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16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 **ELIZABETH HART and LE'ROY**
19 **ROBERSON, individually and on behalf**
20 **of all others similarly situated,**

21 **Plaintiffs,**

22 **v.**

23 **CHARTER COMMUNICATIONS, INC.**
24 **and SPECTRUM MANAGEMENT**
25 **HOLDING COMPANY LLC,**

26 **Defendants.**

27 **Case No. 8:17-CV-00556_____**

28 **CLASS ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

Complaint Filed: _____

Trial Date: None Set

1 Plaintiffs Elizabeth Hart (Hart) and Le’Roy Roberson (Roberson, and collectively
2 with Hart, Plaintiffs) bring this action to seek relief for themselves and millions of other
3 individual consumers for past and ongoing fraudulent, deceptive, and unfair business
4 practices by Defendants Charter Communications, Inc. (Charter) and Spectrum
5 Management Holding Company LLC, formerly known as “Time Warner Cable”
6 (Spectrum-TWC, and collectively with Charter, Defendants).

7 **I. JURISDICTION AND VENUE**

8 1. This Court has jurisdiction over the subject matter of this action under 28
9 U.S.C. §§ 1331 (federal question jurisdiction) and 1332 (diversity jurisdiction).

10 2. This Court also has jurisdiction under the Class Action Fairness Act of 2005,
11 28 U.S.C. §§ 1332(d) and 1453, because the amount put in controversy by this class
12 action exceeds \$5,000,000, there are more than 100 proposed class members, and at least
13 one member of the proposed class and one of the Defendants are citizens of different
14 states (CAFA jurisdiction).

15 3. This Court has jurisdiction over Plaintiffs’ state law claims under 28 U.S.C.
16 § 1367 because the state law claims and the federal claims are so closely related that they
17 form part of the same case or controversy under Article III of the United States
18 Constitution (supplemental jurisdiction).

19 4. This Court has personal jurisdiction over Defendants because (a) a
20 substantial portion of the wrongdoing alleged in this Complaint took place in California,
21 (b) both Defendants are authorized to do business in California, have sufficient minimum
22 contacts with California, and have intentionally availed themselves of the markets in
23 California through the promotion, marketing, and sale of products and services in
24 California, and (c) the exercise of jurisdiction by this Court is permissible under
25 traditional notions of fair play and substantial justice.

26 5. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(1) and (2)
27 because both Defendants have a significant presence in California and a substantial part
28 of the events and omissions that give rise to Plaintiffs’ and Class members’ claims

1 occurred in this District. Venue is also proper under California Code of Civil Procedure
2 section 395.5 and California Business and Professions Code section 17203.

3 **II. PARTIES**

4 **A. Plaintiffs**

5 6. Plaintiff Elizabeth Hart is an individual and citizen of California. She has
6 resided in Orange County, California at all times relevant to this lawsuit. Hart signed up
7 and paid for Defendants' Internet services and was personally harmed by Defendants'
8 false representations and other wrongful business practices. Hart is representative of the
9 Class members.

10 7. Plaintiff Le'Roy Roberson is an individual and citizen of California. He has
11 resided in Los Angeles County, California at all times relevant to this lawsuit. Roberson
12 signed up and paid for Defendants' Internet services and was personally harmed by
13 Defendants' false representations and other wrongful business practices. Roberson is
14 representative of the Class members.

15 **B. Defendants**

16 8. Prior to May 18, 2016, Time Warner Cable, Inc. (TWC) provided and
17 marketed Internet services under the "Time Warner Cable" brand to consumers in
18 California and nationwide. On May 18, 2016, as part of a series of corporate transactions
19 that resulted in Charter Communications, Inc. (Charter) merging with TWC and
20 continuing to operate its business, TWC merged with and into Spectrum Management
21 Holding Company, LLC (Spectrum Holding), a Charter subsidiary. Charter and
22 Spectrum Holding continue to provide Internet service to consumers under the brand
23 "Spectrum," which is in the process of replacing the brand "Time Warner Cable."

24 9. Defendant Spectrum Holding is a Delaware corporation with its principal
25 place of business at 60 Columbus Circle, 17th Floor, New York, New York 10023.

26 10. Defendant Charter is a Delaware corporation with its principal place of
27 business at 400 Atlantic Street, Stamford, Connecticut 06901. Charter is the parent
28 company of Spectrum Holding.

1 11. Charter is the second-largest residential cable provider in the country. Since
2 its merger with TWC on May 18, 2016, Charter, together with its subsidiary Spectrum
3 Holding, has marketed and provided Internet services to millions of consumers and
4 businesses in California and nationwide under both the “Time Warner Cable” and
5 “Spectrum” brand names.

