

Dept. # 6 Assigned Judge Berle

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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF LOS ANGELES

18 BY FAX

19 CARLA JIMENEZ, individually and on behalf
20 of all others similarly situated,

21 Plaintiff,

22 v.

23 CHARTER COMMUNICATIONS, INC.,
24 SPECTRUM MANAGEMENT HOLDING
25 COMPANY LLC, and DOES 1 through 25,

26 Defendants.

27 Case Number: **BC 709678**
28 [Class Action]

COMPLAINT

DEMAND FOR JURY TRIAL

CIT/CASE: BC709678
LEA/DEF#:
RECEIPT #: CCH612315009
DATE PAID: 06/19/18 09:38 AM
PAYMENT: \$1,435.00 310
RECEIVED:
CHECK: \$1,435.00
CASH: \$0.00
CHANGE: \$0.00
CARD: \$0.00

91773 A6013

06/19/2018

1 Plaintiff CARLA JIMENEZ¹ ("Plaintiff"), brings this action against Defendants CHARTER
2 COMMUNICATIONS, INC., SPECTRUM MANAGEMENT HOLDING COMPANY LLC, and
3 DOES 1 through 25 (collectively, "Defendants"), and alleges as follows:

4 **JURISDICTION & VENUE**

5 1. This action is brought by Plaintiff individually and on behalf of a class of similarly
6 situated consumers in California during the relevant time periods. The Court has general jurisdiction
7 over this action under Code Civ. Proc., § 410.10. The amounts of damages sought by Plaintiff exceed
8 the jurisdictional minimum and will be established according to proof at trial. An actual controversy
9 also exists for purposes of issuing declaratory and injunctive relief.

10 2. Venue is proper under Code Civ. Proc., §§ 395 and 395.5, because one or more
11 Defendants resides in this county and because a substantial portion of the events forming the basis of
12 this action occurred in this county.

13 **PARTIES**

14 3. Plaintiff CARLA JIMENEZ is a resident of California. Plaintiff is a consumer who has
15 in the past and currently receives and pays for residential Internet services from Defendants. Plaintiff
16 has purchased and continues to purchase Defendants' residential Internet services in reliance on
17 Defendants' advertisements and related statements concerning the speed, functionality, and reliability
18 of Defendants' residential Internet services. Plaintiff currently pays Defendants for an "Extreme"
19 Internet service plan, an "Ultimate 200 Upgrade," and a Modem. Plaintiff and her family and friends
20 connect to the Internet at Plaintiff's home using multiple Internet-capable devices which rely on a
21 wireless or "WiFi" Internet connection. Plaintiff and her family and friends perform numerous activities
22 using Defendants' residential Internet services, including using the Internet for work, social,
23 educational, and entertainment purposes, and downloading and uploading content and streaming videos.
24 Plaintiff pays more money for higher speed Internet services because she and her family and friends
25 want (and in some instances need) to achieve higher Internet speeds than Plaintiff believes Defendants'
26 plans that promise lower Internet speeds will provide.

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¹ Defendants' bills misspell Plaintiff's name "Gimenez."

06/19/2018

1 4. Defendant CHARTER COMMUNICATIONS, INC. (“CHARTER”) is a corporation
2 doing business in California.

3 5. Defendant SPECTRUM MANAGEMENT HOLDING COMPANY LLC
4 (“SPECTRUM”) is a limited liability company doing business in California. SPECTRUM is an affiliate
5 of CHARTER.

6 6. Plaintiff does not know the true names or capacities, whether individual or corporate, of
7 defendants sued as DOES 1 through 25 and, for that reason, sues such defendants under fictitious names.
8 Plaintiff is informed and believe that each DOE defendant was responsible in some respect for the
9 violations alleged herein and proximately caused Plaintiff and other similarly situated consumers to be
10 subject to unlawful and unfair business practices and to suffer harm. Plaintiff will seek leave to amend
11 as and when the true names and capacities of each DOE defendant become known.

12 **FACTUAL ALLEGATIONS**

13 7. Defendants do business in California. Their business is focused on, among other things,
14 providing Internet services to consumers in California. Defendants currently brand their Internet
15 services under the name “Spectrum.”

