

FILED
NOV 14 2013
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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

EDL

CV 13 5296

19 MONA GANDHI, MARISHA
20 JOHNSTON, and MARSHALL TIETJE,
21 individually and on behalf of all others
22 similarly situated,

23 Plaintiffs,

24 v.

25 TRACFONE WIRELESS, INC.

26 Defendant.

Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

27 Plaintiffs, individually and on behalf of all others similarly situated, allege on personal
28 knowledge, investigation of their counsel, and on information and belief as follows:

NATURE OF THE ACTION

1. This proposed class action alleges that TracFone Wireless, Inc. ("TracFone" or "Defendant") falsely advertises Net10 cellular phone plans as providing "unlimited" data service, when in fact the Net10 subscribers in the class have had their supposed "unlimited" data service terminated or "throttled."

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2. Defendant founded the Net10 brand in 2004, and since that time has continuously advertised “unlimited” service plans, thereby becoming one of the largest prepaid phone brands in the United States.

3. Defendant prominently advertises that Net10 wireless plans include “unlimited” data, but fails to disclose that Defendant terminates or “throttles” (*i.e.* reduces the speed of) subscribers’ access to data. On information and belief, Defendant terminates or throttles data access when subscribers near or exceed Defendant’s internally established, but undisclosed, data usage limits, or when Defendant’s wireless network partners (*e.g.* AT&T) direct Defendant to do so even where subscribers’ usage is below Defendant’s internal, undisclosed limits in order to limit the strain on Defendant’s wireless partners’ networks.

4. In response to complaints from the members of the proposed Class, Defendant routinely blames customers for “misusing” Net10 cellular data service, but fails to explain how customers allegedly misused Net10 cellular data service or the reasons that Defendant has terminated or throttled customers’ data access.

5. After Defendant terminates or throttles data service to Net10’s “unlimited” data plan customers, Defendant engages in the practice of failing to restore data access or regular data speeds unless and until subscribers’ current prepaid data plans expire *and* subscribers purchase new Net10 service plans.

6. As a result of Defendant’s material misrepresentations, bad faith, and unfair and unlawful conduct, Plaintiffs and Class members have suffered damages, including, without limitation, payment for Net10 “unlimited” data service plans, payment for Net10 branded and locked smartphones (which cannot be used with other wireless carriers), or payment for Net10 SIM cards.

7. On behalf of themselves and the Class, Plaintiffs bring this lawsuit against Defendant for breach of contract; breach of the covenant of good faith and fair dealing; unconscionability; unjust enrichment; and violation of California’s Unfair Competition Law and California’s Consumer Legal Remedies Act.

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PARTIES

- 8. Plaintiff Marisha Johnston is an individual residing in Hollister, California.
- 9. Plaintiff Mona Gandhi is an individual residing in Hayward, California.
- 10. Plaintiff Marshall Tietje is an individual residing in Sugarloaf, California.
- 11. Defendant TracFone Wireless, Inc. is a Delaware corporation and is

headquartered in Miami, Florida. TracFone is the fifth largest wireless carrier in the United States, with over 23 million subscribers as of July 2013. TracFone holds multiple agreements with the United States’ largest wireless telecommunications companies, including Verizon, AT&T, Sprint, and T-Mobile, to use their networks to provide wireless service.

JURISDICTION AND VENUE

12. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332(d)(2) as the amount in controversy exceeds \$5,000,000 among the proposed nationwide Class, believed to number at least in the tens of thousands, who are entitled to damages in the amount of the purchase price of Net10 “unlimited” service plans, compatible phones, and SIM cards.

13. This Court has personal jurisdiction over Defendant TracFone because Defendant is authorized to do business and regularly conducts business in California, and has marketed, sold, and issued Net10 service plans, phones, and SIM cards in California. Defendant has conducted business in California with certain of the Plaintiffs. Defendant therefore has sufficient minimum contacts with this state to render the exercise of jurisdiction by this Court permissible.

14. Venue is proper under 28 U.S.C. §§ 1391(a) and (b) because a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this District.

COMMON FACTUAL ALLEGATIONS

A. Defendant Falsely Advertises Net10 Wireless Phone Plans as Providing “Unlimited” Data.

15. Defendant TracFone created the Net10 Wireless brand in 2004, and since then it has become one of the largest prepaid phone brands in the United States.

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16. Defendant markets and sells Net10 branded prepaid wireless service plans, phones, and SIM cards. Net10 products and plans can be purchased directly from Net10 or at over 80,000 retail locations across the United States, including Walmart, Target, BestBuy, RadioShack, and leading and independent supermarkets and drugstores.

17. Defendant offer two types of plans: limited plans, which include specified numbers of minutes which can be used for talk or data on basic or feature phones; and 30-day “unlimited” plans, which can be used with smartphones and which Defendant advertises as including “unlimited” data. “Unlimited” plans include a 30-day individual plan for \$50, and a 30-day international plan for \$65. Defendant also offers unlimited “Family Plans,” which are identical to the unlimited individual plan but include a \$10 discount for each additional phone added to the group, up to a maximum of four phones. Customers are promised a \$5 discount if they sign up for the Net10 “Auto-Refill” program. Below is a screenshot of Net10’s offered plans, taken from Net10’s website on September 25, 2013:

The screenshot displays a grid of Net10 prepaid wireless service plans. The plans are organized into three main categories: Family Plans, 30-Day Monthly Plans, and Pay-As-You-Go plans. Each plan card includes the plan name, price, duration, and key features like minutes, text, and data allowances. Some plans offer an 'Auto-Refill' option.

Category	Plan Name	Price	Duration	Key Features
NEW FAMILY PLANS	2 PEOPLE	\$90 / \$85	30 Days / Auto-Refill	Unlimited Talk, Text, Data
	3 PEOPLE	\$130 / \$125	30 Days / Auto-Refill	Unlimited Talk, Text, Data
	4 PEOPLE	\$170 / \$165	30 Days / Auto-Refill	Unlimited Talk, Text, Data
	NEW FAMILY PLANS	\$20	30 Days	Unlimited Talk, Text, Data
30-DAY MONTHLY PLANS	UNLIMITED* INTERNATIONAL TALK, TEXT, DATA	\$65 / \$60	30 Days / Auto-Refill	Unlimited International Talk, Text, Data
	UNLIMITED* TALK, TEXT, DATA	\$50 / \$45	30 Days / Auto-Refill	Unlimited Talk, Text, Data
	750 MINUTES	\$25	30 Days	750 Minutes, Unlimited Text, Data
	500 MINUTES	\$30	30 Days - Carryover	500 Minutes, Unlimited Text, Data
	200 MINUTES	\$15	30 Days - Carryover	200 Minutes, Unlimited Text, Data
	PAY-AS-YOU-GO	1500 MINUTES \$100	180 Days - Carryover	1500 Minutes, Unlimited Text, Data
PAY-AS-YOU-GO	900 MINUTES	\$60	90 Days - Carryover	900 Minutes, Unlimited Text, Data
	600 MINUTES	\$45	60 Days - Carryover	600 Minutes, Unlimited Text, Data
	300 MINUTES	\$30	60 Days - Carryover	300 Minutes, Unlimited Text, Data
	200 MINUTES	\$20	30 Days - Carryover	200 Minutes, Unlimited Text, Data
	200 MINUTES	\$20	30 Days - Carryover	200 Minutes, Unlimited Text, Data

Marketing to All Other Wireless Carriers. © 2013 Net10. All rights reserved. See www.net10.com for more information.

18. Smartphones comprise over 70 percent of the Net10 branded and locked phones currently offered for sale by Net10. In January 2013, Defendant began selling Net10 branded iPhones, in addition to its Android smartphone lineup.

19. On February 9, 2012, Defendant promoted Net10's "Bring Your Own Phone" program as a new way for consumers to sign up for Net10's "unlimited" data plans. Through this program, Defendant sells Net10 SIM cards to enable the "unlimited" plans on unlocked AT&T or T-Mobile compatible GSM smartphones. On April 4, 2013, Defendant expanded this program such that unlocked Verizon compatible CDMA smartphones may be used with the Net10 "unlimited" plans without a Net10 SIM card.

20. Defendant continues to aggressively and consistently promote the supposed "unlimited" data plans in order to capture the burgeoning smartphone market. Defendant's advertising and packaging of Net10 phones, SIM cards, and data plans prominently feature the word "unlimited." Below are examples of Defendant's marketing for Net10's "unlimited" plans:

The collage consists of several promotional graphics for Net10:

- Top Left:** "NET10 UNLIMITED NATIONWIDE \$50/MONTH" with details for 30-day and pay-as-you-go plans.
- Top Middle:** "NET10 WIRELESS BEST NETWORKS HALF THE COST \$50 UNLIMITED DATA • TEXT • TALK".
- Top Right:** Similar "NET10 WIRELESS" ad featuring a smartphone image.
- Middle Left:** "BRING YOUR OWN PHONE" ad with a woman's face and a smartphone.
- Middle Right:** "NET10 WIRELESS" ad with a person in a large "10" costume.
- Bottom Left:** "iPhone 5" advertisement with "BUY NOW" and "LEARN MORE" buttons.
- Bottom Middle:** "NET iPhone 5 16GB | 32GB | 64GB" advertisement with "\$50/mo." pricing.
- Bottom Right:** "FAMILY PLAN NO CONTRACT UNLIMITED TALK, TEXT, DATA" advertisement with "\$50/mo. First Line" and "\$40/mo. Each Additional Line" pricing.
- Bottom Row:** Small promotional boxes for "Save \$1,200/yr. on a family plan", "Nationalwide Coverage on America's Best and Most Dependable Networks", "iPhone 4S", and "iPhone 4".

