

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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QUATTRO PARENT LLC, :

Plaintiff/Counterclaim Defendant, :

- against - :

ZAKI RAKIB, :

Defendant/Counterclaim Plaintiff. :

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Index No. 651555/2017

ANSWER AND COUNTERCLAIMS

Defendant/Counterclaim Plaintiff Zaki Rakib (“Rakib”), by and through his attorney, Gregory Zimmer, Esq., as and for his answer to the Complaint in this action, and as and for his counterclaims against Plaintiff/Counterclaim Defendant Quattro Parent LLC (“Quattro”) in this action, responds, avers and alleges as follows:

1. Deny the allegations contained in Paragraph 1 of the Complaint, except admit that the Complaint purports to assert a claim for breach of contract against Rakib.
2. Admit the truth of the allegations contained in Paragraph 2 of the Complaint.
3. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint.
4. Admit the allegations contained in Paragraph 4 of the Complaint.
5. Deny the allegations contained in Paragraph 5 of the Complaint.
6. Admit the allegations contained in Paragraph 6 of the Complaint.
7. Admit the allegations contained in Paragraph 7 of the Complaint.
8. Deny the allegations contained in Paragraph 8 of the Complaint.
9. Admit the allegations contained in Paragraph 9 of the Complaint.

10. Deny the allegations and the characterizations concerning the Transaction Agreement contained in Paragraph 10 of the Complaint, except admit that Rakib executed the Transaction Agreement on or about October 9, 2015, admit that the Complaint purports to attach copies of the Transaction Agreement (as defined in the Complaint) and the Amended LLC Agreement (as defined in the Complaint), and respectfully refer the Court to the Transaction Agreement for its full and correct contents.

11. Deny the allegations and the characterizations concerning the Transaction Agreement contained in Paragraph 11 of the Complaint, and respectfully refer the Court to the Transaction Agreement for its full and correct contents.

12. Deny the allegations and the characterizations concerning the Transaction Agreement contained in Paragraph 12 of the Complaint, aver that the Transaction Agreement required certain performance by Rakib only if certain conditions were met, and only if certain actions were not taken by Quattro prior to Rakib's tendering certain performance, which conditions were not met, and which actions were in fact taken by Quattro prior to Rakib's tendering performance, and respectfully refer the Court to the Transaction Agreement for its full and correct contents.

13. Deny the allegations and the characterizations concerning the Transaction Agreement contained in Paragraph 13 of the Complaint, aver that the Transaction Agreement required certain performance by Rakib only if certain conditions were met, and only if certain actions were not taken by Quattro prior to Rakib's tendering certain performance, which conditions were not met, and which actions were in fact taken by Quattro prior to Rakib's tendering performance, and respectfully refer the Court to the Transaction Agreement for its full and correct contents.

14. Deny the allegations and the characterizations concerning the Transaction Agreement contained in Paragraph 14 of the Complaint, and respectfully refer the Court to the Transaction Agreement for its full and correct contents.

15. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint.

16. Deny the allegations contained in Paragraph 16 of the Complaint, and aver that Quattro took actions prior to receiving Rakib's investment that breached the Transaction Agreement and terminated the parties' obligations under the Transaction Agreement, and that Rakib's performance was also excused for other reasons, including as set forth more fully in the Counterclaims below.

17. Deny the allegations contained in Paragraph 17 of the Complaint and aver that Quattro took actions that terminated the parties' obligations (including Rakib's obligation to tender any amount to Quattro) under the Transaction Agreement, and committed breaches the Transaction Agreement that excused any obligation of Rakib to tender any amount to Quattro, and that Rakib's performance was also excused for other reasons, including as set forth more fully in the Counterclaims below.

18. Deny the allegations contained in Paragraph 18 of the Complaint except admit that on or about November 19, 2015, counsel for Quattro sent correspondence to Rakib alleging that he was in default under the Transaction Agreement.

Rakib avers that the WHEREFORE clause in the Complaint does not require a response; to the extent a response is required, Rakib denies that Quattro has a right to the relief requested.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a cause of action.

