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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15
16 MARCUS A. ROBERTS, KENNETH A.
CHEWEY AND ASHLEY M. CHEWEY,
17 on behalf of themselves and all others
similarly situated,

18 Plaintiffs,

19 v.

20 AT&T MOBILTY LLC,

21 Defendant.
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Case No. 3:15-cv-3418

CLASS ACTION

**ORIGINAL COMPLAINT FOR:
VIOLATION OF BUSINESS &
PROFESSIONS CODE § 17200;
VIOLATION OF BUSINESS &
PROFESSIONS CODE § 17500;
VIOLATION OF THE CONSUMER LEGAL
REMEDIES ACT (“CLRA”), CALIFORNIA
CIVIL CODE §1750, *ET SEQ*;
NEGLIGENT MISREPRESENTATION;
MISREPRESENTATION;
FRAUDULENT CONCEALMENT;
BREACH OF EXPRESS WARRANTY; AND
UNJUST ENRICHMENT.**

JURY TRIAL DEMANDED

1 Plaintiffs Marcus A. Roberts, Kenneth A. Chewey and Ashley M. Chewey, on behalf of
2 themselves and all others similarly situated, file this Class Action Complaint against Defendant
3 AT&T Mobility LLC and for their causes of action respectfully allege as follows:

4 **INTRODUCTION**

5 1. Plaintiffs bring this action on behalf of themselves and all other similarly situated
6 consumers who have been harmed by Defendant’s deceptive and unfair trade practice of
7 marketing its wireless service plans as being “unlimited,” when in fact those plans are subject to a
8 number of limiting conditions that either are not disclosed or inadequately disclosed to
9 consumers.

10 2. Defendant lured consumers into purchasing smartphones, wireless data cards and
11 mobile service plans by aggressively promoting “unlimited” data service plans without
12 disclosing, or adequately disclosing, that its so-called “unlimited” plans are actually limited.
13 Defendant failed to disclose to consumers, including Plaintiffs and the Class, that it “throttles”
14 (*i.e.*, intentionally slows) the data speed on cellular phones or wireless cards when the consumer
15 has approached or exceeded Defendant’s internally proscribed data usage limits. These internally
16 proscribed data usage thresholds are not adequately disclosed to consumers.

17 3. Defendant’s throttling practices alleged herein have the effect of significantly
18 limiting consumers’ access to data and services, rendering internet access and other wireless
19 functions on their phones difficult or impossible, and thus unreasonably interfering with the
20 supposedly “unlimited” service that the consumers paid for.

21 4. Defendant’s throttling of the data speed of its unlimited data plan customers is of
22 such a degree that consumers, including Plaintiffs and the Class, are effectively unable to access
23 data for the remainder of a billing cycle.

24 5. As a result of Defendant’s deceptive and material representations, bad faith, and
25 unfair and unlawful conduct alleged herein, Plaintiffs and members of the proposed Class have
26 suffered damages, including, without limitation, payment for services that were not as advertised.

27 6. Plaintiffs bring this action on behalf of themselves and other similarly situated
28 consumers who have purchased the products or services identified herein so as to halt the

1 dissemination of deceptive and misleading advertising, to correct the deceptive and misleading
2 perception Defendant has created in the minds of consumers, and to obtain redress for those
3 consumers who have purchased AT&T “unlimited” data service plans. Plaintiffs seek injunctive
4 and monetary relief for themselves and the proposed Class.

5 **THE PARTIES**

6 7. Plaintiff Marcus A. Roberts is a citizen and resident of San Mateo County,
7 California.

8 8. Plaintiffs Kenneth A. Chewey and Ashley M. Chewey are citizens and residents of
9 Placer County, California.

10 9. Defendant AT&T Mobility LLC is a Delaware limited liability company with its
11 principal office or place of business at 1025 Lenox Park Boulevard NE, Atlanta, GA 30319.
12 AT&T Mobility LLC transacts or has transacted business in this district and throughout the
13 United States.

14 10. Whenever reference in this Complaint is made to any act of Defendant, or other
15 corporate Defendant as may be named in the future, the allegation shall be deemed to mean that
16 the officers, directors, agents, representatives, subsidiaries, affiliates and employees of the
17 Defendant did or authorized the act while actively engaged in the management, direction, or
18 control of the affairs of the corporate Defendant, and while acting within the course and scope of
19 their employment.

20 **JURISDICTION AND VENUE**

21 11. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) in that the
22 amount in controversy, exclusive of interest and costs, exceeds the sum of value of \$5,000,000,
23 and this is a class action in which there are members of the proposed Class who are citizens of a
24 state different from Defendant.

25 12. Venue is proper pursuant to 28 U.S.C. §1391 in that Plaintiff Marcus Roberts
26 resides in this District; many of the acts and transactions giving rise to this action occurred in this
27 District; Defendant is authorized to conduct business in this District, has intentionally availed
28 itself of the laws and markets within this District through distribution and sale of its products in

1 this District, does substantial business in this District, and is subject to personal jurisdiction in
2 this District.

3 **GENERAL ALLEGATIONS**

4 **A. Defendants Falsely Advertises Certain Service Plans as Providing** 5 **“Unlimited” Data.**

6 13. Defendant markets and sells wireless service plans to 121.8 million subscribers in
7 the United States. Such service plans include wireless data, allowing subscribers to use their
8 phones to browse websites, send and receive emails, use smartphone applications, watch videos
9 and stream music, and use GPS navigation.

10 14. Prior to 2010, Defendant offered service plans that purported to include
11 “unlimited” data. Defendant aggressively promoted its “unlimited” plan in order to capture the
12 burgeoning smartphone market. Between 2007 and 2010, AT&T was the sole service plan
13 provider for the Apple iPhone and, upon information and belief, Defendant’s offer of an
14 unlimited data plan was a requirement of its deal with Apple.

15 15. Defendants’ advertising and packaging of its phones and “unlimited” service plans
16 featured the word “unlimited” in prominent font. Examples of Defendant’s advertisements and
17 representations regarding its “unlimited” data plans include the following:

18 **AT&T Plans for iPhone**

19 To use iPhone, you’ll need to sign up for a 2-year service agreement or a renewed 2-year service agreement if you are already an AT&T customer. Plans start at \$59.99 and include Visual Voicemail, Unlimited Data (email and web) and 200 SMS text messages—for use in the U.S. You can add more text messages for a little more a month. You can browse the internet and send emails as often as you like without being charged extra.

