

BLOOD HURST & O'REARDON, LLP
TIMOTHY G. BLOOD (149343)
THOMAS J. O'REARDON II (247952)
CRAIG W. STRAUB (249032)
501 West Broadway, Suite 1490
San Diego, CA 92101
Tel: 619/338-1100
619/338-1101 (fax)
tblood@bholaw.com
toreardon@bholaw.com
cstraub@bholaw.com

QUADE & ASSOCIATES, APLC
MICHAEL W. QUADE (171930)
3377 Carmel Mountain Road, Suite 150
San Diego, CA 92121
Tel: 858/642-1700
858/642-1778 (fax)
mquade@quadelaw.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NEVADA

JAMIE LOPEZ, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

CEQUEL COMMUNICATIONS, LLC, dba
SUDDENLINK COMMUNICATIONS; and
DOES 1-25, inclusive,

Defendants.

Case No. **TCU20-7694**

CLASS ACTION

CLASS ACTION COMPLAINT FOR:

- 1. VIOLATION OF CONSUMERS LEGAL
REMEDIES ACT, CIVIL CODE §§ 1750,
et seq.;**
- 2. VIOLATION OF THE UNFAIR
COMPETITION LAW, BUSINESS AND
PROFESSIONS CODE §§ 17200, *et seq.*;
and**
- 3. BREACH OF CONTRACT**

*(UNLIMITED MATTER
Amount demanded exceeds \$25,000)*

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiff Jaime Lopez ("Plaintiff") brings this action on behalf of himself and all others
2 similarly situated against Defendant Cequel Communications, LLC, dba Suddenlink
3 Communications ("Defendant" or "Suddenlink"). Plaintiff alleges upon personal knowledge as to
4 his acts and experiences, and, as to all other matters, upon information and belief, including
5 investigation conducted by his attorneys.

6 NATURE OF THE ACTION

7 1. This action is brought on behalf of California purchasers of Suddenlink's broadband
8 internet services for use in Placer, El Dorado and Nevada Counties of California (the "Service
9 Area").

10 2. Suddenlink contracts directly with customers in the Service Area. Although
11 Suddenlink promises reliable broadband internet services with download speeds up to 100 to 940
12 megabits per second ("Mbps"), customers experience frequent and prolonged internet service
13 outages and near constant sluggish internet speeds. The service outages and slow speeds prevent
14 customers from using the internet. Outages can last over a month at a time. The sluggish internet
15 speeds inhibit or prevent customers from using their internet or using it effectively. However,
16 Suddenlink continues to charge customers regardless of whether there are prolonged unreasonably
17 slow download speeds and outages.

18 3. Plaintiff brings this action on behalf of himself and all other similarly situated
19 Suddenlink broadband internet customers that pay for these services in the Service Area. Based on
20 violations of the Unfair Competition Law, the Consumers Legal Remedies Act, and breach of
21 contract, Plaintiff seeks damages, including punitive damages, restitution, and injunctive relief for
22 himself and the other members of the Class.

23 JURISDICTION AND VENUE

24 4. The Court has jurisdiction over this action pursuant to Article VI, Section 10 of the
25 California Constitution, because this case is not a cause given by statute to other trial courts. The
26 injuries resulting from the conduct of Defendant occurred in California.

27 5. This Court has personal jurisdiction over Defendant because Defendant is authorized
28 to and does conduct business in the State of California. During the relevant time period, Defendant

1 did sufficient business in, had sufficient contacts with, and intentionally availed itself of the laws
2 and markets of California through the marketing, promotion, and sale of its products and services,
3 as to render exercise of jurisdiction by California courts permissible.

4 6. Venue is proper in this Court because plaintiff Lopez resides in the County of
5 Nevada, California and purchased the subject broadband internet services here, Suddenlink
6 maintains offices and staffing here, and is currently doing, and during the relevant time period, has
7 done significant amounts of business here. In addition, the acts and practices giving rise to the
8 claims alleged occurred in the County of Nevada, California.

