

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

_____)	
SYMBOL TECHNOLOGIES, INC.,)	
)	
Plaintiff,)	Case No. 3:07-cv-237 (JCH)
)	
v.)	
)	
)	DEFENDANT'S AMENDED
)	ANSWER AND
)	COUNTERCLAIM
DATA CAPTURE SOLUTIONS –)	
REPAIR & REMARKETING, INC.,)	
)	
Defendant.)	
_____)	

AMENDED ANSWER

1. The defendant admits that the plaintiff's description of its case in paragraph 1 of the Complaint is accurate.
2. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 2 and leaves plaintiff to its proof.
3. The allegations in paragraph 3 are admitted.
4. The defendant admits the allegations in the first sentence of paragraph 4. As to the balance of this paragraph, the defendant has insufficient knowledge with which to admit or deny the allegations.
5. The allegations in paragraph 5 are denied.
6. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 6 and leaves plaintiff to its proof.

7. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 7 and leaves plaintiff to its proof.
8. The allegations in paragraph 8 are admitted as to the description set forth therein but not the merits of the claim which are denied.
9. The allegations in paragraph 9 are admitted.
10. The allegations in paragraph 10 are denied.
11. The allegations in paragraph 11 are denied.
12. The allegations in paragraph 12 are denied.
13. The allegations in paragraph 13 are denied.
14. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 14 and leaves plaintiff to its proof.
15. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 15 and leaves plaintiff to its proof.
16. The allegations in paragraph 16 are denied.
17. The allegations in paragraph 17 are admitted.
18. The defendants admit that it is terminated.
19. The allegations in paragraph 19 are denied.
20. The allegations in paragraph 20 are admitted.
21. The allegations in paragraph 21 are admitted.
22. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 22 and leaves plaintiff to its proof.
23. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 23 and leaves plaintiff to its proof.

24. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 24 and leaves plaintiff to its proof.
25. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 25 and leaves plaintiff to its proof.
26. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 26 and leaves plaintiff to its proof.
27. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 27 and leaves plaintiff to its proof.
28. The allegations in paragraph 28 are denied.
29. The allegations in paragraph 29 are denied.
30. The allegations in paragraph 30 are denied.
31. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 31 and leaves plaintiff to its proof.
32. The allegations in paragraph 32 are denied.
33. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 33 and leaves plaintiff to its proof.
34. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 34 and leaves plaintiff to its proof.
35. The allegations in paragraph 35 are admitted.
36. The allegations in paragraph 36 are admitted.
37. The allegations in paragraph 37 are admitted.
38. The allegations in paragraph 38 are admitted.

39. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 39 and leaves plaintiff to its proof.
40. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 40 and leaves plaintiff to its proof.
41. The allegations in paragraph 41 are denied.
42. The defendant has no knowledge as to allegations contained in the first and third sentence of paragraph 42 and leaves plaintiff to its proof. The allegations in the second sentence of this paragraph are denied.
43. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 43 and leaves plaintiff to its proof.
44. The defendant admits the first sentence of paragraph 44, but has no knowledge as to balance of claims and leaves the plaintiff to its proof.
45. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 45 and leaves plaintiff to its proof.
46. The allegations in paragraph 46 are denied.
47. The allegations in paragraph 47 are denied.
48. The allegations in paragraph 48 are admitted.
49. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 49 and leaves plaintiff to its proof.
50. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 50 and leaves plaintiff to its proof.

51. The defendant admits the allegations contained in the first two sentences of paragraph 51. However, the defendant has insufficient knowledge as to the remaining allegations in paragraph 51 and leaves plaintiff to its proof.
52. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 52 and leaves plaintiff to its proof.
53. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 53 and leaves plaintiff to its proof.
54. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 54 and leaves plaintiff to its proof.
55. The allegations in paragraph 55 are denied.
56. The allegations in paragraph 56 are denied.
57. The allegations in paragraph 57 are admitted.
58. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 58 and leaves plaintiff to its proof.
59. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 59 and leaves plaintiff to its proof.
60. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 60 and leaves plaintiff to its proof.
61. The allegations in paragraph 61 are admitted.
62. The defendant denies the allegations of paragraph 62 and leaves plaintiff to its proof.
63. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 63 and leaves plaintiff to its proof.

64. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 64 and leaves plaintiff to its proof.
65. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 65 and leaves plaintiff to its proof.
66. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 66 and leaves plaintiff to its proof.
67. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 67 and leaves plaintiff to its proof.
68. The allegations in paragraph 68 are denied.
69. The allegations in paragraph 69 are denied.
70. The allegations in paragraph 70 are denied.
71. The allegations in paragraph 71 are denied.
72. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 72 and leaves plaintiff to its proof.
73. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 73 and leaves plaintiff to its proof.
74. The allegations in paragraph 74 are denied.
75. The allegations in paragraph 75 are admitted as it relates to new product.
76. The allegations in paragraph 76 are denied.
77. The allegations in paragraph 77 are denied.
78. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 78 and leaves plaintiff to its proof.

79. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 79 and leaves plaintiff to its proof.
80. The defendant admits that the terms and conditions set forth in paragraph 80 are accurately quoted.
81. The defendant has insufficient knowledge with which to admit or deny the allegations of paragraph 81 and leaves plaintiff to its proof.
82. The allegations in paragraph 82 are admitted.
83. The allegations in paragraph 83 are admitted as to the date of the release of the software and denied as to the rest of the paragraph.
84. The allegations in paragraph 84 are denied.
85. The allegations in paragraph 85 are denied.
86. The allegations in paragraph 86 are denied.

COUNT I (Breach of Contract)

87. The defendant hereby incorporates its answers to paragraphs 1 through 86 as if set forth herein at length.
88. The allegations in paragraph 87 are denied.
89. The allegations in paragraph 88 are denied.
90. The allegations in paragraph 89 are denied.
91. The allegations in paragraph 90 are denied.
92. The allegations in paragraph 91 are denied.

COUNT II (Violation of the Lanham Act – False Advertising)

93. The defendant hereby incorporates its answers to paragraphs 1 through 92 as if set forth herein at length.

94. The allegations in paragraph 94 are denied.
95. The allegations in paragraph 95 are denied.
96. The allegations in paragraph 96 are denied.
97. The allegations in paragraph 97 are denied.
98. The allegations in paragraph 98 are denied.
99. The allegations in paragraph 99 are denied.

COUNT III (Violation of the Lanham Act – False Designation of Origin)

100. The defendant hereby incorporates its answers to paragraphs 1 through 99 as if set forth herein at length.
101. The allegations in paragraph 101 are denied.
102. The allegations in paragraph 102 are denied.
103. The allegations in paragraph 103 are denied.
104. The allegations in paragraph 104 are denied.
105. The allegations in paragraph 105 are denied.

COUNT IV (Violation of N.Y. Gen. Bus. L. § 349 - Deceptive Business Practices)

106. The defendant hereby incorporates its answers to paragraphs 1 through 105 as if set forth herein at length.
107. The allegations in paragraph 107 are denied.
108. The allegations in paragraph 108 are denied.
109. The allegations in paragraph 109 are denied.
110. The allegations in paragraph 110 are denied.
111. The allegations in paragraph 111 are denied.
112. The allegations in paragraph 112 are denied.

COUNT V (Violation of N.Y. Gen. Bus. L. § 350 – False Advertising)

113. The defendant hereby incorporates its answers to paragraphs 1 through 112 as if set forth herein at length.
114. The allegations in paragraph 114 are denied.
115. The allegations in paragraph 115 are denied.
116. The allegations in paragraph 116 are denied.
117. The allegations in paragraph 117 are denied.
118. The allegations in paragraph 118 are denied.
119. The allegations in paragraph 119 are denied.
120. The allegations in paragraph 120 are denied.

COUNT VI (Violation of N.Y. Unfair Competition Law)

121. The defendant hereby incorporates its answers to paragraphs 1 through 121 as if set forth herein at length.
122. The allegations in paragraph 122 are denied.
123. The allegations in paragraph 123 are denied.
124. The allegations in paragraph 124 are denied.
125. The allegations in paragraph 125 are denied.
126. The allegations in paragraph 126 are denied.
127. The allegations in paragraph 127 are denied.

COUNT VII (Unjust Enrichment)

128. The defendant hereby incorporates its answers to paragraphs 1 through 128 as if set forth herein at length.
129. The allegations in paragraph 129 are denied.

130. The allegations in paragraph 130 are denied.

131. The allegations in paragraph 131 are denied.

COUNT VIII (Violation of N.Y. Unfair Competition Law)

132. The defendant hereby incorporates its answers to paragraphs 1 through 131 as if set forth herein at length.

133. The allegations in paragraph 133 are denied.

134. The allegations in paragraph 134 are denied.

135. The allegations in paragraph 135 are denied.

136. The allegations in paragraph 136 are denied.

137. The allegations in paragraph 137 are denied.

138. The allegations in paragraph 138 are denied.

139. The allegations in paragraph 139 are denied.

140. The allegations in paragraph 140 are denied.

141. The allegations in paragraph 141 are denied.

142. The allegations in paragraph 142 are denied.

143. The allegations in paragraph 143 are denied.

AFFIRMATIVE DEFENSES

144. The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

145. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

146. Plaintiff's claims are barred by the doctrine of unclean hands and is otherwise estopped from bringing this action.

147. Plaintiff's claims are barred by the doctrine of *in pari delicto*.
148. Plaintiff's claims are barred by the doctrine of waiver.
149. Plaintiff's claims are barred by the doctrine of estoppel.
150. Plaintiff's claims are barred by the doctrine of laches.
151. Plaintiff's claims are barred by the doctrine of acquiescence.
152. Plaintiff's copyright claims are barred by express and implied license.
153. Plaintiff's copyright claims are barred by abandonment.
154. Plaintiff's copyright claims are barred by forfeiture.
155. The defendants' use of the plaintiff's name/certifications and the Software is privileged and constitutes fair use.
156. Plaintiff lacks standing to assert a copyright claim.

AMENDED COUNTERCLAIMS

Counterclaim-Plaintiff Data Capture Solutions – Repair & Marketing, Inc. (“Data Capture”), by and through its undersigned counsel, alleges upon knowledge of its own actions, and upon information and belief as to all other matters, as follows:

INTRODUCTION

1. Data Capture brings this counterclaim seeking relief against Counterclaim-Defendant Symbol Technologies, Inc. (“Symbol”) for antitrust violations and unfair and deceptive trade practices.
2. Until the anticompetitive acts alleged herein occurred, Data Capture was one of the largest authorized resellers of Symbol-made rugged, mobile handheld barcode scanners and associated peripheral equipment (“Symbol Equipment”) and the largest replacement parts supplier and repair service provider in the aftermarkets for Symbol Equipment (“Symbol Parts” and “Symbol Repair Services,” respectively).
3. Since the early 1990s, Data Capture and other successful resellers aggressively competed against Symbol and each other in the markets for Symbol Equipment, Symbol Parts and Symbol Repair Services. Data Capture and others offered used Symbol Parts and refurbished Symbol Equipment as inexpensive but adequate alternatives to Symbol’s new Parts and Equipment, and offered less expensive and faster Symbol Repair Services than Symbol. Customers with an installed base of Symbol Equipment have benefited from these competitive alternatives for many years and relied on their availability when they first purchased Symbol Equipment.
4. For a long time, Symbol supplied and supported Data Capture’s and other resellers’ used Symbol Parts and Equipment businesses because customers were often more

willing to purchase new Symbol Equipment from Symbol if a reseller like Data Capture would purchase their old Symbol Equipment.

5. In 2003, Symbol decided to trade in these benefits for monopoly profits by putting an end to competition from used parts suppliers, refurbishers, and service providers. Symbol implemented a new policy intended to gradually eliminate, through a series of anticompetitive acts and agreements, all resellers with a significant used Symbol Parts and refurbished Symbol Equipment business, as well as all significant providers of Symbol Repair Services (“New Policy”).

6. Using its market power in each of those markets, Symbol terminates any reseller whose used parts, refurbishing or repair services business forms a competitive threat; cuts off their access to supplies and customers; and contractually prohibits authorized resellers of new Symbol Equipment to sell refurbished Symbol Equipment, used Symbol Parts, or Symbol Repair Services. As part of its New Policy, Symbol also conditions the sale of its Equipment and Parts on the buyers’ agreement to purchase Symbol Repair Services exclusively from Symbol, so as to drive out all competitors in the market for Symbol Repair Services. In addition, Symbol conditions repairs of old Symbol Equipment on the agreement by customers to purchase new Symbol Equipment, so as to drive out competition from refurbished Symbol Equipment.