16 8. For years and continuing through the present day, Defendants have defrauded and misled
17 Plaintiff and similarly situated consumers by promising to deliver residential Internet service at speeds
18 that Defendants knew they could not reliably deliver and that consumers could rarely, if ever, achieve.
19 Defendants also falsely promised to provide Plaintiff and similarly situated consumers residential
20 Internet services with “no contracts.”

21 9. Defendants advertise and sell residential Internet services based on the Internet speeds
22 consumers can expect to achieve. Defendants classify their Internet speeds based on the number of
23 “megabits per second” (“mbps”) consumers can expect to download or upload using Internet-capable
24 equipment such as desktop computers or Internet-capable devices such as laptop computers,
25 smartphones, and tablets. Defendants offer or have offered in the past or have offered in the past a
26 variety of Internet speed plans, ranging from below 20 mbps to over 200 mbps. The more speed
27 Defendants promise to consumers, the more expensive Defendants’ services are to consumers.
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06/19/2018

1 Defendants also sell Internet services to consumers and convince consumers to purchase such services
2 by representing that there are “no contracts” associated with the services.

3 10. Defendants promise that consumers can obtain high Internet speeds as advertised.
4 Defendants know they could not deliver on their promises, however, based on their insufficient
5 infrastructure, the modems and routers they provide to consumers, and the overcrowding of their
6 network. Nevertheless, instead of admitting their inability to fulfill their promises, Defendants continue
7 to advertise high speed Internet services they know they cannot deliver.

8 11. Defendants’ advertisements and related statements promise consumers will be able to
9 reliably achieve high Internet speeds. For example, Defendants have made and continue to make the
10 following promises in their online, television, and print advertisements, all of which are false and
11 misleading:

- 12 a. Defendants provide “blazing-fast Internet speed – starting at 100 Mbps;”
- 13 b. Defendants’ “lightning-fast speeds start at 100 Mbps with even faster options available
14 in some areas, giving you the speed and bandwidth you need;”
- 15 c. Defendants provide “the high-speed Internet you need to stream video, play online
16 games, download music and more across multiple devices in your home without
17 sacrificing performance;”
- 18 d. Defendants provide the “fastest in-home WiFi;”
- 19 e. Defendants provide “more than enough speed to support all the devices in your home;”
- 20 f. Defendants provide “enough bandwidth to keep everyone in your home connected;”
- 21 g. Defendants provide “enough speed and range to stream, game and upload with ease
22 across all the devices in your home;”
- 23 h. Defendants’ Internet services let consumers “connect all your devices and access high
24 speed Internet with ease;”
- 25 i. Defendants provide “the fastest Internet speeds available” with “enough bandwidth for
26 everyone in your home to be connected at the same time;”

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06/19/2018

1 j. Defendants' Internet services let consumers connect "6-8 devices at the same time" for
2 "streaming movies, group video chats, gaming, uploading large files, checking email,
3 shopping online, social media and more;" and

4 k. Defendants provide Internet services with "no contracts."

5 12. Defendants strongly suggest that consumers can expect to consistently achieve the
6 advertised speeds on all of their Internet-capable devices. Defendants particularly emphasize the
7 wireless or WiFi capabilities of their Internet services and use advertisements that feature handheld
8 devices such as smartphones, tablets, and laptop computers using WiFi to connect to the Internet.
9 Defendants reinforce consumers' impressions of Defendants' Internet services by suggesting that
10 consumers need high Internet speeds to connect multiple devices or perform certain online activities,
11 and then telling consumers that Defendants reliably offer such high speed Internet services.

12 13. Defendants know their advertisements and related statements are false and misleading,
13 and they know they are omitting material information from their representations that would impact
14 consumers' evaluations and purchasing decisions. Defendants know that no consumers will *reliably*
15 *achieve* the Internet speeds they are promised, and that most consumers will *never achieve* the speeds.
16 Defendants know most consumers will not even approach the advertised speeds. This is because
17 Defendants' advertised speeds are based on the maximum potential for wired Internet connections used
18 in an environment that is very different from how consumers typically use residential Internet services.

19 14. Defendants intentionally do not disclose in their advertisements that only a limited subset
20 of consumers who use wired connections under specific conditions will ever reliably achieve the
21 advertised speeds. Defendants also intentionally do not disclose that their wireless services are
22 functionally incapable of providing the advertised speeds to consumers in a typical Internet usage
23 environment, and that any consumers who are using a wireless device (e.g., smartphone, tablet, laptop
24 computer) will never come close to achieving the advertised speeds under most conditions and will
25 typically top-out at less than half of the promised Internet speeds.

