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RICH AND LESLIE STRUZYNSKI

903 DENSTON ROAD

WEST DEPTFORD, NJ 08086-3831,

AND

RACHEL WULK,

270 CRESTMONT TERRACE

COLLINGSWOOD, NJ 08108-1304,

INDIVIDUALLY AND ON BEHALF OF ALL
OTHERS SIMILARLY SITUATED,

PLAINTIFFS,

V.

VERIZON NEW JERSEY, INC.

1 VERIZON WAY

BASKING RIDGE, NJ 07920

AND

VERIZON ONLINE LLC

1 VERIZON WAY

BASKING RIDGE, NJ 07920

DEFENDANTS.

JUL 21 2017
ATTORNEYS FOR PLAINTIFFS AND
THE CLASS

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

CAMDEN COUNTY

DOCKET NO:

L-2903-17

CIVIL ACTION - CLASS ACTION

COMPLAINT WITH JURY TRIAL
DEMAND AND DESIGNATION OF
TRIAL COUNSEL

CLASS ACTION COMPLAINT

Plaintiffs Rich and Leslie Struzynski (the "Struzynskis") and Rachel Wulk (collectively, "Plaintiffs"), individually and upon behalf of all others similarly situated, by and through their attorneys, Anapol Weiss, allege as follows based upon personal knowledge as to themselves and

their own acts and experiences, and as to all other matters, based upon information and belief, including investigation conducted by their attorneys, the undersigned.

INTRODUCTION

1. This Class Action is brought by Plaintiffs on behalf of a Class consisting solely of equipment rental practices and policies of Defendants Verizon New Jersey, Inc. ("Verizon NJ") and Verizon Online LLC (collectively, "Verizon" or the "Verizon Defendants").

2. Verizon has misrepresented—and continues to misrepresent—to its New Jersey customers that they must lease a separate, Verizon-supplied "set-top box" ("STB"),¹ "digital adapter,"² and/or "CableCARD device"³ for each and every television that will be used to access Verizon FiOS⁴ programming within the same household.

3. Despite Verizon's flagrant misrepresentations regarding its equipment rental program, a multitude of "technical equipment alternatives" ("TEAs")⁵ are readily available that

¹ Also referred to colloquially as "cable boxes," STBs are a technological holdover from the days of analog transmission: "In the days of analog TV, cable boxes descrambled the premium channels and managed the high channel numbers old TVs did not support. For today's digital service, the cable box decodes MPEG video frames, decrypts the premium channels and stores and displays the program guides. Also providing upstream communications for video-on-demand, digital cable boxes often have a built-in DVR for recording content on a hard disk." "Definition of: set-top box," PC MAGAZINE, available at <http://www.pcmag.com/encyclopedia/term/51203/set-top-box>.

² Verizon's proprietary "digital adapters" are described in Verizon's own documents as follows: "A Digital Adapter provides Fios TV access without the interactive features, Video On Demand, and the full Media Guide that a regular Set-Top Box provides. Digital Adapters are ideally suited to TVs that are less frequently watched (like a TV in a guest bedroom) or where space limitations are a concern." "FiOS TV Equipment Information on Activation, Features, Dimensions, and Wiring," VERIZON, available at <https://www.verizon.com/support/residential/tv/fios/tv/receivers/equipment+issues/top+questions.htm>.

³ "CableCARDS" refer to an STB-replacement technology mandated by the Federal Communications Commissions ("FCC") since approximately 1998. As explained by Verizon, "[a] CableCARD is a device that provides access to certain encrypted High Definition (HD) and Standard Definition (SD) digital programs without the need for a Set-Top Box." "CableCARDS," VERIZON, available at <https://www.verizon.com/Support/Residential/TV/FiosTV/Other+Hardware/CableCARDS/CableCARDS.htm>.

CableCARDS are "modules" that are roughly "a size slightly larger than a credit card" and which are designed to work in conjunction with "Digital Cable Ready" devices, such as "smart" televisions and certain electronic receivers. *Id.*

⁴ "FiOS" is the commercial name of Verizon's bundled television, telephone and Internet services.

⁵ In general, "TEAs" are a class of digital adapters, physical devices, and software programs that enable consumers to access various types of audio-visual content, including viewing that content on a television. Generally speaking, TEAs fall into three broad designations: (1) "stand-alone streaming devices" (*i.e.*, a device that enables a consumer to browse and view cable content directly on televisions and other digital devices capable of projecting audio-visual content to a television, including, but not limited to, the Roku Streaming Stick, the Amazon Fire TV Stick, the Google Chromecast, TiVo, and other third-party equipment alternatives) that are connected—either physically or otherwise—to a television; (2) digital adapters, connectors, signal filters, and other pieces of equipment that may be used by themselves, or in

permit Verizon customers to enjoy FiOS on multiple televisions within the same household without the claimed “necessity” of leasing multiple pieces of proprietary equipment from Verizon.

4. Verizon’s onerous (and lucrative) rental policies not only misrepresent, conflict with, and impermissibly obscure the true accessibility of Verizon’s FiOS programming, but are directly belied by Verizon’s own public submissions to the U.S. Congress (including signed testimonies by Executive Vice-President & General Counsel Craig L. Silliman and Verizon Executive Director Leora Hochstein) and, upon information and belief, via various other communications, misrepresentations, and omissions made by Verizon and its agents and employees.

5. Plaintiffs seek all available relief from Verizon’s ongoing course of conduct pursuant to the New Jersey Consumer Fraud Act (“CFA”),⁶ the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act (“TCCWNA”),⁷ and the New Jersey Declaratory Judgment Act (“DJA”).⁸

JURISDICTION AND VENUE

6. Plaintiffs have commenced this action pursuant to this Court’s jurisdiction over class actions under N.J. Court Rule 4:3-1(a)(4).

7. The Verizon Defendants regularly and systematically conduct business within New Jersey. Furthermore, upon information and belief, Plaintiffs aver that both Verizon NJ and Verizon Online LLC have principal places of business located in New Jersey. Upon information and belief, Plaintiffs also aver that Verizon NJ is incorporated under New Jersey law. Personal jurisdiction is, therefore, properly exercised over the Verizon Defendants.

8. This Court is a proper venue pursuant to N.J. Court Rule 4:3-2(a)(3), because Plaintiff Rachel Wulk currently resides in Camden County and her cause of action also arose there.

conjunction with a “standalone streaming device” to receive programming from a multichannel video programming distributor (“MVPD”); and (3) an application or program (*i.e.*, software) developed by an MVPD or a third party that allows MVPD content to be accessed directly from a television (*i.e.*, SmartTVs), or via a secondary device (*i.e.*, a computer, cell phone, tablet, or similar apparatus) that is capable of transmitting audio-visual content to a television.

⁶ N.J.S.A. §§ 56:8-1, *et seq.*

⁷ N.J.S.A. §§ 56:12-14, *et seq.*

⁸ N.J.S.A. §§ 2A:16-50, *et seq.*

THE PARTIES

9. Plaintiffs Rich and Leslie Struzynski are adult citizens of New Jersey who reside at 903 Denston Road, West Deptford, NJ 08086-3831. The Struzynskis have been Verizon FiOS customers since at least April 2010, and currently rent three (3) Verizon-supplied STBs for use in their home, and three (3) Verizon-supplied digital adapters, for a total of approximately \$51.94 in monthly fees (exclusive of any additional installation, administrative, and other fees charged by Verizon in relation to these rentals).⁹

10. Plaintiff Rachel Wulk is an adult citizen of New Jersey who resides at 270 Crestmont Terrace, Collingswood, NJ 08108-1304. Wulk has been a Verizon FiOS customer since at least May 2015, and currently rents two (2) Verizon-supplied STBs for use in her household, for a total of approximately \$21.99 in monthly fees (exclusive of any additional installation, administrative, and other fees charged by Verizon in relation to these rentals).¹⁰

11. Defendant Verizon New Jersey, Inc. is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business located at 1 Verizon Way, Basking Ridge, NJ 07920.

12. Defendant Verizon Online LLC is a limited liability corporation organized and existing under the laws of the state of Delaware, with its principal place of business located at 1 Verizon Way, Basking Ridge, NJ 07920.

13. Upon information and belief, including investigation and inquiry conducted by and through their attorneys, Plaintiffs aver the following:¹¹

⁹ This information is confirmed by Plaintiffs Rich and Leslie Struzynski's most recent billing statement, a true and correct copy of which is attached hereto, made a part hereof, and marked Exhibit "A."

¹⁰ This information is confirmed by Plaintiff Rachel Wulk's most recent billing statement, a true and correct copy of which is attached hereto, made a part hereof, and marked Exhibit "B."

¹¹ See, e.g., "Verizon FiOS TV Terms of Service," VERIZON, (April 14, 2017), at ¶ 1, available at <http://www.verizon.com/about/sites/default/files/FTV-ToS-04142017-v17-2-ENGLISH.pdf>, a true and correct copy of which is attached hereto, made a part hereof, and marked Exhibit "C," ("This Agreement includes . . . the specific elements of your Service or Bundled Services plan, including the pricing, duration, applicable Early Termination Fee

- a. Verizon was acting individually, jointly, and/or by and through its agents, servants, franchisees, workmen, and/or employees;
- b. Verizon is a multichannel video programming distributor ("MVPD") that provides, amongst other services, broadband television programming under the FiOS service mark for both residential and commercial customers;
- c. Verizon provides services throughout New Jersey, including Camden and Gloucester Counties;
- d. At all relevant times hereto, throughout the applicable class period(s), and continuing until today, Verizon has been the service provider for all of the aforementioned FiOS services in New Jersey; and
- e. Verizon also acts as the lessor of its own proprietary equipment, with Verizon assessing a variable rental rate that differs depending on the unit being rented, along with other administrative and installation fees imposed by Verizon.

FACTUAL BACKGROUND

a. The STB Rental Market

14. STBs are the prevailing conduit for cable television programming in American households.¹² These proprietary devices make an external cable connection accessible to the devices

("ETF"), and Equipment pricing, all as described in the information made available to you when placing and confirming your order . . ."). This agreement governs Verizon customers' receipt, use, and enjoyment of FiOS "Service," a term defined in the contract to include "without limitation, all Programming, Equipment, media or program guides, video recording capability, software, technical support, and other features, products and services provided as part of and included with our television service . . ." *Id.* at ¶ 2 (emphasis added). Furthermore, the contract makes clear that the term "Equipment" refers to "equipment provided by Verizon to you for use with the Service, including any digital adapter, set top box, digital video recorder, video media server, peripheral devices, routers, or optical network terminal provided to you by Verizon that are either rented by you or otherwise required to be returned to Verizon upon termination" *Id.*

¹² See, e.g., Michael J. De La Merced and David Gelles, "AT&T to Buy DirecTV for \$48.5 Billion in Move to Expand Clout," THE NEW YORK TIMES, May 18, 2014, available at <https://dealbook.nytimes.com/2014/05/18/att-to-buy-directv-for-48-5-billion>.

in an MVPD customer's home. Historically, these units served the purposes of decryption (*i.e.*, converting signals into viewable content) and navigation (*i.e.*, "tuning" or browsing content).¹³

15. As of January 2016, approximately 53 million U.S. consumers rely upon 221 million STBs to watch their television shows. Of these 53 million, approximately **99 percent** (or about 52.47 million U.S. citizens) rent STBs from their respective cable providers.¹⁴

16. STBs serve a more deliberate and pecuniary function beyond any arguable technological role—they are a mechanism for extracting additional profits from unsuspecting consumers. Congressional fact-finding reveals the STB rental market is worth a staggering **\$19.5 billion annually**, with the average U.S. household paying \$231.82 in STB rental fees *every year*. Senior U.S. legislators have termed these policies, quite directly, as "unjust and unjustifiable."¹⁵

17. As part-and-parcel of this billion-dollar scheme, MVPDs have coerced consumers into renting *multiple* STBs for every television in their home, claiming the duplicates are a technological necessity to receive programming on multiple televisions in the same household (they are not). As a result, the typical U.S. cable consumer is obliged to rent an average of 2.6 STBs. Rental fees average \$7.43 per month per unit (oftentimes, much more), and persist for the entire duration of a customer's contractual relationship with their respective MVPD.¹⁶

¹³ See, e.g., Dana A. Scherer, "CRS Insights: The Battle over Cable Boxes," FED. OF AMERICAN SCIENTISTS, November 14, 2014, available at <https://fas.org/sgp/crs/misc/IN10180.pdf>.

