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**FILED**  
Superior Court of California  
County of Los Angeles

APR 16 2020

Sherri R. Carter, Executive Officer/Clerk  
By Steven Drew, Deputy  
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

KIM ATKINSON and KYLE STEVENS, on  
behalf of themselves and all others similarly  
situated,  
  
Plaintiff,  
  
v.  
  
FOX-HULU HOLDINGS, INC. and WALT  
DISNEY DIRECT-TO-CONSUMERS &  
INTERNATIONAL,  
  
Defendants.

Case No. **20STCV14790**  
**CLASS ACTION COMPLAINT**  
JURY TRIAL DEMANDED

05/02/2020

**FILED**

1 Plaintiffs Kim Atkinson and Kyle Stevens (“Plaintiffs”) individually and on behalf of all  
2 others similarly situated, make the following allegations upon information and belief, except as to  
3 allegations specifically pertaining to Plaintiffs which are based on their personal knowledge.

4  
5 **NATURE OF THE ACTION**

6 1. This is putative class action lawsuit regarding Defendants’ false and misleading  
7 labeling and marketing of its Hulu subscriptions in the: (a) Basic Plan, (b) Premium Plan, (c) Basic  
8 + Live TV, and Premium + Live TV (the “Hulu Subscriptions”). The marketing and advertising of  
9 the Hulu Subscriptions contain numerous false and misleading claims that the Hulu Subscriptions  
10 will provide high quality streaming services such that consumers can watch its “on all your favorite  
11 devices” (the “Streaming Quality Claims”). Defendants advertise their subscription services as  
12 high quality and misleads consumers into believing that the Hulu Subscriptions will provide the  
13 same high quality video streaming on computer devices and Hulu’s applications alike even though  
14 the Hulu Subscriptions accessed on computer devices are throttled to prevent high quality  
15 streaming. By doing so, Defendants are able to charge a substantial price premium for its Hulu  
16 Subscriptions on the account of its false Streaming Quality Claims.

17 2. Hulu subscribers are reporting that, contrary to Hulu’s Streaming Quality Claims,  
18 the Hulu Subscriptions are in fact throttled (*i.e.* provide reduced streaming quality) therefore  
19 computer users do not receive the same quality of service. In short, the Steaming Quality Claims  
20 are false and misleading.

21 3. Plaintiffs seek relief in this action individually, and as a class action on behalf of  
22 similarly situated purchases of Defendants’ Hulu Subscriptions, for: (i) breach of express warranty;  
23 (ii) violation of California’s Consumer Legal Remedies Act (“CLRA”), Cal. Civil Code § 1750, *et*  
24 *seq.*; (iii) violation of California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§  
25 17200, *et seq.*; (iv) violation of California’s False Advertising Law (“FAL”), Cal. Bus. & Prof.  
26 Code §§ 17500, *et seq.*; (v) violation of New York’s General Business Law (“GBL”) §349; (vii)  
27 violation of New York’s GBL § 350; (vii) unjust enrichment; and (viii) fraud.

**THE PARTIES**

1  
2           4.       Plaintiff Kim Atkinson is a citizen of California, residing in Hayward, California.  
3 In 2016 Plaintiff Atkinson purchased Hulu’s premium plan from Hulu’s website to stream video on  
4 her computer. Prior to her purchase of her Hulu Subscription, Plaintiff Atkinson reviewed the  
5 marketing and advertising on Hulu’s website and saw that her Hulu Subscription would  
6 purportedly provide high quality streaming on her computer. Plaintiff Atkinson relied on that  
7 advertising and marketing to choose her Hulu Subscription over comparable streaming services.  
8 Plaintiff Atkinson saw these representations prior to, and at the time of purchase, and understood  
9 them as representations and warranties that her Hulu Subscription would include high quality  
10 streaming. Plaintiff Atkinson relied on these representations and warranties in deciding to  
11 purchase her Hulu Subscription. Accordingly, these representations and warranties were part of  
12 the basis of the bargain, in that she would not have purchased her Hulu Subscription on the same  
13 terms had she known these representations were not true. However, Plaintiff Atkinson remains  
14 interested in purchasing a high quality streaming services, and would consider Hulu in the future if  
15 Defendants cease throttling service to computers. In making her purchase, Plaintiff Atkinson paid  
16 a substantial price premium due to the false and misleading Streaming Quality Claims. However,  
17 Plaintiff Atkinson did not receive the benefit of her bargain, because her Hulu Subscription does  
18 not provide high quality streaming. Plaintiff Atkinson also understood that in purchasing Hulu, she  
19 was entering directly into a contract with Defendants for her Hulu Subscription.