26 15. Defendants' advertisements never tell consumers who do not own any wired equipment
27 (e.g., a desktop computer directly connected to a modem/router via an Ethernet cable), or consumers
28 who own devices that may be capable of being wired but are used as wireless devices (e.g., a laptop

1 computer or smart television), that they will probably never achieve the advertised speeds under most
2 conditions. This is true no matter how many wireless devices are connected, how such devices are used,
3 or when the speeds are tested (e.g., outside of peak hours).

4 16. Defendants promise reliable high-speed Internet and reliable performance that will meet
5 the consumers' needs across numerous devices at the same time. Defendants direct their advertisements
6 primarily to consumers who use handheld devices and wireless Internet connections. Yet, based on
7 Defendants' insufficient infrastructure, overcrowded bandwidth, and underperforming equipment,
8 Defendants know such consumers will rarely, if ever, achieve the Internet speeds they are paying for.
9 Even with this knowledge, Defendants intentionally do not change their advertisements and related
10 statements and continue to omit material information. Defendants train their personnel to encourage
11 consumers to purchase higher speed Internet services without regard to whether consumers can reliably
12 achieve such speeds, and Defendants train their personnel to misrepresent and/or avoid truthfully
13 representing the actual Internet service speeds and reliability consumers can expect to achieve.

14 17. As a consumer who purchases residential Internet services from Defendants and
15 primarily uses Defendants' wireless Internet services on multiple devices, Plaintiff has relied on
16 Defendants' promises that she is not entering into a contract by purchasing their services and that she
17 will reliably achieve higher Internet speeds at or near the advertised speed on all of her and his family's
18 and friends' devices. Plaintiff has never achieved at or near the advertised speed she pays for, however.
19 Plaintiff pays a premium over what she would otherwise pay for Defendants' residential Internet
20 services based on the reasonable expectation that she would consistently receive Defendants' advertised
21 Internet speeds and reliability and would not be bound by contract terms.

22 **CLASS ACTION ALLEGATIONS**

23 18. Plaintiff brings this action as a class action under Cal. Code Civ. Proc. § 382 on behalf
24 of all consumers in California who paid for Defendants' residential Internet services within four years
25 from the date this action was filed.

26 19. The members of the class are so numerous that joinder of all class members is
27 impracticable. Plaintiff estimates that there are at least tens of thousands of putative class members.
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06/19/2018

1 20. Plaintiff reserves the right to amend the following class definition, and propose
2 appropriate subclasses, before the Court determines whether class certification is appropriate, or
3 thereafter upon leave of Court:

4 **Proposed Class**

5 All individual consumers in California who purchased Defendants'
6 residential Internet services during the relevant time period.

7 21. Excluded from the proposed class are Defendants and their parents, subsidiaries,
8 affiliates, officers, directors, and current and former employees; all consumers who make a timely
9 election to be excluded from this proceeding using the correct opt-out protocol; any and all federal,
10 state, or local governments; and all judges assigned to hear any aspect of this litigation and their
11 immediate family members.

12 22. Common questions of law and fact exist include, but are not limited to:
13 a. whether Defendants made false, misleading, deceptive, untrue, or unfair statements in
14 their advertisements related to residential Internet speeds and reliability;
15 b. whether Defendants omitted material information from their advertisements and related
16 statements related to residential Internet speeds and reliability;
17 c. whether Defendants advertised "no contracts" Internet services but still sought to impose
18 contracts on consumers;
19 d. whether Defendants properly disclosed that their network, infrastructure, and/or
20 equipment was incapable of consistently supporting the promised Internet speeds and
21 reliability;
22 e. whether Defendants' conduct was knowing and intentional; and
23 f. whether Defendants' conduct is ongoing or capable of repetition and therefore supports
24 the issuance of individual, representative, or public injunctive relief and similar orders
25 that require corrective advertisements and complete and truthful disclosures concerning
26 Internet speeds, reliability, and contract terms, and that require Defendants to cease their
27 unlawful and deceptive conduct.
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06/19/2018

1 23. Plaintiff is a member of the proposed class she seeks to represent and Plaintiff suffered
2 harm and damages as a result of Defendants' conduct alleged herein. Plaintiff continues to be a customer
3 of Defendants and would like to continue to remain a customer of Defendants; she simply would like
4 Defendants to fix their unfair business practices and ensure that their advertisements, disclosures, and
5 related statements and representations are accurate, complete, and truthful.