7. Symbol’s New Policy has successfully eliminated significant competitors. Symbol has eliminated resellers with a significant business in refurbished Symbol Equipment, used Symbol Parts, or Symbol Repair Services, like Data Capture, from the markets for Symbol Equipment, Symbol Parts and Symbol Repair Services. Symbol’s anticompetitive actions have directly harmed Data Capture by completely foreclosing it from access to the Symbol Equipment and Parts supplies and customers necessary to operate its business.

8. Consumers have been substantially harmed by Symbol's conduct. Symbol has forced customers with an installed base of Symbol Equipment to purchase Symbol's less expeditious and more expensive Repair Services, and denied these customers access to lower-priced, used Symbol Parts and refurbished Symbol Equipment. Indeed, without parts and service providers like Data Capture, many customers with an installed base of older Symbol Equipment can no longer get their Symbol Equipment repaired at all because Symbol discontinued its services and Symbol Parts supplies for many of the older models (some that were released only a few years ago).

9. Data Capture seeks redress under Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, and Sections 35-26, 35-27, 35-28 and 35-29, of the Connecticut Antitrust Act, Conn. Gen. Stat. §§ 35-26, 35-27, 35-28 and 35-29, to stop Symbol's anticompetitive actions, which are eliminating competition in the markets for Symbol Equipment, Parts, and Repair Services and which are harming consumers and Data Capture's business, and to recover the damages caused by Symbol's unlawful actions.

10. In furtherance of its anticompetitive plans, Symbol has also undertaken various unfair and deceptive trade practices intended to destroy Data Capture's business, including tortiously interfering with Data Capture's existing and prospective contractual and customer relations, unjustly enriching itself at the expense of Data Capture, misappropriating Data Capture's trade secrets, defrauding Data Capture, and disparaging Data Capture's reputation in the market. Accordingly, Data Capture also seeks redress under the Lanham Act, 15 U.S.C. § 1125(a), common law of unfair competition, common law of unjust enrichment, promissory estoppel, misappropriation of trade secrets, tortious interference with existing and prospective customer relations, fraud, defamation and trade disparagement, and Conn. Gen. Stat. § 42-110b,

to enjoin Symbol from destroying its business and recover the additional damages caused by Symbol's unlawful actions.

THE PARTIES

11. Symbol is a Delaware corporation with its principal place of business at One Symbol Plaza, Holtsville, New York, 11742-1300. Symbol is a global leader in mobile enterprise solutions and, specifically, the manufacture and sale of rugged, mobile handheld barcode scanners ("Mobile Handheld Scanners"). It also provides customer support and professional services, including repair services, related to Mobile Handheld Scanners. For 2005, Symbol reported total revenues of \$1,478 million and \$32 million in net earnings.

12. In November 2000, Symbol acquired Telxon Corporation ("Telxon"), its main rival with regard to Mobile Handheld Scanners. The terms Symbol Equipment, Symbol Parts, and Symbol Repair Services, as used herein, include, respectively, such Telxon-made equipment and related parts and services.

13. On January 9, 2007, just days after this lawsuit was commenced, Motorola, Inc. ("Motorola") acquired Symbol. Motorola is a corporation organized under the laws of the State of Delaware. Its principal executive offices are located at 1303 East Algonquin Road, Schaumburg, Illinois 60196. Motorola is a global communications and information technology company, that primarily (1) develops and provides end-to-end broadband systems that deliver entertainment, communication, and information systems into the home; (2) designs, manufactures, sells, and services mobile communications and multimedia devices; and (3) provides wireless communications systems to enterprise customers, such as government and commercial mobile service providers. Motorola claims to be a market leader in these segments. In 2006, Motorola reported total revenues of \$42.9 billion and \$3.7 billion in net earnings.

14. Data Capture is a Connecticut corporation with its principal place of business at 151 Sheldon Road, Manchester, Connecticut, 06040. Data Capture repairs, refurbishes and resells Symbol Equipment and Symbol Parts. Until its termination by Symbol, Data Capture was one of the largest, most successful resellers of Symbol Equipment, as well as the most significant supplier of Symbol Parts and provider of Symbol Repair Service other than Symbol.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction over Data Capture's Counterclaims pursuant to 15 U.S.C. §§ 15, 26 and 1121 and 28 U.S.C. §§ 1331, 1337 and 1338, because this case arises under the laws of the United States relating to unfair competition and protecting commerce against unreasonable restraints and monopolies. This Court has supplemental jurisdiction over the related state law claims pursuant to 28 U.S.C. § 1367 and also has diversity jurisdiction over those state law claims pursuant to 28 U.S.C. § 1332 in that the parties are citizens of different states and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

16. This Court has personal jurisdiction over Counterclaim Defendant Symbol by virtue of its business activities in this district and because a substantial part of the events giving rise to these Counterclaims occurred in this jurisdiction.

17. Venue is also proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c).

INTERSTATE TRADE AND COMMERCE

18. The products and services at issue in this action are Symbol-made Mobile Handheld Scanners and associated peripheral equipment ("Symbol Equipment"), replacement parts for Symbol Equipment ("Symbol Parts") and Symbol Equipment repair services ("Symbol

Repair Services”). Symbol Equipment includes Symbol-made Mobile Handheld Scanners (“Symbol Scanners”) and associated peripheral equipment such as scanner cases, batteries, shoulder straps, charging cradles, and wands. Symbol Parts are spare parts such as radios, radio cards, central processing units, and all other components that make up a Symbol Scanner, manufactured by Symbol specifically for its Symbol Scanners. Symbol provides, distributes and sells Symbol Equipment, Symbol Parts, and Symbol Repair Services within the State of Connecticut, as well as in interstate commerce.

FACTUAL BACKGROUND

19. In 1992, Joe Teixeira founded Data Capture to repair, refurbish and resell Mobile Handheld Scanners and related peripheral equipment. Mr. Teixeira started the business in his garage and, over the next 15 years, grew it into a multimillion dollar operation that employed over 125 people.

20. Mr. Teixeira knew that the need for Mobile Handheld Scanners, and the need for qualified technicians to repair and refurbish them as they aged and new technologies emerged, was bound to grow over time. Businesses, both large and small, purchase and use Mobile Handheld Scanners for a variety of purposes, including but not limited to inventory management, order entry, collection of point of sale data, security, tracking and management of manufacturing and distribution processes, pick up and delivery scheduling, quality inspection and assurance, patient information management and drug dispensing.

21. However, these Mobile Handheld Scanners cost anywhere from \$400 to \$2,200 per device depending on the device’s functionality, and industrial and commercial customers typically buy hundreds or even thousands of units at one time. Given the expense of new Mobile Handheld Scanners and related equipment, customers typically prefer to have their equipment

serviced or upgraded through refurbishment or used parts, rather than replacing all of their non-functioning units with new units.

22. Initially, Data Capture focused its efforts on repairing, refurbishing and reselling Telxon-made Mobile Handheld Scanners and related equipment. Toward this end, Mr. Teixeira hired staff, who attended Telxon's training center in Houston, Texas.

23. Within five years, Data Capture was a highly successful business. So successful, in fact, that in 1997, Scott Arnold, Symbol's manager of value added resellers, asked Data Capture to focus its efforts on reselling Symbol Equipment and Parts (as opposed to selling Telxon equipment and parts). Data Capture found this request enticing.

24. Symbol was, and remains, the market leader and brand of choice for enterprises with Mobile Handheld Scanner needs. The scanner related technology incorporated in Symbol Scanners and Symbol Parts is by and large proprietary to Symbol.

25. Symbol sells Symbol Equipment, either as part of an enterprise information capture and management system configured by Symbol, which includes a Symbol-made network infrastructure specifically designed to communicate seamlessly with Symbol Scanners (collectively, "Symbol System"), or separately, to customers that already have a Symbol System and need to replace or add units to their Symbol System ("Installed Base Customers").

26. As the market leader and brand of choice, Symbol has the largest base of Installed Base Customers in the industry. Symbol's Installed Base Customers include large retailers such as Walgreen Corporation ("Walgreens"), CVS Pharmacy Inc. ("CVS"), and Federated Department Stores, Inc. ("Federated"), distribution and logistics companies such as McClane Company, manufacturers like Brunswick Corporation, and hospitals like Saint John's Hospital in New York City, among others.

27. In response to Symbol's promising request, Data Capture made substantial investments to develop its Symbol business. Data Capture obtained training for its staff at Symbol's training center in Orange County, California, and obtained Symbol authorization to service, refurbish and resell Symbol Equipment and Symbol Parts.

28. Thereafter, at Symbol's request, but at its own expense, Data Capture continuously purchased significant inventory of new Symbol Parts and Symbol Equipment from Symbol for resale to customers; acquired a comprehensive assortment of used Symbol Parts and refurbished Symbol Equipment primarily by repurchasing old Symbol Equipment from Symbol or Symbol distributors and end-use Installed Base Customers who were purchasing new Symbol Equipment; developed specialized marketing plans; invested in technology; created a sales infrastructure; trained dedicated sales staff; maintained appropriate financial capabilities; and enhanced relationships with existing and potential customers, all to successfully service and further the resale of new and used Symbol Equipment and Symbol Parts.

29. Data Capture's Symbol Repair Service and Symbol Equipment and Parts business flourished, and Symbol encouraged Data Capture to continue to repurchase used Symbol Equipment in order to repair and refurbish Symbol Equipment and to sell used Symbol Parts, because these purchases benefited Symbol. For example:

- a. Symbol often asked Data Capture to purchase a customer's old Symbol Equipment, and to do so at attractive prices, so that Symbol could induce the customers to purchase new Symbol Equipment. This is because installed Base Customers were often more willing to purchase expensive, new Symbol Equipment from Symbol if they were able to sell their old Symbol Equipment for a good price. Data Capture's purchases of used

Symbol Equipment directly resulted in millions of dollars in sales of new Symbol Equipment that would not have occurred otherwise.

- b. Symbol and its direct distributors, through whom Symbol sold the vast majority of Symbol Equipment at that time, also requested that Data Capture purchase Symbol Equipment and Parts that their own customers had returned. Data Capture's purchases of that Symbol Equipment and Parts directly profited Symbol and its distributors.

Symbol also continuously supplied and approved large shipments of new and used Symbol Equipment and Parts to Data Capture, thereby demonstrating its approval of Data Capture's business practices.

30. Data Capture was not aware at the time that during a period prior to 2002, Symbol encouraged and induced Data Capture to purchase some of its inventory in order to fraudulently inflate Symbol's quarterly revenues.

31. Symbol admitted in the complaint it filed in the U.S. District Court for the Eastern District of New York ((No. 04-4863 (LDW))), that its Senior Vice President and General Manager of Worldwide Sales and Services "engineered" many deals to get customers to buy large quantities of Symbol Equipment, often more than the customers wanted at the time. This caused the customers, including Data Capture, to accumulate millions of dollars of excess inventory, which Symbol encouraged Data Capture to resell or use it in refurbishment or Symbol Repair Service.

32. As a result of this conduct, as well as other illegal activities, Symbol paid \$138 million in fines and damages to the U.S. government and a shareholder class. A number of its senior officers have been indicted on criminal charges relating to that conduct as well.

33. Nevertheless, Data Capture's growing inventory of used and refurbished Symbol Equipment and Parts, and its local repair facilities, ultimately enabled it to provide less expensive and faster repair service than Symbol, whose repair facilities are in Mexico.

34. For example, the average turnaround time of Data Capture's Symbol Repair Service has been as low as 7 days, while the average turnaround time of Symbol's equivalent but much more expensive repair service was 37 days.

35. Data Capture's used Symbol Parts and refurbished Symbol Equipment business also allowed it to service older Symbol Equipment that Symbol no longer serviced. That, in turn, enabled many customers to extend the life of their Symbol Equipment by 5 to 10 years, postponing the need for a costly wholesale replacement of that Symbol Equipment.

36. Over time, Data Capture developed a large base of loyal customers who depended on Data Capture for more expeditious and economical repairs and refurbishments of their Symbol Equipment than Symbol offered and for the refurbishment and repair of Symbol Equipment that Symbol no longer serviced. Its customer base also included more sophisticated end-users, such as Safeway, Walgreens, and Federated, who preferred to repair their Symbol Equipment with Data Capture's less expensive used Symbol Parts.

