

1 **Todd M. Friedman (216752)**
2 **Adrian R. Bacon (280332)**
3 **Meghan E. George (274525)**
4 **Law Offices of Todd M. Friedman, P.C.**
5 **21550 Oxnard St. Suite 780,**
6 **Woodland Hills, CA 91367**
7 **Phone: 877-206-4741**
8 **Fax: 866-633-0228**
9 **tfriedman@toddfllaw.com**
10 **abacon@toddfllaw.com**

11 *Attorneys for Plaintiff, Carlo Carter*

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARLO CARTER, individually, and
on behalf of other members of the
general public similarly situated,

Plaintiffs,

vs.

FIRST CHOICE
COMMUNICATIONS LLC; and
DOES 1-10, inclusive,

Defendants.

Case No. 2:18-cv-02645-MCE-AC

**FIRST AMENDED CLASS ACTION
COMPLAINT**

- (1) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*)
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17500 *et seq.*) and
- (3) Violation of Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750 *et seq.*)

Jury Trial Demanded

1 Plaintiff Carlo Carter (“Plaintiff”), individually and on behalf of all other
2 members of the public similarly situated, allege as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against Defendant FIRST
5 CHOICE COMMUNICATIONS LLC. (hereinafter “Defendant” or First Choice)
6 to stop Defendant’s practice of falsely advertising that customers who signed up
7 and/or paid for Directv television service (hereinafter the “Class Product”) would
8 receive Visa Gift Cards in excess of \$100 and two years of NFL Sunday Ticket
9 for free, and to redress for a nationwide class of consumers (“Class Members”)
10 who signed up and/or paid for Directv television service, upon being promised
11 Visa Gift Cards in excess of \$100 and two years of NFL Sunday Ticket
12 programming for free, including activation, interest, service and late fees they did
13 not owe, within the applicable statute of limitations period, by Defendant.

14 2. Defendant misrepresented, omitted and falsely advertised that by
15 signing up for and/or purchasing Directv televisions services, customers would
16 receive: (1) Visa Gift Cards in excess of \$100; and (2) two years of NFL Sunday
17 Ticket programming for free, when in fact they would receive only \$100 in Visa
18 Gift Cards and not receive NFL Sunday Ticket programming for free, when in fact
19 they would not.

20 3. Plaintiff and others similarly situated signed up and/or purchased
21 television service from Defendant.

22 4. Defendant’s misrepresentations and/or omissions to Plaintiff and
23 others similarly situated caused them purchase the Class Product, which Plaintiff
24 and others similarly situated would not have purchased absent these
25 misrepresentations and/or omissions by Defendant and its employees. In so doing,
26 Defendant has violated California consumer protection statutes.

27
28

NATURE OF THE CASE & COMMON ALLEGATIONS OF FACT

1 5. Consumers signed up for and/or purchased television service from
2 Defendant upon the promise that they would receive: (1) Visa Gift Cards in excess
3 of \$100; and (2) two years of NFL Sunday Ticket programming for free, when in
4 fact they would receive only \$100 in Visa Gift Cards and not receive NFL Sunday
5 Ticket programming for free.
6

7 6. Consumers rely on the representations and advertisements of retailers
8 and service providers in order to know which television services to purchase based
9 on additional incentives being offered by such providers. With the abundance of
10 different providers occupying the market, most offer incentives for switching
11 providers which are a key factor influencing purchasing habits in most consumers.

12 7. Such incentives are important and material to consumers at the time
13 they sign up for services with a particular television service provider, as consumers
14 are sensitive to the benefits they receive for signing up and/or purchasing services,
15 compared to what they could receive as incentives from a competitor service
16 provider.

17 8. Defendant is engaged in the marketing, supplying, and distributing of
18 televisions products and services that are accompanied by deceptive advertising
19 and billing practices that are not disclosed at the time consumers purchase goods
20 and/or sign up for services.

