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11 all others similarly situated, and the general public

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County of Los Angeles
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David W. Slayton,
Executive Officer/Clerk of Court,
By D. Jackson Aubry, Deputy Clerk

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

14 Esperanza Reyes Rendon, on behalf of herself,
15 all others similarly situated, and the general
16 public,

17 Plaintiffs,

18 v.

19 T-MOBILE USA, INC., a Delaware
20 corporation, and DOES 1 through 20,
21 inclusive,

22 Defendants.

CASE NO.: 23STCV27370

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR BUSINESS PRACTICES;
- 2) CONVERSION;
- 3) NEGLIGENCE;
- 4) DECLARATORY RELIEF;
- 5) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
- 6) FRAUD;
- 7) CONCEALMENT; AND
- 8) PERMANENT PUBLIC INJUNCTIVE RELIEF.

DEMAND FOR JURY TRIAL

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1 Plaintiff Esperanza Reyes Rendon (hereinafter referred to as "Plaintiff"),
2 hereby alleges:

3 **I. PARTIES**

4 1. Plaintiff is, and at all times herein mentioned was, an adult residing in the
5 State of California. Plaintiff is of Hispanic heritage and has Spanish as a primary
6 language.

7 2. Plaintiff is informed and believes and thereon alleges that Defendants T-
8 MOBILE USA, Inc., and DOES 1 through 20, inclusive, (hereinafter jointly referred as
9 "Defendants") are registered in, and operating throughout, the State of California, and
10 nationwide, including within County of Los Angeles.

11 3. Plaintiff is ignorant of the true names and capacities of the defendants, sued
12 herein as DOES 1 through 20, inclusive, and therefore sues these defendants by such
13 fictitious names. Plaintiff will amend this Complaint to allege their true names and
14 capacities when ascertained. Plaintiff is informed and believes, and thereon alleges that
15 each of the fictitiously named defendants is negligently and/or fraudulently responsible
16 in some manner for the occurrences herein alleged, and Plaintiff's injuries as herein
17 alleged were proximately caused by each defendant's negligence and/or fraud.

18 4. Plaintiff is informed and believes and thereon alleges that at all times herein
19 mentioned, each of the defendants sued herein as a "DOE" was the agent and/or
20 employee of each of the remaining defendants, and was at all times acting within the
21 purpose and scope of such agency and/or employment.

22 5. At all times herein mentioned, DOES 1 through 10, inclusive, were the
23 agents, and/or employees of defendants, and DOES 11 through 20, doing the things
24 hereinafter alleged were acting within the scope and their authority as such agents,
25 servants and employees and with the permission and consent of their co-defendants.

26 **II. JURISDICTION AND VENUE**

27 6. This Court has jurisdiction over T-MOBILE USA, INC. because T-
28 MOBILE USA, INC. conducts business in the County of Los Angeles, State of California

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1 and has sufficient minimum contacts in California and nationwide; or otherwise
2 intentionally avails itself of the markets within California through the promotion, sale,
3 marketing, and distribution of its services to render the exercise of jurisdiction by this
4 Court proper and necessary.

5 7. Venue is proper in Los Angeles County because many of the acts and
6 omissions related to the liability of each Defendant occurred in Los Angeles County,
7 California.

8 8. Plaintiff is informed, believes and thereon alleges that the amount in
9 controversy, exclusive of interest and costs, exceeds \$5,000,000.

10 **III. PLAINTIFF-SPECIFIC ALLEGATIONS**

11 9. Plaintiff is a long-term customer of Defendants and a subscriber of 5
12 telephone lines on her family telephone account offered by Defendants.

13 10. On or about October 23, 2023, Plaintiff discovered that her telephone bill
14 contained extra charges of \$18.00 for each of three out of five phones (\$54.00 total) used
15 on her family subscription plan. Upon further review, Plaintiff discovered that each of her
16 Lines was additionally charged \$3.49 for “Regulatory Programs & Telco Recovery Fee”
17 under the large heading “TAXES & FEES.”

18 11. Plaintiff learned, that when she renewed her or her family members’
19 cellular phones with Defendants she was also signed up to add-on: device protection plan
20 also known as insurance by Defendants without her knowledge and/or consent.

21 12. Plaintiff is Hispanic. She is a Spanish speaker. When Plaintiff purchased
22 additional phones, the purchase was made by a sales representative on an electronic pad.
23 Plaintiff was not offered any brochures or documents in Spanish and did not explain that
24 insurance is being added to Plaintiff’s phone, or that there are any documents that she is
25 needed to sign. Sales Representative never explained to Plaintiff that she will be charged
26 “Regulatory Programs & Telco Recovery Fee” on each of her cell phones in addition to
27 paying for her plan.