SECOND AFFIRMATIVE DEFENSE

Quattro's breach of contract claim is barred because its own actions terminated the parties' obligations (including Rakib's obligation to tender any amount to Quattro) under the Transaction Agreement.

THIRD AFFIRMATIVE DEFENSE

Quattro's breach of contract claim is barred by its own breaches of the Transaction Agreement.

FOURTH AFFIRMATIVE DEFENSE

Quattro's breach of contract claim is barred by mistakes of fact which render the Transaction Agreement unenforceable, as set forth more fully in the Counterclaims in this action.

FIFTH AFFIRMATIVE DEFENSE

Quattro's breach of contract claim is barred by misrepresentations which render the Transaction Agreement unenforceable, as set forth more fully in the Counterclaims in this action.

SIXTH AFFIRMATIVE DEFENSE

Any damages suffered by Quattro were the result of its own misconduct, and were not caused by any act of Rakib.

SEVENTH AFFIRMATIVE DEFENSE

Any damages suffered by Quattro were the result of its own mismanagement, and were not caused by any act of Rakib.

EIGHTH AFFIRMATIVE DEFENSE

Any damages suffered by Quattro were the result of the fact that Quattro had grossly overvalued its assets, and were not caused by any act of Rakib.

NINTH AFFIRMATIVE DEFENSE

The Complaint is barred by the doctrine of unclean hands.

TENTH AFFIRMATIVE DEFENSE

The Complaint is barred by the doctrine of *in pari delicto*.

ELEVENTH AFFIRMATIVE DEFENSE

Any injury suffered by Plaintiff resulted from its own misconduct.

TWELFTH AFFIRMATIVE DEFENSE

Any injury suffered by Plaintiff is subject to setoff or recoupment.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by waiver, estoppel and/or detrimental reliance.

FOURTEENTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

COUNTERCLAIMS

Defendant/Counterclaim Plaintiff Zaki Rakib, by and through his attorney, Gregory Zimmer, Esq., as and for his counterclaims against Plaintiff/Counterclaim Defendant Quattro Parent LLC, alleges as follows:

SUMMARY OF COUNTERCLAIMS

1. Through his counterclaims, Rakib seeks a declaration that he has no obligation to Quattro, including based on the Transaction Agreement Relating to Third Amended and Restated Limited Liability Agreement of Quattro Parent LLC, dated as of October 9, 2015, between and

among Rakib, Quattro and certain other parties (the “Transaction Agreement”), and also seeks damages, based on a mutual or unilateral mistake as to a fundamental component of the transaction contemplated in the Transaction Agreement, misrepresentations made to Rakib by Quattro that induced Rakib to enter into the Transaction Agreement, and on actions taken by Quattro after the Transaction Agreement was executed that terminated Rakib’s obligations under the Transaction Agreement and breached the Transaction Agreement.

2. Rakib was induced to enter into the Transaction Agreement based on a representation by Quattro that the value of its main asset, licenses from the Agência Nacional de Telecomunicações of the Federative Republic of Brazil (“Anatel”), an agency of the Brazilian government, to use certain ranges of wireless spectrum to deliver wireless internet service in certain areas in Brazil (the “Spectrum Rights”) were worth approximately \$90,000,000.

3. That representation was made to Rakib on many occasions and was purportedly supported by a valuation report on the value of the Spectrum Rights, which was commissioned by Quattro (the “Spectrum Valuation Report”) and which Quattro provided to Rakib and other potential investors by Quattro and represented set forth an accurate valuation of the Spectrum Rights.

4. However, Quattro knew, or should have known, that the Spectrum Rights were virtually worthless at the time the Transaction Agreement was entered.

5. Rakib did not know that Quattro’s representations to him about the value of the Spectrum Rights were false, and he reasonably relied upon Quattro’s representations of the Spectrum Value and believed that they were worth approximately \$90,000,000 when he agreed to enter into the Transaction Agreement.

6. Had Rakib known that the Spectrum Rights were virtually worthless in 2015 when he was considering whether to enter into the Transaction Agreement, he would not have entered into the Transaction Agreement.