1 21. Defendant's widespread marketing for Net10's "unlimited" data plans induced
2 millions of new smartphone users to subscribe to the plans and buy Net10 phones and SIM
3 cards.

4 22. Defendant's promise of "unlimited" data is material to consumers.

5 23. Upon information and belief, the networks accessed by Net10's data plans
6 (AT&T, Verizon, Sprint and T-Mobile) have complained to Defendant about the ever-increasing
7 strain being placed on their respective networks by growing numbers of Net10 "unlimited" data
8 plan subscribers.

9
10 **B. Defendant Regularly Terminates or Throttles "Unlimited" Subscribers'
Access to Data.**

11 24. To control network data usage and costs, Defendant implements monthly data
12 usage limits, which Defendant fails to disclose to Net10's "unlimited" data plan subscribers. A
13 former TracFone employee stated that the monthly data cap in 2012 was between 2 GB – 3 GB,
14 having been reduced from a prior 5 GB limit at the behest of Defendant's network carrier
15 partners.¹ Defendant actively conceals these limits from Net10's "unlimited" data customers.

16 25. Upon information and belief, Defendant had a contract dispute with AT&T
17 regarding the increased strain and cost to AT&T's network, which led to Net10's adoption of a
18 policy, in or around March 2013, of imposing a monthly hard cap of 1.5 GB of data for Net10
19 subscribers using AT&T compatible SIM cards, after which subscribers' data would be
20 automatically terminated.²

21 26. Defendant admitted to the 1.5 GB cap in a hard-to-find blog entry on the Net 10
22 website.³ In March 2013, Defendant posted new Terms and Conditions of Service on the Net10
23 website stating, for the first time, that there was a hard 1.5 GB data usage cap for Net10
24 customers who purchased "unlimited" data plans for their Net10 AT&T compatible SIM cards.

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26 ¹ Discussion on XDADEVELOPERS.COM, *Have questions for StraightTalk/Net10/Tracfone?*
(available at <http://forum.xda-developers.com/showthread.php?t=1641966>).

27 ² Humberto Saabedra, *Net10 to Cap AT&T SIM Customers to 1.5 GB Starting March 1st*,
28 PHONENEWS.COM, February 28, 2013 (available at <http://www.phonenews.com/net10-to-cap-att-sim-customers-to-1-5gb-starting-march-1st-22480/>)

³ <http://www.net10blog.com/2013/02/what-can-you-do-with-16-gb-of-data.html>

1 27. Defendant failed to notify existing AT&T SIM card customers of the 1.5 GB data
2 usage cap. Moreover, Defendant continues to prominently advertise and sell the plan as
3 “unlimited.”

4 28. On or about August 8, 2013, Defendant claimed to have removed the 1.5 GB cap
5 for AT&T SIM card customers.⁴

6 29. On September 27, 2013, Defendant posted further revised Terms and Conditions
7 of Service on the Net10 website stating, for the first time, that “unlimited” data plans for all
8 Net10 phones and SIM cards have a monthly data usage cap of 2.5 GB, after which data will be
9 throttled to “2G speeds,” regardless of which underlying carrier network (*i.e.*, AT&T, Verizon,
10 Sprint, or T-Mobile) is utilized to provide service.

11 30. Defendant failed to notify its existing subscribers of the 2.5 GB data usage cap
12 and corresponding throttling. Moreover, Defendant continues to prominently advertise and sell
13 the data plans as “unlimited.”

14 31. When customers exceed Defendant’s data usage limits, Defendant typically
15 throttles or terminates customer data access without any notice or warning, as Defendant did in
16 the case of all three plaintiffs. In other instances, Defendant first throttles customer data to
17 virtually unusable speeds before terminating the data access altogether.

18 32. When customers contact Net10 to complain about being cut off, Net10 blames the
19 customers for engaging in “unauthorized uses” set forth in the Net10 Terms and Conditions. But
20 these Terms and Conditions are not reasonably disclosed or agreed to by customers, and are also
21 riddled with vague, confusing, contradictory, and unconscionable provisions. Defendant fails to
22 disclose its data usage limits to customers or explain the reasons why their data access was
23 terminated or throttled.

24 33. Customers contacting Defendant about their data access being terminated or
25 throttled are often transferred to a recorded message on Defendant’s “High Data Usage Hotline”
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28 ⁴ Humberto Saabedra, *Net10 Removes AT&T Data Caps And Goes Bank To Unlimited?*,
PHONENEWS.COM, August 8, 2013 (*available at* [http://www.phonenews.com/net10-removes-att-
data-caps-and-goes-back-to-unlimited-23238/](http://www.phonenews.com/net10-removes-att-data-caps-and-goes-back-to-unlimited-23238/))

1 that recites to customers that their data service may have been suspended or reduced “due to
2 violation of our Terms and Conditions” and that “our customer care representatives cannot
3 override this policy to restore” data access. The message then suggests “tips” to reduce data
4 usage such as syncing emails no more than once an hour, refraining from browsing regular
5 internet websites (as opposed to “mobile friendly” websites), and downloading a data usage app
6 to “better understand and manage your monthly data plan.”

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8 34. Prior to September 27, 2013, the “High Data Usage Hotline” message did not
9 state or refer to the existence of a data cap or limit. On or about September 27, 2013, Defendant
10 updated the High Data Usage Hotline message to state, for the first time, that the “unlimited”
11 data plans have a 2.5 GB data usage “threshold,” after which data is throttled to “2G speed.”⁵

12 35. Even in the few instances when a customer is fortunate enough to speak to or
13 “chat” via the internet with a live customer service representative, Defendant refuses to provide a
14 clear answer as to why any particular customer’s data access was terminated or throttled. In
15 response to one customer’s question posted on the Net10 Facebook page on July 17, 2013 asking
16 why his “unlimited data” was cutoff, a Net10 representative responded “Your data will be
17 suspended if you have exceeded the limit for mobile browsing” without saying what the “limit”
18 is.

19 36. Defendant’s refusal to explain under what circumstances Defendant will
20 terminate or throttle Net10 “unlimited” plan customers’ data access makes the practice all the
21 more unclear and deceptive to consumers. Customers report that Defendant has terminated their
22 data access after they used as little as 200 megabytes in a month.⁶

23 37. Upon information and belief, Defendant also terminates customers’ data access at
24 the behest of Defendant’s wireless network partners when a particular cell tower is at or near
25 data capacity, regardless of whether that customer’s data usage has exceeded Defendant’s data
26 usage limits. Upon information and belief, Defendant’s network partners such as AT&T are

27 ⁵ “High Data Usage Hotline” recorded message, reachable at 866.793.0474.

28 ⁶ See customer complaint posted in user comments to Net10 commercial at
http://www.youtube.com/watch?v=H0V4i-mvAH4&lc=VdFqO9rG-9ioOELYabLal_ag81GKxUvbZcpQm8gZhYc (posted February 2013)

1 concerned that Net10 customers' data usage on their networks may negatively impact their
2 ability to provide their own direct customers with service, and thus require Defendant to restrict
3 the data usage of Net10 customers. TracFone Executive Resolution Specialist, Juanita
4 Woodside, said the following to a customer in response to his FCC and BBB complaints:
5 "Tracfone... doesn't track your usage, AT&T or T-Mobile does. When on a given cell phone
6 tower (AT&T or T-Mobile), and you use a lot of data, this affects other subscribers."⁷

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8 **C. Defendant Unfairly and Unlawfully Blames Customers for Purportedly
Violating Never-Disclosed and Unconscionable "Terms and Conditions."**

9 38. When customers contact Defendant to complain about their data access having
10 been restricted, Defendant typically tells customers that their "unlimited" data access has been
11 terminated or throttled because they allegedly violated the Net10 "Terms and Conditions" that
12 Defendant purports to apply to Net10 phones, SIM cards, and service plans. But these terms are
13 never adequately disclosed to consumers and contradict Defendant's prominent and consistent
14 advertisements that Net10 plans are "no contract" plans. Defendant advertises in its television
15 commercials that there is "no catch" to Net10's "unlimited everything" plans. One such
16 commercial, titled "What's the Catch?" features a child speaking to the camera: "What's the
17 catch? If I've told you once I've told you a thousand times, with Net10 Wireless there is no
18 catch!"⁸