28 13. Plaintiff reviewed her billing statements for the last 18 months and

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1 discovered that she has been charged extra \$18.00 for each of the three most recently
2 purchased cellular phones every month, increasing her monthly bill by \$54.00 at least for
3 the last 18 months. Additionally, she was charged \$3.49 for each of four phone lines she
4 had, additionally increasing her monthly bill for \$13.96.

5 14. Plaintiff was not offered an option to purchase a phone without protection
6 plan. Accordingly, without her knowledge and/or consent she was subjected for an
7 unwarranted payment of \$54.00 for insurance and \$13.96 “Regulatory Programs & Telco
8 Recovery Fee” every month.

9 **IV. PLAINTIFF’S GENERAL ALLEGATIONS**

10 15. Defendants’ agents, employees and sales representatives
11 (“Representatives”) were trained to sell not only cellphones, but add-ons such as device
12 protection plans also known as insurance, travel coverage, etc. (collectively referred as
13 “Add-ons”). The training of personnel includes training how to sell Add-ons to the
14 devices. The Defendants incentivized their representatives to sell insurance so that
15 Defendants can earn substantial revenue from the sale of Add-ons.

16 16. Defendants provided reduced commissions for sale of cellular phones but
17 provided commissions starting from \$4.00 for each insurance sold.

18 17. The Defendants offered and paid incentives and bonuses to their
19 Representatives to sell and add Add-ons. This incentive process increased the
20 opportunity of fraud and undue influence that the insurance is inseparable from the
21 particular cell phone service plans. In reality Defendants’ sales representatives sold and
22 put Add-ons on the plan unbeknownst to the consumer. The Defendants targeted
23 minority groups, particularly, Hispanics, and used the following language: “Insurance
24 is a requirement;” “The plan comes with insurance;” “Part of the plan includes
25 insurance;” “It is a bundle that includes insurance with the phone;” and “This is what it
26 is.”

27 18. Defendants’ Representatives control the buttons on the device used to sign
28 a contract with Defendants and added extra Add-ons, such as insurance, without

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1 knowledge of consumer. Defendants knew or should have known that consumers trust
2 Defendants based on the representations made the time the sell was made and rarely look
3 closely at the bills sent by Defendants thereafter.

4 19. Furthermore, when cell phones were sold they were often advertised as
5 “free” but in fact they were not free. Defendants charged customer for the following 24
6 month but also provided a company credit. However, if the cell phone is lost or stolen,
7 consumer is left with the 24 months balance but without company credit: even if
8 consumer loses the phone on day one, he or she remains liable to Defendants for the
9 balance.

10 20. Defendants offer customers no brochures on insurance or how insurance
11 works. The Defendants failed to provide adequate information or explanation to the
12 consumers in order to increase the revenue for the Defendants.

13 21. Commonly, during the sale or issuance of a new device to a customer,
14 Defendants’ sales representative simply hits the button for Add-ons, such as insurance
15 coverage and adds it. The sales representative controls the screen and often hits “accept”
16 or insurance and the customer does not even realize that insurance was added.

17 22. Class members are not provided brochures in their primary language (for
18 example, Spanish) and insurance contract.

19 23. Upon information and belief, if a customer complains to customer service
20 of Defendants, customer is not offered a refund, but only a credit towards future
21 Defendants’ services.

22 24. Moreover, the commission-based structure is used to incentivize sales
23 representatives and employees of Defendants to use creative and convincing language to
24 add Add-ons, such as insurance, or North America Family Feature, or Travel to
25 unsuspecting customers.

26 25. Plaintiff is informed and believes that Defendants, their agents and
27 employees, routinely add various Add-ons to the plan without the knowledge and consent
28 of the customer.

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1 26. As a result of the negligent and wrongful conduct of Defendants, Plaintiff
2 and Class members have sustained injuries.

3 27. As a further result of the conduct of Defendants, Plaintiff and Class
4 members incurred pecuniary losses as a result of the actions and inactions herein
5 described.