9 **PARTIES**

10 7. Plaintiff Jaime Lopez is a citizen of the State of California. At all times relevant to
11 this action, he resided in the County of Nevada, California. Plaintiff Lopez has been a customer of
12 Suddenlink's internet services since at least 2015. In reliance on Defendant's representations,
13 Plaintiff Lopez purchased Defendant's broadband internet services, and as a result of Defendant's
14 breach of contract, unfair competition and deceptive practices, Plaintiff suffered injury in fact and
15 lost money, including payments Plaintiff made when Defendant failed to provide the promised
16 broadband internet services.

17 8. Throughout the duration of his time as a Suddenlink customer, Mr. Lopez has always
18 paid for his service with a check via U.S. mail or credit card. Mr. Lopez has never created an online
19 account with Suddenlink to pay for his service.

20 9. Defendant Cequel Communication, LLC, dba Suddenlink Communications is a
21 Delaware Corporation that does business, operates, and maintains offices in California, including in
22 Truckee, California. Suddenlink advertises and sells broadband internet services to consumers and
23 businesses in California. Defendant is a subsidiary of Altice, USA, Inc., and it was acquired by
24 Altice on or about December 21, 2015.

25 10. The true names and capacities of the defendants named herein under California Code
26 of Civil Procedure §474 as Does 1 through 50 are presently unknown to Plaintiff, who therefore
27 sues them by such fictitious names. Plaintiff will amend this Complaint to allege the true names and
28 capacities of these defendants when they have been determined. Each of the fictitiously named

defendants is responsible in some manner for the wrongful conduct alleged herein. The Doe defendants are private individuals, associations, partnerships, private and public corporations or institutions who participated in the wrongful conduct alleged herein in ways which are unknown to Plaintiff at this time.

11. At all times mentioned in the causes of action alleged herein, each and every defendant was an alter ego, agent and/or employee of each and every other defendant. In doing the things alleged in the causes of action stated herein, each and every defendant was acting within the course and scope of this agency or employment, and was acting with the consent, permission and authorization of each of the remaining defendants. All actions of each defendant, as alleged in the causes of action stated herein, were ratified and approved by every other defendant or its officers or managing agents.

FACTUAL ALLEGATIONS

12. Since at least 2010, Suddenlink has held a monopoly in the Service Area by acquiring agreements with homeowners' associations and townships. For most residents of the Service Area, Suddenlink is the only available broadband internet service provider.

13. Suddenlink operates under a standardized adhesionary service contract. Plaintiff and other Class Members pay approximately \$35-100 per month for Suddenlink's internet broadband service. Suddenlink's service contract promises broadband internet services with download speeds up to 100, 200, 400, 600, 800 or 940 Mbps, depending on the package purchased:

Suddenlink 100 Internet has speeds up to 100 Mbps downstream/10 Mbps upstream.
Suddenlink 200 Internet has speeds up to 200 Mbps downstream/20 Mbps upstream.
Suddenlink 400 Internet has speeds up to 400 Mbps downstream/40 Mbps upstream.
Suddenlink 600 Internet has speeds up to 600 Mbps downstream/60 Mbps upstream.
Suddenlink 800 Internet has speeds up to 800 Mbps downstream/80 Mbps upstream.
Suddenlink 1 Gig Internet has speeds up to 940 Mbps downstream/50 Mbps upstream.

14. Throughout its marketing and advertising, Suddenlink promotes and promises "the speed you need," "Fast & reliable Internet," "award-winning Internet delivers a blazing-fast and reliable experience," and a "next-generation network," implying that the network is very good and highly reliable. However, the representations are not true. Further, Suddenlink fails to disclose in its

1 advertising and in its standardized contracts that service is frequently very slow to the point of
2 useless and outages occur frequently and for long periods of time, yet it will not rebate or refund
3 monies paid when its internet services are not available for use. Its contract provides: “[m]any
4 factors affect speed. Actual speeds may vary and are not guaranteed. Wireless speed, performance
5 and availability subject to factors beyond Suddenlink’s control.” However, the near-constant
6 problems with Suddenlink’s internet in the Service Area go well beyond that which can be
7 disclaimed because the performance is well-below that which is represented in its advertising and
8 would make the contract illusory.