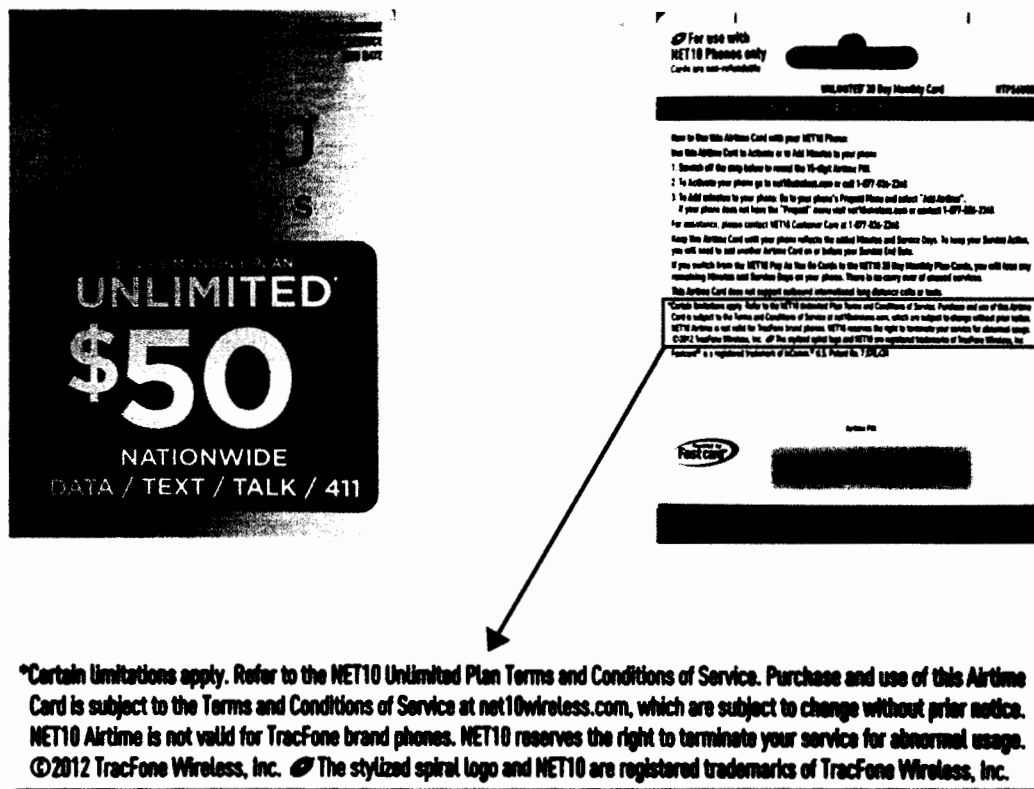
19 39. Defendant does not require consumers who purchase Net10 phones, SIM cards,
20 or service plan cards to view the Terms and Conditions before making their purchase.

21 40. The Terms and Conditions are not referred to and are not available anywhere on
22 websites of major Net10 retailers such as Walmart.com, Target.com, RadioShack.com, and
23 Amazon.com. On net10wireless.com, the Terms and Conditions are hidden in tiny text in a link
24 at the footer of the website's home page, which a consumer must click to have the Terms and
25 Conditions open in a small window.

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28 ⁷ <http://www.howardforums.com/showthread.php/1765893-A-limit-according-to-Tracfone>

⁸ See Net10 commercial at http://www.youtube.com/watch?v=FaOG9_iKhwA

1 41. The Terms and Conditions are not provided with the Net10 service plan cards
 2 purchased at any of the 80,000 retail locations they are sold. The front of the service card, in
 3 very large white text on blue background, features the word “UNLIMITED” next to “Data, Text,
 4 Talk, 411.” Hidden on the back of the card, in tiny text, is a statement that use of the service
 5 card is subject to unspecified “Terms and Conditions of Service at net10wireless.com, which are
 6 subject to change without prior notice.” Below are photographs of the front and back of the
 7 service card:
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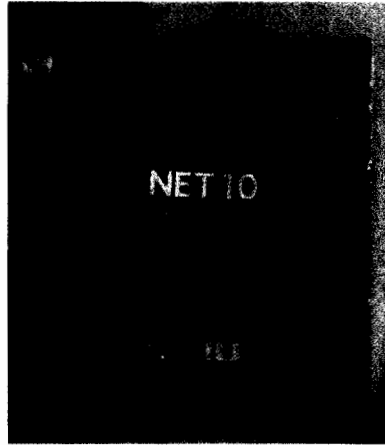


23 42. Defendant does not mention the Terms and Conditions when a customer
 24 purchases or activates a Net10 service plan, smartphone, or SIM card over the telephone.

25 43. Inside the packaging of Net10 phones and SIM cards, Defendant hides the Terms
 26 and Conditions in a shrink-wrapped “Services Guide” booklet. The cover of the booklet directs
 27 customers to “Activate Your SIM Card First” (in the case of SIM cards), or to “Use the
 28 Activation Card First” (in the case of phones). The cover of the booklet does not mention the

1 existence of the Terms and Conditions, which are buried in the middle of the booklet in tiny text.

2 Below is a photo of the Services Guide booklet:



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44. In March of 2013, Defendant began selling a new SIM card package containing both AT&T and T-Mobile compatible SIM cards, which included a notice in the fine print on the back of the package that “The Net10 30-day Unlimited Plan Card that you add to your phone will indicate unlimited data, however if you choose the AT&T compatible SIM you will be limited to 1.5 GB of data.” Defendant also included a slip of paper inside of the package mentioning the 1.5 GB data usage limit for AT&T compatible SIM cards. But, Defendant continued to sell AT&T compatible SIM cards and Net10 branded phones with old packaging, which made no mention of the 1.5 GB limit. When Defendant updated the Net10 Terms and Conditions on September 27, 2013 to state the 2.5 GB data usage cap for all Net10 branded phones and SIM cards, Defendant failed to update any of its product packaging (*e.g.*, for the phones, SIM cards, or data plan cards) to disclose the purported change.

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45. The Terms and Conditions claim that, by purchasing or activating Net10 phones, SIM cards, or data plans, customers agree to them, despite that fact that consumers purchase and activate their phones, SIM cards, or data plans *prior* to even having an opportunity to view the Terms and Conditions. Moreover, Net10 and its retailers do not allow returns of service cards or SIM cards, such that a consumer who reads and decides to reject the Terms and Conditions is unable to do so.

1 46. The Terms and Conditions are illusory in that they purport to allow Defendant to
2 change any of the terms at any time without notice to or consent from Net10 customers: “These
3 Terms and Conditions of Service are subject to change at any time without notice. Any changes
4 to these Terms and Conditions of Service are effective and binding upon you when posted on our
5 websites at NET10.com.”

6 47. Defendant, via its customer service agents and the “High Data Usage Hotline”
7 recorded message, points to the Terms and Conditions as the reason for terminating or throttling
8 customers’ data.

9 48. The Terms and Conditions contain confusing and contradictory language about
10 how much data is included in the monthly “unlimited” plans. Up until September 27, 2013,
11 Section 3 stated that the monthly “Unlimited Plan” provides “50,000 minutes (that is more
12 minutes than there are in a month)” which can be applied equally to talk, email, text and web.
13 Contradictorily, Section 18 made no reference to the 50,000 minutes, and instead stated that the
14 “Unlimited Plan” includes unlimited calling, text, and web access.

15 49. On March 12, 2013, Defendant modified Section 18 to include a notice that “after
16 March 1, 2013 ... Net10 SIM cards that operate on the AT&T Network on an Unlimited Plan
17 will be limited to 1.5 GB of data per month.” Defendant did not update the description of the
18 “Unlimited Plan” in Section 3, which continued to make no mention of a 1.5 GB cap for AT&T
19 compatible SIM cards and continued to state that the “Unlimited Plan” provides 50,000 minutes
20 which can be applied to data usage. Despite Defendant’s statements that the 1.5 GB data cap
21 was removed as of August 8, 2013,⁹ the Terms and Conditions on the Net10 website continued
22 to state the 1.5 GB limit until the Terms were updated on September 27, 2013.

23 50. On September 27, 2013, Defendant modified Sections 3, 18, and 19 to provide,
24 for the first time, that “unlimited” data plans for all Net10 phones and SIM cards have a monthly
25 data usage cap of 2.5 GB, after which data will be throttled to “2G speeds,” regardless of which
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⁹ Saabedra, *Net10 Removes AT&T Data Caps And Goes Bank To Unlimited?*, *supra*.

1 underlying carrier network (*i.e.*, AT&T, Verizon, Sprint, or T-Mobile) is utilized to provide
2 service.

3 51. Section 20 of the Terms and Conditions ambiguously prohibits “access to the
4 Internet, intranets, or other data networks except as the device’s native applications and
5 capabilities permit.” This poorly written provision could arguably be read to encompass the
6 installation and use of any smartphone application not preinstalled on the phone, but such a
7 reading would be extreme and contrary to consumers’ reasonable expectations. Section 20 also
8 prohibits “tethering”; *i.e.* connecting one’s phone to a computer to share Net10’s data
9 connection.

10 52. Up until approximately March 12, 2013, Section 20 provided that Net10 service
11 plans may only be used for “Internet browsing through the Net10 Mobile Web Portal” and
12 “Authorized Content Downloads from the Net10 Mobile Web Store.” Section 20 explicitly
13 prohibited “uploading, downloading or streaming of audio or video programming or games.”
14 But, contradictorily and confusingly, the same section later provided that “downloading legally
15 acquired songs” is an example of a permitted use.

16 53. On or about March 12, 2013, Defendant modified Section 20, which now
17 provides that Net10 data plans may only be used for “Internet browsing and ordinary content
18 downloads.” Section 20 no longer provides that “uploading, downloading, or streaming of audio
19 or video programming or games” are prohibited uses, but instead forbids “uploading,
20 downloading, or streaming uninterrupted continuous video.”