6 28. Furthermore, Defendants perpetrate a bait-and-switch scheme against
7 their wireless service customers. Defendants prominently advertise particular flat monthly rates for
8 its post-paid wireless service plans. Then, after customers sign up, Defendants actually
9 charge higher monthly rates than the customers were promised and agreed to pay.
10 Defendants covertly increase the actual price by padding all post-paid wireless
11 customers' bills each month with a bogus so-called "Regulatory Programs & Telco
12 Recovery Fee" (hereinafter "Regulatory Fee") (currently \$2.99 every month for each
13 phone line for Telco Recovery Fee and \$0.50 every month for each phone for Regulatory
14 Programs, total of \$3.49 per line per month) on top of the advertised price. The
15 Regulatory Fee is not disclosed to customers before or when they sign up, and in fact it is
16 never adequately and honestly disclosed to them. The so-called Regulatory Fee is not, in
17 fact, a bona fide Regulatory Fee, but rather is simply a means for Defendants to charge
18 more per month for the service itself without having to advertise the higher prices.

19 29. Through this scheme, Defendants have unfairly and improperly extracted
20 hundreds of millions of dollars in ill-gotten gains from California consumers.

21 30. The first time Defendants even mention the existence of the Regulatory
22 Fee is on customers' monthly billing statements, which they begin receiving only after
23 they sign up for the service and are financially committed to their purchase.

24 31. Making matters worse, Defendants deliberately hide the Regulatory Fee in
25 the billing statements. In Defendants' printed monthly billing statements, Defendants
26 intentionally bury the Regulatory Fee in a portion of the statement that: (a) makes it likely
27 customers will not notice it; and (b) by putting it under heading "TAXES & FEES
28 BREAKDOWN" misleadingly suggesting that the Regulatory Fee is akin to a tax or

1 another standard government pass-through fee, when in fact it is simply a way for
2 Defendants to advertise and promise lower rates than they actually charge. Thus, by
3 Defendants' own design, the printed monthly statements serve to further Defendants'
4 scheme and keep customers from realizing they are being overcharged. Moreover, in
5 Defendants' online billing statements that Plaintiff and numerous other Defendants'
6 wireless customers receive in lieu of printed statements (Defendants encourage
7 customers to sign up for online billing), the default view for the billing statements does
8 not even include any line item at all for the Regulatory Fee that Defendants systematically
9 charge to all of their post-paid customers.

10 32. Deep within Defendants' website—where by design it is unlikely to be
11 viewed by consumers, and certainly not before they purchase their wireless service
12 plans—there is currently a purported description of the Regulatory Fee. Not only does
13 this description fail to constitute an adequate disclosure of the Regulatory Fee, it serves
14 to further Defendants' deception and scheme by suggesting that the Regulatory Fee is
15 tied to certain costs associated with Defendants providing wireless telephone services
16 (interconnect charges and cell site rental charges).

17 33. Assuming this description were accurate, it would merely reinforce that this
18 undisclosed fee should be included in the advertised monthly price for the service because
19 those are basic costs of providing wireless service itself, and thus a reasonable consumer
20 would expect those costs to be included in the advertised price for the service. Moreover,
21 on information and belief, the fee is not, in fact, tied to the costs that Defendants buried
22 description suggests. This is corroborated by the fact that Defendants have repeatedly
23 increased the amount of the monthly Regulatory Fee since the fee was first imposed,
24 while during that same time period the stated costs that the Regulatory Fee is purportedly
25 paying for (i.e., interconnect charges and cell site rental charges) have actually decreased
26 according to Defendants' financial statements.

27 34. In all events, Defendants should clearly disclose the Regulatory Fee and
28 should clearly and accurately state the true monthly prices for its post-paid wireless

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1 service plans in its price representations and advertising. Defendants have failed to do so,
2 and continues to fail to do so.

3 35. Defendants began sneaking the Regulatory Fee into all of their post-paid
4 wireless service customers' bills in or before 2016. For customers who had signed up prior
5 to that time, and who reasonably expected to pay the monthly rates that Defendants
6 advertised, Defendants made no disclosure to them that this additional charge could or
7 would be added to drive up the true monthly price. The first time these customers could
8 have possibly learned about the existence of the Regulatory Fee was, if they noticed it, on
9 a monthly statement when the fee was introduced, which they would have received
10 months or even years after they signed up with Defendants. For customers who signed
11 up after the Regulatory Fee was first introduced, Defendants likewise made no disclosure
12 to them, in their advertising or during the sign-up process, of the existence of the
13 Regulatory Fee or that the true monthly price of the service plans would actually be higher
14 than advertised and represented because of this bogus fee.