9 15. Despite being advertised as fast and reliable, Suddenlink’s broadband internet
10 service in the Service Area experience frequent and prolonged outages as well as extremely slow
11 download speeds. During outages, no broadband internet services are provided to the affected
12 Service Area. During periods of unreasonably slow download speeds, Defendant’s internet service
13 is likewise useless. Plaintiff and other Class members are directly affected by these consistent and
14 repeated outages as well as extremely slow download speeds. During service outages and extremely
15 slow internet speeds, customers are unable to access the internet and use the Suddenlink services
16 for the intended purposes of the contract, and Suddenlink is in breach of contracts with Plaintiff and
17 other Class members. As a result, Defendant does not meet its contractual obligations and
18 misleadingly advertises its internet services.

19 16. Suddenlink continues to charge Plaintiff and Class members for its services when it
20 is in breach of contract. Suddenlink charges Plaintiff and Class members for their broadband internet
21 services regardless of whether subpar service or any service is provided. For example, Suddenlink
22 has always charged Plaintiff Lopez for broadband internet service during these periods of
23 unreasonably slow download speeds and outages. Suddenlink has even charged Mr. Lopez for the
24 entirety of his monthly bill when the service outage lasted for the entire monthly billing period.
25 Suddenlink does not reimburse Class members or pro-rate their payments when it breaches the
26 service contract during these service outages, nor does it provide any sort of refund during the
27 frequent and excessive periods of extremely slow download speeds.
28

17. Suddenlink also fails to adequately manage the various and frequently changing third-party contractors it uses to attempt to perform repairs and provide service to its customers' hardware, resulting in a mismanagement of customer service records. This causes long delays and unnecessary repeated service visits to customers' homes.

18. Further, although Suddenlink is supposed to monitor whether a service outage is about to occur or is occurring, it lacks sufficient ability to do so. Suddenlink employees admit to frustrated customers that Suddenlink lacks the ability to detect service outages and unreasonably slow download speeds in real time. On a phone call with a Suddenlink customer, one Customer Service Representative admits that the its service monitoring is wholly ineffective, describing its monitoring capabilities as a "shitshow."

19. Suddenlink advertises that it has "world-class" customer support, but the customer service representatives are directed to use a script to assist customers who call Suddenlink regarding their internet service. This script makes it more difficult for customers to inquire about service outages or excessively slow download speeds because it does not cover service outage or subpar speed topics, and customer service representatives are unable to perform any tasks to troubleshoot the problem or even know when the problem may possibly be rectified.

20. Because Suddenlink is primary provider of internet services in the Service Area, Plaintiff and other Class Members have no other option for broadband internet services. If Plaintiff could choose a different broadband internet service, he would do so.

21. There are widespread complaints about outages and severely slow download speeds with Suddenlink's internet service. For example:

- "With the countless hassles and never ending annoyance you'd be better off starting your own cable / internet company than dealing with this one. Suddenlink has the worst customer service of any business I've ever worked with. The website does not have accurate updated information regarding outages in your area nor do they have accurate info about the equipment you're using. In addition, they'll make changes to their systems without updating you and forget to email you your new bill that's due on a totally different date than your previous billing cycle thereby interrupting your service for "nonpayment"! Really?? They don't have enough money to hire people to handle this? If you ever try to call them you're on hold for at least an hour and they never call you back!!! Again, they don't have enough money to hire more customer

service agents??????? REALLY? I can't wait until a better option comes along for the rural areas. I hope they lose ALL their business and close. I hate them!"¹