6 24. Plaintiff's claims are typical of the claims of other class members and Plaintiff has the
7 same interests as the other members of the class.

8 25. Plaintiff will fairly and adequately represent and protect the interests of the class.
9 Plaintiff has retained able counsel experienced in complex and consumer class action litigation.
10 Plaintiff's interests are not antagonistic to the interests of other class members.

11 26. The questions of fact and law common to Plaintiff and members of the class and any
12 subclasses predominate over any questions affecting only individual members.

13 27. A class action is superior to other available methods for the fair and efficient adjudication
14 of this controversy because joinder of all class members is impractical. Moreover, since the damages
15 suffered by individual class members may be relatively small, the expense and burden of individual
16 litigation makes it practically impossible for the class members to individually redress the wrongs
17 committed against them.

18 28. The class and appropriate subclasses are readily definable and ascertainable based on
19 Defendants' records, and prosecution of this action as a class action will eliminate the possibility of
20 repetitive litigation. There will be no difficulty in the management of this action as a class action.

21 **CAUSES OF ACTION**

22 **Count One**

23 **Common Law Fraud and Misrepresentation**

24 29. Plaintiff incorporates all prior paragraphs.

25 30. Defendants have represented and continue to represent in their advertisements and
26 related statements in print, online, and on television, among other places, that:

27 a. Defendants provide "blazing-fast Internet speed – starting at 100 Mbps;"
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06/19/2018

- 1 b. Defendants' "lightning-fast speeds start at 100 Mbps with even faster options available
- 2 in some areas, giving you the speed and bandwidth you need;"
- 3 c. Defendants provide "the high-speed Internet you need to stream video, play online
- 4 games, download music and more across multiple devices in your home without
- 5 sacrificing performance;"
- 6 d. Defendants provide the "fastest in-home WiFi;"
- 7 e. Defendants provide "more than enough speed to support all the devices in your home;"
- 8 f. Defendants provide "enough bandwidth to keep everyone in your home connected;"
- 9 g. Defendants provide "enough speed and range to stream, game and upload with ease
- 10 across all the devices in your home;"
- 11 h. Defendants' Internet services let consumers "connect all your devices and access high
- 12 speed Internet with ease;"
- 13 i. Defendants provide "the fastest Internet speeds available" with "enough bandwidth for
- 14 everyone in your home to be connected at the same time;"
- 15 j. Defendants' Internet services let consumers connect "6-8 devices at the same time" for
- 16 "streaming movies, group video chats, gaming, uploading large files, checking email,
- 17 shopping online, social media and more;" and
- 18 k. Defendants provide Internet services with "no contracts."

19 31. Defendants' representations were and continue to be false and misleading. Defendants
20 knew or should have known that their representations were false and misleading based on Defendants'
21 knowledge of their network, infrastructure, and equipment capabilities and the differences between
22 wired and wireless Internet connections.

23 32. Defendants made such representations, omitted material information from such
24 representations, and continue to make such representations and omissions, with the express intention of
25 inducing Plaintiff and similarly situated consumers to rely on such representations and take action based
26 thereon. Specifically, Defendants intended Plaintiff and similarly situated consumers to purchase
27 Defendants' Internet services. Alternatively, Defendants had a duty to act with reasonable care when
28 advertising and providing their residential Internet services to consumers, and they breached their duty

1 by making representations and omitting material information regarding Internet speed and reliability
2 negligently, and it was reasonably foreseeable that consumers would rely on Defendants'
3 representations and omissions to their detriment.

4 33. Plaintiff and similarly situated consumers relied on and took action based on Defendants'
5 false and misleading representations and material omissions, including by purchasing Defendants'
6 Internet services and paying a premium for Defendants' Internet services. Plaintiff and other consumers
7 continue to rely on Defendants' false and misleading representations and material omissions and
8 continue to pay for services which Defendants are not providing. Plaintiff and similarly situated
9 consumers would not have taken such action had they not believed Defendants' false and misleading
10 representations and material omissions, and would not continue to pay for these services at all or at the
11 same price if the truth were disclosed.