6 **III. BACKGROUND**

7 12. For years and continuing through the present day, Defendants have
8 defrauded and misled consumers by promising to deliver Internet service at speeds and
9 with access that they knew they could not deliver.

10 13. Defendants promised that consumers could obtain high Internet speeds as
11 advertised in Defendants’ various subscription plans. Defendants knew they could not
12 deliver on their promises, however, because they leased to many consumers older-
13 generation modems and wireless routers that were incapable of supporting the promised
14 Internet speeds. Defendants also failed to provide an appropriate network and
15 infrastructure that could have enabled consumers with newer modems and wireless
16 routers to achieve the advertised Internet speeds. Indeed, both Defendants’ “WiFi” and
17 wired Internet speeds consistently, if not always, performed far below the advertised
18 speeds. Instead of admitting their structural inability to fulfill their promises, however,
19 Defendants continued to advertise that their wireless Internet services supported the same
20 speeds as wired connections that are not hampered by modem and wireless router
21 capabilities and network limitations.

22 14. Defendants’ structural limitations caused consumers to be unable to achieve
23 the “fast, reliable Internet speeds” Defendants emphasized in their advertising
24 campaigns. These limitations also prevented Defendants from fulfilling their promises of
25 providing Internet service at high speeds that are “fast” with “no buffering,” “no
26 slowdowns,” “no lag,” “without interruptions,” “without downtime,” and “without the
27 wait.” As a result, instead of obtaining Internet speeds capable of reliable streaming of
28 online content provided by Netflix, Amazon, YouTube, Facebook, and other companies

1 that offered television, movies, or other video-based content, consumers paid for Internet
2 service and speeds that could not consistently perform as advertised. Consumers certainly
3 could not connect numerous devices to the Internet connection at the same time for
4 “streaming movies, group video chats, gaming, uploading large files, checking email,
5 shopping online, social media and more” as Defendants promised.

6 15. Defendants pushed forward with their Internet advertising campaigns and
7 promises despite knowing they could not deliver. They continued to promote and sell
8 Internet service plans that were priced higher because of higher Internet speeds, and they
9 incentivized sales personnel to push the higher-speed, higher-priced plans on consumers.
10 Defendants reaped financial windfalls by selling high Internet speed services without
11 investing in the infrastructure and related equipment necessary to deliver consistently
12 high Internet speeds and without modifying their advertising and related statements to
13 reflect reality.

14 16. In particular, consumers who paid for an Internet service plan that promised
15 to provide Internet speeds of at least 20 megabits per second (mbps) but were leased
16 modems incapable of consistently achieving such speeds were knowingly overcharged
17 by Defendants. And consumers who paid for an Internet service plan that promised to
18 provide Internet speeds of 100 mbps (and up to 300 mbps) but were leased wireless
19 routers incapable of consistently achieving such speeds were likewise knowingly
20 overcharged by Defendants.

21 17. Even when consumers leased at higher prices—or were given as part of their
22 plan or purchased on their own—newer generation modems and wireless routers, they
23 still could not consistently achieve the promised Internet speeds because Defendants
24 failed to manage their network in a manner that delivered such results. Instead,
25 Defendants included too many subscribers in the same service group and provided too
26 few channels for such subscribers, thus causing an Internet “traffic jam” (particularly
27 during peak hours) that slowed every subscriber’s connection to speeds substantially
28

1 below what was promised and paid-for. Indeed, even when consumers resorted to using
2 wired connections, their Internet speeds still fell short of the promised speeds.

3 18. Defendants advertisements and related business practices during the
4 relevant period have been, and continue to be, fraudulent, deceptive, misleading, and
5 unfair to consumers. Defendants acted knowingly and intentionally in pursuing these
6 wrongful business practices, and they pocketed millions of dollars of windfall profits at
7 the expense of trusting consumers. These consumers had little chance of catching
8 Defendants in the act; nor did they have many—if any—alternatives other than to pay for
9 Defendants’ Internet services considering the Internet Age’s reliance on technology and
10 corporate consolidation that limits the number of available Internet service providers.

11 19. Hart signed up for Defendants’ Internet services years ago when it was still
12 branded as “Time Warner Cable.” In 2016, Hart changed her cable and telephone services
13 but was told her only option for Internet services continued to be “Time Warner Cable.”
14 Thus, for many years continuing through the present, Hart and her family were reliant on
15 “Time Warner Cable”—now branded as “Spectrum”—for their Internet service needs
16 and they paid for “WiFi” Internet speeds that were promised to be fast and reliable
17 enough to support all of their various devices and uses.