21 54. Despite Section 20 purporting to prohibit at least some types of video and music
22 uploading, downloading, or streaming, Defendant publicly promotes and encourages consumers
23 to use their smartphones and data plans to download and stream music and videos. Defendant
24 preloads streaming video apps, such as YouTube, on Net10 branded smartphones. In a post on
25 Net10’s blog dated June 3, 2013, Net10 promoted a new Samsung phone as being able to “[d]o
26 two things at once: watch a video as you email or text.”¹⁰

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28 ¹⁰ *The Samsung Galaxy S III Has Arrived*, NET10 WIRELESS BLOG, June 13, 2013 (*available at*
<http://www.net10blog.com>).

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55. Meanwhile, Net10 representatives continue to tell customers that their data access was terminated for reasons Net10 has publicly claimed to not be prohibited uses. As recently as July 13, 2013, a Net10 representative posted on Net10's Facebook page, in response to a customer asking why his data access was terminated, that "unlimited data" is not for audio or video streaming: "Our unlimited plan offers unlimited talk, text and mobile web. All streaming (such as videos, Netflix, YouTube, music, Pandora, online games, large downloads, video chat) has to be done on Wi-Fi and not on NET10's data."

56. Section 20 also discusses Net10's discretion to terminate or throttle data access. Section 20 purports to allow Net10 to terminate or throttle data service "in order to protect the Carrier's network from harm due to any cause including, without limitation, the excessive and/or improper use of Net10 service" or where Net10 believes a customer "is using the Net10 30 Day Unlimited Plan Service in an unauthorized manner or whose usage, in Net10's sole opinion, adversely impacts the Carrier's network or customer service levels." Despite seemingly putting some limits on its discretion in the above provisions, Section 20 then purports to allow Net10 to terminate data access to anyone, at any time, with no notice, and for any reason or no reason at all: "Net10 may modify or cancel any Service or take corrective action at any time without prior notice and for any reason, including but not limited to your violation of this agreement." Up until approximately March 11, 2013, Section 20 also provided as follows: "Notwithstanding the foregoing, Net10 reserves the right to deny Service, deactivate or cancel existing Service, terminate data connections and/or reduce data throughput speeds, to anyone for any reason at any time, in Net10's sole discretion."

57. Section 2 states that any "unused service at the time of termination will not be refunded."

D. Defendant Refuses To Restore Subscribers' Data, if Ever, Unless and Until Their Current Data Plans Expire and They Purchase New Data Plans.

58. Once Defendant terminates or throttles a customer's data access, Defendant will not restore that customer's data service until the customer's current data plan expires *and* the customer purchases a new data plan. Defendant explained on the High Data Usage Hotline

1 recorded message that “customer care representatives cannot override this policy to restore your
2 service to its original data speed. Adding a plan prior to your service end date also will not
3 restore your original data speed.” Even after waiting until their plan has expired and paying for
4 a new data plan, many customers find that their data access remains restricted in the new data
5 plan period.¹¹

6 **E. Defendant’s Practices are Unfair and Likely to Mislead Consumers.**

7 59. Reasonable consumers are likely to be misled by Defendant’s promise of
8 “unlimited” data, particularly in combination with Defendant’s advertisements that encourage
9 customers to use Net10 smartphones and data plans in typical ways such as browsing the
10 internet, streaming or downloading music and videos, running apps, and using GPS navigation.

11 60. Once customers discover the truth about Defendant’s “unlimited” plans,
12 customers are outraged by Defendant’s lies and bad faith practices. Angry customers have
13 flooded Net10’s Facebook page, turning it into a virtual complaint board. Net10’s official online
14 forum, net10forum.com, is also full of complaints from frustrated customers whose data access
15 has been terminated or throttled. Many more customers have posted complaints on consumer
16 websites such as Consumeraffairs.com, Boycottowl.com, Howardforums.com,
17 Pissedconsumer.com, and Ripoffreport.com, or in the comments to Net10 video advertisements
18 posted on YouTube. The following are examples of typical complaints:

19
20 “BIG SCAM! They said I was supposed to have unlimited Internet and I have been
21 without it for at least a week. They even took my money out of my account three days ago
22 and still have not connected my Internet! Every time I call customer service they transfer
me to a recording then I get disconnected. I will surely be canceling my service with these
scam artist!”¹²

23 “On the 7th of jan, I was told ... the only way I could get my data back was to buy a new
24 card! I spent \$50.00 had the card put on my account on the 7th. 2 days later, that being
25 today guess what? my data is off again! in the 2 days I used 195mbs of data. I’ve never
heard of unlimited data being less then 200 mbs.”¹³

26 ¹¹ *E.g., see* customer complaints at <https://www.facebook.com/NET10Wireless> (posted June 6,
27 2013) and <https://www.net10forum.com/viewtopic.php?f=5774&t=201181&start=10#p467601>
(posted June 4, 2013)

28 ¹² <https://www.facebook.com/NET10Wireless> (posted June 6, 2013)

¹³ Comment by Gary Tittle to Net10 commercial at <http://www.youtube.com/watch?v=H0V4i->

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2 “I called in yesterday and they said my data was suspended because of extreme usage?
3 They said I went over 1.5 GB , that is not extreme. I only purchased net10 because it said
4 unlimited Data + Text + Calling on the package at Walmart.”¹⁴

5 “I have filed a complaint with the FCC and the Better Business Bureau against Net 10 for
6 false advertising, and lying about services. I went over the "unlimited" data usage policy 1
7 time, my data was turned off, and I was rudely connected to a pre-recorded message
8 telling me that since I went over my data could not be restored until my next billing
9 period. I read through the info on the "unlimited" plan, and then paid my next month's bill
10 for my smartphone. I have contacted customer service 3 times about the fact that my data
11 is still not turned on, and they simply say the data should have been restored within 24
12 hours of paying my new bill. This is horrible on so many levels I do not know where to
13 begin. That, my friends, is the data policy.”¹⁵

14 “I reactivated my phone on May 17th and had data immediately! The next day, my data is
15 gone! I was told by a Net10 representative that my data had been suspended due to high
16 data usage. How on earth do I lose data in less than 24 hours? ...I have been dealing with
17 Net10 since February of this year, and I have had issues every month! I'm purchasing a
18 \$50 plan each month and my data runs out after about a week... This isn't fair! They can't
19 help me when I call, and they always transfer me to an automated recording.”¹⁶

20 “My son's internet capabilities were just shut off for overusage. NOWHERE can I find a
21 limit. \$50 card says nothing about a data limit. Now my Son does not have internet to
22 research his homework. This is BALONEY! LET us know when we are approaching
23 limits so we can conserve if we have to. My son is 14 yrs. old and just learning about
24 SMART phones and he is also getting a lesson in SHADY business practices.”¹⁷

25 61. Defendant has benefited, and continues to benefit, from falsely advertising that
26 Net10 data plans are “unlimited,” terminating or throttling customers’ data access to cut costs or
27 to keep Defendant’s wireless network carrier partners happy, and relying on confusing,
28 contradictory, and unconscionable Terms and Conditions that Defendant ensures customers will
never see or read to justify Defendant’s unfair and misleading practices.

62. Defendant’s misrepresentations and omissions regarding Defendant’s “unlimited”
data plans are material to reasonable consumers.

25 [mvAH4&lc=VdFqO9rG-9ioOELYabLal_ag81GKxUvbZcpQm8gZhYc](http://net10forum.com/viewtopic.php?f=5782&t=131113) (posted February 2013)

26 ¹⁴ <http://net10forum.com/viewtopic.php?f=5782&t=131113> (posted March 28, 2013)

27 ¹⁵ <https://www.net10forum.com/viewtopic.php?f=5774&t=201181&start=10#p467601> (posted
June 4, 2013)

28 ¹⁶ http://www.consumeraffairs.com/cell_phones/net_10.html?page=2 (posted May 22, 2013)

¹⁷ <https://www.net10forum.com/viewtopic.php?f=5774&t=201181&start=10> (posted June 5,
2013)

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63. Defendant's continuing practice of terminating and/or throttling customers' data access pursuant to secret data usage caps, or for any other reason, is unfair and is done in bad faith, and defies the reasonable expectations of reasonable customers.

64. Defendant's implementation of a 1.5 GB hard data cap for its AT&T customers, and later a 2.5 GB data cap for all customers, without giving the customers notice of these caps and after having promised them "unlimited data" at the time they purchased their data plans, SIM cards and/or Net10 smartphones, was unfair and was done in bad faith, and defied the reasonable expectations of reasonable customers.

65. Defendant's misrepresentations and practices injured and caused Plaintiffs and Class members to lose money or property in that they purchased expensive smartphones, Net10 SIM cards, and Net10 "unlimited" data plans, but Defendant terminated or throttled the promised "unlimited" data rendering Plaintiffs' and Class members' smartphones essentially useless for their intended purposes.

PLAINTIFFS' FACTUAL ALLEGATIONS

Plaintiff Marisha Johnston

66. Prior to March 25, 2013, Plaintiff Marisha Johnston had a voice and data plan with Verizon Wireless.

67. Defendant's marketing and advertisements for "unlimited data" displayed in Ms. Johnston's local Kmart store induced Ms. Johnston to switch to Net10. Relying on Defendant's promises, on or about March 25, 2013, Ms. Johnston purchased a Net10 T-Mobile compatible SIM card from Kmart for \$15 for use with an unlocked T-Mobile branded LG Android smartphone she received from a friend.

