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11 Attorneys for Plaintiffs

12
 13 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 14 COUNTY OF LOS ANGELES

16 RAYMOND JUAREZ, an individual;
 17 ANTHONY FOSTER, an individual;
 ROXY LOPEZ, an individual; SHERRI
 18 SHERWOOD, an individual; and
 19 RACHEL GALARSA, an individual, on
 behalf of themselves and all others
 20 similarly situated,

21 Plaintiffs,

22 v.

23 T-MOBILE, USA Inc., a Delaware
 24 corporation; and DOES 1-100, inclusive,

25 Defendants.

No. **23STCV31225**

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 **COMPLAINT**

2 Plaintiffs Raymond Juarez, Anthony Foster, Roxy Lopez, Sherri Sherwood, and Rachel
3 Galarsa, by and through their undersigned counsel, on their own behalf and on behalf of all other
4 entities and persons similarly situated (residents of California only) (collectively, “Plaintiffs”), sue
5 T-Mobile, USA, Inc. (“T-Mobile”) and DOES 1 through 100 (“Doe Defendants”) (T-Mobile and
6 Doe Defendants are collectively referred to herein simply as the “Defendants”) and for this
7 Complaint, allege upon information and belief, and based on the investigation to date of their
8 counsel, as follows:

9 **INTRODUCTION**

10 1. This is a class action brought for the benefit and protection of Plaintiffs, and all other
11 similarly situated consumers who are residents of California and who have visited, used, or
12 commenced transactions through the websites and mobile applications, including but not limited to
13 t-mobile.com and metrobyt-mobile.com (the “Platforms”).

14 2. By way of this action, Plaintiffs, and all others similarly situated, seek damages,
15 restitution, injunctive relief, public injunctive relief, and other relief necessitated by Defendants’
16 unlawful and unfair actions in violation of California Civil Code section 1670.8 and California
17 Business and Professions Code section 17200; Plaintiffs on behalf of themselves and all others
18 similarly situated seek an order permanently enjoining Defendants from engaging in these ongoing
19 unlawful and unfair practices, and civil penalties and damages available under California law.

20 3. Because of the current power of the internet and social media platforms to publicize
21 a company’s offerings of goods or services—and the potential harm to corporate interests when
22 negative consumer statements “go viral”—Defendants have a significant incentive to minimize the
23 negative publicity they receive, including in the form of negative online reviews and comments.
24 Some companies have gone so far as to attempt to prohibit customers and potential customers from
25 making negative statements about the goods or services they offer, to the detriment of consumers,
26 potential consumers, and the public of the State of California. Fortunately, California Civil Code
27 section 1670.8 was enacted to protect the right of California consumers to voice their opinions,
28 observations, and experiences about the products and services delivered or offered to California

1 consumers, as well as the citizens of the State of California. The California Legislature reasonably
2 and correctly determined that such freedom is important to keep the public informed and keep large
3 corporations honest about the quality of the goods or services they offer to consumers.

4 4. Section 1670.8(a) provides as follows: “(1) **A contract or proposed contract** for
5 the sale or lease of consumer goods or services **may not include a provision waiving the**
6 **consumer’s right to make any statement** regarding the seller or lessor or its employees or agents,
7 or concerning the goods or services” and “(2) **It shall be unlawful to threaten or seek to enforce**
8 **a provision made unlawful under this section, or to otherwise penalize a consumer for making**
9 **any statement protected under this section.**” Section 1670.8’s protections are so important that
10 the statute expressly provides that “**any waiver of the provisions of this section is contrary to**
11 **public policy, and is void and unenforceable.**”

12 5. In order to use and benefit from Defendants’ Platforms, visitors and users of the
13 Platforms are informed that they must agree to T-Mobile’s Website Terms of Use (“Terms”). In
14 fact, Defendants assert that simply by visiting, shopping on, or using their Platforms, users have
15 agreed to be bound by the Terms. Defendants’ Terms specifically provide, “[b]y visiting or using
16 any T-Mobile website, portal or extranet, or the services provided on any T-Mobile website, you
17 agree to these Terms of Use.”