¹⁴ See, e.g., Mark Cooper & John Bergmayer, "Re: Media Bureau Request for Comment on DSTAC Report, MB Docket No. 15-64," PUBLIC KNOWLEDGE, (January 20, 2016), at 2 n.7, available at <https://www.publicknowledge.org/documents/pk-and-mark-cooper-set-top-box-letter-to-fcc>; see also, e.g., "Markey, Blumenthal Decry Lack of Choice, Competition in Pay-TV Video Box Marketplace," U.S. SEN. EDWARD MARKEY, July 30, 2015, available at <http://www.markey.senate.gov/news/press-releases/markey-blumenthal-decry-lack-of-choice-competition-in-pay-tv-video-box-marketplace> ("Congressional Fact-Finding").

¹⁵ See, e.g., "Markey, Blumenthal Decry Lack of Choice, Competition in Pay-TV Video Box Marketplace," U.S. SEN. EDWARD MARKEY, July 30, 2015, available at <http://www.markey.senate.gov/news/press-releases/markey-blumenthal-decry-lack-of-choice-competition-in-pay-tv-video-box-marketplace>. (declaring consumers "deserve protection against hidden, hideously vexing fees for set-top boxes" and "competitive options in accessing technology and television—not exorbitant prices dictated by monopoly cable companies").

¹⁶ *Id.*

18. Taken as a whole, the Consumer Federation of America concludes that MVPDs are overcharging consumers in the range of \$6 billion to \$14 billion *every year*.^{17,18}

19. The distressing state of the MVPD equipment rental market has produced the precise result one might expect in a free market—interlopers (and in some cases, the MVPDs themselves) have developed legitimate TEAs that obviate the requirement of renting multiple pieces of proprietary equipment from an MVPD in order to enjoy programming on multiple televisions within the same home. Contrary to Verizon's representations, the availability of TEAs has already surpassed the paradigm envisioned by the antiquated equipment policies clung to by MVPDs—particularly Verizon.

20. Upon information, investigation, and belief, Plaintiffs aver that the reality of MVPD viewership and the availability of TEAs is much more nuanced and differentiated than Verizon would have its customers believe.¹⁹ Verizon is aware of these nuances, yet deceives its customers into multiple, unnecessary rental agreements and—as a result—into overpaying²⁰ Verizon.

¹⁷ See, e.g., Mark Cooper & John Bergmayer, "Re: Media Bureau Request for Comment on DSTAC Report, MB Docket No. 15-64," PUBLIC KNOWLEDGE, (January 20, 2016), at 1-2, *available at* <https://www.publicknowledge.org/documents/pk-and-mark-cooper-set-top-box-letter-to-fcc>. The same analysis also indicates that STB rental fees increased by 185 percent between 1994 and 2016, which is a 300 percent deviation above the Consumer Price Index during the same time period. Meanwhile, the cost of manufacturing STBs has plummeted by 90 percent along the same chronology. Simply put, there is no justification for the current state (and cost) of prevailing STB practices beyond mere profit.

¹⁸ Plaintiffs' and the class do not request that a different price or rental rate be set for Verizon's STBs. Nor do Plaintiffs' claims rely on any allegation that the literal price set by Verizon is, in and of itself, unlawful. Rather, Plaintiffs' claims implicate Verizon's *conduct* (i.e., the misrepresentations and/or omissions of material facts leading up to, and including, the consummation of the agreements that include equipment rental obligations). Plaintiffs have recited the data above concerning the STB rental market (which speaks for itself) to place Verizon's egregious conduct, which has substantially and ascertainably harmed a Class of New Jersey citizen consumers, in the proper factual context.

¹⁹ In fact, the FCC has *required* Verizon to directly support certain types of TEAs for nearly two decades. In 1998, the FCC adopted rules establishing "(1) manufacturers' right to build, and consumers' right to attach, any non-harmful device to an MVPD network, (2) a requirement that MVPDs provide technical interface information so manufacturers, retailers, and subscribers could determine service compatibility, (3) a requirement that MVPDs make available a separate security element that would allow an STB built by an unaffiliated manufacturer to access encrypted multichannel video programming without jeopardizing security of programming or impeding the legal rights of MVPDs to prevent theft of service, and (4) the 'integration ban,' which required MVPDs to replace existing encryption regimes with CableCARD technology. See, e.g., "Notice of Proposed Rulemaking and Memorandum Opinion and Order," FED. COMM. COMM'N, MB Docket No. 16-42, at ¶ 6 (February 18, 2016). CableCARD technology was a forerunner of current TEAs. CableCARDS are FCC-approved devices that permit cable customers to view cable programming without an STB leased directly from the cable provider. See, e.g., "Digital Cable Compatibility: CableCARD-Ready Devices," FED. COMM. COMM'N, *available at* <https://www.fcc.gov/reports-research/guides/digital-cable-compatibility-cablecard-ready-devices>

b. Verizon's Deceptive and Misleading Equipment Rental Practices.

21. Verizon is the leading MVPD throughout New Jersey—providing service to some 64 percent of New Jersey citizens (approximately 5.6 million people).²¹ Additionally, New Jersey serves as the forum state of Verizon's corporate headquarters at Basking Ridge, NJ.

22. It cannot be reasonably disputed that Verizon requires—or at least *claims* that it is necessary for—all New Jersey citizen customers to rent a separate proprietary device from Verizon for each television used to view FiOS programming. In a suite of customer guidance documents, Verizon states the following: “To receive digital programming, premium channels, the interactive Media Guide, or On-Demand programming, a Set-Top Box is **required**.”²²

23. In the same collection of documents, Verizon also advises its customers that the only alternatives to STB rental are **Verizon-supplied** “digital adapters” and/or “CableCARDS.”

24. With respect to “digital adapters,” Verizon offers a single model for rental named the “Motorola DCT-700.” Verizon describes its functionality as follows:

Is the DCT-700 Digital Adapter the same as a digital converter box I can buy in a store?

A DCT-700 Digital Adapter works with your FiOS TV setup and is not the same thing as the digital converter boxes you can buy in a retail store.

To use a DCT-700 Digital Adapter you must be FiOS TV customer. The adapter provides FiOS TV access without the Interactive features, Video On Demand, and

(“A retail CableCARD-ready device is a television, set-top box, or device that connects to a personal computer that you can plug directly into your cable system to receive cable channels without having to lease a set-top box from your cable operator.”). Since at least August 2011, relevant FCC regulations set forth that cable providers must: (1) allow consumers to use your own third-party, CableCARD-compatible STB without charge; (2) provide a discount for customers electing to utilize a CableCARD-compatible device; and (3) provide accurate rental cost information. *See, e.g., “CableCARD: Know Your Rights,”* FED. COMM. COMM’N, *available at* <https://www.fcc.gov/media/cablecard-know-your-rights> (citing FCC Rules 76.1205(b)(2)-(5), 76.1205(b)(5)(C), 76.1602(b)). This regulatory regime is confirmation that Verizon has egregiously misrepresented the state of its STB technology in written, and other, representations to Plaintiffs and the Class.

²⁰ *See, supra* at n.18.

²¹ *See, e.g., “Verizon FiOS,”* BROADBANDNOW, *available at* <http://broadbandnow.com/Verizon-Fios> (last accessed July 11, 2017).

²² *See, e.g., “Required Equipment for FiOS TV,”* VERIZON, *available at* <https://www.verizon.com/support/residential/tv/fios/general+support/new+to+tv/questionsone/84832.htm> (last accessed July 11, 2017) (*emphasis added*).

the full Media Guide that a regular Set-Top Box provides. Digital Adapters are ideally suited to TVs that are less frequently watched (like a TV in a guest bedroom) or where space limitations are a concern.

Do I need a digital converter box?

You only need a digital converter box if you have a TV that is not:

- Connected to your FiOS TV network
- Capable of receiving an over-the-air digital signal.²³

25. With respect to "CableCARDS," Verizon offers similar guidance to its customers:

What digital programs can I watch with my CableCARD?

You can view all FiOS TV Standard Definition and High Definition digital channels to which you subscribe. You can also order certain Pay-Per-View events by calling 1-800-VERIZON (1-800-837-4966). Without a Set-Top Box, you do not have access to On Demand programming, the FiOS TV Interactive Media Guide, or other advanced features of the FiOS TV service.

What programs can I watch with my DCR TV without a CableCARD or Set-Top Box?

You can watch FiOS TV Local Standard Definition (SD) and High Definition (HD) local digital channels without a Set-Top Box or CableCard plugged into the Digital Cable Ready (DCR) slot.

What should I do if I want to receive interactive services, such as the FiOS TV Interactive Media Guide or On Demand programming?

You must request a Set-Top Box from Verizon. Call 1-800-VERIZON (1-800-837-4966) to request a Set-Top Box.

Can I use the FiOS TV Interactive Media Guide or Parental Controls with a CableCARD?

No. Some of the advanced features of your FiOS TV service are not available using a CableCARD, such as the following:

- FiOS TV Interactive Media Guide
- On Demand
- FiOS TV Widgets
- Parental Controls

²³ "Is the DCT-700 Digital Adapter the same as a digital converter box I can buy in a store?" VERIZON, available at <https://www.verizon.com/support/residential/tv/fios/tv/receivers/equipment+issues/questionsone/124908.htm> (last accessed July 11, 2017).

A Set-Top Box is required to access these services. If you want these advanced options, you may wish to obtain a Set-Top Box to ensure access to the full range of FiOS TV services.²⁴

26. Customers seeking additional information regarding the use of *multiple* televisions to view FiOS are directed to the following explanations of Verizon's equipment rental policies:

Can I hook up multiple TVs with Verizon FiOS Service?

Yes. Set-Top Boxes are required for each television where you would like to receive digital programming (all packages and channels beyond the FiOS TV Local Package). You can install FiOS TV on up to seven televisions with Set-Top Boxes. Our representatives and technicians will work with you set up the best FiOS TV network in your home.

