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8 LANCE BAIRD individually, and on
9 behalf of a class of others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA,**

11 **FOR THE COUNTY OF LOS ANGELES**

12 LANCE BAIRD individually, and on behalf of
13 a class of others similarly situated,

14 Plaintiff,

15 v.

16 CHARTER COMMUNICATIONS, INC., dba
17 CHARTER COMMUNICATIONS (CCI),
18 INC., a Delaware corporation; and DOES 1-
19 100,

20 Defendant.

Case No. 19STCV41042

CLASS ACTION

COMPLAINT

JURY TRIAL REQUESTED

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CLASS ACTION COMPLAINT

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

NOV 14 2019

Sherri R. Carter, Executive Officer/Clerk of Court
By: Isaac Lovo, Deputy

1 Plaintiff Lance Baird ("Plaintiff"), individually and on behalf of all others similarly
2 situated ("the Class"), alleges, upon personal knowledge as to himself and upon information and
3 belief as to other matters, as follows:

4 **NATURE OF ACTION**

5 1. Defendant Charter Communications, Inc., dba Charter Communications (CCI), Inc.
6 (hereinafter "Defendant") provides internet service to customers across the United States and the
7 State of California under the branding name "Spectrum."

8 2. In steep competition with Comcast and other internet providers, Defendant is
9 forced to reinvent advertising to attract new customers to its service.

10 3. One way Defendant draws in new customers in California is to offer "free" internet
11 modems for use by customers in their homes.

12 4. New customers then have the option for how they would like their new Spectrum
13 internet service to be set up inside their homes. Defendant advertises that customers can either
14 pay a professional to come to their home to install the service – which costs upwards of \$50 – or
15 they can self-install the service. Self-installing Defendant's internet service is, according to
16 Defendant "quick and easy." All the customer needs is one of Defendant's "free" modems, or a
17 modem of their own that will meet the technical specifications required to receive Defendant's
18 service, and the "step-by-step" instructions included with the modem and available online through
19 Defendant's website.

20 5. Despite advertising that its modems are "free," Defendant charges a one-time self-
21 installation "fee" for new customers of its internet service. In addition, many customers are
22 required to physically travel out to Defendant's stores, pick up the modems, and return back to
23 install the service themselves.

24 6. Defendant also charges the one-time self-installation "fee" for new customers who
25 opt to use their own modems.

26 7. Defendant provides no service or anything of value in exchange for the one-time
27 self-installation "fee." Defendant misrepresents that the "fee" is being paid in exchange for
28 anything of value – a fact which is not apparent at the point of sale.

18. This Court has jurisdiction over the subject matter of this class action, which is properly filed in Los Angeles County, because Defendant's obligations and liability arose from business activities conducted, in large part, in Los Angeles County. Those business activities include purposefully availing itself of California's markets, including the Los Angeles County market, making false statements to consumers in Los Angeles County, and entering into fraudulent contracts with consumers in Los Angeles County.

19. This Court has personal jurisdiction over Defendant because it is authorized to do business in California, which is a sufficient bases to render the exercise of jurisdiction by this Court permissible under notions of fair play and substantial justice.

STATEMENT OF FACTS

20. Plaintiff purchased internet service from Defendant on October 10, 2019, in the state of California.

21. Plaintiff made his decision to purchase internet service from Defendant based on Defendant's advertised rate for its service, including that there would be no additional fee for his use of Defendant's internet modem with the internet service.

22. Plaintiff initially understood that the \$9.99 fee for self-installation was being paid in exchange for something of value. Only upon ordering the service, traveling to the store to pick up the modem, returning and setting up his service did he understand that he had paid a fee in exchange for nothing of value.

23. Defendant uniformly misrepresented to Plaintiff and the putative class that use of its modems is “free,” and that the \$9.99 fee was required to be paid in exchange for something of value from Defendant. If Defendant decided to charge \$9.99 as a one-time rental fee for its modems, then it made a material misrepresentation by simultaneously claiming it was providing its modems for “free” and hiding the true nature of the \$9.99 fee. If Defendant was simply charging \$9.99 for providing no service at all, it was charging a fee not authorized by law and making a material misrepresentation by deceiving Plaintiff and the putative class that they would receive something of value in exchange for that fee.

24. Plaintiff and the putative class materially relied on Defendant's misrepresentations

1 and were uniformly harmed by Defendant's conduct. This is evident because many of
 2 Defendant's competitors did not provide "free" modems to their customers. Thus, making such an
 3 offer was an additional value intended to and resulting in attracting additional customers to
 4 Defendant's service. Further, the \$9.99 fee was – depending on the internet package a customer
 5 purchased – as much as 22% of the monthly cost of the service being provided. Thus, the fee was
 6 a significant expenditure when compared against the cost of the service itself making it,
 7 necessarily, a non-trivial expenditure.

8 25. Defendant intended that customers would rely on its misrepresentations in deciding
 9 to purchase internet service for the price paid from Defendant by making misrepresentations at the
 10 point of sale. Defendant's intent is manifested by its ubiquitous promulgation of "free" modems
 11 in its advertising and its \$9.99 presentation of its fee without any explanation of what the fee
 12 would actually be exchanged for. Defendant manifested its intent to hide the true nature of its fee
 13 by making it mandatory and by providing no explanation of what customers received in exchange
 14 for the fee – thereby preventing customers from realizing that they were getting nothing in
 15 exchange for the fee.

16 26. Defendant's illegal conduct was the proximate and direct cause of Plaintiff and the
 17 putative class' injuries.

18 **CLASS ACTION ALLEGATIONS**

19 27. This action is brought on behalf of the following classes:

- 20 a. Store Pickup Class: All persons in California who purchased internet service
 21 from Defendant, and to whom Defendant promised "free" use of Defendant's
 22 internet modems, but were charged \$9.99 to self-install Defendant's internet
 23 service.
- 24 b. Own Modem Class: All persons in California who purchased internet service
 25 from Defendant, and were charged \$9.99 to self-install Defendant's internet
 26 service.

27 28. Excluded from the Classes are Defendant, its legal representatives, assigns, and
 28 successors, and any entity in which the Defendant has a controlling interest. Also, excluded from

1 the Classes is the judge to whom this case is assigned, the Judge's immediate family, and
 2 Plaintiff's counsel and their employees. Plaintiff reserves the right to amend the above-stated
 3 class definitions based on facts learned in discovery, as well as adding subclasses as the Court sees
 4 fit.

5 29. Defendant is one of the largest internet service providers the united states.
 6 <https://ir.charter.com/static-files/c6af1cf1-7a43-4c40-a6e4-86bf1dc31de3> (at p.17). In 2018,
 7 Defendant added 1,300,000 internet customers. (*Id.* at p.7). Considering Defendant's sizeable
 8 footprint in California (*id.* at p. 9) the putative Class is so numerous that joinder of all members of
 9 the Class would be impractical.

10 30. Common questions of law and fact exist as to all members of the Class and
 11 predominate over any questions affecting only individual Class members. These common legal
 12 and factual questions include but are not limited to the following:

- 13 a. Whether Defendant's advertising of its modems as "free" amounted to a
 14 material misrepresentation;
- 15 b. Whether Defendant's \$9.99 fee for self-installation amounted to a material
 16 representation when no goods or services were provided in exchange;
- 17 c. Whether Defendant's conduct damaged Plaintiff and the putative class and in
 18 what amount;
- 19 d. Whether Defendant intended Plaintiff and the putative class would rely on its
 20 misrepresentations in deciding to purchase its internet service;
- 21 e. Whether Defendant negligently, willfully, and/or knowingly misrepresented the
 22 sale of its internet service to Plaintiff and the putative class;
- 23 f. Whether Defendant's conduct violated California's consumer protection laws;
- 24 g. Whether a reasonable consumer would have relied on Defendant's advertising
 25 in deciding to purchase Defendant's internet service;
- 26 h. Whether Defendant should be required to change its advertising practice and/or
 27 eliminate its \$9.99 fee for self-installation of its internet service.

28 31. Plaintiff's claims are typical of the Class' and within each subclass and are based

1 on the same facts, legal theories and/or primary rights of all Class members, because Plaintiff and
 2 each Class member were identically injured in paying \$9.99 in exchange for nothing of value. The
 3 class action procedure is also superior to individual lawsuits due to the massive volume of
 4 potential individual lawsuits and the similarities that persist in each Class member's claims when
 5 compared against the predicted amount of recovery per Class member.

