an ASA Basic Keelboat Certification, and has substantial
23 experience sailing the California and Channel Island coasts, down Baja California, in the Sea of
24 Cortez, the Pacific Coast of Mexico, and blue water sailing in the Pacific Ocean. She has lived
25 aboard ship since 2007, and has raised both of her daughters from birth on her sailboat. Charlotte
26 is also a PADI certified diver. At all material times, she was the registered owner of a 36.17' Hans
27 Christian Yacht, CA Hull ID XSA000040675, USCG 1101961, named the *Rebel Heart*.

28 ///

1 2. Nominal defendant Eric Kaufman ("Eric") is an adult who resides in San Diego
2 County, California. Eric is a commercial maritime captain with hundreds of days, and thousands of
3 miles, of sea time. He holds a Master's license issued by the United States Coast Guard, and is also
4 a U.S. military veteran and a trained rescue diver. At all material times, Eric was a co-owner (not
5 registered owner) of the *Rebel Heart*, having lived aboard her since 2007. Eric is named as an
6 indispensable party under Code of Civil Procedure § 389 because in his absence, complete relief
7 cannot be accorded among the other parties.

8 3. Defendant Whenever Communications, LLC ("Whenever") is a Nevada limited
9 liability company doing business as SatellitePhoneStore.com, with its principal place of business and
10 entity address in San Diego County, California.

11 4. The true names and capacities of Does 1 through 20, inclusive, and the facts giving
12 rise to their liability, are unknown to Plaintiff at this time. Plaintiff will amend this complaint once
13 their identities have been ascertained, as well as the facts giving rise to their liability.

14 5. Plaintiff is informed and believes, and thereon alleges, that each of the Doe
15 defendants is responsible in some manner, either by act or omission, strict liability, fraud, negligence
16 or otherwise, for the occurrences herein alleged, and that Plaintiff's harm was legally caused by
17 conduct of the Doe defendants.

18 6. Plaintiff does not allege the State of California ("California") did anything wrong or
19 is in any way responsible for their damages. Quite the contrary; the California Air National Guard
20 rescued plaintiff and her family from a dire condition caused by Whenever. California is named in
21 this action only as an indispensable party under Code of Civil Procedure § 389 because in its
22 absence, complete relief cannot be accorded among the other parties. Also, California may have the
23 right to claim an interest (reimbursement of rescue expenses) relating to the subject of the action and
24 is so situated that the disposition of the action in California's absence may, as a practical matter,
25 impair or impede its ability to protect that interest, or may leave any of the other parties subject to
26 a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of
27 California's claimed interest.

28 ///

1 7. Nor does Plaintiff allege the United States of America ("U.S.A.") did anything wrong
2 or is in any way responsible for her damages. The U.S.A. is named in this action only as an
3 indispensable party under Code of Civil Procedure § 389 because in its absence, complete relief
4 cannot be accorded among the other parties. Also, the U.S.A. may have the right to claim an interest
5 (reimbursement of rescue expenses) relating to the subject of the action and is so situated that the
6 disposition of the action in the U.S.A.'s absence may, as a practical matter, impair or impede its
7 ability to protect that interest, or may leave any of the other parties subject to a substantial risk of
8 incurring double, multiple, or otherwise inconsistent obligations by reason of the U.S.A.'s claimed
9 interest.

10 8. On March 20, 2013, Eric and Charlotte, along with their two minor daughters, Lyra
11 and Cora, departed from Nayarit, Mexico, aboard the *Rebel Heart* with Eric as the Captain. Their
12 destination was Hiva Oa, Marquesas, French Polynesia, which was a 3,000 nautical mile trip, that
13 would take them three to six weeks to complete, depending on sea conditions. Their path would take
14 them toward the equator into the Inter-Tropical Convergence Zone and a band of weather known as
15 the Easterly Trades. Once in the trade winds, they would be practically prevented from turning back
16 to the Pacific Coast of the Americas.

17 9. Prior to leaving, the Kaufmans prepared diligently for their voyage, packing and
18 planning the trip for years. Although Lyra was recently sick in Mexico, her physician had cleared
19 her for departure on the voyage, and the Kaufman's had ample medication and supplies in their fully
20 stocked medicine locker.

21 10. The Kaufmans also took along an Emergency Position-Indicating Radio Beacon
22 ("EPIRB") in case they needed immediate, emergency rescue at sea. However, use of the EPIRB was
23 a last resort option for the Kaufmans because they knew that once it was activated, emergency rescue
24 forces would be dispatched and they would have to scuttle the sailboat they had called home for
25 seven years.

26 11. Another important safety preparation for the Kaufmans was obtaining and packing
27 a satellite phone, which occurred on August 13, 2012, when Eric purchased the phone and executed
28 a service plan agreement with Whenever at its SatellitePhoneStore.com location in Point Loma,

1 California (San Diego County). At the time Eric purchased the phone, Whenever knew or should
2 have known that Eric would use the phone on sea voyages and that other, non-signatories would
3 reasonably rely upon the satellite phone not being deactivated without Eric's consent or for other
4 reasons (e.g., non-payment of the bill). Banking records show that on March 7, 2014, Whenever
5 charged the monthly payment of \$240 directly to the Kaufmans' debit card linked to the Kaufman's
6 checking account.

