

COBLENTZ PATCH DUFFY & BASS LLP  
One Ferry Building, Suite 200, San Francisco, California 94111-4213  
415.391.4800 • Fax 415.989.1663

RICHARD R. PATCH (State Bar No. 88049)  
ANN E. JOHNSTON (State Bar No. 141252)  
DAVID B. ANDERSON (State Bar No. 273419)  
COBLENTZ PATCH DUFFY & BASS LLP  
One Ferry Building, Suite 200  
San Francisco, California 94111-4213  
Telephone: 415.391.4800  
Facsimile: 415.989.1663  
Email: ef-rrp@cpdb.com,  
ef-aej@cpdb.com  
ef-dba@cpdb.com

Attorneys for Defendants  
COXCOM, LLC and  
COX COMMUNICATIONS  
CALIFORNIA, LLC

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

MATTI YOUSIF, an individual,  
ELIZABETH IOANE, an individual,  
ZACH BEIMES, an individual, and  
DAWN HARRELL, an individual, on  
behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

COXCOM, LLC, a Delaware limited  
liability company; COX  
COMMUNICATIONS CALIFORNIA,  
LLC, a Delaware limited liability  
company; and DOES 1 through 100,

Defendants.

Case No. **'15CV1499 JLS MDD**

Superior Court Case No.  
37-2015-00018071-CU-BT-CTL

**NOTICE OF REMOVAL OF  
DEFENDANTS COXCOM, LLC  
AND COX COMMUNICATIONS  
CALIFORNIA, LLC**

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF CALIFORNIA:

Defendants CoxCom, LLC and Cox Communications California, LLC  
(together, "Defendants") file this notice of removal of this action from the  
San Diego County Superior Court to the United States District Court for the

1 Southern District of California pursuant to 28 U.S.C. §§1332(d)(2)(A), 1441 and  
2 1446.

### 3 INTRODUCTION

4 1. On or about May 29, 2015, Plaintiffs Matti Yousif, Elizabeth Ioane,  
5 Zach Beimes, and Dawn Harrell (together, "Plaintiffs") filed a putative class action  
6 in the California Superior Court for the County of San Diego, Case No. 37-2015-  
7 00018071-CU-BT-CTL ("state court action"). A true copy of the Plaintiffs'  
8 complaint in the state court action is attached here as **Exhibit A** ("Complaint").

9 2. On June 8, 2015, each of the two named Defendants - CoxCom, LLC  
10 and Cox Communications California, LLC - was personally served through its  
11 registered agent for service of process with copies of the Complaint, summons, and  
12 other case initiating documents filed in the state court action. A true copy of all  
13 process, pleadings and orders served upon Defendants is attached here as  
14 **Exhibits A-D**.

15 3. Defendants have filed this notice of removal within the 30-day time  
16 period required by 28 U.S.C. §1446(b).

17 4. **Jurisdiction.** As explained below, this is a civil putative class action  
18 over which this Court has original jurisdiction under the Class Action Fairness Act  
19 ("CAFA"), 28 U.S.C. §1332(d)(2), and is one which may be removed to this Court  
20 by Defendants pursuant to the provisions of 28 U.S.C. §1441. All of the  
21 requirements of CAFA are satisfied in this case: (1) the putative class consists of at  
22 least 100 members; (2) the citizenship of at least one proposed class member is  
23 different from that of at least one Defendant; and (3) the aggregated amount in  
24 controversy exceeds \$5 million, exclusive of interest and costs.

25 5. In accordance with 28 U.S.C. §1446(d), Defendants are filing with the  
26 Superior Court, and serving on Plaintiffs, a Notice of Filing of Removal of Action.  
27 A true and correct copy of that notice is attached hereto as **Exhibit E**.

28 ///

08277.049 3186626v1

**I. PARTIES AND ALLEGATIONS OF THE COMPLAINT**

6. As admitted in the Complaint, the Plaintiffs have resided at all times relevant to this action and now do continue to reside in California, Nevada or Arizona. Plaintiffs Yousif and Iaone reside in California (**Exhibit A**, ¶¶1 and 2). Plaintiff Beimes resides in Nevada (*id.*, ¶3). Plaintiff Harrell resides in Arizona (*id.*, ¶4). Defendants are informed and believe, and on that basis allege, that each of the Plaintiffs is a citizen of the state in which he or she resides, as alleged in the Complaint.

7. At the time the action was filed, and at the time of the filing of this notice, defendant Cox Communications California, LLC was and is a limited liability company organized and existing under the laws of Delaware with its principal place of business in Atlanta, Georgia. See, **Exhibit A**, ¶8 (alleging same). The sole member of defendant Cox Communications California, LLC is defendant CoxCom, LLC. See, *id.*

8. At the time the action was filed, and at the time of the filing of this notice, defendant CoxCom, LLC was and is a limited liability company organized and existing under the laws of Delaware with its principal place of business in Atlanta, Georgia. See, **Exhibit A**, ¶7 (alleging same). The sole member of CoxCom, LLC is Cox Communications, Inc., which is a corporation organized and existing under the laws of Delaware with its principal place of business in Atlanta, Georgia.

9. In the Complaint, Plaintiffs allege as follows<sup>1</sup>: Defendants offer cable television, internet, and telephone services to consumers nationwide (**Exhibit A**, ¶15); these services are offered both separately as well as part of a "bundle," including Defendants' "Advanced TV" service and other bundled services packages

---

<sup>1</sup> Any allegation recited by Defendants herein is not intended to be, and should not be construed to be, an admission of the truth of any allegation in the Complaint.

(*id.*); Defendants allegedly charge Advanced TV consumer subscribers unspecified charges that Defendants allegedly have not disclosed in their advertisements and other marketing materials for Advanced TV and otherwise without the authorization of their consumer subscribers (*id.*, ¶16); Plaintiffs purchased Advanced TV and allegedly have paid "at least \$50 worth of additional, unauthorized 'Advanced TV' charges" in reliance based upon Defendants' alleged misrepresentations (*id.*, ¶17).

10. Based on the foregoing allegations, Plaintiffs allege claims for relief for violations of: the California Consumer Legal Remedies Act, section 1750, Cal. Civ. Code; the California Unfair Competition Law, sections 17200 & 17500, Cal. Bus. & Prof. Code; the Nevada Deceptive Trade Practices Act, section 598 *et seq.*, Nev. Rev. Stat.; the Arizona Consumer Fraud Act, section 44-1522(A), Ariz. Rev. Stat.; breach of express warranty; constructive trust; and, conversion. **Exhibit A**, ¶¶29-86.

11. Plaintiffs bring these claims on behalf of themselves and a proposed class and sub-classes allegedly consisting of "thousands" of Defendants' Advanced TV subscribers residing in California, Nevada, and Arizona. **Exhibit A**, ¶¶19 and 21. Plaintiffs admit and allege that the "members of the Class are so numerous that their individual joinder is impracticable." *Id.*, ¶22.

12. In their prayer for relief, Plaintiffs seek - among other things - injunctive and declaratory relief, disgorgement of excess profits, a "full refund" of the purportedly unlawful charges, "actual damages suffered by Plaintiffs and members of the Class," punitive damages, attorneys' fees, and all litigation expenses. **Exhibit A**, p. 20:10-24.

## **II. THERE ARE MORE THAN 100 PUTATIVE CLASS MEMBERS.**

13. Plaintiffs purport to represent three sub-classes, defined as follows:

The proposed California Class consists of: all persons in the State of California who have paid Defendant a separate "Advanced TV" fee in addition to the monthly, recurring charges for its Advanced TV television cable service (the "California Class"). The proposed Nevada Class consists

of: all persons in the State of Nevada who have paid Defendant a separate "Advanced TV" fee in addition to the monthly, recurring charges for its Advanced TV television cable service (the "Nevada Class"). The proposed Arizona Class consists of all persons in the State of Arizona who have paid Defendant a separate "Advanced TV" fee in addition to the monthly, recurring charges for its Advanced TV television cable service (the "Arizona Class").

Exhibit A, ¶19.

14. Plaintiffs admit that the Class consists of "thousands of persons" just in the State of California, and that the members of the Class are "so numerous that joinder of each member is impractical." **Exhibit A**, ¶21; see also, *id.*, ¶22.

### III. MINIMAL DIVERSITY EXISTS BETWEEN THE PARTIES.

15. Under 28 U.S.C. §1332(d)(2)(A), a class action is subject to removal where "any member of a class of plaintiffs is a citizen of a State different from any defendant."