18 6. While conducting substantial business with California consumers, the Terms
19 Defendants impose upon T-Mobile’s customers and prospective customers clearly violate Section
20 1670.8. Pursuant to the Terms that Defendants impose upon their customers for the privilege of
21 accessing the services or products offered and promoted on the Platforms, T-Mobile requires users
22 to agree they “must not post, upload, submit or request . . . any material that could harm T-Mobile’s
23 business, reputation, employees . . .” The Terms further threaten visitors of the Platforms who
24 consider violating the Terms in providing that all users “irrevocably agree that T-Mobile can pursue
25 claims against anyone who violates T-Mobile’s rights in the [s]ubmissions,” and T-Mobile
26 “reserve[s] the right, in our sole discretion, to terminate your access to the Site, or any portion,
27 thereof, at any time, without notice.”

28 7. Defendants’ conduct is unlawful, including among other reasons, because it is aimed

1 to stifle California consumers’ right to free speech, and the right of the California public to hear
2 lawful discourse. Defendants’ strong-arm tactics to silence injured parties were and continue to be
3 intentionally exercised to protect Defendants’ self-promoting public image for commercial and
4 other benefits. Defendants’ unlawful business practices, purposefully designed to maintain and
5 increase its consumers and prop up its stock price, all while denying public, consumers, and
6 potential consumers accurate information so that they may make informed decisions as consumers.

7 8. By way of these provisions, T-Mobile seeks to have users waive their right as
8 consumers to make negative statements regarding T-Mobile or its employees, agents, goods or
9 services, and further threatens to penalize consumers for making such statements. These unlawful
10 restrictions—imposed by Defendants against their own customers and prospective customers—is
11 an important component of T-Mobile’s business strategy, which relies upon the popularity of its
12 product or service offerings nationwide to generate significant revenues and profits. But
13 Defendants’ efforts to silence their customers and prospective customers is clearly prohibited by
14 California law, thereby subjecting Defendants to significant penalties, as described herein.

15 **JURISDICTION AND VENUE**

16 9. This Court has jurisdiction over the claims and causes of action asserted herein
17 because such claims arise solely and specifically out of Defendants’ unlawful business practices
18 within the State of California, and relate to at least one statute—California Civil Code section
19 1670.8—that was designed to protect California’s citizens, the application of which is exclusively
20 a matter for the courts of this State.

21 10. Venue is proper in this Court because: Defendants transact business in California
22 and in the County of Los Angeles based on Plaintiffs’ use of the Platforms in this County;
23 Defendants have committed unlawful acts in the County by and through the Platforms and
24 associated business transactions within the County; and a substantial part of the events giving rise
25 to the claims alleged herein occurred in this County, where at least one of the Plaintiffs reside.

26 **THE PARTIES**

27 11. At all relevant times, Plaintiff Raymond Juarez was and has been a citizen of the
28 State of California and a resident of Los Angeles County. Juarez is an individual who visited, used,

1 or commenced transactions on the Platforms within the applicable limitations period in Los Angeles
2 County in the State of California.

3 12. At all relevant times, Plaintiff Anthony Foster was and has been a citizen of the State
4 of California. Foster is an individual who visited, used, or commenced transactions on the Platforms
5 within the applicable limitations period in the State of California.

6 13. At all relevant times, Plaintiff Roxy Lopez was and has been a citizen of the State
7 of California. Lopez is an individual who visited, used, or commenced transactions on the Platforms
8 within the applicable limitations period in the State of California.

9 14. At all relevant times, Plaintiff Sherri Sherwood was and has been a citizen of the
10 State of California. Sherwood is an individual who visited, used, or commenced transactions on the
11 Platforms within the applicable limitations period in the State of California.

12 15. At all relevant times, Plaintiff Rachel Galarsa was and has been a citizen of the State
13 of California. Galarsa is an individual who visited, used, or commenced transactions on the
14 Platforms within the applicable limitations period in the State of California.

15 16. Upon information and belief, Defendants comprised of affiliated corporate entities,
16 each of which conducts business in the State of California with California citizens. These entities,
17 individually or collectively, through an integrated corporate structure (the details of which Plaintiffs
18 are presently unaware), develop, market, and sell a wide variety of goods and services. Defendants
19 operate in California and generate sales through the Platforms.