21 9. When consumers purchase and/or sign up for services with an
22 television service provider, they reasonably believe that they will benefits offered
23 and promised in a transparent manner and will not be denied the benefits of the
24 offered incentives at the time they agree to initiate a relationship with the service
25 provider.

26 10. Defendant profits from the sale of television services. With deceptive
27 advertising and billing practices, many of the consumers would not have
28

1 purchased or attempted to purchase these services, or would have chosen to the
2 services from a competitor.

3 11. In Plaintiff's case, Defendant expressly represented that he would
4 receive: (1) \$400 in Visa Gift Cards; and (2) two years of NFL Sunday Ticket
5 programming for free, for signing up and/or purchasing television service from
6 Directv.

7 12. Defendant misrepresented and/or omitted the actual incentives that
8 would be received.

9 13. Defendant misrepresented and/or omitted that consumers would only
10 receive \$100 if Visa Gift Cards and/or would not receive two years of NFL Sunday
11 Ticket for free, in order to deceive consumers into switching television service
12 providers.

13 14. Defendant does not present consumers with a written copy of the
14 correct terms of the purchase prior to purchase, in order to conceal the deception
15 that is at issue in this case.

16 15. Defendant makes written and oral representation to consumers which
17 contradict the actual incentives to be received after the consumer purchases the
18 Class Product.

19 16. The aforementioned written and oral representations are objectively
20 false, and constitute a false advertisement under Cal. Civ. Code §§ 1750 et. seq.,
21 and unlawful, unfair, or deceptive business practices under Cal. Bus. & Prof. Code
22 §§ 17200 et. seq. and Cal. Bus. & Prof. Code §§ 17500 et seq.

23 17. Defendant's violations of the law include, but not limited to, the false
24 advertising, marketing, representations, and sale of the Class Products to
25 consumers in California and nationwide.

26 18. On behalf of the class and subclass, Plaintiff seeks an injunction
27 requiring Defendant to cease advertising and selling the Class Products and an
28

1 award of damages to the Class Members, together with costs and reasonable
2 attorneys' fees.

3 **JURISDICTION AND VENUE**

4 19. This class action is brought pursuant to Federal Rule of Civil
5 Procedure 23. All claims in this matter arise exclusively under California law.

6 20. This matter is properly venued in the United States District Court for
7 the Eastern District of California, in that Plaintiff signed up for and/or purchased
8 the Class Product from Defendant in Vacaville, California. Defendant does
9 business in the Eastern District of California. A substantial portion of the events
10 giving rise to Defendant's liability took place in this district.

11 21. There is original federal subject matter jurisdiction over this matter
12 pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (Feb.
13 18, 2005), by virtue of 28 U.S.C. §1332(d)(2), which explicitly provides for the
14 original jurisdiction of federal courts in any class action in which at least 100
15 members are in the proposed plaintiff class, any member of the plaintiff class is a
16 citizen of a State different from the State of citizenship of any defendant, and the
17 matter in controversy exceeds the sum of \$5,000,000.00, exclusive of interests and
18 costs.

19 22. In the case at bar, there are at least 100 members in the proposed Class
20 and Sub-classes, the total claims of the proposed Class members are in excess of
21 \$5,000,000.00 in the aggregate, exclusive of interests and costs, and Plaintiff seeks
22 to represent a nationwide class of consumers, establishing minimum diversity.

23 **THE PARTIES**

24 23. Plaintiff Carlo Carter is a citizen and resident of the State of
25 California, County of Solano.

26 24. Defendant First Choice Communications LLC (hereinafter,
27 "Defendant") is a limited liability company with its principle place of business
28

1 located and headquartered in Mesa, Arizona. Defendant's State of Incorporation
2 is in Delaware.

3 25. Plaintiff is informed and believes, and thereon alleges, that each and
4 all of the acts and omissions alleged herein were performed by, or is attributable
5 to, Defendant and/or its employees, agents, and/or third parties acting on its behalf,
6 each acting as the agent for the other, with legal authority to act on the other's
7 behalf. The acts of any and all of Defendant's employees, agents, and/or third
8 parties acting on its behalf, were in accordance with, and represent, the official
9 policy of Defendant Plaintiff alleges, on information and belief, that Defendant's
10 marketing campaigns, as pertains to this matter, were created by Defendant at its
11 principle place of business in California, and were disseminated from California,
12 nationwide.