7. In addition, after Rakib was induced to enter into the Transaction Agreement, Quattro engaged in conduct that terminated Rakib's obligations under the Transaction Agreement. Quattro's conduct also breached the Transaction Agreement, which breach separately excused Rakib from performance under the Transaction Agreement. Specifically, prior to Rakib completing his investment in Quattro pursuant to the Transaction Agreement, no later than December 2016, Quattro commenced the winding up of its affairs and the affairs of its principal subsidiary, On Telecomunicações Ltda. ("On Telecom"). This action by Quattro triggered an express provision in the Transaction Agreement which provided that if Quattro wound up its affairs or those of any of its key subsidiaries prior to receiving Rakib's investment, the obligations of all parties to the Transaction Agreement would terminate. The winding up of affairs also breached two specific provisions of the Transaction Agreement, and thereby excused further performance by Rakib under the Transaction Agreement.

BACKGROUND FACTS

8. Rakib became a member of Quattro in or about March 2012.

9. Rakib became a member of Quattro when he converted various loans he made between late 2010 and March 2012 to Quattro Brazil, a subsidiary of Quattro, in the amount of \$26,000,000 into an ownership interest in Quattro. Quattro Brazil used the money lent by Rakib to lease certain Brazilian spectrum rights in 2011 and 2012 that were eventually contributed to the parent company of On Telecom, which is a subsidiary of Quattro. The spectrum rights leased using the money lent to Quattro Brazil by Rakib comprise part of the Spectrum Rights.

Quattro Parent

10. Quattro's members include Rakib, the International Finance Corporation, which is a member of the World Bank organization, and certain investment entities owned or controlled by George Soros, a well-known investor

11. The purpose of Quattro was, directly or indirectly through its subsidiaries, to engage in the wireless broadband business and businesses related or ancillary thereto in the state of São Paulo, Brazil.

12. On Telecom was Quattro's principal operating company, and was a "Key Subsidiary" of Quattro within the meaning of the Amended Operating Agreement and the Transaction Agreement.

13. The principal means through which On Telecom attempted to deliver wireless broadband service was the use of specific ranges of wireless communications spectrum covered by the Spectrum Rights.

14. The Spectrum Rights, and rights to other ranges of spectrum licensed by the Brazilian government, are awarded through a bidding process conducted by Anatel.

15. The Spectrum Rights were acquired using Rakib's initial loan of \$26,000,000, additional investment money Obtained by Quattro or its related companies from a Soros-related company in or about August 2012.

The Spectrum Valuation Report

16. In 2013, Quattro commissioned a report from Detcon Consulting, a subsidiary of Deutsche Telecom, that valued the Spectrum Rights at US \$137,000,000 (the "Spectrum Valuation Report").

17. The Spectrum Valuation Report was presented to Quattro by Detcon in or about August, 2013.

18. The Spectrum Valuation Report's overall valuation was denominated in U.S. dollars, but because the underlying revenue and other financial figures and estimates used in the Spectrum Valuation Report were made based on Brazilian currency (the "real"), the value of the Spectrum Rights in U.S. dollars based on the Spectrum Valuation Report fluctuated with the exchange rate of the dollar versus the real.

19. In October 2015, when Rakib agreed to enter into the Transaction Agreement, the exchange rate resulted in a value of the Spectrum Rights of US \$90,000,000.

20. Starting in August 2013, and continuously through October 2015 when the Transaction Agreement was executed, Quattro represented that the valuations set forth in the Spectrum Valuation Report was accurate and had not changed, except for fluctuations in the U.S. dollar-denominated value due to changes in the exchange rate of the dollar versus the real.

21. Rakib had no basis to question the valuation in the Spectrum Valuation Report, or Quattro's continuing representation that the valuation of the Spectrum Rights set forth in the Spectrum Valuation Report was accurate.