37. In 2003, having unsuccessfully attempted to fraudulently inflate its profits by dumping inventory, Symbol decided to eliminate resellers like Data Capture, Ryzex Group, and DBK Concepts, Inc. ("DBK"), which had successful businesses selling refurbished Symbol Equipment, used Symbol Parts, and Symbol Repair Service, in order to gain monopoly profits on Symbol Equipment, Parts, and Repair Services, shorten the lifecycle of old Symbol Equipment and increase sales of and profits from new Symbol Equipment.

38. Symbol developed a policy to marginalize, and ultimately eliminate, the third party business in refurbished Symbol Equipment, used Symbol Parts, and Symbol Repair Services, notwithstanding that it had induced Data Capture to purchase millions of dollars worth of Symbol Equipment and Parts, and to make other substantial investments to develop and support this very business.

39. Initially, Symbol forced all its resellers to enter into new contracts (under its PartnerSelect Program) that purported to drastically limit their sales of used Symbol Parts, refurbished Symbol Equipment, and Symbol Repair Services. Those contracts prohibited resellers from deriving more than 15 percent of their total revenue from the sale of “Not New” Symbol Equipment, and from deriving more than 10 percent of their revenue from the sale of “repair/break-fix” operations on Symbol Equipment.

40. Pursuant to the New Policy and reseller contracts, Symbol almost immediately eliminated a number of resellers with a business in used Symbol Parts, refurbished Symbol Equipment, and Symbol Repair Service that posed a competitive threat to Symbol.

41. In 2003, Symbol refused to supply, or to allow others to supply, Symbol Equipment or Parts to DBK and Ryzex Group, two resellers with a significant business in used Symbol Parts, refurbished Symbol Equipment and Symbol Repair Services after they refused to agree to the terms of the contract. As a result, these companies no longer have any significant refurbished Symbol Equipment, used Parts, and Repair Services.

42. Symbol also punished resellers that undermined or did not comply with Symbol’s New Policy. For example, Symbol cut off Texas Barcoding, Inc. (“Texas Barcoding”) because it resold Symbol Equipment and Parts to Ryzex Group in violation of the New Policy. Symbol also cut off Datavision and Barcode Systems, Inc. from supplies of Symbol Equipment and Parts

pursuant to its New Policy. Today, these companies no longer have a significant business selling or servicing Symbol Equipment or Parts or are no longer in business.

43. However, before it fully implemented its New Policy with respect to Data Capture, Symbol sought to acquire Data Capture's large, loyal and valuable customer base for itself, and to take advantage of Data Capture's used Symbol Equipment and Parts business and willingness to purchase millions of dollars in inventory to support its business.

44. In an October 19, 2004 "Announcement," Thomas Z. Zix, Symbol's Director of TASS Channels Operation, requested that Data Capture disclose the identity of its customers allegedly to assist Symbol in maintaining Symbol Equipment's "competitive edge." Mr. Zix assured Data Capture that in revealing the identity of its customers, Data Capture has "[Symbol's] commitment that this information is treated confidentially and is used for compensation and internal analyses only."

45. Unbeknownst to Data Capture, Symbol intended to use the list to contact Data Capture's customers to pressure them not to purchase or sell any Symbol Equipment, Symbol Parts, or Symbol Repair Service from or to Data Capture, and to steer Data Capture's customers to resellers that would abide by the New Policy.

46. When Data Capture refused to disclose this highly confidential, trade secret information, Symbol terminated the PartnerSelect agreement pursuant to which Symbol and Data Capture had operated since April 2003 and threatened to cut off Data Capture's supply of Symbol Equipment and Part.

47. Thereafter, and notwithstanding its knowledge that Data Capture continued to sell Symbol Parts, refurbished Symbol Equipment, and Symbol Repair Services, Symbol offered to let Data Capture continue to act as an authorized reseller as a "Business Partner," which would

allow Data Capture to purchase Symbol Equipment and Parts from Symbol through distributors or end-users for use in resale, refurbishing or repair services – but only on the condition that Data Capture disclose its customer list to Symbol.

48. In October 2005, Symbol, through Chris Ware, Northeast Channel Account Manager, Mr. Zix, and others, insisted that Data Capture disclose its customer list pursuant to the October 19, 2004 “Announcement,” falsely telling Data Capture that it needed to know who Data Capture’s customers were in order to improve its Equipment offerings and provide better Repair Service and prices.

49. Data Capture’s business was dependent upon a continuing relationship with Symbol because it needed a continuous supply of new Symbol Equipment and Parts to maintain its operations. Data Capture’s inventory of used Symbol Parts and refurbished Symbol Equipment alone was insufficient to maintain a sustainable business in Symbol Equipment, Symbol Parts and Symbol Repair Service because Installed Base Customers need to be able to turn to their reseller for all models, parts and repairs.

50. Data Capture was also dependent on Symbol for its used Symbol Parts and refurbished Symbol Equipment inventory, much of which it obtained directly from Symbol or as the result of sales from third-parties subject to Symbol’s approval.

51. Because of its dependence on access to Symbol Parts and Symbol Equipment, and relying on Symbol’s representations that it would maintain the confidentiality of Data Capture’s customer list and use it solely to help improve Data Capture’s sales opportunities, Data Capture finally acquiesced to Symbol’s demand that it disclose the identity of its customers.

52. In 2005 or early 2006, after it had obtained Data Capture’s customer list, Symbol implemented new terms and conditions for its PartnerSelect Program that purported to prohibit

Data Capture and other resellers from selling any used Symbol Parts, refurbished Symbol Equipment, or Symbol Repair Services. The terms and conditions require that the revenues generated from the sale of “Not New Symbol Equipment” and “repair/break-fix operations on Symbol Equipment” “as a percentage of total company revenue, not exceed zero dollars.”

53. Symbol promptly enforced this provision and cut off ABE Technologies (“ABE”) from supplies for one year because ABE provided its own Symbol Repair Services to one large customer account instead of sending that customer’s Symbol Equipment to Symbol for repair.

54. However, until it terminated its relationship with Data Capture in January 2007, for its own profit, Symbol continued to encourage and request that Data Capture purchase Symbol Parts and Symbol Equipment that it knew Data Capture intended to use specifically to sell, and to repair and refurbish Symbol Equipment, including without limitation:

- a. In January 2005, Symbol was trying to sell approximately \$20 million worth of new Symbol Equipment to CVS. Mr. Teixeira visited CVS and offered to buy CVS’s old Symbol Equipment for \$6 million. While Mr. Teixeira was still in CVS’s office, CVS’s representative called Peter Grimes, an area manager for Symbol, to inquire whether the price was fair. Mr. Grimes informed CVS that the price was good and encouraged CVS to sell its old Symbol Equipment to Data Capture. Thereafter, Mr. Grimes called Mr. Teixeira and thanked him for repurchasing CVS’s old Symbol Equipment and acknowledged that Data Capture’s participation helped consummate the deal between Symbol and CVS;

- b. In the Summer of 2006, Symbol, through its distributor Ingram Micro, authorized a sale of \$500,000 worth of new Equipment and Parts to Data Capture for Data Capture to keep in its inventory;
- c. In the Fall of 2006, Ingram Micro, with Symbol's encouragement, asked Data Capture to purchase \$50,000 worth of its inventory, which consisted primarily of new and used Symbol Equipment and Parts that its customers had returned or that Symbol had sent to Ingram Micro's warehouse;
- d. In December 2006 — just one month before Symbol commenced this lawsuit — Symbol, through its employees Jeff Studley and Mr. Grimes, asked Data Capture to purchase 520 used handheld devices from a customer, to persuade a customer to purchase new Symbol Equipment from Symbol.

55. Accordingly, Symbol through its employees demonstrated continuing support of Data Capture's purchase and sale of used Symbol Equipment and Parts, and their support of Data Capture's purchase of new parts for future resale; and Symbol did so with full knowledge that it intended to prevent Data Capture from making any profitable use of this Symbol Equipment and Parts.

56. During this time, Symbol also began to use Data Capture's customer list to steal customers from Data Capture in order to sell Symbol Equipment and Parts to them directly or steer them to one of the authorized resellers who abided by Symbol's New Policy.

57. For example, while Data Capture was negotiating to sell more than \$500,000 worth of Symbol Equipment to both Value City Furniture of Minnesota and Scholastic, Inc., and approximately \$4,000,000 worth of Symbol Equipment to Brunswick Corporation, Symbol

contacted these customers, told them not to do business with Data Capture, and aggressively sold those customers new Symbol Equipment. Data Capture had informed Symbol of the identity of those customers based on Symbol's assurance that it would use the identity of the customers solely to assist Data Capture in making the sale.

58. In the first week of January 2007, Symbol delivered the final blow. It completely cut Data Capture off from all supplies and steered yet another large Data Capture account, Dick's Sporting Goods, Inc. ("Dick's"), to one of Symbol's remaining authorized resellers. At the direction of Symbol, Lowry Computer Products, Inc., one of Symbol's authorized resellers, sold the initial \$600,000 worth of Symbol Equipment that Data Capture was supposed to sell to Dick's, including the service and additional sales and support for that account.

59. Since January 2007, Symbol has not only refused to sell Data Capture any new Equipment or Parts, it has also barred its distributors and remaining authorized resellers from selling Data Capture any Symbol Equipment or Symbol Parts, new or used. Symbol uses its prior termination of resellers, as well as the termination of Data Capture, as examples to threaten remaining resellers who do not comply with its New Policy. For example, one of Symbol's remaining authorized resellers recently refused to sell Symbol Equipment to Data Capture, on the ground that Symbol would terminate its business if it did so.

60. Over the course of their relationship, Data Capture's resale and servicing of Symbol Equipment and Parts accounted for approximately 90-95 percent of Data Capture's business. At various times since 1992, Data Capture's sales consisted solely of Symbol Equipment, Symbol Parts, and Symbol Repair Services. Over the years, Data Capture has sold over \$50 million worth of Symbol Equipment and Symbol Parts.

61. Today, Data Capture holds an inventory of Symbol Equipment and Parts worth between \$15 and \$20 million. Symbol now seeks to prevent Data Capture from selling this inventory, which Symbol previously authorized and encouraged (directly or indirectly) Data Capture to purchase.

62. To keep remaining authorized resellers compliant with its New Policy, Symbol threatens to withhold supplies or discount prices on big contracts if it suspects that the reseller provides Symbol Repair Services, used Symbol Parts or refurbished Symbol Equipment. For example, very recently, a representative of another authorized reseller of Symbol inquired whether Data Capture was willing to acquire its Symbol Repair Service accounts and its inventory of used Symbol Equipment and Parts, informing Mr. Teixeira that he was being pressured by Symbol to get rid of this business immediately. Symbol threatened to exclude the reseller from a very significant resale contract if he did not end his Symbol Repair Service business.

63. Accordingly, the remaining authorized resellers have acquiesced to Symbol's demands. For instance, Barcoding, Inc., one of Symbol's remaining authorized resellers, indicates on the section of its web-site about repair services that it no longer provides Symbol Repair Service, explaining that "Symbol now requires their product be returned to Symbol's repair depot."

64. Symbol has also ensured that Data Capture, and other eliminated resellers, no longer have access to supplies of used inventory from end-use customers. Symbol has pressured Installed Base Customers to deal exclusively with Symbol (directly or through its distributors) or with resellers that do not sell or purchase any used or refurbished Symbol Equipment or Parts and that do not offer Symbol Repair Service. To that end, Symbol requires customers to refrain

from purchasing or selling any used Symbol Parts and Equipment. Symbol warns customers that noncompliance with these contractual obligations will lead to forfeiture of discounts, penalties, cessation of service, and/or lawsuits similar to the one Symbol brought against Data Capture here.

65. To further ensure the success of its New Policy, Symbol conditions the sale of new Symbol Equipment and Parts to authorized resellers, distributors, and Installed Base Customers on their agreement to purchase Symbol Repair Services exclusively from Symbol. Buyers who do not abide by this requirement forego discounts or otherwise pay higher prices for Symbol Equipment or Parts and also risk contractual penalties or contract termination.

66. Symbol also falsely touts its Symbol Equipment and Repair Services as superior to those of third parties and represents to Installed Base Customers that Data Capture and other third parties are not properly trained and “typically use inferior parts and workmanship.” In addition, Symbol warns Installed Base Customers that use of third party Symbol Repair Service will invalidate the warranty of their Symbol Equipment. If Symbol Equipment was previously serviced or refurbished by another party, Symbol will charge a customer \$50-100 per unit to determine whether it is still willing to service that equipment. Often Symbol will then decide to not service such Symbol Equipment.