* * *

Do I need a separate Set-Top Box for every TV in my house?

Yes. Customers receiving FiOS TV service will need to ensure that each TV set in the home is equipped with a Verizon-supplied set-top box, digital adapter, or CableCARD so that they can continue to enjoy the service on all of their sets.²⁵

27. Overall, these documents state that the only way Verizon customers can connect multiple televisions to their "FiOS service" is by renting an equal number of Verizon-supplied proprietary devices (*e.g.*, an STB, digital adapter, and/or CableCARD).²⁶ Similarly, these documents make clear that the only way Verizon customers can connect to their "FiOS service" AND receive digital programming (which constitutes any and all content beyond "local" programming) on multiple televisions is solely by renting an equal number of Verizon supplied STBS.²⁷

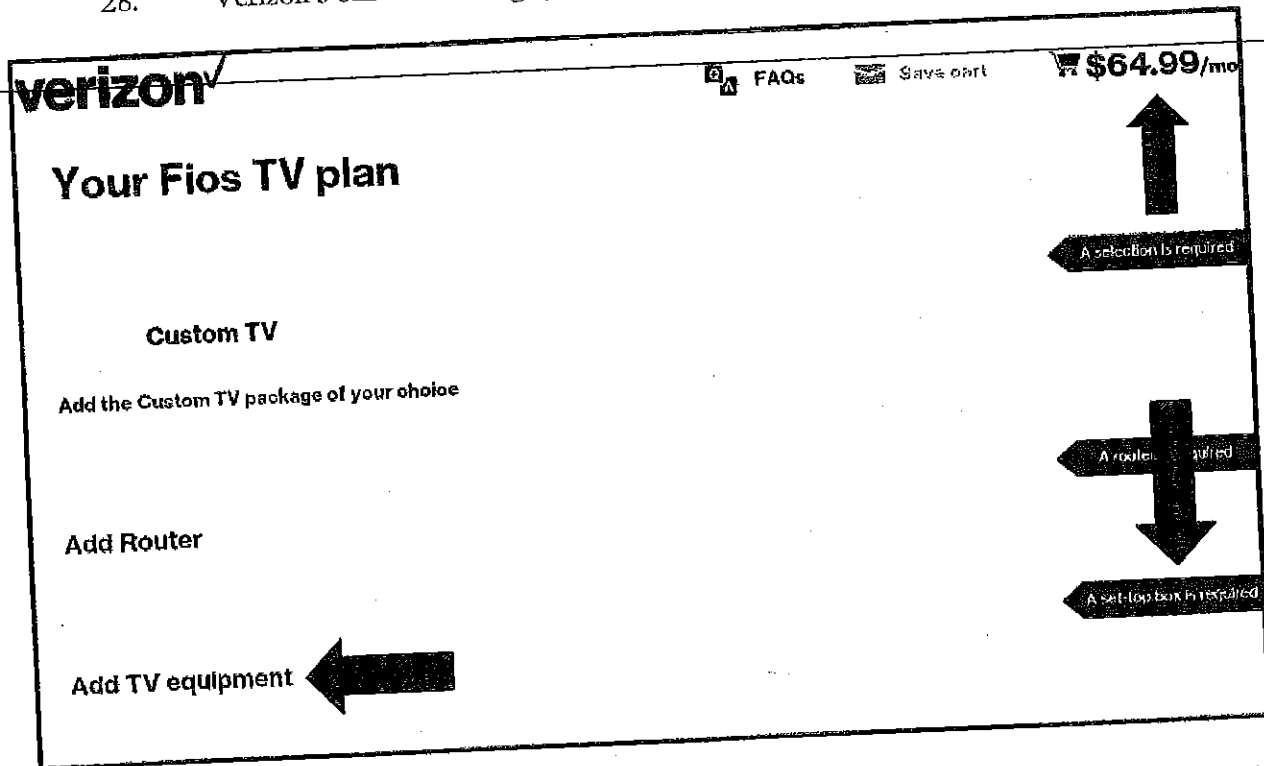
²⁴ "CableCARDS," VERIZON, *available at* <https://www.verizon.com/Support/Residential/TV/FiosTV/Other+Hardware/CableCARDS/CableCARDS.htm> (last accessed July 11, 2017).

²⁵ *See, e.g.*, "Additional information regarding FiOS TV equipment," VERIZON, *available at* <https://www.verizon.com/support/residential/tv/fios/tv/general+support/new+to+tv/questionsone/84837.htm> (last accessed July 11, 2017) (emphasis added).

²⁶ *See, e.g.*, "FiOS TV Installation," VERIZON, *available at* <https://www.verizon.com/support/residential/tv/fios/tv/general+support/new+to+tv/questionsone/84834.htm> (last accessed July 11, 2017) ("Your Verizon FiOS TV trained Technician(s) will [i]ninstall the specified number of Set-Top Boxes."); "Additional FiOS TV Installation Information," VERIZON, *available at* <https://www.verizon.com/support/residential/tv/fios/tv/general+support/new+to+tv/questionsone/84836.htm> (last accessed July 11, 2017) (additional fees imposed if more than three (3) televisions are connected to FiOS in one home).

²⁷ *Id.*

28. Verizon's online ordering system also represents such rentals as a flat requirement:



This screenshot is from a putative order for FiOS cable service in New Jersey. Verizon represents that "[a] set-top box is required" to place the order, which refers exclusively to Verizon's proprietary STBs. Prior to selection, the customer is quoted \$64.99 per month for television service.

29. Below is the menu that appears once a customer clicks on "Add TV equipment":

verizon FAQ Save cart **\$64.99/mo**

Add TV equipment

How many TVs?

1 | **2** | **3** | **4**

Equipment for your 1st TV is \$12; additional TVs are \$10 each

Recording Services

Enhanced	DVR
<ul style="list-style-type: none"> • Store 100 hrs HD • Record 6 shows at once 	<ul style="list-style-type: none"> • Store 16 hrs HD • Record 2 shows at once
\$20.00	\$12.00
details	details

I don't want to record on any TV's

\$0

A set-top box is required

Tellingly, Verizon's system automatically ties the number of STBs that a customer must lease to their number of televisions. The admonition that such rentals are required also remains.

30. As the snapshot above shows, Verizon charges its customers a minimum of \$12.00 per month for the first television, and a minimum of \$10.00 per month for each additional television. While Verizon has certainly endeavored to provide "choices" regarding *which* STBs customers may elect to rent, they have deceptively clouded relevant and technologically dispositive information regarding their customers' true range of options.

31. The rationale for Verizon's opaque behavior on this point is practically self-evident from a financial standpoint—each additional STB rented is another source of revenue:

verizon FAQ **\$96.99/mo**

3 HD Set-Top Boxes

How many TVs?

1 **2** **3** **4**

Equipment for your 1st TV is \$12; additional TVs are \$10 each

Recording Services

Enhanced <ul style="list-style-type: none"> • Store 100 hrs HD • Record 6 shows at once \$20.00 details	DVR <ul style="list-style-type: none"> • Store 16 hrs HD • Record 2 shows at once \$12.00 details
I don't want to record on any TV's \$0	

A selection is required

With the addition of just three (3) STBs to the original service order—the same number of STBs currently rented by Plaintiffs Rich and Leslie Struzynski—the monthly price for FiOS television service jumps to \$96.99, an increase in price of approximately 67 percent. It is possible for FiOS customers to rent as many as seven (7) STBs from Verizon at a single address under normal circumstances (and perhaps more).²⁸ The prices in these screenshots are exclusive of any DVR-capability that customers elect to include with each and every STB (which costs even more *still*).²⁹

32. Furthermore, this fee assessment also does not include any of the “installation” fees that are assessed by Verizon in connection with the rental of Verizon-supplied STBs, or related administrative fees, other costs imposed by Verizon, taxes, *etc.*

²⁸ See, e.g., “Additional FiOS TV Installation Information,” VERIZON, available at <https://www.verizon.com/support/residential/tv/fios/tv/general+support/new+to+tv/questionsone/84836.htm> (last accessed July 11, 2017) (additional fees imposed if more than three (3) televisions are connected to FiOS in one home).

²⁹ See, *supra* at n.15. Verizon’s prices related to the rental of *multiple* STBs (rental fees, installation fees, and administrative fees) are the measurement of damages in this case, not the factual foundation of Plaintiff’s claims.

33. This process does not provide customers with a transparent or adequate opportunity to select how many STBs they wish to lease from Verizon, exclusive from the number of televisions they plan to use to access FiOS programming, nor does it provide customers with any information regarding analogous equipment alternatives (“TEAs”).

34. Verizon’s equipment rental practices depicted above also do not adequately apprise New Jersey citizen consumers of the availability of Verizon’s own alternatives to STB rental (including, but not limited to, the aforementioned “digital adapters” and “CableCARDS”).³⁰

35. Upon information and belief, Plaintiffs aver that New Jersey FiOS customers that order FiOS service via alternative methods (*i.e.*, not online), receive similar (if not identical) deceptive information regarding Verizon’s STB rental policies and encounter analogous roadblocks to pursuing alternative equipment arrangements from Verizon’s agents and/or employees.

c. **Binding Representations Reveal Verizon Has Thorough Knowledge of TEAs.**

36. In stark contrast to the representations discussed above, in which Verizon is bullish regarding its ongoing statements regarding its equipment rental programs, it has made quite different statements in over two years’ worth of filed statements with the FCC and the United States Congress.

37. Some almost three years ago, in December 2014, in response to an official inquiry regarding Verizon’s STB policies from the United States Senate, Verizon General Counsel Silliman stated the following in signed congressional testimony:

[T]he traditional set-top box is rapidly becoming only one of many ways that consumers access video content from video distributors, and . . . changes in technology and competition . . . have provided consumers with additional choices in how and from whom the access video programming. **Consumers increasingly are untethering themselves from their TVs and the traditional set-top boxes,** which were long the centerpiece of the consumer television experience. **They now**

³⁰ See also, *e.g.*, “Additional information regarding FiOS TV equipment,” VERIZON, available at <https://www.verizon.com/support/residential/tv/fios/tv/general+support/new+to+tv/questionsone/84837.htm> (last accessed July 11, 2017) (discussing “Verizon-supplied . . . digital adapters . . .”).

enjoy the freedom to view and interact with content on any device, anytime, anywhere. Advances in home networking and the growing popularity of video delivered over the Internet are fueling these rapid and constantly evolving, technology changes.

* * *

Subscribers to Verizon's FiOS TV service can also access FiOS TV programming on their own equipment, including Xbox game consoles, and smart TVs, through the FiOS TV application. Also, FiOS TV customers can access well over a hundred linear channels in-home and dozens of linear channels out-of home with the FiOS Mobile software application on tablets and smartphones.

* * *

- a. What percentage of your customers leases one or more set-top boxes from your company?

Answer: The vast majority of Verizon's FiOS TV subscribers lease at least one set-top box from Verizon. In addition, many consumers lease CableCARDS or access Verizon's FiOS TV service through means other than the traditional set-top box, e.g., smartTV, game console, computer, mobile device.