20           5.       Plaintiff Kyle Stevens is a citizen of New York, residing in New York, New York.  
21 On November 26, 2018, Plaintiff Stevens purchased Hulu’s premium plan from Hulu’s website to  
22 stream video on his computer. Prior to his purchase of his Hulu Subscription, Plaintiff Stevens  
23 reviewed the marketing and advertising on Hulu’s website and saw that his Hulu Subscription  
24 would purportedly provide high quality streaming on his computer. Plaintiff Stevens relied on that  
25 advertising and marketing to choose his Hulu Subscription over comparable streaming services.  
26 Plaintiff Stevens saw these representations prior to, and at the time of purchase, and understood  
27 them as representations and warranties that his Hulu Subscription would include high quality  
28 streaming. Plaintiff Stevens relied on these representations and warranties in deciding to purchase

1 his Hulu Subscription. Accordingly, these representations and warranties were part of the basis of  
2 the bargain, in that he would not have purchased his Hulu Subscription on the same terms had he  
3 known these representations were not true. However, Plaintiff Stevens remains interested in  
4 purchasing a high quality streaming services, and would consider Hulu in the future if Defendants  
5 cease throttling service to computers. In making his purchase, Plaintiff Stevens paid a substantial  
6 price premium due to the false and misleading Streaming Quality Claims. However, Plaintiff  
7 Stevens did not receive the benefit of his bargain, because his Hulu Subscription does not provide  
8 high quality streaming. Plaintiff Stevens also understood that in purchasing Hulu, he was entering  
9 directly into a contract with Defendants for his Hulu Subscription.

10           6. Defendant Fox-Hulu Holdings, Inc. (“Hulu”) is a Delaware corporation with its  
11 principal place of business at 500 S. Buena Vista St., Burbank CA 91521. Hulu designs, sells,  
12 and/or distributes Hulu Subscriptions, and is responsible for the advertising, marketing, and trade  
13 dress of the Hulu Subscriptions. The planning and execution of the advertising, marketing, testing,  
14 and/or corporate operations concerning the Hulu Subscriptions and Streaming Quality Claims was  
15 primarily carried out at Hulu’s headquarters and facilities within California. The policies,  
16 practices, acts, and omissions giving rise to this Action were developed in, and emanated from,  
17 Hulu’s headquarters in Burbank, California.

18           7. Defendant Walt Disney Direct-To-Consumer & International (“Walt Disney”) is a  
19 California corporation with its principal places of business at 500 S. Buena Vista St., Burbank CA  
20 91521. Walt Disney designs, sells, and/or distributes Hulu Subscriptions, and is responsible for the  
21 advertising, marketing, and trade dress of the Hulu Subscriptions. The planning and execution of  
22 the advertising, marketing, testing, and/or corporate operations concerning the Hulu Subscriptions  
23 and Streaming Quality Claims was primarily carried out at Walt Disney’s headquarters and  
24 facilities within California. The policies, practices, acts, and omissions giving rise to this Action  
25 were developed in, and emanated from, Walt Disney’s headquarters in Burbank, California.

1 **JURISDICTION AND VENUE**

2 8. This Court has subject matter over this class action. This Court has personal  
3 jurisdiction over the parties because Plaintiff Atkinson resides in California and submits to the  
4 jurisdiction of the Court, and because Defendants, at all times relevant hereto, have systematically  
5 and continually conducted, and continue to conduct business in this state.

6 9. Venue is proper in this Court pursuant to Civil Code § 1780(d). Defendants conduct  
7 business in this County and throughout the State of California. Defendants’ principal place of  
8 business is in this County.

9 10. Clause 15.3 of the Parties contract governs this dispute, designating the Los Angeles  
10 County courts as the proper venue for this dispute.

11 **FACTUAL ALLEGATIONS**

12 11. Hulu is a subscription-based video on demand service that provides video streaming  
13 of commercial television and movies to consumers. Hulu’s library includes ~85,000 TV episodes  
14 and movies.<sup>1</sup>

15 12. In 2019, Hulu reported that it had 82 million visitors, with an average of 2.9 viewers  
16 per Hulu account.<sup>2</sup> Of those viewers, 26.8 million are paid subscribers and 1.8 million are unpaid  
17 subscribers.<sup>3</sup>

18 13. Hulu promises consumers that it provides access to “All Your TV In One Place.”<sup>4</sup>  
19



24  
25 <sup>1</sup> <https://variety.com/2019/digital/news/hulu-ad-supported-subscribers-70-percent-1203227954/>  
(last accessed April 2, 2020).