Quattro Seeks Additional Investment

22. In or about July 2014, Quattro decided to seek additional investments to pursue its business plan.

23. Quattro was seeking additional investment of approximately \$50,000,000-\$75,000,000.

24. Quattro sought the additional investment from potential outside investors and from its members, including Rakib.

25. In or about June 2015, because additional investments had not yet been secured, Quattro began discussing a winding up of its affairs.

26. Rakib disagreed that a winding up was appropriate, and believed that because Quattro had significant assets, including the Spectrum Rights which Rakib believed were worth approximately \$90,000,000, he would ultimately be able to secure additional investors to finance a viable business plan for Quattro.

27. Rakib's investment through the Transaction Agreement would result in his having supermajority control of Quattro and having the right to manage its business and that of its subsidiaries, including On Telecom which owned and utilized the Spectrum Rights in providing wireless internet to customers in Brazil.

28. Rakib believed that even if he was not able to obtain additional investors or develop a workable business plan, he could still realize value based on his investment because Quattro's assets had significant value (including liquidation value) based on Quattro's representation that the Spectrum Rights had a value of approximately \$90,000,000, and On Telecom had additional valuable assets, including the value of telecommunications equipment owned by On Telecom, and the value of On Telecom's customer base of approximately 40,000 customers.

Quattro's Representations Concerning The Value Of The Spectrum Rights

29. In making investment presentations to potential investors, including Rakib, Quattro continually represented that the value of the Spectrum Rights was approximately \$90,000,000.

30. The \$90,000,000 valuation of the Spectrum Rights was based on the Spectrum Valuation Report.

31. Quattro had presented the Spectrum Valuation Report to Rakib and the other members of Quattro in or about August 2013 and had represented at that time that the valuation of the Spectrum Rights set forth in the Spectrum Valuation Report was accurate.

32. Quattro continued to represent to its members, including Rakib that the Spectrum Valuation Report and the value of the Spectrum Rights set forth in it was accurate through October 2015.

33. At no time did Quattro make any statements to Rakib, or provide Rakib with any information that would indicate that the value of the Spectrum Rights had declined, or that the Spectrum Valuation Report no longer accurately reflected the value of the Spectrum Rights.

34. At all times, Quattro indicated to Rakib that he could rely on the Spectrum Valuation Report and the \$90,000,000 value of the Spectrum Rights (based on the then-existing exchange rate) set forth in it when considering an additional investment in Quattro.

35. Quattro at times asked Rakib to participate in presentations to other investors.

36. For example, Quattro asked Rakib to attend an investment meeting with the Blackstone Group at Blackstone Group's offices in Manhattan, New York, in or about July 2014. At that meeting, James Melnick, an agent of Quattro, made an investment presentation to Blackstone Group in which he presented the Spectrum Valuation Report and represented that the value of the Spectrum Rights (based on the then-existing exchange rate) was approximately \$90,000,000. Melnick presented the Spectrum Valuation Report to Blackstone Group as part of the investor presentation, and represented that the Spectrum Valuation Report was accurate and could be relied upon.

37. Quattro also reaffirmed in meetings with an individual named Michael Ming, who had access to potential Asian investors in Quattro including company called GIC, that the value

of the Spectrum Rights was approximately \$90,000,000 and that the Spectrum Valuation Report could be relied upon in making investment decisions. These representations were made by James Melnick in meetings at the offices of On Telecom in Campina, Brazil, in February 2015. Rakib set up these meetings, and was informed that Quattro represented at the meetings that the value of the Spectrum Rights was approximately \$90,000,000 and that the Spectrum Valuation Report accurately set forth the value of the Spectrum Rights.

38. Quattro also represented to Rakib in or about October 2015 that the Spectrum Valuation Report properly reflected the value of the Spectrum Rights and that the value of the Spectrum Rights (based on the then-existing exchange rate) was approximately \$90,000,000.

Rakib's Reliance On Quattro's Representations Concerning The Value Of The Spectrum Rights

39. Based on the representations made to him, and to other potential investors in his presence by Quattro, Rakib believed that the value of the Spectrum Rights was approximately \$90,000,000.