67. In order to make sure that Installed Base Customers purchase new Symbol Equipment instead of refurbished Symbol Equipment, Symbol only repairs and services older, still-functioning Symbol Equipment if the Installed Base Customer commits to purchasing new (i.e., not used or refurbished) Symbol Equipment.

68. From 2003 through June 2007, Symbol has gradually, but successfully, marginalized the trade in used Symbol Parts, refurbished Symbol Equipment, and Symbol Repair

Services. In accordance with its plans, Symbol recently discontinued service and parts supply for many legacy Symbol Equipment models and increased prices on its Symbol Equipment, Parts, and Repair Service. For instance, on January 3, 2007, Symbol increased the prices for its spare parts and flat-rate repairs in the U.S. by 10 percent.

69. Symbol's New Policy does not serve a business purpose other than the elimination of competition in order to collect monopoly profits. Symbol's prior encouragement of the trade in used Symbol Parts and refurbished Symbol Equipment and its eagerness to supply resellers with a refurbishing and Symbol Repair Service business demonstrate that it never had any concerns about the product and service quality offered by those resellers.

70. Until Symbol filed its Complaint, it had never at any time expressed concern about the quality of the refurbished Symbol Equipment and used Symbol Parts sold by Data Capture, or the Symbol Repair Service it provided.

71. Similarly, until it filed its complaint in this matter, Symbol never raised any concerns about the use of UL, C-UL, FM, and FCC ID seals on its products about which it now complains.

72. Moreover, each item of Symbol Equipment and each Symbol Part that Data Capture, and resellers like it, sell, very clearly states whether it is new or refurbished. Customers have never been confused about an item's condition because they know that the indication "refurbished" means that the Symbol Equipment they buy is not new. In fact, given the expense of new Symbol Equipment, Installed Base Customers typically seek to have their Symbol Equipment repaired or refurbished with used Symbol Parts rather than replacing non-functioning units with new units through Symbol. They value the competitively priced used Symbol Parts,

quick turn around time, and willingness to service or refurbish Symbol Equipment offered by independent resellers like Data Capture and seek out those resellers exactly for that reason.

73. Data Capture has never received a complaint from a customer who purchased used Symbol Parts or refurbished Symbol Equipment and was expecting new Symbol Parts or Equipment. The success of Data Capture's business and its longstanding relationships with many Installed Base Customers attest to their satisfaction with the quality of its products and service.

74. During more than 15 years of practically daily communications between Symbol and Data Capture, Symbol never expressed any concerns about the quality and labeling of the used Symbol Parts and refurbished Symbol Equipment sold by Data Capture or the quality of Data Capture's Symbol Repair Services. To the contrary, on many occasions, Symbol complimented the quality of Data Capture's products and services, and expressed its frustration with the fast turnaround time and low prices of Data Capture's Symbol Repair Service, and the low prices of Data Capture's used Symbol Parts and refurbished Symbol Equipment. In fact, Symbol often complained that Data Capture's business cost it a lot of revenues, either because it lost customers or because it was forced to drastically lower its prices to keep customers.

75. The quality and labeling concerns Symbol expresses here for the first time are merely pretext, used to mask its anticompetitive objectives.

THE MARKET FOR SYMBOL EQUIPMENT

The Sale of Symbol Equipment to Installed Base Customers is a Separate Relevant Antitrust Market

76. The sale of Mobile Handheld Scanners and related peripheral equipment to Installed Base Customer who need to purchase additional or replacement units compatible with their Symbol System constitutes a separate relevant antitrust market (the “Market for Symbol Equipment”).

77. An Installed Base Customer seeking to replace defective units or add units to its installed base due to growth of its business is locked into purchasing more Symbol Equipment. Mobile Handheld Scanners made by competing manufacturers will not interoperate adequately with a Symbol System. For example, unlike Symbol Scanners, Mobile Handheld Scanners made by Handheld Products, Inc. (“HHP”) or Intermec, Inc. (“Intermec”) (Symbol’s two main competitors in the manufacture of Mobile Handheld Scanners) will not seamlessly roam on a wireless Symbol System. While a Symbol Scanner will generally never lose signal when it is roaming between two wireless access points on a Symbol System, an HHP or Intermec scanner often will. From a customer’s perspective that poses unacceptable risks of data loss. Retailers like Wal-Mart use wireless Mobile Handheld Scanner systems to track and manage their inventory movements as accurately as possible, on a real time basis. Other customers have similar needs for real time information, mobility, and accuracy. That utility is not guaranteed where the data stream between the Mobile Handheld Scanner and the wireless system is unreliable.

78. In addition, the battery life of a Mobile Handheld Scanner made by HHP or Intermec when used on a wireless Symbol System is significantly shorter than that of a Symbol Scanner. Symbol Systems and Symbol Scanners are designed and programmed to communicate

with each other. Part of that utility is that the Symbol System will instruct the Symbol Scanner to go into sleep mode to save battery life when no data are exchanged. An HHP or Intermec Mobile Handheld Scanner will not understand the instructions coming for the Symbol System and remain powered on all day, depleting the battery.

79. An Installed Base Customer is also locked into Symbol because adding another brand of Mobile Handheld Scanners to its installed base of Symbol Equipment is highly inefficient and prohibitively expensive. Operating on two different brands of Mobile Handheld Scanner systems would require a customer to reconfigure its data management software to understand both systems and equipment, to retrain its personnel to be proficient with both systems, and to pay for software as well as hardware support and repair services for two different systems. For each system, software support services alone usually cost 18 to 20 percent of the price of the original software on an annual basis.

80. Due to these incompatibility issues and the high costs of operating on two different systems, an Installed Base Customer will not switch to competing equipment in response to a small but significant non-transitory increase in price of Symbol Equipment. In addition, given the very significant expenditures involved in the purchase of its Symbol System and the installed base of Symbol Equipment, an Installed Base Customer is unlikely to abandon its entire Symbol System in favor of a competing system in response to a small but significant non-transitory increase in the price of Symbol Equipment. The cost of a Symbol System ranges from \$30,000 to \$20,000,000 and each unit of additional Symbol Equipment for that system ranges from \$400 to \$2,200. Many customers order hundreds, or even thousands of units at their original purchase of the system as well as when they expand their operations.

81. Accordingly, a relevant product market includes only new and refurbished Symbol Equipment and not equipment manufactured by a competitor of Symbol.

82. A supplier of equipment for competing systems cannot successfully expand into the Symbol Equipment business without gaining access to a high volume of supplies of all unique Symbol Equipment items and Symbol Parts. There are more than a hundred Symbol Scanner models currently in use, each with hundreds of peripheral equipment items. Most end-use customers will not deal with a supplier that does not have a guaranteed inventory of the model Mobile Handheld Scanner they need. They want a supplier that can serve all their needs. Adequate supplies from Symbol or Symbol distributors are indispensable to guarantee this kind of inventory. Supplies from other sources alone will not enable a reseller to serve a viable customer base.

83. Accordingly, a supplier of a different brand of Mobile Handheld Scanners will not expand into the Market for Symbol Equipment in response to a small, but significant, non-transitory increase in price of Symbol Equipment, unless first approved by Symbol. Significantly, pursuant to its New Policy, Symbol will not supply or allow supplies to any reseller that undercuts the prices it sets for Symbol Equipment.

84. The Market for Symbol Equipment is global. Installed Base Customers use the internet to find the reseller that can offer them the best-priced Symbol Equipment they need, regardless of the location of that reseller or distributor. For instance, in the past, Data Capture regularly sold Symbol Equipment to customers located in the United Kingdom. Accordingly, a small, but significant, increase in the price of Symbol Equipment in the United States would lead a customer to turn to resellers located elsewhere in the world offering more competitive prices.

Shipping costs are insignificant relative to the total purchase price of a typical shipment of Symbol Equipment.

85. In 2006, Installed Base Customers worldwide purchased hundreds of millions of dollars worth of Symbol Equipment.

Symbol Has Market Power in the Market for Symbol Equipment

86. Symbol has long had market power in the Market for Symbol Equipment, even before Symbol implemented its New Policy. Symbol's share of the global Market for Symbol Equipment has consistently exceeded 50 percent and has increased significantly since the implementation of its New Policy.

Barriers to Entry into the Market for Symbol Equipment Are High

87. The technologies incorporated in Symbol's equipment are largely proprietary. As a result, entry into the Market for Symbol Equipment by manufacturers other than Symbol is impossible.

88. Symbol controls entry by resellers because they are dependent on supplies, directly or indirectly, coming from Symbol. Significantly, Symbol's New Policy bars all meaningful entry by prohibiting supplies to resellers that sell refurbished Symbol Equipment, which are the only resellers able to discipline the prices of new Symbol Equipment.

89. Even prior to Symbol's New Policy, entry into the business of refurbishing Symbol Equipment was difficult since it requires significant investments in Symbol-specific refurbishing facilities, software development, personnel training, expertise, and a large inventory of spare parts for Symbol Equipment.

THE MARKET FOR SYMBOL PARTS

The Sale of Symbol Parts is a Separate Relevant Antitrust Market

90. The sale of parts to Installed Base Customers who need replacement parts compatible with their installed base of Symbol Equipment, referred to herein as Symbol Parts, constitutes a separate, relevant antitrust market (the “Market for Symbol Parts”).

91. An Installed Base Customer cannot use replacement parts manufactured for competing equipment because such parts are incompatible with Symbol Equipment. For example, an Installed Base Customer with an MC9060 system that seeks replacement of certain components of some of its handheld scanners, such as outer cases (shells, plastics), scanner engines, keypads, CPU boards or batteries, can only purchase Symbol brand components. The outer cases (shells, plastics), scanner engines, keypads, CPU boards or batteries for handheld scanners of a competing brand, such as Intermec, HHP or LXE, will not fit the MC9060 and are, therefore, useless to an Installed Base Customer with that system. Accordingly, a relevant product market includes only new and used Symbol Parts and not parts manufactured for competing equipment.

92. Because of the substantial investment in their Symbol System and installed base of Symbol Equipment, even a significant price increase for Symbol Parts will not cause an Installed Base Customer to abandon its entire Symbol System for a competing system.

93. A supplier of parts for competing equipment cannot successfully expand into the Symbol Parts business without gaining access to a sufficient supply of each unique Symbol Part. There are more than a hundred models of Symbol Scanners currently in use. Each comes with hundreds of different Symbol Parts. Installed Base Customers will not deal with a supplier that does not have a guaranteed inventory of the Symbol Parts they need. Adequate supplies from

Symbol or Symbol distributors are indispensable to guarantee this kind of Symbol Parts inventory. Supplies of Symbol Parts from alternative sources alone will not enable a reseller to serve a viable customer base.

94. Accordingly, a supplier of parts for competing Mobile Handheld Scanners will not expand into the Market for Symbol Parts in response to a small, but significant, non-transitory increase in the price of Symbol Parts, unless first approved by Symbol. Significantly, pursuant to its New Policy, Symbol will not supply or allow supplies to any reseller that undercuts the prices it sets for Symbol Parts.

95. The Market for Symbol Parts is global. Installed Base Customers use the internet to find the reseller that can offer them the best prices for the Symbol Parts they need, regardless of the location of that reseller. For instance, in the past, Data Capture has regularly sold Symbol Parts to customers located in the United Kingdom. Accordingly, a small, but significant, increase in the price of Symbol Parts in the United States would lead a customer to turn to resellers located elsewhere in the world offering more competitive prices. Shipping costs are insignificant relative to the total purchase price of a typical shipment of Symbol Parts.

96. In 2006, Installed Base Customers worldwide purchased tens of millions of dollars worth of Symbol Parts.

Symbol Has Monopoly Power in the Market for Symbol Parts

97. Symbol has long had market power in the Market for Symbol Parts, even before it implemented its New Policy. Symbol's share of the global Market for Symbol Parts has consistently exceeded 50 percent and has increased significantly since the implementation of its New Policy.

Barriers to Entry into the Market for Symbol Parts Are High

98. The technologies incorporated in Symbol Parts are largely proprietary. As a result, entry into the Market for Symbol Parts by other manufacturers than Symbol is impossible.

99. Symbol controls entry by resellers because they are dependent on supplies directly or indirectly coming from Symbol. Significantly, Symbol's New Policy bars all meaningful entry by prohibiting supplies to resellers that sell used Symbol Parts, which are the only resellers able to discipline the prices of new Symbol Parts.

