

1 **HATTIS & LUKACS**
 2 Daniel M. Hattis, Esq. (SBN 232141)
 3 Paul Karl Lukacs, Esq. (SBN 197007)
 4 11711 SE 8th Street, Suite 120
 5 Bellevue, Washington 98005
 6 Tel.: (425) 233-8628
 Fax: (425) 412-7171
 dan@hattislaw.com
 pkl@hattislaw.com

7 *Attorneys for Plaintiffs*
 8 *and the Proposed Classes*

9
 10 UNITED STATES DISTRICT COURT
 11 SOUTHERN DISTRICT OF CALIFORNIA

12 DONALD CHRISTIANSON,
 13 ISABEL PRADO, NEIL MOURA,
 14 and DANIEL POLINSKY, on behalf
 15 of themselves and all others similarly
 situated,

16 Plaintiffs,

17 v.

18 COX COMMUNICATIONS, INC.,
 19 and COXCOM, LLC,

20 Defendants.
 21
 22
 23
 24
 25
 26
 27
 28

Case No. '22CV1290 RSH MSB

CLASS ACTION

COMPLAINT FOR:

- (1) **VIOLATION OF CAL. CIVIL CODE § 1750;**
- (2) **VIOLATION OF CAL. BUSINESS & PROFESSIONS CODE § 17500;**
- (3) **VIOLATION OF CAL. BUSINESS & PROFESSIONS CODE § 17200;**
- (4) **VIOLATION OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT, NRS 598;**
- (5) **BREACH OF CONTRACT;**
- (6) **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

DEMAND FOR JURY TRIAL

1 Plaintiffs Donald Christianson, Isabel Prado, Neil Moura, and Daniel
2 Polinsky, on behalf of themselves and all others similarly situated, allege as
3 follows, on personal knowledge and investigation of their counsel, against
4 Defendants Cox Communications, Inc., and CoxCom, LLC (collectively, “Cox”):

5 **INTRODUCTION AND SUMMARY**

6 1. This action challenges a deceptive pricing scheme whereby Cox
7 covertly increased the monthly service rate for its cable TV service plans¹ in the
8 middle of promised fixed-rate term contracts. For years, Cox has enticed customers
9 to enter into 24-month contracts for Cox’s cable TV service plans by promising a
10 fixed monthly rate for two years. Customers who entered into these 24-month
11 contracts gave up their ability to freely quit or downgrade their service for the 24
12 months without incurring a significant early termination fee. Customers locked
13 themselves into these 24-month contracts because Cox had represented to them that
14 Cox was similarly locking itself into charging no more than the promised fixed rate
15 during the contract term. However, Cox’s representations were false because Cox
16 intended to, and did, increase the monthly service rate mid-contract by increasing
17 two disguised monthly service charges labeled on the bill as the “Broadcast
18 Surcharge” and the “Regional Sports Surcharge.” Cox failed to adequately disclose
19 these service charges during the signup process, and Cox never disclosed the fact
20 that Cox could, and would, use these service charges as a covert way to increase the
21 monthly service rate mid-contract despite Cox’s promises to the contrary.

22 2. Since 2015, Cox has increased the Broadcast Surcharge and the
23 Regional Sports Surcharge at least once a year—each time between \$1.00 to \$3.50
24 per Surcharge—on all of its cable TV customers regardless of whether they were in
25 the middle of a purportedly fixed-price contractual period.

26 3. Starting March 23, 2021, Cox updated its new cable TV service plan

27 ¹ The term “cable TV service plan” as used in this Complaint includes a service
28 plan that “bundles” television with other services such as internet, phone, and/or
home security.

1 offerings to eliminate the Broadcast Surcharge and the Regional Sports Surcharge.
2 Instead, Cox significantly increased the prices of its new cable TV service plans by
3 an amount equivalent to the lost Surcharges revenue. By rolling the Broadcast
4 Surcharge and Regional Sports Surcharge into the (now higher) top-line advertised
5 price for its cable TV service plans, Cox was admitting that the Surcharges had
6 really just been disguised double-charges for cable TV service all along. And Cox
7 was also admitting that Cox's mid-contract increases to the Surcharges were in fact
8 unlawful increases to its purportedly fixed monthly service rates, in breach of its
9 agreements with its customers.

10 4. Notably, even after March 23, 2021, Cox continued to bill subscribers
11 under existing term contracts for the Surcharges and for the increases made thereto,
12 and Cox continued to impose new increases to the Surcharges even in the middle of
13 fixed-rate contracts—most recently in March 2022, when Cox increased the
14 Broadcast Surcharge by \$3.00, to \$19.00.

15 5. Plaintiffs estimate that Cox has extracted **over \$70 million** since 2015
16 from more than 1 million California and Nevada cable TV subscribers via mid-
17 contract increases to the Broadcast Surcharge and the Regional Sports Surcharge.

18 6. All four Plaintiffs bring this lawsuit on behalf of themselves and
19 classes of similarly situated California consumers, seeking restitution and/or
20 contract damages, and pre- and post-judgment interest. Plaintiff Daniel Polinsky
21 also brings this lawsuit on behalf of himself and classes of similarly situated
22 Nevada consumers, seeking damages and/or restitution, punitive damages, and pre-
23 and post-judgment interest. Plaintiffs also seek attorneys' fees and costs.

24 7. By this action, Plaintiffs are seeking a refund of only the amount of the
25 mid-contract ***increases*** to the Broadcast Surcharge and the Regional Sports
26 Surcharge that Plaintiffs and the members of the Classes paid (i.e., they are not
27 seeking a refund of the full monthly amount of the Surcharges listed on the bill).

28 8. Meanwhile, Cox's misconduct is ongoing with regard to Class

1 members who are under term contracts that are still subject to the Broadcast
2 Surcharge and the Regional Sports Surcharge. Accordingly, Plaintiffs also seek an
3 order enjoining Cox from charging Class members who are in fixed-rate contracts,
4 any amounts for the Surcharges that are higher than the initial rates of the Broadcast
5 Surcharge and Regional Sports Surcharge that were in effect at the start of their
6 contracts.

7 **THE PARTIES**

8 9. Plaintiff Donald Christianson is a citizen and resident of San Diego
9 County, California.

10 10. Plaintiff Isabel Prado is a citizen and resident of San Diego County,
11 California.

12 11. Plaintiff Neil Moura is a citizen and resident of San Diego County,
13 California.

14 12. Plaintiff Daniel Polinsky is a citizen and resident of Orange County,
15 California.

16 13. Defendant Cox Communications, Inc., is a privately-owned subsidiary
17 of Cox Enterprises, Inc., and is incorporated in Delaware, with its headquarters,
18 executive office, principal place of business and/or nerve center in Atlanta,
19 Georgia. The footer of Cox’s public website targeted to current and prospective
20 residential cable TV customers states: “©1998 – 2022 Cox Communications, Inc.”²
21 Cox customer bills, including the bills sent to Plaintiffs, instruct customers that
22 checks should be made payable to “Cox Communications.”

23 14. Defendant CoxCom, LLC, is a subsidiary of Cox Communications,
24 Inc., and is incorporated in Delaware, with its headquarters, executive office,
25 principal place of business and/or nerve center in Atlanta, Georgia. The Cox
26
27
28

² See <https://www.cox.com/residential/home.html>, last accessed August 28, 2022.

1 “Residential Customer Service Agreement”³ for Cox residential customers states
2 that it “sets forth the terms and conditions under which CoxCom, LLC or one or
3 more of its subsidiaries or affiliates authorized by applicable regulatory, franchise
4 or license authority ... agrees to provide Services.”

5 **JURISDICTION AND VENUE**

6 15. **Subject Matter Jurisdiction.** The Court has subject matter
7 jurisdiction over this civil action pursuant to 28 U.S.C. § 1332(d)(2)—i.e., Class
8 Action Fairness Act jurisdiction —because the amount in controversy exceeds the
9 sum or value of \$5 million (exclusive of interest and costs) and is a class action in
10 which any member of a class of plaintiffs is a citizen of a state different from any
11 defendant.

12 16. **Personal Jurisdiction.** This Court has personal jurisdiction over Cox
13 because, without limitation: (1) Cox has purposely availed itself of the privileges of
14 conducting business activities in California; (2) Cox currently maintains systematic
15 and continuous business contacts with California including marketing, selling, and
16 issuing cable TV service plans and bundles to Plaintiffs and other California
17 consumers; (3) Cox has entered into contracts with Plaintiffs and other California
18 consumers to provide cable TV services; and (4) Cox maintains offices and retail
19 locations throughout California. Cox has sufficient minimum contacts with
20 California to render the exercise of jurisdiction by this Court permissible.

21 17. **Venue.** Venue is proper pursuant to 28 U.S.C. § 1391 because
22 Plaintiffs Donald Christianson, Isabel Prado, and Neil Moura reside in this District;
23 many of the acts and transactions giving rise to this action occurred in this District;
24 Cox is authorized to conduct business in this District, has intentionally availed itself
25 of the laws and markets within this District through distribution and sale of its
26 services in this District, does substantial business in this District, and is subject to

27 _____
28 ³ Available at <https://www.cox.com/aboutus/policies/customer-service-agreement.html>, last accessed August 28, 2022.

1 personal jurisdiction in this District.

2 **FACTUAL ALLEGATIONS OF COX’S DECEPTIVE PRICING SCHEME**

3 18. For years, Cox has engaged in a deceptive pricing scheme, whereby
4 Cox advertised its cable TV service plans at fixed monthly rates that were locked in
5 during a 24-month contract, but Cox then covertly increased the monthly service
6 rate in the middle of the contract via increases to the “Broadcast Surcharge” and the
7 “Regional Sports Surcharge.”