20 **AT&T Nation™**

All plans include:

	All plans include: Unlimited Data (Email/Web) Visual Voicemail 200 Text Messages Rollover* Unlimited Mobile to Mobile			
Anytime Minutes	450	900	1350	UNLIMITED
Night & Weekend Minutes	5000	UNLIMITED	UNLIMITED	—
Additional Minutes	.45C	.40C	.35C	N/A
Per Month	\$59.99	\$79.99	\$99.99	\$119.99

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AT&T Nation

	\$59.99	\$79.99	\$99.99	\$119.99	\$169.99	\$219.99
Minutes	450	900	1350	2000	4000	6000
Unlimited Data (email/web)	✓	✓	✓	✓	✓	✓
Visual Voicemail	✓	✓	✓	✓	✓	✓
SMS Text Messaging	200	200	200	200	200	200
Night & Weekend Minutes	5000	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
Rollover Minutes*	✓	✓	✓	✓	✓	✓
Unlimited Mobile to Mobile	✓	✓	✓	✓	✓	✓
Additional Minutes	45¢/min	40¢/min	35¢/min	25¢/min	25¢/min	20¢/min

INCLUDED FEATURES: Nationwide Long Distance and Roaming, Voicemail, Call Forwarding, Call Waiting, 3-Way Calling and Caller ID.

AT&T Plans for iPhone 3G (U.S. Coverage Packages)

AT&T Nation™

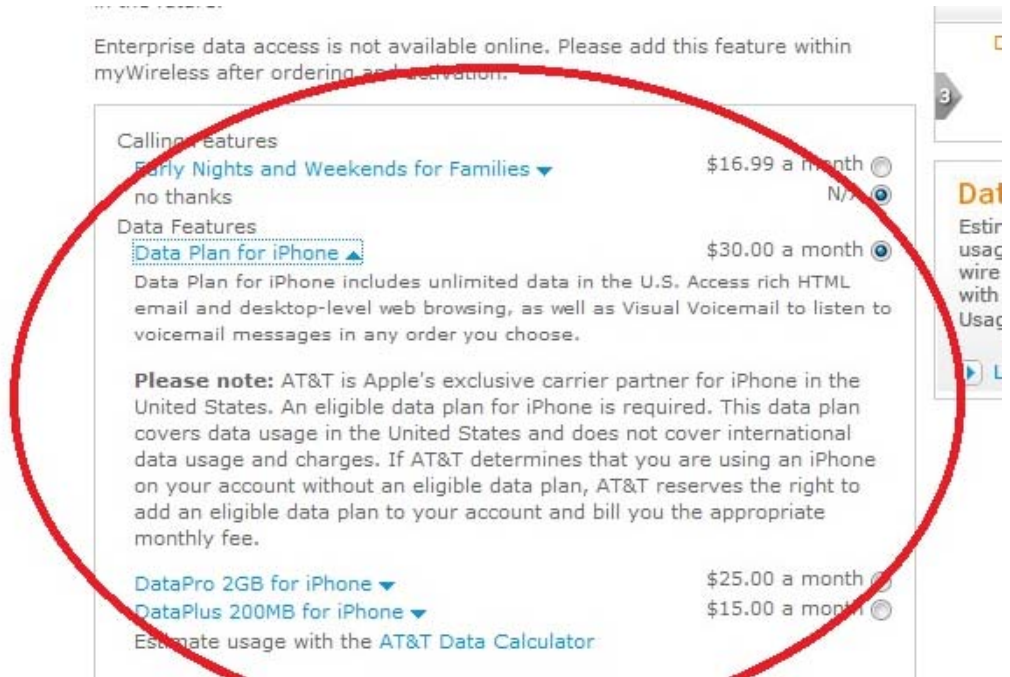
	UNLIMITED Data (Email/Web) Visual Voicemail Rollover* UNLIMITED Mobile to Mobile			UNLIMITED UNLIMITED Data (Email/Web) Visual Voicemail
Anytime Minutes	450	900	1350	UNLIMITED
Night & Weekend Minutes	5000	UNLIMITED	UNLIMITED	—
Additional Minutes	.45¢	.40¢	.35¢	N/A
Per Month	\$69.99	\$89.99	\$109.99	\$129.99

AT&T FamilyTalk™

Includes 2 Lines

	UNLIMITED Data (Email/Web) Visual Voicemail Rollover* UNLIMITED Mobile to Mobile UNLIMITED Nights & Weekends						UNLIMITED UNLIMITED Data (Email/Web) Visual Voicemail
Shared Anytime Minutes	700	1400	2100	3000	4000	6000	UNLIMITED
Additional Minutes	.45¢	.40¢	.35¢	.25¢	.20¢	.20¢	N/A
Per Month	\$129.99	\$149.99	\$169.99	\$209.99	\$259.99	\$359.99	\$259.99
Additional iPhone Line	\$39.99 per line (up to 3 additional lines).						\$129.99

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16. While Defendant stopped offering the “unlimited” plan in June 2010, it allowing existing subscribers to the unlimited plan to be “grandfathered” into those plans, expressly representing that such subscribers would continue to enjoy “unlimited” data.

17. Defendant made this offer in the hopes that its “unlimited” subscribers would not switch to another service plan provider. Thus was particularly important to Defendant when, in 2011, it ceased to be the sole service provider for the Apple iPhone and given that many competing smartphones offered by competing service providers had been introduced in the market by that time.

18. Defendant’s offer was effective: upon information and belief, millions of subscribers kept their unlimited plans rather than switching to a new plan. In fact, these subscribers value their purportedly “unlimited” data so much that they continually elect to forego opportunities to receive phone upgrades for little or no cost. Accepting such phone upgrade offers often require customers to give up their “unlimited” data plans. Defendant’s “unlimited” data promise is thus material to consumers.

19. In stark contrast to the representations in makes to its “unlimited” data subscribers, Defendant discloses the exact monthly allotment of data that subscribers will be able to use (*e.g.*,

1 3 GB) with respect to their “tiered” mobile data plans. Defendant also states that additional fees
2 will apply if a subscriber exceeds the monthly allowance.

3 **B. Defendant Imposes Secret Data Caps on and Regularly Throttles “Unlimited”**
4 **Subscribers’ Service Plans.**

5 20. Despite its representations that “unlimited” plan subscribers would continue to
6 have access to “unlimited” data, in 2011, Defendant began to “throttle” (*i.e.* slow down) the data
7 speed, usually without warning, once those subscribers exceed secret data usage caps. The speeds
8 at which Defendant throttles its subscribers are so slow that they are unable to use their phones
9 for certain intended and advertised purposes, such as streaming video or music or even browsing
10 webpages.

11 21. Defendant throttles its customers once they reach the secret data usage caps no
12 matter if Defendant’s network is not congested at the time and is capable of handling the
13 customers’ data usage at regular speeds.

14 22. Once throttled, customers’ data speeds remain throttled until the next month.

15 23. Defendant initially had different data usage caps applicable to residents of
16 different cities. In some places, Defendant’s data usage cap was as low as 2GB.

17 24. Beginning in 2012, Defendant implemented a secret data usage cap of 3GB for all
18 devices using Defendant’s 3G network (e.g., iPhone 3G, 3GS, 4) and HSPA+ network (e.g.,
19 iPhone 4S), and 5 GB per billing cycle for devices using Defendant’s LTE network (e.g., iPhone
20 5, 5S, 6, 6 Plus).

21 **C. Defendant does Not Adequately Disclose its Throttling Practice or Secret**
22 **Data Usage Caps to its “Unlimited” Subscribers.**

23 25. Defendants’ marketing of its unlimited mobile data plans—both prior to and after
24 Defendant transitioned to offering tiered plans to new customer—has failed to disclose
25 Defendant’s throttling practices, and indeed the limits applied pursuant to Defendant’s throttling
26 practices are wholly inconsistent with Defendant’s repeated and emphasized representations that
27 its unlimited mobile data plans are “unlimited.”
28

1 26. Defendant fails to adequately disclose its data usage limits to customers or to
2 disclose the extremely slow speeds at which customers will be throttled and how that will impact
3 their data service.

4 27. Defendant's Wireless Customer Agreement applicable to all service plans,
5 including "unlimited" data plans, does not disclose its data usage caps applicable to "unlimited"
6 subscribers or its practice of throttling. Instead, it merely prohibits the usage of data for certain
7 activities, such as tethering phones to a computing device so that the computing device may use
8 the phones' data.

9 28. The only disclosure Defendant made regarding throttling prior to implementing its
10 throttling practice was the following brief statement included in some customers' July or August
11 2011 monthly bill:

12 **Important Update for Unlimited Data Plan Customers**

13 To provide the best possible network experience, starting 10/01/11,
14 smartphone customers with unlimited data plans whose usage is in
15 the top 5% of users can still use unlimited data but may see reduced
16 data speeds for the rest of their monthly billing cycle. We'll alert
 you if you near the top 5%. To avoid slowed speeds you may use
 Wi-Fi or choose a tiered data plan. Details @ att.com/dataplans.

17 29. This statement does not adequately disclose or even truthfully describe
18 Defendant's throttling practice. It misrepresents that only the top 5% of users will be throttled,
19 when in fact any user that exceeds Defendant's secret data caps of 3GB or 5GB will be throttled.
20 It also misrepresents that Defendant will alert customers as they reach those data limits, when it
21 often throttles customers without ever alerting them to the fact. Further, it fails to disclose the
22 speeds at which customers' data will be reduced and how such speeds will impact customers'
23 ability to use data.

24 30. On its website, under the heading "Info for smartphone customers with legacy
25 unlimited data plans," Defendant continues to mislead customers to this day about the nature of
26 its throttling practice:

27 In line with common industry standards, we have implemented
28 network management practices to assure that our network resources
 are used for the benefit of all our mobile broadband customers

1 especially during periods when network demand exceeds available
2 network resources (also known as "congestion").

3 One such practice applies when a minority of smartphone
4 customers on unlimited data plans using 3G, 4G, or 4G LTE
5 smartphones exceed certain data usage thresholds in a billing period
6 (3GB for 3G/4G smartphones and 5GB for 4G LTE smartphones).
7 When affected by this practice, these customers *may* experience
8 reduced data speeds and increased latency *during periods of*
9 *congestion* as compared to other customers using the same cell site.
10 (emphasis added).

11 31. Instead of truthfully disclosing the exact nature of its throttling practice,
12 Defendant's website "disclosure" implies that any throttling "might" occur during periods of
13 network congestion, when in fact Defendant *always* throttles "unlimited" subscribers' data once
14 they exceed the data thresholds regardless of whether the network is congested at the time.

15 32. Even the few text messages or emails that Defendant sends to some subscribers as
16 they approach or exceed the secret data usage caps not adequately disclose Defendant's throttling
17 practice. They do not disclose the secret data caps or the speeds at which subscribers will be
18 throttled.

19 33. Defendant's "unlimited" misrepresentations and its failure to adequately disclose
20 its secret data caps and throttling practice was, and is, a deceptive act or practice. In making and
21 disseminating the statements regarding its "unlimited" data plans as alleged herein, Defendant
22 should have known that its advertisements were untrue, deceptive and misleading.

23 **D. Defendant's Practice of Throttling "Unlimited" Subscribers' Data is**
24 **Contrary to those Subscribers' Expectations.**

25 34. Reasonable consumers are likely to be misled by Defendant's promise of
26 "unlimited" data, particularly in combination with Defendant's advertisements that encourage
27 customers to use smartphones and data plans in typical ways such as browsing the internet,
28 streaming or downloading music and videos, running apps, and using GPS navigation.

31 35. Once customers discover the truth about Defendants' "unlimited" plans, customers
32 are outraged by Defendants' lies and bad faith practices. Thousands of customers have
33 complained to Defendant and have submitted complaints to third party consumer protection
34 entities such as the Better Business Bureau and consumeraffairs.com.

1 36. Upon information and belief, Defendant has conducted internal research and focus
2 groups revealing that customers believe the word “unlimited” to mean no restrictions on data, and
3 that Defendant’s practice of throttling data is inconsistent with its “unlimited” representations.
4 Nevertheless, Defendant continues to represent that its “unlimited” plans provide unlimited data.

5 37. The imposition of data usage thresholds and speed reductions is antithetical to the
6 term “unlimited.” Defendant was aware that its continued use of the word “unlimited” to
7 describe its data plans was likely to, and did, mislead and deceive consumers.

8 **E. Defendant Faces a \$100 Million Fine from the FCC for Misleading**
9 **Consumers Regarding “Unlimited” Data.**

10 38. In a Notice of Apparent Liability for Forfeiture and Order adopted June 3, 2015
11 (“NAL”)¹, the Federal Communications Commission (“FCC”) found that Defendant:

12 a. [used] the misleading and inaccurate term “unlimited” to label a data plan
13 that was in fact subject to prolonged speed reductions after a customer used a set amount of data;
14 and

15 b. [failed] to disclose the express speed reductions that it applied to
16 “unlimited” data plan customers once they hit a specified data threshold.

17 39. In the NAL, the FCC further stated that any disclosures of such practice by
18 Defendant were insufficient to overcome the misleading and inaccurate statements about the
19 unlimited plan and, as a result, consumers were deprived “of sufficient information to make
20 informed choices about their broadband service.”

21 40. The NAL imposes on Defendant liability for forfeiture “in the amount of one
22 hundred million dollars (\$100,000,000) for willful and repeated violations of Section 8.3 of the
23 Commission’s rules, 47 C.F.R. § 8.3.”

