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9 Attorneys for Defendant CHARTER  
10 COMMUNICATIONS, INC.

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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**WESTERN DIVISION**

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

15 Plaintiff,

16 vs.

17 CHARTER COMMUNICATIONS,  
18 INC., dba CHARTER  
19 COMMUNICATIONS (CCI), INC., a  
20 Delaware corporation,

21 Defendant.

Case No. 2:19-cv-10621

**DEFENDANT CHARTER**  
**COMMUNICATIONS, INC.'S**  
**NOTICE OF REMOVAL**

**NOTICE OF REMOVAL**

22 Defendant Charter Communications, Inc. ("Charter") respectfully notifies this  
23 Court in accordance with 28 U.S.C. § 1446(a) and the Class Action Fairness Act of  
24 2005, 28 U.S.C. § 1332(d)(2), (d)(5)(B), (d)(6), of its removal of the putative class  
25 action styled *Baird v. Charter Communications, Inc., dba Charter Communications*  
26 *(CCI), Inc.*, No. 19STCV41042, from the Superior Court of the State of California,  
27 County of Los Angeles, to the U.S. District Court for the Central District of  
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1 California. In support of its Notice of Removal, Charter states as follows:

2 **FACTUAL AND PROCEDURAL BACKGROUND**

3 1. Plaintiff filed this putative class action against Charter on or about  
4 November 14, 2019.

5 2. Pursuant to the requirements of 28 U.S.C. § 1446(a), a copy of  
6 Plaintiff's Class Action Complaint (hereinafter, "Complaint"), together with "all  
7 process, pleadings, and orders served upon" Charter, are attached as **Exhibit A**.

8 3. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b) and  
9 Federal Rule of Civil Procedure 6(a) because Charter was served with the Complaint  
10 on November 15, 2019, and thirty (30) days therefrom fell on a Sunday. Therefore,  
11 Charter files this Notice of Removal within thirty (30) days of service, plus the time  
12 allowed pursuant to Rule 6(a). *See, e.g., Malaguit v. Ocwen Loan Servicing, LLC*,  
13 2015 WL 5884856, \*3 (C.D. Cal. Oct. 6, 2015) (finding that a notice of removal  
14 filed on a Monday was timely under Rule 6(a) where the original deadline to remove  
15 fell on a Saturday).

16 4. This action focuses on Charter's alleged misrepresentations related to  
17 its advertising of internet services, including that Charter's internet modems were  
18 "free." (Ex. A, Compl. ¶ 3).

19 5. Plaintiff alleges that upon signing up for Charter internet services,  
20 customers have the option either to pay a professional to install the service or to  
21 install the service himself ("self-installation"), and that customers that chose self-  
22 installation were charged a one-time fee of \$9.99. (Ex. A, Compl. ¶¶ 5-6, 22-23).

23 6. Plaintiff asserts that the self-installation fee is charged regardless of  
24 whether the customer uses his own internet modem or uses the internet modem  
25 provided by Charter. (Ex. A, Compl. ¶¶ 5-6, 22).

26 7. Plaintiff claims that because some new customers go to the store to  
27 pick up their Charter-provided internet modem, the one-time self-installation fee is  
28 being paid in exchange for nothing of value. (Ex. A, Compl. ¶¶ 7, 10, 22).

1           8. Plaintiff otherwise asserts that the one-time self-installation fee is  
2 purportedly a hidden fee associated with renting Charter's internet modem that  
3 Charter advertised was free. (Ex. A, Compl. ¶ 3, 23).

4           9. Plaintiff alleges that Charter's advertising that its internet modems are  
5 "free" is an intentional, material misrepresentation. (Ex. A, Compl. ¶¶ 8, 23).

6           10. Plaintiff alleges that Charter deceived customers by charging the one-  
7 time self-installation fee because Plaintiff claims the fee was either disguised as a  
8 rental fee for the internet modem or charged in exchange for nothing of value. (Ex.  
9 A, Compl. ¶¶ 9, 23).

10           11. Based on Charter's investigation to date, 369,276 California accounts  
11 were charged a \$9.99 self-installation fee between May and November 2019.  
12 (Exhibit B, Decl. of Christine Flores, ¶ 6). The internet modem was either provided  
13 by the customer himself or provided by Charter. (Ex. B, Flores Decl., ¶ 4-5).

14           12. Plaintiff brings this action on behalf of himself and two putative  
15 classes: (1) all persons in California who purchased Charter's internet service and to  
16 whom Charter promised "free" use of Charter's internet modem but were charged  
17 the \$9.99 installation fee to self-install the service ("Store Pickup Class"); (2) all  
18 persons in California who purchased Charter's internet service and were charged the  
19 \$9.99 installation fee to self-install the service ("Own Modem Class"). (Ex. A,  
20 Compl. ¶ 27).

21           13. Based upon these allegations, Plaintiff asserts five alternative claims,  
22 including negligent/intentional misrepresentation (first cause of action), violation of  
23 California's Consumer Legal Remedies Act (second cause of action), violations of  
24 California Business and Professions Code (third and fourth causes of action), and  
25 unjust enrichment (fifth cause of action). (Ex. A, Compl. ¶¶ 35-76).

26           14. Plaintiff's Complaint seeks an unspecified amount, including  
27 compensatory and punitive damages, injunctive relief, attorneys' fees and costs. (Ex.  
28 A, Compl., *ad damnum* clause).

1           15. Charter emphatically disputes the legal and factual validity of  
 2 Plaintiff's claims, including the damages and relief requested by Plaintiff and the  
 3 putative class, and further denies that the putative classes proposed by Plaintiff are  
 4 appropriate for class certification.

5           16. Given the allegations in Plaintiff's Complaint, however, removal is  
 6 proper under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §  
 7 1332(d)(2), (d)(5)(B), (d)(6).

#### 8           REMOVAL UNDER THE CLASS ACTION FAIRNESS ACT

9           17. CAFA authorizes the removal of any class action in which:

10           a. the aggregate amount in controversy "exceeds the sum or value of  
 11 \$5,000,000, exclusive of interest and costs;"

12           b. minimal diversity exists—*e.g.*, "any member" of the proposed class is  
 13 "a citizen of a State different from any defendant;" and

14           c. there are at least 100 members in the proposed class.

15 28 U.S.C. § 1332(d)(2), (d)(5)(B), (d)(6); see also *Serrano v. 180 Connect, Inc.*, 478  
 16 F.3d 1018, 1021-22 (9th Cir. 2007). Each of these jurisdictional requirements is met  
 17 here.

#### 18           Aggregate Amount in Controversy

19           18. The Complaint does not expressly allege an amount in controversy.  
 20 When the complaint does not state an amount in controversy, "a defendant's notice  
 21 of removal need include only a plausible allegation that the amount in controversy  
 22 exceeds the jurisdictional threshold." *Dart Cherokee Basin Operating Co., LLC v.*  
 23 *Owens*, 135 S. Ct. 547, 554 (2014). Compensatory damages, punitive damages,  
 24 attorney's fees, and the value of injunctive relief may all be considered in  
 25 determining the aggregated amount in controversy for CAFA purposes. See *Bell v.*  
 26 *Preferred Life Assur. Soc. of Montgomery, Ala.*, 320 U.S. 238, 243 (1943) (punitive  
 27 damages); *Garibay v. Archstone Communities LLC*, 539 F. App'x 763, 764 (9th Cir.  
 28 2013) (attorney's fees); *Tuong Hoang v. Supervalu Inc.*, 541 F. App'x 747, 748 (9th

1 Cir. 2013) (injunctive relief).

2 19. Charter contends that Plaintiff's damages theories are wholly without  
3 merit, and that the putative class members are not entitled to any of the damages  
4 requested in Plaintiff's Complaint. However, taking the allegations in Plaintiff's  
5 Complaint at face value for purposes of this Notice of Removal only, the alleged  
6 damages sought by Plaintiff satisfy the CAFA amount-in-controversy requirement:

7 a. Plaintiff seeks to recover damages for unjust enrichment. Where a party  
8 brings a cause of action for unjust enrichment, disgorgement is the proper remedy.  
9 *Smith v. Pacific Properties and Development Corp.*, 358 F.3d 1097, 1106 (9th Cir.  
10 2004).