18 20. Like many consumers in California and nationwide, Hart and her family rely
19 on the Internet for social, educational, recreational, and business purposes. They use the
20 Internet on their computers, mobile devices, and television sets, and to interact daily with
21 friends and family members, colleagues, employers, and businesses. When connected to
22 the Internet, they stream and download movies, music, and video content; they browse
23 news and social media sites; they work, shop, and play games; and they engage in
24 innumerable other Internet-based activities.

25 21. Roberson also signed up for Defendants’ Internet services years ago when
26 it was still branded as “Time Warner Cable,” and he continues to pay for Internet services
27 under the “Spectrum” brand. His Internet use is similar to that of Hart’s and millions of
28 other consumers. He paid a premium for higher speed Internet services—300 mbps,

1 which he understood to be the highest speed available—because of his high usage and
2 reliance on Internet services, particularly because he frequently works from home.
3 However, he never could reach anywhere close to the promised Internet speeds, even
4 when he resorted to a wired connection. When Defendants’ personnel came to his home
5 to test his Internet speed on multiple occasions the speeds never registered above 130
6 mbps, far below what he was paying for.

7 22. While practically unimaginable one or two decades ago, Plaintiffs’ and
8 many other consumers’ lives cannot easily function without reliable Internet service at
9 home, school, and work. Capitalizing on this modern necessity, Defendants make
10 promises to provide “the fastest Internet speeds available” and “enough bandwidth for
11 everyone in your home to be connected at the same time.” These promises and other
12 similar representations entice consumers like Plaintiffs to sign up and pay high premiums
13 for Defendants’ Internet service plans offering higher speeds “without sacrificing
14 performance.”

15 23. Defendants willingly sold Plaintiffs and other consumers Internet service
16 plans that were advertised to support their intended uses. In fact, Defendants’ sales
17 personnel are incentivized to sell higher-priced, higher-speed Internet service plans by
18 convincing consumers that such plans will ensure they will not have issues with slow
19 Internet speeds and connectivity. Defendants accepted Plaintiffs’ and millions of other
20 consumers’ high monthly payments knowing they could not deliver on the advertised
21 promises.

22 24. Defendants knowingly failed to provide Plaintiffs and other consumers
23 modems, wireless routers, and related equipment that was incapable of consistently
24 achieving the Internet speeds and reliability promised. Defendants likewise knowingly
25 failed to provide a network and infrastructure capable of supporting all of its subscribers
26 and their promised Internet speeds. Instead of performing on their promises, and instead
27 of investing in improved products and a better network, Defendants pocketed Plaintiffs’
28

1 and other consumers' payments and continued to make the same false and misleading
2 advertisements in search of new subscribers.

3 25. On top of their false and misleading Internet service speed advertisements
4 and other representations, Defendants also have adopted an unlawful and unfair practice
5 of adding new fees or other charges to consumers' bills without adequate notice and
6 outside of the terms promised upon sign-up. In 2016, Hart signed up for a promotional
7 "Spectrum Internet with WiFi" plan with a fixed rate of \$64.99 and a \$10.00
8 "Promotional Discount," making her plan cost a total of \$54.99 per month. This amount
9 was reflected in her February 2017 bill. However, on her March 2017 bill, Hart was
10 automatically charged \$59.99, a \$5.00 increase of which she was not given adequate
11 notice and which was improperly charged to her credit card automatically. Upon
12 information and belief, Defendants add or increase charges like these to consumers'
13 monthly bills regularly without proper notice to consumers, without obtaining explicit
14 and affirmative consent to such material changes to the original terms, and without
15 providing all necessary information in a manner that is capable of being retained by the
16 consumer.

17 26. Plaintiffs, individually and on behalf of similarly situated consumers in
18 California and nationwide, now seek the full measure of damages, restitution, and
19 injunctive relief necessary to remedy the harm they have suffered as a result of
20 Defendants wrongful business practices, and to punish Defendants for their knowing and
21 intentional misconduct.

22 **IV. CLASS ACTION ALLEGATIONS**

23 27. Plaintiffs bring this case as a proposed nationwide class action pursuant to
24 Rule 23 of the Federal Rules of Civil Procedure, individually and on behalf of all
25 members of the following Class and Subclasses. Plaintiffs reserve the right to amend the
26 following definitions before the Court determines whether class certification is
27 appropriate or thereafter upon leave of Court.

1 **Proposed Class**

2 All individual consumers in the United States who paid for an
3 Internet service plan offered by Defendants at any time within the
4 relevant time period.

5 **Proposed False Advertising Subclass**

6 All individual consumers in the United States who paid for an
7 Internet service plan offered by Defendants in reliance on
8 Defendants' representations regarding Internet speeds and
9 reliability.