16. Plaintiffs are residents of California, Arizona or Nevada. **Exhibit A**, ¶¶1-4.

17. At the time the action was filed, and at the time of the filing of this notice, both of the named Defendants were and are citizens of Delaware and Georgia. Both Defendants are limited liability companies. For purposes of determining diversity under CAFA, any "unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized." 28 U.S.C. §1332(d)(10). This rule applies to limited liability companies. *Ferrell v. Express Check Advance of South Carolina LLC*, 591 F.3d 698, 705 (4th Cir. 2010). As alleged and admitted in the Complaint, both defendant Cox Communications California, LLC and defendant CoxCom, LLC were formed under the laws of Delaware and have their principal place of business in Georgia. **Exhibit A**, ¶¶7 and 8.

///

///

18. Because Plaintiffs are citizens of California, Arizona or Nevada, and the two Defendants are citizens of Delaware and Georgia, there is minimal diversity between the parties.

#### IV. THE AMOUNT IN CONTROVERSY EXCEEDS \$5 MILLION IN THE AGGREGATE

19. Under 28 U.S.C. §1332(d)(2), an action is removable under CAFA only where "the matter in controversy exceeds the sum or value of \$5,000,000...." The "amount in controversy" for a class action being removed under CAFA is based on the *aggregated* claims of the entire class or classes, exclusive of interest and costs. 28 U.S.C. §1332(d)(6). Where no specific amount is stated, the Court "must assume that the allegations of the complaint are true, and that a jury will return a verdict for the plaintiff on all claims made in the complaint." *Korn v. Polo Ralph Lauren*, 536 F.Supp.2d 1199, 1205 (E.D. Cal. 2008). "The ultimate inquiry is what amount is put 'in controversy' by the plaintiff's complaint, not what a defendant will actually owe." *Id.*, citing *Rippee v. Boston Mkt. Corp.*, 408 F.Supp.2d 982, 986 (S.D. Cal. 2005).

20. Although the Complaint alleges that the Plaintiffs are informed and believe and thereon allege that the total amount in controversy is "less than \$5,000,000.00," a plaintiff seeking to represent a putative class cannot evade federal jurisdiction under CAFA by alleging or otherwise stipulating that the amount in controversy falls below the jurisdictional minimum. *Standard Fire Ins. Co. v. Knowles*, 133 S.Ct. 1345, 1350, 185 L.Ed. 2d 439 (2013); *Rodriguez v. AT & T Mobility Servs. LLC*, 728 F.3d 975, 981 (9th Cir. 2013) (reversing lower court's remand order that was based upon plaintiff's allegation that "the aggregate amount in controversy is less than five million dollars").

21. When it is unclear from the face of a state-court complaint whether the requisite amount in controversy is pled, the removing defendant only needs to make a "plausible allegation" that the amount in controversy exceeds \$5 million. *Dart Cherokee Operating Basin Co., LLC v. Owens*, 135 S.Ct. 547, 554 (2014). A



1 removing defendant need not submit any evidence with the notice of removal in  
2 support of those allegations. *Id.*

3 22. While Defendants do not admit or accept the truth or accuracy of the  
4 claims alleged in the Complaint, and deny that Plaintiffs - or any putative class  
5 members - are entitled to any monetary (or other) relief, the amount in controversy  
6 according to the allegations of the Complaint satisfies the jurisdictional threshold  
7 under 28 U.S.C. §1332(d)(2). Although the Complaint does not specify the total  
8 amount in controversy, assuming for purposes of this Notice of Removal that the  
9 allegations of the Complaint are true, it is clear that more than \$5 million has been  
10 put in controversy.

11 23. Among other things, the Complaint alleges that Defendants'  
12 "standardized, uniform marketing materials that advertised the price of Advanced  
13 TV" were false and misleading and that "as a result of Defendants' wrongful  
14 conduct, Defendant has wrongfully received *millions of dollars* from Advanced TV  
15 subscribers." **Exhibit A**, ¶16 (emphasis added).

16 24. The Complaint further alleges that the putative class is comprised of  
17 "thousands" of Cox customers who, as a result of Defendants' alleged misconduct,  
18 paid extra "unauthorized" fees to Defendants for their Advanced TV subscriptions.  
19 **Exhibit A**, ¶¶19, 21.

20 25. The four Plaintiffs allege that they have paid Defendants "at least \$50  
21 worth of "additional, unauthorized 'Advanced TV' charges, in additional (sic) to  
22 other losses." **Exhibit A**, ¶17. It is unclear from Plaintiffs' allegations whether their  
23 claim is that they each paid at least \$50 in such fees, or collectively paid at least \$50  
24 in such fees (or approximately \$12.50 each).

25 26. In the last four years, substantially more than 400,000 Cox subscribers  
26 living in California, Nevada and Arizona have subscribed to Advanced TV.  
27 Because 400,000 Advanced TV subscribers multiplied by \$50 equals \$20 million,

28 ///

1 and 400,000 Advanced TV subscribers multiplied by \$12.50 equals \$5 million, there  
2 is at least \$5 million in controversy in this action.

3 27. Moreover, in addition to the recovery of what they claim were  
4 "unauthorized fees" paid by them to Defendants, Plaintiffs also seek an injunction  
5 requiring Defendants to change their promotional materials, the disgorgement by  
6 Defendants of profits, attorneys' fees and punitive damages. Because Plaintiffs have  
7 prayed for these additional forms of relief, the amounts in controversy described  
8 above (based upon the amount of allegedly "unauthorized fees" paid by Plaintiffs to  
9 Defendants) actually understates the amount in controversy. *Rippee*, 408 F.Supp.2d  
10 at 984 (calculation of the amount in controversy takes into account claims for  
11 punitive damages and attorneys' fees if possibly recoverable as a matter of law);  
12 *Rodriguez v. Cleansource, Inc.*, No. 14-CV-0789-L DHB, 2014 WL 3818304, at \*4  
13 (S.D. Cal. Aug. 4, 2014) (denying remand order after increasing "aggregate value of  
14 claims" by additional 25% as benchmark for attorneys' fees in estimating the total  
15 amount in controversy for CAFA jurisdictional purposes).

### 16 CONCLUSION

17 Because this case is removable pursuant to 28 U.S.C. §1332(d), further  
18 proceedings in the action in the Superior Court for San Diego County, State of  
19 California, should be discontinued, and the action should be removed to the United  
20 States District Court for the Southern District of California.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///



**NOTICE TO INTERESTED PARTIES**

There are no presently known interested parties to this action, other than the named parties.

DATED: July 7, 2015

COBLENTZ PATCH DUFFY & BASS LLP

By: /s/ Richard R. Patch

Richard R. Patch  
Attorneys for Defendants  
COXCOM, LLC and  
COX COMMUNICATIONS  
CALIFORNIA, LLC

COBLENTZ PATCH DUFFY & BASS LLP  
One Ferry Building, Suite 200, San Francisco, California 94111-4213  
415.391.4800 • Fax 415.989.1663

JS 44 (Rev. 12/12)

**CIVIL COVER SHEET****'15CV1499 JLS MDD**

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**

MATTI YOUSIF, an individual, ELIZABETH IOANE, an individual, ZACH BEIMES, an individual, and DAWN HARRELL, an individual, on behalf of themselves and all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Derrick F. Coleman; R. Jeffrey Neer; COLEMAN FROST LLP  
429 Santa Monica Blvd., Ste. 700, Santa Monica, CA 90401  
(310) 576-7312

**DEFENDANTS**

COXCOM, LLC, a Delaware limited liability company; COX COMMUNICATIONS CALIFORNIA, LLC, a Delaware limited liability company; and DOES 1 through 100

County of Residence of First Listed Defendant Georgia & Delaware  
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

Richard R. Patch; Ann E. Johnston; David B. Anderson  
COBLENTZ PATCH DUFFY & BASS LLP  
One Ferry Bldg., Suite 200, SF, CA 94111; (415) 391-4800

**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 (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <input checked="" 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 <b>LABOR</b> <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 <b>IMMIGRATION</b> <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 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <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)) <b>FEDERAL TAX SUITS</b> <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
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**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):

Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d).

Brief description of cause:

Plaintiffs allege class claims for recovery under CA, AZ & NV state consumer protection statutes & at common law.

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

5,000,001.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

07/07/2015

SIGNATURE OF ATTORNEY OF RECORD

/s/Richard R. Patch

**FOR OFFICE USE ONLY**

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**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.

