

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

TRISTAR INVESTORS, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
AMERICAN TOWER CORPORATION, AMERICAN TOWERS LLC, AMERICAN TOWERS INC., AMERICAN TOWER GUARANTOR SUB, LLC, AMERICAN TOWER HOLDING SUB, LLC, AMERICAN TOWER ASSET SUB, LLC, AMERICAN TOWER ASSET SUB II, LLC, AMERICAN TOWER MANAGEMENT, LLC, AMERICAN TOWER L.P., and SPECTRASITE COMMUNICATIONS, LLC	§	
	§	
Defendants.	§	

CIVIL ACTION NO. 3:12-CV-499

COMPLAINT AND APPLICATION FOR PERMANENT INJUNCTION

Plaintiff TriStar Investors, Inc. (“TriStar”) files this Complaint against Defendants American Tower Corporation, American Towers LLC, American Towers Inc., American Tower Guarantor Sub, LLC, American Tower Holding Sub, LLC, American Tower Asset Sub, LLC, American Tower Asset Sub II, LLC, American Tower Management, LLC, American Tower L.P., and SpectraSite Communications, LLC (collectively, “American Tower” or “Defendants”), and respectfully shows the Court as follows:

INTRODUCTION

1. This is a case about unfair competition and false advertising in the cell tower industry. American Tower, a massive corporation, has resorted to unfair and illegal tactics in negotiations with landowners for cell tower sites when faced with competition from a tiny competitor, TriStar. Rather than competing fairly and acquiring sites through superior offers,

American Tower has systematically misinformed and deceived landowners to acquire sites under less favorable economic terms than those offered by TriStar, to the material detriment of TriStar and landowners nationwide.

2. American Tower is a “Goliath” of the tower industry, with a total public equity valuation of more than \$25 billion and annual revenue of approximately \$2.5 billion resulting from approximately 40,000 cell tower locations globally. American Tower is not a wireless carrier and does not provide any wireless services. It leases or subleases space on towers to wireless carriers. The vast majority of these towers are on land leased from various landowners. American Tower’s financial motivation for any given site is relatively simple: pay the landowner as little rent as possible and charge the wireless carriers as much as possible. Whatever is left between the two, minus some small operating expenses, is profit. Historically, American Tower and the other tower companies have faced little competition in retaining sites, leaving uninformed landowners with no true options but to extend their lease on whatever terms the tower company would offer. As carrier rents have continued to escalate, a typical landowner has seen the ratio of the cash flow from a tower on his or her land fall from approximately 40% to less than 15%.

3. TriStar, a small private company of approximately forty employees, was founded in 2005 by former executives of a major tower company. TriStar’s business model is firmly rooted in the beliefs that (1) landowners should be educated about the true value of the communications sites occupying their land; (2) landowners should get a fair share of the profits being generated by their land; and (3) carriers should benefit from price competition. To date, TriStar has acquired over 600 tower locations throughout the continental United States.

4. While small, TriStar has brought true competition to the cell tower industry. TriStar's customers, the landowners where the cell towers are located, are much the better for it. In a typical transaction, a landowner who consummates a deal with TriStar will vastly improve his or her current financial arrangement. TriStar conservatively calculates that the landowners that have consummated deals with TriStar will collectively enjoy an increase in compensation over the next thirty years of approximately \$340,000,000 over the amount they would have received if they had just extended their leases under their current lease terms. This increased compensation has a present value of approximately \$104,000,000. In addition to providing more money to landowners, TriStar also reduces the costs incurred by the wireless carriers (e.g., AT&T, Verizon Wireless, Sprint/Nextel, T-Mobile, etc.) when they lease space on the cell towers managed by TriStar. This significant discount for carriers could then be passed down to the carriers' own customers, the consumers who purchase cell phone service.

5. While the landowners and carriers have benefited enormously from TriStar's entry into the market, American Tower has not. Because of the premium financial offers TriStar has made to landowners, revenue is being redirected from the tower company to landowners. American Tower is not at all happy that TriStar is increasing its costs of doing business and shifting dollars from its bottom line to the landowners' bottom lines.

6. When faced with competition from TriStar, American Tower has two legal alternatives: (1) American Tower could compete fairly and seek to acquire sites through equivalent or superior financial offers, which competition is the very essence of capitalism, or (2) American Tower could simply walk away and concede the site to TriStar's superior offer. Unfortunately, American Tower has instead adopted an unlawful strategy of deceiving and misleading landowners in an effort to keep a stranglehold on its customers and to prevent

TriStar's acquisition of sites. American Tower knowingly and habitually makes false statements about TriStar. American Tower knowingly and habitually makes false statements about what it will do to the landowners if they do a deal with TriStar. As a result of American Tower's knowing and intentional misconduct, TriStar and an entire class of landowners nationwide have been significantly harmed.

7. The following statements from two different landowners illustrate the contrast between American Tower's unlawful actions and TriStar's pro-consumer business practices:

I am still trying to make up my mind, but I like your offer. I'm tired of American Tower threatening me. They assured me that if I sign with you they will take the tower down. What happens to me if they really do? My lease with them isn't up until 2025. They want me to sign for another 25 years with no increase. Will TriStar keep paying me for the next 25 years after the current lease is up?

I have Multiple Sclerosis (37 years). Stress is one of my enemies. My nurse was here today and told me whatever is upsetting me I had better solve it, as my MS symptoms are worse. I live alone and I can't walk so I can't take chances with my health. A nursing home would be next. I know you don't need to hear all this, but I think it will help you understand why I haven't made my decision yet.

--Email from a landowner on dealing with American Tower (altered to correct spelling)

Our relations are even stronger now with TriStar than they were because we do know now, firsthand, that they do what they say. . . . No, I'm glad I didn't wait any longer because I gained money by going with TriStar then. They paid me more rent in order to operate my tower in the future. . . . I love the revenue sharing!

--Statement by a landowner on dealing with TriStar

PARTIES

8. TriStar Investors, Inc. is a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania.

9. American Tower Corporation is a Delaware corporation with its principal place of business in Boston, Massachusetts. It receives mail at 116 Huntington Avenue, 11th Floor, Boston, Massachusetts 02116. American Tower Corporation regularly conducts business in the State of Texas even though it is not registered and does not maintain an agent for service of process in Texas. Accordingly, it may be served with process through the Secretary of State of Texas at Citations Division, 1019 Brazos Street, Austin, Texas 78701.

10. American Towers LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It does business in Texas as American Texas Towers LLC. American Towers LLC may be served with process through its registered agent, CT Corporation System, 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201.