THE MARKET FOR SYMBOL REPAIR SERVICES

Symbol Repair Services Is a Separate Relevant Antitrust Market

100. The provision of Symbol Repair Services to Installed Base Customers constitutes a separate relevant antitrust market (the "Market for Symbol Repair Services").

101. Installed Base Customers need repair and maintenance services specifically tailored to Symbol Equipment. For an Installed Base Customer these services are not interchangeable with repair and maintenance services for competing equipment. The technologies and parts of competing equipment are generally different from and incompatible with Symbol Equipment.

102. A provider of repair and maintenance services for competing equipment will not easily switch to servicing Symbol Equipment because to do that successfully requires significant investment in developing technology, software, technical expertise and personnel training specific to Symbol Equipment. Significantly, since implementation of its New Policy, Symbol is the only official service provider for its equipment and it boycotts third party service providers by terminating and prohibiting essential parts supplies to independent service providers.

103. Accordingly, a small, but significant, non-transitory increase in the prices for Symbol Repair Services will not lead Installed Base Customers to turn to service providers for competing equipment and will not lead service providers for competing equipment to start offering Symbol Repair Services.

104. Because of the substantial investment in their Symbol System and installed base of Symbol Equipment, even a significant price increase for Symbol Repair Services will not cause an Installed Base Customer to abandon its entire Symbol System for a competing system.

105. The Market for Symbol Repair Services is separate and distinct from the Market for Symbol Parts and the Market for Symbol Equipment. Symbol Repair Services and Symbol Parts are not interchangeable and are often sold separately. Installed Base Customers sometimes need repairs that do not require replacement of Parts of its equipment. Conversely, large and sophisticated Installed Base Customers service their own Symbol Equipment and therefore always purchase Parts separately.

106. Symbol Equipment and Symbol Repair Services are not interchangeable and are often sold separately. For instance, if an Installed Base Customer, such as Walgreens, opens new stores or warehouses and adds new employees it will need additional Symbol Equipment without having a need for Symbol Repair Services. Similarly, if that Installed Base Customer's Symbol Scanners are broken beyond repair, it will need to replace them but it will not need Symbol Repair Services.

107. The Market for Symbol Repair Services is North America. For repairs of their Symbol Equipment, Installed Base Customers are generally not willing to wait more than a week or ten days. If the Symbol Repair Services of one provider were to take more time, Installed Base Customers would switch to another provider, if they had a choice, even if that provider's

Symbol Repair Services were significantly more expensive. In fact, Installed Base Customers often paid Data Capture to repair their Symbol Equipment so that it would be returned faster than through Symbol's services, even though they had already paid for Symbol's service program as well. Accordingly, repair facilities can generally not be farther than a few shipping days away from the customer's location, which limits the geographic boundaries to North America.

Symbol's repair service facilities in Mexico service Equipment and Parts coming from U.S. and Canadian customers, but not from European customers. For its European customers, Symbol has repair facilities in the Czech Republic.

108. In 2006, Installed Base Customers worldwide purchased more than \$200 million worth of Symbol Repair Services.

Symbol Has Gained a Monopoly in the Market for Symbol Repair Services

109. Symbol has long had market power in the Market for Symbol Repair Services, even before it implemented its New Policy. Symbol's share of the global Market for Symbol Repair Services has consistently exceeded 50 percent and has increased significantly since the implementation of its New Policy.

Entry into the Market for Symbol Repair Services Is Impossible

110. Offering Symbol Repair Services is impossible since Symbol implemented its New Policy in order to cut off third parties trying to offer such services from the Symbol Parts necessary to repair Symbol Equipment. Even if a service provider would somehow be able to acquire some used Symbol Parts despite Symbol's New Policy, that would not suffice for a viable Symbol Repair Service business, because customers need a supplier that they can turn to for all their repairs. Symbol Parts supplies from or authorized by Symbol are essential for a full service operation.

111. As Symbol's consistently high market shares demonstrate, barriers to entry in the Market for Symbol Repair Services were always significant, even before Symbol implemented its New Policy. A sustainable Symbol Repair Services business requires significant investment in software development, repair facilities, personnel training as well as a viable customer base of sufficiently large customers.

**SYMBOL'S ANTICOMPETITIVE ACTIONS AND AGREEMENTS
HAVE ELIMINATED COMPETITION AND HARMED CUSTOMERS**

112. Symbol implemented its New Policy, primarily: (a) to eliminate competition in the Market for Symbol Equipment, specifically competition from refurbished Symbol Equipment, so as to increase prices and limit output in that market; (b) to eliminate competition in the Market for Symbol Parts, specifically competition from used Symbol Parts, so as to increase prices and limit output in that market, and so as to eliminate the availability of refurbished Symbol Equipment and Symbol Repair Services; and (c) to eliminate competition in the Market for Symbol Repair Services, so as to increase service prices and end the availability of services that extend the lifetime of legacy Symbol Equipment. In order to make its New Policy succeed, Symbol sacrificed the benefits it derived from the used Symbol Equipment and Parts trade.

113. Symbol's New Policy has been successful in eliminating significant competitors.

114. The aftermarkets for Symbol Equipment were competitive for many years. Since the early 1990s, successful resellers like Data Capture competed with Symbol in those markets by servicing Installed Base Customers more expeditiously and at substantially lower prices than Symbol. Additionally, they offered Installed Base Customers inexpensive, used Symbol Parts and refurbished Symbol Equipment as alternatives to Symbol's new Equipment and Parts. Accordingly, many Installed Base Customers preferred the used Symbol Parts, refurbished

Symbol Equipment, and Symbol Repair Services offered by resellers like Data Capture. In addition, Installed Base Customers benefited from and relied on their ability to pressure Symbol to lower its prices on Equipment, Parts, and Repair Services by getting better quotes from resellers like Data Capture.

115. Customers relied on the availability of used Symbol Parts, refurbished Symbol Equipment, and Symbol Repair Services from independent service providers when they purchased their original Symbol Equipment. They did not know, and had no reason to expect, that the used Symbol Parts, refurbished Symbol Equipment and low-priced and expeditious Symbol Repair Services offered by resellers like Data Capture would no longer be available at some point during the lifecycle of their installed base.

116. By cutting off Symbol Parts and Symbol Equipment supplies to these resellers through the actions and agreements referenced above, pressuring remaining resellers to comply with the rules of its New Policy, tying the sale of Symbol Repair Services to the sale of Symbol Parts, and conditioning the provision of maintenance and repair of old Symbol Equipment on the purchase of new Symbol Equipment, Symbol has eliminated competition in the Market for Symbol Repair Services, and competition from refurbished Symbol Equipment and used Symbol Parts in the Markets for Symbol Equipment and Symbol Parts, respectively. Resellers like Data Capture are no longer able to supply or service their customers because they do not have the necessary inventory of Symbol Parts and Symbol Equipment. Moreover, customers have been effectively barred from dealing with resellers like Data Capture. As a result:

- a. Installed Base Customers are forced to purchase new Symbol Parts from Symbol, which are generally twice as expensive as used Symbol Parts.

- b. Prices that Symbol charges for its Parts have increased significantly since 2003. As recently as January 2007, Symbol increased the prices of Symbol Parts by an additional 10 percent.
- c. Installed Base Customers are forced to purchase expensive new Symbol Equipment instead of preferred, lower-priced refurbished Symbol Equipment. For instance, in 2003, Symbol charged \$2,396 for a new model WSS1040, while Data Capture offered a refurbished model WSS1040 for only \$1,050. Similarly, Symbol offers a new PDT3100 for approximately \$1,100, while a refurbished PDT3100 from Data Capture would cost \$500.
- d. Symbol has recently discontinued Parts and Services for many of its legacy equipment altogether, making it impossible for customers with an installed base of that legacy system to have their equipment repaired.
- e. Installed Base Customers purchasing new Symbol Equipment no longer have the option to sell their old Symbol Equipment to resellers like Data Capture, which effectively increases the purchase price for new Symbol Equipment.
- f. Symbol Repair Service choices and output for Installed Base Customers have been reduced. Installed Base Customers are forced to purchase Symbol Repair Services from Symbol, even though they prefer Symbol Repair Service offered by third party resellers like Data Capture.
- g. Prices that Installed Base Customers pay for Symbol Repair Services will be much higher now that they can no longer turn to Data Capture.

Symbol's service prices are generally approximately twice the price of Data Capture's equivalent Symbol Repair Services. For example, Symbol's 3 Year Bronze Service From the Start Service Program for the PDT6846 costs \$608, while Data Capture offers that service for \$360. Similarly, Symbol's 1 year Bronze Service Program for a PDT8100 costs \$146, while Data Capture offers this service for \$64.80.

- h. Repairs of Symbol Equipment take much longer now that Installed Base Customers can only turn to Symbol for those services because Symbol ships the equipment to Mexico to be repaired there, while Data Capture, for instance, repairs Symbol Equipment locally in Connecticut. During the period from the first quarter of 2003 through the second quarter of 2007, the turnaround time of Symbol's non upgrade repair service ranged from 16 days to 51 days, while the turnaround time of Data Capture's Symbol Repair Service during that period ranged from 4 days to 11 days.
- i. Symbol's repair service prices have increased significantly since 2003. As recently as January 3, 2007, Symbol increased the prices of its flat-rate repairs by 10 percent and the prices of its service contracts by 5 percent. But certain service price increases were even much more extreme than that. In May 2007, Symbol charged \$1,254 for the repair of a WS5100, while less than a year earlier, in July 2006, Symbol charged \$175 for the repair of a WS5000 model, the predecessor to the WS5000 model.

**DATA CAPTURE IS HARMED BY SYMBOL'S
ANTICOMPETITIVE ACTIONS AND AGREEMENTS**

117. Symbol's anticompetitive actions and agreements have also directly and proximately harmed Data Capture. Specifically, Symbol has foreclosed Data Capture's access to essential supplies and customers, and thereby caused Data Capture to lose substantial revenue, good will and customers.

COUNT ONE

(Monopolization of the Market for
Symbol Equipment – Violation of Sherman Act, 15 U.S.C. § 2)

118. Data Capture incorporates by reference each and every allegation contained in paragraphs 1 through 117 above as if set forth here in full.

119. By virtue of its high market share (exceeding 50 percent) and control over entry in the Market for Symbol Equipment, Defendant Symbol has monopoly power and the ability to exercise control over prices in that market.

120. Symbol has willfully acquired and maintained its monopoly position in the referenced market through the use of anticompetitive practices and exclusionary conduct, namely eliminating all competition from refurbished Symbol Equipment in the Market for Symbol Equipment. By virtue of these and other anticompetitive practices and exclusionary conduct, Symbol has willfully acquired and maintained an unlawful monopoly in that market, in violation of 15 U.S.C. § 2.

121. Symbol's unlawful conduct has eliminated competition, restricted output, resulted in increased prices, and reduced customer choice, all of which has injured, and continues to injure, Installed Base Customers.

122. Symbol's wrongdoing alleged herein has also directly and proximately caused Data Capture to lose revenue, good will, customers, and customer relations, and has otherwise damaged Data Capture's business. Monetary damages alone will not fully compensate Data Capture for its injuries. Data Capture is entitled to injunctive relief against further anticompetitive conduct and monopolization by Symbol in order to be made whole and to prevent further injury.

COUNT TWO

(Monopolization of the Market for Symbol Equipment –
Violation of Connecticut Antitrust Act, Conn. Gen. Stat. § 35-27)

123. Data Capture incorporates by reference each and every allegation contained in paragraphs 1 through 122 above as if set forth here in full.

124. By virtue of its high market share (exceeding 50 percent) and control over entry in the Market for Symbol Equipment, Defendant Symbol has monopoly power and the ability to exercise control over prices in that market.

125. Symbol has willfully acquired and maintained its monopoly position in the referenced market through the use of anticompetitive practices and exclusionary conduct, namely eliminating all competition from refurbished Symbol Equipment in the Market for Symbol Equipment. By virtue of these and other anticompetitive practices and exclusionary conduct, Symbol has willfully acquired and maintained an unlawful monopoly in that market, in violation of the Connecticut Antitrust Act, Conn. Gen. Stat. § 35-27.

126. As a result of Symbol's unlawful conduct, Installed Base Customers have been and will continue to be injured because competition has been eliminated, output has been restricted, prices have increased and customer choice has been reduced.