15 36. In essence, Defendants introduced the bogus Regulatory Fee as a way to
16 covertly increase the actual monthly price customers are charged for their service, and
17 then has continued to use the Regulatory Fee and unilateral increases thereto as a lever
18 by which Defendants continue to ratchet up the price without the customer realizing and
19 after the customer is already committed. This scheme has enabled, and continues to
20 enable, Defendants to effectively increase their rates without having to publicly announce
21 those higher rates, and allows Defendants to entice more customers by misrepresenting
22 the costs customers would pay both in absolute terms and relative to other wireless
23 providers in the industry.

24 37. Plaintiff, by this action, seeks a public injunction to enjoin Defendants from
25 its false advertising practice and to require Defendants to disclose to the consuming
26 public, in advance, the true costs consumers will pay for Defendants' wireless services.

27 38. Plaintiff further seeks, on behalf of herself and a class of all similarly
28 situated California consumers, an award of damages, restitution, pre- and post-

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1 judgment interest, attorneys’ fees and costs, and permanent injunctive relief, including
2 but not limited to that Defendants discontinue charging Plaintiff and the putative class
3 members the improper Regulatory Fees and Add-ons.

4 **V. CLASS ALLEGATIONS**

5 39. Plaintiff brings this action on his own behalf, and on behalf of herself and
6 as a class action on behalf of the following **Insurance Class**:

7 All California residents whose monthly invoice includes Add-ons such as
8 device protection plan (insurance), Travel insurance and/or other add-ons
9 that are contained in the monthly statements to the consumer.

10 40. Plaintiff also seeks to represent the following class of California consumers:

11 **Regulatory Fee Class**:

12 All California residents whose monthly invoice includes a “Regulatory
13 Programs & Telco Recovery Fee” by Defendants.

14
15 41. Class members can be identified through Defendants’ records including
16 sales, product, and customer records. Plaintiff will revise the class definition based upon
17 information learned through discovery. If it is discovered that there is a feasible
18 nationwide class of persons injured by Defendants’ practices alleged herein, Plaintiff
19 reserves the right to amend the Complaint and to introduce a nationwide class.

20 42. Together, the Insurance Class and Regulatory Fee Class shall be
21 collectively referred to herein as the “Class.”

22 43. This action has been brought and may be properly maintained on behalf of
23 the class proposed herein because it satisfies all class action requirements.

24 44. The members of the Class are readily identifiable and ascertainable from
25 Defendants’ records including sales, product, and customer records.

26 45. The members of the Class are so numerous and geographically dispersed
27 that individual joinder of all class members is impracticable, in that there are potentially
28 hundreds of thousands of persons throughout the state of California that were affected

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1 by Defendants’ practices as consumers.

2 46. Class members may be notified of the pendency of this action by recognized,
3 court-approved notice dissemination methods, which may include U.S. mail, electronic
4 mail, Internet postings, and/or published notice.

5 47. Certification of Plaintiff’s claims for Class-wide treatment is appropriate
6 because Plaintiff can prove the elements of the claims on a class-wide basis using the
7 same evidence as would be used to prove those elements in individual actions alleging
8 the same claim.

9 48. This action involves common questions of law and fact, which predominate
10 over any questions affecting individual class members, including, without limitation:

- 11 1) Whether Defendants sold Add-ons without independently
- 12 2) Whether Defendants allowed its managers, employees, agents or
- 13 3) Whether Defendants knew or had reasons to know that
- 14 4) Whether Defendants’ actions and conduct resulted from the failure
- 15 5) Whether Defendants’ conduct as described constituted unfair
- 16 6) Whether Defendants’ conduct and actions constituted a breach of
- 17 7) Whether Defendants’ conduct and actions constituted conversion
- 18 8) Whether Defendants’ description of Regulatory Fee is false;
- 19 9) Whether Defendants should have disclosed the Regulatory Fee and
- 20 10) Whether the Regulatory Fee and the true price of Defendants’ post-
- 21 11) Whether a reasonable consumer is likely to be deceived by
- 22 12) Whether Defendants explained terms and conditions of the
- 23 13) Whether Defendants’ employees, agents and/or representatives
- 24 25 26 27 28

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1 contradictory judgments, and increases the delay and expense to all parties and the
2 court system. By contrast, the class action device presents far fewer management
3 difficulties, and provides the benefits of single adjudication, economy of scale, and
4 comprehensive supervision by a single court.

5 **VI. ARBITRATION PROVISION IS INAPPLICABLE**

6 57. Defendant T-MOBILE USA, INC.'s has form "Terms and Conditions" for
7 its' customers. At all relevant times, this contract has included materially the same
8 arbitration provision that, according to its terms and as drafted by Defendant T-
9 MOBILE USA, INC., is null and void in its entirety here.