12 34. Plaintiff and similarly situated consumers suffered harm as a direct result of their reliance
13 on Respondents' false and misleading representations and material omissions and will continue to suffer
14 harm in the future. Plaintiff, individually and on behalf of all similarly situated consumers in California,
15 seeks: individual, representative, and public injunctive relief requiring Defendants to cease and correct
16 all false and misleading representations and material omissions concerning Internet speeds and
17 reliability and "no contracts" offers and orders granting all similar relief available; actual damages;
18 punitive damages to punish and deter Defendants' wrongful conduct; and costs and attorneys' fees under
19 Cal. Civ. Code § 1021.5.

20 **Count Two**

21 **Violation of False Advertising Law, Cal Bus. & Prof. Code § 17500 et seq.**

22 35. Plaintiff incorporates all prior paragraphs.

23 36. Defendants have intentionally made and disseminated statements and have included
24 material omissions, and they continue to make such statements and omissions, to Plaintiff, Class
25 members, and the general public concerning Defendants' Internet services, as well as circumstances and
26 facts connected to such services, which are untrue and misleading, and which are known (or which by
27 the exercise of reasonable care should be known) to be untrue or misleading. Defendants have also
28 intentionally made or disseminated such untrue or misleading statements and have included material

06/19/2018

1 omissions, and they continue to make such statements and omissions, to Plaintiff, Class members, and
2 the public as part of a plan or scheme with intent not to sell those services as advertised, and they
3 continue to engage in that plan or scheme.

4 37. Defendants' untrue and misleading statements include but are not limited to:

5 a. Defendants provide "blazing-fast Internet speed – starting at 100 Mbps;"

6 b. Defendants' "lightning-fast speeds start at 100 Mbps with even faster options available
7 in some areas, giving you the speed and bandwidth you need;"

8 c. Defendants provide "the high-speed Internet you need to stream video, play online
9 games, download music and more across multiple devices in your home without
10 sacrificing performance;"

11 d. Defendants provide the "fastest in-home WiFi;"

12 e. Defendants provide "more than enough speed to support all the devices in your home;"

13 f. Defendants provide "enough bandwidth to keep everyone in your home connected;"

14 g. Defendants provide "enough speed and range to stream, game and upload with ease
15 across all the devices in your home;"

16 h. Defendants' Internet services let consumers "connect all your devices and access high
17 speed Internet with ease;"

18 i. Defendants provide "the fastest Internet speeds available" with "enough bandwidth for
19 everyone in your home to be connected at the same time;"

20 j. Defendants' Internet services let consumers connect "6-8 devices at the same time" for
21 "streaming movies, group video chats, gaming, uploading large files, checking email,
22 shopping online, social media and more;" and

23 k. Defendants provide Internet services with "no contracts."

24 38. Defendants made these statements and substantially similar ones willfully and
25 intentionally, knowing they were false and misleading, and they continue to make these and
26 substantially similar false and misleading statements willfully and intentionally. Defendants knew or
27 should have known that their statements were false and misleading based on Defendants' knowledge of
28 their network, infrastructure, and equipment capabilities and the differences between wired and wireless

1 Internet connections.

2 39. Each of these statements and omissions, and substantially similar statements and
3 omissions, constitute false and deceptive advertisements under the False Advertising Law, Cal. Bus. &
4 Prof. Code § 17500 *et seq.* (“FAL”). Plaintiff and similarly situated consumers were deceived and
5 continue be deceived by Defendants’ statements and omissions, and there is a strong probability that
6 Class members and members of the public were also or are likely to be deceived as well. Any reasonable
7 consumer would be misled by Defendants’ false and misleading statements and material omissions.

8 40. Plaintiff and similarly situated consumers relied on and took action based on Defendants’
9 false and misleading statements and material omissions, including by purchasing Defendants’ Internet
10 services and paying a premium for Defendants’ Internet services. Plaintiff and other consumers continue
11 to rely on Defendants’ false and misleading statements and material omissions and continue to pay for
12 services which Defendants are not providing. Plaintiff and similarly situated consumers would not have
13 taken such action had they not believed Defendants’ false and misleading statements and material
14 omissions, and would not continue to pay for these services at all or at the same price if the truth were
15 disclosed.