# **EXHIBIT A**

DERRICK F. COLEMAN – State Bar No. 170955  
derrick@colemanfrost.com  
 R. JEFFREY NEER – State Bar No. 190417  
**COLEMAN FROST LLP**  
 429 Santa Monica Blvd., Suite 700  
 Santa Monica, CA 90401  
 Telephone: (310) 576-7312  
 Facsimile: (310) 899-1016

Attorney for Plaintiffs MATTI YOUSIF,  
 ELIZABETH IOANE, ZACH BEIMES,  
 and DAWN HARRELL

**ELECTRONICALLY FILED**  
 Superior Court of California,  
 County of San Diego

**05/29/2015** at 04:48:23 PM  
 Clerk of the Superior Court  
 By Veronica Learned, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF SAN DIEGO**

MATTI YOUSIF, an individual,  
 ELIZABETH IOANE, an individual, and  
 ZACH BEIMES, an individual, and  
 DAWN HARRELL, an individual, on  
 behalf of themselves and all others  
 similarly situated,

Plaintiffs,

vs.

COXCOM, LLC, a Delaware limited liability  
 company;  
 COX COMMUNICATIONS CALIFORNIA,  
 LLC, a Delaware limited liability company;  
 and  
 DOES 1 through 100, ,

Defendants.

) Case No: 37-2015-00018071-CU-BT-CTL

) **CLASS ACTION COMPLAINT FOR:**

) **(1) VIOLATION OF CIVIL CODE**  
 ) **SECTION 1750;**

) **(2) VIOLATION OF CALIFORNIA**  
 ) **BUSINESS AND PROFESSIONS**  
 ) **CODE SECTION 17200 ET. SEQ.;**

) **(3) VIOLATION OF CALIFORNIA**  
 ) **BUSINESS AND PROFESSIONS**  
 ) **CODE SECTION 17500;**

) **(4) VIOLATIONS OF NEVADA'S**  
 ) **DECEPTIVE TRADE PRACTICES**  
 ) **ACT (NRS 598 ET SEQ.);**

) **(5) VIOLATION OF THE ARIZONA**  
 ) **CONSUMER FRAUD ACT, ARIZ.**  
 ) **REV. STAT. § 44-1522(A).**

) **(6) BREACH OF EXPRESS WARRANTY;**

) **(7) CONSTRUCTIVE TRUST;**

) **(8) CONVERSION.**



1 Plaintiffs Matti Yousif, Elizabeth Ioane, Zach Beimes, and Dawn Harrell individually, and  
2 on behalf of all others similarly situated (hereinafter collectively "Plaintiffs"), hereby complain  
3 and allege on information and belief as follows:

4 **PARTIES**

5 1. Plaintiff Matti Yousif ("Mr. Yousif" or "Plaintiff Yousif") is an individual who at  
6 all times herein relevant resided, and continues to reside in or around San Diego, California, the  
7 County of San Diego.

8 2. Plaintiff Elizabeth Ioane ("Ms. Ioane" or "Plaintiff Ioane") is an individual who at  
9 all times herein relevant resided, and continues to reside, in or around Oceanside, California, in  
10 the County of San Diego.

11 3. Plaintiff Zach Beimes ("Mr. Beimes" or "Plaintiff Beimes") is an individual who  
12 at all times herein relevant resided, and continues to reside, in or around Henderson, Nevada, in  
13 Clark County.

14 4. Plaintiff Dawn Harrell ("Ms. Harrell" or "Plaintiff Harrell") is an individual who at  
15 all times herein resided, and continues to reside, in or around Phoenix, Arizona, in Maricopa  
16 County. Mr. Yousif, Ms. Ioane, Mr. Beimes and Ms. Harrell are collectively referred to herein as  
17 "Plaintiffs."

18 5. Plaintiffs seek relief in their individual capacities and on behalf of the statewide  
19 Class for the state in which each of them resides (defined below).

20 6. On information and belief, Cox Enterprises, Inc. is a privately-held media  
21 conglomerate engaged in various industries, including but not limited to, providing Internet  
22 broadband communications and entertainment-related services; operating broadcast television and  
23 radio stations, metro newspapers and more than a dozen non-daily publications; and providing  
24 vehicle remarketing services and digital marketing and software solutions for automotive dealers  
25 and consumers.

26 7. On information and belief, defendant CoxCom, LLC is a limited liability company  
27 organized and existing under the laws of the State of Delaware with its principal place of business  
28 in Atlanta, Georgia. On information and belief, defendant CoxCom, LLC is the subsidiary of Cox



1 Enterprises, Inc. engaged in providing cable television, Internet broadband and other  
2 entertainment-related services. On information and belief, Defendant CoxCom, LLC is the  
3 nation's third largest television cable and broadband company and one of the largest broadband  
4 communications companies in the United States, with services including residential and  
5 commercial video, data and voice offerings in California, Nevada, Arizona and/or elsewhere.

6 8. On information and belief, defendant Cox Communications California, LLC is a  
7 limited liability company organized and existing under the laws of the State of Delaware with its  
8 principal place of business in Atlanta, Georgia. and is a subsidiary of CoxCom, LLC. On  
9 information and belief, CoxCom, LLC provided television cable service to thousands of  
10 California residents prior to January 1, 2012. On information and belief, on August 24, 2011  
11 CoxCom, LLC formed, and became the sole member of, Cox Communications California, LLC  
12 and, starting on January 1, 2012, Cox Communications California, LLC began providing  
13 television cable services to thousands of California residents. On information and belief, during  
14 the past four years prior to the filing of this Complaint, CoxCom, LLC and Cox Communications  
15 California, LLC have collectively received millions of dollars from cable television subscribers in  
16 California.

17 9. Plaintiffs are unaware of the true names, identities or capacities, whether  
18 individual, corporate, associate or otherwise, of those defendants sued herein as DOES 1 through  
19 100, inclusive. Plaintiffs therefore sue said defendants by such fictitious names. Plaintiffs will  
20 seek leave to amend this Complaint to set forth the true names and capacities of these defendants  
21 when they are ascertained.

22 10. Plaintiffs are informed and believe and on that basis allege that defendants sued  
23 herein as DOES I through 100, inclusive, and each of them, are in some way responsible for the  
24 acts and events complained of herein, and proximately caused the injuries and damages to  
25 Plaintiffs and the Class which are described in this Complaint. Plaintiffs will seek leave of court  
26 to amend this Complaint to more specifically set forth these defendants' wrongful conduct when  
27 it has been ascertained.

28 11. Plaintiffs are informed and believe and on that basis allege that at all times herein

1 mentioned, the named defendants and DOES 1 through 100, and each of them, were the  
2 principals, agents, servants, employers, employees, representatives, subsidiaries, affiliates of said  
3 defendants and operating within the purpose and scope of their relationships with defendant, and  
4 engaged in conduct that was directed, authorized, ratified, approved, or otherwise sanctioned by  
5 defendants and that DOES 1 through 100 are responsible in some manner for the occurrences  
6 and/or acts complained of herein and are liable to Plaintiffs and the Class. Defendants CoxCom,  
7 LLC and Cox Communications California, LLC and DOES 1 through 100 are collectively  
8 referred to herein as "Defendant" or "Cox."

9 **JURISDICTION AND VENUE**

10 12. This Court has subject matter jurisdiction over this action pursuant to California  
11 Business and Professions Code §§ 17203, 17204 and 17535 and Civil Code § 1780.

12 13. This Court has personal jurisdiction over Cox because it conducted and continues  
13 to conduct business in the State of California, County of San Diego, including supplying cable  
14 television to residents of San Diego. Cox has sufficient minimum contacts with California and  
15 purposely availed itself of the laws of the State of California by conducting the transactions that  
16 are the subject of this action therein. Venue is proper in this Court pursuant to California Code of  
17 Civil Procedure §§ 395 and 395.5, Business and Professions Code §§ 17203, 17204 and 17535,  
18 and Civil Code § 1780(c) because Defendant conducts business in this County and because a  
19 substantial portion of Defendant's misconduct alleged herein occurred in this County.

20 14. Federal subject matter jurisdiction over this action does not exist. Plaintiffs are  
21 informed and believes that the parties in this action do not meet the diversity requirements of the  
22 Class Action Fairness Act of 2005, which allows Plaintiffs to bring this action in California State  
23 Court. Plaintiffs are informed and believe and thereon alleges that the total amount in  
24 controversy is less than \$5,000,000.00. If new facts are obtained with respect to the amount at  
25 issue, Plaintiffs will seek leave to amend this Complaint. Plaintiffs and the members of the Class  
26 assert no federal question. The state law claims mandate that this action be heard in a California  
27 state court.



**FACTUAL ALLEGATIONS**

15. Defendant offers cable television services to consumers in various states throughout the country, including the states where Plaintiffs herein reside. Defendant's offerings include various levels of cable television service, including but not limited to "Cox Essential TV", "Cox Advanced TV", "Cox Advanced TV Preferred", and "Cox Advanced TV Premier", which consist of various combinations of cable channels and other features. In addition to selling cable service, Internet service, and/or phone service separately, Defendant offers "bundles" of cable television, Internet, and telephone services; a number of Defendant's bundled services include its "Advanced TV" service, including but not limited to, "Cox Advanced TV and Internet Essential," "Cox Advanced TV and Internet Preferred," "Cox TV and Phone Essential," and "Cox TV and Phone Premier."

