

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

DELL MARKETING, L.P.)	
)	Case No. CI17-_____
Plaintiff,)	
)	
v.)	Complaint
)	
DARRELL W. PLUMAGE,)	
)	
Defendant.)	
)	

Plaintiff Dell Marketing, L.P., by and through its attorneys, Rembolt Ludtke LLP, for its cause of action against Defendant Darrell W. Plumage, states and alleges:

1. Plaintiff Dell Marketing, L.P. ("Dell") is a limited partnership organized and existing under the laws of the State of Texas and maintains its principal place of business in Williamson County, Texas.

2. Defendant Darrell Plumage is an individual doing business as The AVcafe with his principal place of business in Lancaster County, Nebraska.

3. Venue is proper per Neb. Rev. Stat. § 25-403.01 in that Defendant is a resident of Lancaster County, Nebraska.

First Theory of Recovery - Open Account

4. Plaintiff incorporates Paragraphs 1 through 3 above as if fully set forth herein.

5. Between July, 2015 to present, Plaintiff entered into a series of transactions with Defendant on open account whereby Plaintiff delivered to Defendant goods and services, the agreed and reasonable value of which there is due and owing a balance of \$93,569.42 as of October 28, 2015, plus interest from and thereafter. A true and correct copy of said account, with all charges and credits thereon is attached hereto and incorporated herein as Exhibit A.

6. Plaintiff performed all conditions and covenants precedent to Defendant's obligation to pay for such goods and services.

7. Written demand has been made upon Defendant for said amount, but despite said demand, Defendant has failed and refused to pay the sums due and owing to Plaintiff.

WHEREFORE, Plaintiff prays for relief as more fully set forth below.

Second Theory of Recovery - Breach of Contract

8. Plaintiff incorporates Paragraphs 1 through 3, and 5 through 7 above as if fully set forth herein.

9. To the extent the above referenced transactions were not on "open account" but on an "account stated," Defendant breached its contract to pay the account with Plaintiff.

10. Defendant's breach proximately caused Plaintiff to be damaged in an amount equal \$93,569.42 as of October 28, 2015, plus interest from and thereafter.

WHEREFORE, Plaintiff prays for relief as more fully set forth below.

Third Theory of Recovery – Quantum Meruit

11. Plaintiff incorporates Paragraphs 1 through 3, and 5 through 7 above as if fully set forth herein.

12. In the alternative and to the extent that the Court determines that Plaintiff is not entitled to recover any or all of its damages per its first or second theories of recovery, then Plaintiff is entitled to recover against Defendant under this third theory of recovery.

13. Defendant received and retained the benefits of the goods provided by Plaintiff.

14. It would be inequitable, unjust and unconscionable to permit Defendant to receive and/or retain these benefits without compensating Plaintiff for the reasonable value thereof.

15. The fair and reasonable value of the benefits received and retained by Defendant is set forth in Paragraph 5.

WHEREFORE, Plaintiff Dell Marketing, L.P. prays the Court for judgment in its favor and against Defendant Darrell W. Plumage in an amount equal to \$93,569.42 as of October 28, 2015 (or such other amount as may be proven at trial), plus interest from and thereafter, plus pre-judgment and post-judgment interest, plus costs, and for such other and further relief as the Court finds in the premises.

Dated: February 8, 2017

DELL MARKETING, L.P., Plaintiff

By: REMBOLT LUDTKE LLP
3 Landmark Centre
1128 Lincoln Mall, Suite 300
Lincoln, NE 68508
(402) 475-5100

By: /s/ Brian S. Kruse
Brian S. Kruse (21963)
bkruse@remboltlawfirm.com

Praecipe

TO THE CLERK OF SAID COURT:

Please issue summons in the above-captioned cause for personal service by the Lancaster County Sheriff upon the following:

Darrell W. Plumage
6201 South 58 Street Suite #A
Lincoln, NE 68516

/s/ Brian S. Kruse
Brian S. Kruse

Payment History

AV CAFE													
Account:	142226911												
Terms	Invoice #	Invoice Date	Order #	Check #	Amounts Pd	Date Paid	Amount Due	Inv Amount	Balance Comments				
30	XJPWPR588	7/9/2015	850898756				\$ 16,758.72	\$ 16,758.72					
30	XJPMX3TRM9	7/10/2015	850898111				\$ 9,523.30	\$ 9,523.30					
30	XJPMXPKM63	7/14/2015	850897550				\$ 26,649.50	\$ 26,649.50					
30	XJR1F2W28	7/16/2015	850897006				\$ 23,148.72	\$ 23,148.72					
30	XJR21CRX9	7/17/2015	850899325				\$ 16,186.77	\$ 16,186.77					
30	XJR3WF1D8	7/24/2015	861252415				\$ 1,077.93	\$ 1,077.93					
30	XJRT4CP75	9/17/2015	887931521	51017	\$ 1,755.22	10/28/2015	\$ 87.77	\$ 1,842.99	Tax Due				
30	XJRTD7717	9/18/2015	887933451	51017	\$ 1,518.95	10/28/2015	\$ 75.95	\$ 1,594.90	Tax Due				
30	XJRTPW8N2	9/20/2015	887934160	51017	\$ 1,214.72	10/28/2015	\$ 60.76	\$ 1,275.48	Tax Due				
						Total Due	\$ 93,569.42						

 $E \times A$