8 19. Cox enticed customers to enter into 24-month contracts for Cox’s
9 cable TV service plans by promising a fixed monthly rate for the 24 months.
10 Customers who entered into these 24-month contracts gave up their ability to freely
11 quit or downgrade their service for the 24 months without incurring an early
12 termination fee. Customers locked themselves into these 24-month contracts
13 because Cox had represented to them that Cox was similarly locking itself into
14 charging no more than the promised fixed service price during the contract term.
15 However, Cox’s representations were false because Cox intended to, and did,
16 increase the monthly service rate mid-contract by increasing two disguised monthly
17 service charges which it labeled the “Broadcast Surcharge” and the “Regional
18 Sports Surcharge.” Cox never disclosed these service charges during the signup
19 process or the fact that Cox could, and would, use these service charges as a covert
20 way to increase the monthly service rate mid-contract.

21 **A. The Broadcast Surcharge and the Regional Sports Surcharge.**

22 20. The Broadcast Surcharge is a monthly television service charge that
23 Cox began adding to its bills in 2015 at a rate of \$3.00 a month. Cox buried this
24 service charge in its monthly bill at the end of the “Monthly Services” section under
25 “Additional TV.” Cox provided no definition or explanation of the Broadcast
26 Surcharge in its monthly bills. In fact, Cox used the Broadcast Surcharge as a way
27 to covertly increase the monthly service price during a customer’s promised fixed-
28 rate contract.

1 21. The Regional Sports Surcharge is a separate monthly television service
2 charge that Cox began adding to its bills in 2017 at a rate of \$3.00 a month. Cox
3 similarly buried this service charge in its monthly bill at the end of the “Monthly
4 Services” section under “Additional TV,” and provided no definition of the charge
5 in its monthly bills. Like the Broadcast Surcharge, Cox used the Regional Sports
6 Surcharge as a way to covertly increase the monthly service price during a
7 customer’s promised fixed-rate contract.

8 22. All members of the putative classes were charged, and received mid-
9 contract increases to, the Broadcast Surcharge. The Broadcast Surcharge was
10 uniformly charged to all Cox cable TV subscribers since 2015, excluding only
11 subscribers who signed up for brand-new service plans after March 23, 2021. Most
12 members of the putative classes were also charged, and received mid-contract
13 increases to, the Regional Sports Surcharge. The Regional Sports Surcharge was
14 charged to Cox television subscribers with “Contour TV” (previously called
15 “Essential TV”) or higher—which comprises the overwhelming majority of Cox
16 cable TV subscribers.

17 23. Cox has steadily increased the Broadcast Surcharge and the Regional
18 Sports Surcharge on at least an annual basis since introducing them, regardless of
19 whether the customer was in the middle of a supposedly fixed-price contract.
20 Today, the Broadcast Surcharge is \$19.00 per month, and the Regional Sports
21 Surcharge is up to \$12.00 per month, for a total of up to \$31.00 per month.

22 24. Starting March 23, 2021, Cox updated its new cable TV service plan
23 offerings to eliminate the Broadcast Surcharge and the Regional Sports Surcharge.
24 Instead, Cox significantly increased the advertised prices of its new cable TV
25 service plans by up to \$28.00—an amount equivalent to the lost Surcharges
26 revenue.

27 25. By rolling the Broadcast Surcharge and Regional Sports Surcharge
28 amounts into the (now higher) top-line price for its cable TV services, Cox was

1 admitting that the Surcharges had really just been disguised double-charges for
2 cable TV service all along. And Cox was further admitting that Cox’s mid-contract
3 increases to the Surcharges were in fact unlawful increases to its purportedly fixed
4 monthly service rates, in breach of its agreements with its customers.

5 26. Notably, even after March 23, 2021, Cox continued to bill subscribers
6 under existing term contracts for the Surcharges and for the increases made thereto,
7 and Cox continued to impose new increases to the Surcharges even in the middle of
8 fixed-rate contracts—most recently in March 2022, when Cox increased the
9 Broadcast Surcharge by \$3.00, to \$19.00.

10 27. Based on Plaintiffs’ calculations, since 2015 Cox has improperly
11 extracted over \$70 million from more than 1 million California and Nevada cable
12 TV subscribers via mid-contract increases to the Broadcast Surcharge and the
13 Regional Sports Surcharge.

14 **B. Cox Aggressively Pushed 24-Month Contracts by Promising Fixed**
15 **Monthly Service Rates for the Contract Period.**

16 28. Cox currently provides cable TV services to approximately 3 million
17 households nationwide, including approximately 400,000 households in California
18 and over 400,000 households in Nevada.

19 29. At all relevant times, Cox has advertised its cable TV service plans
20 through pervasive marketing directed at the consuming public in California and
21 Nevada. This marketing has included advertisements on the Cox website; materials
22 and advertising at its California and Nevada retail stores where customers can sign
23 up for Cox services; video advertisements via YouTube, Facebook, and Twitter;
24 and television, radio, and other internet advertisements.

25 30. Through all of these channels, Cox consistently and prominently
26 advertised particular, flat monthly prices for its cable TV service plans that were
27 “guaranteed” and “price-locked” during a 24-month service agreement.
28

1 **1. Signing up with Cox sales or customer service agents.**

2 31. When customers signed up for Cox cable TV service over the phone,
3 via internet chat, or at one of Cox’s brick-and-mortar stores, Cox sales or customer
4 service agents as a matter of policy only promoted service plans that were subject to
5 24-month service agreements. Cox’s agents pushed 24-month service agreements—
6 which have significant early termination fees—by promising customers that the
7 advertised service rates were “guaranteed” and “price-locked” for the two years.
8 And, even though it was possible to request to sign up for month-to-month service
9 rather than a 24-month service agreement, Cox agents were trained to not mention
10 the month-to-month option unless a customer specifically asked for it.

11 32. Cox agents as a matter of policy did not disclose or mention that Cox
12 could, and would, increase the monthly service price mid-contract (in the middle of
13 the service agreement) by increasing two disguised service charges—the Broadcast
14 Surcharge and the Regional Sports Surcharge.

15 33. Discovery will show that Cox had a uniform, standard policy of having
16 its sales agents not mention or disclose the existence of the Broadcast Surcharge or
17 the Regional Sports Surcharge, let alone that the monthly service price could or
18 would be further increased mid-contract via increases to the Surcharges.

19 **2. Signing up on the Cox website.**

20 34. Cox similarly pushed 24-month service agreements onto customers
21 who signed up on Cox’s website. For years, when a customer visited Cox’s website
22 to sign up for cable TV service, Cox only displayed service plans on its offer
23 webpages that were advertised at fixed prices for 24 months, subject to a 24-month
24 service agreement. The option to go month-to-month was not even presented
25 among the list of service plans.

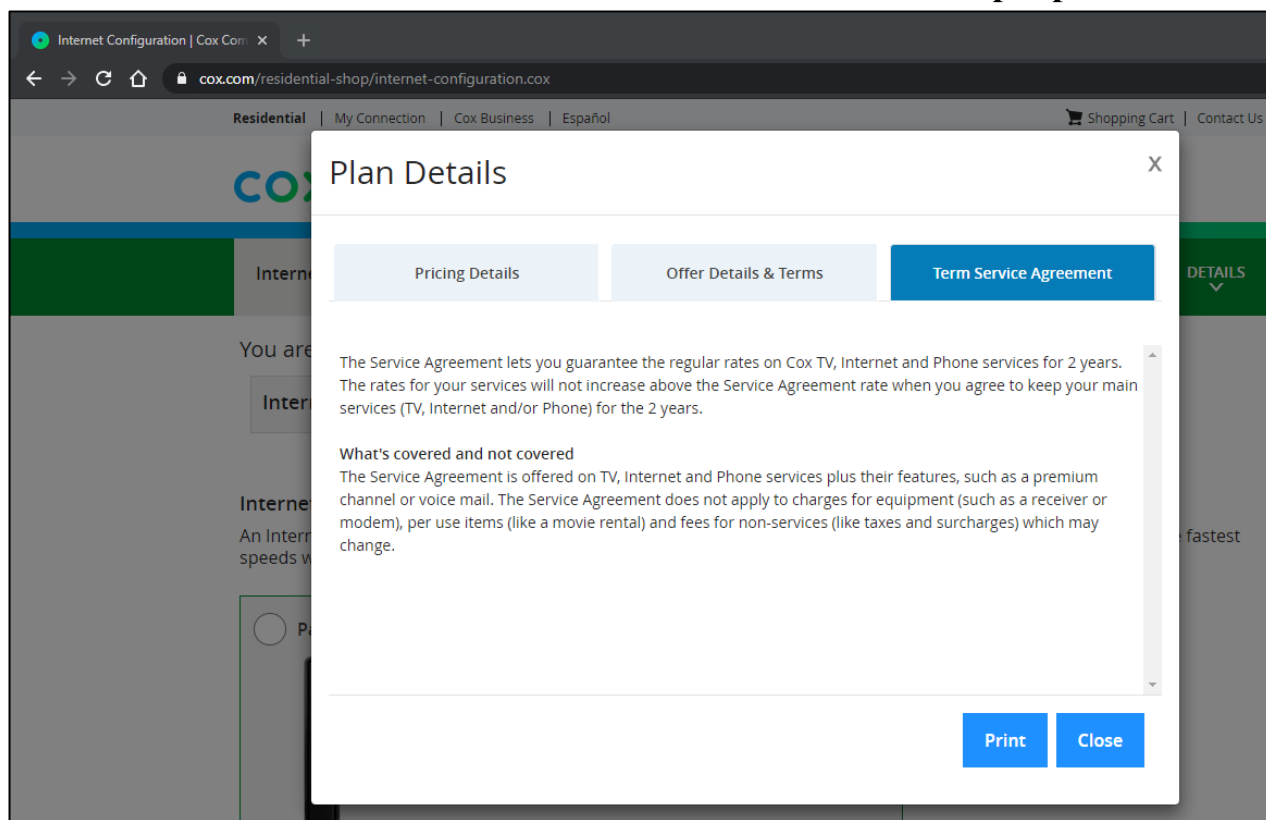
26 35. On Cox’s website and throughout the online order process, Cox
27 repeatedly—and falsely—represented that agreeing to a 24-month service
28 agreement “**guaranteed**” that the monthly service price would be locked-in for two

1 years.