40. Rakib had no reason or basis to question Quattro's representations concerning the value of the Spectrum Rights.

41. Rakib had no way to verify Quattro's representations concerning the value of the Spectrum Rights.

42. Rakib was not asked to conduct any analysis of the value of the Spectrum Rights, nor was he capable of doing so, and he never did so.

43. When considering whether to enter into the Transaction Agreement and to make an additional investment in Quattro, Rakib relied on Quattro's representations concerning the value of the Spectrum Rights.

44. On the basis of Quattro's representations concerning the value of the Spectrum Rights, Rakib believed that the contemplated investment made economic sense because even if Quattro was not able to execute its business model, its principal asset, the Spectrum Rights, had a value (approximately \$90,000,000) that would allow Rakib and Quattro's other members to realize significant value even if Quattro were forced to liquidate the Spectrum Rights.

45. Rakib reasonably believed the value of the Spectrum Rights, as represented to him by Quattro, to be a hedge against the risk that Quattro might not be able to fully finance, or properly execute its business model despite Rakib's investment pursuant to the Transaction Agreement.

46. Rakib reasonably relied on Quattro's representations, and agreed to enter into the Transaction Agreement, because, based on those representations, the value of the Spectrum Rights was sufficient that even if they had to be sold because Quattro could not execute its business plan, Rakib would still recognize significant value. This is a very common and recognized approach to assessing risk in investment situations like the one presented to Rakib by Quattro in the Transaction Agreement.

47. Rakib based his decision to execute the Transaction Agreement and to undertake the obligations it imposed on him on the valuation of Spectrum Rights presented to him by Quattro.

48. Rakib reasonably relied on Quattro's representations in making his decision to enter into the Transaction Agreement.

49. But for the representations by Quattro that the value of the Spectrum Rights was approximately \$90,000,000, Rakib would not have entered into the Transaction Agreement.

Quattro's Representations Concerning The Value Of The Spectrum Rights Was False

50. Quattro's representations concerning the value of the Spectrum Rights was false.

51. One indication that the Spectrum Rights valuation provided to Rakib by Quattro was false is that in auctions that were scheduled to be conducted by Anatel at or about the time the Transaction Agreement was executed, there were *no* bidders for spectrum rights similar to the Spectrum Rights that covered different frequencies and geographic areas. The auctions were postponed until December 17, 2015 and at that time there were, in fact, no bidders for the additional spectrum rights.

52. Another indication that the Spectrum Rights valuation provided to Rakib by Quattro was false is that On Telecom turned the Spectrum Rights back to Anatel in 2017 for no consideration at all.

Quattro Knew Or Should Have Known That Its Representations Concerning The Value Of The Spectrum Rights Was False

53. Quattro knew or should have known that the valuation of the Spectrum Rights given to Rakib at the time he was considering whether to enter into the Transaction Agreement was false.

54. Spectrum rights are awarded in Brazil by Anatel.

55. Anatel conducts auctions for the spectrum rights.

56. Quattro had individuals working for Quattro and/or its subsidiaries who were expert in and advised Quattro concerning the Anatel regulatory and auction process.

57. For example, Quattro was advised by Carlos Andre Albuquerque [SP?], who was at one time the Chief Operations Officer of On Telecom and then focused on regulatory issues primarily relating to Anatel.

58. Albuquerque had significant connections within and knowledge of Anatel and the Anatal auction process.

59. Information about those auctions is material and highly indicative of the value of spectrum rights in Brazil.

60. In addition to the Spectrum Rights licensed from ANATEL by Quattro, a number of other ranges of the spectrum covering different frequencies and geographic areas were auctioned by Anatel at different times.

61. There were additional portions of spectrum being auctioned by Anatel at and around the time Rakib was deciding whether to enter into the Transaction Agreement.

62. Rakib had no information about the timing of the auctions or the fact that there were no bids for the spectrum rights being auctioned, and had no access to such information.

63. Quattro did.

64. Upon information and belief, Quattro knew, or with the use of reasonable diligence based on information known to it at the time should have known, that there was little or no interest in the other ranges of spectrum that were being auctioned by Anatel at the time Rakib was making his decision whether to enter into the Transaction Agreement.