7 12. Whenever's knowledge that persons (signatories and non-signatories) using their
8 phones would be in distant and remote locations, and therefore dependent upon the phones not being
9 wrongfully deactivated, was confirmed by Whenever, in a statement to the press after the Kaufmans
10 were rescued at sea, in which they denied having deactivated the Eric's SIM card: "We would never
11 do that. These phones are used for emergency purposes by 80% of our customers. Legally, I could
12 not do that."

13 13. Nonetheless, on April 3, 2014, Whenever did just that, and deactivated the SIM card,
14 right in the middle of a medical emergency involving Lyra. For the past few days, the Kaufmans had
15 been trying to administer antibiotics to Lyra, per doctors orders, because she had been showing signs
16 that her sickness was returning. When she did not respond, Eric used the phone to call the Coast
17 Guard, and the dispatcher told him to wait by the phone for a return call from a physician. That call
18 was never returned because Whenever deactivated the SIM card, leaving the phone operable only
19 to the extent it could display a "SIM card error" on the screen. That same day, April 3, 2014,
20 Whenever again charged the debit card on file.

21 14. Left stranded with a sick baby and no means of communicating with a physician, Eric
22 made the Captain's decision to activate the EPIRB. Within about twelve hours, members of the
23 California Air National Guard boarded the *Rebel Heart*, and used the same medication and supplies
24 already onboard to treat Lyra. By the time the USS Vandegrift arrived about three days later, Lyra
25 was showing substantial signs of improvement, demonstrating that telephone communication with
26 the Coast Guard physician would have allowed the Kaufmans to successfully treat Lyra, and not have
27 to activate the EPIRB. Eric made the decision that Charlotte and the two children would return to

28 ///

1 San Diego on the USS Vandegrift. Since Eric could not continue the voyage alone, he was forced
2 to scuttle the *Rebel Heart*, and returned with his family to San Diego.

3 **FIRST CAUSE OF ACTION**
4 **(Negligence Against Whenever Communications LLC and Does 1 to 20)**

5 15. Plaintiffs re-allege paragraphs 1 to 14.

6 16. In deactivating the SIM card, Whenever and Does 1 to 20 breached their duty to act
7 with due care, and, given their knowledge that 80% of their customers use satellite phones for
8 emergencies and that it would be "illegal" to deactivate the SIM card, as alleged above, defendants
9 acted with gross negligence by knowingly, wilfully, consciously, and recklessly exposing the
10 Kaufmans to harm without concern for their rights or safety.

11 17. As a legal result of defendants' negligence, plaintiff sustained economic and non-
12 economic damages, including but not limited to, loss of property (the *Rebel Heart* and other
13 possessions), monthly payments, and the general damages and emotional distress related to the
14 rescue itself, its aftermath, and the loss of their home.

15 18. Defendants acted with malice, fraud, and oppression in conscious disregard of
16 plaintiff's rights and safety, entitling plaintiff to recover punitive damages against defendants to
17 punish defendants and to deter such conduct in the future.

18 **SECOND CAUSE OF ACTION**
19 **(Declaratory Relief Against United States of America, State of California, and Does 1 to 20)**

20 19. Plaintiffs re-allege paragraphs 1 to 14.

21 20. The USA and California may have the right to seek reimbursement for the costs of
22 the rescue operation through various legal and equitable principles. However, plaintiff seeks finality
23 by resolving all claims in one legal action that arise from these same set of facts. If the USA and
24 California decide to forgo reimbursement of the rescue expenses, plaintiff will seek declaratory relief
25 that all such claims are extinguished. Until then, plaintiff remains willing and able to cooperate in
26 any claims by the USA and California for reimbursement of rescue costs.

27 ///

28 ///

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

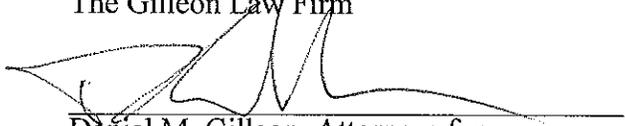
REQUEST FOR RELIEF

THEREFORE, in addition to the declaratory relief requested above, Plaintiff seeks a judgment against Whenever Communications, LLC dba SatellitePhoneStore.com, and Does 1 to 20, for:

- a. Compensatory general and special damages in an amount in accordance with proof;
- b. Exemplary damages against defendants in an amount sufficient to punish them, and to deter defendants and others from engaging in similar conduct;
- c. Attorneys' fees, expenses, and costs of suit; and
- d. Such other and further relief as the Court deems proper.

Dated: July 12, 2014

The Gilleon Law Firm



Daniel M. Gilleon, Attorneys for
Plaintiff Charlotte Kaufman