10 **Proposed Automatic Renewal Payment Subclass**

11 All individual consumers in the United States who paid for an
12 Internet service plan offered by Defendants, who were enrolled in
13 an automatic renewal payment program offered by Defendants, who
14 had material changes made by Defendants to their terms of service,
15 and who did not receive proper notice and thereafter provide explicit
16 and affirmative consent to such material changes.

17 28. Excluded from the proposed Class and Subclasses are Defendants and their
18 parents, subsidiaries, affiliates, officers, directors, and current and former employees; all
19 individuals and businesses who make a timely election to be excluded from this
20 proceeding using the correct opt-out protocol; any and all federal, state or local
21 governments, including but not limited to their departments, agencies, divisions, bureaus,
22 boards, sections, groups, counsels, and/or subdivisions; and all judges assigned to hear
23 any aspect of this litigation, as well as their immediate family members.

24 29. **Numerosity.** The members of the proposed Class and Subclasses are so
25 numerous that joinder is impracticable. Millions of consumers in California and
26 throughout the United States have relied on Defendants' representations concerning
27 Internet speed, have purchased Internet service plans during the relevant period, and
28 therefore have been subjected to and harmed by Defendants' unlawful acts. Millions of

1 consumers have likewise been enrolled in Defendants' automatic renewal payment
2 programs and had materials changes to their terms of service made without proper notice
3 and without providing explicit and affirmative consent. The number and identity of
4 individuals who fall within the proposed Class and Subclass definitions are easily
5 identifiable and ascertainable based on Defendants' business records.

6 30. **Commonality and Predominance.** Common questions of law or fact that
7 will drive the resolution of this case include, but are not limited to:

- 8 a. Whether Defendants made false, misleading, deceptive, untrue, or
9 unfair statements in their advertisements related to Internet speeds
10 and reliability;
- 11 b. Whether Defendants properly disclosed to consumers that the
12 products they were receiving or using (e.g., modems, wireless routers,
13 and related equipment) were incapable of consistently supporting the
14 Internet speeds being advertised and purchased;
- 15 c. Whether Defendants properly disclosed to consumers that the
16 network and infrastructure supporting Defendants' Internet services
17 could not consistently provide the Internet speeds and reliability
18 promised in Defendants' advertisements; and
- 19 d. Whether Defendants provided proper notice of material changes to
20 the terms of service and obtained explicit and affirmative consent to
21 such changes before automatically charging consumers' designated
22 payment methods (e.g., credit cards).

23 31. In addition to the common questions of law and fact that will drive this case,
24 Defendants engaged in a common course of conduct giving rise to violations of the legal
25 rights sought to be enforced by Plaintiffs and proposed Class members. Similar or
26 identical statutory and common law violations, business practices, and injuries are
27 involved in this case and are applicable to Plaintiffs and most, if not all, of the proposed
28

1 Class and Subclass members. Any individual questions that may arise in this case will
2 pale in comparison to the numerous common questions.

3 32. **Typicality.** Plaintiffs' claims are typical of the proposed Class and Subclass
4 members' claims because:

5 a. Plaintiffs and proposed Class members are subject to and
6 detrimentally relied on Defendants' uniform or substantially similar
7 advertisements and related representations;

8 b. Plaintiffs and proposed Class members are harmed by Defendants'
9 practice of leasing modems, wireless routers, and related equipment
10 that could not support the Internet speeds being advertised and
11 promised;

12 c. Plaintiffs and proposed Class members, by being unable to
13 consistently achieve the promised Internet speeds and reliability, are
14 prevented from obtaining the full promised value of their Internet
15 service plans;

16 d. Plaintiffs and proposed Class members are subject to Defendants'
17 uniform terms, policies, and disclosures; and

18 e. Plaintiffs' and proposed Class members' injuries flow from a
19 common nucleus of operative facts, can be determined from
20 Defendants' business records, and can be calculated in an identical or
21 substantially similar manner.

22 33. Given the similar nature of Plaintiffs' and proposed Class members' claims,
23 and given the absence of material differences in the relevant statutes and common laws
24 on which the claims are based, a nationwide Class and various Subclasses may be easily
25 managed by the Court and the parties.

26 34. **Adequacy of Representation.** Plaintiffs will fairly and adequately protect
27 the interests of all proposed Class and Subclass members. Moreover, Plaintiffs have
28 retained counsel experienced in complex commercial litigation and consumer class

1 actions, and Plaintiffs and their counsel intend to prosecute this action vigorously.
2 Plaintiffs have no interests that are adverse or antagonistic to those of the Class members.
3 Plaintiffs' claims are typical of Class members' claims, and all Class members have been
4 similarly affected by Defendants' unlawful conduct.

5 35. **Ascertainability.** Defendants sell Internet service plans through their
6 websites and by other means and have collected detailed personal and financial
7 information associated with each transaction. Accordingly, the precise number and
8 identity of Class and Subclass members can easily be determined by reference to
9 Defendants' business records. As such, Class and Subclass members are easily
10 ascertainable and can be personally notified of the pendency of this action by first class
11 mail, email, and/or published notice calculated to reach all such members.

12 36. **Superiority of a Class Action.** The proposed Class and each of the
13 proposed Subclasses should be certified pursuant to Rule 23 of the Federal Rules of Civil
14 Procedure because:

- 15 a. Prosecution of separate actions by individual Class members would
16 create a risk of inconsistent or varying adjudication with respect to
17 individual Class members that would establish incompatible
18 standards of conduct for Defendants;
- 19 b. Prosecution of separate actions by individual Class members would
20 create a risk of adjudications that would, as a practical matter, be
21 dispositive of the interests of other Class members who are not parties
22 to the adjudications, or would substantially impair or impede their
23 ability to protect their interests;
- 24 c. Individualized litigation would increase the delay and expense to all
25 parties and the court system from the issues raised by this action; by
26 contrast, the class action procedure provides the benefits of
27 adjudicating these issues in a single proceeding, economies of scale,
28

1 and comprehensive supervision by a single court, and it presents no
2 unusual management difficulties;

3 d. Unless a class-wide injunction is issued, Defendants will continue to
4 commit the violations described herein, and the members of the Class
5 and the general public will continue to be misled and injured;

6 e. Because of the relatively small size of the individual Class members'
7 claims, no Class member could afford to seek legal redress on an
8 individual basis, making the class action procedure superior to
9 alternative means of prosecution; and

10 f. Defendants have acted and failed to act on grounds generally
11 applicable to Plaintiffs and Class members, thereby supporting the
12 imposition of uniform relief to ensure compatible standards of
13 conduct toward all Class members.

14 37. For these reasons, this case should be certified as a nationwide class action.

15 **V. CAUSES OF ACTION**

16 **First Cause of Action**

17 **Violation of the Lanham Act, 15 U.S.C. § 1125**

18 38. All of the foregoing paragraphs are incorporated herein.

19 39. Defendants have both engaged in false, misleading, deceptive, unfair, and
20 untrue advertising and marketing tactics that Plaintiffs and Class members have relied on
21 to their detriment.

22 40. The specific advertisements and related statements and representations
23 made by Defendants and relied on by Plaintiffs and Class members include, but are not
24 limited to:

25 a. The representations that Defendants would provide Internet service at
26 speeds that are “fast” with “no buffering,” “no slowdowns,” “no lag,”
27 “without interruptions,” “without downtime,” and “without the wait;”
28

- 1 b. The representations that Defendants’ Internet services would permit
2 consumers to connect “6-8 devices at the same time” for “streaming
3 movies, group video chats, gaming, uploading large files, checking
4 email, shopping online, social media and more;”
- 5 c. The representations that Defendants’ Internet services would provide
6 “more than enough speed to support all the devices in your home;”
- 7 d. The representations that Defendants would provide “the fastest
8 Internet speeds available” with “enough bandwidth for everyone in
9 your home to be connected at the same time;” and
- 10 e. The representations that Defendants’ Internet service plans would
11 enable consumers to connect multiple devices to “stream video, play
12 online games, download music, upload photos and more . . . without
13 sacrificing performance.”

14 41. Defendants made these representations willfully and intentionally, knowing
15 they were false and/or misleading.

16 42. These representations have been made by Defendants on their websites, in
17 print advertisements, and in television advertisements, among other places. Defendants
18 intentionally used in commerce the representations described above. These
19 representations were representations of fact used in commercial advertising or
20 promotion. These representations misrepresent the nature, characteristics, and qualities
21 of the relevant Internet services. Accordingly, these representations each constitute a
22 false and misleading advertisement under the federal Lanham Act, 15 U.S.C. § 1125(a).

23 43. These representations actually deceived Plaintiffs and Class members, and
24 they have a tendency to deceive a substantial segment of consumers nationwide. These
25 representations are material because they influenced Plaintiffs’ and Class members’ sign-
26 up and purchasing decisions. Defendants caused these representations to enter interstate
27 commerce via the online, print, and television advertising means and methods, among
28 others.

1 44. Plaintiffs and other Class members have been or are likely to be injured as
2 a result of these representations.

3 45. Plaintiff, individually and on behalf of all Class members similarly situated,
4 seeks an injunction and any other necessary orders or judgments that will prevent
5 Defendants from continuing with their false and misleading representations, including
6 but not limited to an order requiring corrective advertising and restitution. He also seeks
7 disgorgement of Defendants' profits, an award of all damages suffered, an award of the
8 costs of the action, treble damages, and attorneys' fees.

9 **Second Cause of Action**

10 **Violation of False Advertising Law, Cal. Bus. & Prof. Code § 17500 *et seq.***

11 46. All of the foregoing paragraphs are incorporated herein.

12 47. Defendants have intentionally made and disseminated statements to
13 Plaintiffs, Class members, and the general public concerning Defendants' Internet
14 services, as well as circumstances and facts connected to such services, which are untrue
15 and misleading, and which are known (or which by the exercise of reasonable care should
16 be known) to be untrue or misleading. Defendants have also intentionally made or
17 disseminated such untrue or misleading statements to Plaintiffs, Class members, and the
18 public as part of a plan or scheme with intent not to sell those services as advertised.

19 48. Defendants' statements include but are not limited to:

- 20 a. The representations that Defendants would provide Internet service at
21 speeds that are "fast" with "no buffering," "no slowdowns," "no lag,"
22 "without interruptions," "without downtime," and "without the wait;"
- 23 b. The representations that Defendants' Internet services would permit
24 consumers to connect "6-8 devices at the same time" for "streaming
25 movies, group video chats, gaming, uploading large files, checking
26 email, shopping online, social media and more;"
- 27 c. The representations that Defendants' Internet services would provide
28 "more than enough speed to support all the devices in your home;"

1 d. The representations that Defendants would provide “the fastest
2 Internet speeds available” with “enough bandwidth for everyone in
3 your home to be connected at the same time;” and

4 e. The representations that Defendants’ Internet service plans would
5 enable consumers to connect multiple devices to “stream video, play
6 online games, download music, upload photos and more . . . without
7 sacrificing performance.”

8 49. Defendants made these representations willfully and intentionally, knowing
9 they were false and/or misleading.

10 50. Each of these representations and substantially similar representations
11 constitute false and deceptive advertisements under California’s False Advertising Law,
12 Cal. Bus. & Prof. Code § 17500 *et seq.* (FAL).

13 51. Plaintiffs were deceived by Defendants’ statements, and there is a strong
14 probability that Class members and members of the public were also or are likely to be
15 deceived as well. Indeed, any reasonable consumer would be misled by Defendants’ false
16 and misleading statements.

17 52. Plaintiffs, individually and on behalf of all Class members, seek an
18 injunction and any other necessary orders or judgments that will prevent Defendants from
19 continuing with their false and deceptive advertisements; restitution that will restore the
20 full amount of their money or property; and disgorgement of Defendants’ relevant profits
21 and proceeds. Plaintiffs also seek an award of costs and reasonable attorneys’ fees.

22 **Third Cause of Action**

23 **Violation of Automatic Purchase Renewals Law,**

24 **Cal. Bus. & Prof. Code § 17600 *et seq.***

25 53. All of the foregoing paragraphs are incorporated herein.

26 54. Defendants impose “automatically renewable” monthly payment terms on
27 Plaintiffs and other consumers who subscribe to their Internet services. Consequently,
28 under California’s Automatic Purchase Renewals Law, Defendants are required to

1 disclose such automatic payment terms, related cancellation terms, and any material
2 changes to the payment terms to consumers in a clear and conspicuous manner and obtain
3 their explicit and affirmative consent to such terms and any changes.

4 55. When they sign up for an make automatic payments under Defendants'
5 automatic purchase renewal programs, Plaintiffs and other similarly situated consumers
6 are not:

- 7 a. provided sufficient "automatic renewal" language in a clear and
8 conspicuous manner using text that is larger than surrounding text, in
9 contrasting type, font, or color, or otherwise set off from the
10 surrounding text;
- 11 b. expressly informed of the cancellation policy;
- 12 c. provided proper notice of any changes to the relevant terms;
- 13 d. asked to explicitly and affirmatively consent to the relevant terms and
14 all material changes to such terms; or
- 15 e. provided all of the relevant disclosures, representations, and other
16 terms in a tangible form that they can easily store.

17 56. Hart was not provided proper notice and did not explicitly and affirmatively
18 consent to changes to her payment terms made between her February 2017 bill and her
19 March 2017 bill, and she was not provided all relevant terms in tangible form which she
20 could easily retain.

21 57. Defendants' failure to disclose all required terms and information to
22 Plaintiffs and Class members, and their related failure to obtain explicit and affirmative
23 consent to all material changes to such terms, violates California's Automatic Renewal
24 Law, Cal. Bus. & Prof. Code § 17600 *et seq.*

25 58. Plaintiffs, individually and on behalf of all Class members in California,
26 seek an order enjoining Defendants' unlawful automatic renewal payment policies and
27 practices; actual damages; restitution of their payments; the cost of this action; reasonable
28 attorneys' fees; and all other available relief.

Fourth Cause of Action

Violation of Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*

59. All of the foregoing paragraphs are incorporated herein.

60. Defendants have violated California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.* (CLRA) in multiple ways.

61. Defendants, through their use of the representations described above and below, have engaged in unfair and deceptive acts and practices that constitute false and misleading advertising under the CLRA.

62. The unlawful acts and practices include but are not limited

- a. The representations that Defendants would provide Internet service at speeds that are “fast” with “no buffering,” “no slowdowns,” “no lag,” “without interruptions,” “without downtime,” and “without the wait;”
- b. The representations that Defendants’ Internet services would permit consumers to connect “6-8 devices at the same time” for “streaming movies, group video chats, gaming, uploading large files, checking email, shopping online, social media and more;”
- c. The representations that Defendants’ Internet services would provide “more than enough speed to support all the devices in your home;”
- d. The representations that Defendants would provide “the fastest Internet speeds available” with “enough bandwidth for everyone in your home to be connected at the same time;” and
- e. The representations that Defendants’ Internet service plans would enable consumers to connect multiple devices to “stream video, play online games, download music, upload photos and more . . . without sacrificing performance.”

63. Each representation and substantially similar representations constitute false and misleading advertising, and Defendants violate the CLRA by:

- 1 a. Representing that their Internet services have characteristics, uses,
2 and benefits which they do not have, in violation of Section
3 1770(a)(5);
- 4 b. Representing that their Internet services are of a particular standard,
5 quality, or grade, or that goods are of a particular style or model, if
6 they are of another, in violation of Section 1770(a)(7);
- 7 c. Advertising their Internet services with intent not to sell them as
8 advertised, in violation of Section 1770(a)(9);
- 9 d. Representing that a transaction with them confers or involves rights,
10 remedies, or obligations which it does not have or involve, in
11 violation of Section 1770(a)(14); and
- 12 e. Representing that the subject of a transaction with them has been
13 supplied in accordance with a previous representation when it has not,
14 in violation of Section 1770(a)(16).

15 64. Defendants' failure to provide proper notice and failure to obtain explicit
16 and affirmative consent to material changes to consumers' bills in connection with
17 automatic renewal payments constitutes an unconscionable term that is imposed upon
18 consumers without informed consent in violation of Section 1770(a)(19).

19 65. Defendants' acts and practices were knowing and intentional.

20 66. Plaintiffs and all Class members relied on these advertisements and related
21 statements to their detriment.

22 67. Under Sections 1780 and 1781 of the CLRA, Plaintiff, individually and on
23 behalf of all California Class members similarly situated, seek to an order enjoining
24 Defendants' unlawful methods, acts, and practices; restitution of payments; and costs and
25 reasonable attorneys' fees.

26 68. Concurrently with the filing of this Complaint, Plaintiffs have filed
27 affidavits in support of this Complaint stating facts showing that the action has been
28

1 commenced in a county or judicial district that constitutes a proper place for the trial of
2 this action. See Exhibit A; Exhibit B.

3 **Fifth Cause of Action**

4 **Violation of California's Unfair Competition Law (UCL),**

5 **Cal. Bus. & Prof. Code § 17200 *et seq.***

6 69. All of the foregoing paragraphs are incorporated herein.

7 70. Defendants have engaged in unlawful, unfair, and fraudulent business acts
8 and practices, and unfair, deceptive, untrue, and misleading advertising that constitute
9 false and misleading advertising under California's Unfair Competition Law, Cal. Bus.
10 & Prof. Code § 17200 *et seq.* (UCL).

11 71. These unlawful and unfair acts, practices, and advertisements include but
12 are not limited to:

- 13 a. The representations that Defendants would provide Internet service at
14 speeds that are "fast" with "no buffering," "no slowdowns," "no lag,"
15 "without interruptions," "without downtime," and "without the wait;"
- 16 b. The representations that Defendants' Internet services would permit
17 consumers to connect "6-8 devices at the same time" for "streaming
18 movies, group video chats, gaming, uploading large files, checking
19 email, shopping online, social media and more;"
- 20 c. The representations that Defendants' Internet services would provide
21 "more than enough speed to support all the devices in your home;"
- 22 d. The representations that Defendants would provide "the fastest
23 Internet speeds available" with "enough bandwidth for everyone in
24 your home to be connected at the same time;" and
- 25 e. The representations that Defendants' Internet service plans would
26 enable consumers to connect multiple devices to "stream video, play
27 online games, download music, upload photos and more . . . without
28 sacrificing performance."

1 72. Each representation and substantially similar representations violates the
2 UCL.

3 73. These unlawful and unfair acts and practices further include the failure to
4 provide proper notice of automatic renewal payment terms and all related terms and
5 policies—including any and all material changes to such terms—the failure to obtain
6 explicit and affirmative consent to such terms and material changes, and the failure to
7 provide a tangible copy of such relevant terms and policies that consumers can easily
8 retain.

9 74. Defendants’ acts, practices, and advertisements were knowing and
10 intentional.

11 75. Plaintiffs and Class members each relied on these statements to their
12 detriment, each suffered actual injuries, and each lost money or property as a result. This
13 harm includes but is not limited to being deceived into purchasing or maintaining an
14 Internet service plan which they otherwise would not have purchased or maintained, or
15 which they otherwise would not have purchased or maintained for the price paid.

16 76. Plaintiffs, individually and on behalf of all Class members, seek an
17 injunction and any other necessary orders or judgments that will prevent Defendants from
18 continuing with their unlawful acts, practices, and advertisements; restitution that
19 restores the full amount of their money or property; and disgorgement of their related
20 profits and proceeds. Plaintiffs also seeks an award of costs and reasonable attorneys’
21 fees.

22 **Sixth Cause of Action**

23 **(Restitution and Unjust Enrichment)**

24 77. All of the foregoing paragraphs are incorporated herein.

25 78. Alternatively to the claims stated above, Plaintiffs and Class members are
26 equitably entitled to recover from Defendants based on Defendants’ inequitable and
27 deceptive acts and practices that included falsely advertising their Internet services.
28

1 79. Plaintiffs and Class members conferred specific economic benefits upon
2 Defendants in the form of payments for Internet services that were not actually provided.
3 Defendants knowingly accepted and retained such benefits, but they failed to provide the
4 products and services as advertised and as required by law. Plaintiffs and Class members
5 expected to receive the products and services as advertised and not be subjected to
6 unlawful practices.

7 80. Defendants were unjustly enriched by the benefits they received from
8 Plaintiffs and Class members, and it would be unjust and unconscionable to permit
9 Defendants to be so enriched and continue to be enriched in the future. Defendants should
10 therefore be required to disgorge all amounts that they have been unjustly enriched, and
11 Plaintiffs and Class members should recover such amounts, with interest, as restitution.

12 81. Plaintiffs, individually and on behalf of all Class members similarly
13 situated, seek an injunction and any other necessary orders or judgments that will prevent
14 Defendants' unlawful practices; restitution that restores the full amount of their money
15 or property; and disgorgement of Defendants' related profits and proceeds.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs, on behalf of themselves and all proposed Class
18 members, request the following relief against Defendants:

- 19 (1) Certification of this action as a class action under Federal Rule of Civil
20 Procedure 23, appointing Plaintiffs as class representatives and Soderstrom
21 Law PC and Mahaffey Law Group, PC as class counsel;
- 22 (2) An award of actual, consequential, and punitive damages to Plaintiffs and
23 Class members in an amount sufficient to make them whole, compensate
24 them for all harm, and punish and deter Defendants' wrongful conduct;
- 25 (3) An award of restitution and/or disgorgement of profits and revenues to make
26 Plaintiffs and Class members whole and to avoid unjust enrichment by
27 Defendants;
- 28

- 1 (4) An award of declaratory and injunctive relief stating that Defendants' acts
2 and practices are unlawful and requiring corrective action as permitted by
3 law, including but not limited to corrective advertising, correcting the
4 disclosures related to Internet speeds, and correcting the disclosures related
5 to automatic renewal payments and changes to service terms;
- 6 (5) An award to Plaintiffs and Class counsel of reasonable litigation costs,
7 expenses, and attorneys' fees under California Code of Civil Procedure
8 section 1021.5, under the Lanham Act, under the CLRA, or under any other
9 applicable rule or statute;
- 10 (6) An award to Plaintiffs and Class members of pre-judgment and post-
11 judgment interest, to the extent allowable; and
- 12 (7) Any and all other relief as equity and justice requires.

13
14 Dated: March 28, 2017

SODERSTROM LAW PC

15 By: /s/ Jamin S. Soderstrom

16 Jamin S. Soderstrom

17 and

18 MAHAFFEY LAW GROUP, P.C.

19 By: /s/ Douglas L. Mahaffey

20 Douglas L. Mahaffey

21 *Counsel for Plaintiffs and the Proposed Class*

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JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury of all issues triable by jury.

Dated: March 28, 2017

SODERSTROM LAW PC

By: /s/ Jamin S. Soderstrom

Jamin S. Soderstrom

and

MAHAFFEY LAW GROUP, P.C.

By: /s/ Douglas L. Mahaffey

Douglas L. Mahaffey

Counsel for Plaintiffs and the Proposed Class

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