65. The lack of any interest in acquiring other portions of the spectrum demonstrated that the Spectrum Rights then held by Quattro, like the similar ranges of spectrum being auctioned by Anatel at or about the time Rakib was deciding whether to enter into the Transaction Agreement, had little or no value.

66. Upon information and belief, Quattro had other information based upon which it knew, or should have known, that the Spectrum Rights had little or no value in October 2015.

67. Yet Quattro continued to represent to Rakib that the value of the Spectrum Rights was approximately \$90,000,000, and failed to disclose the material information that there was little or no interest in licensing the additional portions of the spectrum that were being offered by Anatel through the auction process at that time.

68. Quattro made false statements to Rakib about the value of the Spectrum Rights and/or omitted to make statements (about the changed value of the Spectrum Rights) necessary to make its prior statements concerning the value of the Spectrum Rights not misleading.

69. Quattro knew, or reasonably should have known, that Rakib would rely on its statements about the value of the Spectrum Rights and/or its omissions to make statements (about the changed value of the Spectrum Rights) necessary to make its prior statements concerning the value of the Spectrum Rights not misleading when, Rakib decided to enter into the Transaction Agreement.

70. Rakib was damaged by Quattro's false statements and misleading omissions, in that he was induced by them to enter into the Transaction Agreement and to incur significant expenses in doing so.

The Transaction Agreement

71. In or about June 2015, Rakib and Quattro and its other members began discussions about the potential of him making an additional investment in Quattro.

72. In or about June or July 2015 Rakib, Quattro, and the other members of Quattro began negotiating to try to reach agreement on terms acceptable to Rakib under which he would commit to an additional investment in Quattro.

73. The parties eventually negotiated the terms of the Transaction Agreement and the Third Amended and Restated Operating Agreement of Quattro Parent LLC (the “Amended Operating Agreement”).

74. The Transaction Agreement was a heavily negotiated document between sophisticated parties each of whom were represented by counsel.

75. The Transaction Agreement provides for the payment of approximately \$150,000 to certain of the parties to the Transaction Agreement for fees and expenses of those parties incurred in connection with the Transaction Agreement, the Amended Operating Agreement and related documents.

76. The Transaction Agreement contemplated an investment of \$7,500,000 in Quattro by Rakib in exchange for 100,000,000 fully paid, nonassessable Class A Units of Quattro.

77. It also contemplated that upon completion of Rakib’s investment, the Amended Operating Agreement, which was executed by the parties to the Transaction Agreement at the time the Transaction Agreement was executed, would become effective.

78. Because the issuance of additional shares to Rakib if he made the investment would result in a change in control of Quattro, with Rakib owning a majority of the membership units of Quattro, adoption of the Amended Operating Agreement required approval from Anatel.

79. The purpose of Quattro, both before and after the Amended Operating Agreement was implemented if that ever occurred, was, directly or indirectly through its subsidiaries, to engage in the wireless broadband business and businesses related or ancillary thereto in the state of São Paulo, Brazil.

80. Quattro’s Key Subsidiaries include On Telecom, which at one time provided wireless broadband internet service to customers in São Paulo, Brazil.

81. Among its provisions, the Transaction Agreement defines an “Interim Period,” which comprises the period between the date of the Transaction Agreement (October 9, 2015) and the time that *both*: (i) Quattro actually received Rakib’s \$7,500,000 investment, *and* (ii) the Anatel approval was received.

82. During the Interim Period, the Transaction Agreement prohibited Quattro from taking certain actions.

83. Section 3 of the Transaction Agreement specifically provides that if Quattro winds up its or any of its Key Subsidiary’s affairs during the Interim Period, the obligations of the parties under the Transaction Agreement would terminate.

84. Section 3 of the Transaction Agreement prohibited Quattro from taking any action that would be inconsistent with the implementation of the provisions of the Amended Operating Agreement during the Interim Period.