2 36. For example, Cox had an FAQ on its website about term service
3 agreements that encouraged customers to enter into 24-month service agreements.
4 One of the FAQ questions asked: “What if I don’t want a service agreement?”
5 Cox’s posted answer to the question was: “**Service agreements give you peace of**
6 **mind that your bill won’t change over the course of the agreement**, but you can
7 opt out during checkout for \$10 more per month.” (emphasis added).

8 37. When a customer went through the online order process, at the top of
9 each page was a link to “see Offer Terms” which, if clicked, opened a pop-up box
10 where Cox explicitly promised that the rate for the customer’s service would not
11 increase during the contract period. Below is a screenshot which is representative of
12 what Cox displayed from at least 2018 through 2021 to customers who clicked on
13 the “see Offer Terms” link which was on the top of every page in the order process:

14 Cox Online Order Process “See Offer Terms” Pop-Up



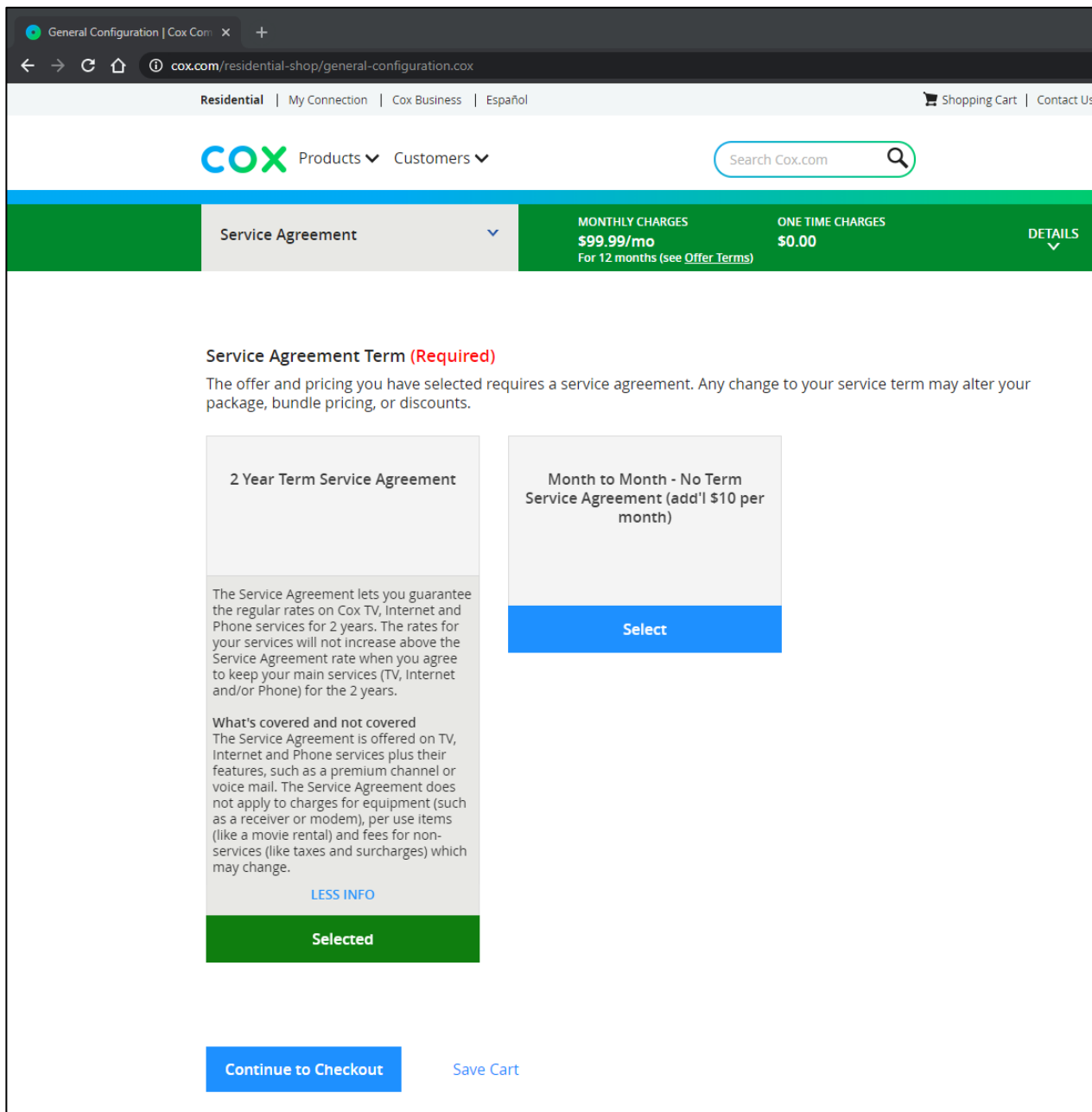
1 38. Cox promised: “The Service Agreement lets you **guarantee** the
2 regular rates on Cox TV, Internet and Phone services for 2 years. **The rates for**
3 **your services will not increase above the Service Agreement rate** when you
4 agree to keep your main services (TV, Internet and/or Phone) **for the 2 years.**”
5 (emphasis added).

6 39. Immediately below that, Cox stated: “**What’s covered and not**
7 **covered.** The Service Agreement is offered on TV, Internet and Phone services plus
8 their features, such as a premium channel or voice mail. The Service Agreement
9 does not apply to charges for equipment (such as a receiver or modem), per use
10 items (like a movie rental) and fees for non-services (like taxes and surcharges)
11 which may change.” Notably, Cox here describes “**surcharges**” as “fees for *non-*
12 *services*” (as a reasonable consumer would expect). Yet in fact Cox has admitted
13 that the Broadcast **Surcharge** and the Regional Sports **Surcharge** are in fact fees
14 for *services* (see ¶¶ 50–56 below).

15 40. Cox made similar representations about the fixed-price of its cable TV
16 service plans during the contract term on the next-to-last page of the online order
17 process—the “Service Agreement” page.

1 41. Below is a screenshot which is representative of what Cox displayed
 2 from at least 2018 through 2021 to customers at the end of the online order process:

3 **Cox Online Order Process “Service Agreement” Page**



4 42. On this “Service Agreement” page, Cox informed the customer that
 5 “The offer and pricing you have selected requires a service agreement.” Cox
 6 provided the customer with two options: (1) a “2 Year Term Service Agreement”
 7 (which was pre-selected); or (2) a “Month to Month – No Term Service
 8

1 Agreement” at an additional \$10 per month.

2 43. Again, Cox promised that “**The rates for your services will not**
3 **increase above the Service Agreement rate** when you agree to keep your main
4 services (TV, Internet and/or Phone) for the 2 years.” (emphasis added).

5 44. Cox’s website and its online order process were designed to push
6 customers into 24-month contracts by only advertising cable TV service plans with
7 24-month contracts and by promising “peace of mind” that customers’ monthly
8 service rates would not increase during the contract.

9
10 **C. Cox Increased the Monthly Service Rate Mid-Contract by**
11 **Increasing Two Disguised Television Service Fees—the Broadcast**
12 **Surcharge and the Regional Sports Surcharge.**

13 45. Cox’s representations that the monthly service rate was “guaranteed”
14 and “price-locked” and that its service agreements “give you peace of mind that
15 your bill won’t change over the course of the agreement” were all false. Cox as a
16 matter of policy increased the monthly service rate in the middle of customers’
17 fixed-rate contracts by increasing two disguised television service fees—the
18 Broadcast Surcharge and the Regional Sports Surcharge.

19 46. Cox has increased the Broadcast Surcharge and the Regional Sports
20 Surcharge at least once a year since 2015—each time between \$1.00 to \$3.50 per
21 Surcharge. And Cox imposed these annual increases on all of its cable TV
22 subscribers even if they were in the middle of a promised fixed-price contract.

23 47. For example, Cox increased the monthly service price twice, by a total
24 of \$8.00, during the span of Plaintiffs Donald Christianson and Isabel Prado’s
25 supposedly “guaranteed” fixed-rate service contract. In February 2020—6 months
26 into their 24-month term—Cox increased the Broadcast Surcharge from \$10.00 to
27 \$13.50 and the Regional Sports Surcharge from \$7.00 to \$8.00. Then, in February
28 2021—18 months into their 24-month term—Cox again increased the Broadcast
Surcharge from \$13.50 to \$16.00 and the Regional Sports Surcharge from \$8.00 to

1 \$9.00.

2 48. Contrary to Cox’s fixed-price “guarantee,” Cox utilized the Broadcast
3 Surcharge and the Regional Sports Surcharge as levers to covertly ratchet up the
4 service price in the middle of the supposedly fixed-rate contract. Because these
5 subsequent increases to the Broadcast Surcharge and the Regional Sports Surcharge
6 were relatively small—typically between \$1.00 to \$3.50 per Surcharge—and were
7 not included in the “Total Your Cox Bundle” price displayed at the top of the bill,
8 Cox knew that customers were unlikely to notice the increased amount of the
9 service charges. Given that taxes and other government-related charges can already
10 vary by small amounts from month to month, Cox knew that customers reasonably
11 expected small changes in the total amount billed each month and would not notice
12 that Cox increased the service price by increasing the amount of these disguised
13 service charges.

14 49. At no point, either prior to or at the time customers signed up for
15 service, did Cox disclose that Cox could, and would, use the Broadcast Surcharge
16 and the Regional Sports Surcharge to increase the monthly service price mid-
17 contract. Rather, Cox made affirmative misrepresentations to the contrary. As
18 detailed above, Cox repeatedly—and falsely—represented to customers that signing
19 up for a 24-month service agreement would “guarantee” that the “rates for your
20 services will not increase” during the 24-month contract. Cox even explicitly—and
21 falsely—stated that the service agreement covered “TV, Internet and Phone services
22 plus their features” and only did not cover equipment, per use items, and “fees for
23 non-services ...”

1 52. Meanwhile, Cox did not list the Broadcast Surcharge or the Regional
2 Sports Surcharge under the separate section on the bill labeled “Taxes, Fees and
3 Surcharges.”

4 53. Cox has admitted that the Broadcast Surcharge and the Regional
5 Sports Surcharge are just carved-out portions of the customer’s cable TV service,
6 which prior to 2015 were included in the top-line service plan price.

7 54. For example, in one discussion thread on Cox’s website, a Cox
8 representative stated that:

9 In the past, all Cox television programming costs and fees were simply
10 rolled together in our charges for Advanced TV service or the specific
11 Tier of service. Over the years, Cox has had to raise service rates due
12 to rising video programming costs and network retransmission fees. In
13 an effort to meet the demand for more transparent billing practices, we
14 introduced surcharges as a way to highlight the different costs
15 associated with the delivery of broadcast TV networks. The separate
16 line items simply allow customers to better track how these costs impact
17 their total TV charge.⁴

18 55. Cox’s representations on its website, on its bills, and by its own agents
19 have made it abundantly clear that the Broadcast Surcharge and the Regional Sports
20 Surcharge are television service charges.

21 56. And when Cox stopped charging the Surcharges to subscribers of its
22 new cable TV plans beginning March 23, 2021—and Cox instead increased the top-
23 line price of its TV service plans by an equivalent amount—Cox was further
24 admitting that the Surcharges had really just been disguised double-charges for TV
25 service all along.

26
27
28 ⁴ https://forums.cox.com/forum_home/tv_forum/f/tv-forum/16427/to-keep-you-better-informed-a-6-00-surcharge-what, last accessed August 28, 2022.

1 **PLAINTIFFS’ FACTUAL ALLEGATIONS**

2 **Plaintiffs Donald Christianson and Isabel Prado**

3 57. Plaintiffs Donald Christianson and Isabel Prado are, and at all relevant
4 times have been, citizens and residents of La Mesa, California.

5 58. Since at least 2010, Mr. Christianson and Ms. Prado have been living
6 together. When they first moved to their previous address in 2010, they signed up
7 for one of Cox’s cable TV and internet service plans. This was five years before
8 Cox first started charging the Broadcast Surcharge and seven years before Cox first
9 started charging the Regional Sports Surcharge.

10 59. In 2012, Mr. Christianson and Ms. Prado moved to their current
11 address. When they moved, they transferred their Cox cable TV and internet service
12 plan from their old address to their new address. Cox still had not started charging
13 either the Broadcast Surcharge or the Regional Sports Surcharge.

14 60. Mr. Christianson and Ms. Prado kept their same Cox cable TV and
15 internet service plan up until June 2019. During this time, Cox quietly added the
16 Broadcast Surcharge in 2015, initially at \$3.00 a month, and later added the
17 Regional Sports Surcharge in 2017, also initially at \$3.00 a month. Mr.
18 Christianson and Ms. Prado were completely unaware that Cox had added these
19 Surcharges or that Cox was quietly increasing them over the years.

20 61. In June 2019, looking for ways to save money, Mr. Christianson and
21 Ms. Prado decided to downgrade their Cox service plan, which at that time was
22 over \$150 a month for TV and internet. Initially, they intended to switch to an
23 internet-only plan and cut out television altogether. However, when they called Cox
24 to switch plans, the sales agent offered to give them a very basic television service
25 (approximately 30 channels) for free with their internet service.

26 62. Mr. Christianson and Ms. Prado had this internet and “free” television
27 service plan for three months.

28 63. In September 2019, a Cox sales agent called Mr. Christianson and

1 Ms. Prado to inform them that they were going over their internet data limit each
2 month. They were going over their data limit because they now almost exclusively
3 watched television shows using streaming services like Hulu and Netflix.

4 64. Customers who went over their internet data limit had to pay
5 additional monthly fees based on how much data the customer used over the limit.
6 At the time, Cox also offered unlimited internet data plans at an additional monthly
7 cost.

8 65. Mr. Christianson and Ms. Prado could have purchased the unlimited
9 internet data plan or paid the additional monthly fee for going over their data limit.
10 Instead, however, the Cox sales agent used this opportunity to try to upsell them on
11 one of Cox's higher-tier TV and internet service bundles. The agent's pitch was that
12 if they had a television service plan with more channels, they could cut back on
13 streaming and avoid going over their internet data limit each month.

14 66. The Cox sales agent quoted Mr. Christianson and Ms. Prado a two-
15 year "locked-in" price for TV and internet subject to a 24-month service agreement.

16 67. Based on the sales agent's representations, Mr. Christianson and
17 Ms. Prado reasonably believed that the monthly service price for TV and internet
18 would not increase during the two-year "locked-in" period.

19 68. Based on the sales agent's representations, Mr. Christianson and
20 Ms. Prado ordered the TV and internet service plan.

21 69. At no point during the phone call did the Cox sales agent mention the
22 existence or the amounts of the additional Broadcast Surcharge or Regional Sports
23 Surcharge. The sales agent also never mentioned that Cox could, and would,
24 increase the service rate during the two-year price-locked period by increasing the
25 undisclosed Broadcast Surcharge and Regional Sports Surcharge.

26 70. In February 2020—6 months into Mr. Christianson and Ms. Prado's
27 24-month "locked-in" price contract—Cox *increased* the price of their cable TV
28 service by \$4.50 by raising the amount of the so-called Surcharges. Specifically,

1 Cox increased the Broadcast Surcharge by \$3.50 (from \$10.00 to \$13.50) and the
2 Regional Sports Surcharge by \$1.00 (from \$7.00 to \$8.00).

3 71. In February 2021—18 months into their 24-month “locked-in” price
4 contract—Cox again *increased* the price of their cable TV service, this time by
5 \$3.50, by raising the amount of the so-called Surcharges. Specifically, Cox
6 increased the Broadcast Surcharge by \$2.50 (from \$13.50 to \$16.00) and the
7 Regional Sports Surcharge by \$1.00 (from \$8.00 to \$9.00).

8 72. When Mr. Christianson and Ms. Prado’s 24-month contract ended in
9 August 2021, they dropped their cable TV service altogether and switched to an
10 internet-only plan from Cox.

11 73. Mr. Christianson and Ms. Prado did not learn that Cox had increased
12 their cable TV service rate mid-contract until it was brought to their attention by
13 their counsel in April 2022.

14 74. When Mr. Christianson and Ms. Prado signed up for Cox’s cable TV
15 services in September 2019 and committed to a 24-month contract, they were
16 relying on Cox’s explicit representations regarding the fixed monthly rate under the
17 24-month contract. Mr. Christianson and Ms. Prado did not expect (and Cox did not
18 tell them) that Cox would actually increase the monthly service rate (first by \$4.50
19 more per month and then again by another \$3.50 more per month) in the middle of
20 the contract via increases to the disguised monthly service charges which it labeled
21 the Broadcast Surcharge and the Regional Sports Surcharge. That information
22 would have been material to them. If Mr. Christianson and Ms. Prado had known
23 that information, they would not have ordered the TV and internet service bundle.

24 75. During their promised 24-month “locked-in” price contract,
25 Mr. Christianson and Ms. Prado suffered damages of **\$110.00** in the form of mid-
26 contract *increases* to their monthly service rate via raises of the Broadcast
27 Surcharge and the Regional Sports Surcharge.

28 76. Mr. Christianson and Ms. Prado’s Cox account is in Ms. Prado’s name,

1 with Mr. Christianson being an authorized user who can make changes to their
2 services and pay their bills. Throughout the duration of their 24-month contract,
3 Mr. Christianson and Ms. Prado would alternate between paying their monthly bill
4 using money from Mr. Christianson's bank account and money from Ms. Prado's
5 bank account. They would also occasionally visit their nearby Cox service center
6 and pay their monthly bill in cash.

7 **Plaintiff Neil Moura**

8 77. Plaintiff Neil Moura is, and at all relevant times has been, a citizen and
9 resident of Oceanside, California.

10 78. Mr. Moura has been a Cox cable TV subscriber for at least the last 15
11 years.

12 79. Around four years ago, Mr. Moura started having technical problems
13 with his Cox cable TV service. After speaking with several Cox customer service
14 agents, Mr. Moura eventually spoke to a Cox agent named Kristi Swangel. In
15 addition to helping Mr. Moura with his service issues, Ms. Swangel also gave him a
16 promotional discount off his internet and TV service plan.

17 80. In July 2020, the promotional discount that Ms. Swangel gave
18 Mr. Moura expired, causing his monthly bill to increase. On July 4, 2020,
19 Mr. Moura emailed Ms. Swangel asking if there was any way to lower his bill, such
20 as cutting portions of his service or getting a promotional discount. Mr. Moura
21 explained that he was retired and on a fixed income. He needed an affordable and
22 fixed-rate monthly bill.

23 81. On July 8, 2020, Ms. Swangel emailed Mr. Moura back and stated that
24 she could give him a promotional discount that would reduce his monthly service
25 rate to "just under \$208" for 24 months subject to a 24-month service agreement.

26 82. Based on Ms. Swangel's representations, Mr. Moura reasonably
27 believed that his monthly service rate would remain at "just under \$208" for 24
28 months (subject to any increases to taxes or government fees).

1 83. Mr. Moura accepted the promotional offer and agreed to the 24-month
2 fixed-price service agreement. When he received his next bill in August 2020, it
3 was \$207.79—“just under \$208.”

4 84. Nowhere in Ms. Swangel’s email did she inform Mr. Moura that Cox
5 could, and would, increase his monthly service rate during the 24-month contract
6 by increasing the Broadcast Surcharge and the Regional Sports Surcharge.

7 85. In fact, Cox increased Mr. Moura’s service rate twice during his 24-
8 month contract—first in March 2021 and then again in March 2022.

9 86. On Mr. Moura’s March 2021 bill—only 8 months into his 24-month
10 purportedly fixed price contract—Cox *increased* the price of his cable TV service
11 by \$3.50 by raising the amount of the so-called Surcharges. Specifically, Cox
12 increased the Broadcast Surcharge by \$2.50 (from \$13.50 to \$16.00) and the
13 Regional Sports Surcharge by \$1.00 (from \$8.00 to \$9.00).

14 87. On Mr. Moura’s March 2022 bill—20 months into his 24-month
15 purportedly fixed price contract—Cox again *increased* the price of his cable TV
16 service, this time by \$3.00, by raising the amount of the Broadcast Surcharge by
17 \$3.00 (from \$16.00 to \$19.00).

18 88. Mr. Moura did not learn that Cox had been increasing his cable TV
19 service rate mid-contract until it was brought to his attention by his counsel in April
20 2022.

21 89. When Mr. Moura committed to a 24-month contract, he relied on
22 Cox’s representations regarding the monthly rate of his Cox internet and TV service
23 plan being “just under \$208” for the duration of the 24-month contract. Mr. Moura
24 did not expect (and Cox did not tell him) that Cox would ultimately increase that
25 rate *twice* (first by \$3.50 per month and then again by another \$3.00 per month) in
26 the middle of the contract via increases to the disguised monthly service charges
27 which it labeled the Broadcast Surcharge and the Regional Sports Surcharge. That
28 information would have been material to him. If Mr. Moura had known that

1 information, he would not have been willing to pay as much for his services and
2 would have acted differently.

3 90. Mr. Moura suffered damages of **\$68.00** during the term of his 24-
4 month contract in the form of *increases* to his purportedly fixed monthly service
5 rate via raises of the Broadcast Surcharge and the Regional Sports Surcharge.

6 **Plaintiff Daniel Polinsky**

7 91. Since November 2020, Plaintiff Daniel Polinsky has been a citizen and
8 resident of San Clemente, California. Prior to that, from August 2019 to October
9 2020, Mr. Polinsky was a citizen and resident of Nevada.

10 92. Mr. Polinsky first signed up for Cox's services in August 2019 while
11 he was living in Nevada. Mr. Polinsky signed up through Cox's website.

12 93. After browsing Cox's various service plans on the Cox website, Mr.
13 Polinsky selected one of Cox's internet and cable TV service plan bundles. On the
14 offer webpage for the internet and cable TV service plan, Cox prominently
15 advertised the plan as having a fixed monthly rate for 24 months with a two-year
16 service agreement.

17 94. Based on these representations, Mr. Polinsky selected the service plan
18 and initiated the online order process.

19 95. As Mr. Polinsky went through the online order process, he viewed
20 Cox's repeated representations that the monthly charges for the service plan would
21 be the same fixed rate for 24 months. For example, Mr. Polinsky viewed the
22 "Service Agreement" webpage (*see* ¶ 41, *supra*), where the "2 Year Term Service
23 Agreement" option was preselected, and where Cox stated: "The Service
24 Agreement lets you guarantee the regular rates on Cox TV, Internet and Phone
25 services for the two years. The rates for your services will not increase above the
26 Service Agreement rate when you agree to keep your main services (TV, Internet
27 and/or Phone) for the 2 years."

28 96. Nowhere during the online order process did Cox indicate that Cox

1 could, and would, increase the monthly service rate mid-contract via increases to
2 additional disguised monthly service charges.

3 97. Relying on Cox's repeated representations regarding the fixed monthly
4 price of the service plan for the two-year contract period, Mr. Polinsky completed
5 the online purchase process and submitted his order.

6 98. At no point was Mr. Polinsky aware that Cox would bill him any
7 additional monthly service charges. At no point in the online purchase process did
8 Mr. Polinsky see any mention of the existence of additional monthly service
9 charges such as the Broadcast Surcharge or the Regional Sports Surcharge.
10 Mr. Polinsky also had no idea that Cox could, and would, increase the service rate
11 during the promised two-year fixed-rate period by increasing the Broadcast
12 Surcharge and Regional Sports Surcharge.

13 99. In February 2020—6 months into Mr. Polinsky's 24-month
14 purportedly fixed price contract—Cox increased the Broadcast Surcharge from
15 \$10.00 to \$13.50. Based on Plaintiffs' counsel's investigation, Cox also increased
16 the Regional Sports Surcharge at the same time.⁵

17 100. Mr. Polinsky never noticed that Cox had increased the amounts of the
18 Broadcast Surcharge and Regional Sports Surcharge in the middle of his contract.

19 101. Mr. Polinsky was signed up for electronic billing and Cox's automatic
20 billing program, EasyPay, as Cox encouraged him to do. Through this billing
21 process, Mr. Polinsky received a monthly Cox billing email which stated his bill
22 total and informed him that his bill would be automatically paid by the payment due
23 date because he was signed up for EasyPay. Cox's EasyPay feature discourages
24 customers from reviewing their monthly bill. And, because Cox's billing emails
25 only state the bill total, customers cannot tell from the email itself that Cox has

26 ⁵ Based on Plaintiffs' counsel's investigation, Cox increased the Regional Sports
27 Surcharge every year in nearly every region that Cox provided service, including in
28 its single Nevada service region. For example, in February 2021, Cox increased the
Regional Sports Surcharge from \$8.50 to \$9.00 in its Nevada service region.

1 increased their monthly service rate by increasing the Broadcast Surcharge and
2 Regional Sports Surcharge. Because the increases are relatively small compared to
3 a customer's total monthly bill, customers would not notice the increase or would
4 reasonably believe that the increase was due to increased taxes or government fees.
5 A reasonable consumer would not assume that an increase to his or her monthly bill
6 total was due to Cox unlawfully increasing the monthly service rate in the middle of
7 the promised fixed-price contract.

8 102. In November 2020, Mr. Polinsky moved to San Clemente, California.
9 When he moved, he was unable to transfer his existing Cox service plan from
10 Nevada. Instead, Mr. Polinsky signed up for a new internet and cable TV service
11 plan from Cox. Mr. Polinsky once again signed up through Cox's website. And,
12 once again, Mr. Polinsky chose an internet and TV service plan that Cox advertised
13 as having a fixed monthly rate for 24 months with a two-year service agreement.
14 Mr. Polinsky went through materially the same online order process and saw
15 materially the same representations as he had when he previously signed up in
16 August 2019.

17 103. When Mr. Polinsky signed up for Cox service in November 2020, he
18 still did not know that Cox could, and would, increase his service rate during the
19 promised fixed-rate period by increasing the Broadcast Surcharge and Regional
20 Sports Surcharge.

21 104. On Mr. Polinsky's February 2021 bill—only 3 months into his 24-
22 month purportedly fixed-price contract—Cox *increased* the price of his cable TV
23 service by \$3.50 by raising the amount of the so-called Surcharges. Specifically,
24 Cox increased the Broadcast Surcharge by \$2.50 (from \$13.50 to \$16.00) and the
25 Regional Sports Surcharge by \$1.00 (from \$8.00 to \$9.00).

26 105. On Mr. Polinsky's February 2022 bill—15 months into his 24-month
27 purportedly fixed-price contract—Cox *increased* the price of his cable TV service
28 again, this time by \$6.00, by raising the amount of the so-called Surcharges.

1 Specifically, Cox increased the Broadcast Surcharge by \$3.00 (from \$16.00 to
2 \$19.00) and the Regional Sports Surcharge by \$3.00 (from \$9.00 to \$12.00).

3 106. Mr. Polinsky did not learn that Cox had been increasing his service
4 rate mid-contract until it was brought to his attention by his counsel in May 2022.

5 107. When Mr. Polinsky signed up for Cox's cable TV services, both in
6 August 2019 and again in November 2020, he was relying on Cox's explicit
7 representations regarding the fixed monthly rate under the 24-month contract.
8 Mr. Polinsky did not expect (and Cox did not tell him) that Cox would in fact
9 increase the monthly service rate in the middle of the contract via increases to
10 disguised monthly service charges which it labeled the Broadcast Surcharge and the
11 Regional Sports Surcharge. That information would have been material to him. If
12 Mr. Polinsky had known that information, he would not have been willing to pay as
13 much for his services and would have acted differently.

14 108. During his 24-month contract in Nevada, Mr. Polinsky suffered
15 damages of **\$31.50** in the form of an *increase* to his monthly service rate via a raise
16 of the Broadcast Surcharge in February 2020. Based on counsel's investigation, Mr.
17 Polinsky suffered additional damages during the contract due to the *increase* of the
18 Regional Sports Surcharge at the same time (the precise amount of the increase will
19 be obtained in discovery).

20 109. Regarding his 24-month contract in California, Mr. Polinsky suffered
21 damages of **\$80.00** through May 2022 in the form of *increases* to his monthly
22 service rate via raises of the Broadcast Surcharge and the Regional Sports
23 Surcharge. Mr. Polinsky terminated his Cox services in mid-May when he moved
24 to a new location outside of Cox's service area.

CLASS ALLEGATIONS

1
2 110. Plaintiffs bring this lawsuit on behalf of themselves and all others
3 similarly situated, pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), and
4 (b)(3).