- "I've heard everyone (Tahoe/Truckee locals & 2nd homeowners) constantly complain about SUDDENLINK and now I know why, Suddenlink SUCKS. They randomly started to charge me an extra \$1.00 even though I am on "PAPERLESS" billing. I waited over an hour to get no where with customer service. The (877) doesn't even attempt to pickup. Robo guy say's they're "too busy". What happened to customer service for the people that PAY you, Suddenlink ? And, BTW, the cable service sucks too, can't get most channels. Suddenlink deserves no stars."²
- "Horrible across the board on every aspect from customer service to the service technicians. You'd get faster results if you sent an arthritic mule across country to with a letter in his saddlebag than you would trying to contact Suddenlink--and the mule would be more apt to solve your issue then they would. It's criminal that they are virtually the only choice we have for internet. The quintessential example of a company that doesn't give a shit."³
- "Suddenlink out of Truckee is the worst for customer service, actually they have no customer service at all. If there was another provider for cable tv and internet at Lake Tahoe I would switch immediately. They have never shown up on the day of service appointments (6 different times). Always an excuse of one thing or another. Today was just another one of their failings. Scheduled appointment 3 weeks ago for this morning for AM appointment and I confirmed it thru their automated call center. Guess what, they never showed up! I called back and the call tree had a new appointment for 5 days later due to lack of manpower. Suddenlink really sucks!"⁴
- "Ok so how do I even begin. Monopoly on the area? Poor to nonexistent customer service? No show techs? Poor signal? An office that can't do ANYTHING? No credit for loss of connection for days? Hours on hold? Yea, I think that about covers it. The ONLY reason they get 2 stars is because when our tech came out, he ran the line for free instead of charging. That was super awesome of him and I wish I remembered his name."⁵ "Impossible to connect with an actual human. Over priced. Their

¹ [https://www.yelp.com/biz/suddenlink-communications-grass-valley?hrid=PXnQcKcJD2GX9jSqOKL72Q&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=\(direct\)](https://www.yelp.com/biz/suddenlink-communications-grass-valley?hrid=PXnQcKcJD2GX9jSqOKL72Q&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=(direct)) (last visited August 7, 2020).

² [https://www.yelp.com/biz/suddenlink-communications-truckee-3?hrid=sTuHq6Zk0NkbXN_CZg9AbA&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=\(direct\)](https://www.yelp.com/biz/suddenlink-communications-truckee-3?hrid=sTuHq6Zk0NkbXN_CZg9AbA&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=(direct)) (last visited August 7, 2020).

³ [https://www.yelp.com/biz/suddenlink-communications-truckee-3?hrid=VqyEt9zY5ifskNEP05ZqCg&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=\(direct\)](https://www.yelp.com/biz/suddenlink-communications-truckee-3?hrid=VqyEt9zY5ifskNEP05ZqCg&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=(direct)) (last visited August 7, 2020).

⁴ [https://www.yelp.com/biz/suddenlink-communications-truckee-3?hrid=1-JRMYPk38Tg2jDTWQpExQ&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=\(direct\)](https://www.yelp.com/biz/suddenlink-communications-truckee-3?hrid=1-JRMYPk38Tg2jDTWQpExQ&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=(direct)) (last visited August 7, 2020).

⁵ [https://www.yelp.com/biz/suddenlink-communications-truckee-3?hrid=SiaDOvv3wKenk5qS431EEw&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=\(direct\)](https://www.yelp.com/biz/suddenlink-communications-truckee-3?hrid=SiaDOvv3wKenk5qS431EEw&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=(direct)) (last visited August 7, 2020).