85. Section 3 of the Transaction Agreement also prohibited Quattro from taking any action during the Interim Period without Rakib’s consent that would require the approval of a Supermajority-in-Interest under the Amended Operating Agreement.

Quattro Takes Actions That Terminate The Transaction Agreement

86. During the Interim Period, no later than December 1, 2016, Plaintiff began winding up its affairs and the Affairs of On Telecom.

87. Rakib did not consent to the winding up of the affairs of Quattro or On Telecom.

88. Pursuant to Section 3 of the Transaction Agreement, Quattro’s winding up of the affairs of Quattro and On Telecom terminated Rakib’s obligations under the Transaction Agreement.

Quattro Breaches The Transaction Agreement

89. During the Interim Period, in or about April 20, 2017, Plaintiff terminated the business activities of On Telecom and On Telecom ceased providing broadband internet services to customers.

90. The Amended Operating Agreement required the consent of a Supermajority-in-Interest to commence the winding up of the affairs of Quattro or any of its Key Subsidiaries, including On Telecom.

91. Under the ownership and voting structure in the Amended Operating Agreement, the consent of a Supermajority-in-Interest for an action by Quattro could not be obtained without Rakib's consent.

92. Rakib did not consent to the termination of the business activities of On Telecom or the cessation of the provision of broadband internet services by On Telecom.

93. The termination of the business activities of On Telecom and the cessation of the provision of broadband internet services by On Telecom were also inconsistent with the implementation of the provisions of the Amended Operating Agreement.

FIRST COUNTERCLAIM
(Rescission – Mutual Mistake of Fact)

94. Rakib repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 93 as though fully set forth herein.

95. If Quattro reasonably believed that the value of the Spectrum Rights at the time Rakib was contemplating entering into the Transaction Agreement was approximately \$90,000,000, then at the time the parties entered into the Transaction Agreement, the parties all believed that the value of the Spectrum Rights was approximately \$90,000,000.

96. The parties' belief that the value of the Spectrum Rights was approximately \$90,000,000 was a fundamental basis for their entry into the Transaction Agreement, and but for that belief, the Transaction Agreement would not have been entered.

97. The Spectrum Rights were not worth approximately \$90,000,000 at the time the Transaction Agreement was entered; in fact they had little or no value at that time.

98. As a result of the foregoing, the Parties were operating under a mutual mistake of fact as to a fundamental term of the Transaction Agreement, and the Transaction Agreement should be rescinded on that basis.

99. As a result of the foregoing, Plaintiff is entitled to rescission of the Transaction Agreement *nunc pro tunc* as of October 6, 2015.

SECOND COUNTERCLAIM
(Rescission – Unilateral Mistake of Fact)

100. Rakib repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 93 as though fully set forth herein.

101. At the time the Termination Agreement was entered, Rakib believed that the value of the Spectrum Rights was approximately \$90,000,000.

102. This belief was reasonable because Quattro had represented to Rakib that the Spectrum Rights were worth approximately \$90,000,000 and had presented Rakib with the Spectrum Valuation Report and reaffirmed the accuracy of the Spectrum Valuation Report supporting that valuation.

103. Rakib's belief that the value of the Spectrum Rights was approximately \$90,000,000 at the time the Transaction Agreement was entered was a fundamental basis for his entry into the Transaction Agreement, and but for that belief, Rakib would not have entered the Transaction Agreement.

104. The Spectrum Rights were not worth approximately \$90,000,000 at the time the Transaction Agreement was entered; in fact they had little or no value at that time.

105. Upon information and belief, Quattro knew or should have known that the value of the Spectrum Rights at the time the Transaction Agreement was entered was not approximately \$90,000,000.

106. Upon information and belief, Quattro knew or should have known that the Spectrum Rights had little or no value at that time.

107. As a result of the foregoing, Rakib was operating under a unilateral mistake of fact as to a basic assumption leading to the entry into the Transaction Agreement, and the Transaction Agreement should be rescinded.

108. As a result of the foregoing, Rakib is entitled to rescission of the Transaction Agreement *nunc pro tunc* as of October 6, 2015.