24 **F. Defendant’s Goal in Throttling is to Encourage Customers to Switch to**
25 **Limited Plans in Order to Make More Money.**

26 41. Defendant’s goal in implementing its throttling program is to make more money.
27 Ultimately, it desires to push grandfathered subscribers off of the “unlimited” plans onto the

28 ¹ <https://www.fcc.gov/document/att-mobility-faces-100m-fine-misleading-consumers-0>

1 “tiered” service plans that are either more expensive than the grandfathered plans or that hit
2 subscribers with overage fees once they exceed the set data thresholds.

3 42. As one article noted, “unlimited” plan subscribers were faced with the choice of
4 continuing to “pay \$30 for ‘unlimited’ service where you’re actually only getting 2 GB of data
5 before your phone becomes useless, or sign up for a 3GB tier for the same price so you’re in line
6 to get socked with the usage overages of tomorrow.” *See*
7 <http://www.dslreports.com/shownews/118235> (last accessed on 7/22/15).

8 43. Defendant’s goal is exemplified by certain unfair practices Defendant imposes
9 only on its “unlimited” plan subscribers. For example, Defendant restricts the popular iPhone
10 application FaceTime—which allows telephone calls via video—such that it may be used only
11 over Wi-Fi, and not over its cellular network, for “unlimited” subscribers. In contrast,
12 Defendant’s tiered plan subscribers are allowed to access Defendant’s cellular network when
13 using FaceTime.

14 44. In addition, Defendant does not throttle its tiered plan subscribers’ data at any
15 time. Indeed, Defendant continues to throttle “unlimited” plan subscribers at secret data caps of
16 3GB or 5GB even though it offers tiered service plans with up to 50GBs of data per month.

17 45. Defendant profits from misleading consumers about its “unlimited” service plans
18 and throttling “unlimited” subscribers’ data in numerous ways. By representing its plans as
19 encompassing “unlimited” data, Defendant is able to induce customers into keeping their
20 “unlimited” plans rather than switching to a different service provider. In addition, Defendant has
21 induced customers to switch to tiered plans to avoid throttling, which often either cost more
22 money (depending on the amount of data provided for in the plan) or which come with overage
23 charges once a customer exceeds the data limits subject to those plans. Further, Defendant has
24 collected substantial early termination fees from “unlimited” subscribers who cancelled service
25 after being throttled.

26 46. Plaintiffs and Class Members have been damaged, including by paying for
27 products and services which were not delivered as represented, and by paying more than they
28 otherwise would have paid.

1 **INAPPLICABLE OR UNENFORCEABLE ARBITRATION CLAUSE**

2 47. Section 2 of Defendant’s Wireless Customer Agreement purports to require that
3 certain disputes be individually arbitrated. Section 2 is unenforceable because it is substantively
4 and procedurally unconscionable and/or is against public policy.

5 48. To the extent that Defendant asserts that Plaintiffs’ and Class members’ claims are
6 subject to an arbitration agreement or a class action waiver, Plaintiffs and the Class seek
7 declaratory relief in the form of a finding that such a purported arbitration agreement is void and
8 unenforceable.

9 **CLASS ACTION ALLEGATIONS**

10 49. As detailed below in the individual counts, Plaintiffs bring this lawsuit on behalf
11 of themselves and all others similarly situated, pursuant to Rule 23(a), (b)(2) and (b)(3) of the
12 Federal Rules of Civil Procedure.

13 50. Plaintiffs seek to represent the following “Class”:

14 All consumers in the United States who purchased an unlimited
15 data plan from AT&T Mobility LLC and whose data usage was
throttled prior to the expiration of the plan.

16 51. Plaintiffs also seek to represent the following “California Subclass”:

17 All consumers residing in California who purchased an unlimited
18 data plan from AT&T Mobility LLC and whose data usage was
throttled prior to the expiration of the service plan.

19 Excluded from the above Class and California Subclass are Defendant and its officers,
20 directors and employees.

21 52. ***Numerosity.*** Members of the Class and California Subclass are so numerous that
22 joinder of all members is impracticable. While the exact number of class members remains
23 unknown at this time, upon information and belief, there are at least hundreds of thousands of
24 putative Class members throughout the United States and at least hundreds of thousands of
25 California Subclass members.

26 53. ***Existence and Predominance of Common Questions of Law and Fact.*** This
27 action involves common questions of law and fact, which predominate over any questions
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1 affecting individual Class or California Subclass members. These common legal and factual
2 questions include, but are not limited to, the following:

3 a. whether Defendant's conduct described herein violates the California
4 Business & Professions Code § 17200 and/or § 17500, *et. seq.*;

5 b. whether Defendant's marketing of its service plans as being "unlimited"
6 constitutes deceptive and unfair trades practice in violation of the California Business &
7 Professions Code § 17200 and § 17500, *et. seq.*;

8 c. whether Defendant breached its express warranties with Plaintiffs and the
9 Class and California Subclass;

10 d. whether Defendant has been unjustly enriched to the detriment of Plaintiffs
11 and the Class and California Subclass;

12 e. whether Plaintiffs and the Class and California Subclass have sustained
13 damages as a result of the conduct alleged herein and, if so, what is the proper measure of such
14 damages;

15 f. whether Plaintiffs and the Class and California Subclass are entitled to
16 restitution and, if so, what is the proper measure of restitution; and

17 g. whether Plaintiffs and Class and California Subclass members are entitled
18 to declaratory and injunctive relief.

19 54. **Typicality.** Plaintiffs' claims are typical of the claims of the members of the Class
20 and California Subclass because, *inter alia*, all Class and California Subclass members were
21 injured through the common misconduct described above and were subject to Defendant's
22 deceptive "unlimited" data plan representations. Plaintiffs are advancing the same claims and
23 legal theories on behalf of themselves and all members of the Class and California Subclass.

24 55. **Adequacy of Representation.** Plaintiffs will fairly and adequately protect the
25 interests of the members of the Class and California Subclass. Plaintiffs have retained counsel
26 experienced in complex consumer class action litigation, and Plaintiffs intend to prosecute this
27 action vigorously. Plaintiffs have no adverse or antagonistic interests to those of the Class and
28 California Subclass.

1 his data usage would be throttled when he reached a particular data usage threshold. Plaintiff
2 Marcus Roberts did not view, nor was he aware of, any arbitration agreements or class action ban
3 as part of his purchase and use of the iPhone 3G and the “unlimited” data plan.

4 60. Plaintiff Marcus Roberts read and relied on, in purchasing his iPhone 3G,
5 subsequent versions of the iPhone, and unlimited data plan, Defendant’s representations that the
6 plan would provide “unlimited” data service.

7 61. In approximately 2012, Plaintiff Marcus Roberts began noticing that by
8 approximately the middle of the month his internet connection was much slower and his ability to
9 download was hampered severely. He believed the slowed speed was due to overall service
10 issues by Defendant, as his friends with service through other carriers seemingly had faster
11 service.

12 62. From 2008 – 2014, Plaintiff Marcus Roberts upgraded to newer versions of the
13 iPhone. Each such time, Defendant offered to “grandfather” him in, allowing him the opportunity
14 to continue with his unlimited mobile data plan, rather than requiring him to switch to
15 Defendant’s tiered mobile data plans required for new customers. In making these subsequent
16 device purchases and in continuing to subscribe to the unlimited data plan through Defendant,
17 Plaintiff Marcus Roberts continued to rely on Defendant’s representation that the data plan was
18 “unlimited.”

19 63. After he experienced slowed data speeds in 2012, Plaintiff Marcus Roberts
20 continued experiencing slowed data speeds with that phone and with the subsequent versions of
21 the iPhone that he purchased.

22 64. On or about July 6, 2015, Plaintiff Marcus Roberts received a text stating that he
23 had used 75% of his allotted 5GB of data usage and that he may experience reduced speeds when
24 using data services. This text was the first such notice he had received from Defendant.

25 65. Upon receipt of this text, Plaintiff Marcus Roberts called Defendant to question
26 why he had received such a message given that he had purchased an “unlimited” data plan.
27 Defendant’s representative on the phone told him, for the first time, that, even though he had an
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1 “unlimited” data plan, his data usage was actually restricted in that it would be throttled when he
2 reached 5GB of data usage..

3 66. Defendant failed to adequately advise Plaintiff Marcus Roberts of the limits that
4 Defendant’s throttling program imposed on his supposedly unlimited mobile data plan.

5 67. When Plaintiff Marcus Roberts purchased and renewed his “unlimited” data plan
6 with Defendant, he reasonably believed that he would have unlimited data service, and not be
7 subject to data usage restrictions or throttling when he reached an internally-mandated data usage
8 threshold..

9 68. Plaintiff Marcus Roberts was harmed by Defendant’s misleading representations
10 and omissions, including by paying for products and services that were not as advertised and by
11 paying more for his products and services than he otherwise would have paid.

12 **Plaintiffs Kenneth and Ashley Chewey**

13 69. Plaintiffs Kenneth and Ashley Chewey were existing customers of Defendant
14 when they purchased an iPhone 3G with a family share plan with “unlimited” data in
15 approximately late 2009.

16 70. Prior to making their purchase, Plaintiffs Kenneth and Ashley Chewey had viewed
17 and heard advertisements for the unlimited data plan sold with the iPhone. All of the
18 advertisements indicated that with the family share plan, they would receive “unlimited” data
19 without restriction. There was no indication that their data usage would be throttled when they
20 reached a particular data usage threshold. Plaintiffs Kenneth and Ashley Chewey did not view,
21 nor were they aware of, any arbitration agreements or class action ban as part of their purchase
22 and use of the iPhone 3G and the “unlimited” data family share plan.

23 71. Plaintiffs Kenneth and Ashley Chewey read and relied, in purchasing their iPhone
24 3G and family share plan with unlimited data, on Defendant’s representations that the plan would
25 provide “unlimited” data service.

26 72. In approximately 2011, Plaintiffs Kenneth and Ashley Chewey began noticing that
27 by around the middle of the month, their internet connection for their iPhone was significantly
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1 slower, to the point where their ability to access the internet using the device was hampered
2 severely.

3 73. After Plaintiff Kenneth Chewey noticed this slowing, he called Defendant to
4 inquire about the issue. He was told by a representative for Defendant that the problem was due
5 to his being in a high congestion area or his attempting to access the internet during a congested
6 time of day. The representative affirmatively stated to Plaintiff Kenneth Chewey that the problem
7 was not due to throttling by Defendant.

8 74. Subsequent to the conversation with Defendant's customer service representative,
9 the data service for Plaintiffs Kenneth and Ashley Chewey has slowed on other occasions,
10 including sometimes to the point that there is no internet connection at all.

11 75. Each time they have renewed their service plan with Defendant, they have chosen
12 to continue to have an unlimited data plan instead of a tiered data plan. In continuing to subscribe
13 to the unlimited data plan through Defendant, Plaintiffs Kenneth and Ashley Chewey continued
14 to rely on Defendant's representation that the data plan was "unlimited."

15 76. On or about July 7, 2015, only seven (7) days into the current billing cycle,
16 Plaintiff Kenneth Chewey received two text messages stating that he was reaching a data usage
17 limit. This message was confusing to him, because he had understood from Defendant's
18 representations that his data service was unlimited pursuant to his "unlimited" plan.

19 77. When Plaintiffs Kenneth and Ashley Chewey purchased and renewed their family
20 share plan with "unlimited" data, they reasonably believed that they would have unlimited data
21 service, and not be subject to data usage restrictions or throttling when they reached an internally-
22 mandated data usage threshold.

23 78. Plaintiffs Kenneth and Ashley Chewey were harmed by Defendant's misleading
24 representations and omissions, including by paying for products and services that were not as
25 advertised and by paying more for their products and services than they otherwise would have
26 paid.

FIRST CAUSE OF ACTION

(Violation of Business & Professions Code § 17200 *et seq.*)
(On Behalf of the California Subclass)

79. Plaintiffs incorporate by reference all allegations set forth in this Class Action Complaint as though fully set forth herein.

80. Plaintiffs assert this cause of action on behalf of themselves and the California Subclass.

81. California Business & Professions Code § 17200 *et seq.* prohibits unfair competition that is any unfair, unlawful, or a fraudulent business practice.

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

83. Defendant’s practice of regularly throttling customers’ “unlimited” data violated the “unfair” prong of the UCL because it was immoral, unethical, oppressive, unscrupulous, unconscionable, and/or substantially injurious to Plaintiffs and California Subclass 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.

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

85. Defendant’s misrepresentations and nondisclosures deceive or have a tendency to deceive the general public.

86. Defendant’s misrepresentations and nondisclosures are material, in that a reasonable person would attach importance to the information and would be induced to act on the information in making purchase decisions.

1 94. Defendant's misrepresentations and nondisclosures are material, in that a
2 reasonable person would attach importance to the information and would be induced to act on the
3 information in making purchase decisions.

4 95. Plaintiffs and the California Subclass members reasonably relied on Defendant's
5 material misrepresentations and nondisclosures, and would not have purchased, or would have
6 paid less money for, Defendant's service plans, phones and other products had they known the
7 truth.

8 96. As a direct and proximate result of Defendant's conduct, Plaintiffs and the
9 California Subclass members lost money or property.

10 97. Defendant's conduct caused substantial injury to Plaintiffs and California Subclass
11 members. Accordingly, Plaintiffs seek an order enjoining Defendant from committing such
12 practices, and seek the full amount of money that Plaintiffs and California Subclass members paid
13 for Defendant's service plans, phones, and other products and/or restitutionary disgorgement of
14 profits. Plaintiffs also seek attorneys' fees and costs under Cal. Code Civ. Proc. § 1021.5.

15 **THIRD CAUSE OF ACTION**

16 (Violation of the Consumer Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*)
17 (On Behalf of California Subclass)

18 98. Plaintiffs incorporate by reference all allegations set forth in this Class Action
19 Complaint as though fully set forth herein.

20 99. Plaintiffs assert this cause of action on behalf of themselves and the California
21 Subclass.

22 100. Defendant is a "person" within the meaning of Civil Code §§1761(c).

23 101. Plaintiffs and the California Subclass members are "consumers," as defined by
24 Cal. Civ. Code §1761(d).

25 102. The data service plans, phones, and other products that Defendant marketed and
26 sold constitute "goods" and "services," as defined by Cal. Civ. Code §1761(a) and (b).

27
28

1 103. Plaintiffs' and California Subclass members' purchases of Defendant's service
2 plans, phones, and other products constitute "transactions," as defined by Cal. Civ. Code
3 § 1761(e).

4 104. Plaintiffs and California Subclass members purchased Defendant's service plans,
5 phones, and other products for personal, family, and household purposes as meant by Cal. Civ.
6 Code § 1761(d).

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

10 106. Defendant deceived consumers in that it misrepresented that its service plans
11 offered "unlimited" data and also failed to disclose or actively concealed that it would regularly
12 throttle customers' data.

13 107. Defendant's misrepresentations, active concealment, and failures to disclose
14 violated the CLRA in the following manner:

15 a. Defendant misrepresented that its service plans, phones, and other products
16 had characteristics, benefits, or uses that they did not have (Cal. Civ. Code § 1770(a)(5));

17 b. Defendant misrepresented that its service plans, phones, and other products
18 were of a particular standard, quality, and/or grade when they were of another (Cal. Civ. Code
19 § 1770(a)(7));

20 c. Defendant advertised its service plans, phones, and other products with an
21 intent not to sell them as advertised (Cal. Civ. Code § 1770(a)(9));

22 d. Defendant misrepresented that its service plans, phones, and other products
23 conferred or involved rights, remedies, or obligations that they did not have (Cal. Civ. Code
24 § 1770(a)(14));

25 e. Defendant misrepresented that its service plans, phones, and other products
26 were supplied in accordance with previous representations when they were not (Cal. Civ. Code
27 § 1770(a)(16));
28

1 f. Defendant inserted unconscionable provisions in its consumer agreements,
2 including an arbitration clause with a class action waiver provision, in violation of §1770(a)(19).

3 108. Defendant's misrepresentations and nondisclosures regarding its "unlimited" data
4 plans and its practice of regularly throttling customers' data were material to Plaintiffs and
5 California Subclass members because a reasonable person would have considered them important
6 in making purchase decisions and because Defendant had a duty to disclose the truth.

7 109. Plaintiffs and California Subclass members reasonably relied upon Defendant's
8 material misrepresentations and nondisclosures, and would not have purchased, or would have
9 paid less money for, Defendant's service plans, phones and other products had they known the
10 truth.

11 110. As a direct and proximate result of Defendant's material misrepresentations and
12 nondisclosures, Plaintiffs and the California Subclass have been irreparably harmed.

13 111. On behalf of the California Subclass, Plaintiffs seek injunctive relief in the form of
14 an order enjoining Defendant from making such material misrepresentations and failing to
15 disclose or actively concealing its practice of throttling customers' data. Plaintiffs also seek
16 attorneys' fees and costs.

17 112. In accordance with Cal. Civ. Code § 1782(a), on July 23, 2015, 2015, Plaintiffs'
18 counsel served Defendant with notice of their CLRA violations by certified mail, return receipt
19 requested. A true and correct copy of that notice is attached as Exhibit B.

20 113. If Defendant fails to provide appropriate relief for their CLRA violations within 30
21 days of Plaintiffs' notification letter, Plaintiffs will amend this complaint to seek compensatory
22 and exemplary damages as permitted by Cal. Civ. Code §§ 1780 and 1782(b).

23 **FOURTH CAUSE OF ACTION**

24 (Negligent Misrepresentation)
25 (On Behalf of the Class)

26 114. Plaintiffs incorporate by reference all allegations set forth in this Class Action
27 Complaint as though fully set forth herein.

28 115. Plaintiffs assert this cause of action on behalf of themselves and the Class.

1 116. During the relevant time period of this lawsuit, Defendant made express
2 statements that the wireless data plans purchased by Plaintiffs and members of the Class were
3 “unlimited.”

4 117. Defendant used false and misleading statements to induce customers, to purchase
5 “unlimited” data plans.

6 118. Plaintiffs and members of the Class justifiably relied upon Defendant’s false and
7 misleading statements or omissions in deciding whether to purchase Defendant’s wireless data
8 plans, phones and other products during the relevant time period of this lawsuit.

9 119. As a direct and proximate result of the above described practices, Plaintiffs and
10 members of the Class sustained damages in an amount to be proven at trial.

11 **FIFTH CAUSE OF ACTION**

12 (Misrepresentation)
13 (On Behalf of the Class)

14 120. Plaintiffs incorporate by reference all allegations set forth in this Class Action
15 Complaint as though fully set forth herein.

16 121. Plaintiffs assert this cause of action on behalf of themselves and the Class.

17 122. During the relevant time period of this lawsuit, Defendant made express
18 statements that the wireless data plans purchased by Plaintiffs and members of the Class were
19 “unlimited.”

20 123. Upon information and belief, Defendant knew that it had represented that the
21 wireless data plans purchased by Plaintiffs and members of the Class were “unlimited,” and that
22 this was false and misleading.

23 124. As such, Defendant used false and misleading statements to induce customers to
24 purchase its wireless data plans.

25 125. Plaintiffs and members of the Class justifiably relied upon Defendant’s false and
26 misleading statements in deciding whether to purchase wireless data service, phones and other
27 products from Defendant. As a direct and proximate result of the above described practices,
28 Plaintiffs and members of the Class sustained damages in an amount to be proven at trial.

1 **SIXTH CAUSE OF ACTION**

2 (Fraudulent Concealment)
3 (On Behalf of the Class)

4 126. Plaintiffs incorporate by reference all allegations set forth in this Class Action
5 Complaint as though fully set forth herein.

6 127. Plaintiffs assert this cause of action on behalf of themselves and the Class.

7 128. Defendant intentionally misrepresented or concealed the following material facts
8 from Plaintiffs and the Class:

9 a. Failing to disclose that its “unlimited” wireless data plans were not
10 “unlimited”; and,

11 b. Misrepresenting that its wireless data plans were “unlimited.”

12 129. Plaintiffs and the Class relied on these representations and omissions in purchasing
13 Defendant’s unlimited wireless data plans, phones and other products.

14 130. Defendant performed the wrongful acts, concealed the information and made the
15 affirmative representations during the relevant time period of this lawsuit with the intent of
16 gaining its own financial advantage to the disadvantage of Plaintiffs and the Class.

17 131. As a result of Defendant’s wrongful conduct, Plaintiffs and the Class have
18 suffered, and continue to suffer, economic losses and non-economic losses, all in an amount to be
19 proven at trial.

20 132. Defendant’s wrongful acts alleged herein were done maliciously, oppressively and
21 with the intent to mislead and defraud. Accordingly, Plaintiffs and the Class are entitled to
22 punitive and exemplary damages.

23 **SEVENTH CAUSE OF ACTION**

24 (Breach of Express Warranty/Breach of Contract)
25 (On Behalf of the Class)

26 133. Plaintiffs incorporate by reference all allegations set forth in this Class Action
27 Complaint as though fully set forth herein.

28

1 134. Plaintiffs, and each member of the Class, formed a contract with Defendant at the
2 time they purchased an “unlimited” data plan from Defendant. The terms of that contract include
3 the promises and affirmations of fact made by Defendant through their marketing materials and
4 statements, as described above, which constitute express warranties, became part of the basis of
5 the bargain, and are part of a standardized contract between Plaintiffs and the members of the
6 Class on the one hand, and Defendant on the other.

7 135. All conditions precedent to Defendant’s liability under this contract have been
8 performed by Plaintiffs and the Class.

9 136. Defendant breached the terms of this contract, including the express warranties,
10 with Plaintiffs and the Class by not providing a product which provided the promised benefits as
11 described above.

12 137. As a result of Defendant’s breach of its contract and warranties, Plaintiffs and the
13 Class have been damaged in an amount to be proven at trial.

14 **EIGHTH CAUSE OF ACTION**

15 (Unjust Enrichment)
16 (On Behalf of the Class)

17 138. Plaintiffs incorporate by reference all allegations set forth in this Class Action
18 Complaint as though fully set forth herein.

19 139. Plaintiffs and the Class have conferred a benefit upon Defendant by purchasing
20 Defendant’s service plans, phones, and other products, which did not perform as promised and/or
21 did not have the attributes and benefits promised by Defendant.

22 140. By their deceptive, misleading and unlawful conduct alleged herein, Defendant has
23 unjustly received and retained benefits at the expense of Plaintiffs and the Class, including funds
24 that Plaintiffs and the Class paid to Defendant for service plans, phones and other products.

25 141. Under principles of equity and good conscience, Defendant should not be
26 permitted to retain money belonging to Plaintiffs and the Class that it unjustly received as result
27 of its deceptive, misleading and unlawful conduct alleged herein without providing compensation
28 to Plaintiffs and the Class.

1 142. Plaintiffs and the Class have suffered financial loss as a direct result of
2 Defendant's conduct.

3 143. Plaintiffs and Class Members are entitled to restitution of, disgorgement of, and/or
4 the imposition of a constructive trust upon all profits, benefits and other compensation obtained
5 by Defendant, and for such other relief that this Court deems proper, as a result of their deceptive,
6 misleading and unlawful conduct.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, as a result of the foregoing, Plaintiffs Marcus Roberts, Kenneth Chewey
9 and Ashley Chewey, on behalf of themselves and all others similarly situated, pray for relief as
10 follows:

11 1. Declaring this action to be a proper class action, certifying the proposed Class and
12 California Subclass, appointing Plaintiffs as class representatives, and appointing Plaintiff's
13 counsel as class counsel;

14 2. An order that Defendant is permanently enjoined from its improper conduct and
15 practices as alleged;

16 3. A judgment awarding Plaintiffs and Class and California Subclass members
17 restitution, including, without limitation, restitutionary disgorgement of all profits and unjust
18 enrichment that Defendant obtained as a result of its unlawful, unfair, and fraudulent business
19 practices and conduct;

20 4. A judgment awarding Plaintiffs and Class and California Subclass members actual
21 damages;

22 5. A judgment awarding Plaintiffs and Class and California Subclass members
23 exemplary damages for Defendant's knowing, willful, and intentional conduct;

24 6. Pre-judgment and post-judgment interest;

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

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

27 **JURY DEMAND**


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

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Dated: July 24, 2015

Respectfully submitted,

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: 
Michael W. Sobol

LIEFF CABRASER HEIMANN & BERNSTEIN LLP
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(888) 316-3489 (fax)

Attorneys for Plaintiffs and the Proposed Class

** Pro Hac Vice application to be submitted*

EXHIBIT A

1 Michael W. Sobol (State Bar No. 194857)
 Roger N. Heller (State Bar No. 215348)
 2 Nicole D. Sugnet (State Bar No. 246255)
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 3 & BERNSTEIN LLP
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5
 6 John A. Yanchunis (*pro hac vice application to be submitted*)
 Rachel Soffin (*pro hac vice application to be submitted*)
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 10 Jean Sutton Martin (*pro hac vice application to be submitted*)
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13 Attorneys for Plaintiffs

14
 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION

18
 19 Marcus A. Roberts, Kenneth A. Chewey
 and Ashley M. Chewey, individually and
 20 on behalf of themselves and all others
 similarly situated,

21 Plaintiffs,

22 v.

23 AT&T MOBILTY LLC,

24 Defendant.

Case No. _____

CLASS ACTION COMPLAINT

DECLARATION ASHLEY CHEWEY

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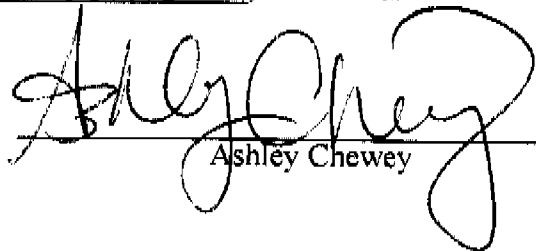
I, Ashley Chewey, hereby declare and state as follows:

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 July 22, 2015, in ROSEVILLE, California.


Ashley Chewey

1 Michael W. Sobol (State Bar No. 194857)
 Roger N. Heller (State Bar No. 215348)
 2 Nicole D. Sugnet (State Bar No. 246255)
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13 Attorneys for Plaintiffs

14
 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION

18
 19 Marcus A. Roberts, Kenneth A. Chewey
 and Ashley M. Chewey, individually and
 20 on behalf of themselves and all others
 similarly situated,

21 Plaintiffs,

22 v.

23 AT&T MOBILTY LLC,

24 Defendant.
25

Case No. _____

CLASS ACTION COMPLAINT

DECLARATION KENNETH CHEWEY

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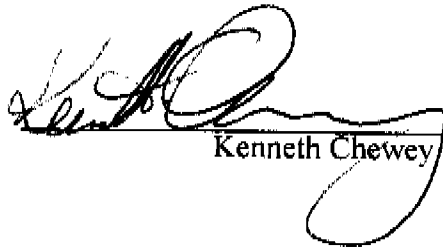
I, Kenneth Chewey, hereby declare and state as follows:

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 July 22, 2015, in ROSEVILLE, California.


Kenneth Chewey

1 Michael W. Sobol (State Bar No. 194857)
2 Roger N. Heller (State Bar No. 215348)
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13 Attorneys for Plaintiffs

14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18
19 Marcus A. Roberts, Kenneth A. Chewey
20 and Ashley M. Chewey, individually and
on behalf of themselves and all others
21 similarly situated,
Plaintiffs,

22 v.

23 AT&T MOBILTY LLC,

24 Defendant.
25

Case No. _____

CLASS ACTION COMPLAINT

DECLARATION MARCUS ROBERTS

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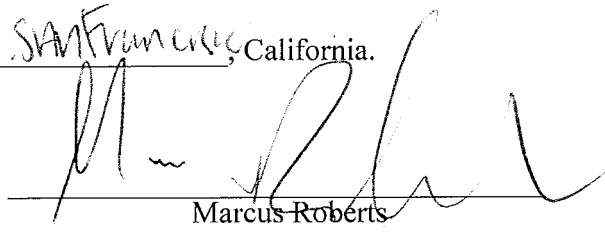
I, Marcus Roberts, hereby declare and state as follows:

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 July 23, 2015, in SO. SAN FRANCISCO, California.



Marcus Roberts

EXHIBIT B

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

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

July 23, 2015

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Glenn Lurie, President and CEO
AT&T Mobility, LLC
1025 Lenox Park Blvd. NE
Atlanta, GA 30319

Registered Agent for Service of Process
CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Re: Notice of Violation of California Consumer Legal Remedies Act

Dear Mr. Lurie:

We represent Marcus Roberts, Kenneth Chewey, and Ashley Chewey, who purchased AT&T Mobility, LLC (“AT&T”) “unlimited” wireless phone plans. All three have purportedly been “grandfathered” into their unlimited plans and accordingly expect to be able to access and use unlimited data on their phones. We send this letter under the California Consumers Legal Remedies Act, California Civil Code Section 1750 *et seq.* (“CLRA”) to notify AT&T that its practice of regularly throttling its unlimited plan subscribers’ data, often without notice, when their data usage exceeds certain undisclosed limits, violates the CLRA. We demand that AT&T rectify its violations within 30 days of receipt of this letter.

AT&T misrepresents to its “unlimited” service plan subscribers that the “unlimited” plan offers “unlimited” web and 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 using GPS navigation. In reality, AT&T regularly throttles “unlimited” plan subscribers’ data speeds once they have used 3GB or 5GB of data, often without notice. AT&T fails to truthfully and adequately disclose its throttling practice. AT&T, for example, does not inform its subscribers as to the drastically reduced speeds at which they will be throttled and how that will impact their data usage, or that their data will be throttled once they have exceeded the data usage limits regardless of whether AT&T’s network is congested at the time.

Relying on AT&T’s promise of “unlimited” data, in 2008, Marcus Roberts purchased an iPhone 3G with an AT&T “unlimited” data plan. Each time Mr. Roberts subsequently upgraded to a newer version of the iPhone, AT&T offered to grandfather him into his “unlimited” plan,

July 23, 2015

Page 2

which he accepted. In 2012, Mr. Roberts began noticing that, by the middle of the month, his internet connection was drastically slower and his ability to download was severely hampered. On or about July 6, 2015, AT&T sent Mr. Roberts a text stating that he had used 75% of a supposed 5GB allotment of data usage, and that he may experience reduced speeds once he exceeded that allotment. This was the first notice regarding AT&T's throttling practice that Mr. Roberts received from AT&T, and even it failed to disclose the true nature of AT&T's practice by deceptively suggesting that his speeds "may" be slowed when in fact AT&T **always** throttles "unlimited" subscribers' data once they exceed the secret data usage caps.

Similarly, Kenneth and Ashley Chewey purchased an iPhone 3G with an AT&T family share plan purportedly providing "unlimited" data in late 2009. In 2011, the Cheweys began notice that around the middle of the month, their internet connection was significantly slower and they were unable to use their iPhone for certain purposes. After noticing the issue, Mr. Chewey called AT&T. A customer service representative falsely told him that the problem was attributable to being in a high congestion area. Subsequent to this conversation, the Cheweys have noticed that their data has been severely slowed on other occasions, sometimes to the point where they are unable to use the internet at all. On or about July 7, 2015, AT&T sent Mr. Chewey two messages stating that he was reaching a data usage limit. This was the first indication from AT&T that the Cheweys' "unlimited" plan had any data restrictions.

AT&T's material misrepresentations, active concealment, and failures to disclose violated the CLRA in the following manner:

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

July 23, 2015

Page 3

6. AT&T inserted unconscionable provisions in its Wireless Customer Agreement and other agreements, including an arbitration clause with a class action ban (Cal. Civ. Code § 1770(a)(19)).

We demand that within thirty (30) days of receiving this letter, AT&T agree to (1) refrain from engaging in the deceptive practices described above at any time in the future; and (2) return all money that AT&T “unlimited” subscribers paid for “unlimited” plans. If AT&T refuse to provide the demanded relief within thirty (30) days, we will seek compensatory and punitive damages, restitution, and any other appropriate equitable relief.

We sincerely hope to confer with you to resolve these violations without the need for litigation. I invite you to contact me to discuss this demand at any time. I can be reached at (415) 956-1000 ext. 2230 or nsugnet@lchb.com. I look forward to hearing from you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Nicole Sugnet", written in black ink on a light-colored background.

Nicole D. Sugnet

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

MARCUS A. ROBERTS, KENNETH A. CHEWEY AND ASHLEY M. CHEWEY, on behalf of themselves and all others similarly situated.

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

(c) Attorneys (Firm Name, Address, and Telephone Number) LIEFF CABRASER HEIMANN & BERNSTEIN, LLP 275 Battery Street, 29th Floor San Francisco, CA 94111

DEFENDANTS

AT&T Mobility, LLC

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

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

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
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)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

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
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): 28 U.S.C. § 1332(d)(2)
Brief description of cause: AT&T falsely advertised data services plans as "unlimited."

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 07/24/2015 SIGNATURE OF ATTORNEY OF RECORD /s/ Michael W. Sobol

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.