13 26. Plaintiff is informed and believes, and thereon alleges, that said
14 Defendant is in some manner intentionally, negligently, or otherwise responsible
15 for the acts, omissions, occurrences, and transactions of each and all its employees,
16 agents, and/or third parties acting on its behalf, in proximately causing the
17 damages herein alleged.

18 27. Plaintiff is informed and believes, and thereon alleges, that at all time
19 relevant, Defendant's sales of products and services are governed by the
20 controlling law in the state in which they do business and from which the sales or
21 products and services, and the allegedly unlawful acts originated, which is
22 California.

23 28. At all relevant times, Defendant ratified each and every act or
24 omission complained of herein. At all relevant times, Defendant, aided and
25 abetted the acts and omissions as alleged herein.

26 **PLAINTIFF'S FACTS**

27 29. In or around November of 2017, Plaintiff visited Defendant's booth
28

1 at an auto show and offered \$400 in Visa Gift Cards and two years of NFL Sunday
2 Ticket for free for signing up for Directv television programming services.
3 Plaintiff decided to sign up for and/or purchase Directv television services from
4 Defendant's agent, who assured Plaintiff orally and in writing that he would
5 indeed three Visa Gift Cards totalling four hundred dollars (\$400), and NFL
6 Sunday Ticket programming for 2017 through, and including, 2019.

7 30. A few days later, Plaintiff received an electronic message from
8 Defendant about only a \$100 Visa Gift Card.

9 31. Disappointed in Defendant's misrepresentation, he called Defendant
10 and was told by Defendant's agent that he would only receive one \$100 Visa Gift,
11 but nothing further.

12 32. Defendant expressly represented to Plaintiff, through written and
13 oral statements, that by signing up for and/or purchasing Directv televisions
14 services, he would receive: (1) \$400 in Visa Gift Cards; and (2) two years of NFL
15 Sunday Ticket programming for free, when in fact he would not.

16 33. Such sales tactics rely on falsities and have a tendency to mislead and
17 deceive a reasonable consumer.

18 34. Plaintiff alleges that such representations were part of a common
19 scheme to mislead consumers and incentivize them to purchase sign up for and/or
20 purchase the Class Product in spite of the fact that Defendant did not have any
21 intention of providing more than one \$100 Visa Gift Card nor two years of NFL
22 Sunday Ticket for free as Defendant had previously misrepresented.

23 35. In purchasing the Class Product, Plaintiff relied upon Defendant's
24 representations as to the promised benefits of purchasing the Class Product.

25 36. Not only were such representations clearly false because Defendant
26 had no intention of providing more than one \$100 Visa Gift Cards nor two years
27 of NFL Sunday Ticket for free.
28

1 limitations and the present, purchased or attempted to
2 purchase one or more of the Class Product, and who
never received two years of NFL Sunday Ticket and
promised.

3
4 43. As used herein, the term “Class Members” shall mean and refer to the
members of the Class and Subclass described above.

5
6 44. Excluded from the Class and Subclass are Defendant, its affiliates,
employees, agents, and attorneys, and the Court.

7
8 45. Plaintiff reserves the right to amend the Class and Subclass, and to
9 add additional subclasses, if discovery and further investigation reveals such
10 action is warranted.

11
12 46. Upon information and belief, the proposed Class and Subclass is
13 composed of thousands of persons. The members of the Class and Subclass are
14 so numerous that joinder of all members would be unfeasible and impractical.

15
16 47. No violations alleged in this complaint are contingent on any
17 individualized interaction of any kind between Class Members and Defendant.

18
19 48. Rather, all claims in this matter arise from the identical, false,
20 affirmative written statements that the services would be provided for Class
21 Members’, when in fact, such representations were false.

22
23 49. There are common questions of law and fact as to the Class Members
24 that predominate over questions affecting only individual members, including but
25 not limited to:

- 26
27 (a) Whether Defendant engaged in unlawful, unfair, or deceptive
28 business practices in selling the Class Product to Plaintiff and
other Class Members;
- (b) Whether Defendant that the Class Product had sponsorship,
approval, characteristics, ingredients, uses, benefits, or
quantities that they do not have;
- (c) Whether Defendant made misrepresentations with respect to

- 1 the quantity, cost, or quality of Class Products to consumers;
- 2 (d) Whether Defendant misrepresentations that the sign up or
- 3 purchase of the Class Product confers or involves rights,
- 4 remedies, or obligations that it does not have or involve;
- 5 (e) Whether Defendant profited from the sale of the goods and
- 6 services;
- 7 (f) Whether Defendant violated California Bus. & Prof. Code §
- 8 17200, *et seq.*, California Bus. & Prof. Code § 17500, *et seq.*
- 9 and California Civ. Code § 1750, *et seq.*;
- 10 (g) Whether Plaintiff and Class Members are entitled to equitable
- 11 and/or injunctive relief;
- 12 (h) Whether Defendant's unlawful, unfair, and/or deceptive
- 13 practices harmed Plaintiff and Class Members; and
- 14 (i) The method of calculation and extent of damages for Plaintiff
- 15 and Class Members.

16 50. Plaintiff is a member of the class and subclass he seeks to represent

17 51. The claims of Plaintiff are not only typical of all class members, they

18 are identical.

19 52. All claims of Plaintiff and the class are based on the exact same legal

20 theories.

21 53. Plaintiff has no interest antagonistic to, or in conflict with, the class

22 or subclass.

23 54. Plaintiff is qualified to, and will, fairly and adequately protect the

24 interests of each Class Member, because Plaintiff relied upon Defendant's

25 advertisements and representations and purchased the Class Products from

26 Defendant during the Class Period. Defendant's unlawful, unfair and/or

27 fraudulent actions concerns the same business practices described herein

28

1 irrespective of where they occurred or were experiences. Plaintiff's claims are
2 typical of all Class Members as demonstrated herein.

3 55. Plaintiff will thoroughly and adequately protect the interests of the
4 class and subclass, having retained qualified and competent legal counsel to
5 represent himself and the class.

6 56. Common questions will predominate, and there will be no unusual
7 manageability issues.

8 **FIRST CAUSE OF ACTION**

9 **Violation of Unfair Business Practices Act**

10 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

11 57. Plaintiff incorporates by reference each allegation set forth above.

12 58. Actions for relief under the unfair competition law may be based on
13 any business act or practice that is within the broad definition of the UCL. Such
14 violations of the UCL occur as a result of unlawful, unfair or fraudulent business
15 acts and practices. A plaintiff is required to provide evidence of a causal
16 connection between a defendant's business practices and the alleged harm--that is,
17 evidence that the defendant's conduct caused or was likely to cause substantial
18 injury. It is insufficient for a plaintiff to show merely that the defendant's conduct
19 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory
20 definition of unfair competition covers any single act of misconduct, as well as
21 ongoing misconduct.

22 **UNFAIR**

23 59. California Business & Professions Code § 17200 prohibits any
24 "unfair ... business act or practice." Defendant's acts, omissions,
25 misrepresentations, and practices as alleged herein also constitute "unfair"
26 business acts and practices within the meaning of the UCL in that its conduct is
27 substantially injurious to consumers, offends public policy, and is immoral,
28

1 unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs
2 any alleged benefits attributable to such conduct. There were reasonably available
3 alternatives to further Defendant's legitimate business interests, other than the
4 conduct described herein. Plaintiff reserves the right to allege further conduct
5 which constitutes other unfair business acts or practices. Such conduct is ongoing
6 and continues to this date.

7 60. In order to satisfy the "unfair" prong of the UCL, a consumer must
8 show that the injury: (1) is substantial; (2) is not outweighed by any countervailing
9 benefits to consumers or competition; and, (3) is not one that consumers
10 themselves could reasonably have avoided.

11 61. Here, Defendant's conduct has caused and continues to cause
12 substantial injury to Plaintiff and members of the Class and Subclass. Plaintiff
13 and members of the Class have suffered injury in fact due to Defendant's decision
14 to sell them falsely described television services thereto, i.e., Class Product. Thus,
15 Defendant's conduct has caused substantial injury to Plaintiff and the members of
16 the Class and Subclass.

17 62. Moreover, Defendant's conduct as alleged herein solely benefits
18 Defendant while providing no benefit of any kind to any consumer. Such
19 deception utilized by Defendant convinced Plaintiff and members of the Class and
20 Subclass that by signing up for and/or purchasing Directv televisions services, they
21 would receive: (1) Visa Gift Cards in excess of \$100; and (2) two years of NFL
22 Sunday Ticket programming for free, when in fact they would not, in order to
23 induce them to spend money. In fact, knowing that the above was false, Defendant
24 unfairly profited in that Defendant knew that the Class Product did not confer the
25 benefits represented. Thus, the injury suffered by Plaintiff and the members of the
26 Class and Subclass is not outweighed by any countervailing benefits to consumers.

27 63. Finally, the injury suffered by Plaintiff and members of the Class and
28

1 Subclass is not an injury that these consumers could reasonably have avoided.
2 After Defendant, falsely represented the benefits conferred upon signing up for
3 and/or purchasing the Class Product, these consumers suffered injury in fact due
4 to Defendant's sale of the Class Product to them, minus the benefits Defendant
5 misrepresented and/or omitted. Defendant failed to take reasonable steps to
6 inform Plaintiff and Class Members that would not receive: Visa Gift Cards in
7 excess of \$100, nor two years of NFL Sunday Ticket programming for free, even
8 though they were told otherwise. As such, Defendant took advantage of
9 Defendant's position of perceived power in order to deceive Plaintiff and the Class
10 members to purchase the Class Product Defendant without the benefits Defendant
11 advertised and/or represented. Therefore, the injury suffered by Plaintiff and
12 members of the Class and Subclass is not an injury which these consumers could
13 reasonably have avoided.

14 64. Thus, Defendant's conduct has violated the "unfair" prong of
15 California Business & Professions Code § 17200.

16 **FRAUDULENT**

17 65. California Business & Professions Code § 17200 prohibits any
18 "fraudulent ... business act or practice." In order to prevail under the "fraudulent"
19 prong of the UCL, a consumer must allege that the fraudulent business practice
20 was likely to deceive members of the public.

21 66. The test for "fraud" as contemplated by California Business and
22 Professions Code § 17200 is whether the public is likely to be deceived. Unlike
23 common law fraud, a § 17200 violation can be established even if no one was
24 actually deceived, relied upon the fraudulent practice, or sustained any damage.

25 67. Here, not only were Plaintiff and the Class members likely to be
26 deceived, but these consumers were actually deceived by Defendant. Such
27 deception is evidenced by the fact that Plaintiff paid for a Class Product Defendant
28

1 without receiving the benefits promised, and paid higher prices for lower quality
2 goods and services other than what was advertised and/or represented. Plaintiff's
3 reliance upon Defendant's deceptive statements is reasonable due to the unequal
4 bargaining powers of Defendant and Plaintiff. For the same reason, it is likely that
5 Defendant's fraudulent business practice would deceive other members of the
6 public.

7 68. As explained above, Defendant deceived Plaintiff and other Class
8 Members by representing falsely that the sign for and/or purchase of the Class
9 Product conferred or involve rights, remedies, or obligations that it does not have
10 or involve.

11 69. Thus, Defendant's conduct has violated the "fraudulent" prong of
12 California Business & Professions Code § 17200.

13 **UNLAWFUL**

14 70. California Business and Professions Code Section 17200, et seq.
15 prohibits "any unlawful...business act or practice."

16 71. As explained above, Defendant deceived Plaintiff and other Class
17 Members by representing that by signing up for and/or purchasing Directv
18 televisions services, they would receive: (1) Visa Gift Cards in excess of \$100;
19 and (2) two years of NFL Sunday Ticket programming for free, when in fact they
20 would not.

21 72. Defendant used false advertising, marketing, and misrepresentations
22 to induce Plaintiff and Class Members to purchase and pay for goods and services
23 that conferred or involve rights, remedies, or obligations that it did not have or
24 involve than what was advertised and represented, in violation of California Civil
25 Code Section 1750, et seq. Had Defendant not falsely advertised, marketed or
26 misrepresented the benefits conferred in signing up for and/or purchasing the Class
27 Product, Plaintiff and Class Members would not have purchased the Class Product
28

1 from Defendant and/or paid the higher price for the lower quality goods and
2 services. Defendant's conduct therefore caused and continues to cause economic
3 harm to Plaintiff and Class Members.

4 73. These representations by Defendant are therefore an "unlawful"
5 business practice or act under and California Civ. Code § 1750, *et seq.*, Business
6 and Professions Code Section 17200 *et seq* and Business and Professions Code
7 Section 17500 *et seq.*

8 74. Defendant has thus engaged in unlawful, unfair, and fraudulent
9 business acts entitling Plaintiff and Class Members to judgment and equitable
10 relief against Defendant, as set forth in the Prayer for Relief. Additionally,
11 pursuant to Business and Professions Code section 17203, Plaintiff and Class
12 Members seek an order requiring Defendant to immediately cease such acts of
13 unlawful, unfair, and fraudulent business practices and requiring Defendant to
14 correct its actions.

15 **SECOND CAUSE OF ACTION**

16 **Violation of the California False Advertising Act**

17 **(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)**

18 75. Plaintiff incorporates by reference each allegation set forth above.

19 76. Pursuant to California Business and Professions Code section 17500,
20 *et seq.*, it is unlawful to engage in advertising "which is untrue or misleading, and
21 which is known, or which by the exercise of reasonable care should be known, to
22 be untrue or misleading...or...to so make or disseminate or cause to be so made or
23 disseminated any such statement as part of a plan or scheme with the intent not to
24 sell that personal property or those services, professional or otherwise, so
25 advertised at the price stated therein, or as so advertised."

26 77. California Business and Professions Code section 17500, *et seq.*'s
27 prohibition against false advertising extends to the use of false or misleading
28

1 written statements.

2 78. Defendant misled consumers by making misrepresentations and
3 untrue statements about the Class Products, namely, Defendant convinced Plaintiff
4 and members of the Class and Subclass that by signing up for and/or purchasing
5 Directv televisions services, they would receive: (1) Visa Gift Cards in excess of
6 \$100; and (2) two years of NFL Sunday Ticket programming for free, when in fact
7 they would not, and made false representations to Plaintiff and other putative class
8 members in order to solicit these transactions.

9 79. Defendant knew that their representations and omissions were untrue
10 and misleading, and deliberately made the aforementioned representations and
11 omissions in order to deceive reasonable consumers like Plaintiff and other Class
12 Members.

13 80. As a direct and proximate result of Defendant's misleading and false
14 advertising, Plaintiff and the other Class Members have suffered injury in fact and
15 have lost money or property. Plaintiff reasonably relied upon Defendant's
16 representations regarding the Class Products, namely that by signing up for and/or
17 purchasing Directv televisions services, they would receive: (1) Visa Gift Cards in
18 excess of \$100; and (2) two years of NFL Sunday Ticket programming for free. In
19 reasonable reliance on Defendant's false advertisements, Plaintiff and other Class
20 Members purchased the Class Products. In turn Plaintiff and other Class Members
21 did not receive: Visa Gift Cards in excess of \$100, nor two years of NFL Sunday
22 Ticket programming for free, even though they were told otherwise., and therefore
23 Plaintiff and other Class Members have suffered injury in fact.

24 81. Plaintiff alleges that these false and misleading written
25 representations made by Defendant constitute a "scheme with the intent not to sell
26 that personal property or those services, professional or otherwise, so advertised
27 at the price stated therein, or as so advertised."
28

- 1 a. Representing that goods or services have sponsorship, approval,
2 characteristics, ingredients, uses, benefits, or quantities which they do
3 not have or that a person has a sponsorship, approval, status, affiliation,
4 or connection which he or he does not have. Cal. Civ. Code § 1770(5);
- 5 b. Advertising goods or services with intent not to sell them as advertised;
6 Cal. Civ. Code §1770(9);
- 7 c. Representing that a transaction confers or involves rights, remedies, or
8 obligations that it does not have or involve, or that are prohibited by
9 law; Cal. Civ. Code §1770(14); and
- 10 d. Representing that the consumer will receive a rebate, discount, or other
11 economic benefit, if the earning of the benefit is contingent on an event
12 to occur subsequent to the consummation of the transaction.; Cal. Civ.
13 Code §1770(17).

14 87. On September 27, 2018, through his Counsel of record, using
15 certified mail with a return receipt requested, Plaintiff served Defendants with
16 notice of its violations of the CLRA, and asked that Defendants correct, repair,
17 replace or otherwise rectify the goods and services alleged to be in violation of the
18 CLRA; this correspondence advised Defendants that they must take such action
19 within thirty (30) calendar days, and pointed Defendants to the provisions of the
20 CLRA that Plaintiff believes to have been violated by Defendant. A true and correct
21 copy of Plaintiff's CLRA notice letter is attached hereto as Exhibit A. Defendants
22 have not replied to this correspondence, and have thereby refused to timely correct,
23 repair, replace or otherwise rectify the issues raised therein.

24 88. Currently, pursuant to California Civil Code 1782(d), with respect only
25 to Plaintiff's CLRA claim, Plaintiff only seeks equitable and injunctive relief
26 through the CLRA and not actual damages via the CLRA. Upon Defendant's failure
27 to rectify or agree to adequately rectify the problems associated with the actions
28 detailed above, Plaintiff will amend his complaint to additionally seek damages,
restitutionary relief, punitive damages, attorneys' fees and costs, and any other relief

1 available under section 1780(a) of the CRLA.

2 **MISCELLANEOUS**

3 89. Plaintiff and Class Members allege that they have fully complied with
4 all contractual and other legal obligations and fully complied with all conditions
5 precedent to bringing this action or all such obligations or conditions are excused.

6 **REQUEST FOR JURY TRIAL**

7 90. Plaintiff requests a trial by jury as to all claims so triable.

8 **PRAAYER FOR RELIEF**

9 91. Plaintiff, on behalf of himself and the Class, requests the following
10 relief:

- 11 (a) An order certifying the Class and appointing Plaintiff as
12 Representative of the Class;
- 13 (b) An order certifying the undersigned counsel as Class Counsel;
- 14 (c) An order requiring Defendant, at its own cost, to notify all
15 Class Members of the unlawful and deceptive conduct herein;
- 16 (d) An order requiring Defendant to engage in corrective
17 advertising regarding the conduct discussed above;
- 18 (e) Actual damages suffered by Plaintiff and Class Members as
19 applicable or full restitution of all funds acquired from Plaintiff
20 and Class Members from purchase of the Class Products and
21 the charging fees and taxes theretor, during the relevant class
22 period;
- 23 (f) Punitive damages, as allowable, in an amount determined by
24 the Court or jury;
- 25 (g) Any and all statutory enhanced damages;
- 26 (h) All reasonable and necessary attorneys' fees and costs provided
27 by statute, common law or the Court's inherent power;
- 28

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

- (i) Pre- and post-judgment interest; and
- (j) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.