16. Defendant represents to consumers in its standardized, uniform marketing materials that the advertised price of Advanced TV includes the total amount of the monthly recurring fees for Advanced TV and applicable discounts (including, for example, temporary "promotional" rates that expire after a few months) and that the only other charges not included in the advertised price consist of government-mandated applicable taxes, fees, and surcharges. In reality, however, unbeknownst to consumers, and without their authorization or consent, Defendant has charged, and continues to charge, many Advanced TV subscribers separate, additional amounts for Advanced TV. Defendant has failed, and continues to fail, to disclose these additional, unauthorized fees to consumers or that the price for Advanced TV as advertised by Defendant does not include these additional, unauthorized charges. Instead, on information and belief, Defendant deliberately misleads consumers and obfuscates these additional, unauthorized charges, including but not limited to, by misleadingly and confusingly labelling them as fees for "Advanced TV", the name of the television cable service. To the extent that Defendant's marketing materials alleged herein contain any qualifying disclosures concerning the monthly price Plaintiffs and the Class consumers will pay for Advanced TV, any such disclosures are and were inadequate in terms of their content, presentation, proximity, prominence or placement such that consumers are unlikely to see or understand such disclosures. On

1 information and belief, consumers have purchased Advanced TV from Defendant as well as paid  
2 these additional, unauthorized charges in reliance upon Defendant's misrepresentations,  
3 misleading statements, omissions and other wrongful conduct. On information and belief, as a  
4 result of Defendant's wrongful conduct, Defendant has wrongfully received millions of dollars  
5 from Advanced TV subscribers.

6 17. Within the past four years, Plaintiffs Yousif and Ioane subscribed to Defendant's  
7 Advanced TV cable television service for service in San Diego County, California, Plaintiff  
8 Beimes subscribed to Defendant's Advanced TV cable television service in Clark County,  
9 Nevada, and Plaintiff Dawn Harrell subscribed to Defendant's Advanced TV cable television  
10 service in Maricopa County, Arizona. Prior to Plaintiffs making their respective purchases of  
11 Defendant's Advanced TV cable television service, Defendant represented to Plaintiffs in its  
12 standardized, uniform marketing materials that the advertised price of Advanced TV includes the  
13 total amount of the monthly recurring fees for Advanced TV and applicable discounts (including,  
14 for example, temporary "promotional" rates that expire after a few months) and that the only other  
15 charges not included in the advertised price consist of government-mandated applicable taxes,  
16 fees, and surcharges. In reality, however, unbeknownst to Plaintiffs, and without their  
17 authorization or consent, Defendant has charged, and continues to charge, Plaintiff separate,  
18 additional amounts for Advanced TV. Defendant has failed, and continues to fail, to disclose  
19 these additional, unauthorized charges to Plaintiffs and other consumers or that the price for  
20 Advanced TV as advertised by Defendant does not include these additional, unauthorized  
21 charges. Plaintiffs purchased Advanced TV from Defendant and paid these additional,  
22 unauthorized charges in reliance upon Defendant's misrepresentations, misleading statements,  
23 omissions and other wrongful conduct. As a result of Defendant's wrongful conduct, Plaintiffs  
24 paid Defendant at least \$50 worth of additional, unauthorized "Advanced TV" charges, in  
25 additional to other losses. Accordingly, Plaintiffs have suffered actual damages as a result of  
26 Defendant's wrongful conduct.

#### 27 CLASS ALLEGATIONS

28 18. Plaintiffs re-allege and incorporate by reference the allegations contained in the



1 paragraphs above as if fully set forth herein.

2       19. Plaintiffs brings this lawsuit on behalf of themselves and the members of the  
3 proposed Class under California Code of Civil Procedure, Section 382, and California Civil  
4 Code, Sections 1752, 1780, and 1781. The proposed California Class consists of: all persons in  
5 the State of California who have paid Defendant a separate "Advanced TV" fee in addition to the  
6 monthly, recurring charges for its Advanced TV television cable service (the "California Class").  
7 The proposed Nevada Class consists of: all persons in the State of Nevada who have paid  
8 Defendant a separate "Advanced TV" fee in addition to the monthly, recurring charges for its  
9 Advanced TV television cable service (the "Nevada Class"). The proposed Arizona Class  
10 consists of: all persons in the State of Arizona who have paid Defendant a separate "Advanced  
11 TV" fee in addition to the monthly, recurring charges for its Advanced TV television cable  
12 service (the "Arizona Class"). (The California Class, Nevada Class, and Arizona Class are  
13 individually and collectively referred to herein as "the Class").

14       20. Subject to additional information obtained through further investigation and  
15 discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or  
16 amended complaint. Specifically excluded from the proposed Class is Defendant, its officers,  
17 directors, agents, trustees, parents, children, corporations, trusts, representatives, employees,  
18 principals, servants, partners, joint venturers, or entities controlled by Defendants, and its heirs,  
19 successors, assigns, or other persons or entities related to or affiliated with Defendant and/or its  
20 officers and/or directors, or any of them; the Judge assigned to this action, and any member of the  
21 Judge's immediate family.

22       21. This action may properly be maintained as a class action pursuant to California  
23 Code of Civil Procedure § 382 and Civil Code §§ 1752, 1780 and 1781. Plaintiffs are informed  
24 and believe that the Class consists of thousands of persons in the State of California. The  
25 members of the Class are so numerous that separate joinder of each member is impractical.  
26 Appropriate discovery can determine the exact number of Class members. The disposition of  
27 their claims in a class action will provide substantial benefits to the parties and the Court.  
28 Furthermore, the prosecution of separate actions by individual members of the Class would create

1 a risk of inconsistent or varying adjudications and would necessarily be dispositive of claims  
2 owned by non-party class members. Further:

3 22. **Numerosity.** The members of the Class are so numerous that their individual  
4 joinder is impracticable. Plaintiffs are informed and believe, and on that basis alleges, that the  
5 proposed Class contains thousands of members. The precise number of Class members is  
6 unknown to Plaintiffs. The true number of Class members is known by the Defendant, however,  
7 and thus, may be notified of the pendency of this action by first class mail, electronic mail, and by  
8 published notice.

9 23. **Existence and Predominance of Common Questions of Law and Fact.** There  
10 exists a well-defined community of interest in the questions of law and fact presented by this  
11 controversy. Common questions of law and fact exist as to all members of the Class and  
12 predominate over any questions affecting only individual Class members. These common legal  
13 and factual questions include, but are not limited to, the following:

14 (a) whether Defendant made statements to Plaintiffs and the Class concerning  
15 the amounts charged by Defendant for its Advanced TV;

16 (b) whether Defendant's alleged statements are false, or are misleading, or  
17 reasonably likely to deceive;

18 (c) whether Defendant's alleged conduct is misleading or reasonably likely to  
19 deceive;

20 (d) whether Defendant's alleged conduct violates public policy;

21 (e) whether Defendant's alleged conduct constitutes violations of the laws  
22 asserted herein;

23 (f) whether Defendant engaged in false or misleading advertising;

24 (g) whether Defendant made express warranties to Plaintiffs and to the Class;

25 (h) whether Defendant breached express warranties made to Plaintiffs and to  
26 the Class;

27 (i) whether Defendant has received ill-gotten gains from Plaintiffs and the  
28 Class as a result of its alleged wrongful conduct;



1 (j) whether Defendant has been unjustly enriched because Defendant  
2 knowingly gained and retained money in an inequitable manner at the expense of Plaintiffs and  
3 the Class;

4 (k) whether Defendant wrongfully took possession of and has since retained  
5 monies belonging to Plaintiffs and the Class;

6 (l) whether Plaintiffs and Class members have sustained monetary loss and the  
7 proper measure of that loss;

8 (m) whether Plaintiffs and Class members are entitled to an award of  
9 restitution;

10 (n) whether Plaintiffs and Class members are entitled to declaratory and  
11 injunctive relief.

12 24. **Typicality.** Plaintiffs' claims are typical of the claims of the members of the Class  
13 in that, among other reasons, Defendant was unjustly enriched as a result of Plaintiffs' and the  
14 Class' respective purchases of Defendant's Advanced TV television cable service.

15 25. **Adequacy of Representation.** Plaintiffs will fairly and adequately protect the  
16 interests of the members of the Class. Plaintiffs have retained counsel experienced in complex  
17 consumer class action litigation, and Plaintiffs intend to prosecute this action vigorously.  
18 Plaintiffs has no adverse or antagonistic interests to those of the Class.