11. American Towers Inc. is a Delaware corporation with its principal place of business in Boston, Massachusetts. It may be served with process through its registered agent, CT Corporation System, 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201.

12. American Tower Guarantor Sub, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It may be served with process through its registered agent, CT Corporation System, 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201.

13. American Tower Holding Sub, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It may be served with process through its registered agent, CT Corporation System, 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201.

14. American Tower Asset Sub, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It may be served with process through its

registered agent, CT Corporation System, 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201.

15. American Tower Asset Sub II, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It may be served with process through its registered agent, CT Corporation System, 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201.

16. American Tower Management, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It may be served with process through its registered agent, CT Corporation System, 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201.

17. American Tower L.P. is a Delaware limited partnership with its principal place of business in Boston, Massachusetts. It may be served with process through its registered agent, CT Corporation System, 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201.

18. SpectraSite Communications, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It may be served with process through its registered agent, CT Corporation System, 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201.

JURISDICTION AND VENUE

19. This Court has personal jurisdiction over all of the Defendants¹ because they each regularly conduct business in the State of Texas and have established minimum contacts with the State of Texas. Further, the Court has personal jurisdiction over American Tower Corporation because it is a holding company that has formed a unitary business operation with its subsidiaries, Defendants American Towers LLC, American Towers Inc., American Tower Guarantor Sub, LLC, American Tower Holding Sub, LLC, American Tower Asset Sub, LLC, American Tower Asset Sub II, LLC, American Tower Management, LLC, American Tower L.P., and SpectraSite Communications, LLC (collectively, the “Subsidiaries”). Upon information and belief, the Subsidiaries are financially dependent on American Tower Corporation, consolidate their financials with American Tower Corporation, and employ key personnel selected by American Tower Corporation. The agents and representatives of Defendants who engaged in the tortious and unlawful conduct described below also hold themselves out in correspondence and otherwise as authorized agents or representatives of American Tower Corporation.

20. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because TriStar asserts claims arising under the laws of the United States.

21. Venue is proper in this district under 28 U.S.C. § 1391(b) because (1) a substantial part of the events giving rise to TriStar’s claims occurred in this district, and (2) a substantial part of the property that is the subject of this action is situated in this district.

¹ The Defendants are referred to collectively because they jointly committed the tortious and unlawful acts described herein using interconnected and interdependent parent and subsidiary entities.

BACKGROUND

A. The Cellular Tower Industry

i. The Beginning of the Industry

22. In the mid-1980s, cellular telephone service was first introduced. Initially, due to government regulation and oversight, there were only two carriers in any given urban region that provided cell service, primarily in densely populated areas. The names of these carriers have changed or evolved, with the dominant carriers today being AT&T, Verizon, Sprint/Nextel, T-Mobile, and MetroPCS. The services provided by these carriers now stretch coast-to-coast, serving nearly the entire United States population, urban and rural.

23. Cell phone service is provided through antennas and other equipment installed on a network of cell site locations, including towers erected for the sole purpose of siting antennas as well as rooftops, water tanks, and other existing structures. From 1985 to 1996, the towers were built and owned by carriers almost exclusively for their sole use.

24. In 1996, President Clinton signed into law the Telecommunications Act of 1996, dramatically altering the landscape of the cell phone industry. The law was designed to both increase the number of wireless carriers and to foster competition among carriers using similar network technologies. The Telecommunications Act mandated two significant changes in the wireless marketplace. First, additional wireless licenses were sold, enabling new wireless carriers to emerge as competitors, certain of which eventually became Sprint/Nextel and T-Mobile. Second, carriers were required to open up their networks for certain kinds of sharing, or “co-locating,” with these new market entrants, essentially requiring each carrier to share space on its towers with competing carriers.

25. This second change in the industry eventually led to the emergence of the cell tower industry. As consumer interest in cell phone service grew exponentially, it became

apparent to the large incumbent carriers that the real value of their cellular business existed not in continuing to own the cell towers—which they were forced to share by federal law—but in attracting new customers to their various service plans. As a result, beginning in 1999, carriers began to outsource their towers by transferring control of the towers to a new market entity: the tower company.

26. The carriers sold or subleased their rights to use the towers (and sometimes the ownership of the towers themselves) to the tower companies and used the proceeds to grow their networks and expand their customer bases. The carriers reserved space on the towers for their own antennas. The carriers are tenants on the towers, whether they sold them or subleased them. The tower companies, in exchange for their investment of capital to control a tower site, were the beneficiaries of two critical opportunities: (1) the lease-back payment from the carrier that had previously owned the tower, and (2) the option to lease additional space on the tower to other wireless carriers.

ii. The Industry Today

27. Today, there are more than 100,000 cell towers in the United States. Over half of those towers are controlled by three major public tower companies. American Tower alone operates over 22,000 towers in the United States. The cell phone carriers continue to control about 27% of the towers, and the remaining towers are controlled by a number of smaller tower companies. By comparison, TriStar controls the ground underlying less than 1% of the towers.

28. When a tower company “controls” a given tower, it may either have actual ownership of the tower steel or simply own sublease rights to space on the towers (i.e., a right to lease to other carriers the space not reserved by the incumbent carrier that maintains ownership of the tower steel). The ownership interests to which each tower is subject varies depending upon the carrier from whom the tower was acquired. The first transaction in which a carrier

transferred control of its towers occurred in 1999. Under the terms of that transaction, Bell Atlantic sold actual ownership of the tower steel to Crown Castle. In subsequent transactions, tower companies like Crown Castle and American Tower acquired only sublease rights to space on the towers, while the carriers retained ownership of the towers. In these later transactions, the landowner owns the land and leases it to a cell phone company, which subleases it to a cell tower company like American Tower.

29. More than 25% of American Tower's towers in the United States are subleased towers. American Tower, as sublessee, often pays rent to the landowner and, as lessor, collects rent from the wireless carriers that use space on the tower. American Tower's profit depends on the gross margin between the rent it pays to the landowner and the rent it collects from the cell phone companies using the tower, less some minor operating expenses.

30. The majority of the nation's more than 100,000 cell towers are located on property that the tower companies or carriers lease from individual landowners for a specific period of time. This is true whether the tower steel is owned by a tower company or a carrier. American Tower recently disclosed that approximately 86% of the communications sites in its portfolio are located on leased land. In order to establish or maintain their control of tower sites and generate revenue, American Tower must negotiate new ground leases, or renewals of current ground leases, with landowners on an individualized basis.

31. While towers could initially be sited at any number of potential locations, zoning regulations in many jurisdictions now make it very difficult to move existing towers, erect new ones, or demolish existing structures housing active carriers. In addition, cellular networks were laid out on a hexagonal grid of concurrent honeycomb shapes (i.e., "cells"), with each tower sitting in the center of each honeycomb and providing service within that honeycomb. Towers

are located to avoid having space between these honeycombs because any space would result in a cellular “dead zone.” Thus, it would be nearly impossible to substantially relocate a tower today without adversely impacting the grid, thereby creating a dead zone in a carrier’s cellular network.

32. With the exponential growth in demand for cell phone service, the tower companies have increased the rents they charge to cell phone carriers, and additional carrier tenants have been added to existing towers, further increasing revenues to tower companies. And while the location of existing cellular sites has also become more important, landowners have not seen a significant increase in rents from the tower companies.

33. Since the formation of the cell tower industry in the mid-1990s, the total cash flow produced by a typical cell tower has increased by more than \$50,000 per year, while the total cash flow received by a typical landowner in the form of ground rent has increased by less than \$10,000 per year. Whereas the typical landowner previously received approximately 40% of a cell tower location’s total cash flow, landowners now typically receive less than 15% from the tower companies. Over the course of the past 15 years, the total cash flow from a typical cell tower has increased by more than 400%, while the share of total cash flow that is typically received by a landowner has declined by more than 50%.

34. A typical cell tower operated by American Tower produces annual gross cash flow in excess of \$80,000 for the company, whereas the landowner of such site typically receives less than \$15,000.

B. American Tower and TriStar as Competitors

i. American Tower as “Goliath” of the Industry

35. Boston-based American Tower is a \$25 billion company, operating approximately 40,000 cell tower locations globally, with offices throughout the United States and in Brazil,

Chile, Colombia, Ghana, India, Mexico, Peru, South Africa, and the United Kingdom. The company's annual rental and management revenue is approximately \$2.5 billion. American Tower's annual consolidated gross margin (generally the difference between its tower rent income and its ground rent, less some minor operating expenses) is more than \$1.8 billion, or approximately a 75% gross profit margin, placing it among the highest of all public companies in the world.

36. American Tower controls more than 22,000 towers domestically. Upon information and belief, many of American Tower's most profitable towers are controlled by a sublease arrangement, whereby (1) American Tower is the sublessee of the wireless carrier that originally entered into a ground lease with the landowner, and (2) American Tower has the right to further sublease out space on the towers to carriers for the duration of the ground lease. Under this arrangement, American Tower does not own the tower steel. In addition, the vast majority of American Tower's towers are located on land leased from individual landowners for a defined period of time.

ii. The Emergence of TriStar

37. Prior to the formation of TriStar and other ground lease acquirers, landowners leasing land to tower companies had only one real option when the ground lease expired: renewing and extending the ground lease with the existing tower company. Given the lack of competitive alternatives, the lease renewal rate was typically set by the tower company without negotiation. The tower company's goal was (and still is) to renew the ground lease at the lowest possible rental rate, and not to share the enormous profits from a site with its landowner.

38. In 2005, TriStar was formed to assist individual landowners in realizing the true value of the land on which the cell tower is located. TriStar is a private company of

approximately forty employees based primarily in Pennsylvania and Texas, with operations throughout the continental United States.

39. Most commonly through execution of an easement with the landowner, but occasionally via a fee purchase or successor lease, TriStar acquires the right to manage a communications site once the underlying ground lease with the existing tower company expires. The tower company enjoys the full benefit of its lease for the duration of the existing term without interference from TriStar. Upon lease expiration, TriStar takes over the management of the tower property from the tower company and endeavors to maximize benefit to the landowner.

40. Upon information and belief, TriStar is the only ground lease acquirer that takes over the management of the tower property from the tower company and endeavors to substantially increase benefits to the landowner. The other ground lease acquirers seek to purchase the ground rent paid by the tower company with the intention of extending the ground lease, and are thus a much less significant business threat to American Tower. In fact, the portfolios of the two largest ground lease acquirers have been acquired by the nation's largest tower companies.

41. TriStar has acquired (or has fully executed agreements to acquire) control of over 600 tower locations throughout the continental United States. Furthermore, the principals of TriStar (the management team) have in the aggregate constructed, acquired, designed, and/or managed more than 40,000 towers in their careers, which is more towers than American Tower owns globally. Their careers in the industry began at the very formation of the cell tower business. They are industry experts.

iii. Example of an American Tower Site Acquired by TriStar

44. While TriStar's entry to the market has been detrimental to American Tower, TriStar has created legitimate competition in the cell tower industry, added tremendous value for landowners, and generated significant savings for wireless carriers. For example, in 2006, TriStar made a deal with a landowner in Tarrant County to acquire land containing one of the most critical towers in the DFW area. The tower holds key communication facilities for three carriers, including critical equipment for transporting signals for AT&T through an expansive metropolitan area.

45. The land was subject to an underlying ground lease with American Tower, with the ground lease expiring on April 30, 2010. Prior to TriStar's involvement, the landowner was receiving ground lease payments of \$3,732 annually from American Tower. At the time that TriStar made the deal with the landowner, the landowner had an offer from American Tower to simply renew and extend the ground lease for a nominal increase. TriStar offered to pay the landowner a premium for the remaining payments due under the ground lease with American Tower and then, after the expiration of that ground lease, to pay the landowner 50% of the actual net revenue generated by TriStar from the site.

46. Upon the landowner's acceptance, TriStar paid the landowner ten times the annual ground rent amount, or \$37,000, and took over receipt of the ground lease payments from American Tower for the remaining three years on the ground lease. Since American Tower's rights to the tower were only sublease rights, American Tower did not actually own the tower. In 2009, TriStar acquired the rights to purchase the tower from the actual tower owner once the underlying ground lease expired on April 30, 2010. Then, upon expiration of the underlying ground lease, TriStar did not renew the ground lease with American Tower. Now in ownership of the tower and in control of the underlying land, TriStar executed new tower lease

arrangements with the carriers at reduced rates from those previously being charged by American Tower. TriStar promptly commenced revenue share payments to the landowner, which amounted to many times what the landowner had received from American Tower.

47. Describing her satisfaction with TriStar, the landowner stated:

At the time that TriStar contacted us, the lease was paying \$3,732. That was the amount of money that we received in 2005. That was a year before TriStar had contacted us, and we went with TriStar. Once TriStar started operating the tower, we received \$43,533 for the yearly lease, and we received that check last June. It was a difficult decision because I knew firsthand how things could change in 25 years, and that's why I was so excited about the revenue sharing rather than just the flat rate that I would agree to now.

48. In sum, TriStar increased the landowner's compensation under the ground lease by more than 1000% and decreased the rental costs for the carrier tenants. TriStar has done many similar deals in which it has provided and will continue to provide substantial value for all parties involved.

C. American Tower's Unfair Competition and Interference with TriStar

49. Instead of trying to compete with TriStar by increasing the rent it offers to landowners, American Tower has decided to employ unfair and illegal tactics to eliminate TriStar as a competitive threat. Since 2007, American Tower representatives, including Brenda Berry, Ben Myers, Jason Hirsch, and others, have knowingly made false statements to landowners about TriStar, American Tower, and the legal rights of both companies and of landowners in order to induce those landowners to extend their ground leases with American Tower instead of accepting better offers from TriStar. Upon information and belief, American Tower has implemented a nationwide business strategy of instructing its agents and representatives to make these false statements as part of American Tower's commercial advertising and promotion to landowners.

50. American Tower has also utilized third-party agents, such as The Lyle Company, to approach landowners with false and misleading information on behalf of American Tower and negotiate lease extensions on behalf of American Tower. Further, upon information and belief, such third-party agents lacked appropriate real estate brokerage licenses to undertake such efforts, in violation of state laws.

51. TriStar, with its limited resources, does not attempt to acquire control over all of the estimated 100,000 towers in the US, or even all of the estimated 22,000 towers currently controlled by American Tower. Instead, TriStar focuses its limited resources on identifying key tower sites and negotiating with those specific landowners for control of those towers. Upon information and belief, based on TriStar's communications with these landowners and based on documentary correspondence obtained by TriStar, American Tower targets all or substantially all of these landowners with current relationships with American Tower as recipients of the false or misleading representations, threats, and other confusing and misleading statements.

i. American Tower's False Statements about Tearing Down Towers

52. American Tower repeatedly has told landowners that if they sign a deal with TriStar instead of extending their leases with American Tower, American Tower will tear down the tower on the land and that, therefore, the landowner would lose its income stream from the site. Upon information and belief, based on TriStar's communications with these landowners and based on documentary correspondence obtained by TriStar, American Tower has made these statements to many of the landowners with whom TriStar has begun negotiations. But these statements are demonstrably false and misleading because American Tower knows that it does not, in the vast majority of cases, have any legal right to tear down towers at the expiration of its ground leases for several reasons.

53. First, a number of the towers American Tower manages—including a significant number of its towers in Texas—are owned by AT&T, and American Tower’s rights with respect to these towers are defined and limited by a sublease agreement (the “SBC Sublease”). Article III, Section 3 of the SBC Sublease, which is publically available, states that the sublease terminates as soon as the underlying ground lease for a tower expires, unless the ground lease has been extended. Article III, Section 35 of the SBC Sublease provides that American Tower has an option to purchase the towers at a specified future date, but *only* if the ground lease for a particular site has not expired or otherwise been terminated before that purchase date. Thus, American Tower has no right to purchase a tower subleased from AT&T if the ground lease has expired. It is therefore unambiguously false for American Tower to represent to landowners that it will or can tear down towers if the landowners do not extend their leases with American Tower because those towers are owned by AT&T, and American Tower has no legal right to purchase the towers after the ground lease expires.

54. Second, even where American Tower has an existing ground lease and a purchase option at a set point in the future, the company has stated in its recent 10Q filings with the SEC that it has not yet decided whether it will exercise its purchase option for any towers, stating specifically:

Our communications site portfolio includes towers that we operate pursuant to lease and sublease agreements that include a purchase option at the end of each lease period. We may not have the required available capital to exercise our right to purchase leased or subleased towers at the end of the applicable period. Even if we do have available capital, we may choose not to exercise our right to purchase such towers for business or other reasons. In the event that we do not exercise these purchase rights, or are otherwise unable to acquire an interest that would allow us to continue to operate these towers after the applicable period, we will lose the cash flows derived from such towers, which may have a material adverse effect on our business. . . .

Thus, American Tower's unequivocal statements to landowners that it will "tear the tower down" are belied by its own statements to the SEC and the investing public.

55. Third, many of the remaining towers that American Tower controls are owned by Verizon and subject to a sublease agreement between American Tower and a Verizon predecessor (the "AirTouch Sublease"). Under the terms of the AirTouch Sublease, which is publically available, American Tower has *no* right to purchase the towers at *any* point. As such, American Tower has no legal right to tear down these towers either.

56. Fourth, American Tower cannot tear down the towers that it actually owns during the respective terms of the underlying ground leases because the carrier tenants have a contractual right to maintain equipment on the towers, and their cellular networks depend on the specific existing sites. Indeed, in a federal complaint filed jointly with Verizon Wireless less than a year ago, American Tower and Verizon emphasized the importance of maintaining – not tearing down – current cellular tower locations:

Because of the early location of the Existing Tower in the development of the Verizon Wireless network, in which all tower sites are interrelated and networked to provide seamless coverage, maintaining wireless telecommunications facilities at this approximate location is critical to the continued operation of Verizon Wireless's wireless communications network.

Complaint at ¶ 7, *Verizon Wireless (VAW) LLC & Am. Tower Corp. v. City of Lee's Summit, Mo.*, No. 4:11-cv-00245-DGK (W.D. Mo. Mar. 4, 2011). Additionally, zoning regulations in many districts would preclude American Tower from acquiring a demolition permit to remove a tower and eliminate wireless coverage since such demolition would result in safety concerns and a lack of 911 coverage for a particular area.

57. The fact is that American Tower has *never* torn down a tower after losing a ground lease to TriStar, even though TriStar has taken property rights underlying hundreds of

sites from American Tower and has assumed control of various sites formerly operated by American Tower.

58. Notwithstanding American Tower's lack of a legal right to tear down towers, it has engaged and continues to engage in a regular practice of threatening landowners that it will do so, not only in the DFW area and across Texas, but throughout the United States. For example, in 2010, TriStar was negotiating with a landowner in Tarrant County to acquire rights to land on which an American Tower-controlled site was located. American Tower offered to extend its ground lease with the landowner on terms far less favorable than the terms TriStar offered. In order to persuade the landowner to accept these less favorable terms, American Tower told him that it would tear down the tower if he did not extend his lease. But the tower on this land is subject to the SBC Sublease, and American Tower therefore has no right to tear the tower down when the ground lease expires. However, because of American Tower's false statements and because of the landowner's understandable lack of knowledge concerning the falsity of those statements, the landowner declined TriStar's favorable deal and extended his ground lease with American Tower.

