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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13

14 IAN VIANU and IRINA BUKCHIN, on
15 behalf of themselves and all others
similarly situated,

16 Plaintiffs

17 v.

18 AT&T MOBILITY LLC,

19 Defendant.
20
21
22
23
24

Case No. 3:19-cv-3602

CLASS ACTION

ORIGINAL COMPLAINT FOR:

- (1) VIOLATION OF CAL. BUSINESS & PROFESSIONS CODE § 17200;**
- (2) VIOLATION OF CAL. BUSINESS & PROFESSIONS CODE § 17500;**
- (3) VIOLATION OF CAL. CIVIL CODE § 1750;**
- (4) PERMANENT PUBLIC INJUNCTIVE RELIEF;**
- (5) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

JURY TRIAL DEMANDED

1 Plaintiffs Ian Vianu and Irina Bukchin (collectively, “Plaintiffs”) bring each cause of
2 action in this Complaint in their individual capacities and/or on behalf of a class of similarly
3 situated consumers, as set forth below, against Defendant AT&T Mobility LLC (“AT&T”) and
4 respectfully allege as follows:

5 **INTRODUCTION**

6 1. This case challenges a bait-and-switch scheme perpetrated by AT&T against its
7 wireless service customers. AT&T prominently advertises particular flat monthly rates for its
8 post-paid wireless service plans. Then, after customers sign up, AT&T actually charges higher
9 monthly rates than the customers were promised and agreed to pay. AT&T covertly increases the
10 actual price by padding all post-paid wireless customers’ bills each month with a bogus so-called
11 “Administrative Fee” (currently \$1.99 every month for each phone line) on top of the advertised
12 price. The Administrative Fee is not disclosed to customers before or when they sign up, and in
13 fact it is never adequately and honestly disclosed to them. The so-called Administrative Fee is
14 not, in fact, a bona fide administrative fee, but rather is simply a means for AT&T to charge more
15 per month for the service itself without having to advertise the higher prices.

16 2. Through this scheme, AT&T has unfairly and improperly extracted hundreds of
17 millions of dollars in ill-gotten gains from California consumers.

18 3. The first time AT&T even mentions the existence of the Administrative Fee is on
19 customers’ monthly billing statements, which they begin receiving only after they sign up for the
20 service and are financially committed to their purchase.

21 4. Making matters worse, AT&T deliberately hides the Administrative Fee in its
22 billing statements. In AT&T’s printed monthly billing statements, AT&T intentionally buries the
23 Administrative Fee in a portion of the statement that: (a) makes it likely customers will not notice
24 it; and (b) misleadingly suggests that the Administrative Fee is akin to a tax or another standard
25 government pass-through fee, when in fact it is simply a way for AT&T to advertise and promise
26 lower rates than it actually charges. Thus, by AT&T’s own design, the printed monthly
27 statements serve to further AT&T’s scheme and keep customers from realizing they are being
28 overcharged. Moreover, in AT&T’s online billing statements that Plaintiffs and numerous other

1 AT&T wireless customers receive in lieu of printed statements (AT&T encourages customers to
2 sign up for online billing), the default view for the billing statements does not even include any
3 line item at all for the Administrative Fee that AT&T systematically charges to all of its post-paid
4 customers.

5 5. Deep within AT&T's website—where by design it is unlikely to be viewed by
6 consumers, and certainly not before they purchase their wireless service plans—there is currently
7 a purported description of the Administrative Fee. Not only does this description fail to constitute
8 an adequate disclosure of the Administrative Fee, it serves to further AT&T's deception and
9 scheme by suggesting that the Administrative Fee is tied to certain costs associated with AT&T
10 providing wireless telephone services (interconnect charges and cell site rental charges).
11 Assuming this description were accurate, it would merely reinforce that this undisclosed fee
12 should be included in the advertised monthly price for the service because those are basic costs of
13 providing wireless service itself, and thus a reasonable consumer would expect those costs to be
14 included in the advertised price for the service. Moreover, on information and belief, the fee is
15 not, in fact, tied to the costs that AT&T's buried description suggests. This is corroborated by the
16 fact that AT&T has repeatedly increased the amount of the monthly Administrative Fee since the
17 fee was first imposed, while during that same time period the stated costs that the Administrative
18 Fee is purportedly paying for (i.e., interconnect charges and cell site rental charges) have actually
19 *decreased* according to AT&T's financial statements.

20 6. In all events, AT&T should clearly disclose the Administrative Fee and should
21 clearly and accurately state the true monthly prices for its post-paid wireless service plans in its
22 price representations and advertising. AT&T has failed to do so, and continues to fail to do so.

23 7. AT&T first began sneaking the Administrative Fee into all of its post-paid wireless
24 service customers' bills in 2013, initially at a rate of \$0.61 per month per line. For customers
25 who had signed up prior to that time, and who reasonably expected to pay the monthly rates that
26 AT&T advertised, AT&T made no disclosure to them that this additional charge could or would
27 be added to drive up the true monthly price. The first these customers could have possibly learned
28 about the existence of the Administrative Fee was if they noticed it on a monthly statement when

1 the fee was introduced, which they would have received months or even years after they signed
2 up with AT&T. For customers who signed up after the Administrative Fee was first introduced in
3 2013, AT&T likewise made no disclosure to them in its advertising or during the sign-up process
4 of the existence of the Administrative Fee or that the true monthly price of the service plans
5 would actually be higher than advertised and represented because of this bogus fee.

6 8. Since the Administrative Fee was first introduced in 2013, AT&T has increased
7 the amount of the fee three times, including twice over a three-month period in 2018. The current
8 amount that AT&T charges all post-paid wireless customers for this fee is \$1.99 per line every
9 month, i.e., more than 200% more than the original amount of the fee. In the past six years,
10 AT&T has used this Administrative Fee scheme to improperly squeeze California consumers for
11 hundreds of millions of dollars in additional charges.

12 9. In essence, AT&T introduced the bogus Administrative Fee as a way to covertly
13 increase the actual monthly price customers are charged for their service, and then has continued
14 to use the Administrative Fee and unilateral increases thereto as a lever by which AT&T
15 continues to ratchet up the price without the customer realizing and after the customer is already
16 committed. This scheme has enabled, and continues to enable, AT&T to effectively increase its
17 rates without having to publicly announce those higher rates, and allows AT&T to entice more
18 customers by misrepresenting the costs customers would pay both in absolute terms and relative
19 to other wireless providers in the industry.

20 10. Plaintiffs, by this action, seek a public injunction to enjoin AT&T from its false
21 advertising practice and to require AT&T to disclose to the consuming public, in advance, the
22 true costs consumers will pay for its wireless services.

23 11. Plaintiffs further seek, on behalf of themselves and a class of all similarly situated
24 California consumers, an award of damages, restitution, pre- and post-judgment interest,
25 attorneys' fees and costs, and permanent injunctive relief, including but not limited to that AT&T
26 discontinue charging Plaintiffs and the putative class members the improper Administrative Fees.

27 **THE PARTIES**

28 12. Plaintiff Ian Vianu is a citizen and resident of Alameda County, California.

1 13. Plaintiff Irina Bukchin is a citizen and resident of Santa Clara County, California.

2 14. Defendant AT&T Mobility LLC (“AT&T”) is a Delaware limited liability
3 company with its principal office or place of business at 1025 Lenox Park Boulevard NE, Atlanta,
4 GA 30319. AT&T transacts business in this district and throughout the United States.

5 **JURISDICTION AND VENUE**

6 15. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §
7 1332(d)(2) because the amount in controversy, exclusive of interest and costs, exceeds
8 \$5,000,000, and this is a proposed class action in which there are members of the proposed Class
9 who are citizens of a state different from AT&T.

10 16. This Court has personal jurisdiction over AT&T because, without limitation: (1)
11 AT&T has purposely availed itself of the privileges of conducting business activities in
12 California; (2) AT&T currently maintains systematic and continuous business contacts with
13 California including marketing, selling, and issuing wireless services to Plaintiffs and other
14 California consumers; (3) AT&T has entered into contracts with Plaintiffs and other California
15 consumers to provide wireless services; and (4) AT&T maintains offices and retail locations
16 throughout California. AT&T has sufficient minimum contacts with California to render the
17 exercise of jurisdiction by this Court permissible.

18 17. Venue is proper pursuant to 28 U.S.C. §1391 because Plaintiffs reside in this
19 District; many of the acts and transactions giving rise to this action occurred in this District;
20 AT&T is authorized to conduct business in this District, has intentionally availed itself of the
21 laws and markets within this District through distribution and sale of its services in this District,
22 does substantial business in this District, and is subject to personal jurisdiction in this District.