* * *

As noted above, our customers' viewing experiences are shifting—much of FiOS TV content is now accessible over a wide range of consumer devices, including Smart TVs, BluRay players, game consoles, smartphones, and tablets, through the FiOS Mobile application. For the few customers interested in owning their own set-top boxes, Verizon supports and provides CableCARDS that enable access to our FiOS TV service through such set-top boxes.

5. If a customer chooses to purchase their own set-top box from a company different than yours, does your company require the consumer to pay any installation or support costs separate from those levied on customers who simply lease a set-top box from your company?

Answer: The initial FiOS installation costs, if any, are the same for customers who lease set-top boxes versus customers who provide their own set-top box. The current support cost for customers who provide their own set-top boxes is \$4.99 a month to lease a CableCARD. A customer can self-install the CableCARD in a set-top box purchased at retail.³¹

³¹ Craig L. Silliman, "RE: Set-Top Box Marketplace," VERIZON, December 11, 2014, at 1-4, *available at* <https://www.markey.senate.gov/imo/media/doc/Response%20-%20VZ%20%2012-12-14.pdf> (emphasis added).

38. Exposing Attorney Silliman's statements to both "sunlight" and "electric light,"³² a number of things become immediately evident: (a) Verizon was, and remains, fully cognizant that their own proprietary equipment is not the only way that their customers can receive FiOS programming in their home; (b) Verizon has full awareness of the wide range of stand-alone streaming devices that are readily available and permit Verizon customers to circumvent the alleged necessity of renting multiple pieces of Verizon's own proprietary technology; and (c) Verizon, itself, has developed hardware and software specifically designed to enable its FiOS customers to view content at their own discretion.

39. General Counsel Silliman's statements are confirmed within the same collection of customer guidance documents discussed above, as Verizon actually specifically advises its FiOS members that they have the option of accessing such programming online at their leisure:

As a FiOS TV subscriber, you can watch your favorite original programming, TV shows, and the latest movies online Just sign into FiOS TV Online with your Verizon user name and password and you can watch on your computer—at home or away—using any broadband connection. You will be able to watch shows from networks that match up with channels you subscribe to based on your current FiOS TV programming package.³³

40. Moreover, these representations are fully confirmed by additional filings prepared by other Verizon executives and attorneys. Below are official remarks advanced on behalf of all "Verizon companies" that are "the regulated, wholly-owned subsidiaries of Verizon Communications Inc." to the FCC in April 2016 (almost two years after Mr. Silliman's congressional testimony and 2014 statements):³⁴

³² Louis D. Brandeis, *Other People's Money and How the Bankers Use it* 92 (Frederick A. Stokes Co. Ed. 1914)(1913) ("sunlight is said to be the best of disinfectants; electric light is the most efficient policeman.")

³³ "Welcome to FiOS TV," VERIZON, *available at* <https://www.verizon.com/support/residential/tv/fios-tv/general+support/new+to+fiOS+tv/questionsone/84831.htm>.

³⁴ The problems plaguing the STB market are pervasive enough that it has also attracted prolonged attention from the FCC, which has been wrestling with this brand seemingly baffling problem for decades. *See, e.g.*, Jim Puzzanghera, "Is the FCC ready to think outside the set-top box?," *THE LOS ANGELES TIMES*, November 8, 2015, *available at* <http://www.latimes.com/business/technology/la-fi-set-top-box-future-20151109-story.html>. In particular, former FCC chairman Tom Wheeler has recently likened the need for regulation in the current STB rental market to the last century's

Today's market for video services offers consumers more choices than ever before. The trends are clear: Consumers want to get their content from the provider of their choice using the device of their choice and when and where they want it. Competition and advances in technology are fueling these trends and will continue to disrupt the marketplace. Verizon supports efforts to promote innovation and increase consumer choice throughout the video marketplace.

* * *

Structured correctly, the [FCC's] proposals could hasten the inevitable demise of traditional set-top boxes. As [an MVPD] that leases millions of set-top boxes to our subscribers today, Verizon understands that new competition in this area will present challenges. We recognize however that the old video viewing model is already giving way to one where consumers increasingly control how, when, and where to view content. We understand that this emerging model promises many benefits to consumers and opportunities for innovative service providers. Verizon shares the goals of increased innovation and consumer choice

* * *

Consumers have more choices than ever before in how they access and view video programming, and the era of the traditional set-top box is already fading. Today's consumers enjoy access to video content from multiple sources and platforms. . . . MVPDs and manufacturers have designed and distributed applications that enable consumers to access content with their own devices, including smartphones, tablets, games consoles, and Smart TVs, using standard operating systems such as Android, iOS, and Windows. All major MVPDs have developed and deployed such applications, and consumers have initiated over 50 million downloads of MVPD apps to mobile devices and Smart TVs. . . . To a large extent, the video marketplace already provides an environment in which "MVPD subscribers [can] watch what they pay for wherever they want, however they want, and whenever they want."

* * *

MVPDs like Verizon continue to roll out new services and technologies that benefit their subscribers, which they should enjoy using either MVPD-supplied or third-party navigation devices.

liberation of consumers from the burden and obligation of, for example, being required to lease a rotary telephone from their service provider. See, e.g., Tom Wheeler, "It's Time to Unlock the Set-Top Box Market," RECODE, January 27, 2016, available at <http://www.recode.net/2016/1/27/11589108/its-time-to-unlock-the-set-top-box-market> ("[I]f you wanted to have a landline in your home, you had to lease your phone from Ma Bell. There was little choice in telephones, and prices were high. The FCC unlocked competition and empowered consumers with a simple but powerful rule: Consumers could connect the telephones and modems of their choice to the telephone network."). General Counsel Silliman's comments above were made in response to a proposed rulemaking initiative from the FCC addressing these concerns regarding the STB marketplace. That rulemaking was postponed indefinitely in September 2016. See, e.g., Cecilia Kang, "F.C.C. Delays Vote on Cable Set-Top Boxes," THE NEW YORK TIMES, September 29, 2016, available at <https://www.nytimes.com/2016/09/30/technology/fcc-cable-box-vote-delayed.html>.

* * *

The [FCC's] rules should support the ongoing evolution toward an environment in which consumers will not need to use separate navigation devices to access MVPD content. As explained above, consumers can already access MVPD programming through a host of consumer devices using applications, and the day is coming when traditional set-top boxes will be relegated to the technology dustbin next to rotary telephones and analog television sets.³⁵

41. Additionally, on September 21, 2016, Verizon's Executive Director of Federal Regulatory and Legal Affairs Leora Hochstein reiterated Verizon's commitment to expanding "consumer choice" in a follow-up letter to the FCC:

As a competitive MVPD, Verizon seeks to empower its customers to access content when and where they want it and on the devices they choose. An apps-based approach can be an effective way to ensure that consumers have additional choices in how they view their video services. In fact, Verizon has worked closely with content providers and device platform owners, such as iOS, Android and Amazon, to develop FiOS apps that deliver content to our subscribers in a variety of ways.³⁶

42. The unmistakable import of these representations is that Verizon is perfectly aware of the "state-of-the-art" regarding MVPD video programming, including a full understanding of how consumers are able to access FiOS content. While Verizon speaks in the "future" tense of the "inevitable demise of traditional set-top boxes," in truth, a transformative marketplace shift has already taken place in the form of TEAs. In fact, Verizon has been explicitly attempting to position its FiOS programming to take advantage of these TEAs for years, as both Mr. Silliman and Ms. Hochstein's statements reveal. Yet, curiously, Verizon continues to represent—to its *customers*—that the rental of multiple pieces of Verizon-supplied equipment is somehow required at the point-of-sale, and in the litany of documents discussed above.

³⁵ William H. Johnson, Esq., "Comments of Verizon," FED. COMM. COMM'N, at 1-2, 3-7, *available at* <https://ecfsapi.fcc.gov/file/60001690178.pdf> (emphasis added).

³⁶ Leora Hochstein, "Letter RE: Expanding Consumers' Video Navigation Choices, MB Docket No. 16-42; Commercial Availability of Navigation Devices, CS Docket No. 97-80," Verizon, (September 21, 2016), *available at* <https://ecfsapi.fcc.gov/file/109212950705929/STB.exparte.9.21.16.pdf>.

43. Assuming, *arguendo*, that one leased STB may somehow be required to facilitate ~~transmission of FiOS service into Verizon's New Jersey customers' respective homes, hoodwinking~~ this Class of consumers into leasing as many as seven (7) STBs (and potentially more pieces of other proprietary equipment) for each and every television in those homes is technologically duplicative, wholly unnecessary, and extraordinarily deceptive. Verizon's strategy is not unique - - attempt to skirt disaster by claiming that it supports and enables the use of TEAs before its regulators, yet represent to its own customers that there is some illusory necessity of renting multiple pieces of equipment directly from Verizon (which equipment is by Verizon's own admission outdated almost immediately upon installation).

44. Verizon has developed a number of proprietary programs—in order to facilitate the “customer choice” it claims to support so ardently—which also provide full and direct access to FiOS programming on multiple televisions within the same residence without the need for multiple pieces of Verizon-supplied equipment (either as a standalone program, or used in conjunction with a standalone streaming device).³⁷ At various times in the last few years, Verizon has created at least two separate programs that permit such access, including the FiOS TV App,³⁸ and the FiOS Mobile App.³⁹ As of filing, at least one (1) of these programs remains available and active to FiOS customers.

³⁷ Verizon's Terms of Residential Service confirm that Verizon has made these workarounds widely available to its FiOS customers: “Verizon may enable you to access and view Programming, including On Demand Services, in a variety of ways: (i) by streaming Programming to your TV through Equipment or Other Devices; (ii) by downloading Programming to an authorized and compatible handset or portable device through a Verizon-provided application supporting media playback; or (iii) by streaming to your PC, using supported browser versions and Verizon-provided hyperlinks, software, or portable-wireless device.” Exhibit “C” at ¶ 4(d) (“USE OF THE SERVICE”).

³⁸ Jon Brodtkin, “Verizon kills FiOS live TV apps for Xbox and smart TVs,” ARS TECHNICA, March 21, 2016, *available at* <https://arstechnica.com/business/2016/03/verizon-kills-fios-live-tv-apps-for-xbox-and-smart-tvs/> (last accessed July 11, 2017).

³⁹ See, e.g., “TV that goes where you go,” VERIZON, *available at* <https://www.verizon.com/home/fiosmobileapps> (last accessed July 11, 2017) (“With the FiOS Mobile app you can live stream on your tablet and smartphone, access a library of thousands of FiOS On Demand movies and TV Shows, plus watch your premium channel content, virtually anywhere you go. All in one convenient app.”); see also, e.g., “Verizon expands FiOS Mobile App to include remote DVR streaming,” PR NEWSWIRE, December 14, 2015, *available at* <http://www.prnewswire.com/news-releases/verizon-expands-fios-mobile-app-to-include-remote-dvr-streaming-300192185.html> (“The latest innovations of the FiOS Mobile

45. The open availability of this software developed by Verizon, itself, and its public representations regarding its technological capabilities are also in direct conflict with the many deceptive statements regarding Verizon's equipment rental program enumerated above.

d. Verizon's Service Agreement is Unlawful and Unenforceable.