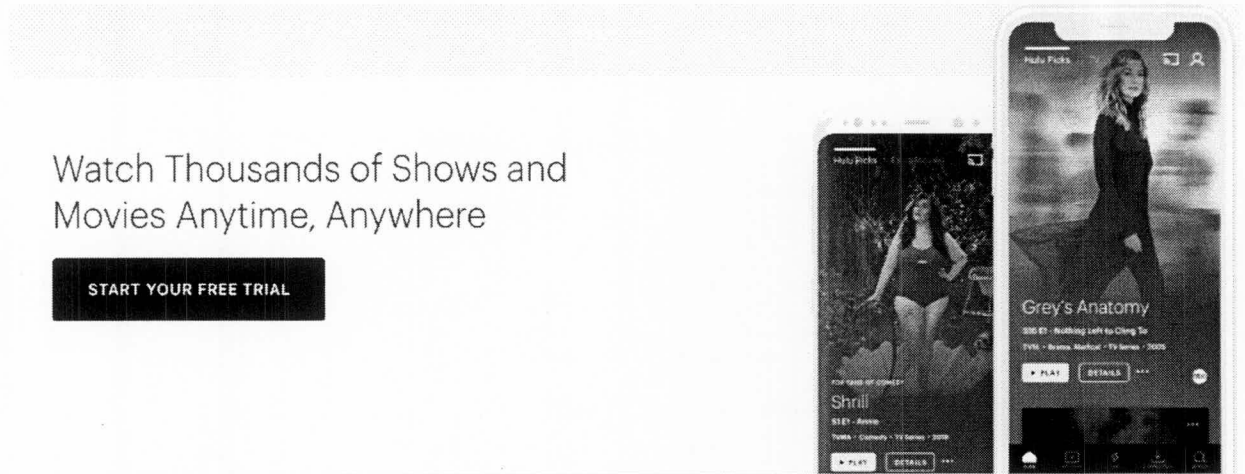
26 <sup>2</sup> <https://variety.com/2019/digital/news/hulu-ad-supported-subscribers-70-percent-1203227954/>  
(last accessed April 2, 2020).

27 <sup>3</sup> <https://variety.com/2019/digital/news/hulu-28-million-total-subscribers-newfronts-2019-1203202212/> (last accessed March 31, 2020).

28 <sup>4</sup> <https://www.hulu.com/content> (last accessed April 2, 2020).

1           14. Every Hulu Subscription “lets you watch exclusive series, hit movies, Originals, Kid  
2 shows, and tons more.”<sup>5</sup>

3           15. Further, Hulu promises that Hulu Subscribers will be able to “Watch Thousands of  
4 Shows and Movies Anytime, Anywhere:”



13           16. Hulu also promises that Hulu Subscribers will be able “watch [its library] on your  
14 favorite devices.” As well as promising that “Hulu Subscribers [will] be able to stream your  
15 favorite content from the comfort of your very own couch to the confines of public  
16 transportation.”<sup>6</sup>

17           17. Computers are among the devices that Hulu claims Hulu Subscribers will be able to  
18 use to access the Hulu Subscriptions: “You can watch shows and movies on Hulu.com using a  
19 computer[.]”

20           18. However, Hulu Subscribers do not get the benefit of their bargain because Hulu is  
21 throttling access to Hulu’s high quality streaming for computer users. As such, Hulu Subscribers  
22 that access Hulu by computer cannot “stream [their] favorite content” from their “favorite devices”  
23 as promised.

24           19. Consumers have reported their complaints to Defendants. For example, one  
25 consumer reported directly to Defendants:

26           “[O]n my PC the quality is horrible. I tried chrome and firefox. Tried them in  
27 private mode, checked my connection speed and I'm at 50/50 mbps. I can

28 <sup>5</sup> <https://signup.hulu.com/plans> (last accessed April 2, 2020).

<sup>6</sup> [https://help.hulu.com/s/article/supported-devices?language=en\\_US](https://help.hulu.com/s/article/supported-devices?language=en_US) (last accessed April 2, 2020).