10 58. Under California law, parties may not agree to waive the right to seek
11 public injunctive relief under California's Unfair Competition Law, False Advertising
12 Law, and the Consumer Legal Remedies Act in any forum, and any such agreements are
13 contrary to California public policy and are unenforceable. *McGill v. Citibank, N.A.*, 393
14 P.3d 85 (Cal. 2017).

15 59. Defendant T-MOBILE USA INC.'s Terms and Conditions, which purport
16 to govern the services at issue here for Plaintiff and all proposed Class members, may
17 include an arbitration agreement, which, in pertinent part, states: "The arbitrator may
18 award on an individual basis any relief that would be available in a court, including
19 injunctive or declaratory relief and attorneys' fees. If you seek injunctive or declaratory
20 relief, you agree that the arbitrator may award injunctive or declaratory relief in favor of
21 you alone, and only to the extent necessary to resolve your individual claim." This
22 language purports to bar the arbitrator from granting the type of public injunctive relief
23 authorized under California law as a remedy for claims under California's Unfair
24 Competition Law, False Advertising Law, and the Consumer Legal Remedies Act. As
25 Arbitration Agreement purports to require the parties to arbitrate "all disputes and
26 claims," the arbitration provision thus purports to bar the parties from seeking public
27 injunctive relief in any forum. Such a provision is unenforceable under *McGill*.

28 60. Furthermore, Defendants may claim the arbitration agreement contains

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1 a provision, stating: “In any action between you and us, if a court or an arbitrator
2 determines that any part of this arbitration provision or Class and Mass Action Waiver
3 is unenforceable with respect to any claim, remedy, or request for relief, then the
4 arbitration provision and Class and Mass Action Waiver will not apply to that claim,
5 remedy, or request for relief.” (underline in original).

6 61. Because potential Arbitration Agreement for the Unfair Business
7 Practices Act and Consumer Legal Remedies Act is an improper waiver of public
8 injunctive relief in any forum, Arbitration Agreement is “null and void” to these claims
9 in their entirety and Class or Mass action waiver is inapplicable to these claims.

10 62. Furthermore, purported Arbitration Agreement is Procedurally and
11 Substantially unconscionable.

12 63. The purported Arbitration Agreement is hidden within the Terms and
13 Conditions of Defendant T-MOBILE USA, INC. which are not provided to customers
14 when applying for the services or purchasing a device from Defendants. The sign-up
15 process is fully controlled by Defendants’ Sale Representatives who operate the
16 electronic pad which is used by Defendants to perfect the sale to Class members. Even if
17 it was offered to Class members, this Arbitration Agreement has no opt-out provision
18 and is provided on take-it-or-leave-it basis.

19 64. The purported Arbitration Agreement is also substantively
20 unconscionable, as it imposes a 60-days notice requirement on a customer who wishes
21 to enforce his, her or its’ rights under the contract.

22 65. Furthermore, the purported Arbitration Agreement limits consumer right
23 to file a case as a class or mass action, when, given the amount of potential individual
24 recovery and cost of retaining a legal counsel becomes prohibitive. The arbitration
25 agreement also denied consumers right to a jury trial.

26 66. More importantly, Plaintiff was never provided Terms and Conditions
27 containing the purported Arbitration Agreement in Spanish. Plaintiff did not even check
28 a box agreeing to the Terms and Conditions. The Sales Representative of Defendants

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1 consummated the contract between Plaintiff and Defendants without informing her
2 whether it included T-Mobile’s Terms and Conditions or any Arbitration Agreement,
3 much less providing her with these documents in Spanish. Accordingly, Plaintiff never
4 agreed to the Arbitration Agreement of Defendant T-MOBILE USA, INC.

5 67. Defendants cannot establish who was the person checking the box:
6 Plaintiff, Class member or Defendants’ Representatives. Defendants had control over
7 the accept or decline box, Defendants’ Representatives in conclusion were the ones who
8 checked the box.

9 **FIRST CAUSE OF ACTION**

10 **Unfair Business Practices Act (Business and Professions Code Section**
11 **17200)**

12 (On behalf of Plaintiff, Insurance Class, and Regulatory Fee Class Members against
13 all Defendants)

14 68. Plaintiff repeats and incorporates herein by reference each and every
15 allegation in paragraphs I through 67, inclusive, as though fully set forth herein.