16 41. Plaintiff and similarly situated consumers lost money or property as a direct result of
17 their reliance on Respondents’ false and misleading statements and omissions and will continue to suffer
18 the same or similar harm in the future. Plaintiff, individually and on behalf of all similarly situated
19 consumers, seeks individual, representative, and public injunctive relief requiring Defendants to cease
20 and correct all false and misleading statements and material omissions concerning Internet speeds and
21 reliability and “no contract” offers and orders granting all similar relief available; restitution that will
22 restore the full amount of their money or property; disgorgement of Defendants’ relevant profits and
23 proceeds; and reasonable costs and attorneys’ fees under Cal. Civ. Code § 1021.5.

24 **Count Three**

25 **Violation of Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.***

26 42. Plaintiff incorporates all prior paragraphs.

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06/19/2018

1 43. Defendants have engaged in unfair and deceptive acts and practices that constitute false
2 and misleading advertising under the Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*
3 (“CLRA”). Defendants’ unlawful acts and practices include but are not limited to:

- 4 a. Representations that Defendants provide “blazing-fast Internet speed – starting at 100
5 Mbps;”
- 6 b. Representations that Defendants’ “lightning-fast speeds start at 100 Mbps with even
7 faster options available in some areas, giving you the speed and bandwidth you need;”
- 8 c. Representations that Defendants provide “the high-speed Internet you need to stream
9 video, play online games, download music and more across multiple devices in your
10 home without sacrificing performance;”
- 11 d. Representations that Defendants provide the “fastest in-home WiFi;”
- 12 e. Representations that Defendants provide “more than enough speed to support all the
13 devices in your home;”
- 14 f. Representations that Defendants provide “enough bandwidth to keep everyone in your
15 home connected;”
- 16 g. Representations that Defendants provide “enough speed and range to stream, game and
17 upload with ease across all the devices in your home;”
- 18 h. Representations that Defendants’ Internet services let consumers “connect all your
19 devices and access high speed Internet with ease;”
- 20 i. Representations that Defendants provide “the fastest Internet speeds available” with
21 “enough bandwidth for everyone in your home to be connected at the same time;”
- 22 j. Representations that Defendants’ Internet services let consumers connect “6-8 devices at
23 the same time” for “streaming movies, group video chats, gaming, uploading large files,
24 checking email, shopping online, social media and more;” and
- 25 k. Representations that Defendants provide Internet services with “no contracts.”

26 44. Each of Defendants’ representations and substantially similar representations constitute
27 false and misleading advertising and violate the CLRA by:
28

- 1 a. Representing that their Internet services have characteristics, uses, and benefits which
- 2 they do not have, in violation of Section 1770(a)(5);
- 3 b. Representing that their Internet services are of a particular standard, quality, or grade, or
- 4 that goods are of a particular style or model, if they are of another, in violation of Section
- 5 1770(a)(7);
- 6 c. Advertising their Internet services with intent not to sell them as advertised, in violation
- 7 of Section 1770(a)(9);
- 8 d. Representing that a transaction with them confers or involves rights, remedies, or
- 9 obligations which it does not have or involve, in violation of Section 1770(a)(14); and
- 10 e. Representing that the subject of a transaction with them has been supplied in accordance
- 11 with a previous representation when it has not, in violation of Section 1770(a)(16).

12 45. Defendants' acts and practices were knowing and intentional.

13 46. Plaintiff and similarly situated consumers relied on these and substantially similar
14 representations and material omissions to their detriment, including by purchasing Defendants' Internet
15 services but not receiving speeds, reliability, and terms they were promised, and by paying more for
16 Defendants' Internet services than they would have had Defendants' advertisements, representations,
17 and terms been truthful, accurate, and complete.

18 47. Defendants knew or should have known that their representations were false and
19 misleading based on Defendants' knowledge of their network, infrastructure, and equipment capabilities
20 and the differences between wired and wireless Internet connections.

21 48. Under Sections 1780 and 1781 of the CLRA, Plaintiff, individually and on behalf of all
22 similarly situated consumers, seeks individual, representative, and public injunctive relief requiring
23 Defendants to cease all of their unlawful methods, acts, and practices and correct all false and misleading
24 statements and material omissions concerning Internet speeds and reliability and "no contract" offers
25 and orders granting all similar relief available; restitution that will restore the full amount of their money
26 or property; disgorgement of Defendants' relevant profits and proceeds; and reasonable costs and
27 attorneys' fees.

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06/19/2018

1 49. Concurrently with the filing of this action, Plaintiff has filed an affidavit in support of
2 this action stating facts showing that the action has been commenced in a county or judicial district that
3 constitutes a proper place for the trial of this action. See Exhibit 1.

4 **Count Four**

5 **Violation of Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq.**

6 50. Plaintiff incorporates all prior paragraphs.

7 51. Defendants have engaged in unlawful, unfair, and fraudulent business acts and practices,
8 and unfair, deceptive, untrue, and misleading advertising that constitutes false and misleading
9 advertising under the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. (“UCL”).

10 52. Defendants are each a “person” under Section 17021.

11 53. Defendants’ acts, practices, and advertisements that violate the UCL include but are not
12 limited to:

- 13 a. Representations that Defendants provide “blazing-fast Internet speed – starting at 100
- 14 Mbps;”
- 15 b. Representations that Defendants’ “lightning-fast speeds start at 100 Mbps with even
- 16 faster options available in some areas, giving you the speed and bandwidth you need;”
- 17 c. Representations that Defendants provide “the high-speed Internet you need to stream
- 18 video, play online games, download music and more across multiple devices in your
- 19 home without sacrificing performance;”
- 20 d. Representations that Defendants provide the “fastest in-home WiFi;”
- 21 e. Representations that Defendants provide “more than enough speed to support all the
- 22 devices in your home;”
- 23 f. Representations that Defendants provide “enough bandwidth to keep everyone in your
- 24 home connected;”
- 25 g. Representations that Defendants provide “enough speed and range to stream, game and
- 26 upload with ease across all the devices in your home;”
- 27 h. Representations that Defendants’ Internet services let consumers “connect all your
- 28 devices and access high speed Internet with ease;”

06/19/2018

- 1 i. Representations that Defendants provide “the fastest Internet speeds available” with
- 2 “enough bandwidth for everyone in your home to be connected at the same time;”
- 3 j. Representations that Defendants’ Internet services let consumers connect “6-8 devices at
- 4 the same time” for “streaming movies, group video chats, gaming, uploading large files,
- 5 checking email, shopping online, social media and more;” and
- 6 k. Representations that Defendants provide Internet services with “no contracts.”

7 54. Each of these representations and substantially similar representations are unlawful,
 8 unfair, fraudulent, deceptive, and untrue and violate the UCL. Each of these representations and
 9 substantially similar representations are further unlawful, fraudulent, deceptive, and untrue because
 10 Defendants intentionally omitted material information within its knowledge concerning the Internet
 11 speeds and reliability and terms underlying its services.

12 55. Defendants took these acts and practices and made their representations and omissions
 13 knowingly and intentionally, intending that Plaintiff and other consumers would rely on them and take
 14 action.

15 56. Plaintiff and similarly situated consumers relied on and took action based on Defendants’
 16 unlawful, unfair, fraudulent, deceptive, and untrue acts, practices, and advertisements and related
 17 representations and omissions and suffered actual harm and lost money or property as a result, including
 18 by purchasing Defendants’ Internet services and paying a premium for Defendants’ Internet services.
 19 Plaintiff and other consumers continue to rely on Defendants’ unlawful, unfair, fraudulent, deceptive,
 20 and untrue acts, practices, and advertisements and related representations and omissions by continuing
 21 to pay for services which Defendants are not providing, hoping Defendants’ services will fulfill their
 22 promises. Plaintiff and similarly situated consumers would not have taken such action had they not
 23 believed Defendants’ false and misleading statements and material omissions, and they would not
 24 continue to pay for these services at all or at the same price if the truth were disclosed.

25 57. Defendants’ actions described above constitute common law fraud and violate the FAL
 26 and CLRA and are therefore unlawful under the UCL.

27 58. As a result of Defendants’ unlawful and unfair acts and practices, they have reaped and
 28 continue to reap unfair benefits and illegal profits at the expense of Plaintiff and other nonexempt

06/19/2018

1 employees.