11 b. As noted earlier, approximately 369,276 California accounts were  
12 charged the \$9.99 self-installation fee. (Ex. B., Flores Decl., ¶ 6).

13 c. The amount in controversy based solely on Plaintiff's unjust  
14 enrichment claim is \$3,689,067.24 (369,276 multiplied by \$9.99).

15 20. If, in addition to repayment of the \$9.99 fee, each putative class  
16 member received only \$10.00 in actual damages, the amount in controversy  
17 requirement would be easily satisfied. And that is true before accounting for  
18 Plaintiff's requested punitive damages and attorney's fees, or the value of injunctive  
19 relief.

20 21. Taking into account Plaintiff's claims for disgorgement, compensatory  
21 damages, punitive damages, and attorney's fees, CAFA's amount in controversy  
22 requirement is easily satisfied.

23 Minimal Diversity

24 22. Plaintiff alleges that he is a citizen and resident of Los Angeles County,  
25 California. (Ex. A, Compl. ¶ 12).

26 23. Plaintiff further alleges that Charter is a Delaware corporation. (Ex. A,  
27 Compl. ¶13).

28 24. Charter's principal place of business is in Connecticut.

1       25. Therefore, minimal diversity exists here because Plaintiff is a citizen of  
2 California, and Charter is a citizen of Delaware and Connecticut under 28 U.S.C. §  
3 1332(c)(1).

4       Numerosity

5       26. Plaintiff's proposed class definitions contain at least 369,276 California  
6 accounts. Thus, the approximate number of members of the putative classes is in the  
7 hundreds of thousands.

8       27. Therefore, there are at least 100 members in the proposed classes and  
9 the minimum numerosity requirement under CAFA is satisfied.

10       28. Because the amount-in-controversy satisfies the \$5 million CAFA  
11 threshold for removal purposes, the number of putative class members significantly  
12 exceeds 100, and minimal diversity is satisfied, this case is properly removable  
13 under CAFA. 28 U.S.C. § 1332(d); *Serrano*, 478 F.3d at 1021-22.

14       CONCLUSION

15       29. Removal to the U.S. District Court for the Central District of California  
16 is proper because this district embraces the Superior Court of the County of Los  
17 Angeles, the place where this action was originally filed. *See* 28 U.S.C. §§ 1446(a),  
18 1453(b).

19       30. Contemporaneously herewith, Charter has provided Plaintiff with  
20 written notice of the filing of this Notice of Removal as required by 28 U.S.C. §  
21 1446(d). A copy of the notice to Plaintiff is attached hereto as **Exhibit C**.

22       31. Pursuant to the requirements of 28 U.S.C. § 1446(d), Charter has filed a  
23 copy of this Notice of Removal with the Clerk of the Superior Court of the County  
24 of Los Angeles, California. A copy of the notice to the Clerk is attached hereto as  
25 **Exhibit D**.

26       33. Charter has given the undersigned counsel authority to sign and file this  
27 Notice of Removal.

28       WHEREFORE, Charter respectfully removes the action styled *Baird v.*

1 *Charter Communications, Inc., dba Charter Communications (CCI), Inc.*, No.  
2 19STCV41042, pending in the Superior Court of the State of California, County of  
3 Los Angeles, to this Court.

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6 DATED: December 16, 2019      **THOMPSON COBURN LLP**

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By: /s/ Lukas Sosnicki

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**LUKAS SOSNICKI**

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Attorneys for Defendant CHARTER  
COMMUNICATIONS, INC.

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