20 17. The true names and/or capacities, whether individual, corporate, partnership,
21 associate, governmental, or otherwise, of the Doe Defendants, inclusive, and each of them, are
22 unknown to Plaintiffs at this time, who therefore sues said Doe Defendants by such fictitious names.
23 Plaintiffs are informed and believe, and thereon allege, that each defendant designated herein as a
24 Doe Defendant caused injuries and damages proximately thereby to Plaintiffs as hereafter alleged,
25 and that each Doe Defendant is liable to Plaintiffs for the acts and omissions alleged herein below,
26 and the resulting injuries to Plaintiffs, and damages sustained by Plaintiffs. Plaintiffs will amend
27 this Complaint to allege the true names and capacities of said Doe Defendants when that same is
28 ascertained.

FACTS COMMON TO ALL CLASS MEMBERS

1
2 18. At all relevant times, Defendants were and currently are in the business of
3 advertising, promoting, marketing, selling, and distributing consumer products and services
4 through the Platforms, which Platforms are targeted to, and accessible by the citizenry of California.

5 19. T-Mobile is well-aware that its public image is vital to maintaining and gaining
6 customers. If the public sees content posted by users that may be insulting to T-Mobile, and/or any
7 of its partners, and/or any its employees, and/or concerning any of its goods or services, then its
8 current customers and/or prospective customers may shift to a competitor, ultimately resulting in
9 loss of business and loss of revenue.

10 20. Thus, in order to maintain a positive public image, T-Mobile has engaged in an
11 intentional business strategy to silence each and every customer or potential customer who visits
12 its Platforms by purporting to bind users to its Terms—immediately upon accessing its Platforms.

13 21. Specifically, Defendants’ Terms provide that “[b]y visiting or using any T-Mobile
14 web site, portal or extranet, or the services provided on any T-Mobile web site, you agree. . . [that]
15 [y]ou must not post, upload, submit or request. . . any material that could harm T- Mobile’s
16 business, reputation, employees. . .”

17 22. Defendants’ Terms further threaten to penalize users for making any statements that
18 purportedly “could harm” T-Mobile in providing that “T- Mobile can pursue claims against anyone
19 who violates T-Mobile’s rights in the [s]ubmissions,” and that T-Mobile “reserve[s] the right, in
20 [their] sole discretion, to terminate your access to the Site, or any portion thereof, at any time,
21 without notice.”

22 23. Defendants have sold and continue to sell millions of services and products to
23 California consumers through the Platforms.

24 24. Defendants purport to forbid any California consumers who have purchased, visited
25 or used the Platforms, or are even considering from purchasing services or products from T-Mobile
26 through its Platforms, from making any statements that purportedly “could harm” T-Mobile itself,
27 any of its partners, any of its employees, any of its agents, and any of its goods or services.

28 25. In doing so, Defendants have and continue to engage in unlawful and unfair conduct,

1 that is contrary to public policy and in violation of California Civil Code section 1670.8 and
2 California Business and Professions Code section 17200.

3 26. Each of the Plaintiffs specifically identified herein, and millions more similarly
4 situated persons in the State of California, have visited the Platforms—either as consumers or
5 potential consumers—and thus have ostensibly been subjected to the unlawful Terms.

6 **CLASS ACTION ALLEGATIONS**

7 27. Pursuant to California Code of Civil Procedure section 382, Plaintiffs bring this
8 class action on their own behalf and on behalf of all other similarly situated consumers in California.
9 The proposed class is defined as follows:

- 10 a. With respect to Count I below, during the fullest period allowed by law, all persons
11 residing in California who, visited, used, or completed transactions on the Platforms
12 (“Class”); and
13 b. With respect to Count II below, a subclass of the Class, during the fullest period allowed
14 by law, all persons residing in California, who completed sales transactions on the
15 Platforms (“Subclass”).

16 28. Like Plaintiffs, all Class members are California residents who visited, used, or
17 completed sales transactions on the Platforms and who were subject to the Terms that limit their
18 right as consumers to make statements regarding Defendants, their employees or agents, or
19 concerning the goods or services.

20 29. Excluded from the Class are assigned judges and members of their families within
21 the first degree of consanguinity; Defendants; and Defendants’ subsidiaries, affiliates, officers, and
22 directors.