68. Ms. Johnston inserted the SIM card into the smartphone and called Net10 customer service to transfer her phone number and activate her Net10 service. While on the call with a customer service representative, Ms. Johnston purchased Net10's "unlimited" 30-day service plan for \$50, and also signed up for Net10's "auto refill" program to automatically renew and pay for her "unlimited" data service each month.

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69. In June 2013, Ms. Johnston received an AT&T compatible Apple iPhone 3GS from her friend. Ms. Johnston called Net10 customer service to switch her plan to the new phone. Ms. Johnston asked if the AT&T iPhone was fully compatible with the Net10 service and whether she would still receive “unlimited” data with the phone. The representative confirmed that with a new AT&T compatible SIM card, Ms. Johnston would receive unlimited data on the iPhone.

70. After receiving the new SIM card and installing it in her iPhone, Ms. Johnston called Net10 customer service to transfer her phone number to the new SIM card and activate the iPhone.

71. Defendant did not adequately disclose Net10’s Terms and Conditions or Net10’s 1.5 GB data cap on AT&T SIM cards during these purchases and activation, and Ms. Johnston was at all times unaware of any such terms.

72. Ms. Johnston used her smartphone and Net10 data plan to access email, navigate via Google Maps, browse websites, and occasionally watch streaming video. While at home, Ms. Johnston accessed the internet on her phone via Wi-Fi. Ms. Johnston never tethered her phone to a computer to access Net10’s data and she never used her phone as a Wi-Fi hotspot.

73. In mid June, approximately two weeks after Ms. Johnston switched to the AT&T compatible SIM card, Net10 terminated Ms. Johnston’s data access without warning. Ms. Johnston called Net10’s customer service, and the representative transferred her to the “high data usage hotline” recorded message, which stated she had violated unspecified “Terms and Conditions.” Ms. Johnston immediately called back and asked a customer service representative what terms she had violated. The representative transferred Ms. Johnston to someone in another department, who told Ms. Johnston that there was a 1.5 GB data cap on Net10 SIM cards. Ms. Johnston asked why are the Net10 plans being marketed as “unlimited,” and told the representative that no one had previously told her there was any such limit. The representative then told Ms. Johnston that he would transfer her to someone who could help her, but he instead transferred her again to the “High Data Usage Hotline” recorded message. Ms. Johnston called

1 back two more times, and each time she was immediately transferred to the same recorded
2 message.

3 74. Ms. Johnston's data access was restored only on June 23, 2013, when she was
4 automatically charged for a new month of service. However, within two weeks of her data
5 access being restored, Net10 again terminated her data access.

6 75. Ms. Johnston transferred her service to T-Mobile in August 2013.

7 76. Ms. Johnston reasonably relied upon Defendant's material misrepresentations and
8 omissions, which, in conjunction with Defendant's acts and practices alleged herein caused Ms.
9 Johnston to suffer harm, injury in fact, and lost money or property. Had Ms. Johnston known
10 that Net10's purportedly "unlimited" plan was in fact limited in the manner that it is, she would
11 not have paid for the Net10 data plan.

12 **Plaintiff Mona Gandhi**

13 77. Prior to January 2013, Plaintiff Mona Gandhi had a voice and data plan with H2O
14 Wireless which she used with her unlocked Samsung Galaxy Note 2 smartphone.

15 78. Defendant's marketing and advertisements for "unlimited data" induced Ms.
16 Gandhi to switch to Net10. On or about January 4, 2013, Ms. Gandhi visited a wireless phone
17 dealer in San Francisco who sold Net10 plans. The dealer confirmed to Ms. Gandhi that the
18 Net10 plan included unlimited data, as stated in Net10 advertisements. Relying on Defendant's
19 promises, Ms. Gandhi purchased a Net10 T-Mobile compatible SIM card from the dealer, along
20 with a \$50 "unlimited" data plan, paying a total of approximately \$70. The dealer installed the
21 SIM card in Ms. Gandhi's smartphone, transferred her phone number to Net10, and activated her
22 service.

23 79. Ms. Gandhi found T-Mobile coverage in the Hayward area to be inadequate, and
24 purchased a Net10 AT&T SIM card from the same wireless dealer in February 2013 for
25 approximately \$20. The dealer installed the new SIM card in Ms. Gandhi's smartphone and
26 transferred Ms. Gandhi's service to the new AT&T SIM card.
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1 80. Ms. Gandhi renewed her monthly service by calling Net10 customer service and
2 purchasing an additional month each time her service plan expired.

3 81. In June 2013, Ms. Gandhi purchased an unlocked iPhone 5 on Craigslist. Ms.
4 Gandhi transferred the AT&T SIM card from her Samsung Galaxy Note 2 to the iPhone 5.

5 82. Defendant did not adequately disclose Net10's Terms and Conditions during
6 these purchases and activation, and Ms. Gandhi was at all times unaware of any such terms.
7 Moreover, when Defendant imposed a 1.5 GB hard data cap on AT&T SIM card "unlimited"
8 plan customers in March 2013, Defendant failed to inform or notify Ms. Gandhi of this
9 purportedly new policy or of the corresponding revision to the Terms and Conditions.

10 83. Ms. Gandhi used her smartphone and Net10 data plan to access email, browse
11 websites, and occasionally navigate via Google Maps. Ms. Gandhi never streamed music or
12 video. Ms. Gandhi never tethered her phone to a computer to access Net10's data and she never
13 used her phone as a WiFi hotspot.

14 84. Only July 2, 2013, Ms. Gandhi renewed her monthly service via telephone and
15 signed up for Net10's "auto refill" program to automatically renew her service each month.

16 85. Approximately one week later, Net10 terminated Ms. Gandhi's data access
17 without warning. Ms. Gandhi called Net10's customer service, and the representative
18 transferred her to the "High Data Usage Hotline" recorded message. Ms. Gandhi immediately
19 called back and asked why her data service had been terminated. The representative told her that
20 her plan was no longer unlimited, and that her data access would not be restored until she
21 purchased another "unlimited" plan. Ms. Gandhi asked to speak to a supervisor.

22 86. The supervisor repeated what the first representative had told her, and informed
23 her that there was now a 1.5 GB data limit on the "unlimited" plan. Ms. Gandhi told the
24 supervisor this did not make sense because she signed up for an "unlimited" data plan and she
25 was never notified that there was a limit. Ms. Gandhi also told the supervisor she did not
26 understand how she could have used 1.5 GB in just a few days given her light usage of data
27 which was limited to checking email and surfing websites. The representative had no response
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1 and was unable to tell Ms. Gandhi how much data she had used before Net10 terminated her data
2 access. Ms. Gandhi meanwhile had no data access on her phone for the next 3 weeks of July.

3 87. Ms. Gandhi transferred her service to Red Pocket Mobile in September 2013.

4 88. Ms. Gandhi reasonably relied upon Defendant's material misrepresentations
5 and omissions, which, in conjunction with Defendant's acts and practices alleged herein
6 caused Ms. Gandhi to suffer harm, injury in fact, and lost money or property. Had Ms. Gandhi
7 known that Net10's purportedly "unlimited" plan was in fact limited in the manner that it is,
8 she would not have paid for the Net10 data plan.

9
10 **Plaintiff Marshall Tietje**

11 89. Prior to 2007, Plaintiff Marshall Tietje subscribed to various pay-as-you-go
12 cellular plans. Defendant's marketing and advertisements for "unlimited" calls, text and data
13 induced Mr. Tietje to switch to Net10 in or about 2007. Mr. Tietje purchased a Net10 branded
14 Nokia feature phone for use with Net10's "unlimited" plan.

15 90. Each month, Mr. Tietje would renew his service by purchasing a Net10 30-day
16 service plan card at a retail store.

17 91. On or about July 3, 2013 Mr. Tietje purchased a Net10 branded LG Optimus
18 Dynamic CDMA smartphone for approximately \$69 from a local Kmart retail store, along with a
19 \$50 Net10 30-day unlimited data plan. Mr. Tietje activated the smartphone and service by
20 calling Net10 customer service.

21 92. Defendant did not adequately disclose Net10's Terms and Conditions during
22 these purchases and activations, and Mr. Tietje was at all times unaware of any such terms.

23 93. Mr. Tietje used his smartphone and Net10 data plan to access email, browse
24 websites, navigate via Google Maps, and occasionally stream radio. Mr. Tietje never tethered
25 his phone to a computer to access Net10's data and he never used his phone as a WiFi hotspot.

26 94. Only July 26, 2013, after only 3 weeks of use of his new smartphone, Net10
27 terminated Mr. Tietje's data access without warning. Mr. Tietje called Net10's customer service,
28 and the representative told him that his service had been suspended because he had exceeded the

1 “data limit” and that his data access would not be restored until he paid for the next month of
2 service. Mr. Tietje asked to speak to a supervisor, and the representative said she would do so.
3 But the representative instead transferred him to the “High Data Usage Hotline” recorded
4 message.

5 95. Mr. Tietje’s data access was restored on August 3, 2013, but he was hesitant to
6 use his data because he feared he would find himself cut off from email and internet again.

7 96. Mr. Tietje transferred his service to AT&T Wireless on October 5, 2013. Because
8 his existing LG Optimus Dynamic was locked to Net10’s network, he purchased a new Samsung
9 Galaxy S III smartphone for use on AT&T Wireless.