6 32. Plaintiff will adequately and fairly protect the interests of the Class and each
 7 subclass. He has retained counsel experienced in class action litigation. Neither Plaintiff nor his
 8 counsel have any interest that might cause them to not vigorously pursue this action in the Class'
 9 and subclass' best interests.

10 33. Certification of the Class and each subclass is proper under California's Rules of
 11 Civil Procedure and Rules of Court.

12 34. Plaintiff and his counsel anticipate that notice to the proposed Class will be
 13 effectuated by mailing notice to Defendant's internet service customers, whose addresses
 14 Defendant maintains in the normal course.

15 **FIRST CAUSE OF ACTION**

16 **(Negligent/Intentional Misrepresentation – *By Plaintiff on behalf of the Class, against*
 17 *Defendant and Does 1-100*)**

18 35. Plaintiff and the Class repeat and reallege each and every allegation above as if set
 19 forth in full herein.

20 36. Defendant made multiple, uniform, and material misrepresentations to Plaintiff and
 21 the Class; specifically, that use of its modems with its internet service would be "free" when in
 22 fact it was not, and that the \$9.99 fee was being paid in exchange for something of value when in
 23 fact it was not.

24 37. Defendant's misrepresentations were material in multiple respects. First, many of
 25 Defendant's competitors did not provide "free" modems to their customers. Thus, making such an
 26 offer was an additional value intended to and resulting in attracting additional customers to
 27 Defendant's service. Second, the \$9.99 fee was – depending on the internet package a customer
 28 purchased – as much as 22% of the monthly cost of the service being provided. Thus, the fee was

1 a significant expenditure when compared against the cost of the service itself.

2 38. Defendant intended that Plaintiff and the Class would rely on its multiple, uniform,
3 and material misrepresentations manifested by its ubiquitous promulgation of “free” modems in
4 advertising and its \$9.99 presentation of its fee without any explanation of what the fee would
5 actually be exchanged for. Defendant manifested its intent to hide the true nature of its fee by
6 making it mandatory and by providing no explanation of what customers received in exchange for
7 the fee – thereby preventing customers from realizing that they were getting nothing in exchange
8 for the fee.

9 39. Plaintiff and the Class reasonably relied on Defendant’s multiple, uniform, and
10 material misrepresentations in purchasing Defendant’s internet service as evidenced by the
11 misrepresentations being present at the point of sale.

12 40. Plaintiff and the Class were and currently remain damaged as a proximate and
13 direct result of Defendant’s multiple, uniform, and material misrepresentations.

14 41. Plaintiff’s and the Class’ reasonable reliance on Defendant’s multiple, uniform, and
15 material misrepresentations were a substantial factor in causing their damages.

16 **SECOND CAUSE OF ACTION**

17 **(Violation of California’s Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750,**
18 ***et seq. – By Plaintiff Conn on behalf of California Subclass, against Defendant and Does***
1-100)

19 42. Plaintiff and the Class repeat and reallege each and every allegation above as if set
20 forth in full herein.

21 43. Defendant made multiple, uniform, and material misrepresentations to Plaintiff and
22 the Class; specifically, that use of its modems with its internet service would be “free” when in
23 fact it was not, and that the \$9.99 fee was being paid in exchange for something of value when in
24 fact it was not.

25 44. Defendant’s misrepresentations were material in multiple respects. First, many of
26 Defendant’s competitors did not provide “free” modems to their customers. Thus, making such an
27 offer was an additional value intended to and resulting in attracting additional customers to
28 Defendant’s service. Second, the \$9.99 fee was – depending on the internet package a customer

1 purchased – as much as 22% of the monthly cost of the service being provided. Thus, the fee was
2 a significant expenditure when compared against the cost of the service itself.

3 45. Defendant intended that Plaintiff and the Class would rely on its multiple, uniform,
4 and material misrepresentations manifested by its ubiquitous promulgation of “free” modems in
5 advertising and its \$9.99 presentation of its fee without any explanation of what the fee would
6 actually be exchanged for. Defendant manifested its intent to hide the true nature of its fee by
7 making it mandatory and by providing no explanation of what customers received in exchange for
8 the fee – thereby preventing customers from realizing that they were getting nothing in exchange
9 for the fee.

10 46. Plaintiff and the Class reasonably relied on Defendant’s multiple, uniform, and
11 material misrepresentations in purchasing Defendant’s internet service as evidenced by the
12 misrepresentations being present at the point of sale.

13 47. Plaintiff and the Class were and currently remain damaged as a result of
14 Defendant’s multiple, uniform, and material misrepresentations.

15 48. That material misrepresentation to Plaintiff and the Class was that a good (the
16 modem) had characteristics and benefits (being “free”) which it did not have in violation of
17 California Civil Code § 1770(a)(5).

18 49. The material misrepresentation to Plaintiff and the Class was that a service (the one
19 purportedly being offered in exchange for \$9.99) had characteristics, uses and benefits that it did
20 not have (it had no value whatsoever) in violation of California Civil Code § 1770(a)(5).

21 50. Defendant violated California Civil Code § 1770(a)(9) by advertising its modems
22 as “free” when it intended to and did charge customers for their use of the modems.

23 51. Defendant violated California Civil Code § 1770(a)(9) by advertising its self-
24 installation service as conveying something of value to customers when in fact it did not.

25 52. Defendant’s deceptive representations occurred in trade or commerce.

26 53. Defendant’s representation was unfair and deceptive resulting in an ascertainable
27 economic injury to Plaintiff and the Class.

28 54. Plaintiff sent notice to Defendant as required by California Civil Code § 1782,

1 requesting Defendant cease its illegal actions. Despite Plaintiff's requests that Defendant stop its
 2 false advertising, stop charging customers \$9.99 for self-installation, and refund all illegally gotten
 3 gains Defendant has refused to do so.

4 **THIRD CAUSE OF ACTION**

5 **(Violation of California Business and Professions Code, Cal. Bus. & Prof. Code**
 6 **§§ 17200, *et seq.* – By Plaintiff on behalf of Class, against Defendant and Does 1-100)**

7 55. Plaintiffs and the Class repeat and reallege each and every allegation above as if set
 8 forth in full herein.

9 56. California Business and Professions Code §§ 17200, *et seq.*, (hereinafter referred at
 10 the "UCL") prohibits unfair competition in the form of any unlawful, unfair or fraudulent business
 11 acts or practices.

12 57. UCL section 17204 allows a person injured by the unfair business acts or practices
 13 to prosecute a civil action for violation of the UCL.

14 58. Defendant made multiple, uniform, and material misrepresentations to Plaintiff and
 15 the Class; specifically, that use of its modems with its internet service would be "free" when in
 16 fact it was not, and that the \$9.99 fee was being paid in exchange for something of value when in
 17 fact it was not.

18 59. The acts and practices described above constitute unfair, unlawful and fraudulent
 19 business practices, and unfair competition, within the meaning of the UCL. Among other things,
 20 Defendant intentionally defrauded – through material misrepresentations – customers into
 21 selecting its service over the service of its competitors in order to gain a competitive advantage
 22 resulting in unfair competition in its industry.

23 60. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
 24 and the Class have suffered a loss of money and property.

25 61. UCL § 17203 provides a court may restore to any person in interest money or
 26 property which may have been acquired by means of such unfair competition. Plaintiff and the
 27 Class are each entitled to restitution pursuant to UCL § 17203 for all monies improperly overpaid
 28 to Defendant in connection with their purchase of internet service during the four-year period prior

1 to filing this Complaint.

2 62. UCL § 17202 provides “notwithstanding section 3369 of the Civil Code, specific or
3 preventative relief may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair
4 competition.” Plaintiff and the putative class are entitled to all applicable penalty provisions of the
5 Labor Code pursuant to Business and Professions Code § 17202.

6 63. Plaintiff’s success in this action will enforce the important rights affecting the
7 public interest, and in that regard Plaintiff sues on behalf of himself as well as others similarly
8 situated and, accordingly, pursuant to the UCL, this Court should make such orders or judgments
9 as may be necessary to prevent continued fraud by Defendant of any unlawful or deceptive
10 practices prohibited by the UCL, including but not limited to disgorgement of ill-gotten gains,
11 which may be necessary to restore Plaintiff and the Class the money Defendant has unlawfully
12 obtained.

13 64. Plaintiff herein takes it upon himself to enforce these lawful claims. There is a
14 financial burden involved in pursuing this action, an action seeking to vindicate a public right, and
15 it would be against the interest of justice to penalize Plaintiff by forcing him and/or his class to
16 pay other parties’ attorney fees from the recovery in this action pursuant to California’s Code of
17 Civil Procedure §1021.5 and otherwise.

18 65. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

19 **FOURTH CAUSE OF ACTION**

20 ***(Violation of California Business and Professions Code §§ 17500, et seq. – By Plaintiff
on behalf of the Class, against Defendant and Does 1-100)***

21 66. Plaintiff and the Class repeat and reallege each and every allegation above as if set
22 forth in full herein.

23 67. Defendant made multiple, uniform, and material misrepresentations to Plaintiff and
24 the Class; specifically, that use of its modems with its internet service would be “free” when in
25 fact it was not, and that the \$9.99 fee was being paid in exchange for something of value when in
26 fact it was not.

27 68. Defendant’s misrepresentations were material in multiple respects. First, many of
28

1 Defendant's competitors did not provide "free" modems to their customers. Thus, making such an
 2 offer was an additional value intended to and resulting in attracting additional customers to
 3 Defendant's service. Second, the \$9.99 fee was – depending on the internet package a customer
 4 purchased – as much as 22% of the monthly cost of the service being provided. Thus, the fee was
 5 a significant expenditure when compared against the cost of the service itself.

6 69. Defendant intended that Plaintiff and the Class would rely on its multiple, uniform,
 7 and material misrepresentations manifested by its ubiquitous promulgation of "free" modems in
 8 advertising and its \$9.99 presentation of its fee without any explanation of what the fee would
 9 actually be exchanged for. Defendant manifested its intent to hide the true nature of its fee by
 10 making it mandatory and by providing no explanation of what customers received in exchange for
 11 the fee – thereby preventing customers from realizing that they were getting nothing in exchange
 12 for the fee.

13 70. Plaintiff and the Class reasonably relied on Defendant's multiple, uniform, and
 14 material misrepresentations in purchasing Defendant's internet service as evidenced by the
 15 misrepresentations being present at the point of sale.

16 71. Plaintiff and the Class were and currently remain damaged as a proximate and
 17 direct result of Defendant's multiple, uniform, and material misrepresentations.

18 72. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

19 FIFTH CAUSE OF ACTION

20 *(Unjust Enrichment – By Plaintiff on behalf of the Class, against Defendant and Does 1-100)*

21 73. Plaintiff and the Class repeat and reallege each and every allegation above as if set
 22 forth in full herein.

23 74. Defendant uniformly misrepresented that use of its modems with its internet service
 24 would be "free" when in fact it was not, and that the \$9.99 fee was being paid in exchange for
 25 something of value when in fact it was not.

26 75. Defendant received such monies from Plaintiff and the Class based, at least in part,
 27 on its misrepresentations. Had Plaintiff and the Class known or had reason to know that the
 28

1 misrepresentations were in fact false, they would have, at least, paid less monies to Defendant for
2 the internet service.

3 76. Defendant retained, and continues to retain, such monies that it received from
4 Plaintiff and the Class and as a result, has been unjustly enriched to the detriment of Plaintiff and
5 the Class.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff and the Class pray for relief as follows:

- 8 1. Certification of Plaintiff's class action claims;
- 9 2. Designation of Plaintiff as adequate class representative for the Class;
- 10 3. Designation of Plaintiff's counsel as Class Counsel;
- 11 4. An award of actual, statutory, and/or punitive damages for to the extent recoverable
12 by law;
- 13 5. Injunctive relief requiring Defendant to stop falsely advertising its internet service,
14 immediately;
- 15 6. An award of costs incurred herein, including reasonable attorneys' fees to the
16 extent allowable by law;
- 17 7. An award of attorneys' fees and costs according to proof pursuant to California
18 Code of Civil Procedure section 1021.5 and Cal. Civ. Code §1780(e);
- 19 8. Pre-judgment and post-judgment interest, as provided by law;
- 20 9. Payment of a reasonable incentive award to Plaintiff in recognition of services he
21 has and will render in furtherance of all Class members' interests including the risks he is taking
22 litigating this case; and
- 23 10. Such other and further legal and equitable relief as this Court deems necessary, just
24 and proper.

25 **JURY DEMAND**

26 Plaintiff hereby demands a trial by jury in this action.
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DATED: November 14, 2019

EMPLOYEE JUSTICE LEGAL GROUP

By: 
Joseph Karczewski
Attorneys for Plaintiff