23 30. The requirements of Code of Civil Procedure section 382 are satisfied for the
24 proposed Class.

25 31. The proposed Class is so numerous that individual joinder of all the members is
26 impracticable because members of the Class number in the tens or hundreds of thousands. The
27 precise number of Class members and their identities are unknown to Plaintiffs at this time but are
28 objectively ascertainable and will be determined through appropriate discovery and other readily

1 available means.

2 32. Defendants possess objective evidence as to the identity of each Class member and,
3 to a reasonable degree of certainty, the harm suffered by each Class member, including without
4 limitation web traffic data evidencing visits to the Platforms, sales receipts, phone numbers, names,
5 rewards accounts data, credit card data, customer service complaint forms/emails/date, and other
6 evidence which objectively identifies class members.

7 33. Class members may be notified of the pendency of this action by mail, publication
8 and/or through the records of Defendants.

9 34. There are common questions of law and fact affecting Plaintiffs and Class members.
10 Common legal and factual questions include, but are not limited to:

11 a. Whether each imposition of Defendants' Terms upon members of the Class constitutes a
12 violation of the provisions of California Civil Code section 1670.8 and, if so, whether each such
13 violation is a "willful, intentional, or reckless" violation;

14 b. Whether Defendants' Terms are unlawful, contrary to public policy, void and/or
15 unenforceable;

16 c. Whether by the misconduct set forth in this Complaint, Defendants engaged and continue
17 to engage in unfair, fraudulent, or unlawful business practices;

18 d. Whether the Class is entitled to recover statutory attorney's fees;

19 e. Whether Class members are entitled to civil penalties; and

20 f. Whether, as a result of Defendants' misconduct alleged herein, Plaintiffs and Class
21 members are entitled to restitution, injunctive, public injunctive, and/or monetary relief and, if so,
22 the amount and nature of such relief.

23 35. Plaintiffs' claims are typical of the claims of the proposed Class because the rights
24 of Plaintiffs and Class members were violated in the same manner by the same conduct.

25 36. Plaintiffs and Class members are all entitled to recover statutory penalties and other
26 relief arising out of Defendants' violations of statutory law alleged herein.

27 37. Plaintiffs will fairly and adequately represent and protect the interests of the Class.

28 38. Plaintiffs' interests do not conflict with the interests of the Class they seek to

1 represent. Plaintiffs have retained counsel competent and experienced in prosecuting class actions,
2 and Plaintiffs intend to vigorously prosecute this action.

3 39. The class mechanism is superior to other available means for the fair and efficient
4 adjudication of the claims of Plaintiffs and Class members.

5 40. Given the relative value of statutory penalties available to any of the individual Class
6 members, individual litigation is not practicable.

7 41. Individual Class members will not wish to undertake the burden and expense of
8 individual cases.

9 42. In addition, individualized litigation increases the delay and expense to all parties
10 and multiplied the burden on the judicial system. Individualized litigation also presents the potential
11 for inconsistent or contradictory judgments.

12 43. In contrast, the class action device presents far fewer management difficulties and
13 provides the benefits of single adjudication, economy of scale, and comprehensive supervision by
14 a single court.

15 44. Questions of law and fact common to all Class members predominate over any
16 questions affecting only individual Class members. Injuries sustained by Plaintiffs and Class
17 members flow, in each instance, from a common nucleus of operative facts as set forth above.

18 45. In each case, Defendants' actions caused harm to all Class members as a result of
19 such conduct. The resolution of these central issues will be the focus of the litigation and
20 predominate over any individual issues.

21 46. Proposed Class counsel possesses the knowledge, experience, reputation, ability,
22 skill, and resources to represent the Class and should be appointed lead counsel for the Class.

23 **COUNT I— VIOLATION OF CIVIL CODE SECTION 1670.8**

24 47. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 46 of their
25 Complaint. Plaintiffs assert this first cause of action on behalf of themselves and all other similarly
26 situated persons residing in California who visited or used the Platforms.

27 48. Defendants are in the business of selling or leasing consumer products and services.

28 49. Plaintiffs and Class members purchased used, visited, or completed transactions for

1 goods or services from Defendants via the Platforms.