10 97. Mr. Tietje reasonably relied upon Defendant’s material misrepresentations and
11 omissions, which, in conjunction with Defendant’s acts and practices alleged herein caused
12 Mr. Tietje to suffer harm, injury in fact, and lost money or property. Had Mr. Tietje known
13 that Net10’s purportedly “unlimited” plan was in fact limited in the manner that it is, he would
14 not have purchased his Net10 smartphone or data plan.

15 CLASS ACTION ALLEGATIONS

16 98. Plaintiffs bring this class-action lawsuit on behalf of themselves and the proposed
17 Class members under Rule 23(b)(3) of the Federal Rules of Civil Procedure.

18 99. Plaintiffs seek certification of the following Class:

19 All persons in California who purchased an “unlimited” Net10 wireless service plan and
20 whose data access was terminated or throttled prior to the expiration of the service plan.
21 Specifically excluded from the Class is the Defendant and any entities in which Defendant has a
22 controlling interest, Defendant’s agents and employees, the judge to whom this action is assigned,
23 members of the judge’s staff, and the judge’s immediate family.

24 100. **Numerosity.** Plaintiffs do not know the exact number of Class members but
25 believe that the Class comprises tens of thousands, if not hundreds of thousands, of consumers in
26 California. As such, Class members are so numerous that joinder of all members is
27 impracticable.

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101. ***Commonality and predominance.*** Well-defined, nearly identical legal or factual questions affect all Class members. These questions predominate over questions that might affect individual Class members. These common questions include, but are not limited to, the following:

- a. Whether Defendant offered to Plaintiffs and Class members “unlimited” data plans;
- b. Whether Plaintiffs and Class members accepted Defendant’s offer for “unlimited” data plans;
- c. Whether the Net10 Terms and Conditions were adequately disclosed to and were consented to by Plaintiffs and Class members;
- d. Whether the Net10 Terms and Conditions contain illusory terms;
- e. Whether the Net10 Terms and Conditions contain unconscionable terms;
- f. Whether Defendant breached Defendant’s contracts with Plaintiffs and Class members by terminating and/or throttling their data access prior to the expiration of their data plans;
- g. Whether Defendant acted in bad faith or abused Defendant’s discretion in terminating or throttling Plaintiffs’ and Class members’ data access prior to the expiration of their data plans;
- h. Whether Defendant’s practice of terminating or throttling Plaintiffs’ and Class members’ data access went against Plaintiffs’ and Class members’ objectively reasonable expectations;
- i. Whether Defendant’s promise of “unlimited” data was likely to mislead objectively reasonable consumers;
- j. Whether Defendant engaged in deceptive and unfair business and trade practices under California law;
- k. Whether Plaintiffs and Class members are entitled to restitution and other equitable relief;

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l. Whether Plaintiffs and Class members are entitled to damages; and
m. Whether Defendant should be enjoined from engaging in this type of conduct.

102. **Typicality.** Plaintiffs’ claims are typical of Class members’ claims. Plaintiffs and the Class members all sustained injury as a direct result of Defendant’s practice of terminating or throttling data access prior to the expiration of their “unlimited” data plans.

103. **Adequacy.** Plaintiffs will fairly and adequately protect Class members’ interests. Plaintiffs have no interests antagonistic to Class members’ interests, and Plaintiffs have retained counsel that has considerable experience and success in prosecuting complex class-action and consumer-protection cases.

104. **Superiority.** A class action is the superior method for fairly and efficiently adjudicating this controversy for the following reasons without limitation:

a. Class members’ claims are relatively small compared to the burden and expense required to litigate their claims individually, so it would be impracticable for Class members to seek individual redress for Defendant’s illegal and deceptive conduct;

b. Even if Class members could afford individual litigation, the court system could not. Individual litigation creates the potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court; and

c. Plaintiffs anticipate no unusual difficulties in managing this class action.

INAPPLICABLE OR UNENFORCEABLE ARBITRATION CLAUSE

105. Section 16 of the Net10 Terms and Conditions purports to require that certain disputes be individually arbitrated. Section 16 is unenforceable because it is never adequately disclosed or agreed to by consumers, and Defendant does not require consumers who purchase Net10 SIM cards, service plans, or phones to view the arbitration clause before making their purchase. Section 16 is unenforceable because it is unconscionable and/or is against public

1 policy. Section 16 is substantively unconscionable because, among other reasons, it lacks
2 mutuality in that it purports to require consumers to arbitrate all claims while explicitly
3 permitting Defendant to bring state or federal lawsuits for certain types of claims important to
4 Defendant; it prohibits any damages arising out of the use of or inability to use Net10 data
5 services, and prohibits punitive damages in all circumstances, while specifying \$5,000 liquidated
6 damages payable to Defendant by consumers regarding certain types of claims important to
7 Defendant; it requires consumers to bear their own attorneys' fees and costs, even where, as
8 here, the law allows for the prevailing party to be awarded such fees and costs; it requires
9 arbitrations to occur in Miami, Florida regardless of the consumer's state of residence; and it
10 provides that consumers must pay a minimum claim filing fee of \$200 per AAA rules effective
11 March 1, 2013. Section 16 is procedurally unconscionable because, among other reasons, it is
12 presented to consumers, if at all, on a take-it-or-leave-it basis and is not conspicuous.

13 106. Section 16 is not enforceable as to any of Plaintiffs' and Class members' claims
14 because it is illusory, in that Defendant reserves the right to modify or change it at any time
15 without notice to or consent from consumers.

16 107. Section 16 is not applicable to Plaintiffs' claims for public injunctive relief,
17 because such claims are not arbitrable.

18 108. To the extent that Defendant asserts that Plaintiffs' and Class members' claims
19 are subject to an arbitration agreement or a class action waiver, Plaintiffs and the Class seek
20 declaratory relief in the form of a finding that such a purported arbitration agreement is void and
21 unenforceable.

22
23 **COUNT I**
Breach of Contract

24 109. Plaintiffs reallege and incorporate by reference every allegation set forth in the
25 preceding paragraphs as though alleged in this Count.

26 110. Defendant offered to Plaintiffs and Class members "unlimited" data plans for use
27 with Net10 SIM cards or Net10 branded and locked smartphones.
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111. In exchange for Defendant’s promise of “unlimited” data plans, Plaintiffs and Class members paid for 30-day service plans, SIM cards, and Net10 branded and locked smartphones.

112. Plaintiffs and Class members gave consideration that was fair and reasonable, and have performed all conditions, covenants, and promises required to be performed.

113. Defendant breached Defendant’s promise of providing “unlimited” data by terminating or throttling Plaintiffs’ and Class members’ data access prior to the expiration of their data plans.

114. The Net10 Terms and Conditions do not form a contract and are not a part of the above-described bargain for lack of mutual assent. Defendant does not (a) adequately disclose the existence of such terms to Plaintiffs or Class members prior to or at the time of the purchase and activation of their Net10 data plans; (b) require Plaintiffs or Class members to acknowledge or assent to the Terms and Conditions; or (c) provide an opportunity for Plaintiffs or Class members to reject the terms in the event that they discover the terms subsequent to the purchase and activation of their data plans. Defendant also does not provide any new consideration in exchange for any subsequent agreement to the Terms and Conditions.

115. The Net10 Terms and Conditions do not form a contract and are not a part of the above-described bargain because the terms described therein are illusory. Specifically, the Terms and Conditions provide that Net10 may change or modify the terms at any time, in its sole discretion, and without notice to or consent from Plaintiffs or Class members, rendering all of the terms therein illusory.

116. In the alternative, assuming that the Net10 Terms and Conditions do form part of the basis of the bargain, Sections 2, 7, 8, 10, 16, 17, 18, and 20 of the Terms and Conditions are unconscionable and, therefore, unenforceable.

117. In the alternative, assuming that the Net10 Terms and Conditions do form part of the basis of the bargain, Sections 3 and 20 of the Terms and Conditions are so contradictory, vague, and ambiguous as to render them meaningless and unenforceable.

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127. As a result of Defendant's breach of the implied covenant of good faith and fair dealing, Plaintiffs and the Class sustained damages in an amount to be determined by this Court, including interest on all liquidated sums.

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COUNT III
Unjust Enrichment

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128. Plaintiffs reallege and incorporate by reference every allegation set forth in the preceding paragraphs as though alleged in this Count.

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129. Plaintiffs and Class members bring this claim in the alternative to their Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing claims.

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130. Defendant knowingly retained a benefit at the expense of Class members, in the form of substantial revenues and payments from Plaintiffs and Class members for Net10 "unlimited" data plans, phones, and SIM cards, from Defendant's conduct in misrepresenting that Defendant's data plans were "unlimited," and regularly terminating or throttling "unlimited" customers' data access.

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131. Plaintiffs' and Class members' detriment and Defendant's enrichment are traceable to, and resulted directly and proximately from, the conduct challenged in this Complaint.

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132. It would be inequitable for Defendant to retain the benefits Defendant received and continues to receive from Plaintiffs and Class members without payment to Plaintiffs and Class members.

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133. Plaintiffs and the Class have no adequate remedy at law.

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134. Plaintiffs seek disgorgement of and/or a constructive trust on all of the inequitable payments and profits Defendant retained from Plaintiffs and Class members.