127. As a direct and proximate result of Symbol's wrongdoing alleged herein, Data Capture has been injured in its business, having suffered, among other things, substantial lost revenue, and loss of good will and customer relations. Data Capture will not be fully compensated with monetary damages alone. Data Capture is entitled to injunctive relief against further anticompetitive conduct and monopolization by Symbol in order to be made whole and to prevent further injury.

COUNT THREE

(Attempted Monopolization of the Market for
Symbol Equipment – Violation of Sherman Act, 15 U.S.C. § 2)

128. Data Capture incorporates by reference each and every allegation contained in paragraphs 1 through 127 above as if set forth here in full.

129. Symbol has a market share exceeding 50 percent and control over entry in the Market for Symbol Equipment.

130. Symbol has willfully engaged in a course of conduct described herein, including anticompetitive and exclusionary actions, with the specific intent of monopolizing the referenced market, and there is a dangerous probability that, unless restrained, it will succeed in obtaining a monopoly in that market in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

131. As a result of Symbol's unlawful conduct, Installed Base Customers have been and will continue to be injured because competition has been eliminated, output has been restricted, prices have increased and customer choice has been reduced.

132. As a direct and proximate result of Symbol's unlawful attempted monopolization of the Market for Symbol Equipment, Data Capture has been injured in its business, having suffered, among other things, substantial lost revenue, and loss of good will and customer relations. Data Capture will not be fully compensated with monetary damages alone. Data

Capture is entitled to injunctive relief against further anticompetitive conduct and attempted monopolization by Symbol in order to be made whole and to prevent further injury.

COUNT FOUR

(Attempted Monopolization of the Market for Symbol Equipment –
Violation of Connecticut Antitrust Act, Conn. Gen. Stat. § 35-27)

133. Data Capture incorporates by reference each and every allegation contained in paragraphs 1 through 132 above as if set forth here in full.

134. Symbol has a market share exceeding 50 percent and control over entry in the Market for Symbol Equipment.

135. Symbol has willfully engaged in a course of conduct described herein, including anticompetitive and exclusionary actions, with the specific intent of monopolizing the referenced market, and there is a dangerous probability that, unless restrained, it will succeed in obtaining a monopoly in that market in violation of the Connecticut Antitrust Act, Conn. Gen. Stat. § 35-27.

136. As a result of Symbol's unlawful conduct, Installed Base Customers have been and will continue to be injured because competition has been eliminated, output has been restricted, prices have increased and customer choice has been reduced.

137. As a direct and proximate result of Symbol's unlawful attempted monopolization of the Market for Symbol Equipment, Data Capture has been injured in its business, having suffered, among other things, substantial lost revenue, and loss of good will and customer relations. Data Capture will not be fully compensated with monetary damages alone. Data Capture is entitled to injunctive relief against further anticompetitive conduct and attempted monopolization by Symbol in order to be made whole and to prevent further injury.

COUNT FIVE

(Unreasonable Restraints of Trade affecting the Market
for Symbol Equipment – Violations of Sherman Act, 15 U.S.C. § 1)

138. Data Capture incorporates by reference each and every allegation contained in paragraphs 1 through 137 above as if set forth here in full.

139. By virtue of its high market share (greater than 50 percent) and control over entry in the Markets for Symbol Equipment and Symbol Repair Services, Defendant Symbol has market power and the ability to exercise control over prices in those markets.

140. Symbol Equipment and Symbol Repair Services are separate products.

141. Symbol has pressured authorized distributors and resellers of Symbol Equipment into unlawful agreements barring them from selling any Symbol Equipment or Parts to Data Capture or other unauthorized resellers of Symbol Equipment, Symbol Parts or Symbol Repair Services. These agreements have unreasonably restrained competition in the Market for Symbol Equipment, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

142. Symbol has pressured Installed Base Customers into unlawful agreements barring them from selling or purchasing used or refurbished Symbol Equipment or Parts. These agreements have unreasonably restrained competition in the Market for Symbol Equipment, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

143. Symbol has pressured authorized distributors and resellers into unlawful agreements requiring them to refrain from selling used or refurbished Symbol Equipment or Parts. These agreements have unreasonably restrained competition in the Market for Symbol Equipment, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

144. Symbol has conditioned the provision of Symbol Repair Services for Installed Base Customers' on their agreement by to purchase new Symbol Equipment. Symbol coerced

Installed Base Customers into these agreements by threatening to discontinue or charge higher prices for Symbol Repair Services on their old Symbol Equipment if they did not agree to purchase new Symbol Equipment to supplement their installed base. As a result, Installed Base Customers have been forced to purchase new Symbol Equipment, even though they prefer refurbished Symbol Equipment offered by others. These tying arrangements affect a substantial amount of interstate commerce in the Market for Symbol Equipment and have unreasonably restrained competition in that Market, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

145. As a result of these unlawful agreements, Installed Base Customers have been and will continue to be injured because competition has been eliminated, output has been restricted, prices have increased and customer choice has been reduced.

146. As a direct and proximate result of the unlawful agreements alleged herein, Data Capture has been injured in its business, having suffered, among other things, substantial lost revenue, and loss of good will and customer relations. Data Capture will not be fully compensated with monetary damages alone. Data Capture is entitled to injunctive relief against these unreasonable restraints of trade in order to be made whole and to prevent further injury.

COUNT SIX

(Unreasonable Restraints of Trade affecting the Market for Symbol Equipment –
Violations of Connecticut Antitrust Act, Conn. Gen. Stat. §§ 35-26, 35-28, and 35-29)

147. Data Capture incorporates by reference each and every allegation contained in paragraphs 1 through 146 above as if set forth here in full.

148. By virtue of its high market shares (greater than 50 percent) and control over entry in the Markets for Symbol Equipment and Symbol Repair Services, Defendant Symbol has market power and the ability to exercise control over prices in those markets.

149. Symbol Equipment and Symbol Repair Services are separate products.

150. Symbol has pressured authorized distributors and resellers of Symbol Equipment into unlawful agreements barring them from selling any Symbol Equipment or Parts to Data Capture or other unauthorized resellers of Symbol Equipment, Symbol Parts or Symbol Repair Services. These agreements have unreasonably restrained competition in the Market for Symbol Equipment, in violation of the Connecticut Antitrust Act, Conn. Gen. Stat. §§ 35-26 and 35-28.

151. Symbol has pressured Installed Base Customers into unlawful agreements barring them from selling or purchasing used or refurbished Symbol Equipment or Parts. These agreements have unreasonably restrained competition in the Market for Symbol Equipment, in violation of the Connecticut Antitrust Act, Conn. Gen. Stat. §§ 35-26, 35-28, and 35-29.

152. Symbol has pressured authorized distributors and resellers into unlawful agreements requiring them to refrain from selling used or refurbished Symbol Equipment or Parts. These agreements have unreasonably restrained competition in the Market for Symbol Equipment, in violation of the Connecticut Antitrust Act, Conn. Gen. Stat. §§ 35-26 and 35-28.

153. Symbol has conditioned the provision of Symbol Repair Services for Installed Base Customers' on their agreement to purchase new Symbol Equipment. Symbol coerced Installed Base Customers into these agreements by threatening to discontinue or charge higher prices for Symbol Repair Services on their old Symbol Equipment if they did not agree to purchase new Symbol Equipment to supplement their installed base. As a result, Installed Base Customers have been forced to purchase new Symbol Equipment, even though they prefer refurbished Symbol Equipment offered by others. These tying arrangements affect a substantial amount of interstate commerce in the Market from Symbol Equipment and have unreasonably restrained competition in that Market, in violation of the Connecticut Antitrust Act, Conn. Gen.

Stat. §§ 35-26, 35-28, and 35-29. As a result of these unlawful agreements, Installed Base Customers have been and will continue to be injured because competition has been eliminated, output has been restricted, prices have increased and customer choice has been reduced.

154. As a direct and proximate result of the unlawful agreements alleged herein, Data Capture has been injured in its business, having suffered, among other things, substantial lost revenue, and loss of good will and customer relations. Data Capture will not be fully compensated with monetary damages alone. Data Capture is entitled to injunctive relief against these unreasonable restraints of trade in order to be made whole and to prevent further injury.

COUNT SEVEN

(Monopolization of the Market for
Symbol Parts – Violation of Sherman Act, 15 U.S.C. § 2)

155. Data Capture incorporates by reference each and every allegation contained in paragraphs 1 through 154 above as if set forth here in full.

156. By virtue of its high market share (exceeding 50 percent) and control over entry in the Market for Symbol Parts, Defendant Symbol has monopoly power and the ability to exercise control over prices in that market.

157. Symbol has willfully acquired and maintained its monopoly position in the referenced market through the use of anticompetitive practices and exclusionary conduct, namely eliminating all competition from used Symbol Parts in the Market for Symbol Parts. By virtue of these and other anticompetitive practices and exclusionary conduct, Symbol has willfully acquired and maintained an unlawful monopoly in that market, in violation of 15 U.S.C. § 2.

158. As a result of Symbol's unlawful conduct, Installed Base Customers have been and will continue to be injured because competition has been eliminated, output has been restricted, prices have increased and customer choice has been reduced.

159. As a direct and proximate result of Symbol's wrongdoing alleged herein, Data Capture has been injured in its business, having suffered, among other things, substantial lost revenue, and loss of good will and customer relations. Data Capture will not be fully compensated with monetary damages alone. Data Capture is entitled to injunctive relief against further anticompetitive conduct and monopolization by Symbol in order to be made whole and to prevent further injury.

COUNT EIGHT

(Monopolization of the Market for Symbol Parts –
Violation of Connecticut Antitrust Act, Conn. Gen. Stat. § 35-27)

160. Data Capture incorporates by reference each and every allegation contained in paragraphs 1 through 159 above as if set forth here in full.

161. By virtue of its high market share (exceeding 50 percent) and control over entry in the Market for Symbol Parts, Defendant Symbol has monopoly power and the ability to exercise control over prices in that market.

162. Symbol has willfully acquired and maintained its monopoly position in the referenced market through the use of anticompetitive practices and exclusionary conduct, namely eliminating all competition from used Symbol Parts in the Market for Symbol Parts. By virtue of these and other anticompetitive practices and exclusionary conduct, Symbol has willfully acquired and maintained an unlawful monopoly in that market, in violation of the Connecticut Antitrust Act, Conn. Gen. Stat. § 35-27.

163. As a result of Symbol's unlawful conduct, Installed Base Customers have been and will continue to be injured because competition has been eliminated, output has been restricted, prices have increased and customer choice has been reduced.

164. As a direct and proximate result of Symbol's wrongdoing alleged herein, Data Capture has been injured in its business, having suffered, among other things, substantial lost revenue, and loss of good will and customer relations. Data Capture will not be fully compensated with monetary damages alone. Data Capture is entitled to injunctive relief against further anticompetitive conduct and monopolization by Symbol in order to be made whole and to prevent further injury.

COUNT NINE

(Attempted Monopolization of the Market
for Symbol Parts – Violation of Sherman Act, 15 U.S.C. § 2)

165. Data Capture incorporates by reference each and every allegation contained in paragraphs 1 through 164 above as if set forth here in full.

166. Symbol has a market share exceeding 50 percent and control over entry in the Market for Symbol Parts.

167. Symbol has willfully engaged in a course of conduct described herein, including anticompetitive and exclusionary actions, with the specific intent of monopolizing the referenced market, and there is a dangerous probability that, unless restrained, it will succeed in obtaining a monopoly in that market in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

168. As a result of Symbol's unlawful conduct, Installed Base Customers have been and will continue to be injured because competition has been eliminated, output has been restricted, prices have increased and customer choice has been reduced.

169. As a direct and proximate result of Symbol's unlawful attempted monopolization of the Market for Symbol Parts, Data Capture has been injured in its business, having suffered, among other things, substantial lost revenue, and loss of good will and customer relations. Data Capture will not be fully compensated with monetary damages alone. Data Capture is entitled to

injunctive relief against further anticompetitive conduct and attempted monopolization by Symbol in order to be made whole and to prevent further injury.

COUNT TEN

(Attempted Monopolization of the Market for Symbol Parts –
Violation of Connecticut Antitrust Act, Conn. Gen. Stat. § 35-27)

170. Data Capture incorporates by reference each and every allegation contained in paragraphs 1 through 169 above as if set forth here in full.

171. Symbol has a market share exceeding 50 percent and control over entry in the Market for Symbol Parts.

172. Symbol has willfully engaged in a course of conduct described herein, including anticompetitive and exclusionary actions, with the specific intent of monopolizing the referenced market, and there is a dangerous probability that, unless restrained, it will succeed in obtaining a monopoly in that market in violation of the Connecticut Antitrust Act, Conn. Gen. Stat. § 35-27.

173. As a result of Symbol's unlawful conduct, Installed Base Customers have been and will continue to be injured because competition has been eliminated, output has been restricted, prices have increased and customer choice has been reduced.

174. As a direct and proximate result of Symbol's unlawful attempted monopolization of the Market for Symbol Parts, Data Capture has been injured in its business, having suffered, among other things, substantial lost revenue, and loss of good will and customer relations. Data Capture will not be fully compensated with monetary damages alone. Data Capture is entitled to injunctive relief against further anticompetitive conduct and attempted monopolization by Symbol in order to be made whole and to prevent further injury.

COUNT ELEVEN

(Unreasonable Restraints of Trade affecting the Market
for Symbol Parts – Violations of Sherman Act, 15 U.S.C. § 1)

175. Data Capture incorporates by reference each and every allegation contained in paragraphs 1 through 174 above as if set forth here in full.

176. By virtue of its high market share (greater than 50 percent) and control over entry in the Market for Symbol Parts, Defendant Symbol has market power and the ability to exercise control over prices in that market.

177. Symbol has pressured authorized distributors and resellers of Symbol Equipment and Parts into unlawful agreements barring them from selling any Symbol Equipment or Parts to Data Capture or other unauthorized resellers of Symbol Equipment, Symbol Parts or Symbol Repair Services. These agreements have unreasonably restrained competition in the Market for Symbol Parts, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

178. Symbol has pressured Installed Base Customers into unlawful agreements barring them from selling or purchasing used Symbol Equipment or Parts. These agreements have unreasonably restrained competition in the Market for Symbol Parts, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

179. Symbol has pressured authorized distributors and resellers into unlawful agreements requiring them to refrain from selling used Symbol Equipment or Parts. These agreements have unreasonably restrained competition in the Market for Symbol Parts, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

180. As a result of these unlawful agreements, Installed Base Customers have been and will continue to be injured because competition has been eliminated, output has been restricted, prices have increased and customer choice has been reduced.

181. As a direct and proximate result of the unlawful agreements alleged herein, Data Capture has been injured in its business, having suffered, among other things, substantial lost revenue, and loss of good will and customer relations. Data Capture will not be fully compensated with monetary damages alone. Data Capture is entitled to injunctive relief against these unreasonable restraints of trade in order to be made whole and to prevent further injury.

COUNT TWELVE

(Unreasonable Restraints of Trade affecting the Market for Symbol Parts –
Violations of Connecticut Antitrust Act, Conn. Gen. Stat. §§ 35-26 and 35-28)

182. Data Capture incorporates by reference each and every allegation contained in paragraphs 1 through 181 above as if set forth here in full.

183. By virtue of its very high market share (greater than 50 percent) and control over entry in the Market for Symbol Parts, Defendant Symbol has market power and the ability to exercise control over prices in that market.

184. Symbol has pressured authorized distributors and resellers of Symbol Equipment and Parts into unlawful agreements barring them from selling any Symbol Equipment or Parts to Data Capture or other unauthorized resellers of Symbol Equipment, Symbol Parts or Symbol Repair Services. These agreements have unreasonably restrained competition in the Market for Symbol Parts, in violation of the Connecticut Antitrust Act, Conn. Gen. Stat. §§ 35-26 and 35-28.

185. Symbol has pressured Installed Base Customers into unlawful agreements barring them from selling or purchasing used Symbol Equipment or Parts. These agreements have unreasonably restrained competition in the Market for Symbol Parts, in violation of the Connecticut Antitrust Act, §§ 35-26, 35-28, and 35-29.

186. Symbol has pressured authorized distributors and resellers into unlawful agreements requiring them to refrain from selling used Symbol Equipment or Parts. These agreements have unreasonably restrained competition in the Market for Symbol Parts, in violation of the Connecticut Antitrust Act, §§ 35-26 and 35-28.

187. As a result of these unlawful agreements, Installed Base Customers have been and will continue to be injured because competition has been eliminated, output has been restricted, prices have increased and customer choice has been reduced.

188. As a direct and proximate result of the unlawful agreements alleged herein, Data Capture has been injured in its business, having suffered, among other things, substantial lost revenue, and loss of good will and customer relations. Data Capture will not be fully compensated with monetary damages alone. Data Capture is entitled to injunctive relief against these unreasonable restraints of trade in order to be made whole and to prevent further injury.

COUNT THIRTEEN

(Monopolization of the Market for
Symbol Repair Services – Violation of Sherman Act, 15 U.S.C. § 2)

189. Data Capture incorporates by reference each and every allegation contained in paragraphs 1 through 188 above as if set forth here in full.

190. By virtue of its high market share (exceeding 50 percent) and control over entry in the Market for Symbol Repair Services, Defendant Symbol has monopoly power and the ability to exercise control over prices in that market.

191. Symbol has willfully acquired and maintained its monopoly position in the referenced market through the use of anticompetitive practices and exclusionary conduct, namely eliminating all competition in the Market for Symbol Repair Services. By virtue of these and

other anticompetitive practices and exclusionary conduct, Symbol has willfully acquired and maintained an unlawful monopoly in that market, in violation of 15 U.S.C. § 2.

192. As a result of Symbol's unlawful conduct, Installed Base Customers have been and will continue to be injured because competition has been eliminated, output has been restricted, prices have increased and customer choice has been reduced.

193. As a direct and proximate result of Symbol's wrongdoing alleged herein, Data Capture has been injured in its business, having suffered, among other things, substantial lost revenue, and loss of good will and customer relations. Data Capture will not be fully compensated with monetary damages alone. Data Capture is entitled to injunctive relief against further anticompetitive conduct and monopolization by Symbol in order to be made whole and to prevent further injury.

COUNT FOURTEEN

(Monopolization of the Market for Symbol Repair Services –
Violation of Connecticut Antitrust Act, Conn. Gen. Stat. § 35-27)

194. Data Capture incorporates by reference each and every allegation contained in paragraphs 1 through 193 above as if set forth here in full.

195. By virtue of its high market share (exceeding 50 percent) and control over entry in the Market for Symbol Repair Services, Defendant Symbol has monopoly power and the ability to exercise control over prices in that market.

196. Symbol has willfully acquired and maintained its monopoly position in the referenced market through the use of anticompetitive practices and exclusionary conduct, namely eliminating all competition in the Market for Symbol Repair Services. By virtue of these and other anticompetitive practices and exclusionary conduct, Symbol has willfully acquired and maintained an unlawful monopoly in that market, in violation of Conn. Gen. Stat. § 35-27.

197. As a result of Symbol's unlawful conduct, Installed Base Customers have been and will continue to be injured because competition has been eliminated, output has been restricted, prices have increased and customer choice has been reduced.

198. As a direct and proximate result of Symbol's wrongdoing alleged herein, Data Capture has been injured in its business, having suffered, among other things, substantial lost revenue, and loss of good will and customer relations. Data Capture will not be fully compensated with monetary damages alone. Data Capture is entitled to injunctive relief against further anticompetitive conduct and monopolization by Symbol in order to be made whole and to prevent further injury.

COUNT FIFTEEN

(Attempted Monopolization of the Market for
Symbol Repair Services – Violation of Sherman Act, 15 U.S.C. § 2)

199. Data Capture incorporates by reference each and every allegation contained in paragraphs 1 through 198 above as if set forth here in full.

200. Symbol has a market share exceeding 50 percent and control over entry in the Market for Symbol Repair Services.

201. Symbol has willfully engaged in a course of conduct described herein, including anticompetitive and exclusionary actions, with the specific intent of monopolizing the referenced market, and there is a dangerous probability that, unless restrained, it will succeed in obtaining a monopoly in that market in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

202. As a result of Symbol's unlawful conduct, Installed Base Customers have been and will continue to be injured because competition has been eliminated, output has been restricted, prices have increased and customer choice has been reduced.

203. As a direct and proximate result of Symbol's unlawful attempted monopolization of the Market for Symbol Repair Services, Data Capture has been injured in its business, having suffered, among other things, substantial lost revenue, and loss of good will and customer relations. Data Capture will not be fully compensated with monetary damages alone. Data Capture is entitled to injunctive relief against further anticompetitive conduct and attempted monopolization by Symbol in order to be made whole and to prevent further injury.

COUNT SIXTEEN

(Attempted Monopolization of the Market for
Symbol Repair Services – Violation of Connecticut Antitrust Act, § 35-27)

204. Data Capture incorporates by reference each and every allegation contained in paragraphs 1 through 203 above as if set forth here in full.

205. Symbol has a market share exceeding 50 percent and control over entry in the Market for Symbol Repair Services.

206. Symbol has willfully engaged in a course of conduct described herein, including anticompetitive and exclusionary actions, with the specific intent of monopolizing the referenced market, and there is a dangerous probability that, unless restrained, it will succeed in obtaining a monopoly in that market in violation of the Connecticut Antitrust Act, Conn. Gen. Stat. § 35-27.

207. As a result of Symbol's unlawful conduct, Installed Base Customers have been and will continue to be injured because competition has been eliminated, output has been restricted, prices have increased and customer choice has been reduced.

208. As a direct and proximate result of Symbol's unlawful attempted monopolization of the Market for Symbol Repair Services, Data Capture has been injured in its business, having suffered, among other things, substantial lost revenue, and loss of good will and customer relations. Data Capture will not be fully compensated with monetary damages alone. Data

Capture is entitled to injunctive relief against further anticompetitive conduct and attempted monopolization by Symbol in order to be made whole and to prevent further injury.

COUNT SEVENTEEN

(Unreasonable Restraints of Trade affecting the Market for
Symbol Repair Services – Violations of Sherman Act, 15 U.S.C. § 1)

209. Data Capture incorporates by reference each and every allegation contained in paragraphs 1 through 208 above as if set forth here in full.

210. By virtue of its high market shares (greater than 50 percent) and control over entry in the Markets for Symbol Equipment, Symbol Parts and Symbol Repair Services, Defendant Symbol has market power and the ability to exercise control over prices in those markets.

211. Symbol Parts and Symbol Repair Services are separate products.

212. Symbol Equipment and Symbol Product Repairs Services are separate products.

213. Symbol has pressured authorized distributors and resellers of Symbol Equipment and Parts into unlawful agreements barring them from selling any Symbol Equipment or Parts to Data Capture or other unauthorized resellers of Symbol Equipment, Symbol Parts or Symbol Repair Services. These agreements have unreasonably restrained competition in the Market for Symbol Repair Services, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

214. Symbol has pressured Installed Base Customers into unlawful agreements barring them from selling or purchasing used Symbol Equipment or Parts. These agreements have unreasonably restrained competition in the Market for Symbol Repair Services, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

215. Symbol has pressured authorized distributors and resellers into unlawful agreements requiring them to refrain from selling used Symbol Equipment or Parts. These

agreements have unreasonably restrained competition in the Market for Symbol Repair Services, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

216. Symbol has conditioned the sale of Symbol Equipment and Parts to Installed Base Customers, resellers and distributors on their agreement to purchase Symbol Repair Services exclusively from Symbol. Symbol coerced buyers into these agreements by threatening to charge higher prices or withdraw discounts for Symbol Equipment and Parts if they did not. As a result, Installed Base Customers have been forced to switch to Symbol's repair services, even though they prefer services offered by others. These tying and exclusive dealing arrangements affect a substantial amount of interstate commerce in the Market for Symbol Repair Services and have unreasonably restrained competition in that Market, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

217. As a result of these unlawful agreements, Installed Base Customers have been and will continue to be injured because competition has been eliminated, output has been restricted, prices have increased and customer choice has been reduced.

218. As a direct and proximate result of the unlawful agreements alleged herein, Data Capture has been injured in its business, having suffered, among other things, substantial lost revenue, and loss of good will and customer relations. Data Capture will not be fully compensated with monetary damages alone. Data Capture is entitled to injunctive relief against these unreasonable restraints of trade in order to be made whole and to prevent further injury.

COUNT EIGHTEEN

(Unreasonable Restraints of Trade affecting the Market for Symbol Repair Services – Violations of Connecticut Antitrust Act, Conn. Gen. Stat. §§ 35-26, 35-28, and 35-29)

219. Data Capture incorporates by reference each and every allegation contained in paragraphs 1 through 218 above as if set forth here in full.

220. By virtue of its high market shares and control over entry in the Markets for Symbol Equipment, Symbol Parts and Symbol Repair Services, Defendant Symbol has market power and the ability to exercise control over prices in those markets.

221. Symbol Parts and Symbol Repair Services are separate products.

222. Symbol Equipment and Symbol Product Repairs Services are separate products.

223. Symbol has pressured authorized distributors and resellers of Symbol Equipment and Parts into unlawful agreements barring them from selling any Symbol Equipment or Parts to Data Capture or other unauthorized resellers of Symbol Equipment, Symbol Parts or Symbol Repair Services. These agreements have unreasonably restrained competition in the Market for Symbol Repair Services, in violation of the Connecticut Antitrust Act, §§ 35-26 and 35-28.

224. Symbol has pressured Installed Base Customers into unlawful agreements barring them from selling or purchasing used Symbol Equipment or Parts. These agreements have unreasonably restrained competition in the Market for Symbol Repair Services, in violation of the Connecticut Antitrust Act, §§ 35-26 and 35-28.

225. Symbol has pressured authorized distributors and resellers into unlawful agreements requiring them to refrain from selling used Symbol Equipment or Parts. These agreements have unreasonably restrained competition in the Market for Symbol Repair Services, in violation of the Connecticut Antitrust Act, §§ 35-26, 35-28, and 35-29.

226. Symbol has conditioned the sale of Symbol Equipment and Parts to Installed Base Customers, resellers and distributors on their agreement to purchase Symbol Repair Services exclusively from Symbol. Symbol coerced buyers into these agreements by threatening to charge higher prices or withdraw discounts for Symbol Equipment and Parts if they did not. As a result, Installed Base Customers have been forced to switch to Symbol's repair services, even though they prefer services offered by others. These tying and exclusive dealing arrangements affect a substantial amount of interstate commerce in the Market for Symbol Repair Services and have unreasonably restrained competition in that Market, in violation of Connecticut Antitrust Act, Conn. Gen. Stat. §§ 35-26, 35-28, and 35-29.

227. As a result of these unlawful agreements, Installed Base Customers have been and will continue to be injured because competition has been eliminated, output has been restricted, prices have increased and customer choice has been reduced.

228. As a direct and proximate result of the unlawful agreements alleged herein, Data Capture has been injured in its business, having suffered, among other things, substantial lost revenue, and loss of good will and customer relations. Data Capture will not be fully compensated with monetary damages alone. Data Capture is entitled to injunctive relief against these unreasonable restraints of trade in order to be made whole and to prevent further injury.

COUNT NINETEEN

(Promissory Estoppel)

229. Data Capture repeats and realleges each and every allegation contained in paragraphs 1 through 228 above, as if fully repeated herein.

230. Symbol clearly and unambiguously promised Data Capture that it would allow Data Capture to sell the inventory it purchased.

231. In reasonable reliance upon Symbol's clear and unambiguous promises, Data Capture purchased and current holds \$15 - \$20 million worth of Symbol Parts and Symbol Equipment.

232. In breach of its promise to allow Data Capture to sell the inventory, Symbol has hindered Data Capture from selling the inventory, thereby causing Data Capture to suffer significant damages.

COUNT TWENTY

(Unfair Competition)

233. Data Capture repeats and realleges each and every allegation contained in paragraphs 1 through 232 above, as if fully repeated herein.

234. Through its conduct alleged herein, Symbol has willfully and in bad faith engaged in unfair competition by:

- a. selling and authorizing others to sell Products and Parts to Data Capture for resale or use in refurbishing its customers' Products, while concealing its bad faith intent of preventing Data Capture from reselling the Parts or Products; and
- b. misappropriating Data Capture's existing and prospective customer information, which Data Capture had developed over many years, at significant expense, and had maintained as a trade secret that it previously disclosed solely within its own business, and solely on a need-to-know basis; and
- c. interfering with Data Capture's existing and prospective customer relations, with customers to whom Data Capture had sold millions of

dollars worth of Symbol products and services, and from whom it had a reasonable expectation of earning future sales and service contracts.

- d. Symbol's tortious conduct was motivated solely out of malice and a desire to harm Data Capture. In the course of its tortious conduct, Symbol employed wrongful means, including fraud and misrepresentation.

235. As a result of Symbol's conduct alleged above, Data Capture has been unable to sell the purchased Products and Parts and has lost sales of products and services to existing and prospective customers. Data Capture has been injured by Symbol's conduct and has suffered a complete loss of its investment.

236. These willful acts of unfair competition by Symbol have caused and continue to cause Data Capture significant commercial and competitive harm.

237. Moreover, these unlawful acts by Symbol have resulted in Symbol's unjust enrichment at the expense of Data Capture in that Symbol has received the benefit of the sale of Symbol products to Data Capture that it is now preventing Data Capture from reselling, as well as the benefit of Data Capture's existing customer base, that Data Capture developed over many years, and significant expense..

238. In light of Symbol's willful and bad faith acts of unjust enrichment and the resulting and ongoing harm to Data Capture, equity and good conscience demand that Data Capture be awarded restitution in addition to damages.

COUNT TWENTY-ONE

(Fraud)

239. Data Capture repeats and realleges each and every allegation contained in paragraphs 1 through 238 above, as if fully repeated herein.

240. Symbol, knowing that Data Capture would rely on its statements and representations, knowingly and intentionally made material misrepresentations and omissions regarding Data Capture's ability to resell Symbol Equipment and Symbol Parts, and the maintenance of the confidentiality of Data Capture's customer list.

241. Data Capture reasonably relied upon Symbol's false representations in purchasing the Symbol Equipment and Symbol Parts from Symbol and its distributors and disclosing its customer lists to Symbol.

242. But for those representations and omissions, Symbol would not have purchased the 15 – 20 million dollars worth of Symbol Equipment and Symbol Parts that it now has in inventory and would not have developed its business to promote Symbol Equipment or disclosed its customer list to Symbol.

243. The representations and omissions were made intentionally, so that Symbol could generate millions of dollars in revenue, inflate its revenues, and steer business to itself or its preferred distributors and resellers.

244. Symbol's fraudulent statements and omissions have caused Data Capture to suffer damages, including its inability to sell the millions of dollars in inventory it currently holds, its loss of customers, the destruction of its business and its inability to service its customers.

COUNT TWENTY-TWO

(Unfair Trade Practices in Violation of CUTPA)

245. Data Capture repeats and realleges each and every allegation contained in paragraphs 1 through 244 above, as if fully repeated herein.

246. Through its conduct alleged herein, Symbol has willfully and in bad faith engaged in unfair methods of competition and unfair or deceptive trade practices in violation of the Connecticut Unfair Trade Practices Act (“CUTPA”), Conn. Gen. Stat. § 42-110b, and related Connecticut common law by making false or misleading representations or omissions of material fact in relation to its sale of Products and Parts to Data Capture, Data Capture’s purchasing of used Products and Parts, and Data Capture’s disclosure of its customer lists.

247. Symbol’s deceptive conduct, including: (a) the bad faith concealment of the fact that Symbol improperly labels its products; (b) its intention to bar Data Capture from reselling the Products and Parts that Data Capture had purchased with the specific intent to resell those products and parts; and (c) its intention to use Data Capture’s customer information for Symbol’s own benefit and to Data Capture’s detriment; offends public policy; is immoral, unethical, oppressive, or unscrupulous; and has resulted in significant commercial and competitive harm to Data Capture, the effects of which harm Data Capture is still suffering today.

COUNT TWENTY-THREE

(Defamation and Trade Disparagement)

248. Data Capture repeats and realleges each and every allegation contained in paragraphs 1 through 247 above, as if fully repeated herein.

249. Symbol falsely represented to Installed Base Customers, including Data Capture's customers, that Data Capture and other resellers are not properly trained and "typically use inferior parts and workmanship."

250. Symbol's false and defamatory statements had the capacity to deceive and did deceive a substantial segment of the Installed Base Customers and materially influenced their purchasing decision.

251. Accordingly, Symbol has defamed Data Capture and committed trade disparagement in violation of Lanham Act § 43(a), 15 U.S.C. 1125(a), and Connecticut and common law.

252. Data Capture has been harmed and injured as a direct result of Symbol's defamation and trade disparagement in that Data Capture's reputation has been tarnished and it has lost customers and sales.

COUNT TWENTY-FOUR

(Tortious Interference with Existing Contractual Relations)

253. Data Capture repeats and realleges each and every allegation contained in paragraphs 1 through 252 above, as if fully repeated herein.

254. Data Capture has existing contractual relations with numerous customers to whom it has sold millions of dollars worth of Symbol Equipment and Parts, and provided Symbol Repair Services. Symbol is aware of Data Capture's existing contracts with customers.

255. Through the conduct alleged herein, Symbol has intentionally procured and effected the breach of those contracts.

256. Data Capture was and continues to be injured as a direct result of Symbol's tortious conduct.

COUNT TWENTY-FIVE

(Tortious Interference with Prospective Customer Relations)

257. Data Capture repeats and realleges each and every allegation contained in paragraphs 1 through 256 above, as if fully repeated herein.

258. Symbol has existing relationships with many customers to whom it sold millions of dollars worth of Symbol Equipment and Parts and provided Symbol Repair Services. Those customers continuously purchase Symbol Equipment and Parts from Data Capture and retain its Symbol Repair Services to fix their Symbol Equipment. Symbol is aware of Data Capture's existing relationships with its customers.

259. Through the conduct alleged herein, Symbol has intentionally prevented Data Capture and its customers from entering into prospective agreements, in furtherance of those existing business relationships, for the sale and service of Symbol Equipment and Parts.

260. Data Capture was injured as a direct result of Symbol's tortious conduct.

261. Symbol's tortious conduct was motivated solely out of malice and a desire to harm Data Capture. In the course of its tortious conduct, Symbol employed wrongful means, including fraud and misrepresentation.

COUNT TWENTY-SIX

(Misappropriation of Trade Secrets)

262. Data Capture repeats and realleges each and every allegation contained in paragraphs 1 through 261 above, as if fully repeated herein.

263. Data Capture's customer list is a trade secret, disclosed solely within Data Capture's own business, solely on a need-to-know basis and has been developed over many years at significant expense. Data Capture ensures that the customer list cannot be obtained by anyone outside of the company. Symbol clearly and unambiguously agreed with Data Capture that it would maintain Data Capture's customer list in the strictest of confidence and not use the customer list for any purpose other than assisting Data Capture in servicing those customers.

264. In breach of the agreement to maintain the confidentiality of Data Capture's customer list, Symbol used Data Capture's customer list for its own benefit, soliciting those customers directly, and disclosing the list to Data Capture's competitors, causing Data Capture to lose the business. Data Capture has been injured by Symbol's breach of its agreement.

RELIEF SOUGHT

WHEREFORE, Data Capture prays for judgment against Symbol as follows:

- A. Dismissing Symbol's Complaint against Data Capture with prejudice;
- C. Awarding to Data Capture such damages as it has sustained as a consequence of Symbol's actions complained of herein, such damages to be enhanced in accordance with applicable law;
- D. Ordering Symbol to pay exemplary and punitive damages for its false and fraudulent acts;

- E. Awarding to Data Capture the costs of this action, together with reasonable attorneys' fees;
- F. Awarding to Data Capture such further relief as the Court may deem just and proper; and
- G. Enjoining Symbol from engaging in the conduct alleged herein.

JURY DEMAND

Pursuant to F.R. Civ. P. 38(a), Counterclaim-Plaintiffs hereby demand a trial by jury of all issues triable by a jury.

Dated: Hartford, Connecticut
June 20, 2007

Respectfully submitted,

MOUND, COTTON, WOLLAN & GREENGRASS LLP

By /s/ Philip J. Walsh

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*Attorneys for Defendant Data Capture Solutions – Repair
& Remarketing, Inc.*

I hereby certify that a copy of this Amended Answer and Counterclaim was mailed to the Connecticut Attorney General and the Connecticut Commissioner of Consumer Protection pursuant to Conn. Gen. Stat. § 42-110g(c).

By: /s/ Philip J. Walsh
Philip J. Walsh (CT 12777)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Amended Answer and Counterclaim is being filed electronically with the Court this 20th day of June, 2007. Notice of this filing will be sent by e-mail to all parties by operation of the Court's "ECF" system.

By /s/ M. Darren Traub
M. Darren Traub (MT 8194)