59. American Tower made similar false statements to Leon Pelzel, another landowner in the DFW area. While TriStar was negotiating with Mr. Pelzel, American Tower told him that it would tear down the tower on his land if he signed with TriStar. But this tower was also subject to the SBC Sublease, so American Tower made these statements knowing that it did not have a legal right to tear the tower down. Although Mr. Pelzel eventually signed with TriStar, TriStar had to devote additional time and money to close the transaction. As a direct result of American Tower's false statements, TriStar also had to put up a letter of credit that Mr. Pelzel could cash in if TriStar was not able to convert the tower due to it being torn down. Contrary to

American Tower's false statements to Mr. Pelzel, TriStar ultimately followed through with its promise to convert the tower and operate it in a manner that is profitable to Mr. Pelzel.

60. In Dallas County, TriStar offered Karl Willock \$100,000 to purchase a tower site, which was significantly more than American Tower was willing to pay for the same site. Instead of increasing its offer, American Tower made false statements to Mr. Willock about the company's ability to tear down the tower, which is subject to the SBC Sublease. Mr. Willock eventually signed with TriStar, but TriStar had to increase the purchase price to \$136,000 to overcome American Tower's misrepresentations and disparaging comments about TriStar to Mr. Willock.

61. At several other DFW area sites, negotiations between TriStar and landowners are ongoing. American Tower continues to make false statements regarding its ability to tear down towers that are subject to SBC Subleases. In addition, American Tower has disparaged TriStar to some of these landowners, stating that TriStar does not have the ability to convert and operate their towers. TriStar continues to spend significant amounts of time and money to combat American Tower's false advertising. Additionally, American Tower's ongoing false statements are likely to cause at least some of the landowners to take inferior offers from American Tower, causing additional financial losses to TriStar.

62. American Tower has made similar false statements to other landowners throughout the State of Texas. In fact, American Tower has made false statements regarding its ability to tear down towers to landowners in at least the following Texas counties: Cameron, Dallas, Denton, Hidalgo, Nueces, Tarrant, and Taylor. All of the towers at issue were either subject to the SBC Sublease or had a tenant that was committed to stay on the tower. In either

scenario, American Tower falsely represented that it could and would tear down a tower, despite knowing that it had no legal right to do so.

63. American Tower has also made false statements to landowners outside of Texas. With knowledge that it had no legal right to tear down towers at the end of ground leases under the SBC Sublease, American Tower has told landowners in multiple states that it will tear down their towers if they sign with TriStar. For example, in Oklahoma, Doris Vorel turned down a TriStar deal and accepted an inferior offer from American Tower because American Tower told her that the tower on her land would be torn down unless she signed a lease extension.

64. American Tower also threatened to tear down a tower that is subject to the SBC Sublease in New Jersey if the landowner, Carl Jolley, signed a deal with TriStar. This false statement caused Mr. Jolley so much fear that he turned down TriStar's superior proposal to sign a lease extension with American Tower.

65. Further, American Tower has made false statements to landowners throughout the United States where towers are subject to the AirTouch Sublease. For example, in Oregon, TriStar offered Kevin Howard a 50% share of revenue generated by the tower on his land. American Tower made an inferior offer that involved an outright purchase of the land and told Mr. Howard that "the TriStar offer of 50% revenue share is only good if the tower is still there." While this tower is subject to the AirTouch Sublease (under which American Tower has no right to tear the tower down), American Tower emailed Mr. Howard language from another contract, claiming that the language gave it the right to tear down the tower on his land. Because of American Tower's blatantly and intentionally misleading statement, Mr. Howard rejected TriStar's superior offer.

66. Similarly, American Tower told Martha McCain, a landowner in Arizona, that the company would tear down the tower on her land, which was also subject to the AirTouch Sublease, if Ms. McCain did business with TriStar. As a result of this false statement, Ms. McCain signed a long-term lease extension with American Tower and turned down TriStar's superior offer.

67. Likewise, American Tower has told several landowners in California, including Beymer Well Service Company, Yosemite College, and Stephen Weinberg, that their towers will be torn down if they sign deals with TriStar, despite American Tower's knowledge that these towers are subject to the AirTouch Sublease and therefore cannot be torn down.

68. Moreover, American Tower has made false statements in several additional states where tower ownership is subject to some other arrangement. Notably, American Tower cannot tear down towers even when it actually owns the towers due to its obligations to the carriers and zoning regulations. Despite knowing that it has no right to tear down these towers, American Tower continues to harass and deceive landowners with misrepresentations and unfounded threats. For example, as recently as February 14, 2012, American Tower told a landowner in Oklahoma that the company would move the tower if the landowner did not sign an extension with American Tower. At the time it made this threat, upon information and belief, American Tower did not have an alternate site zoned or the agreements of the tenants to move towers. Under these circumstances, the tower and the tenants could not move.

69. Additionally, in April 2011, American Tower made false statements regarding its ability to tear down a tower in Michigan. American Tower's persistent harassment caused the landowner such concern and hardship that she wrote the following email (altered to correct spelling):

I am still trying to make up my mind, but I like your offer. I'm tired of American Tower threatening me. They assured me that if I sign with you they will take the tower down. What happens to me if they really do? My lease with them isn't up until 2025. They want me to sign for another 25 years with no increase. Will TriStar keep paying me for the next 25 years after the current lease is up?

I have Multiple Sclerosis (37 years). Stress is one of my enemies. My nurse was here today and told me whatever is upsetting me I had better solve it, as my MS symptoms are worse. I live alone and I can't walk so I can't take chances with my health. A nursing home would be next. I know you don't need to hear all this, but I think it will help you understand why I haven't made my decision yet.

70. American Tower's false statements throughout the country are numerous and widespread. According to TriStar's discussions with landowners, American Tower has made false statements regarding its ability to tear down towers to landowners in at least the following counties: Yuma, Arizona; Camino, California; El Dorado, California; Merced, California; Sacramento, California; Stanislaus, California; Sutter, California; Hernando, Florida; Chatham, Georgia; Cobb, Georgia; Elmore, Idaho; St. Clair, Illinois; Jackson, Michigan; Oakland, Michigan; St. Clair, Michigan; Jackson, Missouri; St. Francois, Missouri; Monmouth, New Jersey; Curry, New Mexico; Lucas, Ohio; Perry, Ohio; Cherokee, Oklahoma; McClain, Oklahoma; Oklahoma, Oklahoma; Clackamas, Oregon; Bucks, Pennsylvania; Providence, Rhode Island; Sumter, South Carolina; Chelan, Washington; and Racine, Wisconsin.