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COUNT IV
Violations of California's Unfair Competition Law
California Business & Professions Code § 17200 et seq.

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135. Plaintiffs reallege and incorporate by reference every allegation set forth in the preceding paragraphs as though alleged in this Count.

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136. Section 17200 of the California Business & Professions Code (“UCL”) prohibits any “unlawful,” “unfair,” or “fraudulent” business practice.

137. Defendant violated the “unlawful” prong of the UCL by making material misrepresentations that Net10 data plans offer “unlimited” data, when in fact Defendant regularly terminates or throttles customers’ data access, in violation of California’s Consumer Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*

138. Defendant’s practice of regularly terminating or throttling customers’ “unlimited” data access, often without notice, violated the “unfair” prong of the UCL because it was immoral, unethical, oppressive, unscrupulous, unconscionable, and/or substantially injurious to Plaintiffs and Class members. Defendant’s practice was also contrary to legislatively declared and public policy and the harm it caused to consumers outweighed its utility, if any.

139. Defendant violated the “fraudulent” prong of the UCL by making material misrepresentations that Net10 data plans were “unlimited” when they were not, and by failing to disclose and actively concealing material information regarding Defendant’s practice of regularly terminating or throttling customers’ data access. These material misrepresentations and nondisclosures were likely to mislead consumers.

140. Plaintiffs relied on Defendant’s material misrepresentations and nondisclosures, and would not have purchased, or would have paid less money for, Net10 service plans, compatible phones, or SIM cards had they known the truth.

141. As a direct and proximate result of Defendant’s unfair, unlawful, and fraudulent conduct, Plaintiffs lost money or property.

142. Defendant’s conduct caused substantial injury to Plaintiffs and Class members. Accordingly, Plaintiffs seek an order enjoining Defendant from committing such unlawful, unfair, and fraudulent business practices, and seek the full amount of money that Plaintiffs and Class members paid for their Net10 service plans, compatible phones, and SIM cards and/or restitutionary disgorgement of profits. Plaintiffs also seek attorneys’ fees and costs under Cal. Code Civ. Proc. § 1021.5.

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COUNT V
Violations of California’s Consumer Legal Remedies Act
California Civil Code §1750 et seq.

143. Plaintiffs reallege and incorporate by reference every allegation set forth in the preceding paragraphs as though alleged in this Count.

144. Defendant is a “person,” as defined by Cal. Civ. Code § 1761(c).

145. Plaintiffs and the Class members are “consumers,” as defined by Cal. Civ. Code §1761(d).

146. The service plans, phones, and SIM cards that Defendant marketed and sold constitute “goods” and “services,” as defined by Cal. Civ. Code §1761(a) and (b).

147. Plaintiffs’ and Class members’ purchases of Net10 service plans, compatible phones, and SIM cards constitute “transactions,” as defined by Cal. Civ. Code § 1761(e).

148. Plaintiffs and Class members purchased Net10 service plans, compatible phones, and SIM cards for personal, family, and household purposes as meant by Cal. Civ. Code § 1761(d).

149. Venue is proper under Cal. Civil Code § 1780(d) because a substantial portion of the transactions at issue occurred in this county. Plaintiffs’ declarations establishing that this Court has proper venue for this action are attached as Exhibit A.

150. Defendant deceived consumers in that Defendant misrepresented that Net10 service plans offered “unlimited” data and also failed to disclose or actively concealed that Defendant would regularly terminate or throttle customers’ data access.

151. Defendant’s misrepresentations, active concealment, and failures to disclose violated the CLRA in the following manner:

a. Defendant misrepresented that Defendant’s Net10 service plans, phones, and SIM cards had characteristics, benefits, or uses that they did not have (Cal. Civ. Code § 1770(a)(5));

1 b. Defendant misrepresented that Defendant’s Net10 service plans, phones,
2 and SIM cards were of a particular standard, quality, and/or grade when they were of another
3 (Cal. Civ. Code § 1770(a)(7));

4 c. Defendant advertised Net10 service plans, phones, and SIM cards with an
5 intent not to sell them as advertised (Cal. Civ. Code § 1770(a)(9));

6 d. Defendant misrepresented that Net10 service plans, phones, and SIM cards
7 conferred or involved rights, remedies, or obligations that they did not have (Cal. Civ. Code
8 § 1770(a)(14));

9 e. Defendant misrepresented that Net10 service plans, phones, and SIM cards
10 were supplied in accordance with previous representations when they were not (Cal. Civ. Code §
11 1770(a)(16));

12 f. Defendant inserted unconscionable provisions in the Net10 Terms and
13 Conditions, including Sections 2, 7, 8, 10, 16, 17, 18, and 20 (Cal. Civ. Code § 1770(a)(19)).

14 152. Defendant’s misrepresentations and nondisclosures regarding Net10 “unlimited”
15 data plans and Defendant’s practice of regularly terminating or throttling customers’ data access
16 were material to Plaintiffs and Class members because a reasonable person would have
17 considered them important in deciding whether or not to purchase the Net10 service plans,
18 phones, and SIM cards, and because Defendant had a duty to disclose the truth.

19 153. Plaintiffs and Class members relied upon Defendant’s material misrepresentations
20 and nondisclosures, and had Plaintiffs and Class members known the truth, they would have
21 acted differently.

22 154. As a direct and proximate result of Defendant’s material misrepresentations and
23 nondisclosures, Plaintiffs and the Class have been irreparably harmed.

24 155. On behalf of the Class, Plaintiffs seek injunctive relief in the form of an order
25 enjoining Defendant from making such material misrepresentations and failing to disclose or
26 actively concealing their practice of terminating or throttling data access. Plaintiffs also seek
27 attorneys’ fees and costs.
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PRAYER FOR RELIEF

1. On behalf of themselves and the Class, Plaintiffs request that the Court order relief and enter judgment against Defendant as follows:

2. An order certifying Plaintiffs' proposed Class and appointing Plaintiffs and their counsel to represent the Class;

3. An order that Defendant is permanently enjoined from Defendant's improper conduct and practices as alleged;

4. A judgment awarding Plaintiffs and Class members restitution, including, without limitation, restitutionary disgorgement of all profits and unjust enrichment that Defendant obtained as a result of Defendant's unlawful, unfair, and fraudulent business practices and conduct;

5. A judgment awarding Plaintiffs and Class members actual damages;

6. A judgment awarding Plaintiffs and Class members exemplary damages for Defendant's knowing, willful, and intentional conduct;

7. Pre-judgment and post-judgment interest;

8. Attorneys' fees, expenses, and the costs of this action; and

9. All other and further relief as this Court deems necessary, just, and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

1 Dated: November 14, 2013

2 Respectfully submitted,

3 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

4
5
6 By: 
7 Michael W. Sobol

8 Michael W. Sobol
9 msobol@lchb.com
10 Nicole D. Reynolds
11 nreynolds@lchb.com
12 LIEFF CABRASER HEIMANN & BERNSTEIN LLP
13 275 Battery Street, 29th Floor
14 San Francisco, CA 94111
15 Telephone: (415) 956-1000

16 Daniel M. Hattis
17 dan@hattislaw.com
18 HATTIS LAW
19 1134 Crane Street, Suite 216
20 Menlo Park, CA 94025
21 Telephone: (650) 980-1990

22 *Attorneys for Plaintiffs*

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Exhibit A

**Lieff
Cabrer
Heimann &
Bernstein**
Attorneys at Law

Lieff Cabrer Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
t 415.956.1000
f 415.956.1008

November 14, 2013

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Frederick J. Pollak, President and CEO
Richard B. Salzman, EVP-General Counsel
TracFone Wireless, Inc.
9700 NW 112 Ave.
Miami, FL 33178

Registered Agent for Service of Process
Corporate Creations Network, Inc.
131-A Stoney Circle, Suite 500
Santa Rosa, CA 95401

Re: Notice of Violation of California Consumer Legal Remedies Act

Dear Mr. Pollak and Mr. Salzman:

We represent Marisha Johnston, Mona Gandhi and Marshall Tietje, who purchased Net10 “unlimited” wireless phone plans. We send this letter under the California Consumers Legal Remedies Act, California Civil Code Section 1750 *et seq.* (“CLRA”), to notify TracFone Wireless, Inc. (“TracFone”) that its practice of advertising Net10 plans as providing “unlimited” data, while also regularly terminating or throttling subscribers’ data when consumers exceed undisclosed data usage limits or arbitrarily at the direction of network carrier partners, violates the CLRA. We demand that TracFone rectify its violations within 30 days of receipt of this letter.

TracFone misrepresents to consumers that its Net10 wireless phone plans offer “unlimited” data access and that consumers may use the data access to operate their smartphones as virtual PCs by browsing the internet, streaming music and videos, or playing video games. In reality, TracFone regularly throttles subscribers’ data speeds or cuts off access to data altogether without notice. TracFone refuses to disclose its data usage caps or explain under what circumstances it might throttle or terminate data access, making the practice all the more unclear and deceptive to consumers.

Moreover, TracFone purports to rely on the Net10 Terms and Conditions of Service when terminating or throttling subscribers’ data, but these terms are never given to or seen by customers and are riddled with vague, contradictory, unconscionable, and illusory terms.