2 50. Pursuant to the Terms, Defendants require users to agree that “[y]ou must not post,
3 upload, submit or request. . . any material that could harm T- Mobile’s business, reputation,
4 employees. . .” The Terms further threaten visitors of the Platforms who consider violating the
5 Terms in providing that “T- Mobile can pursue claims against anyone who violates T-Mobile’s
6 rights in the [s]ubmissions,” and that T-Mobile “reserve[s] the right, in [their] sole discretion, to
7 terminate your access to the Site, or any portion thereof, at any time, without notice.”

8 51. By visiting, using, or making purchases on the Platforms, Defendants purport to
9 have charged Plaintiffs and Class Members with having read, understood, and agreed to be bound
10 by the Terms.

11 52. By way of this restriction, Defendants intentionally, willfully, or recklessly sought
12 to have Plaintiffs and the Class members waive their right as consumers to make statements
13 regarding Defendants, their employees or agents, or concerning the goods or services, which
14 restriction is prohibited under California Civil Code 1670.8 and is contrary to public policy.

15 53. Defendants have repeatedly violated California Civil Code 1670.8 in relation to each
16 of the Plaintiffs and Class members and their respective visits, uses, or transactions on the
17 Platforms.

18 54. Defendants’ conduct has caused Plaintiffs and Class members to suffer harm.

19 55. Plaintiffs and Class members are entitled to restitutionary and injunctive relief,
20 including public injunctive relief.

21 56. Plaintiffs and Class members are also entitled to civil penalties for Defendants’
22 violations of Civil Code 1670.8.

23 **COUNT II—VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

24 57. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 56 of their
25 Complaint. Plaintiffs assert this second cause of action on behalf of themselves and all other
26 similarly situated within the Subclass.

27 58. By engaging in the above-described conduct, Defendants, and each of them, acted
28 in a manner that is unlawful and unfair—including by virtue of the fact that their conduct violates

1 California Civil Code section 1670.8—and have thus engaged in unfair and unlawful business
2 practices to the extreme detriment of Plaintiffs and Subclass members, which conduct is prohibited
3 under California Business & Professions Code sections 17200, et seq.

4 59. Defendants’ unlawful and unfair conduct has allowed for Defendants to enrich
5 themselves at the expense of Plaintiffs and Subclass members, including through Plaintiffs’
6 payment of monies to Defendants, including without limitation through the purchase transactions
7 completed on the Platforms.

8 60. Plaintiffs are thus entitled to restitutionary and injunctive relief, including without
9 limitation disgorgement of any unlawful gains that Defendants obtained as a result of their unlawful
10 and unfair conduct at the expense of Plaintiffs and Subclass members.

11 **PRAYERS FOR RELIEF**

12 **WHEREFORE**, Plaintiffs, on behalf of themselves and the putative Class members, pray
13 for judgment as follows:

- 14 a. Determining that this action is a proper class action and certifying the Class and Subclass,
15 as defined herein;
- 16 b. Appointing Plaintiffs as Class and Subclass representatives;
- 17 c. Appointing the undersigned as Class and Subclass counsel;
- 18 d. Finding Defendants liable to Plaintiffs and Class members for damages in such amount(s)
19 as the Court or Jury may determine;
- 20 e. Awarding statutorily provided damages to Plaintiffs and Class members as appropriate;
- 21 f. Awarding restitutionary disgorgement and all other forms of equitable monetary relief to
22 Plaintiffs, Class members; and Subclass members;
- 23 h. Awarding pre- and post-judgment interest;
- 24 i. Awarding injunctive relief, including public injunctive relief, as claimed herein or as the
25 Court may deem proper;
- 26 j. Awarding Plaintiffs, Class members, and Subclass members attorney fees and all
27 litigation costs as allowed by law; and
- 28 k. Awarding such other and further relief as may be just and proper.

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues so triable.

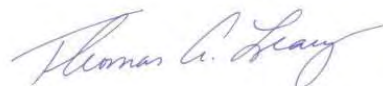
Dated: December 20, 2023

SINGLETON SCHREIBER, LLP



By: _____
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Attorneys for Plaintiffs

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