2 59. Plaintiff, individually and on behalf of similarly situated consumers, seeks individual,
3 representative, and public injunctive and declaratory relief requiring Defendants to cease all of their
4 unlawful acts, practices, and advertisements and correct all false and misleading statements and material
5 omissions concerning Internet speeds and reliability and “no contract” offers and orders granting all
6 similar relief available; restitution that will restore the full amount of their money or property;
7 disgorgement of Defendants’ relevant profits and proceeds; and reasonable costs and attorneys’ fees
8 under Cal. Civ. Code § 1021.5.

9 **Count Five**

10 **Declaratory and Injunctive Relief**

11 60. Plaintiff incorporates all prior paragraphs.

12 61. An actual controversy between Plaintiff and Defendants exists concerning their
13 respective legal rights and obligations related to Defendants’ residential Internet services for purposes
14 of California Code of Civil Procedure sections 1060 through 1062.

15 62. Plaintiff requests that the Court adjudicate and declare that Plaintiff and similarly situated
16 consumers in California have a right to view and rely upon truthful advertising; that Defendants have
17 an obligation to ensure all of their advertisements and related statements and representations are truthful,
18 complete, and not misleading; that Defendants have an obligation not to advertise that their services
19 have “no contracts” associated with them if Defendants in fact seek to impose contracts on their
20 consumers; that Defendants cannot enforce any alleged contract terms against consumers where
21 Defendants represented that their services had “no contracts;” that Defendants have an obligation not to
22 advertise Internet speeds that they know or reasonably should know consumers are unlikely to
23 consistently or reliably achieve; and that Defendants have an obligation to train their personnel not to
24 misrepresent Defendants’ Internet services and not to avoid presenting consumers with truthful,
25 complete, and accurate information.

26 63. Plaintiff further requests that the Court issue related injunctive relief that requires
27 Defendants to comply with their legal obligations and utilize only truthful and complete advertisements,
28 statements, and representations, and ensure consumers are aware of any and all contracts Defendants

06/19/2018

1 seek to impose against consumers.

2 64. Plaintiff, individually and on behalf of all class members similarly situated, seeks
3 individual, representative, and public declaratory and injunctive relief and any other necessary orders
4 or judgments that will declare the parties' respective legal rights and obligations and that will prevent
5 Defendants from continuing to ignore their legal obligations and consumers' legal rights. Plaintiff
6 further seeks her reasonable costs and attorneys' fees under Cal. Civ. Code § 1021.5.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, individually and on behalf of all similarly situated consumers in
9 California, prays for the following relief:

- 10 A. Certification of this action as a class action;
- 11 B. Designation of Plaintiff as a class representative and Plaintiff's counsel as class counsel;
- 12 C. An award of actual and punitive damages;
- 13 D. Individual, representative, and public equitable, injunctive, and declaratory relief to
14 remedy Defendants' violations of California law, including but not limited to an order declaring the
15 parties' respective legal rights and obligations and enjoining Defendants from continuing their unlawful
16 and unfair business practices and advertisements and requiring Defendants to correct all false and
17 misleading statements and material omissions concerning Internet speeds and reliability and "no
18 contract" offers and orders granting all similar relief available;
- 19 E. Restitution and disgorgement;
- 20 F. Pre-judgment and post-judgment interest as allowed by law;
- 21 G. Reasonable costs and attorneys' fees; and
- 22 H. Such additional and further relief as this Court may deem just and proper.

23 Dated: June 15, 2018

SODERSTROM LAW PC

By: /s/ Jamin S. Soderstrom

Jamin S. Soderstrom

and

26 MAHAFFEY LAW GROUP, P.C.

By: /s/ Douglas L. Mahaffey

Douglas L. Mahaffey

Counsel for Plaintiff and the Proposed Class

06/19/2018

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JURY TRIAL DEMANDED

Plaintiff demands a trial by jury of all issues triable by jury.

Dated: June 15, 2018

SODERSTROM LAW PC

By: /s/ Jamin S. Soderstrom

Jamin S. Soderstrom

and

MAHAFFEY LAW GROUP, P.C.

By: /s/ Douglas L. Mahaffey

Douglas L. Mahaffey

Counsel for Plaintiff and the Proposed Class

06/19/2018