MONOPOLY on the area should be illegal, and they're clearly taking advantage of their customers.”⁶

- “Truckee, CA SuddenLink Internet Service has been down several times over the last several days. @suddenlink customer service hangs you up when you call. @suddenlink has a monopoly over Truckee, CA. Not Good!”⁷
- “Made an appt. for internet installation two weeks in advance for a vacation home in Lake Tahoe, CA. Suddenlink texted me the day before to confirm my appt. & said that an installer would arrive between 11-2pm. I drove up from the Bay Area specifically to be there to meet the installer. Well, the installer never showed up during the 3 hour window. I called Suddenlink twice that day to inquire where the installer was & that he hadn't shown up. They told me over the phone they hire independent contractors as installers so they had no idea where the installer was or why the installer hadn't shown up. They stated they weren't able to track him down because they're not given names or numbers of their independent contractors. So, I continued to wait & wait & wait thinking he'd still show up. Clearly at 6pm it became obvious it wasn't going to happen. I've received no follow-up call from Suddenlink about the appt. that never happened. I'm completely just left in limbo. I'm also at their mercy because Suddenlink is the only communications company that provides service to my residential area in Lake Tahoe, CA. My experience has been awful & Suddenlink clearly doesn't value customer relationships or their customer's time. They honestly just don't care.”⁸
- “Does anyone else feel emotionally abused by Suddenlink here in Truckee?! We have been having internet connection issues with them for two months. I have had 3 technicians over at my house and they get the internet working for about a day and then it goes south again. They are taking \$100 a month from us and in turn giving us shoddy internet and BS customer service. I can't talk to anyone over the phone without waiting 30+ minutes. I can't get a technician at my house without having to wait a week and a half. This morning I went to the local office and the individuals that work at the front counter literally are worthless. What's the point of them being there if they can't help with billing, or trying to triage a technician to a problem house that has multiple documented service calls that have no resolution?! All they do is take your money and give a blank stare and look at you like you're a crazy person. Seriously, just lock the door and install an envelop slot, that's basically the service they are providing. Truckee residents are STUCK with this company because there are no other internet service providers in the area. FYI: I just submitted a complaint to the BBB and the FCC.”⁹

⁶ [\(https://www.yelp.com/biz/suddenlink-communications-truckee-3?hrid=ep5k0tniBcsHf5PDAi0t5w&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=\(direct\)\)](https://www.yelp.com/biz/suddenlink-communications-truckee-3?hrid=ep5k0tniBcsHf5PDAi0t5w&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=(direct)) (last visited August 7, 2020).

⁷ [\(https://twitter.com/DonSung4/status/1263203159704350720\)](https://twitter.com/DonSung4/status/1263203159704350720)

⁸ [\(https://www.yelp.com/biz/suddenlink-communications-truckee-3?hrid=lrOY3PISgZPepVlwvOda7A&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=\(direct\)\)](https://www.yelp.com/biz/suddenlink-communications-truckee-3?hrid=lrOY3PISgZPepVlwvOda7A&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=(direct)) (last visited August 7, 2020).

⁹ [\(https://www.yelp.com/biz/suddenlink-communications-truckee-3?hrid=lrOY3PISgZPepVlwvOda7A&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=\(direct\)\)](https://www.yelp.com/biz/suddenlink-communications-truckee-3?hrid=lrOY3PISgZPepVlwvOda7A&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=(direct))

22. Plaintiff and the other Class members have been and will continue to be deceived by Defendant's false and deceptive claims and contractual promises to provide certain download speeds and functioning internet. The only purpose for purchasing the broadband internet services is to obtain usable internet access.

CLASS DEFINITION AND ALLEGATIONS

23. Plaintiff seeks certification of a Class consisting of all persons in California who purchased Suddenlink's broadband internet services in the Placer, El Dorado and Nevada Counties of California and were not reimbursed for payments made during service outages and periods of slow download speeds.

24. The Class excludes Defendant's officers and directors, current or former employees, including their immediate family members, as well as any judge, justice or judicial officer presiding over this matter and members of their immediate families and judicial staff. Plaintiff reserves the right to amend the Class definition or include subclasses if discovery and further investigation reveal that the Class should be expanded or otherwise modified.

25. This action is properly brought as a class action for the following reasons:

(a) The Class is so numerous and geographically dispersed that joinder of all members of the Class is impracticable. While Plaintiff does not know the exact number and identity of all Class members, Plaintiff believes there are hundreds of Class members and that their identities can be ascertained from Suddenlink's books and records. Attempting to join each Class member as co-plaintiffs is impracticable.

(b) There are questions of law and fact common to the Class which predominate over any questions affecting only individual Class members. These questions, which arise from Defendant's common course of conduct, including the statements made in the applicable contracts and advertisements, predominate over any questions affecting only individual Class members. Among these common questions of law and fact are:

3?hrid=Hk9rpvU3iFnY0ucqQVPVDw&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=(direct) (last visited August 7, 2020).

BLOOD HURST & O' REARDON, LLP

- i) Whether the representations made by Defendant are true, or are misleading, or are reasonably likely to deceive;
- ii) Whether Defendant's alleged conduct violates public policy;
- iii) Whether Defendant's alleged conduct constituted breach of contract;
- iv) Whether the alleged conduct constitutes violations of the laws asserted herein;
- v) Whether Defendant engaged in false or misleading advertising;
- vi) Whether Plaintiff and Class members are entitled to damages or equitable relief, and the proper measure of those damages or equitable relief; and
- vii) Whether Plaintiff and Class members are entitled to declaratory and injunctive relief.

26. The claims asserted by Plaintiff are typical of the claims of Class members.

27. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff does not have any interests antagonistic to those of the Class. Furthermore, Plaintiff has retained counsel competent and experienced in the prosecution of this type of litigation.

28. This class action is superior to other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation would make it impracticable or impossible for Class members to prosecute their claims individually. Moreover, the trial and the litigation of Plaintiff's claims are manageable.

29. Plaintiff seeks a constructive trust, and preliminary and permanent injunctive and equitable relief on behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin and prevent Defendant from engaging in the acts described, and requiring Defendant to provide full restitution to Plaintiff and Class members.

30. Absent a class action, Defendant's violations of law will continue, and Defendant will continue to reap and retain substantial proceeds as a result of their improper conduct.

31. Defendant has acted and refused to act on grounds generally applicable to the Class, making appropriate final injunctive relief with respect to the Class as a whole.

1 **FIRST CAUSE OF ACTION**

2 **Violations of California Unfair Competition Law (“UCL”)**

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

4 32. Plaintiff realleges and incorporates by reference the allegations contained in the
5 paragraphs above as if fully set forth herein.

6 33. Plaintiff brings this cause of action on behalf of himself and the Class.

7 34. The UCL prohibits any “unlawful . . . business act or practice.” Defendant has
8 violated the UCL’s prohibition against engaging in unlawful acts and practices by, inter alia, making
9 the representations and omissions of material facts, as set forth more fully herein, violating the
10 Consumers Legal Remedies Act, Civ. Code §§ 1770(a)(5), (7), (9), (14), (16) and (19) and breaching
11 the standardized contract, as alleged. Defendant’s above-described wrongful acts and practices
12 constitute actual and constructive fraud within the meaning of Civil Code §§ 1572 and 1573, as well
13 as deceit, which is prohibited under Civil Code §§ 1709 and 1711.

14 35. Plaintiff and the Class reserve the right to allege other violations of law which
15 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this
16 date.

17 36. The UCL also prohibits any “unfair . . . business act or practice.”

18 37. Defendant’s acts, omissions, misrepresentations, practices, and non-disclosures as
19 alleged herein also constitute “unfair” business acts and practices within the meaning of California
20 Business and Professions Code §§ 17200, *et seq.* in that its conduct is substantially injurious to
21 consumers, offends public policy, and is immoral, unethical, oppressive and unscrupulous as the
22 gravity of the conduct outweighs any alleged benefits attributable to such conduct.

23 38. As stated in this Complaint, Plaintiff alleges false and deceptive advertising, unfair
24 conduct and breaches of contract resulting in harm to consumers. Plaintiff asserts violation of the
25 public policy against engaging in false and misleading advertising, unfair competition and deceptive
26 conduct towards consumers. Defendant’s contracts are also unconscionable because the contracts
27 contain an overbroad disclaimer and other provisions that are unreasonably favorable to Defendant,
28 the more powerful party. This conduct constitutes violations of the UCL’s unfair prong.

39. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein.

40. The UCL also prohibits any "fraudulent business act or practice."

41. Defendant's claims, affirmative representations and misleading statements relating to the internet services, as more fully set forth above, were false, misleading and/or likely to deceive the consuming public within the meaning of California Business and Professions Code § 17200.

42. Defendant's conduct also constitutes "unfair, deceptive, untrue [and] misleading advertising" within the meaning of California Business and Professions Code § 17200.

43. Defendant's conduct caused and continues to cause substantial injury to Plaintiff and the other Class members. Plaintiff and Class members have suffered injury in fact and have lost money as a result of Defendant's unfair conduct.

44. Defendant has thus engaged in unlawful, unfair, and fraudulent business acts and practices and false advertising, entitling Plaintiff to judgment and equitable relief against Defendant, as set forth in the Prayer for Relief.

SECOND CAUSE OF ACTION

Violations of the Consumers Legal Remedies Act ("CLRA")

(Cal. Civ. Code §§ 1750, *et seq.*)

45. Plaintiff realleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

46. Plaintiff brings this cause of action on behalf of himself and the Class.

47. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.* (the "Act"). Plaintiff is a "consumer" as defined by California Civil Code § 1761(d). Defendant's internet services are "goods" or "services" within the meaning of the Act. Defendant's sale and advertisement of its broadband internet services constitutes "transactions" within the meaning of the CLRA. Cal. Civ. Code § 1761(e).

48. Defendant violated and continues to violate the Act by engaging in the following practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiff and the Class which were intended to result in, and did result in, the sale of internet services:

(5) Representing that [internet services] have . . . approval, characteristics, . . . uses [and] benefits . . . which [they do] not have . . .

* * *

(7) Representing that [the internet services] are of a particular standard, quality or grade . . . if [they are] of another.

* * *

(9) Advertising goods or services . . . with intent not to sell them as advertised.

* * *

(14) Representing that a transaction confers or involves rights, remedies, or obligations that it does not have or involve . . .

* * *

(16) Representing that [the internet services] has been supplied in accordance with a previous representation when [they have] not.

* * *

(19) Inserting and unconscionable provision in the contract.

49. Defendant violated the Act by representing and failing to disclose material facts about the internet broadband services throughout its standardized contract, marketing and advertising, as described above, when it knew, or should have known, that the representations were false and misleading and that the omissions were of material facts it was obligated to disclose.

50. Defendant knew or should have known that its representations about its internet services were misleading, and that by omitting the prevalence of its service outages and unreasonably slow download speeds, it was omitting a material fact that would alter any consumer's decision to purchase its services.

51. Defendant's violations of the CLRA proximately caused injury in fact to Plaintiff and the Class.

52. Plaintiff and the Class Members purchased Suddenlink's broadband internet service on the belief that they would receive reasonable broadband internet coverage as advertised.

53. Defendant's broadband internet service, however, is worthless during service outages and when experiencing unreasonably slow download speeds. No reasonable consumer would purchase such a service if they knew they would have to pay when the service was unavailable or unusable. Because the broadband internet service was worthless during service outages and periods of unreasonably slow download speed times, Plaintiff and each Class member were injured by the mere fact of the purchase.

54. Pursuant to § 1782(d) of the Act, Plaintiff and the Class seek a court order enjoining the above-described wrongful acts and practices of Defendant and for restitution and disgorgement.

55. Pursuant to § 1782 of the Act, Plaintiff notified Defendant in writing by certified mail of the particular violations of § 1770 of the Act and demanded that Defendant rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendant's intent to so act. A copy of the letter is attached hereto as Exhibit A.

56. If Defendant fails to rectify or agrees to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to § 1782 of the Act, Plaintiff will amend this Complaint to add claims for actual, punitive and statutory damages, as appropriate.

57. Defendant's conduct is fraudulent, wanton and malicious.

58. Pursuant to § 1780(d) of the Act, attached hereto as Exhibit B is the affidavit showing that this action has been commenced in the proper forum.

THIRD CAUSE OF ACTION

Breach of Contract on Behalf of Plaintiff and the Class

59. Plaintiff realleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

60. Plaintiff brings this cause of action on behalf of himself and the Class.

61. Plaintiff and each Class member formed a contract with Defendant. The terms of that contract included a provision that Suddenlink would provide broadband internet services in return for payment by Plaintiff and the Class Members.

62. Defendant's breached the terms of these contracts by promising to deliver broadband internet services, but it did not provide such service during the frequent and prolonged outages and frequent periods of unreasonably slow download speeds as described above. During such service outages and slow download speed periods, Defendant did not provide any functioning internet services to Plaintiff and members of the Class. To date, Defendant has failed to refund and/or compensate Plaintiff for these breaches.

63. Further, in all contracts, including Defendant's internet service contracts at issue, there is an implied covenant of good faith and fair dealing that no party will do anything that will have the effect of impairing, destroying, or injuring the rights of the other party to receive the benefits of their agreement. By misrepresenting the broadband internet services through sales, customer service communications and marketing materials, Defendant engaged in objectively unreasonable conduct and breached the covenant of good faith and fair dealing. Also, by creating and maintaining a monopoly over the relevant market, Defendant engaged in objectively unreasonable conduct and breached the covenant of good faith and fair dealing.

64. All conditions precedent to Defendant's liability under this standardized contract, have been performed by Plaintiff and the other members of the Class.

65. As a result of Defendant's breach of contract and and the implied duty to act in good faith, Plaintiff and the other members of the Class have been damaged in the amount to be determined at trial.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment:

- A. Certifying the Class as requested herein;
- B. Awarding Plaintiff and Class members damages;
- C. Awarding Plaintiff and Class members restitution;
- D. Awarding declaratory and injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein, and directing Defendant to identify, with Court supervision, victims of its conduct and

1 pay them restitution and disgorgement of all monies acquired by Defendant by means
2 of any act or practice declared by this Court to be wrongful;

3 E. Imposing a constructive trust on Defendant on all monies wrongfully obtained by
4 Defendant, and ordering the monies to be returned to Plaintiff and the Class;

5 F. Awarding attorneys' fees and costs pursuant to applicable law and doctrines;

6 G. Awarding pre-judgment and post-judgment interest; and

7 H. Providing such further relief as may be just and proper.

8 **JURY DEMAND**

9 Plaintiff demands a trial by jury on all issues so triable.

10 Respectfully submitted,

11 Dated: September 28, 2020

BLOOD HURST & O'REARDON, LLP
TIMOTHY G. BLOOD (149343)
THOMAS J. O'REARDON II (247952)
CRAIG W. STRAUB (249032)

14 By: 

TIMOTHY G. BLOOD

501 West Broadway, Suite 1490
San Diego, CA 92101
Tel: 619/338-1100
619/338-1101 (fax)
tblood@bholaw.com
toreardon@bholaw.com
cstraub@bholaw.com

QUADE & ASSOCIATES, APLC
MICHAEL W. QUADE (171930)
3377 Carmel Mountain Road, Suite 150
San Diego, CA 92121
Tel: 858/642-1700
858/642-1778 (fax)
mquade@quadelaw.com

Attorneys for Plaintiff