71. And these are just the instances that TriStar has been able to learn about. Upon information and belief, the practice is even more widespread. TriStar contacts over 1000

landowners every year seeking to do a deal. In most circumstances, TriStar is not privy to why the landowner either will not engage in negotiations with TriStar, or breaks off negotiations once begun. Upon information and belief, American Tower's practice of making misrepresentations to the landowners is a matter of policy and is widespread throughout the country.

ii. American Tower's False Statements about Relocating Tenants

72. American Tower has made additional false statements regarding the company's ability to relocate the carrier tenants to another American Tower site. For example, in 2010, American Tower told Santos Leal, a landowner in Dallas County, that if he signed with TriStar, American Tower would relocate the carrier tenants—including AT&T and MetroPCS—to another American Tower site, rendering Mr. Leal's tower worthless. Upon information and belief, at the time American Tower made this threat, neither AT&T nor MetroPCS had agreed to move towers and American Tower had not gotten an alternate site zoned or approved.

73. American Tower made the same statement to St. John's Lutheran Church, a Tarrant County landowner, in 2011. By 2011, MetroPCS had a contractual arrangement in place with TriStar in both Texas and California where it will not relocate from a TriStar controlled tower. Because, upon information and belief, American Tower knows that MetroPCS has this contractual commitment to TriStar, American Tower's statement that MetroPCS would relocate to another site is untrue.

74. With respect to other carriers, it is misleading for American Tower to suggest that these tenants will relocate because American Tower does not have an alternative site acceptable to the carriers or one that has all regulatory approvals and permits. Additionally, the carriers have a right to be at the precise location they have contracted for, and, as American Tower recently has told other courts, the carriers' network is designed around the specific locations of its current tower equipment. American Tower therefore knows that even carriers without

contractual deals with TriStar would likely not relocate to a new site. Finally, American Tower knows that carriers would have no incentive to abandon a TriStar-controlled tower and relocate to an American Tower-controlled tower because, as explained above, carriers benefit from discounted lease rates and operational efficiencies offered by TriStar on towers it controls.

75. American Tower has nevertheless made this demonstrably false statement to landowners in the DFW area, across Texas, and throughout the United States. Specifically, TriStar is aware of American Tower making similar false statements about moving carriers in at least the following counties: Dallas, Texas; Tarrant, Texas; Smith, Texas; Oakland, Michigan; St. Clair, Michigan; Curry, New Mexico; Lucas, Ohio; and Bucks, Pennsylvania.

76. Again, these are just the instances that TriStar has been able to learn about. Upon information and belief, the practice is even more widespread. TriStar contacts over 1000 landowners every year seeking to do a deal. In most circumstances, TriStar is not privy to why the landowner either will not engage in negotiations with TriStar, or breaks off negotiations once begun. Upon information and belief, American Tower's practice of making misrepresentations to the landowners is a matter of policy and is widespread throughout the country.

iii. American Tower's False Statements about TriStar's Business

77. American Tower has told numerous landowners that TriStar is going out of business, is unable to meet its current financial obligations, or will be unable to meet its financial obligations in the future. American Tower also has specifically stated that TriStar never intends to convert or operate towers that it acquired and/or that TriStar lacks the financial means or expertise necessary to operate the towers. Each of these statements is false. TriStar is financially stable and able to meet all of its obligations, has honored all of its contractual agreements, and is owned and managed by principals with extensive experience in operating and managing tower sites. TriStar's business model is to not renew leases with American Tower

when they expire, but instead to operate each tower site for wireless communications purposes upon expiration of the respective lease.

78. Nevertheless, American Tower makes these statements knowing that they are false and intending for landowners to rely on them. For example, as recently as February 14, 2012, American Tower told a landowner in Washington that TriStar is going out of business, which American Tower knows is false.

79. American Tower has made similar false statements in at least the following counties: Denton, Texas; St. Clair, Alabama; Volusia, Florida; Madison, Illinois; St. Francois, Missouri; Chesterfield, Virginia; and King, Washington.

80. Once again, these are just the instances that TriStar has been able to learn about. Upon information and belief, the practice is even more widespread. TriStar contacts over 1000 landowners every year seeking to do a deal. In most circumstances, TriStar is not privy to why the landowner either will not engage in negotiations with TriStar, or breaks off negotiations once begun. Upon information and belief, American Tower's practice of making misrepresentations to the landowners is a matter of policy and is widespread throughout the country.

iv. American Tower's False Claim of Affiliation with AT&T

81. American Tower sent letters to landowners implying that American Tower was endorsed by or affiliated with AT&T. Upon information and belief, based on the nature of the letters TriStar has obtained from landowners and based on TriStar's communications with landowners, American Tower has sent these letters to all or substantially all of the landowners with sites subject to the SBC Sublease. These letters encouraged landowners to enter into long-term lease extensions with American Tower. While American Tower knew that the designation of affiliation with AT&T was false, American Tower used the designation for its benefit and to the detriment of TriStar.

v. Harm Caused by American Tower's False Claims to Landowners

82. American Tower's false representations to landowners across the country have caused many of these landowners to sign deals with American Tower, despite more favorable offers from TriStar. In some cases, negotiations with landowners are ongoing, and American Tower's false statements have required TriStar to spend additional time and money to attempt to close a deal. Even in those cases where landowners have ultimately signed contracts with TriStar, American Tower's false statements have caused TriStar to overpay for certain sites to offset the reputational damage American Tower has caused with its false and disparaging statements and the understandable fears of landowners resulting from American Tower's misrepresentations and threats. Additionally, American Tower's false statements have caused TriStar to include unfavorable contractual guarantees and to purchase letters of credit to comfort landowners fearful of American Tower's false statements. In all of these scenarios, American Tower's unlawful actions have caused significant financial harm to TriStar.

vi. American Tower's Tortious Interference with TriStar's Contracts

83. Even when landowners have seen through American Tower's deception and signed better deals with TriStar, American Tower has continued to make false statements to the landowners. Specifically, American Tower has encouraged landowners to breach their contracts with TriStar, repeating its threats that it will tear down towers and relocate tenants if the landowners honor their contracts.

84. For example, in mid-2011, American Tower continued to make false and harassing statements to Verbenia Carroll, a landowner in the DFW area who had signed a contract with TriStar in January 2011. Although American Tower knew of TriStar's relationship with Ms. Carroll and TriStar had publically recorded its interest months earlier, American Tower

threatened to tear down the tower on the land—despite that the company had no right to do so—unless Ms. Carroll entered into a lease extension with American Tower.