46. Plaintiffs aver that the content of Verizon's service agreement⁴⁰ (including, but not limited to, the terms regarding its equipment rental policies, arbitration, and waiver of class/collective actions in arbitration), Verizon's patent misrepresentations and/or omissions of material facts, the methods utilized to obtain Plaintiffs' and the Class' consent, and all other relevant considerations, indicate that the agreement is unenforceable under New Jersey.

47. Of particular concern, Verizon has also included an extraordinarily broad arbitration agreement in the most-recent version of its relevant terms of service ("Verizon FiOS TV Terms of Service"), which includes the following passages:

YOU AND VERIZON BOTH AGREE TO RESOLVE DISPUTES ONLY BY ARBITRATION OR IN SMALL CLAIMS COURT. THERE IS NO JUDGE OR JURY IN ARBITRATION, AND THE PROCEDURES MAY BE DIFFERENT, BUT AN ARBITRATOR CAN AWARD YOU THE SAME DAMAGES AND RELIEF, AND MUST HONOR THE SAME TERMS IN THIS AGREEMENT, AS A COURT WOULD. IF THE LAW ALLOWS FOR AN AWARD OF ATTORNEYS' FEES, AN ARBITRATOR CAN AWARD THEM TOO. WE ALSO BOTH AGREE THAT:

(a) The Federal Arbitration Act applies to this Agreement. Except for small claims court cases that qualify, any dispute that in any way relates to or arises out of this agreement or from any equipment, products and services you receive from us (or from any advertising for any such products or services) will be resolved by one or more neutral arbitrators before the American Arbitration Association ("AAA"). You can also bring any issues you may have to the Better Business Bureau ("BBB"), attention of federal, state, or local government agencies, and if the law allows, they can seek relief against us for you.

* * *

app are how today's consumers want to watch TV and view content. . . . These new features allow our customers to take their home FiOS TV experience with them and to enjoy it whenever and wherever they go.").

⁴⁰ See, generally, Exhibit "C."

(c) THIS AGREEMENT DOES NOT ALLOW CLASS OR COLLECTIVE ARBITRATIONS EVEN IF THE AAA PROCEDURES OR RULES WOULD. ~~NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT,~~ THE ARBITRATOR SHALL NOT HAVE THE POWER TO DETERMINE THAT CLASS ARBITRATION IS PERMISSIBLE. THE ARBITRATOR ALSO SHALL NOT HAVE THE POWER TO PRESIDE OVER CLASS OR COLLECTIVE ARBITRATION, OR TO AWARD ANY FORM OF CLASSWIDE OR COLLECTIVE REMEDY. INSTEAD, THE ARBITRATOR SHALL HAVE POWER TO AWARD MONEY OR INJUNCTIVE RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT PARTY'S INDIVIDUAL CLAIM. NO CLASS OR REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL THEORIES OF LIABILITY OR PRAYERS FOR RELIEF MAY BE MAINTAINED IN ANY ARBITRATION HELD UNDER THIS AGREEMENT. NO RULE WILL APPLY IF IT CONFLICTS WITH THE PROVISIONS OF THIS AGREEMENT. IN ADDITION, NOTWITHSTANDING ANY CONTRARY PROVISION IN THE AAA RULES, THE ARBITRATOR WILL BE BOUND TO APPLY LEGAL PRINCIPLES AND THE LAWS THAT GOVERN THIS AGREEMENT, AND DOES NOT HAVE THE POWER TO AWARD ANY RELIEF THAT IS NOT AUTHORIZED BY SUCH LAWS.

* * *

(f) An arbitration award and judgment confirming it apply only to that specific case; it cannot be used in any other case except to enforce the award itself.

(g) IF FOR SOME REASON THE PROHIBITION ON CLASS ARBITRATIONS SET FORTH IN SUBSECTION 17(c) CANNOT BE ENFORCED, THEN THE AGREEMENT TO ARBITRATE WILL NOT APPLY.

(h) IF FOR ANY REASON A CLAIM PROCEEDS IN COURT RATHER THAN THROUGH ARIBTRATION, YOU AND VERZION UNCONDITIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY WAY. IN THE EVENT OF LITIGATION, THIS PARAGRAPH MAY BE FILED TO SHOW A WRITTEN CONSENT TO A TRIAL BY THE COURT.⁴¹

48. The substance of this arbitration agreement purports to prohibit FiOS subscribers who are also New Jersey citizens from seeking collectivized (*i.e.*, class-based) relief from Verizon,

⁴¹ Exhibit "C," at ¶ 17.

either via the courts or arbitration. These terms significantly prejudice Plaintiffs' and the Class' ability to seek legal redress for the claims contained within this Class Action Complaint.

49. Plaintiffs aver that the standardized FiOS Terms of Service were presented on a "take-it-or-leave-it" basis, and that Plaintiffs were not provided with any reasonable opportunity to negotiate the terms of the contract with Verizon. Consequently, the contract is one of adhesion.

50. Furthermore, Verizon's disparate bargaining power (due in part, to Verizon's 6490 share of the New Jersey MVPD market), coupled with the highly technical nature of the equipment involved in the relevant agreements, Plaintiffs' lack of sophistication regarding the state of cable, broadband, and/or multimedia over coax ("MoCA") technology, Verizon's economic compulsion of the Plaintiffs, and New Jersey's public policy favoring statutory remedies for New Jersey consumers augurs that Verizon's contract of adhesion is unenforceable and unconscionable.

51. As described above at length, Verizon also made patent deceptive statements and/or omissions of material facts in the consummation of the service agreement with the Class. Plaintiffs aver that their consent to the terms of service, including but not limited to terms regarding both equipment rentals and arbitration, was deceptively obtained.

52. Due to Verizon's disparate bargaining power, the peculiar character of television service in New Jersey and its lack of commercial competition, Verizon's predominance in the New Jersey cable television market, Plaintiffs' relative lack of knowledge and sophistication at the time regarding the state of cable equipment and related technology, and all other relevant factors, Plaintiffs' also aver their consent was obtained through undue duress.

53. Plaintiff also avers that the arbitration clause recited above does not subsume, encompass, or otherwise apply to the statutory causes of action brought in this case. Verizon's terms of service are utterly silent as to whether the arbitration provisions apply to, or are intended to include, statutory causes of action (*i.e.*, Plaintiffs' claims pursuant to the CFA, TCCWNA, and DJA).

54. Furthermore, Plaintiff avers that the arbitration provisions set forth in Exhibit "C" ~~lack clarity and consistency, and are plainly contradictory as written. A straightforward reading of~~ the provisions regarding arbitration, class actions, available relief, and the purported waiver of jury trial leaves considerable questions regarding the scope of the relief available to Plaintiffs. As such, the arbitration provisions should be invalidated for lack of clarity and consistency in drafting.

55. By engaging in the course of conduct set forth and described above, at length, Verizon and its agents/employees have violated New Jersey law, including (but not limited to), the CFA and the TCCWNA, in the following ways:

- a. Unconscionably, deceptively, and/or affirmatively requiring Plaintiffs and the Class of New Jersey citizens to lease a separate STB for each TV in a home under the false pretense that proprietary STBs are required to receive FiOS service on multiple TVs within the same household; and
- b. Knowingly concealing, suppressing, and/or omitting salient material facts from their communications with New Jersey consumers regarding the availability and functionality of the TEAs discussed above and the false necessity of renting multiple STBs from Verizon with the hope and/or intent that Plaintiffs and the Class would then agree to multiple, open-ended lease terms for said STBs.
- c. Subjecting Plaintiffs and the Class to a contract of adhesion (including, but not limited to, the FiOS Terms of Service) that includes terms that are considered unconscionable and, therefore, unenforceable under New Jersey law;
- d. Obtaining the contractual consent of Plaintiffs and the Class to the agreements governing their relationship with Verizon (including, but not limited to, the FiOS Terms of Service) through fraud, and/or deception;

- e. Obtaining the contractual consent of Plaintiffs and the Class to the agreements governing their relationship with Verizon (including, but not limited to, the FiOS

Terms of Service) through undue duress; and/or

- f. Otherwise engaging in commercial conduct deemed unlawful in New Jersey.

56. Plaintiffs therefore allege that the conduct of Verizon and its agents, employees, officers, directors, servants, and/or other representatives constitute violations of New Jersey law, including but not limited to the CFA and the TCCWNA, and gives rise to Verizon's liability for the claims set forth herein below.

CLASS ACTION ALLEGATIONS

57. Plaintiffs incorporate herein, by reference, all other paragraphs and footnotes of this Class Action Complaint as if fully set forth herein at length.

58. Plaintiffs bring this action on behalf of themselves, and as members of the Class defined below, as a Class Action under the provisions of N.J. Court Rules, R. 4:32-1.

59. The Class on whose behalf this action is brought is defined as follows:

All New Jersey citizens who are current or former customers of Verizon, who purchased FiOS service, and who have paid rental charges, installation fees, and any other expenditures to Verizon for the installation, maintenance, and/or use of more than one Verizon-supplied STB, digital adapter, or CableCARD at any time from July 2012 to the present.

60. Certification of the Class defined above is expedient and proper in that:

- g. The proposed class of New Jersey citizens who purchased FiOS and paid rental fees on multiple STBs are so numerous that joinder of all members is impractical. The exact number and identities of this Class are currently unknown to Plaintiffs, however, that information is uniquely and exquisitely known to Verizon;
- h. There are questions of law and fact common to the class, including, but not limited to, whether Verizon:

- i. Unconscionably, deceptively, and affirmatively required its New Jersey FiOS customers to lease multiple STBs by claiming that such rental agreements were "required" to view FiOS content on multiple televisions;
- ii. Knowingly concealed, suppressed, or omitted material facts from communications with New Jersey FiOS customers regarding the availability and functionality of TEAs with the intent that such consumers would rely upon those omissions in agreeing to multiple, open-ended leases; and
- iii. Otherwise engaged in a commercial scheme that constitutes an ongoing unfair method of commercial competition, and illegal, deceptive conduct under New Jersey Law.

61. Plaintiffs are members of the class and their claims, as described above, are typical of the claims of the other Class members.

62. As representative parties, Plaintiffs will fairly and adequately protect the interests of the class under the criteria set forth at N.J. Court Rule 4:32-1(a), in particular:

- a. Plaintiffs and their attorneys will adequately represent the interests of the class;
- b. Plaintiffs do not have any conflict of interest in the maintenance of this class action; and
- c. Plaintiffs have engaged responsible Class Counsel, who have sufficient financial resources to assure that the interests of the Class will be adequately protected and will not be harmed, consistent with the New Jersey Disciplinary Rules of Professional Conduct.