19 26. **Superiority** (to the extent required). A class action is superior to all other available  
20 means for the fair and efficient adjudication of this controversy. The damages or other financial  
21 detriment suffered by individual Class members is relatively small compared to the burden and  
22 expense that would be entailed by individual litigation of their claims against the Defendant. It  
23 would thus be virtually impossible for the Class, on an individual basis, to obtain effective redress  
24 for the wrongs done to them. Furthermore, even if Class members could afford such  
25 individualized litigation, the court system could not. Individualized litigation would create the  
26 danger of inconsistent or contradictory judgments arising from the same set of facts.  
27 Individualized litigation would also increase the delay and expense to all parties and the court  
28 system from the issues raised by this action. By contrast, the class action device provides the

1 benefits of adjudication of these issues in a single proceeding, economies of scale, and  
2 comprehensive supervision by a single court, and presents no unusual management difficulties  
3 under the circumstances here. In the alternative, the Class may also be certified because:

- 4 (a) the prosecution of separate actions by individual Class members would  
5 create a risk of inconsistent or varying adjudication with respect to  
6 individual Class members that would establish incompatible standards of  
7 conduct for the Defendant;
- 8 (b) the prosecution of separate actions by individual Class members would  
9 create a risk of adjudications with respect to them that would, as a practical  
10 matter, be dispositive of the interests of other Class members not parties to  
11 the adjudications, or substantially impair or impede their ability to protect  
12 their interests; and/or
- 13 (c) Defendant has acted or refused to act on grounds generally applicable to  
14 the Class thereby making appropriate final declaratory and/or injunctive  
15 relief with respect to the members of the Class as a whole.

16 24. Adequate notice can be given to Class members directly using information  
17 maintained in Defendant's records or through notice by publication.

18 25. Damages may be calculated, in part, from the sales information maintained in  
19 Defendant's records, so that the cost of administering a recovery for the Class can be minimized.  
20 However, the precise amount of damages available to Plaintiffs and the other members of the  
21 Class is not a barrier to class certification.

22 26. Plaintiffs seek a preliminary and permanent injunction and equitable relief on  
23 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin and  
24 prevent Defendant from engaging in the acts described, and requiring Defendant to provide full  
25 restitution to Plaintiffs and Class members.

26 27. Unless a class is certified, Defendant will retain monies received as a result of its  
27 conduct that was taken from Plaintiffs and proposed Class members. Unless a class-wide  
28



1 injunction is issued, Defendant will continue to commit the violations alleged, and the members  
2 of the Class and the general public will continue to be misled.

3 28. Defendant has acted and refused to act on grounds generally applicable to the  
4 Class, making appropriate final injunctive relief with respect to the Class as a whole.

5 **FIRST CAUSE OF ACTION**

6 **For Violations of the Consumers Legal Remedies Act (Civil Code §1750 *et seq.*)**

7 **On Behalf of Plaintiffs Yousif and Ioane and the California Class**

8 29. Plaintiffs re-allege and incorporate by reference the allegations contained in the  
9 paragraphs above as if fully set forth herein.

10 30. This cause of action is brought pursuant to the Consumers Legal Remedies Act,  
11 Civil Code, Section 1750, *et seq.* (the "Act"). Each of the named Plaintiffs is a consumer as  
12 defined by Civil Code, Section 1761(d). Defendant's Advanced TV television cable is a service  
13 and/or good within the meaning of the Act.

14 31. Defendant violated and continues to violate the Act by engaging in the following  
15 practices proscribed by Section 1770(a) of the Act in transactions with Plaintiffs and the Class  
16 which were intended to result in, and did result in, the sale of Advanced TV television cable and  
17 payment of Defendant's additional, unauthorized charges to and Plaintiffs and the Class:

- 18 (a) Representing that [Advanced TV television cable] have....characteristics,  
19 uses [or] benefits.....which [it does] not have.....
- 20 (b) Representing that a transaction confers or involves rights, remedies, or  
21 obligations which it does not have or involve....
- 22 (c) Advertising [Advanced TV television cable] with intent not to sell [it] as  
23 advertised.
- 24 (d) Representing that [Advanced TV television cable] [has] been supplied in  
25 accordance with a previous representation when [it has] not.

26 32. Defendant violated the Act by making the representations and advertisements  
27 concerning Advanced TV described above when it knew, or should have known, that the  
28 representations and advertisements were false, deceptive and misleading.

1           33. Defendant's unfair methods of competition and unfair or deceptive acts or  
2 practices were material to Plaintiffs' and other Class members' decision to purchase Defendant's  
3 Advanced TV television cable and pay Defendant's additional, unauthorized charges for  
4 Advanced TV. Plaintiffs and the Class reasonably relied on the misrepresentations and  
5 misleading statements and omissions made by Defendant, and sustained injury in fact as a result  
6 of Defendant's misconduct, including but not limited to, the loss of money used to purchase  
7 Advanced TV television cable from Defendant, pay Defendant's additional unauthorized charges,  
8 and loss of use of these funds. As a result of Defendant's conduct, Plaintiffs and Class members  
9 have sustained actual damage and out-of-pocket losses.

10           34. Plaintiffs have standing to bring an action pursuant to the CLRA on behalf of  
11 himself and the Class because Plaintiffs and the members of the Class have sustained damage as a  
12 result of Defendant's wrongful conduct. Plaintiffs are seeking the recovery of monetary damages.

13           35. Pursuant to Section 1782 of the CLRA, Plaintiffs' counsel notified Defendant in  
14 writing via certified mail (return receipt requested) of the particular violations of the CLRA  
15 described more fully above and demanded that Defendant rectify the actions described above by,  
16 among other things, providing complete monetary relief and agreeing to cease the unlawful  
17 business practices alleged in this pleading (a copy of said letters is attached as Exhibit A).  
18 Defendant, however, responded by denying that it has violated the CLRA and refusing to rectify  
19 the actions discussed above, including refusing to provide any monetary relief and refusing to  
20 cease its unlawful business practices.

21           36. Plaintiffs have incurred attorneys' fees and costs in connection with the filing of  
22 this Complaint and anticipate incurring additional attorneys' fees and costs in connection with the  
23 prosecution of this action. An award of attorneys' fees is therefore appropriate pursuant to,  
24 among other grounds, Civil Code, Section 1780(d).

25           37. Pursuant to Section 1782(d) of the Act, Plaintiffs and the Class seek a Court  
26 order enjoining the above-described wrongful acts and practices and for restitution and  
27 disgorgement.

28



38. In doing the things mentioned above, Defendant acted with malice, fraud and/or oppression, and in conscious disregard of Plaintiffs' and the Class' rights, so as to entitle Plaintiffs and the Class to recovery of punitive damages. Plaintiffs are informed and believe, and thereon allege, that all of the acts alleged herein against Defendant were performed, authorized or ratified by Defendant's officers, directors, and/or managing agents. Accordingly, Plaintiffs and the Class are entitled to an award of punitive damages.

39. Plaintiffs have incurred attorneys' fees and costs in connection with the filing of this Complaint and anticipates incurring additional attorneys' fees and costs in connection with the prosecution of this action. An award of attorneys' fees is therefore appropriate pursuant to, among other grounds, Civil Code, Section 1780(d).

40. Pursuant to Section 1780(d) of the Act, attached hereto as Exhibit B are Plaintiffs' affidavits showing that this action has been commenced in the proper forum.

## **SECOND CAUSE OF ACTION**

### **Unlawful Business Acts and Practices in Violation of California Business & Professions Code Section 17200, et seq., On Behalf of Plaintiffs Yousif and Ioane and the California Class**

41. Plaintiffs repeat and re-allege the allegations contained in the paragraphs above, as if fully set forth herein.

41. Business & Professions Code Section 17200 prohibits any "unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." For the reasons discussed above, Defendant has violated each of these provisions of Business & Professions Code, Section 17200.

42. Defendant has violated Section 17200's prohibition against engaging in unlawful acts and practices by, among other things, making the representations and omissions of material facts, as set forth more fully herein, and violating, among other statutes, Civil Code, Sections 1572, 1573, 1709, 1710, 1711, 1770, Business & Professions Code, Sections 17200 *et seq.* and 17500 *et seq.*, and by violating the common law.

1           43.     Plaintiffs and the Class reserve the right to allege other violations of law which  
2     constitute other unlawful business acts or practices. Such conduct is ongoing and continues to  
3     this date.

4           44.     Defendant's acts, omissions, misrepresentations, practices and non-disclosures as  
5     alleged herein also constitute "unfair" business acts and practices within the meaning of Business  
6     & Professions Code Section 17200 *et seq.* in that its conduct is substantially injurious to  
7     consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the  
8     gravity of the conduct outweighs any alleged benefits attributable to such conduct.

9           45.     As stated in this Complaint, Plaintiffs allege violations of consumer protection,  
10    unfair competition and truth in advertising laws resulting in harm to consumers. Plaintiffs assert  
11    violations of the public policy of engaging in false and misleading advertising, unfair competition  
12    and deceptive conduct towards consumers.

13          46.     There were reasonably available alternatives to further Defendant's legitimate  
14    business interests, other than the conduct described herein.

15          47.     Defendant's claims, nondisclosures and misleading statements, as more fully set  
16    forth above, were also false, misleading and/or likely to deceive the consuming public within  
17    the meaning of Business & Professions Code, Section 17200, and actually *did* deceive  
18    Plaintiff.

19          48.     Defendant's labeling, website and other advertisements, as described herein, also  
20    constitute unfair, deceptive, untrue and misleading advertising.

21          49.     Defendant's conduct caused and continues to cause substantial injury to Plaintiffs  
22    and the other Class members. Plaintiffs have suffered injury in fact and has lost money as a result  
23    of Defendant's unfair conduct. Plaintiffs were exposed to, saw, and relied on Defendant's  
24    representations and purchased Advanced TV television cable and paid Defendant's additional,  
25    unauthorized "Advanced TV" charges from Defendant in reliance on Defendant's claims.

26          50.     Defendant has thus engaged in unlawful, unfair and fraudulent business acts and  
27    practices and false advertising, entitling Plaintiffs to judgment and equitable relief against  
28    Defendant, as set forth in the Prayer for Relief.



51. Additionally, pursuant to Business & Professions Code, Section 17203, Plaintiffs seek an order requiring Defendant to immediately cease such acts of unlawful, unfair and fraudulent business practices and requiring Defendant to engage in a corrective advertising campaign.

### **THIRD CAUSE OF ACTION**

#### **False Advertising in Violation of Cal. B&P § 17500, *et seq.*, On Behalf of Plaintiffs Yousif and Ioane and the California Class**

52. Plaintiffs allege and incorporate by reference each and every allegation contained in the paragraphs above, as if set forth in full herein.

53. Plaintiffs and the Class have suffered injury in fact and lost money or property as a result of Defendant's conduct.

54. Defendant advertises and markets the Advanced TV television cable service products in a false and misleading manner.

55. Defendant knew or should have known that this advertising and marketing is untrue and/or misleading.

56. Defendant has committed acts of untrue and misleading advertising, as defined by Cal. Bus. & Prof. Code, Section 17500, by engaging in the acts and practices described above with the intent to induce members of the public to purchase its products, Plaintiffs and the members of the Class relied on the false advertising campaign conducted by the Defendant, and sustained losses as a result of the false advertising campaign.

57. Plaintiffs on behalf of themselves and all others similarly situated, seek an injunction prohibiting Defendant from continuing such practice, restitution, and all other relief this Court deems appropriate, consistent with the False Advertising Law, California Bus. & Prof. Code Sections 17500, *et seq.*

//

//

//

//

**FOURTH CAUSE OF ACTION**

**For Violation of Nevada's Deceptive Trade Practices Act (NRS 598 *et seq*) On Behalf of  
Plaintiff Beimes and the Nevada Class**

58. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

59. The acts, omissions, and practices of Defendant as alleged herein constituted, and continue to constitute deceptive trade practices within the meaning of NRS §§ 598.0915 and 598.0925. Plaintiff has standing to bring this action under NRS § 598.0993 because he has suffered injury in fact and has lost money because of Defendant's conduct.

60. Defendant has engaged in "deceptive trade practices" by, in the course of its business or occupation, knowingly making false representations and statements and omissions as alleged above in connection with its offering of Advanced TV. Defendant's actions described herein constitute deceptive trade practices within the meaning of NRS §§ 598.0915 and 598.0925 in that Defendant's failure to disclose was likely to mislead Plaintiff and the Class.

61. As a result of the conduct described above, Defendant has been and will be unjustly enriched at the expense of Plaintiff and the Class.

62. The aforementioned unlawful or unfair business acts or practices conducted by Defendant has been committed in the past and continue to this day. Defendant has failed to acknowledge the wrongful nature of its actions or take steps to correct its wrongful conduct or provide full restitution and disgorgement of all ill-gotten monies either acquired or retained by Defendant as a result thereof, thereby depriving Plaintiff and the Class of money.

63. Pursuant to NRS § 598.0993, Plaintiff and the Class seek an order of this Court requiring Defendant to disgorge all ill-gotten gains and awarding Plaintiff and the Class full restitution of all monies wrongfully acquired by Defendant by means of such deceptive conduct, so as to restore any and all monies to Plaintiff and the Class and the general public, which were acquired and obtained by means of such deceptive conduct, and which ill-gotten gains are still retained by Defendant. Plaintiff and the Class additionally request that such funds be impounded by the Court or that an asset freeze or constructive trust be imposed upon such monies by



1 Defendant. Plaintiff and the Class may be irreparably harmed and/or denied an effective and  
2 complete remedy if such an order is not granted.

3 **FIFTH CAUSE OF ACTION**

4 **Violation of the Arizona Consumer Fraud Act (Ariz. Rev. Stat. §§ 44-1521 *et seq.*) On**  
5 **Behalf of Plaintiff Harrell and the Arizona Class**

6 64. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
7 paragraphs above as if fully set forth herein.

8 65. As alleged above, Defendant knowingly and intentionally misrepresented and  
9 omitted material facts to Plaintiff and the Class and violated its duty not to do so.

10 66. Plaintiff and the Class reasonably relied on Defendant's material  
11 misrepresentations and omissions in its marketing of its Advanced TV television cable in paying  
12 for Advanced TV.

13 67. Defendant's use of deception, false promises, misrepresentations and material  
14 omissions in connection with the sale and advertisement of Advanced TV violates the Arizona  
15 Consumer Fraud Act, Ariz. Rev. Stat. § 44-1522(A).

16 68. Had Plaintiff and the Class known that Defendant had engaged in the wrongful  
17 conduct alleged above, they would not have purchased the Advanced TV or would have paid  
18 less for Advanced TV.

19 69. Plaintiff and the Class suffered injury in fact to a legally protected interest. As a  
20 result of Defendant's wrongful conduct, Plaintiff and Class members were harmed and suffered  
21 actual damages, including but not limited to, the amounts they paid for the unauthorized  
22 Advanced TV charges. Had Plaintiff and other Class Members known that they were being  
23 charged unauthorized Advanced TV charges, they would not have purchased Advanced TV or  
24 would have paid less for it.

25 70. As a result of Defendant's conduct, Plaintiff and Class Members were harmed  
26 and suffered actual damages.

27 //

28 //

**SIXTH CAUSE OF ACTION**

**Breach of Express Warranty On Behalf of Plaintiffs and the Class**

71. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above as if fully set forth herein.

72. Plaintiffs, and each member of the Class, formed a contract with Defendant at the time Plaintiffs and the other members of the Class purchased Advanced TV television cable. The terms of that contract include the promises and affirmations of fact made by Defendant, as described above. These representations constitute express warranties, became part of the basis of the bargain, and is part of a standardized contract between Plaintiffs and the members of the Class on the one hand, and Defendant on the other.

73. All conditions precedent to Defendant's liability under this contract have been performed by Plaintiffs and the Class and/or these conditions have otherwise been satisfied.

74. Defendant breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing the Advanced TV television cable service which could provide the benefits described above at the price advertised by Defendant.

75. As a result of Defendant's breach, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

**SEVENTH CAUSE OF ACTION**

**For Imposition of Constructive Trust On Behalf of Plaintiffs and the Class**

76. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above as if fully set forth herein.

77. Plaintiffs bring this claim individually and on behalf of the Class.

78. Defendants have been unjustly enriched because they knowingly gained and retained money in an inequitable manner at the expense of its customers and is thus accountable to the Plaintiffs and Class members to restore such money and are holding in constructive trust such monies for the benefit of Plaintiffs and the Class.

79. Defendants may not in good conscience and equity retain the benefits from their wrongful conduct and those monies belong instead to Plaintiffs and members of the Class.



**For Conversion On behalf of Plaintiffs and the Class**

82. Defendants wrongfully took possession of Plaintiffs' and the Class' money as set forth herein.

84. Plaintiffs and other members of the Class have suffered harm as a result of Defendants' wrongful taking and withholding of their property. Further, Plaintiffs and the members of the Class have been, and continue to be, to their further damage, unable to use the funds Defendants wrongfully took.