85. American Tower made similar threats to Morteza Shafinury, a landowner in South Texas who had already executed a contract with TriStar. Based on American Tower's demands for Ms. Shafinury to break the TriStar agreement, she eventually cancelled the TriStar contract and entered into a lease extension with American Tower.

86. American Tower has continued to make false and harassing statements to landowners under contract with TriStar throughout the United States, in places such as Taylor County, Texas; Denton County, Texas; Hidalgo County, Texas; Maricopa County, Arizona; and Sacramento County, California. This has caused financial harm to TriStar, as some landowners have dishonored their deals with TriStar to enter into lease extensions with American Tower.

vii. American Tower's False Statements to AT&T and MetroPCS

87. In addition to American Tower's false statements to landowners, American Tower has also made false statements to AT&T and MetroPCS. TriStar reached an agreement with a landowner in Dallas County to take over land on which an American Tower-controlled site was located. TriStar did not extend American Tower's ground lease when it expired in 2009. Shortly thereafter, American Tower convinced AT&T and MetroPCS to relocate to a new site by telling them that the land under the tower had been condemned. American Tower knew that the land had not been condemned but made the false statement for the purpose of inducing AT&T and MetroPCS to leave the TriStar-controlled site. When AT&T discovered that American Tower had misrepresented that the land had been condemned, AT&T decided not to relocate but asked TriStar to extend the ground lease. TriStar agreed to extend the lease, which resulted in significantly less revenue for TriStar and rendered its asset less valuable.

viii. American Tower's Breach of Contracts with TriStar

88. In addition to its numerous false statements and other anticompetitive acts, American Tower has also breached contracts with TriStar. After TriStar executes a contract with a landowner, it often steps into the shoes of the landowner and assumes the legal rights of the landowner to receive lease payments due to the landowner under any existing ground lease. American Tower has refused to acknowledge these rights following proper notice and is withholding payments due to TriStar under existing ground leases.

CAUSES OF ACTION

COUNT I

Violation of the Lanham Act, 15 U.S.C. 1125(a)

89. TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

90. American Tower, and third parties acting under the direction of American Tower, made false and misleading descriptions or representations of fact, misrepresenting the nature, characteristics, and qualities of TriStar's services and commercial activities and of American Tower's services and commercial activities. For example, American Tower falsely represented that it could and would tear down towers or relocate tenants if landowners signed with TriStar. American Tower also misrepresented facts related to TriStar's current and future financial condition.

91. American Tower also made false or misleading representations of fact about its affiliation with or sponsorship or approval by AT&T in connection with American Tower's services or commercial activities. These misrepresentations are likely to cause confusion or to deceive consumers about an affiliation between American Tower and AT&T.

92. American Tower also made false or misleading representations of fact to AT&T and MetroPCS, stating that a tower site had been condemned.

93. American Tower made these false statements and misrepresentations by telephone, mail, email, and fax across state lines, causing its false statements to enter interstate commerce and regarding transactions of an interstate nature.

94. American Tower's false statements and misrepresentations were made in commercial advertising or promotion. Specifically, the false statements constituted commercial speech by American Tower, an entity engaged in commercial competition with TriStar, for the purpose of influencing landowners and/or carriers to sign deals with American Tower. Upon information and belief, based on TriStar's communications with landowners and based on documentary correspondence obtained by TriStar, these false statements were disseminated, pursuant to a marketing or promotion campaign organized by American Tower, to all or substantially all of the relevant purchasing public—those landowners with lease relationships with American Tower and with whom TriStar has attempted to negotiate, as well as wireless carriers like AT&T.

95. American Tower's false statements and misrepresentations were material in that they caused numerous landowners to sign leases with American Tower instead of taking better offers from TriStar and, in other cases, caused landowners substantial concerns about leasing their property to TriStar. They also caused TriStar to pay more to acquire sites than it would have paid in the absence of American Tower's unlawful conduct. As a direct and proximate result of American Tower's false statements and misrepresentations, TriStar has suffered actual damages in the form of lost revenue from towers, inflated rent payments to landowners, unfavorable contractual guarantees, payments for letters of credit, and other losses that it is

entitled to recover at trial. TriStar is also entitled to recover American Tower's profits and the costs incurred in bringing this action, including attorney's fees, pursuant to 15 U.S.C. § 1117(a).

96. Defendants are jointly and severally liable for their actions as described in the foregoing paragraphs.

COUNT II
Unfair Competition

97. TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

98. American Tower's conduct described above, including the conduct of third parties acting under the direction of American Tower, constitutes unfair competition under the laws of the various states where Defendants do business, including but not limited to the following: California Business & Professions Code § 17200, *et seq.*; Florida Statutes § 501.204; Illinois Compiled Statutes Chapter 815, § 510; South Carolina Code § 39-5-20; Washington Revised Code § 19.86.020; Wisconsin Statutes § 100.20, and the common law of numerous other states.

99. American Tower's conduct is contrary to honest practice in commercial matters and has interfered and continues to interfere with TriStar's ability to conduct its business. The nature of these practices is anticompetitive and injurious to TriStar, landowners, cellular phone carriers, and consumers.

100. American Tower's conduct, including the conduct of third parties acting under the direction of American Tower or in concert with American Tower, is independently tortious or unlawful because, as described above, American Tower has violated § 43(a) of the Lanham Act and other federal and state laws; made false, misleading, and deceptive statements to landowners; and intentionally disparaged TriStar's business and services. American Tower's

conduct also unreasonably restrains trade and violates the spirit of laws ensuring fair competition.

101. American Tower's conduct has proximately caused and continues to proximately cause damages to TriStar as described above.

102. Defendants are jointly and severally liable for their actions as described in the foregoing paragraphs. In addition, because of the knowing and reckless nature of their conduct, Defendants are liable for exemplary damages and attorney's fees.

COUNT III
Business Disparagement

103. TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

104. American Tower has published and continues to publish disparaging words against TriStar's economic interests to third parties. Among other things, American Tower has disparaged TriStar by telling landowners that American Tower will run TriStar out of business, that TriStar is currently unable to meet its financial obligations, and that TriStar is unable to sustain its business in the foreseeable future. These statements are false.

105. As described above, American Tower lacked privilege in making these statements, knew that the statements were false, acted with reckless disregard for the truth, and acted with ill will or intent to interfere in the economic interests of TriStar.

106. As a result of American Tower's intentional, unlawful, and unexcused use of disparaging words grounded in falsity and malice, TriStar has been and continues to be injured and financially damaged.

107. Defendants are jointly and severally liable for their actions as described in the foregoing paragraphs. In addition, because of the knowing and reckless nature of their conduct, Defendants are liable for exemplary damages.