November 14, 2013

Page 2

Relying on TracFone's promise of "unlimited" data, on March 25, 2013, Marisha Johnston purchased a Net10 SIM card for \$15 from a local Kmart store for use with her unlocked LG Android phone. Ms. Johnston also purchased a \$50 "unlimited" Net10 data plan, and signed up for Net10's "auto refill" program. In early June 2013, Mr. Johnston upgraded to an Apple iPhone and received a Net10 AT&T compatible SIM card for use with the phone. Two weeks later, Net10 terminated Ms. Johnston's data without warning. Net10 restored Ms. Johnston's data on June 23, 2013, when she was automatically charged for a new month of service. However, within two weeks of her data being restored, Net10 again terminated her data.

Similarly, advertisements for the Net10 "unlimited" data plan induced Mona Gandhi to purchase a Net10 AT&T compatible SIM card from a local Net10 authorized dealer in February 2013 for \$20. Ms. Gandhi also purchased a \$50 "unlimited" data plan, and signed up for Net10's "auto refill" program. In July 2013, Net10 terminated Ms. Gandhi's data without warning. When Ms. Gandhi called Net10 customer service, she was told that the "unlimited" plan was now capped at 1.5 GB of data, and that her data would not be restored until she purchased another "unlimited" plan.

Net10 advertisements for Net10's "unlimited" data plan likewise induced Marshall Tietje to purchase a Net10 locked CDMA phone for \$69 on or about July 3, 2013, from a local Kmart store. Mr. Tietje also purchased a \$50 "unlimited" Net10 data plan. Three weeks later, on July 26, 2013, Net10 terminated Mr. Tietje's data without warning. Net10 informed Mr. Tietje his data would not be restored until his current plan expired on August 3, 2013.

TracFone's material misrepresentations, active concealment, and failures to disclose violated the CLRA in the following manner:

1. TracFone misrepresented that its Net10 phones, SIM cards, and data plans had characteristics, benefits, or uses that they did not have (Cal. Civ. Code § 1770(a)(5));
2. TracFone misrepresented that its Net10 phones, SIM cards, and data plans were of a particular standard, quality, and/or grade when they were of another (Cal. Civ. Code § 1770(a)(7));
3. TracFone advertised its Net10 phones, SIM cards, and data plans with an intent not to sell them as advertised (Cal. Civ. Code § 1770(a)(9));
4. TracFone misrepresented that its Net10 phones, SIM cards, and data plans conferred or involved rights, remedies, or obligations that they did not have (Cal. Civ. Code § 1770(a)(14));
5. TracFone misrepresented that its Net10 phones, SIM cards, and data plans were supplied in accordance with previous representations when they were not (Cal. Civ. Code § 1770(a)(16));

November 14, 2013

Page 3

6. TracFone inserted unconscionable provisions in the Net10 Terms and Conditions (Cal. Civ. Code § 1770(a)(19)).

We demand that within thirty (30) days of receiving this letter, TracFone agrees to (1) refrain from engaging in the deceptive practices described above at any time in the future; and (2) return all money Net10 “unlimited” subscribers whose data was terminated or throttled paid for Net10 phones, SIM cards, and/or “unlimited” plans. If TracFone refuses to provide the demanded relief within thirty (30) days, we will seek compensatory and punitive damages, restitution, and any other appropriate equitable relief.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael Sobol". The signature is stylized and cursive.

Michael W. Sobol

1140580.1
1140580.1

Exhibit B

1 Michael W. Sobol (State Bar No. 194857)
Nicole D. Reynolds (State Bar No. 246255)
2 LIEFF CABRASER HEIMANN & BERNSTEIN LLP
275 Battery Street, 29th Floor
3 San Francisco, CA 94111
Telephone: (415) 956-1000
4 E-mail: msobol@lchb.com
nreynolds@lchb.com
5

Daniel Hattis (State Bar No. 232141)
6 HATTIS LAW
1134 Crane Street, Suite 216
7 Menlo Park, CA 94025
Telephone: (650) 980-1990
8 E-mail: dan@hattislaw.com

9 *Attorneys for Plaintiff*

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 MONA GANDHI, MARISHA
15 JOHNSTON, and MARSHALL TIETJE,
16 individually and on behalf of all others
similarly situated,

17 Plaintiffs,

18 v.

19 TRACFONE WIRELESS, INC.

20 Defendant.
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Case No. _____

DECLARATION OF MONA GANDHI

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I, Mona Gandhi, hereby declare and state as follows:

1. I am over the age of 18, and a Plaintiff in this action. The facts contained in this declaration are based on my personal knowledge, and if called upon to do so, I could and would testify competently hereto.

2. The complaint in this action, filed concurrently with this declaration, is filed in the proper place for trial under California Civil Code § 1780(d), because this is a county in which the Defendant does business and where a substantial portion of the transactions occurred.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on September 4, 2013, in Hayward California.



Mona Gandhi

1 Michael W. Sobol (State Bar No. 194857)
Nicole D. Reynolds (State Bar No. 246255)
2 LIEFF CABRASER HEIMANN & BERNSTEIN LLP
275 Battery Street, 29th Floor
3 San Francisco, CA 94111
Telephone: (415) 956-1000
4 E-mail: msobol@lchb.com
nreynolds@lchb.com

5 Daniel Hattis (State Bar No. 232141)
6 HATTIS LAW
1134 Crane Street, Suite 216
7 Menlo Park, CA 94025
Telephone: (650) 980-1990
8 E-mail: dan@hattislaw.com

9 *Attorneys for Plaintiff*

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 MONA GANDHI, MARISHA
15 JOHNSTON, and MARSHALL TIETJE,
individually and on behalf of all others
16 similarly situated,

17 Plaintiffs,

18 v.

19 TRACFONE WIRELESS, INC.

20 Defendant.
21
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Case No. _____

**DECLARATION OF MARISHA
JOHNSTON**

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I, Marisha Johnston, hereby declare and state as follows:

1. I am over the age of 18, and a Plaintiff in this action. The facts contained in this declaration are based on my personal knowledge, and if called upon to do so, I could and would testify competently hereto.

2. The complaint in this action, filed concurrently with this declaration, is filed in the proper place for trial under California Civil Code § 1780(d), because this is a county in which the Defendant does business and where a substantial portion of the transactions occurred.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on September 5, 2013, in Hollister California.



Marisha Johnston

1 Michael W. Sobol (State Bar No. 194857)
Nicole D. Reynolds (State Bar No. 246255)
2 LIEFF CABRASER HEIMANN & BERNSTEIN LLP
275 Battery Street, 29th Floor
3 San Francisco, CA 94111
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6 HATTIS LAW
1134 Crane Street, Suite 216
7 Menlo Park, CA 94025
Telephone: (650) 980-1990
8 E-mail: dan@hattislaw.com

9 *Attorneys for Plaintiff*

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 MONA GANDHI, MARISHA
15 JOHNSTON, and MARSHALL TIETJE,
individually and on behalf of all others
16 similarly situated,

17 Plaintiffs,

18 v.

19 TRACFONE WIRELESS, INC.

20 Defendant.
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Case No. _____

DECLARATION OF MARSHALL TIETJE

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I, Marshall Tietje, hereby declare and state as follows:

1. I am over the age of 18, and a Plaintiff in this action. The facts contained in this declaration are based on my personal knowledge, and if called upon to do so, I could and would testify competently hereto.

2. The complaint in this action, filed concurrently with this declaration, is filed in the proper place for trial under California Civil Code § 1780(d), because this is a county in which the Defendant does business and where a substantial portion of the transactions occurred.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on September 8, 2013, in Big Bear Lake California.



Marshall Tietje

JS 44 (Rev. 12/12) and rev (1/15/13)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 MONA GANDHI, MARISHA JOHNSTON, and MARSHALL TIETJE,
 individually and on behalf of all others similarly situated.

(b) County of Residence of First Listed Plaintiff San Benito
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Michael W. Sobol 415-956-1000
 Lieff Cabraser Heimann & Bernstein, LLP
 275 Battery St., 29th Floor, San Francisco, CA 94111

DEFENDANTS
 TRACFONE WIRELESS, INC.

County of Residence of First Listed Defendant _____
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) _____

① 13-5296EDL

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Exclude Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 California Business & Professions Code § 17200 et seq.; Cal. Civ. Code § 1750 et seq.

Brief description of cause:
 Defendants falsely advertise Net 10 cellular phone plans as providing "unlimited" data service.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): _____ JUDGE _____ DOCKET NUMBER _____

DATE: 11/14/2013

SIGNATURE OF ATTORNEY OF RECORD: *[Signature]*

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

EDL

MONA GANDHI, MARISHA JOHNSTON, and
MARSHALL TIETJE, individually and on behalf of all
others similarly situated,

Plaintiff(s)

v.

TRACFONE WIRELESS, INC.

Defendant(s)

CV 13 5296

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Tracfone Wireless, Inc.
Registered Agent for Service of Process
Corporate Creations Network, Inc.
131-A Stoney Circle, Suite 500
Santa Rosa, CA 95401

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael W. Sobol
LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
275 Battery St., 29th Floor
San Francisco, CA 94111

Daniel M. Hattis
HATTIS LAW
1134 Crane Street, Suite 216
Menlo Park, CA 94025

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

RICHARD W. WIEKING
CLERK OF COURT

Date: NOV 14 2013

ANNA SPRINKLES
Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: