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**Pro Hac Vice Application to Be Submitted*

DAQUIS SEALE, NICK VASQUEZ, ANNETTE BAKER, JEFF LAMOREE, KATHRYN MAJOR, NATIVIDAD CONCEPCION, XUE SHI LIN, and JESSE FRIEDMAN, on behalf of themselves and all others similarly situated, Plaintiffs, v. ALTICE USA, INC.; CEBRIDGE TELECOM CA, LLC (D/B/A SUDDENLINK COMMUNICATIONS); and CSC HOLDINGS, LLC (D/B/A OPTIMUM), Defendants.	SUPERIOR COURT OF NEW JERSEY MERCER COUNTY LAW DIVISION DOCKET NO. **CLASS ACTION COMPLAINT**

Plaintiffs Daquis Seale, Nick Vasquez, Annette Baker, Jeff Lamoree, Kathryn Major, Natividad Concepcion, Xue Shi Lin, and Jesse Friedman (collectively "Plaintiffs"), on behalf of themselves and all others similarly situated, allege as follows, on personal knowledge and investigation of counsel, against Defendants Altice USA, Inc.; Cebridge Telecom CA, LLC (d/b/a Suddenlink Communications); and CSC Holdings, LLC (d/b/a Optimum) (collectively "Defendants" or "Altice"):

INTRODUCTION AND SUMMARY

1. Plaintiffs, on behalf of themselves and all others similarly situated, bring this action under New Jersey, California, and New York law to challenge a bait-and-switch scheme whereby Defendants charged their customers more for internet and television service than Defendants advertised and promised.

2. With respect to the sale of internet service, Defendants advertised and promised to sell internet service to consumers at flat monthly rates for a specified time period, and Defendants' customers agreed to pay those rates for Defendants' internet service. However, Defendants actually charged their customers higher monthly rates by unilaterally and deceptively adding to each customer's monthly bill a fabricated, undisclosed, and extra-contractual additional charge, which Defendants called a "Network Enhancement Fee." Defendants used this Network Enhancement Fee as a way to covertly increase their customers' monthly rates for Defendants' own profit, including during their customers' advertised and promised fixed-rate service periods.

3. Defendants began padding their internet bills with the so-called Network Enhancement Fee in February 2019, at a rate of $2.50 per month for each internet customer. Defendants thereafter increased the Network Enhancement Fee to $3.50 per month, which amount they currently charge each and every internet customer on a monthly basis over and above the advertised and agreed-to monthly rates for such service.

4. The Network Enhancement Fee was not included in the advertised and quoted internet service plan prices to which Defendants' customers – *i.e.,* Plaintiffs and Class members – agreed when they purchased internet service from Defendants. Indeed, it is specifically alleged that neither Plaintiffs nor the Class members ever agreed or consented to the Fee or to any increases thereto.

5. Nor did Defendants disclose the Network Enhancement Fee to internet customers before or when said customers agreed to purchase internet service from Defendants.

6. Rather, the first time Defendants ever mentioned the Network Enhancement Fee to their customers was on their monthly billing statements, which customers began receiving only after they signed up for internet service and were committed to their purchase. Even then, Defendants deliberately buried the Fee, without any definition or explanation whatsoever, in middle of their billing statements. Thus, by Defendants' very design, Defendants' monthly statements served to further Defendants' scheme and keep Defendants' customers from realizing they were being overcharged.

7. In the event that a customer happened to notice that the Network Enhancement Fee had been charged on his or her monthly statement and contacted Defendants to inquire about the Fee, Defendants' agents would falsely tell the customer that the Fee was a tax or government fee or was otherwise out of Defendants' control.

8. In actuality, the Network Enhancement Fee was not a tax or government fee. Nor did Defendants' customers receive anything different or more than they were promised in exchange for paying the Fee. Rather, the so-called Fee was and is a completely fabricated and arbitrary double-charge invented by Defendants as a way to covertly charge more per month for Defendants' internet service without having to advertise higher prices.

9. With respect to the sale of television service, Defendants similarly advertised their television service plans at specific flat monthly rates that were locked in for a promotional period or term contract, without disclosing or including two additional service charges – a "Broadcast Station Programming Surcharge"[1] and a "Sports Programming Surcharge."

[1] The "Broadcast Station Programming Surcharge" was previously called the "Broadcast Station Surcharge." At some point, Defendants added the word "Programming" to the name. This Complaint will refer to the surcharge using its most recent name, the "Broadcast Station Programming Surcharge."

10. As with Defendants' Network Enhancement Fee, the Broadcast Station Programming Surcharge and Sports Programming Surcharge also were not taxes or government fees. Rather, they were disguised double-charges for Defendants' television service, and were set by and entirely in the control of Defendants.

11. Defendants utilized the Broadcast Station Programming Surcharge and the Sports Programming Surcharge to: (a) charge more per month for Defendants' television service without having to advertise higher prices; and (b) as a way to covertly increase their customers' rates, even during their promised fixed-rate promotional period or term contract.

12. Defendants charged every one of their internet service customers the undisclosed, extra-contractual Network Enhancement Fee, including Plaintiffs and each member of the proposed internet fee Class. And Defendants charged every one of their television service customers the undisclosed, extracontractual Broadcast Station Programming Surcharge, including Plaintiffs Baker, Lamoree, and Major and each member of the proposed television fees Class. Most of Defendants' television customers, including Plaintiffs Baker, Lamoree, and Major and numerous members of the proposed television fees Class, were also charged the Sports Programming Surcharge by Defendants. Plaintiffs estimate that Defendants have pilfered more than $150 million in Network Enhancement Fees, Broadcast Station Programming Surcharges, and Sports Programming Surcharges from their unsuspecting internet and television customers since they unilaterally began imposing these fees and charges.

13. Plaintiffs bring this lawsuit individually and on behalf of proposed Classes comprised of all of Defendants' internet and television customers in the United States, seeking restitution and/or damages on behalf of themselves and the Classes to obtain a refund of all the undisclosed, extra-contractual fees and surcharges they paid to Defendants as a result of Defendants' misconduct.

THE PARTIES

14. Plaintiff Daquis Seale is a citizen and resident of Trenton, Mercer County, New Jersey, and was a customer of Defendants' Optimum internet service during the class period. Like every other internet fee class member, Plaintiff Daquis Seale has been victimized by the same uniform policies described in detail herein, in that she signed up for Defendants' internet service in the manner described herein, received or was directed to the same uniformly-worded documents and/or websites described herein, received an internet bill which imposed the same undisclosed Network Enhancement Fee in the same uniform language as described herein, and paid the Network Enhancement Fee complained of herein.

15. Plaintiff Nick Vasquez is a citizen and resident of Humboldt County, California, and was a customer of Defendants' Suddenlink/Optimum[2] internet service during the class period. Like every other internet fee class member, Plaintiff Nick Vasquez has been victimized by the same uniform policies described in detail herein, in that he signed up for Defendants' internet service in the manner described herein, received or was directed to the same uniformly-worded documents and/or websites described herein, received an internet bill which imposed the same undisclosed Network Enhancement Fee in the same uniform language as described herein, and paid the Network Enhancement Fee complained of herein.

16. Plaintiff Annette Baker is a citizen and resident of Humboldt County, California, and was a customer of Defendants' Optimum internet and television service during the class period. Like every other internet and television fee class member, Plaintiff Annette Baker has been victimized by the same uniform policies described in detail herein, in that she signed up

[2] Prior to August 1, 2022, Defendants provided their internet and television services to California customers under the brand name "Suddenlink." On August 1, 2022, Defendants changed their brand name to "Optimum." This Complaint will henceforth refer to Defendants' internet and television services using their current name of "Optimum."

for Defendants' internet and television service in the manner described herein, received or was directed to the same uniformly-worded documents and/or websites described herein, received a bill for internet and television services which imposed the same undisclosed Network Enhancement Fee, Broadcast Station Programming Surcharge, and Sports Programming Surcharge in the same uniform language as described herein, and paid the Network Enhancement Fee, Broadcast Station Programming Surcharge, and Sports Programming Surcharge complained of herein.

17. Plaintiff Jeff Lamoree is a citizen and resident of Humboldt County, California, and was a customer of Defendants' Optimum internet and television service during the class period. Like every other internet and television fee class member, Plaintiff Jeff Lamoree has been victimized by the same uniform policies described in detail herein, in that he signed up for Defendants' internet and television service in the manner described herein, received or was directed to the same uniformly-worded documents and/or websites described herein, received a bill for internet and television services which imposed the same undisclosed Network Enhancement Fee, Broadcast Station Programming Surcharge, and Sports Programming Surcharge in the same uniform language as described herein, and paid the Network Enhancement Fee, Broadcast Station Programming Surcharge, and Sports Programming Surcharge complained of herein.

18. Plaintiff Kathryn Major is a citizen and resident of Humboldt County, California, and was a customer of Defendants' Optimum internet and television service during the class period. Like every other internet and television fee class member, Plaintiff Kathryn Major has been victimized by the same uniform policies described in detail herein, in that she signed up for Defendants' internet and television service in the manner described herein, received or was directed to the same uniformly-worded documents and/or websites described

herein, received a bill for internet and television services which imposed the same undisclosed Network Enhancement Fee, Broadcast Station Programming Surcharge, and Sports Programming Surcharge in the same uniform language as described herein, and paid the Network Enhancement Fee, Broadcast Station Programming Surcharge, and Sports Programming Surcharge complained of herein.

19. Plaintiff Natividad Concepcion is a citizen and resident of Brooklyn, Kings County, New York, and was a customer of Defendants' Optimum internet service during the class period. Like every other internet fee class member, Plaintiff Natividad Concepcion has been victimized by the same uniform policies described in detail herein, in that she signed up for Defendants' internet service in the manner described herein, received or was directed to the same uniformly-worded documents and/or websites described herein, received an internet bill which imposed the same undisclosed Network Enhancement Fee in the same uniform language as described herein, and paid the Network Enhancement Fee complained of herein.

20. Plaintiff Xue Shi Lin is a citizen and resident of Brooklyn, Kings County, New York, and was a customer of Defendants' Optimum internet service during the class period. Like every other internet fee class member, Plaintiff Xue Shi Lin has been victimized by the same uniform policies described in detail herein, in that she signed up for Defendants' internet service in the manner described herein, received or was directed to the same uniformly-worded documents and/or websites described herein, received an internet bill which imposed the same undisclosed Network Enhancement Fee in the same uniform language as described herein, and paid the Network Enhancement Fee complained of herein.

21. Plaintiff Jesse Friedman is a citizen and resident of Bridgeport, Fairfield County, Connecticut, and was a customer of Defendants' Optimum internet service during the class period. Like every other internet fee class member, Plaintiff Jesse Friedman has been

victimized by the same uniform policies described in detail herein, in that he signed up for Defendants' internet service in the manner described herein, received or was directed to the same uniformly-worded documents and/or websites described herein, received an internet bill which imposed the same undisclosed Network Enhancement Fee in the same uniform language as described herein, and paid the Network Enhancement Fee complained of herein. Plaintiff Jesse Friedman seeks relief from Defendants under New York law pursuant to Defendants' Residential General Terms and Conditions of Service, Paragraph 25, which purports to govern the relationship between Defendants and their customers and provides that "this Agreement shall be governed by the laws of the state of New York."[3]

22. Defendant Altice USA, Inc., is a corporation chartered under the laws of Delaware, with its principal place of business in Long Island City, Queens County, New York.

23. Defendant Cebridge Telecom CA, LLC is a limited liability company chartered under the laws of Delaware, with its principal place of business in New York.

24. Defendant CSC Holdings, LLC is a limited liability company chartered under the laws of Delaware, with its principal place of business in Long Island City, Queens County, New York.

25. Without formal discovery, Plaintiffs are unable to determine exactly which entities engaged in or assisted with the specific unlawful conduct pled herein or which instructed, approved, consented, or participated in such unlawful conduct. "Optimum" and/or "Suddenlink" are the business entities that are referenced in Plaintiffs' billing statements, yet neither "Optimum" nor "Suddenlink" appears to be an actual business entity. Meanwhile, CSC Holdings, LLC and "Altice" are referenced in the Optimum General Terms and Conditions of Service (Residential), and CSC Holdings, LLC is listed as holding the copyright on the

[3] *See* https://www.optimum.com/terms-of-service/residential.

Optimum website at www.optimum.com. Based on counsel's research, Defendant Altice USA, Inc., is the parent and holding company that provides, through its subsidiaries which include CSC Holdings, LLC, broadband internet, communication, and video services under the brand "Optimum." Defendant Altice USA, Inc.'s most recent 10-K report lists several dozen subsidiaries, none of which is named "Optimum." The relevant operating company in New Jersey, New York, and Connecticut appears to be Defendant CSC Holdings, LLC, which is a subsidiary of Altice USA, Inc. The relevant operating company in California appears to be Defendant Cebridge Telecom CA, LLC, which is also a subsidiary of Altice USA, Inc.

26. Based on the foregoing, Defendants Altice USA, Inc.; CSC Holdings, LLC; and Cebridge Telecom CA, LLC will collectively be referred to herein as "Defendants" or "Altice."

JURISDICTION AND VENUE

27. **Personal Jurisdiction**. This Court has personal jurisdiction over all Defendants because, *inter alia*: (a) each Defendant transacted business in New Jersey; (b) each Defendant maintained continuous and systematic contacts in New Jersey prior to and during the class period; and; (c) each Defendant purposefully availed themselves of the benefits of doing business in New Jersey. Accordingly, Defendants maintain minimum contacts with New Jersey which are more than sufficient to subject them to service of process and to comply with due process of law.

28. More specifically, Defendants own and operate approximately twenty (20) brick and mortar retail stores within the state of New Jersey, and did so during the class period.

29. **Venue**. Venue is proper in Mercer County because Plaintiff Daquis Seale is a New Jersey citizen who resides in Trenton, Mercer County, New Jersey, and certain services at issue were purchased for, and provided to, Plaintiff Seale's home in Trenton, Mercer County, New Jersey.

FACTUAL ALLEGATIONS OF DEFENDANTS' BAIT AND SWITCH SCHEME

30. Defendant Altice USA, Inc. is the fourth-largest cable television provider in the United States, supplying internet, television, and telephone services to approximately 4.9 million residential and business customers in 21 states. Defendant CSC Holdings, LLC, which does business as and operates under the "Optimum" brand name, is a regional subsidiary of Altice USA, Inc. that services businesses and households primarily in New Jersey, New York, and Connecticut, and offers services to approximately 11.9 million people across those three states. Defendant Cebridge Telecom CA, LLC, which until recently did business as and operated under the "Suddenlink" brand name and now does business as and operates under the "Optimum" brand name, is also a regional subsidiary of Altice USA, Inc. that services approximately 19,000 businesses and households in California.

I. Defendants' Unlawful Internet Service Fee.

31. Virtually all of Defendants' customers subscribe to internet service, and many also subscribe to television and/or telephone services as part of a "bundled" internet service plan. (The term "internet service plan" as used in this Complaint includes a service plan that "bundles" internet with other services such as television or telephone.)

32. Defendants advertise all of their internet service plans at specific, flat monthly prices that are advertised to be "locked-in" for a certain promotional period. Defendants typically promise their customers a one-year fixed-price promotional period, but Defendants also regularly advertise a "Price For Life" promotion where they offer and promise their customers a fixed price for an internet service plan for life.

33. Defendants have aggressively advertised their internet service plans through pervasive marketing directed at the consuming public in their service areas throughout the United States. This marketing has included advertisements on Defendants' website; other

internet advertising; materials and advertising at Defendants' retail stores in where customers can sign up for internet and other services; and video advertisements via YouTube, Facebook, and Twitter.

34. Prior to February 2019, Defendants included in their advertised and quoted monthly internet service plan prices all monthly internet service costs that would be charged on their customers' monthly bills.

35. But beginning in February 2019, Defendants unilaterally began padding their customers' internet bills with a newly-invented and disguised $2.50 extra charge each month for internet service – which charge was *not* included in the advertised and quoted service plan price, and which Defendants' customers did *not* agree to pay – which Defendants called the "Network Enhancement Fee." Defendants buried the Network Enhancement Fee in the middle of their monthly bills, and provided no definition or explanation of the Fee in their monthly bills or on their website.

36. In or around February 2020, Defendants increased the Network Enhancement Fee charged to their internet customers by $1.00, to $3.50 per customer per month.

37. Defendants' Network Enhancement Fee was not a tax or government fee, nor was it a legitimate "pass-through" charge. Nor did Defendants' customers receive anything different or more than they were promised in exchange for paying the Fee to Defendants. Rather, the Network Enhancement Fee was a completely fabricated and arbitrary charge invented by Defendants as a way to covertly charge their customers more per month for internet service than the amounts Defendants had promised, and to which their customers had agreed, for Defendants' own profit.

38. Moreover, Defendants never adequately disclosed the existence, amount, or nature of the Network Enhancement Fee to their customers, nor any increases thereto. Nor did

Defendants ever seek consent or agreement from their customers to charge the Fee, and in fact no Plaintiff or Class member ever consented or agreed to pay the Fee (or any increases thereto). Rather, the Network Enhancement Fee was arbitrarily and unilaterally imposed by Defendants, and increased, without adequate disclosure, solely to increase Defendants' own profit.

39. Defendants have utilized this fabricated and arbitrary Network Enhancement Fee as part of a "bait-and-switch" scheme whereby Defendants (a) advertised and promised a lower monthly price for their internet service plans than Defendants actually charged, and then (b) surreptitiously increased the monthly service rate for internet customers, including in the middle of promised, fixed-rate promotional periods, by imposing (and increasing) the Network Enhancement Fee.

40. Based on Plaintiffs' calculations, through this bait-and-switch scheme Defendants have extracted in excess of $150 million in Network Enhancement Fee payments from their internet subscribers.

A. Defendants' Website Advertising and Online Purchase Process Made False and Misleading Statements About the Prices Defendants Charged for Internet Service Plans.

41. Defendants explicitly represented in their website advertising and representations to consumers like Plaintiffs and the Class that the advertised prices for their internet service plans included all monthly service charges, and that the promised monthly rates would be fixed during the specified promotional period.

42. For example, Defendants' online order process consists of four webpages: (a) the "Select Your Services" webpage; (b) the "Customize Your Services" webpage; (c) the "Customer Information" webpage; and (d) the "Schedule Installation" and "Place Order" webpage.

43. On the "Select Your Services" webpage, Defendants advertised, *inter alia*, the Optimum 100 internet service plan at a flat rate of $29.99 a month. Upon selecting this service plan, customers would see, in large, bold font on the right side of the webpage, that their "Monthly Total" price for the Optimum 100 internet service plan was "$29.99."

44. Below the $29.99 "Monthly Total" representation, however, was smaller text reading: "Additional taxes, fees, surcharges, and restrictions apply." But there was no explanation specifying what additional taxes, fees, or surcharges might apply. A reasonable consumer would assume that any "additional taxes, fees, [or] surcharges" would be legitimate government or pass-through charges outside of Defendants' control, as opposed to a fabricated and arbitrary fee which was a disguised double-charge to provide the same internet service that Defendants advertised as included in the $29.99 monthly price.

45. Upon selecting the $29.99 Optimum 100 internet service plan, the consumer would then be taken to the "Customize Your Services" webpage, where the consumer could customize the service and select add-ons.

46. As on the "Select Your Services" webpage, the right side of the "Customize" webpage prominently stated in large, bold font that the "Monthly Charges" were $29.99. Directly below that, Defendants listed a breakdown showing that the monthly price for the "Optimum 100" plan was $34.99 less a $5.00 discount for enrolling in "Auto Pay" and "Paperless Billing." Again, in smaller text below the $29.99 "Monthly Charges" representation Defendants stated that "Additional taxes, fees, surcharges, and restrictions apply," but there was no explanation specifying what additional taxes, fees, or surcharges might apply.

47. Importantly, there was no disclosure language, asterisk, or link adjacent to or in the vicinity of the promised monthly price indicating that Defendants would charge an additional monthly internet service Fee of $3.50, such that the true "Monthly Charges" for the

Optimum 100 internet service plan was actually $33.49, not $29.99 – representing an 11.7% increase in the total monthly cost to Defendants' customers of the Optimum 100 plan.

48. Further, there was no disclosure language indicating that the internet service plan price could be raised at any time during the purported fixed-rate period; only the statement in small print that "Additional taxes, fees, surcharges and restrictions apply." Again, a reasonable consumer would assume that "taxes, fees, surcharges" referred to legitimate government or pass-through charges outside of Defendants' control, as opposed to a bogus fee unilaterally imposed by Defendants which was in fact a disguised double-charge for the same internet service above and beyond the promised and agreed-to service price.

49. Next, the customer would be taken to the "Customer Information" webpage. Again, the right side of the webpage continued to state that the total "Monthly Charges" for the Optimum 100 internet service plan were $29.99, with no mention of an additional monthly $3.50 Network Enhancement Fee.

50. The final page in the online order process was the "Schedule Installation" and order submission webpage. On this webpage, which contained a "Place Order" button, Defendants again stated that the "Monthly Charges" for the Optimum 100 internet service plan totaled $29.99, with no mention or disclosure of any additional monthly $3.50 Fee.

51. On none of these order process webpages was there any mention of the additional Network Enhancement Fee or its amount.

52. In fact, the advertised price for the Optimum 100 internet service plan was false, because it did not include the additional $3.50 for the so-called Network Enhancement Fee which Defendants automatically charged to all internet customers, and which was in fact a fabricated and disguised double-charge for the promised internet service.

53. Any disclosures which Defendants made about the Network Enhancement Fee were themselves part and parcel of Defendants' deceptive practices, whereby Defendants advertised and quoted the lower-than-actual internet service price and then deceptively presented the Network Enhancement Fee as something separate even though it was in fact a bogus fee for the same internet service quoted in the advertised and promised internet service plan price.

54. For example, the only way the existence of the Network Enhancement Fee could be found in the online purchase process was if the consumer scrolled to the bottom right of the purchase process webpages and noticed and clicked on a tiny "Disclaimer" hyperlink.

55. If the consumer clicked this small "Disclaimer" hyperlink, a pop-up box would appear with pages of fine print for various Optimum service plans. Buried deep in this fine print was the sentence: "EQUIP, TAXES & FEES: Free standard installation with online orders. visit Optimum.com/installation for details. . . . A $3.50 Network Enhancement Fee applies. Surcharges, taxes, plus certain add'l charges and fees will be added to bill, and are subject to change during and after promotion period." Nowhere in this tiny print (which only displayed after clicking a small "Disclaimer" hyperlink at the bottom of the page) did Defendants define or explain what the Network Enhancement Fee was.[4]

56. Even if a consumer saw this hidden disclaimer, the disclaimer simply reinforced and furthered Defendants' deception that the (undefined) Network Enhancement Fee was to pay for something separate from the internet service itself, even though the Fee was in fact an

[4] As of at least December 21, 2020, a definition of the Network Enhancement Fee could not be found anywhere on the entire Optimum website. Even if a customer clicked on a tiny link in the footer of the homepage for "Online help," and then did a search for "Network Enhancement Fee" in the search bar, zero results were displayed. Likewise, on the sample internet service bill which was posted in the "Online help" section of the Optimum website as of December 21, 2020, the Network Enhancement Fee was listed nowhere.

invented double-charge for the same internet service quoted in the internet service plan price. Even worse, the disclaimer was additionally misleading because, by listing the Network Enhancement Fee in the fine print under "TAXES & FEES," Defendants falsely and intentionally indicated to consumers that the Network Enhancement Fee was a legitimate government tax or fee outside of Defendants' control.

57. Meanwhile, Defendants' form terms of service (the "Residential General Terms and Conditions of Service"[5]) posted on their website did not name or disclose the existence of the Network Enhancement Fee, despite listing and naming numerous other specific charges and fees that customers must pay.

B. Defendants' Sales Agents Made False and Misleading Statements About the Prices Defendants Charged for Internet Service Plans.

58. Defendants also engaged in this bait-and-switch scheme with consumers who signed up for internet service plans over the phone, via internet chat, or at one of Defendants' brick-and-mortar retail stores. When a consumer signed up for internet service through a sales agent, the agent would present the consumer with the same menu of internet service plans and prices that were on Defendants' sales website. The offers were exactly the same, including the advertised monthly rates which excluded the Network Enhancement Fee.

59. Defendants' uniform policy and practice was for their sales agents (including telesales agents and in-store sales staff) to: (a) not disclose or mention the existence of the Network Enhancement Fee; and (b) quote prices for internet service plans which *excluded* the amount of the Network Enhancement Fee.

60. When Defendants' agents quoted customers the total order price (which price excluded the amount of the Network Enhancement Fee), the most they said, if anything, about

[5] Available at https://www.optimum.com/terms-of-service/residential, last accessed June 6, 2022.

any additional charge is that the quoted price was the total "plus taxes" or "plus taxes and fees." A reasonable consumer would interpret the phrase "taxes and fees" to mean government or regulatory charges, as opposed to an invented and arbitrary double-charge unilaterally imposed and collected by Defendants to provide the same internet service that was quoted and promised in the advertised service plan price.

61. Discovery will show that Defendants had a uniform, standard policy of directing their sales agents to not mention or disclose the existence of the Network Enhancement Fee or its amount, and to at most mention (if at all) that the advertised, offered, and promised price was the total monthly service price plus "taxes" or "taxes and fees."

62. Defendants' sales agents were likewise trained to push promotional offers by promising customers that the advertised service rates were guaranteed not to increase during the promotional period. Defendants regularly advertised 12-month fixed-price promotions, as well as "Price For Life" promotions, where Defendants promised that the monthly service plan rate would not increase during the life of the customer's service. These representations of fixed internet service rates were false because Defendants in fact reserved the right to, and did in fact, increase their service prices during the promotional period by imposing and/or increasing the Network Enhancement Fee.

C. Defendants Continued to Deceive Internet Customers After They Signed Up.

63. Defendants continued to deceive their internet customers about the Network Enhancement Fee and the true monthly price of internet service even after they signed up and were paying for such service.

64. Defendants first began sneaking the Network Enhancement Fee onto all of their customers' bills in February 2019, at a rate of $2.50 per month. For customers who signed up prior to February 2019, the first time they could have possibly learned about the existence of

the Fee was on their bill after the Fee was introduced. This could have been months or years after the customer had signed up for internet service, and it could have also been while the customer was still under a promised fixed-price promotion (including a "Price For Life" promotion).

65. For customers who signed up after Defendants began imposing the Network Enhancement Fee, the billing statements were the first possible chance they could have learned about the Fee, and by the time they received their first statement they were already committed to their purchase.

66. Moreover, far from constituting even a belated disclosure, the monthly billing statements served to further Defendants' scheme and deception.

67. First, Defendants buried the Network Enhancement Fee in the middle of the multi-page bill, where customers were unlikely to even notice it.

68. Second, the bill deceptively presented the Network Enhancement Fee as something separate from the internet service, even though the Fee is in fact an invented and arbitrary double-charge for the same internet service quoted in the internet service plan price.

69. Indeed, the fact that the Network Enhancement Fee was a not a separate fee, but rather was a double-charge for the same internet service promised to Defendants' customers at the quoted and agreed-to plan price, is supported by Defendants' own monthly bills, which blatantly add the Network Enhancement Fee as a separate cost of the internet service. *See*, *e.g.*, Exhibit A, July 30, 2021 bill of Plaintiff Natividad Concepcion, charging a "Network Enhancement Fee" of "$3.50" under the "INTERNET" section on page 3 of Plaintiff's 6-page bill.

70. Despite this, as set forth above, Defendants' advertised and promised monthly fees for internet service neither included nor mentioned the Network Enhancement Fee.

71. Moreover, Defendants never defined or explained the Network Enhancement Fee anywhere on their billing statements. Even worse, the only explanation about "fees" on the customer bill that Defendants provide to their customers indicated that all fees on the bill are government related. In the fine print of the bill, under "Billing Information," Defendant stated: "Your monthly bill includes all government fees." Moreover, for internet-only subscribers, such as Plaintiff Xue Shi Lin, the only "fee" that was typically on their bill was the Network Enhancement Fee. *See*, *e.g.*, Exhibit B, March 30, 2022 bill of Plaintiff Xue Shi Lin, charging only a single fee – the "Network Enhancement Fee" of "$3.50" under the "INTERNET" section on page 3 of Plaintiff's 4-page bill.

72. Thus, even if customers noticed the existence of the hidden Network Enhancement Fee on their bill, the customers would reasonably assume—just as Defendants intend—that the Fee was a legitimate government tax or fee outside of Defendants' control.

73. However, the Network Enhancement Fee was not a tax or government fee. The Network Enhancement Fee was not even a third-party pass-through charge. Rather, Defendants invented the so-called "Network Enhancement Fee" out of whole cloth, and the existence of the Fee and its amount were arbitrary and entirely within Defendants' control. Defendants concocted the Fee as a way to deceptively charge more for internet service without advertising a higher rate and to covertly increase customers' monthly rates for their own profit, including during their promised fixed-rate promotional period.

74. Many, if not most, customers did not read the printed monthly statements described above at all because Defendants encourage their customers to sign up for electronic billing and automatic payment in lieu of receiving paper statements. In fact, Plaintiffs Natividad Concepcion, Xue Shi Lin, and Jesse Friedman each signed up for and participated in the electronic billing and "Auto Pay" program.

75. If a customer happened to notice that the Network Enhancement Fee was charged on the customer's monthly statement and contacted Defendants via phone or online to inquire about the Fee, Defendants' agents would falsely tell the customer that the Fee was a tax or a pass-through government charge over which Defendants have no control.

D. Defendants Intentionally Make It Difficult for Internet Customers to Cancel Service.

76. If Defendants' customers happened to realize that their actual total monthly bill was higher than what they were promised – and what they agreed to pay – after they received and reviewed their monthly billing statements, they could not simply cancel their internet service without penalty or cost, even if they noticed the Network Enhancement Fee overcharge on their very first statement.

77. First, Defendants' so-called "Risk-Free Experience," which is Defendants' term for their promised 60-day money-back guarantee, covers only the monthly service fee (*i.e.*, the base price of the internet service plan). Customers who cancel during this 60-day period would not receive refunds of the Network Enhancement Fees or any installation charges they paid.

78. Second, Defendants' Residential General Terms and Conditions of Service has an "Early Termination Fees" provision, which states at Section 5: "If you cancel, terminate or downgrade the Service(s) before the completion of any required promotional term to which You agreed ('Initial Term'), you agree to pay Altice any applicable early cancellation fee plus all outstanding charges for all Services used and Equipment purchased for which you have not paid us prior to termination."[6] This informs customers that if they terminate service prior to the end of their promotional fixed-price period, they may be subject to a "cancellation fee."

[6] *See* https://www.optimum.com/terms-of-service/residential (last accessed June 6, 2022).

79. Third, Defendants do not pro-rate cancellations of internet service. Thus, customers are charged for the cost of the *entire* month even if they cancel on the very first day of the service month.[7]

80. Fourth, customers may also rent or purchase equipment to use exclusively with Defendants' internet and cable services, such as internet and telephone modems, wireless routers, and digital cable converter boxes.

81. Defendants' refusal to provide a full refund despite the purported 60-day money-back guarantee, the cancellation fee, and their refusal to pro-rate cancellations are designed by Defendants to penalize and deter customers from cancelling their internet service after signing up. These policies are deliberately and knowingly designed by Defendants to lock customers in if and when they deduce that they are being charged more per month than advertised and agreed-to for Defendants' internet services.

82. Because the initial amount of the Network Enhancement Fee – $2.50 per month beginning in February 2019 – and the subsequent increase by $1.00 approximately a year later to $3.50 per month were relatively small in proportion to Defendants' total monthly charges for their internet services, Defendants knew that their customers were unlikely to notice the new or increased charge on their monthly bills. Given that legitimate taxes and other government-related charges can already vary by amounts of a dollar or so from month to month, Defendants also knew that their customers reasonably expected small changes in the total amount billed each month. Defendants further knew that their customers would not readily be able to tell that Defendants increased the price for their internet service via the Network Enhancement Fee by

[7] *See id.*, stating: "PAYMENTS ARE NONREFUNDABLE AND THERE ARE NO REFUNDS OR CREDITS FOR PARTIALLY USED SUBSCRIPTION PERIOD(S). … Any request for cancellation after the commencement of a service period will be effective at the end of the then-current service period."

merely comparing the total amount billed in a particular month to the total amount billed in the prior month or months.

83. When Defendants increased the Network Enhancement Fee in February 2020, Defendants hid the increase by providing no disclosure or explanation whatsoever anywhere on the first billing statement containing the increase, other than listing the increased Fee itself (buried in the middle of a multi-page bill). Even a customer who read the entire bill would have zero notice that Defendants had increased the Fee, or whether or why the customer's new monthly bill was higher than the prior month's total.

II. Defendants' Unlawful Television Service Fees

84. Many of Defendants' customers also subscribe to a television service plan. (The term "television service plan" as used in this Complaint includes a service plan that "bundles" television with other services such as internet or telephone.)

85. At all relevant times, Defendants have aggressively advertised their television service plans through pervasive marketing directed at the consuming public in their service areas throughout the United States. This marketing has included advertisements on Defendants' website; other internet advertising; materials and advertising at Defendants' retail stores where customers can sign up for Defendants' services; and video advertisements via YouTube, Facebook, and Twitter.

86. Throughout all of these channels, Defendants for years prominently advertised all of their television service plans at specific, flat monthly prices that were locked-in for a promotional period of 1 year or longer, without disclosing or including two additional television service charges—a "Broadcast Station Programming Surcharge" and a "Sports Programming Surcharge."

87. For years, Defendants padded all of their television subscribers' bills with a monthly charge called the "Broadcast Station Programming Surcharge." By 2021, the Broadcast Station Programming Surcharge was $15.00 per month. Defendants buried the Broadcast Station Programming Surcharge in the "Taxes, Fees & Other Charges" section of the Optimum bill where it was lumped together with legitimate taxes and government-related fees. Defendants did not define or explain the Broadcast Station Programming Surcharge anywhere on the bill.

88. The Sports Programming Surcharge is another monthly television service charge that Defendants began adding to their television service bills in 2015 at a rate of $3.00 a month. By 2021, the Sports Programming Surcharge was $6.65 per month. Defendants similarly buried the Sports Programming Surcharge in the "Taxes, Fees & Other Charges" section of the bill where it was lumped together with legitimate taxes and government-related fees. Defendants did not define or explain the Sports Programming Surcharge anywhere on the bill.

89. All members of the television fees class were charged the Broadcast Station Programming Surcharge (which was uniformly charged to all of Defendants' television service subscribers), and most members of the television fees class were also charged the Sports Programming Surcharge (which was charged to Defendants' television service subscribers with Standard Cable or higher, who comprised the overwhelming majority of the subscribers).

90. Defendants utilized the Broadcast Station Programming Surcharge and the Sports Programming Surcharge as part of a deceptive fees scheme whereby Defendants: (a) advertised and promised a lower monthly price for Defendants' television service plans than they actually charged, and then (b) surreptitiously increased the monthly television service rates for their customers, including in the middle of promised fixed-rate promotional periods, by

increasing the amounts of the Broadcast Station Programming Surcharge and the Sports Programming Surcharge.

91. Based on Plaintiffs' calculations, through this bait-and-switch scheme Defendants have extracted tens of millions of dollars in Broadcast Station Programming Surcharges and Sports Programming Surcharges from their television service subscribers.

A. Defendants Made False and Misleading Statements About the Prices of Their Television Service Plans When Customers Signed Up.

92. On their website, Defendants explicitly advertised and represented to consumers that the advertised prices for their television service plans included all of the monthly service charges, and that the monthly rate would be fixed during the specified promotional period or term contract. Defendants did not disclose or adequately disclose the existence or the amount of the Broadcast Station Programming Surcharge or Sports Programming Surcharge (let alone their true nature or basis) prior to or at the time customers signed up for Defendants' television service. Additionally, Defendants did not disclose or adequately disclose the fact that they could and would increase the monthly service price during the customer's locked-in rate period or contract by simply increasing one or more of these hidden and disguised service charges.

93. Defendants engaged in the same misrepresentations and nondisclosures with consumers whether they signed up over the phone, via internet chat, or at one of Defendants' brick-and-mortar retail stores. Defendants' sales and customer service agents quoted the same flat monthly prices as in Defendants' public advertising, which excluded the amounts of the Broadcast Station Programming Surcharge and the Sports Programming Surcharge.

94. Defendants' uniform policy and practice was for their sales agents (including telesales agents and in-store sales staff) to: (a) not disclose or mention the existence of the Broadcast Station Programming Surcharge or the Sports Programming Surcharge; and (b)

quote prices for their television service plans which *excluded* the amounts of the Broadcast Station Programming Surcharge and the Sports Programming Surcharge.

95. When Defendants' agents quoted customers the total order price (which excluded the amounts of the Broadcast Station Programming Surcharge and the Sports Programming Surcharge), the most they would say, if anything, about any additional charges was that the quoted price was the total "plus taxes" or "plus taxes and fees." A reasonable consumer would interpret the phrase "taxes and fees" to mean government or regulatory charges, as opposed to double-charges to provide the same television channels that were promised in the quoted television service plan price.

96. Discovery will show that Defendants had a uniform, standard policy of directing their sales agents to not mention or disclose the existence of the Broadcast Station Programming Surcharge and the Sports Programming Surcharge or their amounts, and to at most mention (if at all) that the advertised price was the total monthly service price plus "taxes" or "taxes and fees."

97. Defendants' sales agents were likewise trained to push promotional offers by promising customers that the advertised service rates were guaranteed not to increase during the promotional period. Defendants regularly advertised 12-month fixed-price promotions. These representations of fixed television service rates were false because Defendants in fact reserved the right to, intended to, and did, increase their television service prices during the promotional period by increasing the Broadcast Station Programming Surcharge and the Sports Programming Surcharge.

B. Defendants Continued to Deceive Customers After They Signed Up.

98. Defendants continued to deceive their customers about the Broadcast Station Programming Surcharge and the Sports Programming Surcharge, and the true monthly price of

Defendants' television service plans, even after the customers signed up and were paying for the services.

99. The first possible chance customers could have learned about the Broadcast Station Programming Surcharge or the Sports Programming Surcharge was after receiving their first bill from Defendants, and by that time they were already committed to their purchase.

100. Moreover, far from constituting even a belated disclosure, the monthly billing statements served to further Defendants' scheme and deception. The bill deceptively presented the Broadcast Station Programming Surcharge and the Sports Programming Surcharge as charges separate from the television service, even though they were in fact double-charges for the same channels promised in the service plan price. Defendants buried the Surcharges in the "Taxes, Fees & Other Charges" section of the bill, lumped together with purported taxes and government charges. This misleadingly told Defendants' customers that the Broadcast Station Programming Surcharge and the Sports Programming Surcharge were taxes or other legitimate government fees, when they were in fact disguised television service charges.

101. Defendants did not define or explain the Broadcast Station Programming Surcharge or the Sports Programming Surcharge anywhere on their billing statements. Even worse, the only explanation about "fees" on the customer bill that Defendants did provide indicated that all fees on the bill were government-related. In the fine print of Defendants' bill, under "Billing Information," Defendants stated: "Your bill includes all government fees. TV Taxes and Fees includes an FCC fee and payments required under Altice's franchise agreement to support public, educational or government channels. Taxes and Fees are subject to change."

102. Thus, even if a customer noticed the Broadcast Station Programming Surcharge or the Sports Programming Surcharge on the bill, the customer would reasonably assume—just

as Defendants intended—that the Surcharges were legitimate government taxes or fees outside of Defendants' control.

C. The Broadcast Station Programming Surcharge and the Sports Programming Surcharge Are Double-Charges for Service.

103. Deep within Defendants' website—where, by design, it was unlikely to be viewed by consumers, and certainly not before they purchased their television service plans—Defendants admitted that the Broadcast Station Programming Surcharge and the Sports Programming Surcharge were double-charges for Defendants' television service. These buried admissions reinforce the fact that these undisclosed charges should have been included in the advertised monthly price for the television service because they are basic costs of providing the service itself. A reasonable consumer would expect the advertised price for the television service to include all costs necessary to provide said service.

104. Defendants had a page on their website titled "Understanding the Fees on Your Bill," where Defendants admitted that the Broadcast Station Programming Surcharge and the Sports Programming Surcharge are double-charges for television service. On this page, Defendants called the Broadcast Station Programming Surcharge the "Broadcast Basic Surcharge" and stated that the charge "is related to the incremental costs charged by the programmers for the rights to distribute the broadcast TV networks included in your TV package like ABC, CBS, Fox and NBC. This fee applies to all customers with TV Service through [Optimum], as these channels are included in all packages." (emphasis added).

105. On this same page, Defendants stated that the Sports Programming Surcharge "is related to the incremental costs charged by the programmers for the rights to distribute the sports programming included in many of our TV packages. This fee applies to all customers receiving any package above Local Broadcast, as all the TV packages include several sports networks." (emphasis added).

106. Thus, Defendants admitted that the Broadcast Station Programming Surcharge and the Sports Programming Surcharge were to cover costs to distribute channels that were *already* "included in your TV package." A consumer would reasonably expect the cost of supplying television channels that were part of their service plan to be *included* in the basic monthly rate Defendants advertised and charged for the television service itself.

D. Defendants' Customers Could Not Cancel Without Penalty.

107. If customers realized that their actual monthly bill was higher than promised when they received their billing statements from Defendants, they could not simply back out of the deal without penalty or cost, even if they noticed the Broadcast Station Programming Surcharge or the Sports Programming Surcharge overcharge on their very first statement.

108. First, Defendants' 30-Day Money Back Guarantee *excluded* the Broadcast Station Programming Surcharge and the Sports Programming Surcharge. According to Defendants' website: "30-day money back is only on the monthly service fee," *i.e.*, only on the base price of the service.[8]

109. Second, most customers were required to pay a one-time non-refundable installation charge on sign-up, which could be as much as $59.00.

110. Third, Defendants' Residential Services Agreement had an "Early Termination Fees" provision, which stated at Section 5: "If you cancel, terminate or downgrade the Service(s) before the completion of any required promotional term to which You agreed ('Initial Term'), you agree to pay [Optimum] any applicable early cancellation fee plus all outstanding charges for all Services used and Equipment purchased for which you have not

[8] *See* https://www.suddenlink.com/promotion-offer-disclaimers (last accessed July 13, 2022).

paid us prior to termination."[9] This indicated to customers that if they terminated service prior to end of their promotional fixed-price period, they may be subject to a "cancellation fee."

111. Fourth, Defendants did not pro-rate cancellations. Thus, customers were charged for the cost of the *entire* month even if they cancelled on the very first day of the service month.[10]

112. Fifth, customers may also have rented or purchased equipment to use exclusively with Defendants' services, such as digital cable converter boxes and internet modems and wireless routers.

113. Defendants' installation fee, refusal to provide a full refund despite the purported 30-day money back guarantee, refusal to pro-rate cancellations, and early termination fee were designed by Defendants to penalize and deter customers from cancelling after signing up. And Defendants' policies were deliberately and knowingly designed by Defendants to lock customers in if and when they deduced that they were being charged more per month than advertised and promised for Defendants' television services.

PLAINTIFFS' FACTUAL ALLEGATIONS

114. All Plaintiffs are current customers of Defendants' Optimum internet and/or television service, or were during the relevant class period.

115. When Plaintiffs purchased their internet and/or television service plans, Defendants prominently advertised and quoted to them that their plans would cost a particular monthly price, a price to which Plaintiffs agreed. Defendants did not disclose to Plaintiffs, at

[9] *See* https://www.suddenlink.com/residential-services-agreement (last accessed July 13, 2022).

[10] The Residential Services Agreement states: "PAYMENTS ARE NONREFUNDABLE AND THERE ARE NO REFUNDS OR CREDITS FOR PARTIALLY USED SUBSCRIPTION PERIODS. … Any request for cancellation after the commencement of a service period will be effective at the end of the then-current service period."

any time before or when they signed up, that Defendants would charge them a Network Enhancement Fee, a Broadcast Station Programming Surcharge, and/or a Sports Programming Surcharge in addition to the advertised and promised monthly price to which Plaintiffs agreed.

116. Despite this, Defendants have charged each Plaintiff a Network Enhancement Fee of up to $3.50 per month on each monthly bill. Defendants also have charged Plaintiffs Baker, Lamoree, and Major a Broadcast Station Programming Surcharge of up to $15.00 per month, and a Sports Programming Surcharge of up to $6.65 per month, on each monthly bill.

117. Defendants never adequately disclosed the Network Enhancement Fee, the Broadcast Station Programming Surcharge, or the Sports Programming Surcharge to Plaintiffs in any form or fashion, and Plaintiffs never agreed to pay the Network Enhancement Fee, the Broadcast Station Programming Surcharge, or the Sports Programming Surcharge to Defendants. In fact, Plaintiffs were not aware of the existence of the Network Enhancement Fee, the Broadcast Station Programming Surcharge, or the Sports Programming Surcharge until well after they signed up for Defendants' internet and/or television service.

118. Specifically, Defendants never provided Plaintiffs with notice or adequate notice that they would be (or were being) charged the Network Enhancement Fee, the Broadcast Station Programming Surcharge, or the Sports Programming Surcharge – not at sign-up, not on Plaintiffs' monthly bill, not on Defendant's website, or otherwise. Further, Defendants did not provide Plaintiffs with any information regarding the true nature or basis of the Network Enhancement Fee, the Broadcast Station Programming Surcharge, or the Sports Programming Surcharge, and never provided Plaintiffs with any opportunity to agree or object to these fees and surcharges. In fact, no Plaintiff ever agreed to pay the Network Enhancement Fee, the Broadcast Station Programming Surcharge, or the Sports Programming Surcharge to Defendants.

119. Further, Defendants misrepresented the true nature of the Network Enhancement Fee, the Broadcast Station Programming Surcharge, and the Sports Programming Surcharge on their website, as described herein.

120. Moreover, despite increasing the amount of the Network Enhancement Fee, the Broadcast Station Programming Surcharge, and the Sports Programming Surcharge, Defendants never disclosed to Plaintiffs at any time that these fees and surcharges would or might increase, never provided Plaintiffs with notice or adequate notice of such increase, and never provided Plaintiffs with any opportunity to agree to object to the increase. In fact, no Plaintiff ever agreed to an increase of the Network Enhancement Fee, the Broadcast Station Programming Surcharge, or the Sports Programming Surcharge.

121. Because neither the Network Enhancement Fee, the Broadcast Station Programming Surcharge, nor the Sports Programming Surcharge were included in the quoted price for Defendants' internet or television service plans, then Defendants have for years been charging Plaintiffs more each month than what Plaintiffs agreed and contracted to pay, and the promised plan price that Defendants advertised and quoted to each Plaintiff was false. Defendants concealed and failed to disclose the true price of their internet and television plans to Plaintiffs.

122. Plaintiffs did not expect (and were never told) that Defendants would charge them the so-called Network Enhancement Fee, the Broadcast Station Programming Surcharge, and/or the Sports Programming Surcharge on top of Defendants' advertised, promised, and agreed-to internet and television service plan prices, or that the actual price of the internet and television service they had agreed to purchase was greater than what they had agreed to pay, in that it included the undisclosed, extra-contractual Network Enhancement Fee, the Broadcast Station Programming Surcharge, and/or the Sports Programming Surcharge that Defendants

could and would unilaterally increase at their desire. This information was material to Plaintiffs. Had Plaintiffs known this information, they would not have been willing to pay as much for their internet and television service plans and would have acted differently.

123. Further, Plaintiffs did not know, nor could they have known, that the Network Enhancement Fee, the Broadcast Station Programming Surcharge, and the Sports Programming Surcharge were each invented by Defendants as part of a scheme to covertly charge a higher price for internet and television service than advertised and as a way to raise the monthly rate at any time, even during Plaintiffs' fixed-price promotional periods.

124. Plaintiffs have a legal right to rely now, and in the future, on the truthfulness and accuracy of Defendants' representations and advertisements regarding their internet and television service plan prices. Plaintiffs believe they were given the services that Defendants promised them, just not at the *prices* that Defendants promised and advertised to them, which Plaintiffs agreed to pay.

125. Each Plaintiff remains an Optimum internet and/or television customer as of this filing. Plaintiffs cannot cancel their internet or television service plans without paying significant penalties. Plaintiffs will continue to purchase internet and/or television service from Defendants in the future. However, Plaintiffs want to be confident that the advertised and quoted prices for Defendants' internet and television service plans are the true and full prices for those services (*i.e.*, that the prices include all applicable discretionary monthly service fees, specifically including but not limited to the Network Enhancement Fee, the Broadcast Station Programming Surcharge, and the Sports Programming Surcharge), and that all discretionary fees like the Network Enhancement Fee, the Broadcast Station Programming Surcharge, and the Sports Programming Surcharge are properly and adequately disclosed. And, if Defendants introduce any new or invented discretionary monthly service fee or surcharge (or any increase

thereto) – like they did with the Network Enhancement Fee, the Broadcast Station Programming Surcharge, and the Sports Programming Surcharge – Plaintiffs want to be confident that Defendants will include the amount of that fee or surcharge (or increase thereto) in the advertised and quoted service plan price, and that such fee or surcharge is included in the plan price before Plaintiffs and other internet and television service customers sign up for such service. Plaintiffs will be harmed if, in the future, they are left to guess as to whether Defendants' representations and advertisements as to their service prices are accurate and whether there are omissions and misrepresentations of material facts regarding the price of the internet service plans advertised and represented to them.

126. As of the date of filing, each Plaintiff has suffered damages in the amount of the undisclosed, extra-contractual Network Enhancement Fees, Broadcast Station Programming Surcharges, and/or Sports Programming Surcharges they paid to Defendants.

CLASS ALLEGATIONS

127. Plaintiffs bring this class-action lawsuit on behalf of themselves and members of the following class of Defendants' internet service subscribers (the "Internet Fee Class"):

> **All current and former Optimum internet service customers in the United States who were charged a "Network Enhancement Fee" by Defendants within the applicable statute of limitations.**

128. Plaintiffs Baker, Lamoree and Major also bring this class-action lawsuit on behalf of themselves and members of the following class of Defendants' television service subscribers (the "Television Fees Class"):

> **All current and former Optimum television service customers in the United States who were charged a "Broadcast Station Programming Surcharge" and/or a "Sports Programming Surcharge" by Defendants within the applicable statute of limitations.**

129. Specifically excluded from the Classes are Defendants and any entities in which Defendants have a controlling interest, Defendants' agents and employees, the bench officers to

whom this civil action is assigned, and the members of each bench officer's staff and immediate family.

130. ***Numerosity***. The number of members of each Class are so numerous that joinder of all members would be impracticable. Plaintiffs do not know the exact number of Class members prior to discovery. However, based on information and belief, there are at least 1,000,000 members in each Class. The exact number and identities of Class members are contained in Defendants' records and can be easily ascertained from those records.

131. ***Commonality and Predominance***. All claims in this action arise exclusively from the uniform policies and procedures of Defendants as outlined herein. This action involves multiple common legal or factual questions which are capable of generating class-wide answers that will drive the resolution of this case. These questions predominate over any questions that might affect individual Class members. These common questions include, but are not limited to:

a. Whether Defendants employed a uniform policy of charging the Network Enhancement Fee to their Optimum internet customers;

b. Whether Defendants employed a uniform policy of charging the Broadcast Station Programming Surcharge to their Optimum television customers;

c. Whether Defendants employed a uniform policy of charging the Sports Programming Surcharge to their Optimum television customers;

d. Whether the each of these fees and surcharges was a bogus or made-up fee;

e. Whether the amounts of these fees and surcharges were arbitrary;

f. Whether the Network Enhancement fee was a disguised double-charge for internet service;

g. Whether the Broadcast Station Programming Surcharge and/or the Sports Programming Surcharge were designed double-charges for television service;

h. What was the nature and purpose of the Network Enhancement Fee, the Broadcast Station Programming Surcharge, and the Sports Programming Surcharge;

i. What costs did these fees and surcharges pay for and how were the revenues from these fees and surcharges spent;

j. Why did Defendants decide to start charging these fees and surcharges;

k. Why did Defendants not include the amounts of these fees and surcharges in their advertised and quoted internet and television service plan prices;

l. Whether Defendants' policy and practice of advertising and quoting the prices of their internet and television service plans without including the existence or amounts of these fees and surcharges was false, deceptive, or misleading;

m. Whether Defendants' policy and practice of advertising and representing that the prices of their internet and television service plans were fixed and would not increase during a specified promotional period, when in fact Defendants reserved the right to and did in fact increase service prices during that period by increasing these fees and surcharges, was false, deceptive, or misleading;

n. Whether Defendants' uniform policy and practice of burying these fees and surcharges in the middle of a multi-page bill was deceptive and misleading;

o. Whether Defendants' failure to define or explain these fees and surcharges in their monthly billing statements was deceptive and misleading;

p. Whether Defendants deliberately hid and obscured the nature of these fees and surcharges in their monthly billing statements;

q. Whether Defendants adequately or accurately disclosed the existence of these fees and surcharges, their nature, or their amount, to the Classes in any form or fashion, and if so, when;

r. Whether Defendants' deceptive conduct, misleading advertisements, and other misrepresentations and material omissions described herein violate controlling law; and

s. Whether Defendants' conduct described herein constituted a breach of contract in violation of the implied covenant of good faith and fair dealing.

132. ***Typicality***. Plaintiffs, like all class members, are current or former customers of Defendants' internet and/or television service who have been charged higher monthly rates than quoted at the time of subscription and/or whose rates have been surreptitiously increased by Defendants' unilateral imposition and systematic raising of the Network Enhancement Fee, the Broadcast Station Programming Surcharge, and/or the Sports Programming Surcharge. Plaintiffs' claims are typical of Class members' claims, in that all claims arise from the same

course of conduct by Defendants, are based on the same legal theories, and face the same potential defenses. Plaintiffs are each a member of the Classes they seek to represent. All claims of Plaintiffs and the Classes arise from the same course of conduct, policy and procedures as outlined herein.

133. ***Adequacy***. Plaintiffs will fairly and adequately protect Class members' interests. Plaintiffs have no interests antagonistic to Class members' interests and are committed to representing the best interests of the Classes. Plaintiffs have retained counsel with considerable experience and success in prosecuting complex class actions and consumer protection cases.

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

135. By their conduct and omissions alleged herein, Defendants have acted and refused to act on grounds that apply generally to the Classes.

136. A class action is the only practical, available method for the fair and efficient adjudication of the controversy since, *inter alia*, the harm suffered by each Class member is too small to make individual actions economically feasible.

137. Common questions will predominate, and there will be no unusual manageability issues.

138. Without the proposed class action, Defendants will likely retain the benefits of their wrongdoing and will continue the complained-of practices, which will result in further damages to Plaintiffs and class members.

CAUSES OF ACTION

COUNT I

VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT
N.J.S.A. § 56:8-1, *et seq.*
(Plaintiff Seale)

139. Plaintiff Seale incorporates by reference all previous paragraphs of this Complaint as if fully set forth herein.

140. Defendants' internet service constitutes "merchandise" within the meaning of N.J.S.A. § 56:8-1(c).

141. Defendants, Plaintiff, and all class members are "persons" within the meaning of N.J.S.A. § 56:8-1(d).

142. The CFA was enacted to protect consumers against sharp and unconscionable commercial practices by persons engaged in the sale of goods or services. *See Marascio v. Campanella*, 689 A.2d 852, 857 (App. Div. 1997).

143. The CFA is a remedial statute which the New Jersey Supreme Court has repeatedly held must be construed liberally in favor of the consumer to accomplish its deterrent and protective purposes. *See Furst v. Einstein Moomjy, Inc.*, 860 A.2d 435, 441 (N.J. 2004) ("The [CFA] is remedial legislation that we construe liberally to accomplish its broad purpose of safeguarding the public.").

144. Indeed, "[t]he available legislative history demonstrates that the [CFA] was intended to be one of the strongest consumer protection laws in the nation." *New Mea Const. Corp. v. Harper*, 497 A.2d 534, 543 (App. Div. 1985).

145. For this reason, the "history of the [CFA] is one of constant expansion of consumer protection." *Kavky v. Herbalife Int'l of Am.*, 820 A.2d 677, 681-82 (App. Div. 2003).

146. The CFA was intended to protect consumers "by eliminating sharp practices and dealings in the marketing of merchandise and real estate." *Lemelledo v. Beneficial Mgmt. Corp.*, 696 A.2d 546, 550 (N.J. 1997).

147. Specifically, N.J.S.A. § 56:8-2 prohibits "unlawful practices", which are defined as:

> "The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission … whether or not any person has in fact been misled, deceived or damaged thereby ..."

148. The catch-all term "unconscionable commercial practice" was added to the CFA by amendment in 1971 to ensure that the CFA covered, *inter alia*, "incomplete disclosures." *Skeer v. EMK Motors, Inc.*, 455 A.2d 508, 512 (App. Div. 1982).

149. In describing what constitutes an "unconscionable commercial practice," the New Jersey Supreme Court has noted that it is an amorphous concept designed to establish a broad business ethic. *See Cox v. Sears Roebuck & Co.*, 647 A.2d 454, 462 (N.J. 1994).

150. In order to state a cause of action under the CFA, a plaintiff does not need to show reliance by the consumer. *See Varacallo v. Massachusetts Mut. Life Ins. Co.*, 752 A.2d 807 (App. Div. 2000); *Gennari v. Weichert Co. Realtors*, 691 A.2d 350 (N.J. 1997) (holding that reliance is not required in suits under the NJCFA because liability results from

"misrepresentations whether 'any person has in fact been misled, deceived or damaged thereby").

151. As stated by the New Jersey Supreme Court in *Lee v. Carter-Reed Co., L.L.C.*, 4 A.3d 561, 580 (N.J. 2010): "It bears repeating that the [NJCFA] does not require proof of reliance, but only a causal connection between the unlawful practice and ascertainable loss."

152. It is also not required that an affirmative statement be literally false in order to be considered deceptive and misleading under the CFA. Even a statement which is literally true can be misleading and deceptive in violation of the CFA. *See Smajlaj v. Campbell Soup Co.*, 782 F. Supp. 2d 84, 98 (D.N.J. 2011) (upholding a NJCFA claim where the defendant argued its written statement was literally true, holding "the fact that the labels were literally true does not mean they cannot be misleading to the average consumer.").

153. A CFA violation also does not require that the merchant be aware of the falsity of the statement or that the merchant act with an intent to deceive. *See Gennari v. Weichert Co. Realtors*, 691 A.2d 350, 365 (N.J. 1997):

> "One who makes an affirmative misrepresentation is liable even in the absence of knowledge of the falsity of the misrepresentation, negligence, or the intent to deceive… An intent to deceive is not a prerequisite to the imposition of liability."

154. Nor is it a defense to a CFA claim that the merchant acted in good faith. *See Cox v. Sears Roebuck & Co.*, 647 A.2d 454, 461 (N.J. 1994) ("the Act [CFA] is designed to protect the public even when a merchant acts in good faith.").

155. In the case at bar, Defendants' policy of promising a specific monthly rate for its internet service but later unilaterally charging an extracontractual, inadequately disclosed, and/or inaccurately described Network Enhancement Fee to their customers, as described herein, is a deceptive, misleading, and/or unconscionable commercial practice in the sale of goods in violation of N.J.S.A. § 56:8-2 for the reasons set forth herein.

156. This policy involves, *inter alia*, both misleading affirmative statements of fact, knowing omission of material facts, and an unconscionable commercial practice.

157. First, Defendants' practice of advertising internet service plans at a specific flat monthly rate—which price does not reflect the actual monthly rate that Defendants ultimately charge their customers because it does not include the Network Enhancement Fee—is an affirmative misleading and deceptive statement in the sale of goods or services in violation of N.J.S.A. § 56:8-2. Defendants' practice of categorizing and describing the Network Enhancement Fee as a tax imposed by the government or as a pass-through fee imposed by networks and broadcasters are also affirmative misleading and deceptive statements in violation of N.J.S.A. § 56:8-2.

158. Second, Defendants failed to adequately disclose the Network Enhancement Fee to their customers before they agreed to purchase internet service from Defendants, and Defendants continued to fail to adequately disclose the Fee, *inter alia*, by intentionally falsely describing the Fee as a tax, by lumping the Fee with taxes and government-related fees on its bills, by obscuring and failing to disclose the true nature of the Fee, and by having a policy of customer service and sales agents falsely telling customers that the Fee was a tax or government-related charge. Defendants have never explained to their customers that the true reason Defendants charge the Fee is that it is a surreptitious way to charge more for Defendants' services than the advertised, promised, and agreed-to price for those services. Thus, Defendants' policy also involves knowing omissions of material fact in the sale of goods in violation of N.J.S.A. § 56:8-2.

159. Defendants' deceptive policies described herein also violate N.J.S.A. § 56:8-2.2, as Defendants advertised their internet service to Plaintiff and the public as part of a plan or scheme not to sell the services at the advertised price.

160. For these reasons, Defendants' conduct constitutes an unconscionable business practice in violation of N.J.S.A. § 56:8-2.

161. Plaintiff and the Class reasonably and justifiably expected Defendants to comply with applicable law, but Defendants failed to do so.

162. As a direct and proximate result of these unlawful actions by Defendants, Plaintiff and the Class have been injured and have suffered an ascertainable loss of money.

163. Specifically, Plaintiff and each Class member has been charged an unlawful, undisclosed, and extracontractual Network Enhancement Fee on a monthly basis throughout the class period by Defendants, and have paid those Fees to Defendants.

164. Pursuant to N.J.S.A. § 56:8-19, Plaintiff seeks actual damages, treble damages, attorney's fees and costs, and injunctive relief for herself and the class.

COUNT II

VIOLATION OF THE NEW JERSEY TRUTH IN CONSUMER CONTRACT, WARRANTY AND NOTICE ACT, N.J.S.A. § 56:12-14, *et seq.*
(Plaintiff Seale)

165. Plaintiff Seale incorporates by reference all previous paragraphs of this Complaint as if fully set forth herein.

166. Plaintiff and Class members are "consumers" within the meaning of N.J.S.A. § 56:12-15.

167. Defendants are each a "seller" within the meaning of N.J.S.A. § 56:12-15.

168. Defendants' internet service is a "service which is primarily for personal, family or household purposes" within the meaning of N.J.S.A. § 56:12-15.

169. The representations on Defendants' website, as well as Defendants' advertisements and monthly bills, are all consumer "notices," "signs" and/or "warranties" within the meaning of N.J.S.A. § 56:12-15.

170. By the acts alleged herein, Defendants have violated N.J.S.A. § 56:12-15 because, in the course of Defendants' business, Defendants have offered, displayed and presented written consumer notices, signs and warranties to Plaintiff and the Classes which contained provisions that violated their clearly established legal rights under New Jersey state law, within the meaning of N.J.S.A. § 56:12-15.

171. These clearly established rights of Plaintiff and the Classes under New Jersey state law include the right not to be subjected to unconscionable commercial practices and false written affirmative statements of fact in the sale of services, as described herein, which acts are prohibited by the CFA, N.J.S.A. § 56:8-2.

172. Plaintiff and each class member are aggrieved consumers for the reasons set forth herein, and specifically because, *inter alia*, each was charged the monthly Network Enhancement Fee by Defendants and paid those Fees to Defendants, and each Plaintiff and Class member suffered an ascertainable loss under the CFA as described above.

173. Pursuant to N.J.S.A. § 56:12-17, Plaintiff seeks a statutory penalty of $100 for each class member, as well as actual damages and attorneys' fees and costs. *See* N.J.S.A. § 56:12-17, providing that a seller who violates the TCCWNA: "shall be liable to the aggrieved consumer for a civil penalty of not less than $100.00 or for actual damages, or both at the election of the consumer, together with reasonable attorney's fees and court costs." *See also United Consumer Fin. Servs. Co. v. Carbo,* 410 N.J. Super. 280, 310 (App. Div. 2009), affirming the trial judge's decision to award the $100 statutory penalty to each class member under N.J.S.A. § 56:12-17 of TCCWNA, stating:

> "[T]he $100 civil penalty is not unreasonably disproportionate when viewed in that context, whether it is considered with respect to an individual consumer or the 16,845 consumers whose contracts included the prohibited fee. We note that when assessing the constitutional reasonableness of punitive damage awards, courts are directed to consider and give 'substantial deference' to

> judgments made by the Legislature in fixing civil penalties. Nothing about the facts of this case or the numerosity of this class warrants a more searching evaluation of the reasonableness of awarding the civil penalty selected by the Legislature to each member of this class. (citation omitted).

COUNT III

Violation of the Consumers Legal Remedies Act ("CLRA")
California Civil Code § 1750 *et seq*.
(Plaintiffs Vasquez, Baker, Lamoree and Major)

174. Plaintiffs Vasquez, Baker, Lamoree, and Major reallege and incorporate by reference all paragraphs previously alleged herein.

175. Plaintiffs bring this claim in their individual capacity, in their capacity as private attorneys general seeking the imposition of public injunctive relief to protect the general public, and as representatives of the Classes.

176. Each Defendant is a "person," as defined by Cal. Civ. Code § 1761(c).

177. Plaintiffs and Class members are each "consumers," as defined by Cal. Civ. Code §1761(d).

178. Defendants' internet and television service plans are "services," as defined by Cal. Civ. Code § 1761(b).

179. The purchase of internet and television service plans by Plaintiffs and Class members is a "transaction," as defined by Cal. Civ. Code § 1761(e).

180. Plaintiffs and Class members purchased Defendants' internet and television service plans for personal, family, and/or household purposes, as meant by Cal. Civ. Code § 1761(d).

181. The unlawful methods, acts or practices alleged herein to have been undertaken by Defendants were all committed intentionally and knowingly. The unlawful methods, acts or

practices alleged herein to have been undertaken by Defendants did not result from a bona fide error notwithstanding the use of reasonable procedures adopted to avoid such error.

182. Defendants intentionally deceived Plaintiffs and the Classes, and continue to deceive the general public, by:

a. Misrepresenting the prices of Defendants' internet and television service plans by advertising or quoting prices that did not include applicable monthly service charges such as the Network Enhancement Fee, the Broadcast Station Programming Surcharge, and the Sports Programming Surcharge;

b. Inventing these bogus fees and surcharges out of whole cloth and not including said fee and surcharge amounts in the advertised and quoted prices of Defendants' internet and television service plans, when in fact the fees and surcharges are arbitrary and disguised double-charges for the internet and television services promised in the plans;

c. Misrepresenting that the prices of Defendants' internet and television service plans are fixed and will not increase during a specified promotional period, when in fact Defendants reserve the right to unilaterally increase service prices during that period by increasing discretionary monthly service charges such as the Network Enhancement Fee, the Broadcast Station Programming Surcharge, and the Sports Programming Surcharge;

d. Misrepresenting the nature of these fees and surcharges, including by stating or indicating that the fees and surcharges are taxes, government fees, regulatory fees, or charges over which Defendants have no control; and

e. Misrepresenting the nature of the fees and surcharges on the customer bills by burying the fees and surcharges alongside taxes and government fees in the "Taxes, Fees & Other Charges" section of the bill.

183. Defendants' conduct alleged herein has violated the CLRA in multiple respects, including, but not limited to, the following:

a. Defendants represented that their internet and television service plans had characteristics that they did not have (Cal. Civ. Code § 1770(a)(5));

b. Defendants advertised their internet and television service plans with an intent not to sell them as advertised (Cal. Civ. Code § 1770(a)(9));

c. Defendants made false or misleading statements of fact concerning reasons for, existence of, or amounts of, price reductions. (Cal. Civ. Code § 1770(a)(13));

d. Defendants misrepresented that their internet and television service plans were supplied in accordance with previous representations when they were not (Cal. Civ. Code § 1770(a)(16)); and

e. Defendants inserted unconscionable provisions in their consumer agreements, including an arbitration clause which waives the right to seek public injunctive relief in any forum, in violation of California law (Cal. Civ. Code § 1770(a)(19)).

184. With respect to any omissions, Defendants at all relevant times had a duty to disclose the information in question because, *inter alia*: (a) Defendants had exclusive knowledge of material information that was not known to Plaintiffs and Class members; (b) Defendants concealed material information from Plaintiffs and Class members; and (c) Defendants made partial representations, including regarding the supposed monthly rate of their internet and television service plans, which were false and misleading absent the omitted information.

185. Defendants' misrepresentations deceive and have a tendency to deceive the general public.

186. Defendants' misrepresentations are material, in that a reasonable person would attach importance to the information and would be induced to act on the information in making purchase decisions.

187. Plaintiffs and Class members reasonably relied on Defendants' material misrepresentations, and would not have purchased, or would have paid less money for, Defendants' internet and television services had they known the truth.

188. As a direct and proximate result of Defendants' violations of the CLRA, Plaintiffs and Class members have been harmed and lost money or property in the amount of the Network Enhancement Fees, Broadcast Station Programming Surcharges, and/or Sports Programming Surcharges they have been charged and paid. Moreover, Defendants continue to

charge Plaintiffs and Class members these fees and surcharges and may continue to increase their service prices via future increases of these fees and surcharges.

189. Defendants' conduct has caused substantial injury to Plaintiffs, Class members, and the general public.

190. Plaintiffs lack an adequate remedy at law to prevent Defendants' continued misrepresentations. Defendants' conduct is ongoing and is likely to continue and recur absent a permanent injunction.

191. Plaintiffs, on behalf of themselves and as a private attorney general, seek public injunctive relief under the CLRA to protect the general public from Defendants' false advertising and misrepresentations.

192. In accordance with California Civil Code § 1782(a), on May 3, 2021, Plaintiffs, through counsel, served Defendants with notice of their CLRA violations by USPS certified mail, return receipt requested. Defendants did not respond whatsoever to Plaintiff's notification letter. Defendants failed to give, or to agree to give within a reasonable time, an appropriate correction, repair, replacement, or other remedy for their CLRA violations within 30 days of their receipt on May 11, 2021, of the CLRA demand notice. Accordingly, pursuant to Sections 1780 and 1782(b) of the CLRA, Plaintiffs and the Class are entitled to recover actual damages, attorneys' fees and costs, and any other relief the Court deems proper for Defendants' CLRA violations.

COUNT IV

Violation of California's False Advertising Law California Business and Professions Code § 17500 *et seq*. (Plaintiffs Vasquez, Baker, Lamoree, and Major)

193. Plaintiffs Vasquez, Baker, Lamoree, and Major reallege and incorporate by reference all paragraphs previously alleged herein.

194. Plaintiffs bring this claim in their individual capacity, in their capacity as private attorneys general seeking the imposition of public injunctive relief to protect the general public, and as representatives of the Classes.

195. By their conduct alleged herein, Defendants have committed acts of untrue and misleading advertising, as defined by and in violation of California Business & Professions Code § 17500, *et seq.*, also known as California's False Advertising Law ("FAL"). These acts include but are not limited to:

a. Misrepresenting the prices of Defendants' internet and television service plans by advertising or quoting service plan prices that do not include applicable monthly service charges such as the Network Enhancement Fee, the Broadcast Station Programming Surcharge, and the Sports Programming Surcharge;

b. Misrepresenting that the prices of their internet and television service plans are fixed and will not increase during a specified promotional period, when in fact Defendants reserve the right to increase service prices during that period by increasing discretionary monthly service charges such as the Network Enhancement Fee, the Broadcast Station Programming Surcharge, and the Sports Programming Surcharge; and

c. Misrepresenting the nature of these fees and surcharges, including by stating or indicating that these fees and surcharges are taxes, government fees, regulatory fees, or charges over which Defendants have no control.

196. Defendants committed such violations of the FAL with actual knowledge that their advertising was misleading, or Defendants, in the exercise of reasonable care, should have known that their advertising was misleading.

197. Defendants' misrepresentations deceive and have a tendency to deceive the general public.

198. Defendants intentionally deceived Plaintiffs and Class members, and continue to deceive the public.

199. Defendants' misrepresentations are material, in that a reasonable person would attach importance to the information and would be induced to act on the information in making purchase decisions.

200. Plaintiffs and Class members reasonably relied on Defendants' material misrepresentations, and would not have purchased, or would have paid less money for, Defendants' internet and television services had they known the truth.

201. By their conduct alleged herein, Defendants received more money from Plaintiffs and Class members than they should have received, and that money is subject to restitution.

202. As a direct and proximate result of Defendants' violations of the FAL, Plaintiffs and Class members have been harmed and have lost money or property in the amount of the Network Enhancement Fees, Broadcast Station Programming Surcharges, and/or Sports Programming Surcharges they have been charged and paid. Moreover, Defendants continue to charge Plaintiffs and Class members the Network Enhancement Fee, the Broadcast Station Programming Surcharge, and the Sports Programming Surcharge and may continue to increase their service prices via future increases of these fees and surcharges.

203. Defendants' conduct has caused substantial injury to Plaintiffs, Class members, and the general public.

204. Plaintiffs lack an adequate remedy at law to prevent Defendants' continued false advertising practices. Defendants' conduct is ongoing and is likely to continue and recur absent a permanent injunction. Accordingly, Plaintiffs seek an order enjoining Defendants from committing such practices.

205. Plaintiffs, on behalf of themselves and as a private attorney general, seek public injunctive relief under the FAL to protect the general public from Defendants' false advertising.

206. Plaintiffs further seek an order granting restitution to Plaintiffs and Class members in an amount to be proven at trial. Plaintiffs further seek an award of attorneys' fees and costs under Cal. Code Civ. Proc. § 1021.5.

COUNT V

Violation of California's Unfair Competition Law
California Business and Professions Code § 17200 *et seq*.
(Plaintiffs Vasquez, Baker, Lamoree, and Major)

207. Plaintiffs Vasquez, Baker, Lamoree, and Major reallege and incorporate by reference all paragraphs previously alleged herein.

208. Plaintiffs bring this claim in their individual capacity, in their capacity as private attorneys general seeking the imposition of public injunctive relief to protect the general public, and as representatives of the Classes.

209. California Business & Professions Code § 17200, *et seq.*, also known as California's Unfair Competition Law (UCL), prohibits any unfair, unlawful, or fraudulent business practice.

210. Defendants have violated the UCL by engaging in the following ***unlawful*** business acts and practices:

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

b. Inserting unconscionable provisions in their consumer agreements in violation of Cal. Civ. Code § 1770(a)(19) (the CLRA), including an arbitration clause which waives the right to seek public injunctive relief in any forum in violation of California law;

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

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

211. Defendants have violated the UCL by engaging in the following ***unfair*** and ***fraudulent*** business acts and practices:

a. Misrepresenting the prices of Defendants' internet and television service plans by advertising or quoting service plan prices that do not include applicable monthly service charges such as the Network Enhancement Fee, the Broadcast Station Programming Surcharge, and the Sports Programming Surcharge;

b. Inventing these bogus fees and surcharges out of whole cloth and not including the amounts thereof in the advertised and quoted price of Defendants' internet and television service plans, when in fact the fees and surcharges are arbitrary and disguised double-charges for the internet and television services promised in the plans;

c. Misrepresenting that the prices of Defendants' internet and television service plans are fixed and will not increase during a specified promotional period, when in fact Defendants reserve the right to increase service prices during that period by increasing discretionary monthly service charges such as the Network Enhancement Fee, the Broadcast Station Programming Surcharge, and the Sports Programming Surcharge;

d. Misrepresenting the nature of these fees and surcharges, including by stating or indicating that the fees and surcharges are taxes, government fees, regulatory fees, or charges over which Defendants have no control; and

e. Misrepresenting the nature of the fees and surcharges on customer bills by burying the fees and surcharges alongside taxes and government fees in the "Taxes, Fees & Other Charges" section of the bill.

212. Defendants' misrepresentations were likely to mislead reasonable consumers.

213. Defendants' misrepresentations deceive and have a tendency to deceive the general public.

214. Defendants' misrepresentations are material, in that a reasonable person would attach importance to the information and would be induced to act on the information in making purchase decisions.

215. Defendants intentionally deceived Plaintiffs and Class members, and continue to deceive the public.

216. Plaintiffs and Class members reasonably relied on Defendants' material misrepresentations, and would not have purchased, or would have paid less money for, Defendants' internet and television services had they known the truth.

217. By the conduct alleged herein, Defendants received more money from Plaintiffs and Class members than they should have received, and that money is subject to restitution.

218. As a direct and proximate result of Defendants' unfair, unlawful, and fraudulent conduct, Plaintiffs and Class members lost money in the amount of the Network Enhancement Fees, Broadcast Station Programming Surcharges, and/or Sports Programming Surcharges they have been charged and paid. Moreover, Defendants continue to charge Plaintiffs and Class members these fees and surcharges and may continue to increase their service prices via future increases of these fees and surcharges.

219. Defendants' conduct alleged herein is immoral, unethical, oppressive, unscrupulous, unconscionable, and substantially injurious to Plaintiffs, Class members, and the general public. Perpetrating a years-long scheme of misleading and overcharging customers is immoral, unethical, and unscrupulous. Moreover, Defendants' conduct is oppressive and substantially injurious to consumers. By its conduct alleged herein, Defendants has improperly extracted over $150 million dollars from the Classes. There is no utility to Defendants' conduct, and even if there were any utility, it would be significantly outweighed by the gravity of the harm to consumers caused by Defendants' conduct alleged herein.

220. Plaintiffs lack an adequate remedy at law. Defendants' conduct is ongoing and is likely to continue and recur absent a permanent injunction.

221. Plaintiffs, on behalf of themselves and as private attorneys general, seek public injunctive relief under the UCL to protect the general public from Defendants' false advertisements and misrepresentations.

222. Plaintiffs further seek an order granting restitution to Plaintiffs and Class members in an amount to be proven at trial. Plaintiffs further seek an award of attorneys' fees and costs under Cal. Code Civ. Proc. § 1021.5.

COUNT VI

Violations of New York General Business Law § 349
(Plaintiff Concepcion, Xue Shi Lin, and Friedman)

223. Plaintiffs Concepcion, Xue Shi Lin, and Friedman reallege and incorporate by reference all paragraphs previously alleged herein.

224. New York General Business Law § 349 prohibits deceptive acts or practices in the conduct of any business, trade, or commerce.

225. In their advertising, sales, and billing practices with respect to Optimum internet service in the State of New York and throughout the United States, Defendants conducted business and trade within the meaning of New York General Business Law § 349.

226. Plaintiffs and Class members are each consumers who purchased Optimum internet service from Defendants for their personal use.

227. Defendants have engaged in deceptive and misleading practices with respect to Plaintiffs and the Class, which include, without limitation:

a. Misrepresenting the prices of Defendants' internet service plans by advertising or quoting an internet service plan price that did not include applicable monthly service charges such as the Network Enhancement Fee;

b. Inventing a bogus "Network Enhancement Fee" out of whole cloth and not including that Fee amount in the advertised and quoted price of the internet service plan, when in fact the Fee is an arbitrary and disguised double-charge for the internet service promised in the plan;

c. Misrepresenting that the prices of their internet service plans are fixed and will not increase during a specified promotional period, when Defendants reserve the right to (and did in fact) increase service prices during that period by increasing discretionary monthly service charges such as the Network Enhancement Fee;

d. Misrepresenting the nature of the Network Enhancement Fee, including by stating or indicating that the Network Enhancement Fee is a tax, government fee, regulatory fee, or charge over which Defendants have no control; and

e. Charging the undisclosed, extra-contractual Network Enhancement Fee to Plaintiffs and the Class despite the fact that Plaintiffs and the Class neither agreed nor consented to pay such fee.

228. Moreover, Defendants omitted, actively concealed, and failed to adequately disclose the true nature and amount of the Network Enhancement Fee, and the increase thereto. With respect to such omissions, Defendants at all relevant times had a duty to disclose the information in question because, *inter alia*: (a) Defendants had exclusive knowledge of material information that was not known to Plaintiffs and Class members; (b) Defendants concealed material information from Plaintiffs and Class members; and (c) Defendants made partial representations, including regarding the supposed monthly rate of Optimum internet service plans, which were false and misleading absent the omitted information.

229. Defendants' misrepresentations and omissions have a tendency to deceive, and in fact deceived, the general public, including Plaintiffs and the Class.

230. Defendants' misrepresentations and omissions were and are material, in that they were likely to, and did in fact, mislead reasonable consumers acting reasonably under the circumstances.

231. Although not required by New York law, Plaintiffs and Class members reasonably relied on Defendants' material misrepresentations, and would not have purchased, or would have paid less money for, Defendants' Optimum internet service plans had they known the truth about Defendants' Network Enhancement Fee.

232. Defendants knowingly and willingly committed these deceptive acts and practices, for their own profit.

233. As a direct and proximate result of Defendants' actions, Plaintiffs and Class members have been harmed and lost money or property in the amount of the Network Enhancement Fees they were charged by and paid to Defendants.

234. By reason of this conduct, Defendants have engaged in deceptive conduct in violation of the New York General Business Law.

235. Defendants' actions were the direct, foreseeable, and proximate cause of the damages that Plaintiffs and Class have sustained, as Defendants charged the undisclosed, extra-contractual Network Enhancement Fees to Plaintiffs and the Class and required Plaintiffs and the Class to pay such Fees to Defendants.

236. As a result of Defendants' actions and violations, Plaintiffs and the Class members have suffered damages and are entitled to recover those damages as well as statutory and treble damages and reasonable attorney's fees from Defendants.

COUNT VII

Violations of New York General Business Law § 350 (Plaintiffs Concepcion, Xue Shi Lin, and Friedman)

237. Plaintiffs Concepcion, Xue Shi Lin, and Friedman reallege and incorporate by reference all paragraphs previously alleged herein.

238. New York General Business Law § 350 prohibits false advertising in the conduct of any business, trade, or commerce.

239. Pursuant to the statute, false advertising is defined as "advertising, including labeling, of a commodity … if such advertising is misleading in a material respect."

240. Defendants have engaged in misleading advertising regarding Optimum internet service with respect to Plaintiffs and the Class, which include, without limitation:

a. Misrepresenting the prices of Defendants' internet service plans by advertising or quoting an internet service plan price that did not include applicable monthly service charges such as the Network Enhancement Fee;

b. Inventing a bogus "Network Enhancement Fee" out of whole cloth and not including that Fee amount in the advertised and quoted price of the internet service plan, when in fact the Fee is an arbitrary and disguised double-charge for the internet service promised in the plan;

c. Misrepresenting that the prices of their internet service plans are fixed and will not increase during a specified promotional period, when Defendants reserve the right to (and did in fact) increase service prices during that period by increasing

discretionary monthly service charges such as the Network Enhancement Fee; and

d. Misrepresenting the nature of the Network Enhancement Fee, including by stating or indicating that the Network Enhancement Fee is a tax, government fee, regulatory fee, or charge over which Defendants have no control.

241. Moreover, Defendants omitted, actively concealed, and failed to disclose the true nature and amount of the Network Enhancement Fee in their advertisements. With respect to such omissions, Defendants at all relevant times had a duty to disclose the information in question because, *inter alia*: (a) Defendants had exclusive knowledge of material information that was not known to Plaintiffs and Class members; (b) Defendants concealed material information from Plaintiffs and Class members; and (c) Defendants made partial representations, including regarding the supposed monthly rate of Optimum internet service plans, which were false and misleading absent the omitted information.

242. Defendants' misleading advertisements have a tendency to deceive, and in fact deceived, the general public, including Plaintiffs and the Class.

243. Defendants' misleading advertisements were and are material, in that a reasonable person would attach importance to the information and would be induced to act on the information in making purchase decisions.

244. Plaintiffs and Class members reasonably relied on Defendants' misleading advertisements, and would not have purchased, or would have paid less money for, Optimum internet service had they known the truth.

245. Defendants knowingly and willingly made these false advertisements and misrepresentations, for their own profit.

246. As a direct and proximate result of Defendants' actions, Plaintiffs and Class members have been harmed and lost money or property in the amount of the Network Enhancement Fees they were charged by and paid to Defendants.

247. By reason of this conduct, Defendants have engaged in deceptive advertising in violation of the New York General Business Law.

248. Defendants' actions were the direct, foreseeable, and proximate cause of the damages that Plaintiffs and Class have sustained, as Defendants charged the undisclosed, extra-contractual Network Enhancement Fees to Plaintiffs and the Class and required Plaintiffs and the Class to pay such Fees to Defendants.

249. As a result of Defendants' actions and violations, Plaintiffs and the Class members have suffered damages and are entitled to recover those damages as well as statutory and treble damages and reasonable attorney's fees from Defendants.

COUNT VIII

Breach of Contract Through Violation of the Implied Covenant of Good Faith and Fair Dealing (All Plaintiffs)

250. Plaintiffs reallege and incorporates by reference all paragraphs previously alleged herein.

251. By operation of law, there existed a contract for the sale of internet and television services between Defendants and each Plaintiff and Class member.

252. By operation of law, there existed an implied duty of good faith and fair dealing in each such contract.

253. By the acts alleged herein, Defendants have violated that duty of good faith and fair dealing, thereby breaching the implied contract between Defendants and each Plaintiff and Class member.

254. Specifically, Defendants have violated the duty of good faith and fair dealing with respect to the sale of internet and television service to Plaintiffs and the Classes by, *inter alia*:

a. Misrepresenting the prices of Defendants' internet and television service plans by advertising, quoting, and promising service plan prices that did not include applicable monthly service charges such as the Network Enhancement Fee, the Broadcast Station Programming Surcharge, and the Sports Programming Surcharge;

b. Inventing these bogus fees and surcharges out of whole cloth and not including the amounts thereof in the advertised, quoted, and promised prices of the internet and television service plans, when in fact the fees and surcharges are arbitrary and disguised double-charges for the internet and television service promised in the plans;

c. Misrepresenting that the prices of their internet and television service plans are fixed and will not increase during a specified promotional period, when Defendants reserve the right to, and did in fact, increase service prices during that period by increasing discretionary monthly service charges such as the Network Enhancement Fee, the Broadcast Station Programming Surcharge, and the Sports Programming Surcharge;

d. Misrepresenting the nature of these fees and surcharges, including by stating or indicating that the fees and surcharges are taxes, government fees, regulatory fees, or charges over which Defendants have no control; and

e. Charging the undisclosed, extra-contractual fees and surcharges to Plaintiffs and the Class despite the fact that Plaintiffs and the Classes neither agreed nor consented to pay such fees or surcharges.

255. Moreover, Defendants omitted, actively concealed, and failed to adequately disclose the true nature and amount of the Network Enhancement Fee, the Broadcast Station Programming Surcharge, and the Sports Programming Surcharge, and the increases thereto. With respect to such omissions, Defendants at all relevant times had a duty to disclose the information in question because, *inter alia*: (a) Defendants had exclusive knowledge of material information that was not known to Plaintiffs and Class members; (b) Defendants concealed material information from Plaintiffs and Class members; and (c) Defendants made partial representations, including regarding the supposed monthly rate of their internet and television service plans, which were false and misleading absent the omitted information.

256. As a result of these breaches, each Plaintiff and Class member has suffered damages as described herein, in that they were charged and forced to pay undisclosed, extra-

contractual Network Enhancement Fees, Broadcast Station Programming Surcharges, and Sports Programming Surcharges to Defendants.

PRAYER FOR RELIEF

WHEREFORE, on behalf of themselves and the proposed Classes, Plaintiffs request that this Court order relief and enter judgment against Defendants as follows:

a. Declare this action to be a proper class action, certify the proposed nationwide Classes and appoint Plaintiffs and their counsel to represent the Classes;

b. Declare that Defendants are financially responsible for notifying all Class members of Defendants' deceptive and unconscionable business practices alleged herein;

c. Find that Defendants' conduct alleged herein be adjudged and decreed in violation of the laws cited above;

d. Enter judgment in favor of each class member for damages suffered as a result of the conduct alleged herein, to include interest and pre-judgment interest;

e. Permanently enjoin Defendants from engaging in the misconduct alleged herein;

f. Award Plaintiffs and the class statutory, treble and punitive damages;

g. Award Plaintiffs reasonable attorneys' fees and costs; and

g. Grant such other and further legal and equitable relief as the Court deems just and proper.

JURY TRIAL DEMAND

PLEASE TAKE NOTICE that the Plaintiffs hereby demand a trial by jury as to all parties.

Dated: March 31, 2023

BY: _____

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* Pro Hac Vice Application To Be Submitted

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