86. Plaintiffs request individually and on behalf of all Class members damages in an amount to be proven at trial

WHEREFORE, Plaintiffs, individually and on behalf of the Class, pray for judgment against Defendant as follows:

A. For an order certifying this a class action and appointing Plaintiffs and their counsel to represent the Class;

1           B.       For declaratory relief finding that Defendant has engaged in unfair, unlawful, or  
 2 fraudulent business acts or practices in violation of the CLRA and California Business &  
 3 Professions Code §§ 17200, *et seq.* and 17500, *et seq.*; Ariz. Rev. Stat. §§ 44-1521 *et seq.* and  
 4 NRS 598 *et seq.*

5           C.       For preliminary and permanent injunctive relief enjoining Defendant and its  
 6 officers, directors, agents, distributors, servants, employees, attorneys, and all others in active  
 7 concert or participation with Defendant from engaging in the false advertising campaign and  
 8 selling Advanced TV television cable service using false and misleading statements and  
 9 omissions and wrongful conduct;

10          D.       For restitution to all persons from whom Defendant unlawfully, unfairly, or  
 11 fraudulently took money, including a full refund of all money spent on the illegal charges alleged  
 12 above, and accrued interest, in addition to other unjust enrichment of Defendant, in an amount to  
 13 be proven at trial;

14          E.       For restitution, disgorgement, or any other equitable relief this Court deems  
 15 proper, including imposing a constructive trust on Defendant's excess profits from the improper  
 16 and unlawful marketing and sale of Defendant's Advanced TV television cable offerings;

17          F.       For actual damages suffered by Plaintiffs and members of the Class;

18          G.       For punitive damages;

19          H.       For interest at the maximum rate allowed by law;

20          I.       For costs of suit;

21          J.       For Plaintiffs to be awarded attorneys' fees and all litigation expenses pursuant to  
 22 the California Civil Code § 1780(d) and California Code of Civil Procedure § 1021.5.

23 Alternatively, for all attorneys' fees and all litigation expenses to be awarded pursuant to the  
 24 substantial benefit doctrine, the common fund doctrine, or any other provision of law; and

25          K.       For such other and further relief as the Court may deem just and proper.

26 //

27 //

28 //



**JURY DEMAND**

Plaintiffs demand a trial by jury on all causes of action where a trial by jury is permitted.

**COLEMAN FROST LLP**

Dated: May 29, 2015

By:



Derrick Coleman  
Attorneys for Plaintiffs MATTI YOUSIF, ELIZABETH  
IOANE, ZACH BEIMES, and DAWN HARRELL

**EXHIBIT A**



**COLEMAN FROST LLP**

429 SANTA MONICA BLVD.  
SUITE 700  
SANTA MONICA, CA 90401

February 17, 2015

**Sent Via Certified Mail, Return Receipt Requested**

David A. Bialis, Senior Vice-President and General Manager  
Cox Communications California, LLC  
5651 Copley Dr.  
San Diego CA 92111

Cox Communications California, LLC  
c/o CSC – Lawyers Incorporating Service  
2370 Gateway Oaks Dr., Suite 100  
Sacramento CA 95833

Cox Communications California, LLC  
c/o Coxcom, LLC, Manager  
6205 Peachtree Dunwoody Rd.  
Atlanta GA 30328  
Attn: Patrick J. Esser, President

Patrick J. Esser, President  
CoxCom, LLC  
1400 Lake Hearn Dr. N E  
Atlanta GA 30319

Coxcom, LLC  
c/o CSC – Lawyers Incorporating Service  
2370 Gateway Oaks Dr., Suite 100  
Sacramento CA 95833

**Re: *Matti Yousif v. Cox Communications California, LLC and Coxcom, LLC***

Greetings:

We represent Matti Yousif and all other consumers similarly situated with regard to their claims against Cox Communications California, LLC and Coxcom, LLC (collectively hereafter



February 17, 2015

Re: Cox Communications California, LCC and Coxcom, LLC

Page 2

“Cox”) arising out of, inter alia, misrepresentations, either express or implied, by Cox to consumers concerning the amounts charged for its Advanced TV services.

Cox represented to consumers in its standardized, uniform marketing materials that the advertised price of Advanced TV includes the total amount of the monthly recurring fees for Advanced TV and applicable discounts (including, for example, temporary “promotional” rates that expire after a few months) and that the only other charges not included in the advertised price consist of government-mandated applicable taxes, fees, and surcharges. In reality, however, unbeknownst to Mr. Yousif and other consumers, and without their authorization or consent, Cox has charged, and continues to charge, separate, additional amounts for Advanced TV. Cox has failed, and continues to fail, to disclose these additional, unauthorized charges to consumers or that the price for Advanced TV as advertised by Cox does not include these additional, unauthorized charges. Mr. Yousif purchased Advanced TV from Cox and paid these additional, unauthorized charges in reliance upon Cox’s misrepresentations, misleading statements, omissions and other wrongful conduct.

Cox’s representations are false and misleading and, along with the deceptive over billing practices, constitute unfair methods of competition and unlawful, unfair and fraudulent acts or practices, undertaken by Cox with the intent to result in the sale of its Advanced TV offerings to the public. In fact, these representations do not assist consumers; they simply mislead them.

This practice constitutes a violation of the California Civil Code Section 1770(a) under, inter alia, the following subdivisions:

- (a) Representing that [Advanced TV television cable] has . . . characteristics, . . . uses [or] benefits . . . which [it does] not have . . . .
- (b) Representing that the purchase of the Advanced TV service confers or involves rights, remedies, or obligations which it does not have or involve....
- (c) Advertising [Advanced TV television cable] with intent not to sell [it] as advertised.
- (d) Representing that [Advanced TV television cable] [has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code Section 1770(a)(5)-(16).

February 17, 2015

Re: Cox Communications California, LCC and Coxcom, LLC

Page 3

Cox's claims and billing practices also constitute violations of California Business and Professions Code Sections 17200 and 17500 *et seq.*, conversion and a breach of the express and implied warranties related to the sale of the Advance TV services.

Pursuant to California Civil Code Section 1782, we hereby demand on behalf of our client and all others similarly situated in California that Cox immediately correct and rectify this violation of California Civil Code Section 1770 by ceasing the misleading marketing campaign, ceasing the dissemination of false and misleading information, and by engaging in an appropriate corrective advertising campaign. In addition, Cox should offer to refund the improper Advanced TV charges to all consumer purchasers of these services, plus reimbursement for interest, costs and fees.

Mr. Yousif will, after 30 days from the date of this letter, file a Complaint against Cox seeking, among other remedies, claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims would also include claims under theories of unlawful business acts and practices, unfair and fraudulent business acts and practices, false and deceptive advertising, as well as the claims under the Consumer Legal Remedies Act, conversion and breach of express and implied warranties. Thus, to avoid further litigation, it is in the interest of all parties concerned that Cox address this problem immediately.

Cox must undertake all of the following actions to satisfy the requirements of California Civil Code Section 1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the Cox Advanced TV services who reside in California;
2. Notify all such consumers so identified that upon their request, Cox will offer an appropriate correction for its wrongful conduct, which can include a full refund of the purchase price paid for such services, plus interest, costs and fees;
3. Undertake (or promise to undertake within reasonable time if it cannot be done immediately) the actions described above for all purchasers who so request; and
4. Cease from expressly or impliedly representing to consumers that Cox's price for Advanced TV services includes the total amount of the monthly recurring fees for Advanced TV and applicable discounts (including, for example, temporary "promotional" rates that expire after a few months) and that the only other charges not included in the advertised price consist of government-mandated applicable taxes, fees, and surcharges.

In addition, we remind you of your legal duty to preserve all records relevant to such litigation. This firm anticipates that all e-mails, letters, reports, and internal corporate instant

February 17, 2015

Re: Cox Communications California, LCC and Coxcom, LLC

Page 4

---

messages that relate to the formulation and marketing of the Advanced TV services will be sought in the forthcoming discovery process. Therefore, you must inform any employees, contractors, and third-party agents (for example, advertising agencies handling your services account) to preserve all such relevant information.

We await your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Coleman', with a stylized flourish at the end.

Derrick Coleman  
COLEMAN FROST LLP



**EXHIBIT B**

**DECLARATION OF MATTI YOUSIF**

I, Matti Yousif, declare as follows:

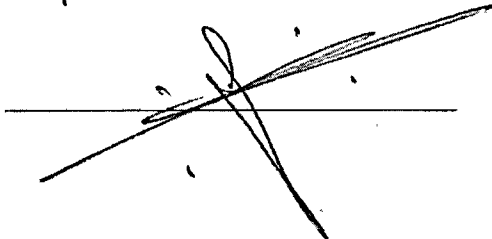
I am the plaintiff in the above-entitled action and make this declaration to the best of my knowledge, information and belief of the facts stated herein.