THIRD COUNTERCLAIM
(Rescission and Damages – Negligent Misrepresentation)

109. Rakib repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 93 as though fully set forth herein.

110. At the time the Transaction Agreement was entered, Quattro represented to Rakib that the value of the Spectrum Rights was approximately \$90,000,000.

111. At the time the Transaction Agreement was entered, Rakib reasonably relied on Quattro's representation that the value of the Spectrum Rights was approximately \$90,000,000.

112. At the time the Transaction Agreement was entered, Quattro knew or should have known that the value of the Spectrum Rights was not approximately \$90,000,000 but that the Spectrum Rights had little or no value.

113. As a result of Quattro's negligent misrepresentation that the value of the Spectrum Rights was approximately \$90,000,000, Rakib entered into the Transaction Agreement, and incurred significant expenses in doing so.

114. As a result of the foregoing, Rakib is entitled to a declaration that the Transaction Agreement is rescinded *nunc pro tunc* as of October 6, 2015, and a judgment against Quattro in an amount to be determined at trial, but not less than \$150,000.

FOURTH COUNTERCLAIM
(Rescission and Damages – Fraudulent Inducement)

115. Rakib repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 93 as though fully set forth herein.

116. At the time the Transaction Agreement was entered, Quattro represented to Rakib that the value of the Spectrum Rights was approximately \$90,000,000.

117. Quattro's representation to Rakib at the time the Transaction Agreement was entered that the value of the Spectrum Rights was approximately \$90,000,000 was known by Quattro to be false when made.

118. Quattro's representation to Rakib at the time the Transaction Agreement was entered that the value of the Spectrum Rights was approximately \$90,000,000 was made with the knowledge and/or intent that Rakib would rely upon it when deciding whether to enter into the Transaction Agreement.

119. Rakib did in fact rely upon Quattro's representation that the value of the Spectrum Rights was approximately \$90,000,000 when deciding whether to enter into the Transaction Agreement, and that representation was a material fact relied upon by Rakib in deciding to enter into the Transaction Agreement.

120. Rakib's reliance on Quattro's representation that value of the Spectrum Rights was approximately \$90,000,000 was reasonable.

121. As a result of Quattro's fraudulent misrepresentation that the value of the Spectrum Rights was approximately \$90,000,000, Rakib entered into the Transaction Agreement, and incurred significant expenses in doing so.

122. As a result of the foregoing, Rakib is entitled to a declaration that the Transaction Agreement is rescinded *nunc pro tunc* as of October 6, 2015, and a judgment against Quattro in an amount to be determined at trial, but not less than \$150,000.

FIFTH COUNTERCLAIM

(Declaratory Judgment –Transaction Agreement Terminated Without Liability)

123. Rakib repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 93 as though fully set forth herein.

124. The Transaction Agreement provides that if Quattro wound up its affairs or those of any of its Key Subsidiaries during the Interim Period, all of the parties' obligations under the Transaction Agreement (including any performance obligations of Rakib) would terminate.

125. Quattro would up its affairs and those of its Key Subsidiary On Telecom during the Interim Period.

126. As a result, the parties' obligations under the Termination Agreement terminated (including any performance obligations or Rakib).

127. As a result of the foregoing, Rakib is entitled to a declaration that he has no performance obligations to Quattro or anyone else under the Transaction Agreement.

WHEREFORE, Rakib demands judgment against Quattro as follows:

- (1) dismissing Quattro's Complaint in its entirety, with prejudice;

- (2) Enter a declaration that the Transaction Agreement is rescinded and/or terminated and that Rakib has no obligations under the Transaction Agreement to Quattro or any other person or entity;
- (3) Enter a judgement against Quattro, in an amount to be determined at trial, but no less than \$150,000, along with costs and attorneys' fees; and
- (4) Award Rakib such other and further relief that the Court deems just and proper.

Dated: Westchester, New York
October 6, 2017

GREGORY ZIMMER, ESQ.

A handwritten signature in black ink, appearing to read 'G. Zimmer', is written over a horizontal line.

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