63. This Class Action provides a fair and efficient method for adjudication of the controversy under the criteria set forth at N.J. Court Rule 4:32-1(b)(1)-(3), in particular:

- a. The matter appropriately may be managed and maintained as a Class Action;

b. The prosecution of separate actions by individual members of the Class would create

~~a risk of inconsistent or varying adjudications with respect to the individual members~~

of the class and establishing incompatible standards of conduct for the party opposing the class;

c. Verizon's actions and/or inactions are generally applicable to the whole Class such that Class-wide final injunctive and/or declaratory relief is appropriate;

d. Common questions of law and fact predominate over any arguable individual issues, such that a Class Action is superior to all other available adjudicative methods, particularly with respect to the following factors:

i. Due to the adequacy and competency of Class Counsel and Plaintiffs' representation, the members of the Class will have little interest in individually controlling the prosecution of separate actions;

ii. There is no pending litigation already commenced addressing these issues;

iii. This Court is the appropriate forum for litigation of the claims of the entire case, which solely implicates a Class of New Jersey citizens; and

iv. There are no unique difficulties likely to be encountered in the management of this Class Action; and

e. In view of the complexity and expense of litigation, the separate claims of the individual members of the class, alone, would not be sufficient to justify the expense of effectively prosecuting such claims;

64. The Class is readily definable and prosecution of this controversy as a Class Action will eliminate the possibility of repetitious litigation, while also providing redress for claims that may be too small to justify the expense of individual, complex litigation. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the Courts of New Jersey and

would likely result in inconsistent adjudications. Conversely, a single Class Action would definitively determine the rights of all Class members with the added benefit of preserving judicial economy.

65. In this Class Action, Plaintiffs seek all appropriate and available relief from Verizon for the deceptive practices and unfair trade methods of Verizon described above.

COUNT I: Violation of the New Jersey Consumer Fraud Act ("CFA")

66. Plaintiffs incorporate herein, by reference, all other paragraphs and footnotes of this Class Action Complaint as if fully set forth herein at length.

67. Plaintiffs seek relief pursuant to the CFA, which enshrines legal protections and legal recourse for private actions brought by New Jersey consumers to obtain relief and recover damages caused by deceptive commercial conduct:

Any person who suffers any ascertainable loss of moneys or property, real or personal, as a result of the use or employment by another person of any method, act, or practice declared unlawful under this act or the act hereby amended or supplemented may bring an action . . . in any court of competent jurisdiction.⁴²

68. Verizon's actions described above constitute actionable and ongoing violations of the CFA pursuant to N.J. Stat. § 56:8-2 ("Fraud, etc., in connection with sale or advertisement of merchandise or real estate as unlawful practice"), which provides as follows:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, . . . in connection with the sale or advertisement of any merchandise . . . , or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice⁴³

⁴² N.J.S.A. § 56:8-19.

⁴³ N.J.S.A. § 56:8-2.

69. Plaintiffs, the Class, Verizon, and Verizon's agents, employees, officers, directors, servants, and/or other representatives are all "persons" as defined by the relevant section of the CFA.⁴⁴

70. Verizon FiOS is "merchandise" as defined by the relevant section of the CFA, as FiOS was directly and/or indirectly offered to the public for sale.⁴⁵

71. Verizon's actions, misrepresentations, and deceptions described herein constitute a "sale" and/or an "advertisement"⁴⁶ as defined by the relevant section of the CFA (*i.e.*, the sale and/or advertisement of FiOS service).⁴⁷

72. Verizon's unconscionable affirmative actions, misrepresentation, and/or deceptions attendant to its equipment rental program as discussed throughout this Class Action Complaint (*i.e.*, unconscionably and deceptively claiming that serial equipment rentals are allegedly "required" to view FiOS programming on multiple televisions) constitutes plainly unlawful conduct under the CFA.

73. Plaintiffs and the Class have suffered ascertainable financial injuries and/or damages as a result of Verizon's unconscionable affirmative actions and misrepresentations, including, but not limited to, unnecessary rental fees, installation fees, lost economic opportunities and other administrative costs imposed by Verizon.

⁴⁴ See, e.g., N.J.S.A. § 56:8-1(d) ("[A]ny natural person or his legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee, or *cestuis que trustent* thereof.").

⁴⁵ See, e.g., N.J.S.A. § 56:8-1(c) ("The term 'merchandise' shall include any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale.").

⁴⁶ See, e.g., N.J.S.A. § 56:8-1(a) ("[T]he attempt directly or indirectly by publication, dissemination, solicitation, [e]ndorsement or circulation or in any other way to induce directly or indirectly any person to enter or not enter into any obligation or acquire any title or interest in any merchandise or to increase the consumption thereof . . .").

⁴⁷ See, e.g., N.J.S.A. § 56:8-1(e) ("[A]ny sale, rental or distribution, offer for sale, rental or distribution, or attempt directly to sell, rent or distribute.").

CLAIM FOR RELIEF

WHEREFORE, Plaintiffs and the Class respectfully request that this Honorable Court enter judgment against Verizon as to Count I and award Plaintiffs and the Class actual and statutory damages for each instance of Verizon's unfair and/or deceptive conduct, including, but not limited to each instance when Verizon and its agents, employees, officers, directors, servants, and/or other representatives improperly required its New Jersey customers to lease multiple pieces of proprietary equipment of Verizon. Plaintiffs and the Class respectfully request damages,⁴⁸ together with interest, statutory damages,⁴⁹ treble damages,⁵⁰ costs of litigation,⁵¹ reasonable attorneys' fees,⁵² injunctive relief, and any other supplemental relief as this Court may deem appropriate.

COUNT II: Violation of the New Jersey Consumer Fraud Act

74. Plaintiffs incorporate herein, by reference, all other paragraphs and footnotes of this Class Action Complaint as if fully set forth herein at length.

75. Plaintiffs seek relief pursuant to the CFA, which enshrines legal protections and legal recourse for private actions brought by New Jersey consumers to obtain relief and recover damages caused by deceptive commercial conduct, including omissions and failures to act:

Any person who suffers any ascertainable loss of moneys or property, real or personal, as a result of the use or employment by another person of any method, act, or practice declared unlawful under this act or the act hereby amended or supplemented may bring an action . . . in any court of competent jurisdiction.⁵³

⁴⁸ See, e.g., N.J.S.A. § 56:8-2.11 ("Any person violating the provisions of the within act shall be liable for a refund of all moneys acquired by means of any practice declared herein to be unlawful."); N.J.S.A. § 56:8-2.12 ("The refund of moneys herein provided for may be recovered in a private action . . .").

⁴⁹ See, e.g., N.J.S.A. § 56:8-19 ("In any action under this section the court shall, in addition to any appropriate legal or equitable relief, award threefold the damages sustained by any person in interest. In all actions under this section, . . . the court shall also award reasonable attorneys' fees, filing fees and reasonable costs of suit.").

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ N.J.S.A. § 56:8-19.

76. Verizon's actions described above constitute actionable and ongoing violations of the CFA pursuant to N.J. Stat. § 56:8-2 ("Fraud, etc., in connection with sale or advertisement of merchandise or real estate as unlawful practice"), which provides as follows:

The . . . omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice; . . .⁵⁴

77. Plaintiffs, the Class, Verizon, and Verizon's agents, employees, officers, directors, servants, and/or other representatives are all "persons" as defined by the relevant section of the CFA.⁵⁵

78. Verizon FiOS is "merchandise"⁵⁶ as defined by the relevant section of the CFA, as it was directly and/or indirectly offered to the public for sale.

79. Verizon's concealment, suppression, and/or omission of material facts described herein constitute a "sale"⁵⁷ and/or an "advertisement"⁵⁸ as defined by the relevant section of the CFA (*i.e.*, the sale and/or advertisement of FiOS service).

80. Verizon's concealment, suppression, and/or omission of material facts attendant to its equipment rental program as discussed throughout this Class Action Complaint (*i.e.*, obscuring, obfuscating, and omitting information regarding the availability of TEAs and Verizon's own alternatives to multiple equipment rentals) constitutes plainly unlawful conduct under the CFA.

⁵⁴ N.J.S.A. § 56:8-2.

⁵⁵ *See, e.g.*, N.J.S.A. § 56:8-1(d) ("[A]ny natural person or his legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee, or *custis que trustent* thereof.").

⁵⁶ *See, e.g.*, N.J.S.A. § 56:8-1(c) ("The term 'merchandise' shall include any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale.").

⁵⁷ *See, e.g.*, N.J.S.A. § 56:8-1(e) ("[A]ny sale, rental or distribution, offer for sale, rental or distribution, or attempt directly to sell, rent or distribute.").

⁵⁸ *See, e.g.*, N.J.S.A. § 56:8-1(a) ("[T]he attempt directly or indirectly by publication, dissemination, solicitation, [e]ndorsement or circulation or in any other way to induce directly or indirectly any person to enter or not enter into any obligation or acquire any title or interest in any merchandise or to increase the consumption thereof . . .").

81. At all relevant times, Verizon and its employees/agents concealed, suppressed, and/or omitted material facts regarding its equipment rental policies with the intent that the Class would rely upon Verizon's concealment, suppression, and/or omissions in agreeing to multiple proprietary equipment rental agreements with Verizon.

82. Plaintiffs and the Class have suffered ascertainable financial injuries and/or damages as a result of Verizon's unconscionable affirmative actions and misrepresentations, including, but not limited to, lost economic opportunities, unnecessary rental fees, installation fees, and other administrative costs imposed by Verizon.

CLAIM FOR RELIEF

WHEREFORE, Plaintiffs and the Class respectfully request that this Honorable Court enter judgment against Verizon as to Count II and award Plaintiffs and the Class actual and statutory damages for each instance of Verizon's unfair or deceptive conduct, including, but not limited to each instance when Verizon and its agents and employees: (a) improperly required its New Jersey customers to lease multiple STBs; and/or (b) misrepresented, obfuscated, or denied the availability of TEAs. Plaintiffs and the Class respectfully request damages,⁵⁹ together with interest, statutory damages,⁶⁰ treble damages,⁶¹ costs of litigation,⁶² reasonable attorneys' fees,⁶³ injunctive relief, and any other supplemental relief as this Court may deem appropriate.

COUNT III: Violation of the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act.

⁵⁹ See, e.g., N.J.S.A. § 56:8-2.11 ("Any person violating the provisions of the within act shall be liable for a refund of all moneys acquired by means of any practice declared herein to be unlawful."); N.J.S.A. § 56:8-2.12 ("The refund of moneys herein provided for may be recovered in a private action . . .").

⁶⁰ See, e.g., N.J.S.A. § 56:8-19 ("In any action under this section the court shall, in addition to any appropriate legal or equitable relief, award threefold the damages sustained by any person in interest. In all actions under this section, . . . the court shall also award reasonable attorneys' fees, filing fees and reasonable costs of suit.").

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

83. Plaintiffs incorporate, herein, by reference, all other paragraphs of this Class Action

~~Complaint as if fully set forth herein at length.~~

84. TCCWNA provides as follows:

Any person who violates the provisions of this act shall be liable to the aggrieved consumer for a civil penalty of not less than \$100.00 or for actual damages, or both at the election of the consumer, together with reasonable attorney's fees and court costs. This may be recoverable by the consumer in a civil action in a court of competent jurisdiction . . . against the seller, lessor, creditor, lender or bailee or assignee of any of the aforesaid, who aggrieved him. A consumer also shall have the right to petition the court to terminate a contract which violates the provisions of section 2 of this act and the court in its discretion may void the contract.⁶⁴

85. In relevant part, the TCCWNA prohibits an ambit of corporate behavior, which factually and legally comports with Verizon's actions in this controversy:

No seller, lessor, creditor, lender or bailee shall in the course of his business offer to any consumer or prospective consumer or enter into any written consumer contract or give or display any written consumer warranty, notice or sign after the effective date of this act which includes any provision that violates any clearly established legal right of a consumer or responsibility of a seller, lessor, creditor, lender or bailee as established by State or Federal law at the time the offer is made or the consumer contract is signed or the warranty, notice or sign is given or displayed. Consumer means any individual who buys, leases, borrows, or bails any money, property or service which is primarily for personal, family or household purposes.⁶⁵

86. Plaintiffs and the Class are "consumers" as defined by TCCWNA (*i.e.*, "individuals" who have bought, leased, borrowed, and/or bailed property and/or service from Verizon in the form of FiOS, which is primarily for "personal, family, or household purposes."