I am over twenty-one years of age and am a resident of San Diego, California.

I purchased the television subscription at issue in this action while in San Diego County.

Defendant conducts business in the County of San Diego.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was signed on the 27 day of May 2015, at San Diego, California.

A handwritten signature in black ink, appearing to be 'Matti Yousif', is written over a horizontal line.

Matti Yousif

# **EXHIBIT B**



# SUMMONS (CITACION JUDICIAL)

SUM-100

**NOTICE TO DEFENDANT:** **COXCOM, LLC**, a Delaware limited liability company; **COX COMMUNICATIONS CALIFORNIA, LLC**, a Delaware limited liability company; and **DOES 1 through 100**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**05/29/2015 at 04:46:23 PM**

Clerk of the Superior Court  
By Veronica Learned, Deputy Clerk

**YOU ARE BEING SUED BY PLAINTIFF:** **MATTI YOUSIF**, an individual, **ELIZABETH IOANE**, an individual, **ZACH BEIMES**, an individual, and **DAWN HARRELL**, an individual, on behalf of themselves and all others similarly situated

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

San Diego Superior Court  
330 W Broadway

CASE NUMBER  
(Número del Caso) 37-2015-00018071-CU-BT-CTL

San Diego, CA 92101

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Derrick F. Coleman (SBN 170955)

(310) 576-7312 (310) 899-1016

COLEMAN FROST LLP

429 Santa Monica Blvd., Suite 700

Santa Monica, CA 90401

DATE: 06/01/2015

Clerk, by

V. Learned  
V. Learned

Deputy

(Fecha)

(Secretario)

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED:** You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

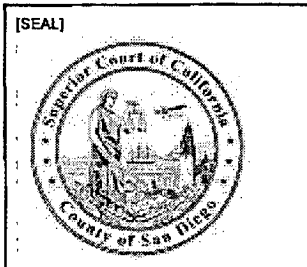
☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

Page 1 of 1



# **EXHIBIT C**

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

STREET ADDRESS: 330 W Broadway  
MAILING ADDRESS: 330 W Broadway  
CITY AND ZIP CODE: San Diego, CA 92101-3827  
BRANCH NAME: Central  
TELEPHONE NUMBER: (619) 450-7075

PLAINTIFF(S) / PETITIONER(S): Matti Yousif et.al.

DEFENDANT(S) / RESPONDENT(S): CoxCom LLC et.al.

YOUSIF VS COXCOM LLC [IMAGED]

**NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT  
CONFERENCE on MANDATORY eFILE CASE**

CASE NUMBER:  
37-2015-00018071-CU-BT-CTL

**CASE ASSIGNMENT**

Judge: Richard E. L. Strauss

Department: C-75

**COMPLAINT/PETITION FILED:** 05/29/2015

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
---------------------------	------	------	------	-------

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR\* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

**TIME STANDARDS:** The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

**COMPLAINTS:** Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

**DEFENDANT'S APPEARANCE:** Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

**JURY FEES:** In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

**MANDATORY eFILE:** Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at [www.onelegal.com](http://www.onelegal.com). Refer to General Order 051414 at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov) for guidelines and procedures.

**\*ALTERNATIVE DISPUTE RESOLUTION (ADR):** THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).



# **EXHIBIT D**



## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

### ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2015-00018071-CU-BT-CTL CASE TITLE:

YOUSIF vs COXCOM LLC [IMAGED]

**NOTICE:** All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

#### **Potential Advantages and Disadvantages of ADR**

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

##### **Potential Advantages**

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

##### **Potential Disadvantages**

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

#### **Most Common Types of ADR**

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

**Mediation:** A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

**Settlement Conference:** A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

**Arbitration:** A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

**Other ADR Processes:** There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

### **Local ADR Programs for Civil Cases**

**Mediation:** The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

**On-line mediator search and selection:** Go to the court's ADR webpage at [www.sdcourt.ca.gov/adr](http://www.sdcourt.ca.gov/adr) and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

**Settlement Conference:** The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

**Arbitration:** The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

**More information about court-connected ADR:** Visit the court's ADR webpage at [www.sdcourt.ca.gov/adr](http://www.sdcourt.ca.gov/adr) or contact the court's Mediation/Arbitration Office at (619) 450-7300.

**Dispute Resolution Programs Act (DRPA) funded ADR Programs:** The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at [www.ncrconline.com](http://www.ncrconline.com) or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at [www.nclifeline.org](http://www.nclifeline.org) or (760) 726-4900.

**Private ADR:** To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

### **Legal Representation and Advice**

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at [www.courtinfo.ca.gov/selfhelp/lowcost](http://www.courtinfo.ca.gov/selfhelp/lowcost).



# **EXHIBIT E**

COBLENTZ PATCH DUFFY & BASS LLP  
One Ferry Building, Suite 200, San Francisco, California 94111-4213  
415.391.4800 • Fax 415.989.1663

RICHARD R. PATCH (State Bar No. 88049)  
ANN E. JOHNSTON (State Bar No. 141252)  
DAVID B. ANDERSON (State Bar No. 273419)  
COBLENTZ PATCH DUFFY & BASS LLP  
One Ferry Building, Suite 200  
San Francisco, California 94111-4213  
Telephone: 415.391.4800  
Facsimile: 415.989.1663  
Email: ef-rrp@cpdb.com,  
ef-aej@cpdb.com  
ef-dba@cpdb.com

Attorneys for Defendants  
COXCOM, LLC, a Delaware limited liability  
company and COX COMMUNICATIONS  
CALIFORNIA, LLC, a Delaware limited  
liability company

## SUPERIOR COURT OF THE STATE OF CALIFORNIA

### COUNTY OF SAN DIEGO

#### HALL OF JUSTICE COURTHOUSE

MATTI YOUSIF, an individual, ELIZABETH  
IOANE, an individual, ZACH BEIMES, an  
individual, and DAWN HARRELL, an  
individual, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

COXCOM, LLC, a Delaware limited liability  
company; COX COMMUNICATIONS  
CALIFORNIA, LLC, a Delaware limited  
liability company; and DOES 1 through 100,

Defendants.

Case No. 37-2015-00018071-CU-BT-CTL

#### **NOTICE OF FILING OF REMOVAL TO FEDERAL COURT TO ADVERSE PARTIES AND STATE COURT**

Judge: Hon. Richard E. L. Strauss  
Dept.: C-75

Assigned for All Purposes to:  
Hon. Richard E. L. Strauss, Dept. C-75

Action Filed: May 29, 2015  
Trial Date: None Set

TO THIS HONORABLE COURT AND PLAINTIFFS MATTI YOUSIF, ELIZABETH  
IOANE, ZACH BEIMES, DAWN HARRELL AND THEIR ATTORNEYS OF RECORD:

A Notice of Removal of this action was filed in the United States District Court for the  
Southern District of California on July 7, 2015. A copy of the Notice of Removal is attached to  
this Notice and is served and filed herewith.

///

COBLENTZ PATCH DUFFY & BASS LLP  
One Ferry Building, Suite 200, San Francisco, California 94111-4213  
415.391.4800 • Fax 415.989.1663

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: July \_\_, 2015

COBLENTZ PATCH DUFFY & BASS LLP

By: \_\_\_\_\_

Richard R. Patch  
Attorneys for Defendants  
COXCOM, LLC, a Delaware limited liability  
company and COX COMMUNICATIONS  
CALIFORNIA, LLC, a Delaware limited  
liability company



**CERTIFICATE OF SERVICE****STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is One Ferry Building, Suite 200, San Francisco, CA 94111-4213.

On July 7, 2015, I served true copies of the following document(s) described as:

1. **NOTICE OF REMOVAL OF DEFENDANTS COXCOM, LLC AND COX COMMUNICATIONS CALIFORNIA, LLC.**
2. **CIVIL COVER SHEET.**
3. **DEFENDANTS' RULE 7.1 CORPORATE DISCLOSURE STATEMENT AND CIVIL LOCAL RULE 40.2 CERTIFICATION OF INTERESTED ENTITIES**

on the interested parties in this action as follows:

**Attorneys for Plaintiffs:**

Derrick F. Coleman, Esq.  
R. Jeffrey Neer, Esq.  
COLEMAN FROST LLP  
429 Santa Monica Blvd., Suite 700  
Santa Monica, CA 90401  
Telephone: (310) 576-7312  
Facsimile: (310) 899-1016  
Email: derrick@colemanfrost.com

**BY FEDEX:** I enclosed said document(s) in an envelope or package provided by FedEx and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of FedEx or delivered such document(s) to a courier or driver authorized by FedEx to receive documents.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 7, 2015, at San Francisco, California.

  
Kelly K. Smith