5 111. All four Plaintiffs seek to represent the following **“California Class”**:

6 **All individual consumers who entered into a term**
7 **contract for Cox cable TV service in California where**
8 **Cox increased the amount of the “Broadcast Surcharge”**
9 **and/or the “Regional Sports Surcharge” in the middle of**
10 **the contract.**

11 112. Plaintiff Daniel Polinsky also seeks to represent the following
12 **“California Online Signup Subclass”**:

13 **All individual consumers who signed up online on Cox’s**
14 **website for a term contract for Cox cable TV service in**
15 **California where Cox increased the amount of the**
16 **“Broadcast Surcharge” and/or the “Regional Sports**
17 **Surcharge” in the middle of the contract.**

18 113. Plaintiff Daniel Polinsky also seeks to represent the following
19 **“Nevada Class”**:

20 **All individual consumers who entered into a term**
21 **contract for Cox cable TV service in Nevada where Cox**
22 **increased the amount of the “Broadcast Surcharge”**
23 **and/or the “Regional Sports Surcharge” in the middle of**
24 **the contract.**

25 114. Plaintiff Daniel Polinsky also seeks to represent the following
26 **“Nevada Online Signup Subclass”**:

27 **All individual consumers who signed up online on Cox’s**
28 **website for a term contract for Cox cable TV service in**
29 **Nevada where Cox increased the amount of the**
30 **“Broadcast Surcharge” and/or the “Regional Sports**
31 **Surcharge” in the middle of the contract.**

1 115. This Court should apply the discovery rule to extend any applicable
2 limitations period (and the corresponding class period) for each class and subclass
3 to the date on which Cox first engaged in its practice of increasing the Broadcast
4 Surcharge and the Regional Sports Surcharge in the middle of a term contract. The
5 nature of Cox's misconduct was non-obvious and intentionally concealed from its
6 cable TV subscribers. As a result of Cox's intentional misconduct, omissions, and
7 affirmative misrepresentations throughout the customer lifecycle, neither Plaintiffs
8 nor the members of the Classes could have, through the use of reasonable diligence,
9 learned of the accrual of their claims against Cox at an earlier time.

10 116. Specifically excluded from the Classes are Cox and any entities in
11 which Cox has a controlling interest, Cox's agents and employees, the bench
12 officers to whom this civil action is assigned, and the members of each bench
13 officer's staff and immediate family.

14 117. **Numerosity.** The number of members of each Class are so numerous
15 that joinder of all members would be impracticable. Plaintiffs do not know the
16 exact number of class members of each Class prior to discovery. However, based
17 on information and belief, each Class comprises tens of thousands of individuals.
18 The exact number and identities of Class members are contained in Cox's records
19 and can be easily ascertained from those records.

20 118. **Commonality and Predominance.** This action involves multiple
21 common legal or factual questions which are capable of generating class-wide
22 answers that will drive the resolution of this case. These common questions
23 predominate over any questions affecting individual Class members, if any. These
24 common questions include, but are not limited to, the following:

25 a. Whether Cox employed a uniform policy of charging the
26 Broadcast Surcharge and the Regional Sports Surcharge to its customers who
27 subscribed to cable TV service;

28 b. What is the nature or purpose of the Broadcast Surcharge;

- 1 c. What is the nature or purpose of the Regional Sports Surcharge;
- 2 d. Whether the Broadcast Surcharge is a monthly service fee for
- 3 providing cable TV service;
- 4 e. Whether the Regional Sports Surcharge is a monthly service fee
- 5 for providing cable TV service;
- 6 f. Whether increases to the Broadcast Surcharge and the Regional
- 7 Sports Surcharge are increases to the monthly service price;
- 8 g. Whether Cox offered term contracts where Cox promised that
- 9 the monthly service price would be fixed during the term contract;
- 10 h. Whether Cox advertised and represented to customers that the
- 11 monthly service price for Cox’s cable TV service plans was fixed during the term
- 12 contract;
- 13 i. Whether Cox’s policy and practice of increasing the monthly
- 14 service price mid-contract via increases to the Broadcast Surcharge and the
- 15 Regional Sports Surcharge is material information, such that a reasonable consumer
- 16 would find that information important to the consumer’s purchase decision;
- 17 j. Whether Cox’s policy and practice of advertising and
- 18 representing that the prices of its service plans were fixed and would not increase
- 19 during a term contract, when in fact Cox intended to, and did, increase service
- 20 prices during that period by increasing the Broadcast Surcharge and the Regional
- 21 Sports Surcharge is false, deceptive, or misleading;
- 22 k. Whether it was a breach of contract for Cox to increase the
- 23 monthly service price mid-contract by increasing the Broadcast Surcharge and the
- 24 Regional Sports Surcharge;
- 25 l. Whether it was a breach of the covenant of good faith and fair
- 26 dealing for Cox to increase the monthly service price mid-contract by increasing the
- 27 Broadcast Surcharge and the Regional Sports Surcharge;
- 28 m. For the California Classes: Whether Cox’s misrepresentations

1 and misconduct alleged herein violated California Civil Code § 1750 *et seq.*
2 (CLRA), California Business & Professions Code § 17500 *et seq.* (FAL), and
3 California Business & Professions Code § 17200 *et seq.* (UCL); and

4 n. For the Nevada Classes: Whether Cox’s misrepresentations and
5 misconduct alleged herein violated the Nevada Deceptive Trade Practices Act
6 (NDTPA), NRS Chapter 598.

7 119. **Typicality.** Plaintiffs’ claims are typical of Class members’ claims.
8 Plaintiffs and Class members all sustained injury as a direct result of Cox’s
9 standard practices and schemes, bring the same claims, and face the same potential
10 defenses.

11 120. **Adequacy.** Plaintiffs and their counsel will fairly and adequately
12 protect Class members’ interests. Plaintiffs have no interests antagonistic to Class
13 members’ interests and are committed to representing the best interests of the
14 Classes. Moreover, Plaintiffs have retained counsel with considerable experience
15 and success in prosecuting complex class action and consumer protection cases.

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

1 122. By its conduct and omissions alleged herein, Cox has acted and
2 refused to act on grounds that apply generally to the Classes, such that declaratory
3 relief is appropriate respecting the Classes as a whole.

4 123. Cox is primarily engaged in the business of selling services. Each
5 cause of action brought by Plaintiffs against Cox in this Complaint arises from and
6 is limited to statements or conduct by Cox that consist of representations of fact
7 about Cox’s business operations or services that is or was made for the purpose of
8 obtaining approval for, promoting, or securing sales of or commercial transactions
9 in, Cox’s services or the statement is or was made in the course of delivering Cox’s
10 services. Each cause of action brought by Plaintiffs against Cox in this Complaint
11 arises from and is limited to statements or conduct by Cox for which the intended
12 audience is an actual or potential buyer or customer, or a person likely to repeat the
13 statements to, or otherwise influence, an actual or potential buyer or customer.

14 **CAUSES OF ACTION**

15 **COUNT I**

16 **Violation of the Consumers Legal Remedies Act**
17 **California Civil Code § 1750 *et seq.***

18 124. Plaintiffs reallege and incorporate by reference all paragraphs
19 previously alleged herein.

20 125. All four Plaintiffs bring this cause of action in their individual
21 capacities and as representatives of the California Class.

22 126. Defendants are each a “person,” as defined by Cal. Civ. Code
23 § 1761(c).

24 127. Plaintiffs and the California Class members are each “consumers,” as
25 defined by Cal. Civ. Code §1761(d).

26 128. Cox’s cable TV service plans—including service plans that “bundle”
27 television with other services such as internet, phone, and/or home security—are
28 “services,” as defined by Cal. Civ. Code § 1761(b).

1 129. The purchase of a Cox cable TV service plan by each Plaintiff is a
2 “transaction,” as defined by Cal. Civ. Code § 1761(e).

3 130. Each Plaintiff purchased Cox’s cable TV service plans for personal,
4 family, and/or household purposes, as meant by Cal. Civ. Code § 1761(d).

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

9 132. By its conduct and omissions alleged herein, Cox has committed
10 unlawful methods, acts or practices, including:

11 a. Misrepresenting that the prices of its cable TV service plans are
12 fixed and will not increase during the contract term, despite Cox’s pattern and
13 practice of increasing service prices mid-contract by raising the Broadcast
14 Surcharge and the Regional Sports Surcharge; and

15 b. Increasing the Broadcast Surcharge and Regional Sports
16 Surcharge on customers in the middle of promised fixed-rate contracts.

17 133. The unlawful methods, acts or practices alleged herein to have been
18 undertaken by Cox were all committed intentionally and knowingly. The unlawful
19 methods, acts or practices alleged herein to have been undertaken by Cox did not
20 result from a bona fide error notwithstanding the use of reasonable procedures
21 adopted to avoid such error.

22 134. Cox’s conduct alleged herein has violated the CLRA in multiple
23 respects, including, but not limited to, the following:

24 a. Cox represented that its cable TV service plans had
25 characteristics that they did not have (Cal. Civ. Code § 1770(a)(5));

26 b. Cox advertised its cable TV service plans with an intent not to
27 sell them as advertised (Cal. Civ. Code § 1770(a)(9));

28 c. Cox made false or misleading statements of fact concerning

1 reasons for, existence of, or amounts of, price reductions. (Cal. Civ. Code
2 § 1770(a)(13));

3 d. Cox misrepresented that its cable TV service plans were
4 supplied in accordance with previous representations when they were not (Cal. Civ.
5 Code § 1770(a)(16)); and

6 e. Cox inserted unconscionable provisions in its consumer
7 agreements, including, but not limited to, an arbitration clause which impairs the
8 ability of customers to enforce their legal rights including their ability to bring
9 arbitrations, in violation of California law (Cal. Civ. Code § 1770(a)(19)).