COUNT IV
Tortious Interference with Existing Contract

108. TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

109. TriStar has valid contracts with landowners. TriStar's contracts with landowners include, among other things, agreements to pay rent and/or share revenue with landowners in exchange for TriStar's right to operate a tower site once the underlying ground lease with the existing tower company expires.

110. As described above, American Tower has and had actual knowledge of the existence of TriStar's contracts with landowners and TriStar's interest therein, or knowledge of facts and circumstances that would lead a reasonable person to know of their existence.

111. American Tower has interfered and continues to interfere with TriStar's existing contracts with landowners by the conduct described above. Among other things, American Tower has convinced landowners to breach their contracts with TriStar by threatening landowners that American Tower will tear down the towers on the landowners' land and/or relocate the carriers currently leasing space on those towers and by falsely representing to landowners that TriStar is unable to meet its current financial obligations or will be unable to meet its financial obligations in the future.

112. American Tower has willfully and intentionally committed the acts described above that are calculated to interfere with TriStar's existing contracts, which acts and interference have caused damage to TriStar in its lawful business, and American Tower's willful

and intentional interference continues to cause TriStar damage. TriStar has suffered and continues to suffer losses in revenue and profits as a result of American Tower's interference because certain landowners have breached their contracts with TriStar due to American Tower's conduct and because TriStar has been forced to expend additional resources in an attempt to prevent other breaches of its contracts with landowners. American Tower's acts have proximately caused and continue to proximately cause actual damage and loss to TriStar.

113. Defendants are jointly and severally liable for their actions as described in the foregoing paragraphs. In addition, because of the knowing, malicious or reckless nature of their conduct, Defendants are liable for exemplary damages.

COUNT V

Tortious Interference with Prospective Business Relations

114. TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

115. American Tower and third parties acting under the direction of American Tower have interfered and continue to interfere with TriStar's prospective business relations with landowners by the conduct described above. Among other things, American Tower and its representatives have made false and misleading statements of fact and unfounded threats to landowners regarding, among other things, American Tower's rights with respect to the towers, American Tower's rights or ability to relocate carriers from specific towers, TriStar's financial status and ability to meet its current obligations, and American Tower's affiliation with AT&T.

116. Absent American Tower's interference, a reasonable probability existed that TriStar would have entered into business relationships with the landowners with whom it negotiated, especially because TriStar offered landowners substantially better terms than the terms offered by American Tower.

117. American Tower's conduct was and is independently tortious or unlawful because, as described above, American Tower has violated § 43(a) of the Lanham Act, made false, misleading, and deceptive statements to landowners, and intentionally disparaged TriStar's business and services.

118. American Tower's interference with TriStar's prospective business relations is intentional and without privilege or justification. Upon information and belief, American Tower has and had actual knowledge regarding TriStar's ongoing negotiations with landowners regarding easement and lease arrangements, and American Tower intended and intends by its tortious and unlawful conduct to prevent TriStar from reaching agreements with landowners as to towers and leases in which American Tower is interested.

119. American Tower's tortious and unlawful acts have been and continue to be the proximate cause of actual damage and loss to TriStar. As a result of American Tower's conduct, including unfounded threats and misrepresentations, landowners have rejected TriStar's more favorable offers, which has resulted in lost revenue to TriStar and lost income to the landowners. In some instances, TriStar has still reached agreement with landowners, but only upon less favorable terms due to American Tower's tortious and unlawful acts.

120. American Tower's intentional, tortious, unlawful, and unexcused interference with TriStar's ability to enter into business relations and business contracts with landowners owning property on which towers were located has been and continues to be the proximate cause of actual injury and special financial damage to TriStar.

121. Defendants are jointly and severally liable for their actions as described in the foregoing paragraphs. In addition, because of the knowing, malicious, and/or reckless nature of their conduct, Defendants are liable for exemplary damages.

COUNT VI
Breach of Contract

122. TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

123. American Tower entered into or otherwise acquired valid and enforceable lease agreements with a number of individuals that own property on which cell towers have been erected. Concurrent with TriStar's acquisition of rights to the land underneath those towers from the landowners, these landowners assigned these valid and enforceable contracts to TriStar. Thus, TriStar stands in the shoes of the landowners and is entitled to all benefits flowing from the contracts, including rent payments from American Tower.

124. TriStar has performed its contractual obligations by allowing American Tower to continue to operate its towers during the duration of the lease

125. American Tower breached the lease agreements by failing to tender payment to TriStar, despite proper notice that the lease agreements have been assigned to TriStar.

126. As a result of American Tower's breach, TriStar has incurred actual damages in the form of lost rent payments and is entitled to recover these damages at trial. TriStar is also entitled to attorney's fees pursuant to Texas Civil Practices & Remedies Code § 38.001-006. All conditions precedent to this claim have been satisfied.

COUNT VII
Application for Permanent Injunction

127. TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

128. American Tower continues to make false statements and misrepresentations about TriStar. TriStar has learned of several recent false statements: (1) on February 8, 2012, an American Tower employee informed a California landowner with whom TriStar is negotiating

that TriStar will never be able to acquire control of the site on her property despite MetroPCS being a tenant on the tower; (2) on February 14, 2012 an American Tower employee told an Oklahoma landowner that American Tower would move the tower if he did a deal with TriStar, despite not having the agreement from the tenants on the tower to move towers; and (3) on February 14, 2012 an American Tower employee told a Washington landowner that TriStar was going out of business.

129. TriStar has been and will continue to be severely injured by American Tower's unfair and unlawful actions throughout the United States. American Tower's false statements and misrepresentations about TriStar will continue to cause a loss of reputation, goodwill, and competitiveness in the market, which cannot be adequately compensated by monetary damages.

130. Pursuant to Texas Business and Commerce Code § 16.29, TriStar prays that this Court grant it a permanent injunction prohibiting American Tower and third parties acting under the direction of American Tower from (1) making false statements about its own services and commercial activities in negotiations with landowners; (2) making false statements about TriStar's services and commercial activities in negotiations with landowners; and (3) making statements to landowners under contract with TriStar for purposes of inducing a breach of the TriStar contract.

JURY DEMAND

131. Plaintiff demands a jury trial of all claims in the Complaint on which a jury trial is available.

PRAYER

Wherefore, TriStar respectfully prays that this Court grant the following relief:

- a. a permanent injunction restraining Defendants as described above;

- b. a monetary judgment awarding TriStar actual, consequential, and exemplary damages; costs and attorney's fees; and pre- and post-judgment interest; and
- c. such other and further relief to which TriStar is justly entitled.

Respectfully submitted,

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