87. Verizon is considered a "seller, lessor, creditor, lender, or bailee" under TCCWNA and its misrepresentations, omissions, and/or related actions attendant to the consummation of the at-issue rental agreements constitute an "offer to any consumer or prospective consumer" (*i.e.*, offers to enter into agreements with Verizon, including renting Verizon-provided STBs, *etc.*).

⁶⁴ N.J.S.A. § 56:12-17.

⁶⁵ N.J.S.A. § 56:12-15.

88. Verizon's misrepresentations, omissions, and/or related actions *also* constitute acts by which Verizon has given or displayed a written consumer warranty, notice or sign regarding the terms of the at-issue rental agreements (*i.e.*, the sundry provisions appearing on Verizon's websites discussed above, and all other relevant "written" warranties, notices, or signs published, displayed, or given by Verizon to the Plaintiffs and the Class, whether directly or indirectly).

89. Verizon's conduct has violated the clearly established rights of Plaintiffs and the Class under New Jersey state law by engaging in a pattern of commercial behavior that violates the CFA as described above in Paragraphs 61-77, which Plaintiffs hereby fully incorporate herein by reference.⁶⁶

CLAIM FOR RELIEF

WHEREFORE, Plaintiffs and the Class respectfully request that this Honorable Court enter judgment against Verizon as to Count III and award Plaintiffs and the Class actual and statutory damages for each instance of Verizon's illegal conduct, including, but not limited to each instance when Verizon and its agents and employees: (a) improperly misrepresented to its New Jersey customers that leasing multiple pieces of Verizon-supplied equipment was "required" to view FiOS on multiple televisions within the same household; and/or (b) concealed, suppressed, and /or omitted the availability of TEAs. Plaintiffs and the Class respectfully request termination of the at-issue contract(s),⁶⁷ actual damages together with interest,⁶⁸ statutory damages/civil penalties,⁶⁹ costs of litigation,⁷⁰ reasonable attorneys' fees,⁷¹ injunctive relief, and any other supplemental relief that this Court may deem appropriate.

⁶⁶ See, *supra* at ¶¶ 61-77.

⁶⁷ See, e.g., N.J.S.A. § 56:12-17 ("A consumer also shall have the right to petition the court to terminate a contract which violates the provisions of section 2 of this act and the court in its discretion may void the contract.").

⁶⁸ *Id.* ("Any person who violates the provisions of this act shall be liable to the aggrieved consumer for a civil penalty of not less than \$100.00 or for actual damages, or both at the election of the consumer, together with reasonable attorney's fees and court costs.").

⁶⁹ *Id.*

⁷⁰ *Id.*

COUNT IV: Violation of the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act.

90. Plaintiffs incorporate, herein, by reference, all other paragraphs of this Class Action Complaint as if fully set forth herein at length.

91. TCCWNA provides as follows:

Any person who violates the provisions of this act shall be liable to the aggrieved consumer for a civil penalty of not less than \$100.00 or for actual damages, or both at the election of the consumer, together with reasonable attorney's fees and court costs. This may be recoverable by the consumer in a civil action in a court of competent jurisdiction . . . against the seller, lessor, creditor, lender or bailee or assignee of any of the aforesaid, who aggrieved him. A consumer also shall have the right to petition the court to terminate a contract which violates the provisions of section 2 of this act and the court in its discretion may void the contract.⁷²

92. In relevant part, the TCCWNA prohibits an ambit of corporate behavior, which factually and legally comports with Verizon's actions in this controversy:

No seller, lessor, creditor, lender or bailee shall in the course of his business offer to any consumer or prospective consumer or enter into any written consumer contract or give or display any written consumer warranty, notice or sign after the effective date of this act which includes any provision that violates any clearly established legal right of a consumer or responsibility of a seller, lessor, creditor, lender or bailee as established by State or Federal law at the time the offer is made or the consumer contract is signed or the warranty, notice or sign is given or displayed. Consumer means any individual who buys, leases, borrows, or bails any money, property or service which is primarily for personal, family or household purposes.⁷³

93. Plaintiffs and the Class are "consumers" as defined by TCCWNA (*i.e.*, "individuals" who have bought, leased, borrowed, and/or bailed property and/or service from Verizon in the form of FiOS, which is primarily for "personal, family, or household purposes."

94. Verizon is considered a "seller, lessor, creditor, lender, or bailee" under TCCWNA and its misrepresentations, omissions, and/or related actions attendant to the consummation of the

⁷¹ *Id.*

⁷² N.J.S.A. § 56:12-17.

⁷³ N.J.S.A. § 56:12-15.

at-issue rental agreements constitute an "offer to any consumer or prospective consumer" (*i.e.*, ~~offers to enter into agreements with Verizon, including renting Verizon-provided STBs, etc.~~).

95. Verizon's misrepresentations, omissions, and/or related actions *also* constitute acts by which Verizon has given or displayed a written consumer warranty, notice or sign regarding the terms of the at-issue rental agreements (*i.e.*, the sundry provisions appearing on Verizon's websites discussed above, and all other relevant "written" warranties, notices, or signs published, displayed, or given by Verizon to Plaintiffs and the Class, whether directly or indirectly).

96. Verizon's conduct has violated the clearly established rights of Plaintiffs and the Class under New Jersey state law by subjecting Plaintiffs and the Class to unconscionable contract terms in its FiOS service agreements(s) as defined under New Jersey law, including, but not limited to, provisions regarding Verizon's equipment rental program and provisions prohibiting Plaintiffs and the Class from pursuing collectivized arbitration.

97. With respect to Plaintiffs' claims regarding unconscionability, Plaintiffs allege that the at-issue agreement(s) are both procedurally and substantively unconscionable.

98. Verizon's terms of service are procedurally unconscionable—and therefore a contract of adhesion—under New Jersey law due to the Plaintiffs' lack of technical sophistication and knowledge, Verizon's lack of transparency regarding its equipment rental program, and the method of presentation of the contract as a "take-it-or-leave-it" proposition without a meaningful opportunity for negotiation.

99. Verizon's terms of service are substantively unconscionable due to the Plaintiffs' abject lack of bargaining power compared to Verizon, the extraordinarily harsh and one-sided nature of the provisions (including, but not limited to, a prohibition on all class-based relief), Verizon's economic compulsion of Plaintiffs' consent (*i.e.*, Verizon's misrepresentation of the necessity of

equipment rental fees coupled with Verizon's predominance of the New Jersey cable market), and New Jersey's public policy favoring the availability of statutory causes of action for its consumers.

CLAIM FOR RELIEF

WHEREFORE, Plaintiffs and the Class respectfully request that this Honorable Court enter judgment against Verizon as to Count IV and award Plaintiffs and the Class actual and statutory damages for each instance of Verizon's illegal conduct, including, but not limited to each instance when Verizon and its agents and employees subjected the Class to unconscionable contractual terms. Plaintiffs and the Class respectfully request termination of the at-issue contract(s),⁷⁴ actual damages together with interest,⁷⁵ statutory damages/civil penalties,⁷⁶ costs of litigation,⁷⁷ reasonable attorneys' fees,⁷⁸ injunctive relief, and any other supplemental relief that this Court may deem appropriate.

COUNT V: Violation of the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act.

100. Plaintiffs incorporate, herein, by reference, all other paragraphs of this Class Action Complaint as if fully set forth herein at length.

101. TCCWNA provides as follows:

Any person who violates the provisions of this act shall be liable to the aggrieved consumer for a civil penalty of not less than \$100.00 or for actual damages, or both at the election of the consumer, together with reasonable attorney's fees and court costs. This may be recoverable by the consumer in a civil action in a court of competent jurisdiction . . . against the seller, lessor, creditor, lender or bailee or assignee of any of the aforesaid, who aggrieved him. A consumer also shall have the right to petition the court to terminate a contract which violates the provisions of section 2 of this act and the court in its discretion may void the contract.⁷⁹

⁷⁴ See, e.g., N.J.S.A. § 56:12-17 ("A consumer also shall have the right to petition the court to terminate a contract which violates the provisions of section 2 of this act and the court in its discretion may void the contract.").

⁷⁵ *Id.* ("Any person who violates the provisions of this act shall be liable to the aggrieved consumer for a civil penalty of not less than \$100.00 or for actual damages, or both at the election of the consumer, together with reasonable attorney's fees and court costs.").

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ N.J.S.A. § 56:12-17.

102. In relevant part, the TCCWNA prohibits an ambit of corporate behavior, which

factually and legally comports with Verizon's actions in this controversy:

No seller, lessor, creditor, lender or bailee shall in the course of his business offer to any consumer or prospective consumer or enter into any written consumer contract or give or display any written consumer warranty, notice or sign after the effective date of this act which includes any provision that violates any clearly established legal right of a consumer or responsibility of a seller, lessor, creditor, lender or bailee as established by State or Federal law at the time the offer is made or the consumer contract is signed or the warranty, notice or sign is given or displayed. Consumer means any individual who buys, leases, borrows, or bails any money, property or service which is primarily for personal, family or household purposes.⁸⁰

103. Plaintiffs and the Class are "consumers" as defined by TCCWNA (*i.e.*, "individuals" who have bought, leased, borrowed, and/or bailed property and/or service from Verizon in the form of FiOS, which is primarily for "personal, family, or household purposes."

104. Verizon is considered a "seller, lessor, creditor, lender, or bailee" under TCCWNA and its misrepresentations, omissions, and/or related actions attendant to the consummation of the at-issue rental agreements constitute an "offer to any consumer or prospective consumer" (*i.e.*, offers to enter into agreements with Verizon, including renting Verizon-provided STBs, *etc.*).

105. Verizon's misrepresentations, omissions, and/or related actions *also* constitute acts by which Verizon has given or displayed a written consumer warranty, notice or sign regarding the terms of the at-issue rental agreements (*i.e.*, the sundry provisions appearing on Verizon's websites discussed above, and all other relevant "written" warranties, notices, or signs published, displayed, or given by Verizon to Plaintiffs and the Class, whether directly or indirectly).

106. Verizon's conduct has violated the clearly established rights of the Class under New Jersey state law by engaging in a pattern of fraudulent and/or deceptive commercial behavior in the presentation, "negotiation," execution, and consummation of the relevant service agreements with the Class.

⁸⁰ N.J.S.A. § 56:12-15.

107. With respect to Plaintiffs' claims regarding fraud and/or deception, Plaintiffs' allege that Verizon materially misrepresented the false necessity that New Jersey consumers must rent multiple STBs (or Verizon-supplied equivalents) to enjoy FiOS programming on multiple televisions, as well as concealing, suppressing, and/or omitting the availability of alternative equipment.

108. Verizon knew or should have known that its claims regarding its equipment rental policies were false, misleading and deceptive, as evinced by the statements of its executive employees and other communications referenced herein.⁸¹

109. At all relevant times hereto, Verizon knew or should have know that its misrepresentations, omissions and/or deceptions regarding the need to rent multiple pieces of Verizon-supplied equipment would reasonably relied upon by Plaintiffs and the Class when they decided to rent Verizon supplied equipment.

110. Plaintiffs and the Class did, in fact, rely upon those misrepresentations when they entered into multiple, open-ended lease agreements for Verizon-supplied proprietary equipment.

111. Plaintiffs and the Class suffered ascertainable injuries as a result of Verizon's course of conduct (*i.e.*, Verizon's imposition of rental, administrative, and other equipment-related fees).

CLAIM FOR RELIEF

WHEREFORE, Plaintiffs and the Class respectfully request that this Honorable Court enter judgment against Verizon as to Count V and award Plaintiffs and the Class actual and statutory damages for each instance of Verizon's illegal conduct, including, but not limited to each instance when Verizon and its agents and employees defrauded the Class. Plaintiffs and the Class respectfully request termination of the at-issue contract(s),⁸² actual damages together with interest,⁸³

⁸¹ See, *e.g.* *supra* at ¶¶ 36-45.

⁸² See, *e.g.* N.J.S.A. § 56:12-17 ("A consumer also shall have the right to petition the court to terminate a contract which violates the provisions of section 2 of this act and the court in its discretion may void the contract.")

statutory damages/civil penalties,⁸⁴ costs of litigation,⁸⁵ reasonable attorneys' fees,⁸⁶ injunctive relief, and any other supplemental relief that this Court may deem appropriate.

COUNT VI: Violation of the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act.

112. Plaintiffs incorporate, herein, by reference, all other paragraphs of this Class Action Complaint as if fully set forth herein at length.

113. TCCWNA provides as follows:

Any person who violates the provisions of this act shall be liable to the aggrieved consumer for a civil penalty of not less than \$100.00 or for actual damages, or both at the election of the consumer, together with reasonable attorney's fees and court costs. This may be recoverable by the consumer in a civil action in a court of competent jurisdiction . . . against the seller, lessor, creditor, lender or bailee or assignee of any of the aforesaid, who aggrieved him. A consumer also shall have the right to petition the court to terminate a contract which violates the provisions of section 2 of this act and the court in its discretion may void the contract.⁸⁷

114. In relevant part, the TCCWNA prohibits an ambit of corporate behavior, which factually and legally comports with Verizon's actions in this controversy:

No seller, lessor, creditor, lender or bailee shall in the course of his business offer to any consumer or prospective consumer or enter into any written consumer contract or give or display any written consumer warranty, notice or sign after the effective date of this act which includes any provision that violates any clearly established legal right of a consumer or responsibility of a seller, lessor, creditor, lender or bailee as established by State or Federal law at the time the offer is made or the consumer contract is signed or the warranty, notice or sign is given or displayed. Consumer means any individual who buys, leases, borrows, or bails any money, property or service which is primarily for personal, family or household purposes.⁸⁸

⁸³ *Id.* ("Any person who violates the provisions of this act shall be liable to the aggrieved consumer for a civil penalty of not less than \$100.00 or for actual damages, or both at the election of the consumer, together with reasonable attorney's fees and court costs.").

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ N.J.S.A. § 56:12-17.

⁸⁸ N.J.S.A. § 56:12-15.

115. Plaintiffs and the Class are “consumers” as defined by TCCWNA (*i.e.*, “individuals” ~~who have bought, leased, borrowed, and/or bailed property and/or service from Verizon in the~~ form of FiOS, which is primarily for “personal, family, or household purposes.”

116. Verizon is considered a “seller, lessor, creditor, lender, or bailee” under TCCWNA and its misrepresentations, omissions, and/or related actions attendant to the consummation of the at-issue rental agreements constitute an “offer to any consumer or prospective consumer” (*i.e.*, offers to enter into agreements with Verizon, including renting Verizon-provided STBs, *etc.*).

117. Verizon’s misrepresentations, omissions, and/or related actions *also* constitute acts by which Verizon has given or displayed a written consumer warranty, notice or sign regarding the terms of the at-issue rental agreements (*i.e.*, the sundry provisions appearing on Verizon’s websites discussed above, and all other relevant “written” warranties, notices, or signs published, displayed, or given by Verizon to the Class, whether directly or indirectly).

118. Verizon’s conduct has violated the clearly established rights of the Class under New Jersey state law by obtaining their consent to these service agreements by duress and/or coercion.

119. Specifically, Plaintiffs aver that their lack of bargaining power when “negotiating” with Verizon, coupled with the unique character and lack of competition in New Jersey’s cable market, Verizon’s predominance in New Jersey’ cable market, and the lack of meaningful alternatives for cable service, produced a coercive environment in which the at-issue contractual agreements were consummated.

CLAIM FOR RELIEF

WHEREFORE, Plaintiffs and the Class respectfully request that this Honorable Court enter judgment against Verizon as to Count V and award Plaintiffs and the Class actual and statutory damages for each instance of Verizon’s illegal conduct, including, but not limited to each instance when Verizon and its agents and employees obtained consent of the Class via duress and coercion.

Plaintiffs and the Class respectfully request termination of the at-issue contract(s),⁸⁹ actual damages together with interest,⁹⁰ statutory damages/civil penalties,⁹¹ costs of litigation,⁹² reasonable attorneys' fees,⁹³ injunctive relief, and any other supplemental relief that this Court may deem appropriate.

COUNT VII: Declaratory Judgment.

120. Plaintiffs incorporate herein, by reference, all other paragraphs of this Class Action Complaint as if fully set forth herein at length.

121. As discussed and described throughout this Class Action Complaint, Verizon's course of conduct respecting its equipment rental program violates New Jersey law by: (a) violating the CFA in the manner described herein;⁹⁴ (b) violating TCCWNA in the manner described herein;⁹⁵ and/or (c) otherwise violating existing New Jersey law as pleaded herein. As such, Verizon's actions and/or inactions require judicial intervention and relief to remedy these improper practices.

122. Pursuant to the DJA, this Court may adjudicate these claims:

A person interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.⁹⁶

123. Plaintiffs and the Class are all "persons" as defined by the DJA.⁹⁷

⁸⁹ See, e.g., N.J.S.A. § 56:12-17 ("A consumer also shall have the right to petition the court to terminate a contract which violates the provisions of section 2 of this act and the court in its discretion may void the contract.").

⁹⁰ *Id.* ("Any person who violates the provisions of this act shall be liable to the aggrieved consumer for a civil penalty of not less than \$100.00 or for actual damages, or both at the election of the consumer, together with reasonable attorney's fees and court costs.").

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ See, e.g., N.J.S.A. § 56:8-2; see also, *supra* at ¶¶ 60-68.

⁹⁵ See, e.g., N.J.S.A. § 56:12-15; see also, *supra* at ¶¶ 69-75.

⁹⁶ N.J.S.A. § 2A:16-53.

⁹⁷ See, e.g., N.J.S.A. § 2A:16-50 ("As used in this article, "person" includes any person, partnership, joint stock company, unincorporated association or society, and municipal or other corporation of any character.").

124. Plaintiffs and the Class are “interested” parties under the relevant service contract(s) ~~with Verizon addressing the various STB policies forming the foundation of this cause of action,~~ and as the intended recipients of Verizon’s customer guidance documents discussed above.⁹⁸

125. Plaintiffs and the Class are interested, affected, and contemplated by the strictures of the CFA, as they are persons who have suffered ascertainable losses and/or pecuniary injuries as a result of Verizon’s unlawful conduct and flagrant misrepresentations of material facts.⁹⁹

126. Declaratory relief is appropriate because, as discussed at length above: (a) there is a real, actual, and substantial controversy raised by Plaintiffs’ claims against Verizon, which has a vested interest in contesting Plaintiffs’ claims; (b) Plaintiffs and the Class have suffered direct, pecuniary, and ascertainable losses as a result of Verizon’s conduct; (c) there is a direct causal nexus between Verizon’s misrepresentations, knowing concealment, deceptive conduct and/or other illegal conduct, in that those misrepresentations, concealment and/or deceptions gave direct and immediate rise to Plaintiffs’ and the Class’ complained-of injuries (*i.e.*, the imposition of rental fees, installation fees, and other administrative costs of equipment rentals); (d) Plaintiffs and the Class have a direct, substantial, and present interest in the resolution of the instant controversy; and (e) this controversy is ripe for judicial determination and adjudication.

127. Plaintiffs therefore seek a declaration that Verizon has violated—and continues to violate—New Jersey law including, but not limited to, the CFA and the TCCWNA as described above in Paragraphs 61-114.

CLAIM FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment against Verizon on Count VII and issue a declaration consistent with Paragraph 125 as well as any

⁹⁸ See, e.g., N.J.S.A. § 2A:16-53 (“A person interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status or other legal relations are affected by a statute, . . .”).

⁹⁹ See, e.g., N.J.S.A. § 2A:16-56 (“Parties interested as parties to proceedings.”).

supplemental relief, including, but not limited to, injunctive relief, an accounting, and any other appropriate relief under the circumstances to remedy Verizon's violations of New Jersey law, together with interest, costs of litigation, reasonable attorneys' fees, and any other supplemental relief that this Court may deem appropriate.¹⁰⁰

JURY DEMAND

128. Plaintiffs demand trial by a jury on all of the triable issues of this Complaint, pursuant to New Jersey Court Rules 1:8(b) and 4:35-1(a).

NOTICE PURSUANT TO RULES 1:5-1(a)

129. Plaintiffs hereby demand, pursuant to Rule 1:5-1(a), that each party herein serving pleadings, interrogatories or any other discovery requests and receiving answers thereto, serve copies of all such pleadings, interrogatories and other discovery requests and all answers thereto received from any and all parties, including any documents, papers and other materials referred to therein, upon the undersigned attorney. This notice is a continuing demand.

CERTIFICATION PURSUANT TO RULE 4:5-1(b)(2)

130. Plaintiffs hereby certify that the dispute about which they are suing is not currently the subject of any other action against the current Defendants pending in any other court or a pending arbitration proceeding, nor is any other action contemplated at this time. Plaintiffs further certify that no other parties should be made part of this lawsuit.

DESIGNATION OF TRIAL COUNSEL PURSUANT TO RULE 4:25-4

131. David S. Senoff, Esquire, is hereby designated as trial counsel for Plaintiffs Rich and Leslie Struzynski and Rachel Wulk.

¹⁰⁰ See, e.g., N.J.S.A. § 2A:16-60 ("Further relief based on a declaratory judgment may be granted whenever necessary or proper, by application to a court having jurisdiction to grant the relief.").

ANAPOL WEISS

BY:

A handwritten signature in black ink, appearing to read "David S. Senoff", is written over a horizontal line.

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DATED: JULY 21, 2017