23 18. Intra-District Assignment. This action may properly be assigned to the San
24 Francisco/Oakland Division, where Plaintiff Vianu resides, or the San Jose Division, where
25 Plaintiff Bukchin resides.

26 **COMMON FACTUAL ALLEGATIONS**

27 19. AT&T falsely advertises its wireless services at lower monthly rates than it
28 actually charges customers, by not disclosing and not including in the advertised price a bogus

1 “Administrative Fee” which AT&T imposes on all post-paid wireless service customers each
2 month.

3 20. The so-called “Administrative Fee” is not, in fact, a bona fide administrative fee,
4 but rather is simply a way for AT&T to charge more per month for the service itself without
5 having to advertise the true, higher prices.

6 21. Since it first began imposing the Administrative Fee, AT&T has increased the
7 dollar amount of the fee on three occasions, in essence using the fee as a lever to covertly,
8 improperly, and unilaterally jack up the monthly rates for the services without having to publicly
9 disclose to consumers the higher actual monthly prices. AT&T has deliberately rolled out the
10 Administrative Fee and the increases thereto in a manner and timing that is designed by AT&T to
11 further ensure that they go unnoticed by customers.

12 22. Through the scheme alleged herein, AT&T has, in effect, created a way to
13 advertise and promise a lower monthly service price than it actually charges, and to secretly
14 further increase its service price to existing customers at its whim, via this below-the-line hidden
15 and deceptive Administrative Fee.

16 23. Revealingly, while it systematically imposes the Administrative Fee on all *post-*
17 *paid* wireless customers, AT&T does *not* impose an Administrative Fee or any similar
18 undisclosed charge on its *pre-paid* wireless service customers—i.e., the customers who pay
19 month-to-month, in advance, for AT&T wireless services¹—even though AT&T’s purported
20 service cost defrayment explanation for the Administrative Fee (charged to post-paid customers
21 only) would seem to apply to both groups equally if at all. Presumably, this differential treatment
22 is explained by the fact that AT&T does not see an opportunity to bait-and-switch pre-paid
23 customers who know and pay the actual monthly charges before agreeing to receive the services.

24 **A. The Administrative Fee**

25 24. The Administrative Fee is a uniform, per-phone line flat charge that AT&T adds to
26 the bills of all AT&T post-paid wireless service customers across the country every month.

27 ¹ A “pre-paid” plan is one where the customer pays up front for a month or other time period of
28 service to be received. A “post-paid” plan, by contrast, is one where the customer signs up for a
plan and is then billed each month during the plan for the services they received the prior month.

1 AT&T unilaterally sets the amount of the Administrative Fee at its sole discretion. It is unrelated
2 to any taxes or government assessments.

3 25. AT&T first began imposing the Administrative Fee in approximately May 2013, at
4 an initial rate of \$0.61 per month per phone line. The fee was added to the bills of all post-paid
5 wireless customers, including customers like Plaintiffs who had signed up for the services well
6 before the Administrative Fee even existed.

7 26. Since the Administrative Fee was first imposed in 2013, AT&T has unilaterally
8 increased the monthly amount of the fee three times. AT&T increased the Administrative Fee to
9 \$0.76 per month per phone line starting in June 2016. Then, in 2018, the increases became larger
10 and more frequent (around the same time AT&T's parent company incurred significant debt in
11 acquiring Time Warner Inc.). AT&T raised the Administrative Fee to \$1.26 per month per phone
12 line starting in April 2018, and then again to \$1.99 per month per phone line starting in June
13 2018, which is the current monthly fee as of this filing. Thus, between March 2018 and June
14 2018 alone, AT&T increased the Administrative Fee from \$0.76 to \$1.99 per month per phone
15 line, a whopping 162% increase in just three months.

16 **B. AT&T Fails to Disclose the Administrative Fee to Customers.**

17 27. At all relevant times, AT&T has aggressively advertised its post-paid wireless
18 service plans through pervasive marketing directed at the consuming public in California and
19 throughout the United States, including via high-profile television, radio, and online
20 advertisements, and on its website and through materials at its numerous retail stores and the
21 stores of third party businesses (e.g., Apple Stores, Best Buy) where customers can sign up for
22 AT&T wireless services.

23 28. In all of these locations and through all of these channels, AT&T consistently and
24 prominently advertises particular flat monthly prices for its post-paid wireless service plans,
25 without disclosing or including the Administrative Fee in the advertised price. Neither the
26 existence nor the amount of the Administrative Fee is disclosed or adequately disclosed to
27 customers prior to or at the time they sign up for the services.

28 29. By way of example only, AT&T ran two broad-scale national television

1 advertisements in 2016 that promoted the price for its post-paid wireless services as \$180 per
2 month for four lines.² The flat monthly rate was prominently featured in the advertisements.
3 There was no asterisk next to the advertised price or other qualifier disclosing the Administrative
4 Fee. At the tail end of the advertisements, there was some *very* tiny fine print that appeared on
5 the bottom of the screen, five sentences long and so tiny as to render it unreadable by any
6 reasonable consumer. The fourth of these five tiny print sentences said that “Fees, monthly &
7 other charges, add’l usage & other restr’s apply.” There was no voice reading this tiny print, and
8 viewers were not directed, even in the print itself, to anywhere they might learn what such fees
9 are.

10 30. As another example, in 2017, AT&T ran a broad-scale national television
11 advertisement promoting its wireless service plans for under \$40 per line per month, again with
12 no asterisk (adjacent to the advertised price or anywhere else) or voice reading of the fine print.³
13 The flat monthly rate was prominently featured in the advertisement. The advertisement did not
14 mention the Administrative Fee. This ad, too, had very tiny print on the screen, appearing for just
15 a few seconds and unreadable by a reasonable consumer. One of several tiny print sentences
16 (appearing for about three seconds) said that “Other charges, add’l usage & other rest’s apply.”
17 Viewers were not directed to anywhere they might learn what such fees are.

18 31. The unreadable, tiny print references in these advertisements to fees and other
19 charges does not remotely constitute an adequate disclosure of the Administrative Fee by AT&T,
20 particularly in light of the prominence routinely given to the supposed flat monthly service
21 charges in AT&T’s marketing. Moreover, in any event, as alleged herein, the Administrative Fee
22 is not, in fact, a bona fide administrative fee, but rather is simply a way for AT&T to charge more
23 for the service itself than is advertised.

24 32. Likewise, at all relevant times, AT&T’s proprietary website has advertised its
25 post-paid wireless service plans, at all times prominently featuring the supposed flat monthly

26 _____
27 ² These 2016 ads can be viewed at <https://www.ispot.tv/ad/AOz0/at-and-t-unlimited-plan-instant-crowd> and <https://www.ispot.tv/ad/At1d/at-and-t-unlimited-plan-data-rich-song-by-ti>.

28 ³ This 2017 ad can be viewed here: <https://www.ispot.tv/ad/Avvw/at-and-t-unbelievable-song-by-emf>.

1 prices for the services, and not disclosing the Administrative Fee. As of this filing, AT&T's
2 website currently lists four post-paid wireless plan options prominently at the top, and a
3 configurator which shows different prices for each plan depending on how many lines (between
4 one and four) the consumer selects. For instance, if a consumer chooses a single line under the
5 "AT&T Unlimited &More" plan, the price displayed is \$70 per line, for a total of \$70 per month.
6 If the consumer instead chooses four lines under that same plan, the price displayed is \$40 per
7 line, for a total of \$160 per month.⁴ Each of these options is presented as having a flat rate per
8 month, with no asterisk or any other suggestion that the monthly cost for the service will actually
9 be higher than the large bold flat monthly prices that are prominently presented. Customers can
10 click a link directly under those advertised prices to sign up for those services. Neither the
11 existence nor the amount of the Administrative Fee (which is in fact an additional \$1.99 monthly
12 charge for each line, e.g., \$7.96 per month for four lines) is disclosed or adequately disclosed,
13 though AT&T of course knows that it plans to charge the fee and in what amount. For customers
14 who sign up for AT&T wireless service plans via the AT&T website, there is no disclosure at all
15 to them regarding the existence or the amount of the Administrative Fee, including on the final
16 order submittal page.

17 33. For those customers who contact an AT&T service representative about wireless
18 service plans, either by phone or online, AT&T customer service personnel, as a matter of
19 company policy, are trained to present the customer with the advertised flat monthly prices
20 without disclosing the Administrative Fee. If a potential customer calls AT&T's customer sales
21 agents, or reaches out via web chat, and asks what if any other fees will be charged, the agents as
22 a matter of company policy say that the only additions to the advertised prices (besides
23 subscriptions to extra services or features) are taxes or other government-related fees passed on
24 by AT&T to the customers.

25 34. Similarly, if a consumer shops for a wireless service plan at an AT&T store, they
26 are presented with the advertised supposed monthly service prices and nothing is disclosed to
27 them about the Administrative Fee. The AT&T stores use a uniform sales process in which a

28 ⁴ <https://www.att.com/plans/wireless.html>

1 sales representative walks customers through a proprietary sales application on an in-store iPad.
2 For those customers who purchase their wireless service plans in-store, AT&T does not disclose
3 the Administrative Fee anywhere in this in-store sign-up process. In fact, AT&T does not
4 disclose the total monthly price customers would pay after taxes, fees, and other charges at any
5 time before the customer receives their first monthly statement (weeks after signing up). There is
6 no option to view the total monthly charges on the in-store iPad sales application, and sales agents
7 are unaware of (or are trained to pretend to be unaware of) details beyond the fact that *taxes* will
8 be charged on top of the advertised monthly prices.

9 35. Customers may also sign up for AT&T wireless service plans at certain authorized
10 third-party retail stores. The customer experience in these stores is, in all material respects
11 pertinent to this action, the same as in the AT&T stores. Thus, if a consumer shops for an AT&T
12 wireless service plan at a third-party retailer (e.g., Apple Store or Best Buy), they are presented
13 with the advertised supposed monthly service prices and nothing is disclosed to the customer
14 about the Administrative Fee. At these stores, as at the AT&T stores, the customer purchase
15 process is conducted through an iPad or other electronic display, the relevant content of which is
16 determined by AT&T and does not include a disclosure of the Administrative Fee. On
17 information and belief, the pricing information and disclosures which are provided to customers
18 in third-party stores are provided to the third-party retailers by AT&T.

19 36. Because the Administrative Fee is flat, uniform nationwide, and set by AT&T,
20 AT&T knows what the “fee” is at any given time before any prospective customer signs up, and
21 AT&T could easily disclose the fee as part of its advertised prices. However, as alleged herein,
22 AT&T does not disclose the Administrative Fee or its amount to customers or potential
23 customers. There is no disclosure of the amount of the fee, and the only description of the
24 Administrative Fee is buried deep in the fine print of its website—where AT&T knows customers
25 are unlikely to visit and where they are not required to visit before signing up—and the
26 description itself is false and misleading, as alleged further herein.

27 **C. AT&T Continues to Deceive Customers After They Sign Up.**

28 37. AT&T continues to deceive customers about the Administrative Fee and the true

1 monthly price of the services, even after they have signed up for the services.

2 38. For customers, like Plaintiffs, who signed up with AT&T before the
3 Administrative Fee even existed, the first time they possibly could have learned about the fee's
4 existence was on their April 2013 billing statement one month prior to the fee being first imposed,
5 which would have been months or even years after the customer signed up. For customers who
6 signed up after AT&T began imposing the fee, the billing statements are likewise the first
7 possible chance they might have had to learn about the fee, and by the time they received their
8 first statement they were already committed to their purchase.

9 39. Moreover, far from constituting even a belated disclosure, the monthly billing
10 statements serve to further AT&T's scheme and deception. AT&T's monthly statements (which,
11 again, customers only begin receiving after they have signed up and are committed): (a) bury the
12 Administrative Fee and the increases thereto so that they will continue to go unnoticed by
13 customers; and (b) for those customers who do manage to spot the fee on their statements, the
14 statements present the Administrative Fee in a location and manner that misleads the customer
15 regarding the nature of the fee.

16 40. AT&T's printed statements prior to September 2018 included a section titled
17 "Monthly Charges," which listed a "Total Monthly Charges" amount for the wireless services and
18 a breakdown of those charges. The Administrative Fee was *not* included as a line item in this
19 section, nor was the dollar amount of the Administrative Fee included in the "Total Monthly
20 Charges." Instead, the Administrative Fee was relegated to a different section, further down in
21 the statement, titled "Surcharges and Other Fees." Every other charge in that "Surcharges and
22 Other Fees" section is for government costs that AT&T must pay (e.g., taxes), except the
23 Administrative Fee. This placement strongly suggests to customers who even notice the fee that
24 the Administrative Fee is akin to a tax or is another government-related pass-through charge,
25 which it is not.

26 41. AT&T's printed statements since September 2018 similarly include a section
27 under each phone number titled "Monthly Charges," and a breakdown of those charges. Neither
28 the Administrative Fee nor its dollar amount is included as a line item in this section. Instead, the

1 Administrative Fee is relegated to a different section, further down in the statement, titled
2 “Surcharges & fees.” Like in the “Surcharges and Other Fees” section in the bills prior to
3 September 2018, every other charge in the “Surcharges & fees” section is for government costs
4 AT&T must pay (e.g. taxes,), except the Administrative Fee. This again suggests to customers
5 who even notice the fee that the Administrative Fee is akin to a tax or is another government-
6 related pass-through charge, which it is not.

7 42. Many, if not most, customers will not read the printed monthly statements
8 described above at all because AT&T encourages its customers to sign up for electronic billing
9 (in lieu of receiving paper statements). Those who sign up for electronic billing (like Plaintiffs)
10 receive emails from AT&T directing them to an AT&T payment website. On that payment
11 website, customers have the option to either click “Make a payment” or “See my bill.” If the
12 customer clicks “Make a payment,” they would not see any disclosure at all of the Administrative
13 Fee or any notice of increases thereto. If the customer clicks “See my bill,” they are taken to a
14 screen showing, as a default, only the total amount due. To review details of the bill, the
15 customer would have to click a “+” sign, and then once the text is expanded, the customer would
16 have to click a second nested “+” sign to expand even more text. There, in a section separate
17 from and below the “Monthly plan charges” is another section labelled “Surcharges & fees,”
18 where the Administrative Fee is listed, similar to how it is misleadingly listed in the printed
19 statements. No explanation of the Administrative Fee is provided there.

20 43. If a customer happens to notice the Administrative Fee has been charged on their
21 monthly statement, and contacts AT&T via phone or online to inquire about the fee, AT&T
22 agents tell the customer that the Administrative Fee is like a tax or another pass-through
23 government charge.

24 44. If customers realize that their actual total monthly bill is higher than promised
25 when they receive their monthly billing statements, they cannot simply back out of the deal
26 without penalty, even if they notice the fee and overcharge on their very first statement.⁵

27 a. First, when customers sign up they pay a one-time activation fee (currently

28 ⁵ See <https://www.att.com/shop/wireless/returnpolicy.html>.

1 \$30) that is refundable for only three days—well before they receive even their *first* monthly bill
2 (which they receive approximately two weeks after they sign up, either via an email notice
3 directing them to a payment website as described above, or via a mailed printed billing statement
4 if they have not signed up for electronic billing).

5 b. Second, customers who signed up for a one-year or two-year service
6 commitment (the majority of customers until at least 2016) are charged an early termination fee
7 of up to \$325 if they cancel their service more than 14 days after purchase (again, the customers
8 don't even receive notice of their *first* statement until around that same date or later).

9 c. Third, many customers purchase devices (such as new cellular phones)
10 with their service plans; indeed, AT&T markets devices and wireless plans in bundles. The
11 devices can only be returned to AT&T within the first 14 days after purchase. If customers return
12 a device within 14 days of purchase (again, typically still before receipt of the first monthly
13 billing statement), they pay a restocking fee of up to \$45 or 10% of accessory prices over \$200.
14 If they wait longer than 14 days, it is too late and they are on the hook for the full purchase price
15 of the device.

16 d. Fourth, since 2016, AT&T has offered installment plans to pay for new
17 devices that are tied to customers' service plans. Instead of a one-year or two-year service
18 commitment, many AT&T wireless customers today ostensibly have a month-to-month service
19 plan but sign 24-month or 30-month installment agreements with AT&T under which customers
20 pay for their cellular phone (i.e., the device) in monthly installments. For example, a customer
21 would pay, for an \$800 phone, an equipment "installment" charge of \$33.33 on each monthly
22 AT&T bill for 24 months. If a customer cancels her service plan any time before the installment
23 plan is paid off, the full outstanding balance of her device becomes due immediately in a single
24 balloon payment. For example, even if the customer notices the Administrative Fee on her very
25 first monthly statement (despite AT&T's efforts to hide it), and thereby immediately chooses to
26 cancel her service, AT&T will demand that the customer immediately pay the entire remaining
27 \$800 balance all at once. (If she returns the device within the 14-day return deadline, typically
28 prior to having received the first bill, she must still pay the restocking fee mentioned above.) In

1 this way the installment plan balloon payment is similar to an early termination fee, creating a
2 large immediate cost to cancelling the AT&T service plan once customers learn their plans'
3 actual monthly prices are higher than advertised.

4 45. The activation fee, restocking fee, early termination fee, and installment balloon
5 payment all function as ways to penalize and deter customers from cancelling after signing up,
6 and AT&T's policies (including the cancellation/return periods and how they relate to the timing
7 of the billing statements) are deliberately and knowingly designed by AT&T to lock customers in
8 if and when they deduce that they are being charged more per month than advertised.

9 46. Because both the initial amount of the Administrative Fee charged in 2013 (\$0.61)
10 and each of the three subsequent increases to the Administrative Fee have been by less than one
11 dollar each, AT&T knows that customers are unlikely to notice the increased charge on the total
12 price on their monthly bills. Given that taxes and other government-related charges can already
13 vary by amounts smaller than one dollar from month to month, AT&T knows that customers
14 reasonably expect small changes in the total amount billed each month and will not be able to tell
15 that AT&T imposed or increased the Administrative Fee simply by comparing the total amount
16 billed that month to the total billed in the prior month or months. For example, on information
17 and belief, AT&T intentionally split its 2018 increases of the Administrative Fee across a three-
18 month period (a \$0.50 increase in April 2018, a one-month pause, and then another \$0.73 increase
19 in June 2018) in order to make its planned total \$1.23 fee increase harder for its customers to
20 detect.

21 47. Each time AT&T has increased the Administrative Fee, AT&T has hidden the
22 increase by providing no disclosure or language whatsoever anywhere on the first billing
23 statement containing that increase. Even a customer viewing the full long-form printed bill would
24 have zero notice that AT&T had increased the fee, or why their monthly total charge might be
25 higher than the prior month's total.

26 48. The only place AT&T mentions to existing customers that it plans to increase the
27 Administrative Fee is on the printed monthly billing statement the month before the fee is actually
28 raised, and even then, each of the three times the fee was increased, AT&T buried that inadequate

1 “disclosure” among a mix of advertisements and notices unrelated to price increases. For
2 example, before AT&T was set to increase the Administrative Fee to its current rate of \$1.99 per
3 month in June 2018, AT&T buried an inadequate notice in its May 2018 printed billing
4 statements, in the third paragraph of a seldom-read section titled “News You Can Use.” The first
5 two paragraphs described how customers could “Get Customer Support Online” or “Build Your
6 Bundle. Find out about special offers.” Neither the title of this section nor the first two items
7 would alert customers that a *price increase* would be announced below (in the third item).

8 49. Even if customers noticed that AT&T imposed or increased the Administrative
9 Fee, as discussed above, they would have to pay penalties at that point if they wanted to cancel
10 their AT&T service after learning of the fee or of a fee increase, as alleged herein. AT&T has
11 drafted its contractual terms regarding cancellation fees and the like so that there are no
12 exceptions, meaning these cancellation fees and similar costs would apply no matter how high
13 AT&T chose to unilaterally increase the Administrative Fee.

14 50. To wit, with respect to customers with a one-year or two-year service commitment
15 (which comprised the majority of customers until at least 2016), AT&T told an industry reporter,
16 after the fee was first imposed in 2013, that the Administrative Fee was “not a rate increase, and
17 customers won’t be able to terminate their contract without penalty, that is, paying an early
18 termination fee.”⁶ AT&T took this position even though its form Wireless Customer Agreement
19 stated that “if we increase the price of any of the services to which you subscribe . . . you may
20 terminate this agreement without paying an early termination fee . . . provided your notice of
21 termination is delivered to us within thirty (30) days” (capitalization omitted).

22 51. Today, AT&T’s Wireless Customer Agreement states that customers with service
23 commitments may cancel service without paying an early termination fee by notifying AT&T
24 within 30 days of a materially adverse change; but, the Wireless Customer Agreement *also* states
25 that changes to “surcharges” (which AT&T falsely and unfairly claims the Administrative Fee is)
26 are *not* materially adverse changes. Based on that, AT&T does not allow customers with service
27 commitments to cancel service after an increase to the Administrative Fee (no matter the amount

28 ⁶ <https://www.cnet.com/news/is-at-ts-admin-fee-just-a-sneaky-way-of-raising-rates/>

1 of the increase) without paying an early termination fee of up to \$325.

2 52. As explained above, for customers with equipment installment plans, cancellation
3 after discovery of an increase in the Administrative Fee would likewise require an immediate
4 balloon payment of the entire equipment cost (often in the hundreds of dollars).

5 **D. AT&T's Buried Description of the Administrative Fee is Inadequate and**
6 **Misleading.**

7 53. The lone description that exists of the Administrative Fee that appears anywhere is
8 grossly inadequate and misleading. Buried deep within AT&T's website—in a location AT&T
9 knows reasonable consumers are unlikely to venture, and where they are not required and are
10 highly unlikely to venture before signing up for the services—is a purported description of the
11 Administrative Fee. This description does not remotely constitute an adequate disclosure to
12 customers or prospective customers of the Administrative Fee. Moreover, this description was
13 not even available prior to the time the Administrative Fee was first imposed in 2013—including,
14 e.g., when Plaintiffs and many other customers signed up with AT&T. Moreover, this buried
15 description is itself false and misleading in all events.

16 54. The description in question states that the Administrative Fee helps defray a
17 portion of (a) charges AT&T or its agents pay to interconnect with other carriers to deliver calls
18 from AT&T customers to their customers, and (b) charges associated with cell site rents and
19 maintenance. The description states that the Administrative Fee amount is subject to change “as
20 AT&T's costs change,” further suggesting that the amount of the fee is tied to AT&T's costs for
21 interconnections and cell sites.

22 55. A similar description was provided in the fine print at the bottom of AT&T's
23 printed billing statements through approximately July 2018. There, AT&T likewise stated that
24 the Administrative Fee was “to help defray certain expenses AT&T incurs, such as
25 interconnection and cell site rents and maintenance.” Starting in July 2018, AT&T removed this
26 description from its billing statements.

27 56. On information and belief, AT&T's description of the Administrative Fee is highly
28 misleading if not outright false. AT&T's own public filings with the Securities & Exchange

1 Commission, during the time period since the Administrative Fee was first imposed, have
2 repeatedly stated that interconnection charges have been *decreasing* for years, even as AT&T has
3 *increased* the Administrative Fee *by more than 200%* during that same time frame.

4 57. For example, in AT&T's 2015 Annual Report, under its Consumer Mobility
5 segment, AT&T reported a \$2.4 billion decrease in operations and support expenses compared to
6 the year before. AT&T credited \$434 million of the \$2.4 billion decrease to reduced network
7 costs "primarily due to lower interconnect costs."

8 58. AT&T's 2016 Annual Report again credited "lower network costs of \$246
9 [million] driven by a decline in interconnect costs" as a primary contributor to the \$1.8 billion
10 decrease in operations and support expenses.

11 59. AT&T's 2017 Annual Report reported a \$765 million decrease in overall "other
12 costs of services" expenses, credited in part to "lower traffic compensation and wireless
13 interconnect costs."

14 60. AT&T's Annual Reports since 2015 have not mentioned cell site rental or
15 maintenance costs at all, implying that those are not a primary contributing factor to AT&T's
16 expenses. Meanwhile, on those same Annual Reports overall "operations and support expenses"
17 have continually declined over the years.

18 61. Even if the Administrative Fee were truly tied to the costs of interconnection and
19 cell sites, customers would reasonably expect those costs to be *included* in the basic monthly rate
20 AT&T charges for wireless services. After all, interconnectivity (connecting customers to
21 networks) and cell site rental and maintenance are basic parts of providing wireless services.
22 AT&T would not be able to provide functional or competitive wireless services without those
23 basic parts. Thus, in all events, AT&T should be including the Administrative Fee as part of the
24 advertised monthly prices for its services, which as discussed herein it has never done and still
25 does not do.

26 62. Contrary to AT&T's description, the Administrative Fee is *actually* used by
27 AT&T as a way to covertly jack up its monthly service prices, and thereby squeeze hundreds of
28 millions of additional dollars out of its customers, without having to advertise the true, higher

1 prices.

2 63. As alleged above, the increases to the Administrative Fee are not, as AT&T's
3 buried description suggests, tied to changes in the costs of providing the services. Rather, on
4 information and belief, AT&T has increased the fee, and thus has increased the monthly amounts
5 billed to consumers, in large part to fund unrelated corporate liabilities of its parent company
6 AT&T Inc., including to pay down the debt incurred in connection with the acquisition of Time
7 Warner Inc. in 2018.

8 **PLAINTIFFS' FACTUAL ALLEGATIONS**

9 **Plaintiff Ian Vianu**

10 64. Plaintiff Ian Vianu is, and at all relevant times has been, a California resident.

11 65. Vianu first became an AT&T post-paid wireless customer on or around December
12 21, 2011. He signed up for his first AT&T post-paid wireless service plan at an AT&T store in
13 the California Bay Area. He signed up for a service contract with AT&T that was at least one-
14 year in length. He also purchased an iPhone along with the service contract, as part of a bundle.

15 66. When Vianu purchased his wireless service plan, AT&T prominently advertised,
16 to Vianu and to the public, that the plan would cost a particular monthly price. AT&T did not
17 disclose to Vianu, at any time before or when he signed up, that AT&T would or might later add
18 an Administrative Fee on top of the advertised and promised monthly price.

19 67. Vianu continued to have the same AT&T post-paid service plan until
20 approximately December 2014.

21 68. AT&T first began charging Vianu an Administrative Fee in May 2013, at \$0.61
22 per month. Vianu did not receive notice or adequate notice that the Administrative Fee would be
23 charged or regarding the nature or basis of the fee. AT&T has continued to charge Vianu an
24 Administrative Fee each month from May 2013 to the present. During that time, AT&T has
25 increased the amount of the Administrative Fee charged to Vianu three times. AT&T increased
26 the Administrative Fee to \$0.76 in June 2016. AT&T increased the Administrative Fee again to
27 \$1.26 per month in April 2018. AT&T increased the Administrative Fee again, just two months
28 later in June 2018, to \$1.99 per month, which is the current fee amount as of this filing.

1 69. Through its imposition of the Administrative Fees, AT&T has for several years
2 charged Vianu a higher price for the services each month than AT&T advertised and that he was
3 promised and expected to pay.

4 70. On or around December 21, 2014, Vianu changed his AT&T wireless service plan
5 by visiting an AT&T store in San Francisco, California. During this visit, Vianu also purchased a
6 new iPhone through AT&T on a 30-payment installment plan. Again, when Vianu made his
7 purchase, AT&T prominently advertised, to Vianu and to the public, a particular monthly price
8 for the service plan, and did not disclose the Administrative Fee. When Vianu switched his plan
9 at the AT&T store, a salesperson walked him through a proprietary sales process on an iPad.
10 During this process, AT&T represented to Vianu the supposed monthly price for the service,
11 upon which Vianu reasonably relied. The price that AT&T stated did not include the
12 Administrative Fee, nor did it reflect the true total amount he would be charged each month
13 (inclusive of the Administrative Fee). Nor did AT&T disclose that the total price, inclusive of the
14 Administrative Fee, would or might increase, including during the 30-payment period under
15 Vianu's installment plan, as a result of increases to the Administrative Fee.

16 71. Vianu made further changes to his AT&T service plan on or about January 11,
17 2015. Again, the Administrative Fee was never disclosed to him.

18 72. On or around April 29, 2017, Vianu visited an AT&T store in Berkeley,
19 California, and purchased a new iPhone on a 30-payment "AT&T Next" installment plan. When
20 Vianu purchased the new iPhone, he did not change his existing wireless plan. Vianu continued,
21 and continues to this day, to be enrolled in the same AT&T post-paid service plan he signed up
22 for on or about January 11, 2015.

23 73. At the time he purchased his original AT&T wireless post-paid service plan in
24 2011, Vianu signed up for AT&T electronic billing, as AT&T encouraged him to do. Vianu has
25 been signed up for AT&T electronic billing at all times since then. Through that channel, Vianu
26 has paid and continues to pay his monthly AT&T bill by clicking on a link in a monthly AT&T
27 billing email, which in turn takes him to a website where he can pay his bill. As alleged above,
28 like the printed monthly statements, AT&T's electronic billing process is deliberately designed in

1 a manner that keeps the Administrative Fee hidden from customers. AT&T's monthly electronic
2 billing did not inform or adequately disclose to Vianu that AT&T was adding an Administrative
3 Fee to his bill each month.

4 74. The first Vianu ever learned of the Administrative Fee's existence was in early
5 2018, when he examined a PDF version of his full printed statement to understand why his bill
6 had increased by some \$15.00. Prior to that time, he had no idea about the existence of the
7 Administrative Fee. Based on the location of the Administrative Fee on the statement he
8 examined, Vianu believed when he read the statement that the Administrative Fee was a pass-
9 through government cost that AT&T was required to charge, like a tax. At the bottom of the
10 billing statement, there was fine print misleadingly describing the Administrative Fee, as
11 described in more detail above.

12 75. Since April 29, 2017, Vianu has been enrolled in an "AT&T Next" installment
13 plan for his cellular phone. If Vianu were to cancel his AT&T wireless service before the
14 installment payments are complete, he would have to pay the full remaining balance immediately
15 in a single balloon payment. For example, when AT&T raised the Administrative Fee to \$1.99 in
16 June 2018, Vianu had an outstanding balance of \$346.61 on his AT&T Next plan for his cellular
17 phone. If Vianu did not wish to pay this newly increased Administrative Fee, he would have
18 needed to cancel his service, upon which AT&T would have immediately required him to make a
19 \$346.61 balloon payment to AT&T.

20 76. When Vianu agreed to purchase his AT&T service plans, he was relying on
21 AT&T's prominent representations, in each instance, regarding the monthly price of the services.
22 While he understood that taxes might be added to the price, he did not expect that AT&T would
23 charge a bogus so-called Administrative Fee on top of the advertised service price or that the true
24 price of the services would include an additional Administrative Fee which AT&T could and
25 would increase at its whim. That information would have been material to him. Had he known
26 that information he would not have been willing to pay as much for his plans and/or would have
27 acted differently.

28 **Plaintiff Irina Bukchin**

1 77. Plaintiff Irina Bukchin is, and at all relevant times has been, a California resident.

2 78. Bukchin has been an AT&T post-paid wireless services customer for at least 12
3 years, and previously was a post-paid wireless services customer of Cellular One and Cingular
4 Wireless, which were taken over by and/or rebranded as AT&T.

5 79. When Bukchin purchased each of her AT&T service plans, AT&T prominently
6 advertised, to Bukchin and to the public, that the plans would cost a particular monthly price.
7 AT&T did not disclose to Bukchin, at any time before or when she signed up, that AT&T would
8 or might later add an Administrative Fee on top of the advertised and promised monthly price.

9 80. In or around October 2010, Bukchin purchased an AT&T-subsidized iPhone at an
10 Apple Store. The iPhone was bundled with a two-year contract extension of her existing AT&T
11 post-paid wireless service plan. When Bukchin made her purchase, AT&T prominently
12 advertised, to Bukchin and to the public, a particular monthly price for the service plan. AT&T
13 did not disclose the Administrative Fee or the price inclusive of the Administrative Fee. To sign
14 up for the contract extension, Bukchin completed an AT&T-created contract extension process at
15 the Apple Store. As part of that process AT&T represented the monthly price that she would pay
16 for the services, and Bukchin reasonably relied upon that representation. The stated price did not
17 include the Administrative Fee. AT&T did not disclose to Bukchin, at any time before or when
18 she signed up for this extension, that AT&T would or might later add an Administrative Fee on
19 top of the advertised monthly price.

20 81. AT&T first began charging Bukchin an Administrative Fee in May 2013, at \$0.61
21 per month per line. Bukchin did not receive notice or adequate notice that the Administrative Fee
22 would be charged or regarding the nature and basis of the fee. AT&T has continued to charge
23 Bukchin an Administrative Fee each month from May 2013 to the present. During that time,
24 AT&T has increased the amount of the Administrative Fee charged to Bukchin three times.
25 AT&T increased the Administrative Fee to \$0.76 in June 2016. AT&T increased the
26 Administrative Fee again to \$1.26 per month in April 2018. AT&T increased the Administrative
27 Fee again, just two or three months later in July 2018, to \$1.99 per month, which is the current fee
28 amount as of this filing.

1 82. Through its imposition of the Administrative Fees, AT&T has for several years
2 charged Bukchin a higher price for the services each month than AT&T advertised and that she
3 was promised and expected to pay.

4 83. In or around September 2014, Ms. Bukchin purchased another AT&T-subsidized
5 iPhone at an Apple Store. The iPhone was bundled with a two-year contract extension of her
6 existing AT&T service plan. Again, when Bukchin made her purchase, AT&T prominently
7 advertised, to Bukchin and to the public, a particular monthly price for the service plan, and did
8 not disclose the Administrative Fee. To sign up for the contract extension, Bukchin completed an
9 AT&T-created contract extension process. As part of that process AT&T prominently
10 represented the monthly price that she would pay for the services, and Bukchin reasonably relied
11 upon that representation. The stated price did not include the Administrative Fee. AT&T did not
12 disclose the Administrative Fee to Bukchin, at any time before or when she signed up for this
13 extension. Nor did AT&T disclose that the total price, inclusive of the Administrative Fee, would
14 or might increase, including during the two-year contract period, as a result of increases to the
15 Administrative Fee.

16 84. In 2017 or 2018, Bukchin visited an AT&T store to add a second phone line to her
17 existing AT&T wireless service plan. Bukchin did not purchase a new phone at this time, because
18 the second line was for a relative who already possessed an existing phone compatible with
19 AT&T service. When Bukchin updated her plan at the AT&T store to include the additional
20 phone line, AT&T prominently advertised, to Bukchin and the public, a particular monthly price
21 for the service plan, and did not disclose the Administrative Fee. When Bukchin updated her plan
22 at the AT&T store, an AT&T salesperson walked her through a proprietary sales process on an
23 iPad. During this in-store process, AT&T represented to Bukchin the supposed updated monthly
24 price for the service, and Bukchin reasonably relied upon that representation. The price that
25 AT&T stated did not include the Administrative Fee, nor did it reflect the true total amount she
26 would be charged each month (inclusive of the Administrative Fee, which AT&T charged on
27 *each* of her two lines). Nor did AT&T disclose that the total price, inclusive of the
28 Administrative Fee, would or might increase as a result of increases to the Administrative Fee.

1 85. On or about May 23, 2018, Bukchin purchased another iPhone from a Best Buy
2 store. She did not make any changes to her existing AT&T wireless service plan at that time.
3 Bukchin purchased the iPhone on an AT&T-provided 24-month installment plan, via an AT&T-
4 created sign-up process. During this sign-up process, AT&T did not disclose the Administrative
5 Fee, nor did it disclose that the total price of her service plan may increase, including during the
6 24-month installment plan period, as a result of increases to the Administrative Fee.

7 86. Bukchin signed up for AT&T electronic billing, as AT&T encouraged her to do.
8 Bukchin has been signed up for AT&T electronic billing at all relevant times, and continues to be
9 signed up for AT&T electronic billing. Through that channel, Bukchin has paid and continues to
10 pay her monthly AT&T bill by clicking on a link in a monthly AT&T billing email, which in turn
11 takes her to a website where she can pay her bill. As alleged above, like the printed monthly
12 statements, AT&T's electronic billing process is designed in a manner that keeps the
13 Administrative Fee hidden from customers. AT&T's monthly electronic billing did not inform or
14 adequately disclose to Bukchin that AT&T was adding an Administrative Fee to her bill each
15 month.

16 87. The first Bukchin ever learned of the Administrative Fee's existence was in
17 September 2018.

18 88. From approximately September 2014 through September 2016, Bukchin was
19 enrolled in a two-year wireless services contract with AT&T, such that she would be charged a
20 significant early termination fee (of up to \$325) if she terminated her contract.

21 89. Since May 23, 2018, Bukchin has been enrolled in an "AT&T Next" installment
22 plan for her iPhone. If Bukchin were to cancel her AT&T wireless service before the installment
23 payments are complete, she would have to pay the full remaining balance immediately in a single
24 balloon payment. For example, when AT&T raised the Administrative Fee to \$1.99 in July 2018,
25 Bukchin had an outstanding balance of \$595.81 on her AT&T Next plan for her cellular phone. If
26 Bukchin did not wish to pay this newly increased Administrative Fee, she would have had to
27 cancel her service, upon which AT&T would have immediately required her to make a \$595.81
28 balloon payment to AT&T.

1 information important to their purchase decision;

2 c. Whether a reasonable consumer is likely to be deceived by AT&T's
3 conduct and omissions alleged herein;

4 d. Whether AT&T's description of the Administrative Fee is false and/or
5 misleading; and

6 e. Whether AT&T has violated the covenant of good faith and fair dealing,
7 implied in its form contracts with its Plaintiffs and the Class, by imposing and increasing the
8 Administrative Fee in the manner alleged herein.

9 96. **Typicality.** Plaintiffs, like all Class Members, are current or former California
10 subscribers of post-paid AT&T wireless service plans who have been charged Administrative
11 Fees by AT&T. Their claims all arise from the same course of conduct by AT&T and are based
12 on the same legal theories. Plaintiffs' claims are typical of the Class members' claims.

13 97. **Adequacy.** Plaintiffs and their counsel will adequately protect the Class'
14 interests. Plaintiffs have no interests antagonistic to Class members' interests and are committed
15 to representing the best interests of the Class. Moreover, Plaintiffs have retained counsel who are
16 highly experienced in prosecuting complex class action and consumer protection cases.

17 98. **Superiority.** A class action is superior to all other available methods for fairly and
18 efficiently adjudicating this controversy. Each Class member's interests are small compared to
19 the burden and expense required to litigate each of their claims individually, so it would be
20 impractical and would not make economic sense for Class members to seek individual redress for
21 AT&T's conduct. Individual litigation would add administrative burden on the courts, increasing
22 the delay and expense to all parties and to the court system. Individual litigation would also
23 create the potential for inconsistent or contradictory judgments regarding the same uniform
24 conduct. A single adjudication would create economies of scale and comprehensive supervision
25 by a single judge. Moreover, Plaintiffs do not anticipate any difficulties in managing a class
26 action trial.

27 99. By its conduct and omissions alleged herein, AT&T has acted and refused to act
28 on grounds that apply generally to the Class, such that final injunctive relief and/or declaratory

1 relief is appropriate respecting the Class as a whole.

2 100. The nature of AT&T's misconduct is non-obvious and/or obscured from public
3 view, and neither Plaintiffs nor the members of the Class could have, through the use of
4 reasonable diligence, learned of the accrual of their claims against AT&T at an earlier time. This
5 Court should, at the appropriate time, apply the discovery rule to extend any applicable
6 limitations period (and the corresponding class period) to the date on which AT&T first began
7 charging the Administrative Fee.

8 **NULLITY OF ARBITRATION PROVISION**

9 101. Plaintiffs and all proposed Class members are subject to AT&T's form "Wireless
10 Customer Agreement." At all relevant times, this contract has included materially the same
11 arbitration provision that, according to its terms and as drafted by AT&T, is null and void in its
12 entirety here.

13 102. Under California law, parties may not agree to waive the right to seek public
14 injunctive relief under California's Unfair Competition Law, False Advertising Law, and the
15 Consumer Legal Remedies Act in any forum, and any such agreements are contrary to California
16 public policy and are unenforceable. *McGill v. Citibank, N.A.*, 393 P.3d 85 (Cal. 2017).

17 103. AT&T's Wireless Customer Agreement, which governs the services at issue here
18 for Plaintiffs and all proposed Class members, includes an arbitration agreement as Section 2.2.
19 Section 2.2(6) of that arbitration agreement states that: "The arbitrator may award declaratory or
20 injunctive relief only in favor of the individual party seeking relief and only to the extent
21 necessary to provide relief warranted by that party's individual claim." This language purports to
22 bar the arbitrator from granting the type of public injunctive relief authorized under California
23 law as a remedy for claims under California's Unfair Competition Law, False Advertising Law,
24 and the Consumer Legal Remedies Act. As Section 2.2(1) purports to require the parties to
25 arbitrate "all disputes and claims," the arbitration provision thus purports to bar the parties from
26 seeking public injunctive relief in any forum. Such a provision is unenforceable under *McGill*.

27 104. Section 2.2(6) of AT&T's arbitration agreement concludes with a non-severability
28 (or "poison pill") provision, stating: "If this specific provision is found to be unenforceable, then

1 the entirety of this arbitration provision shall be null and void.”

2 105. Because Section 2.2(6) is unenforceable under California law as an improper
3 waiver of public injunctive relief in any forum, the “entirety” of the full arbitration agreement
4 (Section 2.2) is “null and void.” Therefore, the claims brought in this lawsuit are not subject to
5 any of the requirements of AT&T’s arbitration agreement.

6 106. Two courts in this District have already concluded that the very same AT&T
7 arbitration agreement is null and void for just these reasons. *See Roberts v. AT&T Mobility LLC*,
8 No. 3:15-cv-3418-EMC, 2018 WL 1317346 (N.D. Cal. Mar. 14, 2018); *McArdle v. AT&T*
9 *Mobility LLC*, No. 09-cv-1117-CW, 2017 WL 4354998 (N.D. Cal. Oct. 2, 2017).

10 **CAUSES OF ACTION**

11 **FIRST CAUSE OF ACTION:**

12 **Violation of California’s Unfair Competition Law (“UCL”) California Business & Professions Code § 17200, *et seq.***

13 107. Plaintiffs reallege and incorporate by reference every allegation set forth in the
14 preceding paragraphs as though alleged in this cause of action.

15 108. California Business & Professions Code § 17200, *et seq.*, also known as
16 California’s Unfair Competition Law (UCL), prohibits any unfair, unlawful, or fraudulent
17 business practice.

18 109. By its conduct and omissions alleged herein, AT&T’s has violated the “unfair”
19 prong of the UCL, including without limitation by: (a) pervasively misrepresenting AT&T
20 wireless service plan prices while failing to disclose and/or to adequately disclose that AT&T
21 actually charges higher monthly prices than advertised, through its imposition of Administrative
22 Fees on top of the advertised price; (b) continuing to hide, obscure, and misrepresent the
23 Administrative Fees even after customers have signed up; (c) charging a so-called
24 “Administrative Fee” that is not in fact a bona fide administrative fee; (d) imposing and
25 increasing the Administrative Fee on customers without notice or adequate notice; (e) preventing
26 existing customers from canceling their services after learning the actual total monthly amount
27 they are charged or learning of the Administrative Fee or increases to the Administrative Fee; and
28 (f) imposing and increasing the Administrative Fee as a covert way to increase the actual monthly

1 prices customers pay for their services without having to advertise the actual higher prices and/or
2 in response to unrelated corporate costs incurred by its corporate parent.

3 110. AT&T's conduct and omissions alleged herein are immoral, unethical, oppressive,
4 unscrupulous, unconscionable, and/or substantially injurious to Plaintiffs and the Class.
5 Perpetrating a years-long scheme of misleading and overcharging customers is immoral,
6 unethical, and unscrupulous. Moreover, AT&T's conduct is oppressive and substantially
7 injurious to consumers. By its conduct alleged herein, AT&T has improperly extracted millions of
8 dollars from California consumers. There is no utility to AT&T's conduct, and even if there were
9 any utility, it would be significantly outweighed by the gravity of the harm to consumers caused
10 by AT&T's conduct alleged herein.

11 111. AT&T's conduct and omissions alleged herein also violate California public
12 policy, including as such policy is reflected in Cal. Civ. Code § 1750 *et seq.* and Cal. Civ. Code
13 §§ 1709-1710.

14 112. By its conduct and omissions alleged herein, AT&T has violated the "unlawful"
15 prong of the UCL, including by making material misrepresentations and omissions in violation of
16 Cal. Bus. & Prof. Code § 17500 *et seq.* and Cal. Civ. Code § 1750, *et seq.*, engaging in deceit in
17 violation of Cal Civ. Code §§ 1709-1710, and violating the implied covenant of good faith and
18 fair dealing, in violation of California common law.

19 113. AT&T has violated the "fraudulent" prong of the UCL by making material
20 misrepresentations and omissions, including regarding: (a) the true prices of its post-paid wireless
21 service plans; (b) the existence and amount of Administrative Fees; and (c) the nature and basis of
22 the Administrative Fees.

23 114. With respect to omissions, AT&T at all relevant times had a duty to disclose the
24 information in question because, *inter alia*: (a) AT&T had exclusive knowledge of material
25 information that was not known to Plaintiffs and the Class; (b) AT&T concealed material
26 information from Plaintiffs and the Class; and (c) AT&T made partial representations, including
27 regarding the supposed monthly prices of the services, which were false and misleading absent
28 the omitted information.

1 115. AT&T's material misrepresentations and nondisclosures were likely to mislead
2 reasonable consumers, existing and potential customers, and the public.

3 116. AT&T's misrepresentations and nondisclosures deceive and have a tendency to
4 deceive the general public and reasonable consumers.

5 117. AT&T's misrepresentations and nondisclosures are material, such that a
6 reasonable person would attach importance to the information and would be induced to act on the
7 information in making purchase decisions.

8 118. Plaintiffs and members of the proposed Class reasonably relied on AT&T's
9 material misrepresentations and nondisclosures, and would not have purchased, or would have
10 paid less money for, AT&T's wireless service plans had they known the truth.

11 119. By its conduct and omissions alleged herein, AT&T received more money from
12 Plaintiffs and the Class than it should have received, including the excess Administrative Fees
13 that AT&T charged Plaintiffs and the Class on top of the advertised prices for the service plans,
14 and that money is subject to restitution.

15 120. As a direct and proximate result of AT&T's unfair, unlawful, and fraudulent
16 conduct, Plaintiffs and the proposed Class members lost money.

17 121. AT&T's conduct has caused substantial injury to Plaintiffs, proposed Class
18 members, and the public. AT&T's conduct is ongoing and is likely to continue and recur absent a
19 permanent injunction. Accordingly, Plaintiffs seek an order enjoining AT&T from committing
20 such unlawful, unfair, and fraudulent business practices. Plaintiffs further seek an order granting
21 restitution to Plaintiffs and the Class in an amount to be proven at trial. Plaintiffs further seek an
22 award of attorneys' fees and costs under Cal. Code Civ. Proc. § 1021.5.

23 122. Absent injunctive relief, AT&T will continue to injure Plaintiffs and the Class
24 members. AT&T's misrepresentations and omissions regarding the true service plan prices and
25 regarding the Administrative Fees are ongoing. Moreover, AT&T continues to charge customers
26 the unfair and unlawful Administrative Fees. Even if such conduct were to cease, it is behavior
27 that is capable of repetition or re-occurrence by AT&T, which is a dominant player in the industry
28 and has many millions of customers in California alone.

1 123. Plaintiffs individually seek public injunctive relief, under the UCL, to protect the
2 general public from AT&T's false advertisements and omissions—including AT&T's advertising
3 of monthly service rates that do not reflect the true rates, and AT&T's failure to disclose or
4 adequately disclose the true rates or the Administrative Fees.

5 **SECOND CAUSE OF ACTION:**
6 **Violation of California's False Advertising Law ("FAL")**
7 **California Business & Professions Code § 17500, *et seq.***

8 124. Plaintiffs reallege and incorporate by reference every allegation set forth in the
9 preceding paragraphs as though alleged in this cause of action.

10 125. By its conduct and omissions alleged herein, AT&T has committed acts of untrue
11 and misleading advertising, as defined by and in violation of California Business & Professions
12 Code § 17500, *et seq.*, also known as California's False Advertising Law (FAL). These acts
13 include but are not limited to: (a) misrepresenting the prices of its wireless service plans; (b)
14 failing to disclose or adequately disclose the true prices of its wireless service plans and the
15 existence, amount, or nature of Administrative Fees; (c) continuing to hide, obscure, and
16 misrepresent the Administrative Fee even after customers sign up; and (d) describing the
17 Administrative Fee, in its buried description, in a manner that is false and misleading.

18 126. With respect to omissions, AT&T at all relevant times had a duty to disclose the
19 information in question because, *inter alia*: (a) AT&T had exclusive knowledge of material
20 information that was not known to Plaintiffs and the Class; (b) AT&T concealed material
21 information from Plaintiffs and the Class; and (c) AT&T made partial representations, including
22 regarding the supposed monthly prices of the services, which were false and misleading absent
23 the omitted information.

24 127. AT&T's misrepresentations and nondisclosures deceive and have a tendency to
25 deceive the general public.

26 128. AT&T's misrepresentations and nondisclosures are material, in that a reasonable
27 person would attach importance to the information and would be induced to act on the
28 information in making purchase decisions.

129. Plaintiffs and members of the proposed Class reasonably relied on AT&T's

1 material misrepresentations and nondisclosures, and would not have purchased, or would have
2 paid less money for, AT&T's service plans had they known the truth.

3 130. By its conduct and omissions alleged herein, AT&T received more money from
4 Plaintiffs and the Class than it should have received, including the excess Administrative Fees
5 that AT&T charged Plaintiffs and the Class on top of the advertised prices for the service plans,
6 and that money is subject to restitution.

7 131. As a direct and proximate result of AT&T's violations of the FAL, Plaintiffs and
8 the proposed Class members lost money.

9 132. AT&T's conduct has caused substantial injury to Plaintiffs, proposed Class
10 members, and the public. AT&T's conduct is ongoing and is likely to continue and recur absent a
11 permanent injunction. Accordingly, Plaintiffs seek an order enjoining AT&T from committing
12 such violations of the FAL. Plaintiffs further seek an order granting restitution to Plaintiffs and
13 the Class in an amount to be proven at trial. Plaintiffs further also seek an award of attorneys'
14 fees and costs under Cal. Code Civ. Proc. § 1021.5.

15 133. Absent injunctive relief, AT&T will continue to injure Plaintiffs and the Class
16 members. AT&T's misrepresentations and omissions regarding the true service plan prices and
17 regarding the Administrative Fees are ongoing. Moreover, AT&T continues to charge customers
18 the unfair and unlawful Administrative Fees. Even if such conduct were to cease, it is behavior
19 that is capable of repetition or re-occurrence by AT&T, which is a dominant player in the industry
20 and has many millions of customers in California alone.

21 134. Plaintiffs individually seek public injunctive relief, under the FAL, to protect the
22 general public from AT&T's false advertisements and omissions—including AT&T's advertising
23 of monthly service rates that do not reflect the true rates, and AT&T's failure to disclose or
24 adequately disclose the true rates or the Administrative Fees.

25 **THIRD CAUSE OF ACTION:**
26 **Violation of the Consumer Legal Remedies Act ("CLRA")**
27 **California Civil Code § 1750, et seq.**

28 135. Plaintiffs reallege and incorporate by reference every allegation set forth in the
preceding paragraphs as though alleged in this cause of action.

1 136. AT&T is a “person” within the meaning of Cal. Civ. Code § 1761(c).

2 137. Plaintiffs and the proposed Class members are “consumers,” as defined by Cal.
3 Civ. Code §1761(d).

4 138. The wireless service plans that AT&T marketed and sold are “services,” as defined
5 by Cal. Civ. Code §1761(a) and (b).

6 139. The purchases of AT&T’s wireless service plans by Plaintiffs and proposed Class
7 members are “transactions,” as defined by Cal. Civ. Code § 1761(e).

8 140. Plaintiffs and proposed Class members purchased AT&T’s wireless service plans
9 for personal, family, and household purposes as meant by Cal. Civ. Code § 1761(d).

10 141. Venue is proper under Cal. Civil Code § 1780(d) because a substantial portion of
11 the transactions at issue occurred in this county. Plaintiffs’ declarations establishing that this
12 Court is a proper venue for this action are attached hereto as **Exhibit A**.

13 142. AT&T intentionally deceived Plaintiffs and proposed Class members, and
14 continues to deceive the public, by misrepresenting the prices of its services and by failing to
15 disclose or adequately disclose the Administrative Fee or the true prices of the services. AT&T
16 has intentionally deceived Plaintiffs and the proposed Class members, and continues to deceive
17 the public, by misrepresenting and failing to disclose or adequately disclose material information
18 about the true prices of the services and about the existence, amount, and basis of the
19 Administrative Fee.

20 143. AT&T’s conduct alleged herein has violated the CLRA in multiple respects,
21 including, but not limited to, the following:

22 a. AT&T advertised its wireless service plans with an intent not to sell them
23 as advertised (Cal. Civ. Code § 1770(a)(9));

24 b. AT&T misrepresented that its wireless service plans were supplied in
25 accordance with previous representations when they were not (Cal. Civ. Code § 1770(a)(16)); and

26 c. AT&T inserted unconscionable provisions in its consumer agreements,
27 including an arbitration clause which waives the right to seek public injunctive relief in any
28 forum, in violation of California law.

1 144. With respect to omissions, AT&T at all relevant times had a duty to disclose the
2 information in question because, *inter alia*: (a) AT&T had exclusive knowledge of material
3 information that was not known to Plaintiffs and the Class; (b) AT&T concealed material
4 information from Plaintiffs and the Class; and (c) AT&T made partial representations, including
5 regarding the supposed monthly prices of the services, which were false and misleading absent
6 the omitted information.

7 145. AT&T's misrepresentations and nondisclosures deceive and have a tendency to
8 deceive the general public.

9 146. AT&T's misrepresentations and nondisclosures are material, in that a reasonable
10 person would attach importance to the information and would be induced to act on the
11 information in making purchase decisions.

12 147. Plaintiffs and members of the proposed Class reasonably relied on AT&T's
13 material misrepresentations and nondisclosures, and would not have purchased, or would have
14 paid less money for, AT&T's service plans had they known the truth.

15 148. As a direct and proximate result of AT&T's violations of the CLRA, Plaintiffs and
16 the proposed Class members have been damaged.

17 149. AT&T's conduct alleged herein caused substantial injury to Plaintiffs, proposed
18 Class members, and the public. AT&T's conduct is ongoing and is likely to continue and recur
19 absent a permanent injunction. Accordingly, Plaintiffs seek an order enjoining AT&T from
20 committing such practices. Plaintiffs also seek attorneys' fees and costs.

21 150. Plaintiffs individually seek public injunctive relief, under the CLRA, to protect the
22 general public from AT&T's false advertisements and omissions.

23 151. In accordance with California Civil Code § 1782(a), on June 20, 2019, Plaintiffs'
24 counsel served AT&T with notice of its CLRA violations by certified mail, return receipt
25 requested. A true and correct copy of that notice is attached hereto as **Exhibit B**. If AT&T fails
26 to provide appropriate relief for its CLRA violations within 30 days of Plaintiffs' notification
27 letter, Plaintiffs will amend this complaint to seek compensatory and exemplary damages as
28 permitted by Cal. Civ. Code §§ 1780 and 1782(b).

1 160. AT&T has abused any discretion it had under the contract to impose or increase
2 the Administrative Fee. On information and belief, AT&T imposed and increased the
3 Administrative Fee that it charged, not, as AT&T misleadingly stated in its buried description, in
4 response to cell site rental and maintenance costs or interconnectivity costs, which AT&T's
5 financial statements show have gone down at the same time AT&T has significantly increased the
6 amount of the fee. Rather, AT&T imposed and has increased the Administrative Fee as a covert
7 way to increase customers' monthly rates without having to advertise such higher rates. On
8 information and belief, AT&T increased the Administrative Fee in large part to fund unrelated
9 corporate liabilities of its parent company AT&T Inc., including to pay down the debt incurred in
10 connection with the acquisition of Time Warner Inc. in 2018.

11 161. AT&T's imposition and increasing of the Administrative Fees defied customers'
12 reasonable expectations, was objectively unreasonable, frustrated the basic terms of the parties'
13 agreement, and defied even AT&T's own buried description of the fee. AT&T's conduct alleged
14 herein was arbitrary and in bad faith.

15 162. AT&T's conduct described herein has had the effect, and the purpose, of denying
16 Plaintiffs and Class members the full benefit of their bargains with AT&T.

17 163. Plaintiffs and the Class members have performed all, or substantially all, of the
18 obligations imposed on them under their contracts with AT&T. There is no legitimate excuse or
19 defense for AT&T's conduct.

20 164. Any attempts by AT&T to defend its overcharging through reliance on contractual
21 provisions will be without merit. Any such provisions are either inapplicable or are
22 unenforceable because they are void, illusory, lacking in mutuality, are invalid exculpatory
23 clauses, violate public policy, are procedurally and substantively unconscionable, and are
24 unenforceable in light of the hidden and deceptive nature of AT&T's misconduct, among other
25 reasons. Any such provisions, if any, would not excuse AT&T's abuses of discretion or otherwise
26 preclude Plaintiffs and the Class from recovering for breaches of the covenant of good faith and
27 fair dealing.

28 165. Plaintiffs and members of the Class sustained damages as a result of AT&T's

1 breaches of the covenant of good faith and fair dealing. Plaintiffs seek damages in an amount to
2 be proven at trial.

3 **PRAYER FOR RELIEF**

4 166. In order to prevent injury to the general public, Plaintiffs individually request that
5 the Court enter a public injunction, under the UCL, FAL, and CLRA, enjoining AT&T from
6 falsely advertising the prices of its wireless service plans and from concealing the true prices of
7 its wireless service plans;

8 167. Further, on behalf of themselves and the proposed Class, Plaintiffs request that the
9 Court order relief and enter judgment against AT&T as follows:

10 a. Declare this action to be a proper class action, certify the proposed Class,
11 and appoint Plaintiffs and their counsel to represent the Class;

12 b. Permanently enjoin AT&T from engaging in the misconduct alleged
13 herein, and order AT&T to discontinue charging the Administrative Fees to its customers in
14 California;

15 c. Order AT&T to pay damages and restitution to Plaintiffs and the Class in
16 an amount to be proven at trial;

17 d. Order AT&T to pay court attorneys' fees, costs, and pre-judgment and
18 post-judgment interest;

19 e. Retain jurisdiction to monitor AT&T's compliance with the permanent
20 injunctive relief; and

21 f. Provide all other relief to which Plaintiffs and the Class may show
22 themselves justly entitled.

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JURY DEMAND

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

Dated: June 20, 2019

Respectfully submitted,

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: /s/ Michael W. Sobol

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**Pro hac vice application to be submitted*