16 69. Plaintiff brings this cause of action individually and on behalf of all others
17 similarly situated.

18 70. By engaging in the acts and practices described above, Defendants
19 committed one or more acts of “unfair competition” within the meaning of Business and
20 Professions Code section 17200. “Unfair competition” is defined to include any
21 “unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or
22 misleading advertising and any act prohibited by [Business & Professions Code § 17500
23 et seq.]”

24 71. Defendants committed “unlawful” business acts or practices, by, among
25 other things, engaging in false advertising in violation of Business and Professions Code
26 section 17500 as described below.

27 72. Defendants committed “unfair” business acts or practices by, among
28 other things:

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- 1 a. Engaging in conduct where the utility of such conduct, if any, is outweighed by
- 2 the gravity of the consequences to Plaintiff and Class members;
- 3 b. Engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or
- 4 substantially injurious to Plaintiff and Class members;
- 5 c. Engaging in conduct that undermines or violates the spirit or intent of the
- 6 consumer protection;
- 7 d. When and if a customer complains sufficiently, Defendants do not provide a
- 8 cash refund of the overcharges but, rather, provide a credit to the customer
- 9 instead of refunding the customer's money; and
- 10 e. The credit issued by Defendants does not make the customer whole.

11 73. Defendants committed “fraudulent” business acts or practices by, among
 12 other things, engaging in conduct Defendants knew or should have known was likely to
 13 and did deceive the public, including Plaintiff and other Class members.

14 74. As detailed above, Defendants’ unlawful and unfair practices include, but
 15 are not limited to, subscribing customers without their knowledge and/or consent to
 16 Add-ons.

17 75. Plaintiff and Class members lost money and suffered injury in fact when
 18 they were forced to pay for the Add-ons which they did not voluntarily purchase and
 19 Regulatory Fee which was never disclosed beforehand along with their bills.

20 76. Plaintiff and Class members seek restitution, declaratory and injunctive
 21 relief, and other relief allowable under Section 17200, et seq.

22 77. Particularly, Plaintiff and Class members seek equitable relief that
 23 Defendants be enjoined from their practice of unknowingly subscribing their customers
 24 to Add-ons and charging Regulatory Fees without disclosing them as a part of the plan
 25 advertised.

26 ///

27 ///

28 ///

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SECOND CAUSE OF ACTION

Conversion

(On behalf of Plaintiff, Insurance Class, and Regulatory Fee Class Members
against all Defendants)

78. Plaintiff repeats and incorporates herein by reference each and every allegation in paragraphs I through 67, inclusive, as though fully set forth herein.

79. At all times relevant hereto, Plaintiff and the other members of the Class were, and still are, the owners of the monies paid to Defendants for Add-ons billed by Defendants for Add-ons even though Plaintiff and Class members never knew/consented to the subscriptions for which they were billed, as well as the monies paid by them for excess taxes and surcharges incurred by them as a result of the improper billing of involuntary Add-ons. The property described above has a value to be determined.

80. Furthermore, at all times relevant hereto, Plaintiff and the other members of the Class were, and still are, the owners of the monies paid to Defendants for Regulatory Fee billed by Defendants in addition to their plans' costs even though Plaintiff and Class members never knew/consented to the Regulatory Fee for which they were billed, as well as the monies paid by them for excess taxes and surcharges incurred by them as a result of the improper billing of Regulatory Fee. The property described above has a value to be determined.

81. Defendants took the property described above from the possession of Plaintiff and the other members of the Class and converted the same to Defendants' own use by billing Defendants' customers for Add-ons and Regulatory Fee even though Defendants' customers never consented to the imposition of Add-ons and Regulatory Fee for which they were billed.

82. Between the time of Defendants' conversion of the above-described property to their own use and the filing of this action, Plaintiff undertook the

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1 investigation and efforts described above in pursuit of the converted property, all to
2 Plaintiffs farther damage in an amount to be determined at trial.

3 83. Defendants, without claim of right and without legal justification, took the
4 above-mentioned property from the possession of Plaintiff and the other members of the
5 Class and converted it to Defendants' own use. Therefore, Plaintiff has not made a
6 demand for return of the property. Although not required to make a demand, Plaintiff
7 does hereby demand return of all monies wrongfully paid on behalf of herself and the
8 members of the Class.

9 84. As a direct and proximate result of Defendants' unlawful conversion of
10 the monies belonging to Plaintiff and the other members of the Class, Plaintiff and the
11 other members of the Class have been damaged in an amount according to proof at trial
12 in excess of the minimum jurisdictional requirements of this Court.

13 85. In engaging in the acts of conversion alleged herein, Defendants acted in
14 a willful, wanton and malicious manner, in callous, conscious and intentional disregard
15 for the rights of Plaintiff and the other members of the Class, and with knowledge that
16 their actions and conduct were substantially likely to vex, annoy and injure Plaintiff and
17 the other members of the Class. As a result, Plaintiff and the other members of the Class
18 are entitled to an award of punitive and exemplary damages against Defendants
19 pursuant to California Civil Code section 3294, in an amount according to proof at trial.

20 **THIRD CAUSE OF ACTION**

21 **Negligence**

22 (On behalf of Plaintiff, Insurance Class, and Regulatory Fee Class Members
23 against all Defendants)

24 86. Plaintiff repeats and incorporates herein by reference each and every
25 allegation in paragraphs I through 67, inclusive, as though fully set forth herein.

26 87. Defendants owed a duty to Plaintiff and each member of the Class to
27 exercise due care and diligence in placing charges for services on their bills.

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88. Defendants breached their duties of care to Plaintiff and the other members of the Class by failing to exercise ordinary care and due diligence in negligently permitting the circumstances to exist that led to Plaintiff and the other members of the Class being billed for Add-ons and Regulatory Fee even though they never consented to the services for which they were billed.

89. Defendants’ activities were a substantial factor in causing the damages to Plaintiff and the other members of the Class as complained of herein.

90. As a direct and proximate result of Defendants' negligence, Plaintiff and the other members of the Class have been damaged in an amount according to proof at trial.

FOURTH CAUSE OF ACTION

Declaratory Relief

(On behalf of Plaintiff, Insurance Class, and Regulatory Fee Class Members
against all Defendants)

91. Plaintiff repeats and incorporates herein by reference each and every allegation in paragraphs I through 67, inclusive, as though fully set forth herein.

92. An actual controversy has arisen and now exists between Plaintiff and the other members of the Class, on one hand, and Defendants on the other hand, concerning their respective rights and duties in that Plaintiff and the other members of the Class contend that Defendants are engaging in and continue to engage in improper practices as described herein, while Defendants contend that their actions and conduct are lawful and proper.

93. A judicial declaration is necessary and appropriate at this time, under the circumstances presented, in order that Plaintiff and the other members of the Class may ascertain their rights and duties with respect to the practices described herein.

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FIFTH CAUSE OF ACTION

Breach of Implied Covenant of Good Faith and Fair Dealing

(On behalf of Plaintiff, Insurance Class, and Regulatory Fee Class Members
against all Defendants)

94. Plaintiff repeats and incorporates herein by reference each and every allegation in paragraphs I through 67, inclusive, as though fully set forth herein.

95. In every contract or agreement there is an implied promise of good faith and fair dealing. This implied promise means that each party will not do anything to unfairly interfere with the right of any other party to receive the benefits of the contract. Good faith means honesty of purpose without any intention to mislead or to take unfair advantage of another.

96. Plaintiff and Class members entered into a contract with Defendants for services, which does not include Add-ons. Add-ons were optional separate services which can be purchased altogether with the purchase of a new device.

97. While Plaintiff and Class Members agreed to the general terms of the contract, they did not require inclusion of Add-ons in their contracts.

98. Plaintiff and Class members entered into a contract with Defendants for services, which does not disclose Regulatory Fee. Regulatory Fee is arbitrarily calculated and imposed by Defendants to increase their revenue while advertising plans for a price that does not disclose Regulatory Fee.

99. Defendants, using their position of drafters of the agreements, added Add-ons which were not requested by Plaintiff and/or Class members for Defendants' benefit to include additional charges to Plaintiff and Class members' bills.

100. Defendants, using their position of the party issuing bills, added Regulatory Fee which were not disclosed to Plaintiff and/or Class members beforehand for Defendants' benefit to include additional charges to Plaintiff and Class members' bills.

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1 115. Plaintiff and Class members did not know that they were subscribed to
2 Add-ons and did not know that the devices they purchase carry mandatory Regulatory
3 Fee in addition to the price of the plan offered by Defendants.

4 116. Defendants intended to deceive Plaintiff and Class members by
5 concealing these facts.

6 117. Had Defendants disclose to Plaintiff and Class members that they are
7 being subscribed for Add-ons, Plaintiff and Class Members reasonably would have
8 behaved differently.

9 118. Had Defendants disclose to Plaintiff and Class Members that in addition
10 to the price of the plan they will have to pay Regulatory Fee on each phone, Plaintiff and
11 Class Members reasonably would have chosen other plans or even other carriers who
12 request more competitive price for their services.

13 119. Plaintiff and Class members were harmed in a form of previously
14 undisclosed additional charges on their bills from Defendants.

15 120. The concealment of additional charges and/or services by was a
16 substantial factor in causing harm to Plaintiff and Class Members.

17 121. In engaging in the acts of concealment alleged herein, Defendants acted
18 in a willful, wanton and malicious manner, in callous, conscious and intentional
19 disregard for the rights of Plaintiff and the other members of the Class, and with
20 knowledge that their actions and conduct were substantially likely to vex, annoy and
21 injure Plaintiff and the other members of the Class. As a result, Plaintiff and the other
22 members of the Class are entitled to an award of punitive and exemplary damages
23 against Defendants pursuant to California Civil Code section 3294, in an amount
24 according to proof at trial.

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EIGHTH CAUSE OF ACTION

Permanent Public Injunctive Relief

(On behalf of Plaintiff, Insurance Class, and Regulatory Fee Class Members
against all Defendants)

122. Plaintiff repeats and incorporates herein by reference each and every allegation in paragraphs I through 67, inclusive, as though fully set forth herein.

123. If not enjoined by this Court, Defendants will continue to injure the general public through its false advertising and omissions alleged herein, which are directed at the consuming public, including in California.

124. In order to prevent injury to the general public, Plaintiffs individually seek public injunctive relief in the form of a judgment and injunction to permanently enjoin Defendants from their false advertising and to require Defendants to disclose to the public in advance the true prices consumers will pay if they sign up for Defendants' wireless services, including the disclosure of the services consumers are being subscribed to and their right to decline any Add-ons, or as the Court otherwise deems just and proper.

125. The balance of the equities favors the entry of permanent public injunctive relief. The general public will continue to be harmed, and Defendants' unlawful behavior is likely to continue, absent the entry of permanent public injunctive relief. Therefore, a public injunction is in the public interest.

WHEREFORE, Plaintiff Esperanza Reyes Rendon individually and on behalf of others similarly situated, respectfully request that this Court:

1. Determine that the claims alleged herein may be maintained as a class action, and issue an order certifying one or more Classes as defined above;
2. Appoint Plaintiff Esperanza Reyes Rendon as the representatives of the Class(es) and her counsel as Class counsel;

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- 1 3. Award compensatory damages according to proof;
- 2 4. Award costs of suit herein incurred;
- 3 5. Award pre-judgment and post-judgment interest on such monetary relief;
- 4 6. Grant appropriate injunctive and/or declaratory relief, including, without
- 5 limitation, an order that requires Defendants: 1) enjoin from enrolling to
- 6 and billing its customers for Add-ons which were not disclosed to and/or
- 7 requested by their customers; 2) forcing customers to enroll into Add-ons
- 8 when obtaining a new device from Defendants without an option to opt-out
- 9 and still purchase the device;
- 10 7. Award reasonable attorneys' fees and costs under California Code of Civil
- 11 Procedure section 1021.5, and all other applicable statutory and prudential
- 12 authority for such;
- 13 8. Permanently enjoin Defendants from engaging in the misconduct alleged
- 14 herein, and order Defendants to discontinue signing their customers in
- 15 California to Add-ons without disclosing these Add-ons and customers'
- 16 right to refuse these services and still purchase new devices from
- 17 Defendants;
- 18 9. Permanently enjoin Defendants from engaging in the misconduct alleged
- 19 herein, and order Defendants to discontinue hiding Regulatory Fee from its
- 20 customers while advertising their services;
- 21 10. Retain jurisdiction to monitor Defendants' compliance with the permanent
- 22 injunctive relief;
- 23 11. Award punitive damages; and
- 24 12. Grant any other relief or damages allowed by law, or statutes not set out
- 25 above, and such other and further relief as the court may deem proper.

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1 Dated: November 7, 2023

GOMEZ LAW GROUP

By: 

Alvin M. Gomez, Esq.
Boris Smyslov, Esq.
Attorney for Plaintiff

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5 **DEMAND FOR TRIAL BY JURY**

6 Plaintiff Esperanza Reyes Rendon hereby demands a trial by jury.

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8 Dated: November 7, 2023

GOMEZ LAW GROUP

By: 

Alvin M. Gomez, Esq.
Boris Smyslov, Esq.
Attorney for Plaintiff

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