1 download things just fine so it doesn't seem to be my connection, also because  
2 other streaming services are streaming in HD just fine on the PC.”<sup>7</sup>

3 A second stated:

4 “[Hulu,] I think your video service is stuck in Data Saver mode [lowest streaming  
5 quality]. This issue occurs when watching Live TV on a PC.”<sup>8</sup>

6 A third consumer reported:

7 “Hulu disabled HD playback on browsers ... It's 2019, I am paying hulu \$50 a  
8 month and yet I am stuck watching everything in like 360-480P resolution.”<sup>9</sup>

9 20. Defendants throttle streaming quality to consumers because in order to  
10 force their customers to access Hulu using through proprietary Hulu applications rather  
11 than web browsers. Defendants use their applications to collect personal information  
12 such as location data, email address, and device serial numbers. This information is  
13 subsequently monetized and resold to advertisers, social networking sites, business  
14 partners, and other third party companies.

15 21. Defendants’ prefer that users use the Hulu applications because, compared  
16 to computer browsers, applications provide more direct access to consumer’s personal  
17 data during online and offline use. This opens up a multitude of opportunities for  
18 Defendants to customize their data collection and further monetize their subscribers.

19 **CLASS ACTION ALLEGATIONS**

20 22. Plaintiffs bring this action on their own behalf, and as representatives of all similarly  
21 situated individuals pursuant to Cal. Code Civ. Proc. § 382 and Cal. Civ. Code § 1781 and the  
22 below-defined Classes of consumers who purchased Hulu Subscriptions:

23  
24 <sup>7</sup> [https://community.hulu.com/s/question/0D71L000005dAU9/poor-video-quality-on-my-pc-but-not-  
25 firestick?sloid=00D41000005saI&s1nid=0DB41000000blQA&emkind=chatterCommentNotifica  
26 tion&s1uid=0051L00000CA7Rw&emtm=1579360559091](https://community.hulu.com/s/question/0D71L000005dAU9/poor-video-quality-on-my-pc-but-not-firestick?sloid=00D41000005saI&s1nid=0DB41000000blQA&emkind=chatterCommentNotification&s1uid=0051L00000CA7Rw&emtm=1579360559091) (last accessed Apr. 8, 2020).

27 <sup>8</sup> [https://community.hulu.com/s/question/0D51L00006PPfFhSAL/live-tv-image-quality-is-stuck-  
28 in-data-saver](https://community.hulu.com/s/question/0D51L00006PPfFhSAL/live-tv-image-quality-is-stuck-in-data-saver) (last accessed Apr. 8, 2020).

<sup>9</sup> <https://community.hulu.com/s/question/0D51L00006RTYIISAP/three-weeks-of-hd-being-broken>  
(last accessed Apr. 8, 2020).

1           **Nationwide Class:** All persons in the United States that purchased Hulu  
2           Subscriptions;

3           **California Subclass:** All persons in California that purchased Hulu Subscriptions;  
4           and

5           **New York Subclass:** All persons in New York that purchased Hulu  
6           Subscriptions.

7           Excluded from the Class are persons who made such purchase for the purpose of resale. Also  
8           excluded are Defendants and their affiliates, parents, subsidiaries, employees, officers, agents, and  
9           directors, as well as any judicial officers presiding over this matter and the members of their  
10          immediate families and judicial staff.

11          23.       Members of the Nationwide Class, California Subclass, and New York Subclass are  
12          so numerous that their individual joinder herein is impracticable. On information and belief,  
13          members of the Nationwide Class, California Subclass, and New York Subclass number in the tens  
14          or hundreds of thousands. The precise number of Class Members and their identities are unknown  
15          to Plaintiffs at this time but may be determined through discovery. Class Members may be notified  
16          of the pendency of this action by mail and/or publication through the distribution records of  
17          Defendants and third-party retailers and vendors.

18          24.       Common questions of law and fact exist as to all Class Members and predominate  
19          over questions affecting only individual Class Members. Common legal and factual questions  
20          include, but are not limited to: whether the Streaming Quality Claims are false or misleading;  
21          whether Defendants warranted the Streaming Quality Claims in the marketing or advertising;  
22          whether Defendants breached these warranties; and whether Defendants committed statutory fraud  
23          by doing so.

24          25.       Plaintiffs' claims are typical of the claims of the Nationwide Class, California  
25          Subclass, and New York Subclass in that they purchased the Hulu Subscriptions in reliance on the  
26          representations and warranties described above, and suffered a loss as result of those purchases.  
27  
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1           32. As a direct and proximate cause of Defendants’ breach of express warranty,  
2 Plaintiffs and Class Members have been injured and harmed because: (a) they would not have  
3 purchased their Hulu Subscriptions on the same terms if the true facts were known about the  
4 product; (b) they paid a price premium for their Hulu Subscriptions due to Defendants’ promises  
5 that their Hulu Subscriptions would provide high quality streaming on computer devices; and (c)  
6 the Hulu Subscriptions did not have the characteristics as promised by Defendants.

7   **SECOND CAUSE OF ACTION**  
8   **(Violation Of California’s Consumers Legal Remedies Act,**  
9   **California Civil Code §§ 1750, et seq.)**

10           33. Plaintiffs hereby incorporate by reference the allegations contained in all preceding  
11 paragraphs of this complaint.

12           34. Plaintiff Atkinson brings this claim individually and on behalf of the Members of  
13 the proposed Nationwide Class and California Subclass against Defendants.

14           35. California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5), prohibits  
15 “[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses,  
16 benefits, or quantities which they do not have or that a person has a sponsorship, approval, status,  
17 affiliation, or connection which he or she does not have.”

18           36. Defendants violated this provision by misrepresenting that the Hulu provides “high  
19 quality streaming” on computer devices.

20           37. Plaintiff Atkinson, the Nationwide Class, and the California Subclass suffered  
21 injuries caused by Defendants because: (a) they would not have purchased their Hulu  
22 Subscriptions on the same terms if the true facts were known about the product; (b) they paid a  
23 price premium for their Hulu Subscriptions due to Defendants’ promises that it would provide high  
24 quality streaming on computer devices; and (c) the Hulu Subscriptions did not have the  
25 characteristics as promised by Defendant.

26           38. On or about April 3, 2020, prior to filing this action, a CLRA notice letter was  
27 served on Defendants which complies in all respects with California Civil Code § 1782(a).  
28 Plaintiffs sent Defendants a letter via certified mail, return receipt requested, advising Defendants  
that it is in violation of the CLRA and demanding that it cease and desist from such violations and

1 make full restitution by refunding the monies received therefrom. A true and correct copy of  
2 Plaintiffs' letter is attached hereto as **Exhibit A**.

3 39. Wherefore, Plaintiff Atkinson seeks injunctive relief for this violation of the CLRA.

4 **THIRD CAUSE OF ACTION**  
5 **(Violation Of California's Unfair Competition Law,**  
6 **California Business & Professions Code §§ 17200, *et seq.*)**

7 40. Plaintiffs hereby incorporate by reference the allegations contained in all preceding  
8 paragraphs of this complaint.

9 41. Plaintiff Atkinson bring this claim individually and on behalf of the Members of the  
10 proposed Nationwide Class and the California Subclass against Defendants.

11 42. Defendants are subject to California's Unfair Competition Law, Cal. Bus. & Prof.  
12 Code §§ 17200, *et seq.* The UCL provides, in pertinent part: "Unfair competition shall mean and  
13 include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or  
14 misleading advertising ...."

15 43. Defendants' misrepresentations and other conduct, described herein, violated the  
16 "unlawful" prong of the UCL by violating the CLRA as described herein; the FAL as described  
17 herein; and Cal. Com. Code § 2607.

18 44. Defendants' misrepresentations and other conduct, described herein, violated the  
19 "unfair" prong of the UCL in that their conduct is substantially injurious to consumers, offends  
20 public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the  
21 conduct outweighs any alleged benefits.

22 45. Defendants violated the "fraudulent" prong of the UCL by making  
23 misrepresentations about the Hulu Subscriptions, as described herein.

24 46. Plaintiff Atkinson, the Nationwide Class, and the California Subclass lost money or  
25 property as a result of Defendants' UCL violations because: (a) they would not have purchased  
26 their Hulu Subscriptions on the same terms if the true facts were known about the product; (b) they  
27 paid a price premium for their Hulu Subscriptions due to Defendants' promises that they would  
28 provide high quality streaming on computer devices; and (c) the Hulu Subscriptions did not have  
the characteristics as promised by Defendants.

1 **FOURTH CAUSE OF ACTION**  
2 **(Violation Of California's False Advertising Law,**  
3 **California Business & Professions Code §§ 17500, et seq.)**

4 47. Plaintiffs hereby incorporate by reference the allegations contained in all preceding  
5 paragraphs of this complaint.

6 48. Plaintiff Atkinson brings this claim individually and on behalf of the Members of  
7 the proposed Nationwide Class and California Subclass against Defendants.

8 49. California's False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, et seq.,  
9 makes it "unlawful for any person to make or disseminate or cause to be made or disseminated  
10 before the public in this state, ... in any advertising device ... or in any other manner or means  
11 whatever, including over the Internet, any statement, concerning ... personal property or services,  
12 professional or otherwise, or performance or disposition thereof, which is untrue or misleading and  
13 which is known, or which by the exercise of reasonable care should be known, to be untrue or  
14 misleading."

15 50. Defendants committed acts of false advertising, as defined by §17500, by  
16 misrepresenting that the Hulu Subscriptions would provide high quality streaming on computer  
17 devices.

18 51. Defendants knew or should have known, through the exercise of reasonable care  
19 that their representations about the Hulu Subscriptions were untrue and misleading.

20 52. Defendants' actions in violation of § 17500 were false and misleading such that the  
21 general public is and was likely to be deceived.

22 53. Plaintiff Atkinson and the California Subclass lost money or property as a result of  
23 Defendants' FAL violations because: (a) they would not have purchased the Hulu Subscriptions on  
24 the same terms if the true facts were known about the product; (b) they paid a price premium for  
25 the Hulu Subscriptions due to Defendants' promises that they would provide high quality  
26 streaming on computer devices; and (c) the Hulu Subscriptions did not have the characteristics as  
27 promised by Defendants.  
28

**FIFTH CAUSE OF ACTION**  
**(Violation Of New York's General Business Law § 349)**

1  
2  
3 54. Plaintiffs hereby incorporate by reference the allegations contained in all preceding  
4 paragraphs of this complaint.

5 55. Plaintiff Stevens brings this claim individually and on behalf of the Members of the  
6 proposed New York Subclass against Defendants.

7 56. New York's General Business Law § 349 prohibits deceptive acts or practices in the  
8 conduct of any business, trade, or commerce.

9 57. In its sale of goods throughout the State of New York, Defendants conduct business  
10 and trade within the meaning and intendment of New York's General Business Law § 349.

11 58. Plaintiff Stevens and Members of the New York Subclass are consumers who  
12 purchased products from Defendants for their personal use.

13 59. By the acts and conduct alleged herein, Defendants have engaged in deceptive,  
14 unfair, and misleading acts and practices, which include, without limitation, misrepresenting that  
15 the Hulu Subscriptions would provide high quality streaming on computer devices.

16 60. The foregoing deceptive acts and practices were directed at consumers.

17 61. The foregoing deceptive acts and practices are misleading in a material way because  
18 they fundamentally misrepresent the characteristics of the Hulu Subscriptions to induce consumers  
19 to purchase same.

20 62. By reason of this conduct, Defendants engaged in deceptive conduct in violation of  
21 New York's General Business Law.

22 63. Defendants' action are the direct, foreseeable, and proximate cause of the damages  
23 that Plaintiff Stevens and Members of the New York Subclass have sustained from having paid for  
24 and used Defendant's products.

25 64. As a result of Defendants' violations, Plaintiff Stevens and Members of the New  
26 York Subclass have suffered damages because: (a) they would not have purchased the Hulu  
27 Subscriptions on the same terms if the true facts were known about the product; (b) they paid a  
28 price premium for the Hulu subscriptions due to Defendants' promises that they would provide

1 high quality streaming on computer devices; and (c) the Hulu Subscriptions did not have the  
2 characteristics as promised by Defendants.

3 65. On behalf of himself and other Members of the New York Subclass, Plaintiff  
4 Stevens seeks to recover his actual damages or fifty dollars, whichever is greater, three times actual  
5 damages, and reasonable attorneys' fees.

6 **SIXTH CAUSE OF ACTION**  
7 **(Violation Of New York's General Business Law § 350)**

8 66. Plaintiffs hereby incorporate by reference the allegations contained in all preceding  
9 paragraphs of this complaint.

10 67. Plaintiff Stevens brings this claim individually and on behalf of the Members of the  
11 proposed New York Subclass against Defendants.

12 68. New York's General Business Law § 350 prohibits false advertising in the conduct  
13 of any business, trade, or commerce.

14 69. Pursuant to said statute, false advertising is defined as "advertising, including  
15 labeling, of a commodity ... if such advertising is misleading in a material respect."

16 70. Based on the foregoing, Defendants have engaged in consumer-oriented conduct  
17 that is deceptive or misleading in a material way which constitutes false advertising in violation of  
18 Section 350 of New York's General Business Law.

19 71. Defendants' false, misleading, and deceptive statements and representations of fact  
20 were and are directed to consumers.

21 72. Defendants' false, misleading, and deceptive statements and representations of fact  
22 were and are likely to mislead a reasonable consumer acting reasonably under the circumstances.

23 73. Defendants' false, misleading, and deceptive statements and representations of fact  
24 have resulted in consumer injury or harm to the public interest.

25 74. As a result of Defendants' false, misleading, and deceptive statements and  
26 representation of fact, Plaintiff Stevens and the New York Subclass have suffered and continue to  
27 suffer economic injury.  
28



1 **EIGHTH CAUSE OF ACTION**  
2 **(Fraud)**

3 82. Plaintiffs hereby incorporate by reference the allegations contained in all preceding  
4 paragraphs of this complaint.

5 83. Plaintiffs bring this claim individually and on behalf of the Members of the  
6 proposed Nationwide Class and Subclasses against Defendants.

7 84. As discussed above, Defendants provided Plaintiffs and Class members with false or  
8 misleading material information and failed to disclose material facts about the Hulu  
9 Subscriptions computer streaming quality. These misrepresentations and omissions were made  
10 with knowledge of their falsehood.

11 85. The misrepresentations and omissions made by Defendants, upon which Plaintiffs  
12 and Class members reasonably and justifiably relied, were intended to induce and actually induced  
13 Plaintiffs and Class members to purchase the Hulu Subscriptions.

14 86. The fraudulent actions of Defendants caused damage to Plaintiffs, Class members,  
15 and Subclass members who are entitled to damages and other legal and equitable relief as a result.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs, individually and on behalf of others similarly situated, seek  
18 judgment against Defendants, as follows:

- 19 a) For an order certifying the certifying the Nationwide Class, the California Subclass, and  
20 the New York Subclass under Cal. Code Civ. Proc. §382 naming Plaintiff Atkinson as a  
21 representative of the Nationwide Class, and the California Subclass, Plaintiff Stevens as  
22 a representative of the Nationwide Class, and the New York Subclass, and Plaintiffs'  
23 attorneys as Class Counsel to represent the Nationwide Class, California Subclass, and  
24 New York Subclass Members;
- 25 b) For an order finding in favor of Plaintiffs, the Nationwide Class, the California Subclass,  
26 and the New York Subclass on all counts asserted herein;
- 27 c) For compensatory, statutory, and punitive damages in amounts to be determined by the  
28 Court and/or Jury;



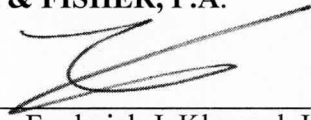
- 1 d) For prejudgment interest on all amounts awarded;  
2 e) For an order of restitution and all other forms of equitable monetary relief;  
3 f) For injunctive relief as pleaded or as the Court may deem proper; and  
4 g) For an order awarding Plaintiffs, the Nationwide Class, the California Subclass, and the  
5 New York Subclass their reasonable attorneys' fees, expenses, and costs of suit.

6 **JURY DEMAND**

7 Plaintiffs demand a trial by jury on all causes of action and issues so triable.

8 Dated: April 13, 2020

**BURSOR & FISHER, P.A.**

9  
10 By:   
Frederick J. Klorczyk III

11 L. Timothy Fisher (State Bar No. 191626)  
12 Frederick J. Klorczyk III (State Bar No. 320783)  
13 Brittany S. Scott (State Bar No. 327132)  
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17 **BURSOR & FISHER, P.A.**

18 Philip L. Fraietta (*Pro Hac Vice Forthcoming*)  
19 888 Seventh Avenue  
20 New York, NY 10019  
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Facsimile: (212) 989-9163  
E-Mail: pfraietta@bursor.com

21 *Attorneys for Plaintiffs*

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05/02/2020

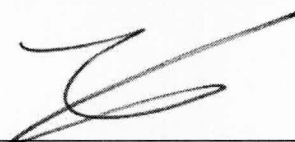
1 **CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)**

2 I, Frederick J. Klorczyk III, declare as follows:

3  
4 1. I am an attorney at law licensed to practice in the State of California and I am member of  
5 the bar of this Court. I am a Partner at Bursor & Fisher, P.A., counsel of record for Plaintiffs in  
6 this action. I have personal knowledge of the facts set forth in this declaration and, if called as a  
7 witness, I could and would competently testify thereto under oath.

8 2. The Complaint filed in this action is filed in the proper place for trial under Civil Code  
9 Section 1780(d) in that the parties' contract designates "the courts located in the Los Angeles  
10 County of the State of California" the proper venue for this action.

11 I declare under the penalty of perjury under the laws of the State of California and the  
12 United States that the foregoing is true and correct and that this declaration was executed at Walnut  
13 Creek, California this 13th day of April, 2020.

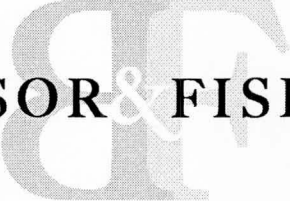


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15 Frederick J. Klorczyk III

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05/02/2020

**EXHIBIT A**



**BURSOR & FISHER**  
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April 3, 2020

**Via Certified Mail - Return Receipt Requested**

Fox-Hulu Holdings, Inc.  
500 S. Buena Vista St.  
Burbank, CA 91521

Walt Disney Direct-to-Consumer  
500 S. Buena Vista St.  
Burbank, CA 91521

Fox-Hulu Holdings, Inc.  
Walt Disney Direct-to Consumer  
c/o C T Corporation System  
818 W. 7<sup>th</sup> St, Ste. 940  
Los Angeles, CA 90017

Re: *Notice and Demand Letter Pursuant to U.C.C. §§ 2-313, 2-314, 2-607;  
New York General Business Law §§ 349-50; and California's Consumers Legal  
Remedies Act, Cal. Civil Code §§ 1750, et seq; and all other applicable consumer  
protection statutes*

To Whom it May Concern:

This letter serves as a preliminary notice and demand for corrective action by Fox-Holdings, Inc. and Walt Disney Direct-to-Consumer & International (collectively "Hulu"), pursuant to U.C.C. § 2-607(3)(a) concerning breaches of express and implied warranties on behalf of our clients, Kyle Stevens and Kim Atkinson, and a class of all similarly situated subscribers of Hulu's steaming services, including the (a) Basic Plan, (b) Premium Plan, (c) Basic + Live TV, and Premium + Live TV (the "Hulu Subscriptions"). This letter also serves as notice of violation of New York General Business Laws §§ 349-50 and California's Consumers Legal Remedies Act, Cal. Civil Code §§ 1750, *et seq.*, including subsections 1770(a)(5), (7), and (9), and all other applicable federal and state laws. Should we not receive a response to our offer of resolution set forth below, this letter provides statutory notice of our intent to file a class action lawsuit.

Our clients purchased certain of the above-listed Hulu Subscriptions, which Hulu repeatedly misrepresented and warranted included "high quality streaming" on computer devices. Our clients understood this to mean that their streaming service would high quality regardless of how they accessed the service. However, Hulu has been throttling streaming services to consumers who access Hulu using computers. Accordingly, Hulu violated the California CLRA, New York GBL, and breached express and implied warranties made to our clients and the Class. *See* U.C.C. §§ 2-313, 2-314, 2-607; New York General Business Laws §§ 349-50; and California Civil Code §§ 1750, *et seq.* Our clients and similarly situated consumers were injured and damaged by purchasing the Hulu Subscriptions.

04/03/2020

On behalf of our clients and the Class, we hereby demand that Hulu immediately (1) cease and desist throttling streaming quality for consumers accessing Hulu by computer and (2) make full restitution to all Hulu subscribers of all purchase money obtained from sales thereof.

We also demand that Hulu preserve all documents and other evidence which refer or relate to any of the above-described practices during the applicable class periods, including electronically stored information and including, but not limited to, the following:

1. All documents concerning the source code and code revision history (*i.e.* git revision) for Hulu's streaming services;
2. All tests of the Hulu code and its component parts, whether performed by Hulu or any other third-party entities;
3. All documents concerning the pricing, advertising, marketing, and/or sale of Hulu Subscriptions;
4. All communications with customers involving complaints or comments concerning the Hulu Subscriptions; and
5. All documents concerning the total revenue derived from sales of the Hulu Subscriptions.

If you contend that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents immediately upon receipt of this letter.

Please contact me right away if you wish to discuss an appropriate way to remedy this matter. If I do not hear from you promptly, I will take this as an indication that you are not interested in discussing this offer of resolution.

Very truly yours,



Frederick J. Klorczyk III