Dated: November 12, 2018 Respectfully submitted,

LAW OFFICES OF TODD M. FRIEDMAN , PC

By: /s/ Todd M. Friedman
TODD M. FRIEDMAN, ESQ.
Attorney for Plaintiff Carlo Carter

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

EXHIBIT A
(CLRA Letter)

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

ATTORNEYS FOR CONSUMERS

21550 OXNARD ST., SUITE 780

WOODLAND HILLS, CA 91367

877-206-4741 TOLL FREE

866-633-0228 FACSIMILE

CALIFORNIA OFFICE

WWW.TODDFLAW.COM

E-MAIL: TFRIEDMAN@TODDFLAW.COM

WRITER LICENSED IN:
CALIFORNIA

September 27, 2018

Via U.S. Certified Mail and Email

**First Choice Communications LLC
c/o Harvard Business Services, Inc.
16192 Coastal Hwy.
Lewes, DE 19958**

**First Choice Communications LLC
646 W Broadway Rd., Suite 401
Mesa, AZ 85210-1243**

**First Choice Communications LLC
638 W. Broadway, Suite 306
Mesa, AZ 85210-1243**

**Confidential Settlement Communication Pursuant to FRE 408 and CEC 1152 and
Notice of Violations of CLRA Pursuant to Cal. Civ. Code §§1782(a)(2)**

Re: *Carlo Carter, individually, and on behalf of all others similarly situated v. First Choice Communications LLC and DOES 1-10, inclusive*

To Whom It May Concern:

Please be advised that our office represents Carlo Carter (“Plaintiff”), and other similarly situated individuals, in pursuing class action wide legal claims against the First Choice Communications LLC. (“Defendant”), for violations of the Consumer Legal Remedies Act (“CLRA”) and California Business and Professions Code §17200 (“BPC”).

Thus, please accept this correspondence as notice pursuant to the CLRA, of Defendants’ violations thereof. Be advised, you have thirty (30) calendar days from the date of receipt of this notice, to correct, repair, replace, or otherwise rectify the goods or services alleged to be in violation of § 1770 of the CLRA, as further outlined below.

Having been formally notified of our representation, we respectfully demand you not contact our client for any reason. Instead, please direct all future contact and correspondence to this office. We reserve the right to seek injunctive relief against you should you fail to honor these directives.

quality, as advertised or represented, said conduct constitutes fraudulent and unfair business practices, all of which subjects DEFENDANT to statutory penalties of \$2500 per each class member, as well as actual damages, and attorney's fees and costs.

Class Potential

At this stage, DEFENDANT's fraudulent and deceptive business practices have impacted thousands of consumers throughout the nation. Thus, we anticipate a nation-wide class of thousands of consumers whom Carlo Carter will more than adequately represent. The conduct detailed above is systematic in nature. Thus, certifying a class will be very straightforward. Upon certifying a class, we will seek not only actual damages, but punitive damages and statutory damages, in addition to attorney's fees and costs. DEFENDANT is facing seven-figure liability, at the very least.

Demand

We intend to take this matter up as a class action, and therefore expect that any offers to settle this case must contemplate class-wide settlement. Please contact our offices within twenty (21) days of your receipt of this correspondence, to discuss settlement. Also, please be aware of the CLRA notice provided herein and that you now have thirty (30) days to cure the defects described herein before we file a lawsuit for violation of the CLRA.

Regards,

A handwritten signature in black ink, appearing to be 'Todd M. Friedman', written in a cursive style.

Todd M. Friedman, Esq.
Attorney at Law

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

Filed electronically on this 12th day of November, 2018, with:

United States District Court CM/ECF system

Notification sent electronically via the Court’s ECF system to:

Honorable Judge Morrison C. England, Jr.
United States District Court
Eastern District of California

And mailed to:
First Choice Communications LLC
16192 Coastal Highway
Lewes, DE 19958

This 12th day of November, 2018.

s/Todd M. Friedman, Esq.
TODD M. FRIEDMAN