10 135. With respect to any omissions, Cox at all relevant times had a duty to
11 disclose the information in question because, inter alia: (a) Cox had exclusive
12 knowledge of material information that was not known to Plaintiffs and the
13 California Class members; (b) Cox concealed material information from Plaintiffs
14 and the California Class members; and (c) Cox made partial representations,
15 including regarding the supposedly fixed monthly rate of its service plans, which
16 were false and misleading absent the omitted information.

17 136. Cox's misrepresentations deceive and have a tendency to deceive the
18 general public.

19 137. Cox's misrepresentations are material, in that a reasonable person
20 would attach importance to the information and would be induced to act on the
21 information in making purchase decisions.

22 138. Plaintiffs and the California Class members reasonably relied on Cox's
23 material misrepresentations, and would not have purchased, or would have paid less
24 money for, Cox's cable TV service plans had they known the truth.

25 139. As a direct and proximate result of Cox's violations of the CLRA,
26 Plaintiffs and the California Class members have been harmed and lost money or
27 property.

28 140. Cox's conduct has caused substantial injury to Plaintiffs and the

1 California Class members.

2 141. Cox’s misconduct is ongoing with regard to California Class members
3 who are under term contracts that are still subject to the Broadcast Surcharge and
4 the Regional Sports Surcharge. Accordingly, Plaintiffs seek an order enjoining Cox
5 from charging California Class members who are in fixed-rate contracts any
6 amounts for the Surcharges that are higher than the initial rates of the Broadcast
7 Surcharge and Regional Sports Surcharge that were in effect at the start of their
8 contracts.

9 142. In accordance with California Civil Code § 1782(a), Plaintiffs, through
10 counsel, served Cox with notice of its CLRA violations by USPS certified mail,
11 return receipt requested on August 30, 2022.

12 143. If Cox fails to provide appropriate relief for its CLRA violations
13 within 30 days of its receipt of Plaintiffs’ notification letter, Plaintiffs will amend or
14 seek leave to amend this Complaint to pray for compensatory and punitive damages
15 as permitted by Cal. Civ. Code §§ 1780 and 1782(b), along with attorneys’ fees and
16 costs.

17
18 **COUNT II**

19 **Violation of California’s False Advertising Law
20 California Business and Professions Code § 17500 *et seq.***

21 144. Plaintiffs reallege and incorporate by reference all paragraphs
22 previously alleged herein.

23 145. All four Plaintiffs bring this cause of action in their individual
24 capacities and as representatives of the California Class.

25 146. By its conduct and omissions alleged herein, Cox has committed acts
26 of untrue or misleading advertising, as defined by and in violation of California
27 Business & Professions Code § 17500, *et seq.*, also known as California’s False
28 Advertising Law (“FAL”). These acts include misrepresenting that the prices of its
cable TV service plans are fixed and will not increase during the contract term,

1 despite Cox's pattern and practice of increasing service prices mid-contract by
2 raising the Broadcast Surcharge and the Regional Sports Surcharge.

3 147. With respect to omissions, Cox at all relevant times had a duty to
4 disclose the information in question because, inter alia: (a) Cox had exclusive
5 knowledge of material information that was not known to Plaintiffs and the
6 California Class members; (b) Cox concealed material information from Plaintiffs
7 and the California Class members; and (c) Cox made partial representations,
8 including regarding the supposedly fixed monthly prices of its services, which were
9 false or misleading absent the omitted information.

10 148. Cox committed such violations of the FAL with actual knowledge that
11 its advertising was untrue or misleading, or Cox, in the exercise of reasonable care,
12 should have known that its advertising was untrue or misleading.

13 149. Cox's misrepresentations and nondisclosures deceived and had a
14 tendency to deceive the general public.

15 150. Cox's misrepresentations and nondisclosures are material, in that a
16 reasonable person would attach importance to the information and would be
17 induced to act on the information in making purchase decisions.

18 151. Plaintiffs and members of the California Class reasonably relied on
19 Cox's material misrepresentations and nondisclosures, and would not have
20 purchased, or would have paid less money for, Cox's cable TV services had they
21 known the truth.

22 152. As a direct and proximate result of Cox's violations of the FAL,
23 Plaintiffs and the California Class members lost money.

24 153. By its conduct and omissions alleged herein, Cox received more
25 money from Plaintiffs and the California Class members than it should have
26 received, and that money is subject to restitution.

27 154. Plaintiffs seek an order granting restitution to Plaintiffs and the
28 California Class members in an amount to be proven at trial. Plaintiffs further seek

1 an award of attorneys’ fees and costs under Cal. Code Civ. Proc. § 1021.5.

2
3 **COUNT III**

4 **Violation of California’s Unfair Competition Law**
5 **California Business and Professions Code § 17200 *et seq.***

6 155. Plaintiffs reallege and incorporate by reference all paragraphs
7 previously alleged herein.

8 156. All four Plaintiffs bring this cause of action in their individual
9 capacities and as representatives of the California Class.

10 157. California Business & Professions Code § 17200, *et seq.*, also known
11 as California’s Unfair Competition Law (“UCL”), prohibits any unfair, unlawful, or
12 fraudulent business practice.

13 158. Cox has violated the UCL by engaging in the following **unlawful**
14 business acts and practices:

15 a. Making material misrepresentations in violation of Cal. Civ.
16 Code §§ 1770(a)(5), (9), (13), and (16) (the CLRA);

17 b. Inserting unconscionable provisions in its consumer agreements
18 in violation of Cal. Civ. Code § 1770(a)(19) (the CLRA);

19 c. Making material misrepresentations in violation of Cal. Bus. &
20 Prof. Code § 17500 *et seq.* (the FAL); and

21 d. Engaging in deceit in violation of Cal Civ. Code §§ 1709–1710.

22 159. Cox has violated the UCL by engaging in the following **unfair** and
23 **fraudulent** business acts and practices:

24 a. Misrepresenting that the prices of its cable TV service plans are
25 fixed and will not increase during the contract term, despite Cox’s pattern and
26 practice of increasing service prices mid-contract by raising the Broadcast
27 Surcharge and the Regional Sports Surcharge;

28 b. Increasing the Broadcast Surcharge and Regional Sports
Surcharge on customers in the middle of promised fixed-rate contracts; and

1 c. Preventing or discouraging customers from freely canceling
2 their services if they learned that Cox had increased the price of their services in the
3 middle of promised fixed-rate contracts via increases to the Broadcast Surcharge
4 and the Regional Sports Surcharge.

5 160. With respect to omissions, Cox at all relevant times had a duty to
6 disclose the information in question because, inter alia: (a) Cox had exclusive
7 knowledge of material information that was not known to Plaintiffs and the the
8 California Class members; (b) Cox concealed material information from Plaintiffs
9 and the California Class members; and (c) Cox made partial representations,
10 including regarding the supposedly fixed monthly prices of its services, which were
11 false or misleading absent the omitted information.

12 161. Cox's misrepresentations and nondisclosures deceive and have a
13 tendency to deceive the general public.

14 162. Cox's misrepresentations and nondisclosures are material, in that a
15 reasonable person would attach importance to the information and would be
16 induced to act on the information in making purchase decisions.

17 163. Plaintiffs and members of the California Class reasonably relied on
18 Cox's material misrepresentations and nondisclosures, and would not have
19 purchased, or would have paid less money for, Cox's cable TV services had they
20 known the truth.

21 164. As a direct and proximate result of Cox's unfair, unlawful, and
22 fraudulent conduct, Plaintiffs and the California Class members lost money.

23 165. By its conduct and omissions alleged herein, Cox received more
24 money from Plaintiffs and the California Class members than it should have
25 received, and that money is subject to restitution.

26 166. Cox's conduct and omissions alleged herein are immoral, unethical,
27 oppressive, unscrupulous, unconscionable, and/or substantially injurious to
28 Plaintiffs and the California Classes. Perpetrating a years-long scheme of

1 misleading and overcharging customers is immoral, unethical, and unscrupulous.
2 Moreover, Cox’s conduct is oppressive and substantially injurious to consumers.
3 By its conduct alleged herein, Cox has improperly extracted tens of millions of
4 dollars from California consumers. There is no utility to Cox’s conduct, and even if
5 there were any utility, it would be significantly outweighed by the gravity of the
6 harm to consumers caused by Cox’s conduct alleged herein.

7 167. Plaintiffs seek an order granting restitution to Plaintiffs and the
8 California Class members in an amount to be proven at trial. Plaintiffs further seek
9 an award of attorneys’ fees and costs under Cal. Code Civ. Proc. § 1021.5.

10 168. Cox’s misconduct is ongoing with regard to California Class members
11 who are under term contracts that are still subject to the Broadcast Surcharge and
12 the Regional Sports Surcharge. Accordingly, Plaintiffs seek an order enjoining Cox
13 from charging California Class members who are in fixed-rate contracts any
14 amounts for the Surcharges that are higher than the initial rates of the Broadcast
15 Surcharge and Regional Sports Surcharge that were in effect at the start of their
16 contracts.

17
18 **COUNT IV**

19 **Violation of the Nevada Deceptive Trade Practices Act**
20 **NRS Chapter 598**

21 169. Plaintiff Daniel Polinsky realleges and incorporates by reference all
22 paragraphs previously alleged herein.

23 170. Plaintiff Daniel Polinsky brings this cause of action in his individual
24 capacity and as a representative of the Nevada Classes.

25 171. Under the Nevada Deceptive Trade Practices Act (“NDTPA”), “[a]n
26 action may be brought by any person who is a victim of consumer fraud.” NRS
27 41.600(1). “If the claimant is the prevailing party, the court shall award the
28 claimant: (a) Any damages that the claimant has sustained; (b) Any equitable relief
that the court deems appropriate; and (c) The claimant’s costs in the action and

1 reasonable attorney’s fees.” NRS 41.600(3).

2 172. Actionable “consumer fraud” includes deceptive trade practices as
3 defined in NRS 598.0915 to 598.0925. *See* NRS 41.600(2)(e).

4 173. “To state a private right of action under the NDTPA, a plaintiff must
5 allege: (1) defendant violated the NDTPA, (2) causing plaintiff, (3) damages.”
6 *Switch, Ltd. v. Uptime Inst., LLC*, 426 F. Supp. 3d 636, 643 (D. Nev. 2019).

7 174. Cox’s practice of increasing service prices in the middle of promised
8 fixed-rate contracts by raising the Broadcast Surcharge and the Regional Sports
9 Surcharge violates the NDTPA in the following ways:

10 a. Cox knowingly represented that its cable TV service plans had
11 characteristics that they did not have (NRS 598.0915(5));

12 b. Cox advertised its cable TV service plans with an intent not to
13 sell them as advertised (NRS 598.0915(9));

14 c. Cox made false or misleading statements of fact concerning the
15 prices of its cable TV service plans. (NRS 598.0915(13));

16 d. Cox knowingly made false representations in transactions
17 related to its cable TV service plans (NRS 598.0915(15));

18 e. Cox failed to disclose a material fact in connection with the sale
19 of its cable TV service plans (NRS 598.0923(1)(b)); and

20 f. Cox used an unconscionable practice in its transactions related
21 to its cable TV service plans ((NRS 598.0923(1)(e)).

22 175. With respect to any omissions, Cox at all relevant times had a duty to
23 disclose the information in question because, inter alia: (a) Cox had exclusive
24 knowledge of material information that was not known to Plaintiff and the Class
25 members; (b) Cox concealed material information from Plaintiff and the Class
26 members; and (c) Cox made partial representations, including regarding the
27 supposedly fixed monthly rate of its service plans, which were false and misleading
28 absent the omitted information.

1 176. The deceptive trade practices alleged herein to have been undertaken
2 by Cox were all committed intentionally and knowingly. The deceptive trade
3 practices alleged herein to have been undertaken by Cox did not result from a bona
4 fide error notwithstanding the use of reasonable procedures adopted to avoid such
5 error.

6 177. Cox's misrepresentations deceive and have a tendency to deceive the
7 general public.

8 178. Cox's misrepresentations are material, in that a reasonable person
9 would attach importance to the information and would be induced to act on the
10 information in making purchase decisions.

11 179. Plaintiff Polinsky and the Nevada Class members reasonably relied on
12 Cox's material misrepresentations, and would not have purchased, or would have
13 paid less money for, Cox's cable TV service plans had they known the truth.

14 180. As a direct and proximate result of Cox's violations of the NDTPA,
15 Plaintiff Polinsky and the Nevada Class members have been harmed and lost
16 money or property.

17 181. Plaintiff Polinsky seeks an order awarding damages and equitable
18 relief (including restitution and/or disgorgement) to Mr. Polinsky and the Nevada
19 Class members in an amount to be proven at trial. NRS 41.600(3). Mr. Polinsky
20 also seeks punitive damages. NRS 42.005. Mr. Polinsky further seeks an award of
21 attorneys' fees and costs. NRS 41.600(3).

22 182. Cox's misconduct is ongoing with regard to Nevada Class members
23 who are under term contracts that are still subject to the Broadcast Surcharge and
24 the Regional Sports Surcharge. Accordingly, Plaintiff Polinsky seeks an order
25 enjoining Cox from charging Nevada Class members who are in fixed-rate
26 contracts, any amounts for the Surcharges that are higher than the initial rates of the
27 Broadcast Surcharge and Regional Sports Surcharge that were in effect at the start
28 of their contracts.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT V
Breach of Contract

183. Plaintiffs reallege and incorporate by reference all paragraphs previously alleged herein.

184. All four Plaintiffs bring this cause of action in their individual capacities and as representatives of the Classes.

185. Plaintiffs allege this cause of action in the alternative to Count VI.

186. Cox entered into contracts with Plaintiffs and all members of the Classes when Plaintiffs and the members of the Classes each accepted Cox’s offer of a specified cable TV service plan under a term contract.

187. All of the contracts between Cox and Plaintiffs and the members of the Classes contained the following material terms: Cox would provide the ordered cable TV service plan, and, in exchange, the customer would pay a specific promised monthly price for service that was fixed for a specific period of months.

188. Plaintiffs and the members of the Classes have performed, for the relevant time frame, all of each’s material obligations under the contract or have been excused from any non-performance.

189. Cox breached the contract by increasing the monthly service price in the middle of its term contracts with Plaintiffs and each member of the Classes via raises of the Broadcast Surcharge and the Regional Sports Surcharge.

190. Plaintiffs and the members of the Classes sustained damages as a result of Cox’s breaches of contract. Plaintiffs seek damages in the amount they and the Classes paid in mid-contract increases to the Broadcast Surcharge and the Regional Sports Surcharge.

COUNT VI

Breach of the Implied Covenant of Good Faith and Fair Dealing

191. Plaintiffs reallege and incorporate by reference all paragraphs previously alleged herein.

1 192. All four Plaintiffs bring this cause of action in their individual
2 capacities and as representatives of the Classes.

3 193. Plaintiffs allege this cause of action in the alternative to Count V.

4 194. To the extent any applicable contract could be read as granting Cox
5 discretion to increase the Broadcast Surcharge and the Regional Sports Surcharge in
6 the middle of promised fixed-rate term service agreements—which Plaintiffs do not
7 concede—that discretion is not unlimited, but rather is limited by the covenant of
8 good faith and fair dealing implied in every contract by California law and by
9 Nevada law.

10 195. Cox has violated the covenant of good faith and fair dealing by its
11 conduct alleged herein.

12 196. Cox has abused any discretion it purportedly had under any applicable
13 contract to raise the monthly price for Cox’s cable TV services in the middle of the
14 term contract. Cox used the Broadcast Surcharge and the Regional Sports
15 Surcharge as levers to covertly ratchet up the service price in the middle of the
16 contract period, despite Cox’s promises and advertising that the service rates were
17 “guaranteed” to not change during the term contract.

18 197. Cox meanwhile utilized the threat of imposing an early termination fee
19 to discourage customers from freely canceling their services if they ever learned
20 that Cox had increased their service price mid-contract via increases to the
21 Broadcast Surcharge and the Regional Sports Surcharge.

22 198. Cox’s mid-contract increases to the Broadcast Surcharge and the
23 Regional Sports Surcharge defied customers’ reasonable expectations, were
24 objectively unreasonable, and frustrated the basic terms of the parties’ agreement.
25 Cox’s conduct alleged herein was arbitrary and in bad faith.

26 199. Cox’s conduct described herein has had the effect, and the purpose, of
27 denying Plaintiffs and the members of the Classes the full benefit of their bargains
28 with Cox.

1 c. Order Cox to stop charging Class members who are in fixed-rate
2 contracts any amounts for the Surcharges that are higher than the initial rates of the
3 Broadcast Surcharge and Regional Sports Surcharge that were in effect at the start
4 of their contracts;

5 d. Order disgorgement and/or restitution, including, without
6 limitation, disgorgement of all revenues, profits and/or unjust enrichment that Cox
7 obtained, directly or indirectly, from Plaintiffs and the members of the Classes as a
8 result of the unlawful conduct alleged herein regarding raises of the Broadcast
9 Surcharge and the Regional Sports Surcharge during their fixed-rate contracts;

10 e. Order Cox to pay damages for breach of contract (or in the
11 alternative, for breach of the implied covenant of good faith and fair dealing) to
12 members of each Class in the amount they paid in mid-contract increases to the
13 Broadcast Surcharge and the Regional Sports Surcharge;

14 f. Order Cox to pay damages, and also punitive damages, to
15 Plaintiff Polinsky and the members of the Nevada Classes for violation of the
16 Nevada Deceptive Trade Practices Act;

17 g. Order Cox to pay attorneys' fees, costs, and pre-judgment and
18 post-judgment interest to the extent allowed by law; and

19 h. Grant such other relief as this Court deems just and proper.

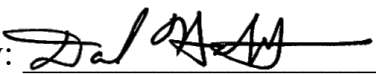
20 **DEMAND FOR JURY TRIAL**

21 Each Plaintiff, individually and as a class representative on behalf of all
22 others similarly situated, demands a trial by jury on all issues so triable.

23
24 DATED: August 30, 2022.

25 Presented by:

26 HATTIS & LUKACS

27 By: 
28 Daniel M. Hattis (SBN 232141)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Paul Karl Lukacs (SBN 197007)
HATTIS & LUKACS
11711 SE 8th Street, Suite 120
Bellevue, Washington 98005
Telephone: (425) 233-8650
Facsimile: (425) 412-7171
Email: dan@hattislaw.com
Email: pkl@hattislaw.com

*Attorneys for Plaintiffs
and the Proposed Classes*

JS 44 (Rev. 10/20)

CIVIL COVER SHEET

'22CV1290 RSH MSB

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
DONALD CHRISTIANSON, ISABEL PRADO, NEIL MOURA, and DANIEL POLINSKY
(b) County of Residence of First Listed Plaintiff San Diego County
(c) Attorneys (Firm Name, Address, and Telephone Number)
Hattis & Lukacs, Daniel M. Hattis & Paul Karl Lukacs, (425) 233-8650, 11711 SE 8th St, Ste 120, Bellevue, WA 98005

DEFENDANTS
COX COMMUNICATIONS, INC., and COXCOM, LLC
County of Residence of First Listed Defendant Fulton County, GA
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State PTF DEF
Citizen of Another State PTF DEF
Citizen or Subject of a Foreign Country PTF DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(d)(2)
Brief description of cause:
Deceptive fees, fraud, breach of contract

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE August 30, 2022 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE