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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**FLOR BARRAZA and NIKOLE  
HENSON, individuals, on behalf of  
themselves and others similarly  
situated,**

Plaintiffs,

v.

**CRICKET WIRELESS, LLC and  
LEAP WIRELESS  
INTERNATIONAL, INC.,**

Defendants.

**GUNDERSON SHARP, LLP**  
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) Case No. 3:15-CV-2471-WHA

) **CORRECTED AMENDED  
COMPLAINT  
CLASS ACTION**

) 1. Consumer Legal Remedies Act (Cal.  
) Civ. Code § 1750 et seq.)  
) 2. Untrue or Misleading Advertising (Cal.  
) Bus. & Prof. Code §§ 17500 et seq.)  
) 3. Negligence/Negligence Per Se  
) 4. Unconscionability and Unconscionable  
) Conduct  
) 5. Unjust Enrichment  
) 6. Unlawful, Unfair, and Fraudulent  
) Business Acts and Practices (Cal. Bus. &  
) Prof. Code §§ 17200 et seq.)  
) 7. Various State Consumer Protection  
) Acts

) **DEMAND FOR JURY TRIAL**

1 Plaintiffs, FLOR BARRAZA and NIKOLE HENSON, on behalf of themselves  
 2 and all others similarly situated, sue Defendants Cricket Wireless, LLC and Leap  
 3 Wireless International, Inc. for selling 4G/LTE phones that had no 4G/LTE  
 4 capabilities on their system and alleges as follows:

### 5 **NATURE OF THE ACTION**

6 1. Beginning in 2012, Leap Wireless International, Inc. (“LEAP”), by and  
 7 through its affiliated entities including, but not limited to, Cricket Wireless, LLC  
 8 (“Cricket Wireless”), marketed **UNLIMITED 4G/LTE** services throughout the  
 9 United States (LEAP and its affiliated entities, including Cricket Wireless, LLC will  
 10 be referred to hereinafter, collectively, as “Cricket”, which is the commonly known  
 11 brand name).

12 2. Based on the representations made by Cricket, Plaintiffs and thousands  
 13 of other consumers seeking better call connectivity and faster Internet and data  
 14 speeds purchased high-end, expensive 4<sup>th</sup> Generation Long Term Evolution  
 15 (“4G/LTE”) capable mobile cellular phones (“4G/LTE-Capable Phones”), such as  
 16 the iPhone and Samsung Galaxy, in an attempt to take advantage of Cricket’s  
 17 advertised **UNLIMITED 4G/LTE** services throughout the United States.

18 3. Contrary to Cricket’s advertisements of **UNLIMITED 4G/LTE**, Cricket  
 19 did not have the capability to provide unlimited 4G/LTE services to its customers;  
 20 indeed, no (or very limited) service was available in the major metro areas where  
 21 Cricket sold its goods.

22 4. LEAP’s own documents filed with the SEC confirm the limited coverage  
 23 of Cricket’s 4G/LTE: “to date, we [LEAP] covered approximately 21 million POPs <sup>1</sup>  
 24

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25  
 26 <sup>1</sup> POPs is a term that refers to the potential customers that a network could cover.  
 27 Specifically, LEAP Wireless International, Inc., in its 10-K/A filed for the period  
 28 ending December 31, 2012, refers to this as “information relating to population and

*Footnote continued on next page*

1 with next-generation LTE network technology. However, given the significant  
 2 decrease in the size of our customer base in recent quarters, our high level of  
 3 indebtedness, and the high cost of LTE deployment, **we have generally determined**  
 4 **not to deploy LTE network technology in additional markets at this time.**<sup>2</sup> For  
 5 comparison, the U.S. Census Bureau estimates that on May 1, 2015, there were just  
 6 under 321 million residents of the United States.<sup>3</sup>

7 5. Despite LEAP's admissions that Cricket's current 4G/LTE could only  
 8 cover a maximum of 21 million potential consumers and that it had no plans to expand  
 9 its 4G/LTE coverage, it continued to advertise and market to consumers nationwide  
 10 that it had **UNLIMITED 4G/LTE**.

11 6. Defendant's advertisements and representations to consumers that it had  
 12 **UNLIMITED 4G/LTE** without limitation were false.

13 7. Based on LEAP's own statements to the SEC and FCC, Defendants made  
 14 such advertisements and representations to consumers with full knowledge that they  
 15 were false.

16  
 17  
 18 potential customers, or POPs, is based on 2012 population estimates provided by  
 19 Claritas Inc., a market research company." Leap Wireless International, Inc.,  
 20 Securities and Exchanges Commission Form 10-K for the period ending December  
 21 31, 2013, filed March 6, 2014, at page 44,  
 22 <https://www.sec.gov/edgar/searchedgar/companysearch.html> (then "Fast Search" for  
 LEAP's CIK #0001065049, Filter results by Filing Type 10-K/A, click on Document  
 for Filing Date 2013-10-28).

23 <sup>2</sup> Leap Wireless International, Inc., Securities and Exchanges Commission Form 10-  
 24 K for the period ending December 31, 2013, filed March 6, 2014, at page 44,  
 25 <https://www.sec.gov/edgar/searchedgar/companysearch.html> (then "Fast Search" for  
 LEAP's CIK #0001065049, Filter results by Filing Type 10-K, click on Document  
 for Filing Date 2014-03-06).

26 <sup>3</sup> U.S. CENSUS BUREAU, *Monthly Population Estimates for the United States: April 1,*  
 27 *2010 to December 1, 2015: 2014 Population Estimates*,  
 28 <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>  
 (last visited July 6, 2015).





26. Defendant Cricket Wireless, LLC is a Delaware corporation doing business in California.

### **THE AT&T – LEAP MERGER: TIMELINE AND FACTS**

27. On or about August 1, 2013, Cricket License Company, LLC, LEAP Wireless International, Inc. and AT&T, Inc. filed an Application for Assignments and Transfers of Control (“the Application”) with the FCC.

28. In the Application, ATT seeks permission to take over Cricket and LEAP’s wireless communication rights and licenses.

29. Included in the Application were the following statements made by the joint applicants ATT and LEAP:

- a. “LEAP’S financial resources and limited spectrum depth make it uneconomic to upgrade its current 3G CDMA platform to LTE throughout its network; **to date it has deployed LTE technology in only 11 metropolitan areas** covering approximately 21 million people and has little prospect today of financing significant upgrades to cover the remainder of its network footprint”;

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2014, Merger Sub merged with and into the Company with the Company surviving as a wholly owned subsidiary of AT&T (the “Merger”). LEAP Wireless

*Footnote continued on next page*

International, Inc., Securities and Exchanges Commission Form 8-K, filed on March 14, 2014, <https://www.sec.gov/edgar/searchedgar/companysearch.html> (“Fast Search” for LEAP’s CIK # 0001065049, Filter Results by Filing Type “8-K”, click on Document for Current Report, item 5.03, click on “body.htm”). AT&T described the merger to the SEC as follows: ***ATT acquired all of LEAP including its stock and wireless properties, including licenses, network assets, retail stores, approximately 5 million subscribers and debt.*** AT&T, Inc., Securities and Exchanges Commission Form 10-Q, dated Sept. 30, 2013, <https://www.sec.gov/edgar/searchedgar/companysearch.html> (then “Fast Search” for AT&T’s CIK #732717, Filter Results by Filing Type “10-Q”, click on Document for Filing Date 2013-11-01) (see NOTE 7. ACQUISITIONS, DISPOSITIONS AND OTHER ADJUSTMENTS).



b. “LEAP had deployed LTE technology in only 11 metropolitan areas...**offers only slower, less spectrally efficient 3G CDMA EVDO elsewhere to 65 percent of its subscribers**”; and

c. “LEAP primarily deployed its spectrum to support CDMA EVDO technology, which is far less spectrally efficient than AT&T’s 4G network. To the extent that LEAP has deployed LTE, it has done so in 3x3 MHz and 5x5 MHz block configurations. In contract, AT&T is typically deploying spectrum to support LTE in 10x10 MHz blocks, with 5x5 MHz configuration as a minimum”.

30. In March of 2014, the FCC approved the merger.

31. On or about May 18, 2014, the “New Cricket” re-launched under ATT.

### **PLAINTIFFS’ EXPERIENCES**

#### **Plaintiff Flor Barraza**

32. Plaintiff Flor Barraza (“Flor”) has been a customer of Cricket for approximately the past eight years.

33. Flor’s then-current 3G phone and services would not allow her to stream videos, load web pages, or use her GPS system reliably.

34. In August of 2013, Flor was in the market for a mobile, wireless telephone that was 4G/LTE-Capable because her then-current Cricket phone had poor and unreliable Internet and data service.

35. Flor visited a full-service Cricket retail store in Carlsbad, California.

36. Cricket prominently displayed signs advertising **UNLIMITED 4G/LTE** throughout the store.

37. On August 22, 2013, Flor purchased a 4G/LTE-Capable Phone, the Samsung Galaxy S4 from Cricket for \$599.99 plus taxes.

38. The Samsung Galaxy S4 was fully capable of connecting to a 4G/LTE network. In addition, Flor purchased a monthly service plan that was supposed to provide her with access to 4G/LTE services.

1           39. The 4G/LTE capability was noted on the box that contained the Samsung  
2 Galaxy S4, the materials inside the box, and the SIM Card.

3                                   **Plaintiff Nikole Henson**

4           40. Plaintiff Nikole Henson (“Nikole”) was a customer of Cricket for  
5 approximately five or six years.

6           41. Nikole’s then-current 3G services and phone would not allow her to  
7 stream videos, load web pages, or use her GPS system reliably.

8           42. In January of 2013, Nikole was in the market for a new mobile, wireless  
9 telephone with 4G/LTE service because her then-Cricket phone had poor and  
10 unreliable Internet and data service.

11           43. Nikole visited a Cricket store in Roeland Park, Kansas.

12           44. Cricket prominently displayed signs advertising **UNLIMITED 4G/LTE**  
13 throughout the store.

14           45. Nikole ultimately purchased a 4G/LTE-Capable Phone, the Samsung  
15 Galaxy S3 from Cricket for approximately \$499.99 plus taxes.

16           46. The Samsung Galaxy S3 was fully capable of connecting to a 4G/LTE  
17 network. In addition, Nikole purchased a monthly service plan that was supposed to  
18 provide her with access to 4G/LTE services.

19           47. The 4G/LTE capability was noted on the box that contained the Samsung  
20 Galaxy S3, the materials inside the box, and the SIM Card.

21                                   **COMMON FACTUAL ALLEGATIONS**

22                           **Cricket’s 4G/LTE Advertising and Marketing to Consumers**

23           48. Cricket describes itself as providing “innovative, high-value wireless  
24 services to a fast-growing, young, and ethnically diverse customer base.”<sup>6</sup>  
25

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26  
27 <sup>6</sup> News Release, PR Newswire, Leap Announces Expanded Availability of Cricket  
28 Products and Services Through Key National Retail Outlets (Sept. 22, 2011)  
<http://www.prnewswire.com/news-releases/leap-announces-expanded-availability-of->



1           49. Since 2012, Cricket has advertised to thousands of consumers across the  
 2 United States the opportunity to purchase a 4G/LTE-Capable Phone with 4G/LTE  
 3 services without distinction, clarification or disclosure that such 4G/LTE coverage  
 4 was extremely limited in size, scope and strength and, in most cities, nonexistent  
 5 (“4G/LTE Misrepresentations”).

6           50. Cricket advertised its 4G/LTE services in a variety of methods including,  
 7 but not limited to: in-store advertising, printed marketing materials, radio, television,  
 8 billboards, and the Internet.

9           51. Such advertisements included statements that Cricket’s 4G/LTE services  
 10 provided **UNLIMITED 4G/LTE** in the United States without noting any areas of  
 11 limited or nonexistent coverage.

12           52. 4G/LTE is the most advanced type of network currently available to the  
 13 general public.

14           53. 4G/LTE has several significant advantages over conventional 3G  
 15 service.

16           54. This includes, but is not limited to: a significantly higher quality cellular  
 17 service for making phone calls, faster text messaging, and exponentially faster data  
 18 and Internet/data services (approximately eight times faster than 3G).

19           55. Cricket’s own current “Acceptable Use Policy” describes data speeds as  
 20 follows (updated as of May 18, 2014 <sup>7</sup>):

- 21           a. Cricket’s 4G LTE service currently offers download speeds up to 8  
 22 Mbps <sup>8</sup>; and  
 23  
 24

25 [cricket-products-and-services-through-key-national-retail-outlets-130327813.html](http://cricket-products-and-services-through-key-national-retail-outlets-130327813.html)  
 26 (quoted source no longer available).

27 <sup>7</sup> CRICKET WIRELESS, *Acceptable Use Policy*, <https://www.cricketwireless.com/legal-info/acceptable-use-policy.html> (Revised May 18, 2014).

28 <sup>8</sup> “Mbps” = Mega bytes per second

- 1           b.     3G service as providing download speeds from 700 Kbps up to 1.7  
2               Mbps.

3           56.   4G/LTE services allow a consumer to get the best and highest use of the  
4   4G/LTE-Capable Phone. This includes, but is not limited to:

- 5           a.     Ability to download or stream music and videos;  
6           b.     Greatly enhanced speed of downloading or streaming music and  
7               video;  
8           c.     Ability to use mobile applications that have practical, safety-  
9               enhancing features such as turn-by-turn GPS directions;  
10          d.     The use of other mobile applications that would require 4G/LTE  
11               services as advertised by Cricket (such as MUVE); and,  
12          e.     In general, the ability of a consumer to have the full functionality of  
13               a 4G/LTE-Capable Phone.

14          57.   From 2012 to the present, Cricket offered a variety of monthly wireless  
15   cell phone plans (talk, text, and data) on either or both a 3G and 4G network,  
16   including the following:

- 17          a.     3G Basic Plans starting at approximately \$35.00 or \$45.00 per month;  
18               and,  
19          b.     4G/LTE plans starting at approximately \$50.00 to \$60.00 per month.

20                               **Cricket's 4G/LTE-Capable Phones**

21          58.   To access Cricket's 4G/LTE services, Cricket requires consumers to  
22   purchase a 4G/LTE- Capable Phone from Cricket.

23          59.   From 2012 to the present, Cricket offered a variety of high-end, 4G/LTE-  
24   Capable Phones, such as various versions of the Apple iPhone and the Samsung  
25   Galaxy.

26          60.   Cricket offered these high-end 4G/LTE-Capable Phones for sale at full  
27   retail price, generally between \$399.99 and \$599.99.

61. 4G/LTE-capable phones were the most expensive kind of mobile wireless phones that Cricket offered for sale and were purchased by Plaintiffs and the putative class.

62. During that same time period, Cricket also offered 3G-capable wireless mobile smart-phones.

63. 3G-capable smart-phones were significantly cheaper than Cricket's 4G/LTE-Capable Phones and could generally be purchased between \$99.99 and \$269.99.

### **Cricket's Packaging of its 4G/LTE-Capable Phones**

64. The 4G/LTE-Capable Phones offered for sale by Cricket and purchased by Plaintiffs and the putative class members were branded with "4G/LTE" symbol.

65. These measures were so significant and widespread that an objectively reasonable consumer, having purchased a 4G/LTE-Capable Phone from Cricket, would believe that the phone would receive 4G/LTE coverage; this is especially true when coupled with Cricket's advertisements of **UNLIMITED 4G/LTE** without any disclaimer indicating that such 4G/LTE coverage was extremely limited and, in most cases, nonexistent.

66. Such 4G/LTE branding included the packaging of the phone itself, for example:



67. Such 4G/LTE branding also included in the “Quick Start Guide”, for example:



68. Such 4G/LTE branding also included the Subscriber Identification Module (“SIM”) card holder contained in the box provided by the Defendants. The SIM card holder had a large moniker stating “4G/LTE” and a notation stating “4G/LTE Technology – Lets you live, work, and play faster than with 3G”. For example:



69. Such 4G/LTE branding also included the 4G/LTE-Capable Phone itself.

70. This type of branding (SIM card, Phone, Booklet, etc.) is not typically found with any other major carrier that has 4G/LTE coverage.



71. Upon information and belief, Cricket took these actions to intentionally deceive and confuse Plaintiffs and the putative class members that after purchasing a 4G/LTE-Capable Phone, Cricket would provide 4G/LTE coverage.

### **The True Scope of Cricket's 4G/LTE Services**

72. Despite advertising **UNLIMITED 4G/LTE** across the United States, Cricket did not have a network that was capable of providing 4G/LTE services to the vast majority of 4G/LTE phone purchasers across the country.

73. For example, coverage maps taken from Cricket's own website show that Cricket did not have 4G/LTE coverage in Southern California. (Note that potential consumers are notified that "*a 4G device is required for 4G/LTE service*"):

**search cricket coverage**

My home zip code: 92081 (Change)

Check coverage for a specific location:

Street:

City:  State:  Zip:

Vista CA 92081

[show coverage](#)

**coverage map legend**

Select the coverage type to display

☒ **Talk & Text Coverage**

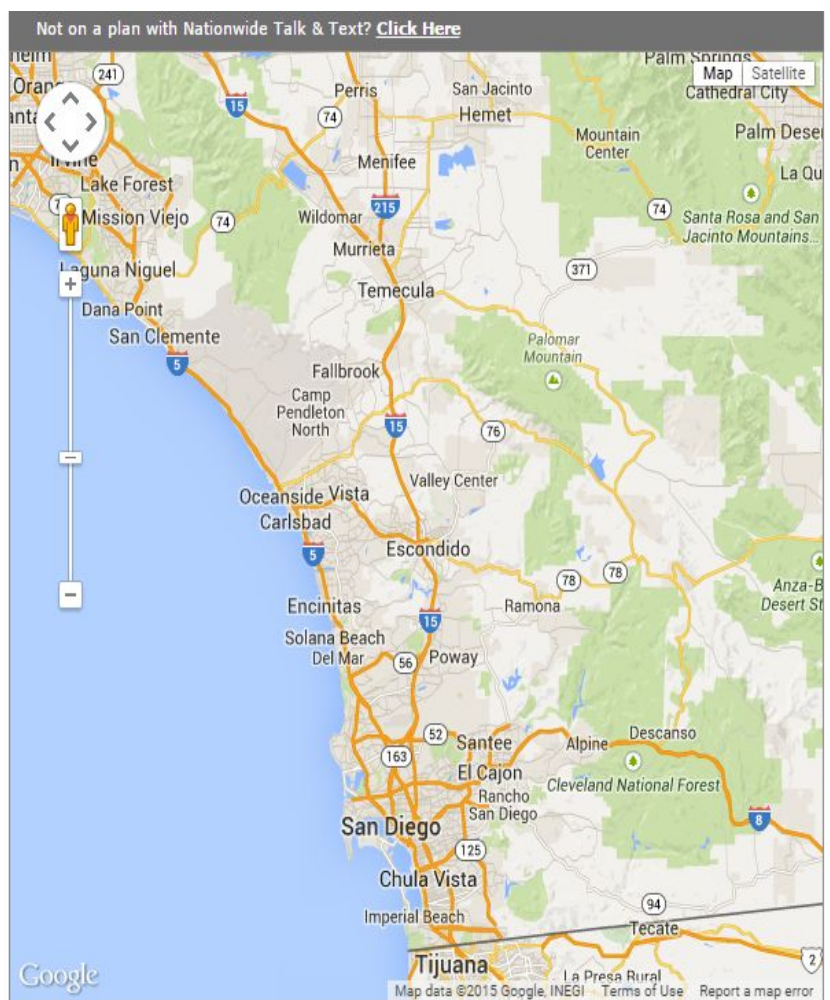
☒ **3G Data Coverage**

☒ **4G LTE Data Coverage**

☒ Cricket 4G LTE Data Coverage (4G device required for 4G LTE service)

☒ Partner 4G LTE Data Coverage

☐ No Coverage



74. In contrast, coverage maps from Cricket's own website show that there is abundant 3G coverage throughout all of the major metropolitan areas of Southern California:

My home zip code: 92101 (Change)

Check coverage for a specific location:

Street:

City:  State:  Zip:

San Diego CA 92101

show coverage

coverage map legend

Select the coverage type to display

► Talk & Text Coverage

▼ 3G Data Coverage

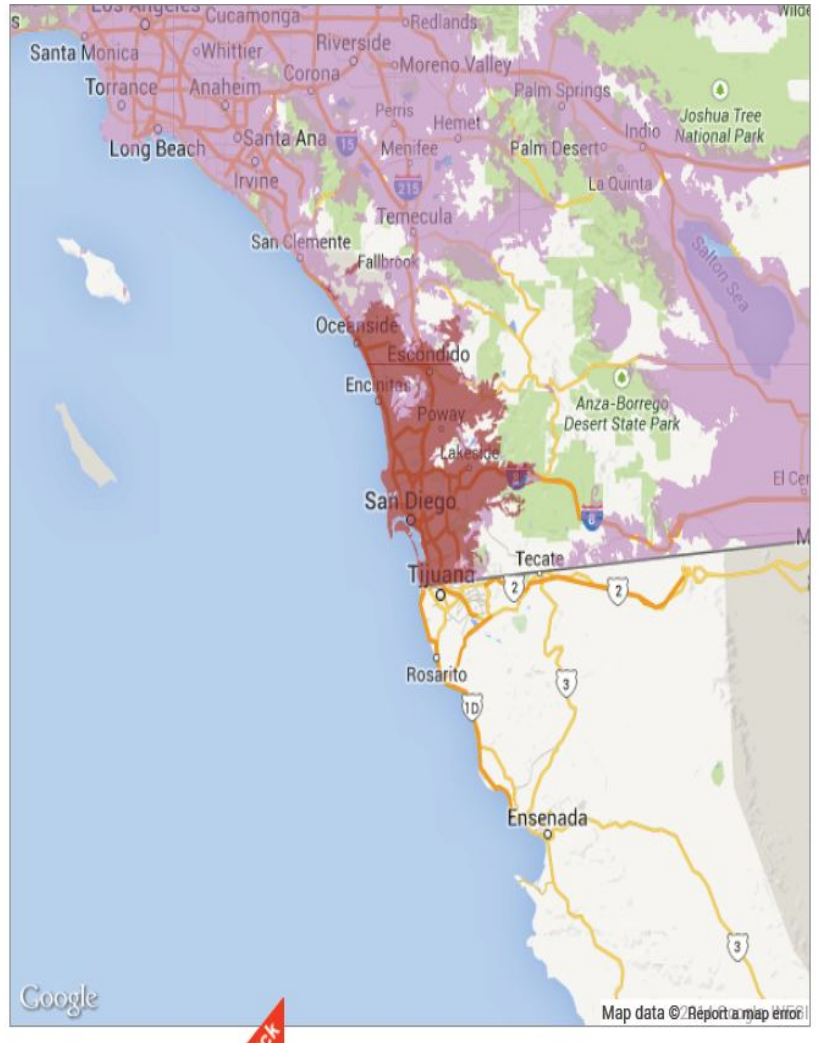
Cricket 3G Data Coverage

Partner 3G Data Coverage

Additional Partner Data Coverage (Phones only)

☐ No Coverage

► 4G LTE Data Coverage



75. As of December 31, 2013, Cricket service was offered in 48 states and the District of Columbia across an extended area covering approximately 292 million POPs.

76. As discussed, *supra*, LEAP's SEC filings admit that 4G/LTE coverage extends to only approximately 21 million POPs (population and potential customers) in the entire United States.



1           77. Further, LEAP's SEC Filings as recent as March 5, 2014 made the  
2 following public statements concerning its lack of 4G/LTE capabilities and its lack  
3 of ability to expand its 4G/LTE capabilities<sup>9</sup>:

- 4           a. "Many of our competitors also offer LTE services over a significantly  
5 larger geographic area than we do";
- 6           b. "Given the significant decrease in the size of our customer base in  
7 recent quarters, our high level of indebtedness, and high cost of LTE  
8 deployment, **we have generally determined not to deploy LTE**  
9 **network technology in additional markets at this time**"; and
- 10          c. "Our ability to remain competitive will depend, in part, on our ability  
11 to anticipate and respond to various competitive factors, to provide  
12 LTE-based services, and meet increasing customer demand for high  
13 data throughput speeds..."

14           78. By Cricket's own admissions, it made a conscious decision not to expand  
15 their 4G/LTE coverage—none of which was divulged in its nationwide advertising  
16 campaign for **UNLIMITED 4G/LTE SERVICES**.

17           79. Despite admitting that to "remain competitive" it had to "meet increasing  
18 customer demand for high data throughput speeds", Cricket continued on its course  
19 of advertising and marketing to consumers that it had **UNLIMITED 4G/LTE**  
20 **SERVICES** and failed to inform customers that its 4G/LTE services were (and  
21 would continue to be) only available in very limited geographic regions.

22           80. Essentially, Cricket told one story to the SEC and FCC ("we have a very  
23 limited 4G/LTE network, cannot and will not expand our 4G/LTE network, etc."),  
24

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25           <sup>9</sup> LEAP Wireless International, Inc., Securities and Exchanges Commission Form  
26 10-K for the period ending December 31, 2013, filed March 6, 2014,  
27 <https://www.sec.gov/edgar/searchedgar/companysearch.html> (then "Fast Search" for  
28 LEAP's CIK #0001065049, Filter results by Filing Type 10-K, click on Document  
for Filing Date 2014-03-06).

1 but continued to engage in a mass advertising campaign that told a very different  
2 story to its consumers (“we have and provide **UNLIMITED 4G/LTE**”).

3 **NO CONTRACT OR AGREEMENT WAS OR EVER COULD HAVE BEEN**  
4 **FORMED; THUS, ANY PURPORTED AGREEMENT TO ARBITRATE IS**  
5 **UNENFORCEABLE AS A MATTER OF LAW**

6 81. Any purported arbitration clause that Defendants may allege exists is  
7 unenforceable because no contract or agreement between Cricket and consumers was  
8 ever formed.

9 82. **Cricket’s “No Contract” Representations.**

- 10 a. During all relevant time periods in this Amended Complaint, Cricket  
11 marketed itself to all consumers, including Plaintiffs and the putative  
12 class, as the “**Home of the No Contract, No Hassle Wireless Carrier**”.
- 13 b. For example, the “Quick Start Guide” that Defendants provided to  
14 Plaintiffs and the putative class members welcomed them to Cricket  
15 Wireless, the “**Home of No Contract, No Hassle Wireless**”:



- 25 c. In addition, from approximately May 1, 2012 to June 1, 2014, Cricket  
26 advertised on its website that its services had Unlimited Data, Talk,  
27 Text & Music with “**No Contracts**”.
- 28

- i. For example, Cricket made the following representation on its website in 2013:



- d. Significantly, after ATT finalized its acquisition of LEAP/Cricket (on or around May 18, 2014), the marketing and advertising messages conveyed to consumers changed to “No *Annual* Contract” instead of its prior message of “No Contract”. The clear implication is that ATT knew the “No Contract” advertisement campaign was problematic and changed the advertising message accordingly.
- e. Thus, Defendants cannot enforce an arbitration clause or other contractual provision against any class member consumers in this case since no contract or agreement, including any arbitration provision, was ever offered or formed due to Defendants’ prior representations to consumers (through marketing, advertisements, printed materials, etc.) that Cricket’s 4G/LTE services have “No Contract”.

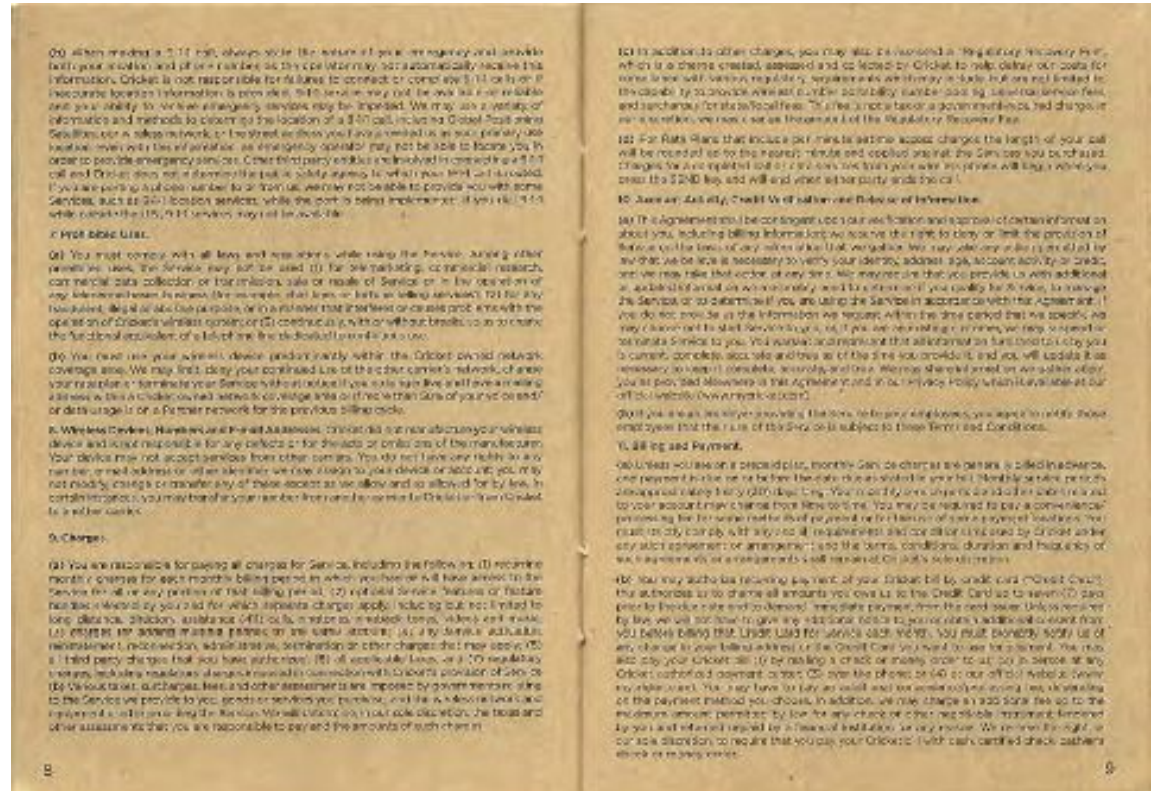
83. **Cricket’s Failure to Meaningfully Disclose the Arbitration.**

- 1 a. Upon information and belief, Defendants provided the same or  
2 similar “Quick Start Guide” to all consumers that purchased 4G/LTE-  
3 Capable Phones from 2012 to mid-2014.
- 4 b. The arbitration clause was included in a booklet titled “Quick Start  
5 Guide” with the subtitle “A Simple Guide to Activating Your  
6 Phone”<sup>10</sup> (herein, “Quick Start Guide: Simple Activation Guide”).
- 7 c. There is no mention or description on the front of the booklet about  
8 anything in the “Quick Start Guide: Simple Activation Guide”  
9 relating to additional “agreements”, “contracts”, “terms of service”,  
10 or arbitration clauses.
- 11 d. Because Cricket failed to meaningfully and conspicuously notify  
12 consumers of the existence of any “terms of service” which contained  
13 an arbitration provision, no contract or agreement was or could have  
14 been formed due to the following:
  - 15 i. First, the “Quick Start Guide: Simple Activation Guide” can only  
16 be accessed *after* the deal to purchase a 4G/LTE phone.
  - 17 ii. Second, Cricket included the arbitration clause in a “Quick Start  
18 Guide: Simple Activation Guide” described as a “*simple way of*  
19 *activating your phone*”, a misnomer designed to mislead  
20 consumers about what was contained therein.
  - 21 iii. Third, the arbitration clause was buried on the final pages of the  
22 “Quick Start Guide: Simple Activation Guide”.
  - 23 iv. Fourth, the entire “Terms of Service” included in the “Quick Start  
24 Guide: Simple Activation Guide” is printed in extremely small  
25 font (either 5 or 6-point character size) that is very difficult, if not  
26 impossible, for an average consumer to read or understand. Each  
27

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28 <sup>10</sup> See *supra*, paragraph 67.

page contained within the “Quick Start Guide: Simple Activation Guide” is approximately 3 inches by 4 inches. A sample page from the “**Quick Start Guide**” used by Cricket in actual size is listed below:



v. Fifth, because of Cricket advertised that its services had “**No Contract**”, an objectively reasonable consumer would have no reason to believe that a “Quick Start Guide: Simple Activation Guide”, designed to guide a consumer through the process of activating the 4G/LTE-Capable Phone, would contain any contractual provisions.



**CLASS ACTION ALLEGATIONS**

84. Plaintiffs, on behalf of themselves and similarly situated persons, bring this action pursuant to Rule 23(b)(3) of the FRCP on behalf of themselves and others similarly situated (the “Class”) from May 1, 2012 to May 18, 2014 (the “Class Period<sup>11</sup>”), initially defined as:

All persons in the United States who purchased a 4G/LTE-Capable Phone from Cricket (including its affiliates and subsidiaries) during the Class Period.

85. The following persons shall be excluded from the Class: (1) Defendants and their subsidiaries and affiliates; (2) governmental entities; and (3) the judge(s) to whom this case is assigned and any immediate family members thereof.

86. The claims for relief asserted herein satisfy the prerequisites for certification as a class action pursuant to Federal Rule of Civil Procedure 23(b)(3):

- a. There are common questions of law or fact common to the class;
- b. The claims or defenses of the representative parties are typical of the claims or defenses of the class;
- c. The representative party will fairly and adequately protect the interests of the class;
- d. The questions of law or fact common to class members predominate over any questions affecting only individual members; and
- e. A class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

87. **Numerosity.** The members of the Class are so numerous that individual joinder of all the members is impracticable. Although the exact size of the Class is unknown, Defendants Cricket Wireless, LLC and Leap Wireless International, Inc.

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<sup>11</sup> On information and belief, all 4G/LTE-Capable Phones purchased on or after May 19, 2014 were a part of AT&T’s 4G network and, thus, not a part of this class action; however, the “Class Period” as defined above may be revised and amended based on information uncovered in discovery.



1 submitted to this Court that over 10,000 Samsung Galaxy S4s were sold to California  
2 consumers from June 1, 2012 to May 18, 2014. The identifying information of the  
3 group that purchased Samsung Galaxy S4s, as well as all other 4G/LTE-Capable  
4 Phones during the Class Period is unknown to Plaintiffs; however, that information  
5 is readily available from the Defendants.

6 88. **Commonality and Predominance.** This action involves common  
7 questions of law or fact, which predominate over any questions affecting individual  
8 class members, including, but not limited to, the following:

- 9 a. Whether Defendants advertised “No Contract”;
- 10 b. Whether Defendants advertised and/or provided “4G/LTE-Capable  
11 Phones”;
- 12 c. Whether Defendants advertised and/or provided “4G/LTE Services”.
- 13 d. Whether Plaintiffs and Class members purchased 4G/LTE-Capable  
14 Phones from Defendants;
- 15 e. Whether Plaintiffs and Class members purchased 4G/LTE wireless  
16 cellular phone plans from Defendants;
- 17 f. Whether and to what extent Defendants failed to provide 4G/LTE  
18 services;
- 19 g. Whether Defendant’s Terms of Service were adequately disclosed to  
20 and were consented to by the Plaintiffs and class members;
- 21 h. Whether Defendants acted in bad faith in falsely advertised the scope  
22 of their 4G/LTE coverage;
- 23 i. Whether Defendants’ claims of “No Contract” was likely to mislead  
24 objectively reasonable consumers;
- 25 j. Whether Defendants’ 4G/LTE advertisements and marketing were  
26 likely to mislead an objectively reasonable consumer;

- k. Whether Defendant engaged in deceptive and unfair business and trade practices;
- l. Whether Plaintiffs and class members are entitled to restitution, damages, and/or other equitable relief; and
- m. Whether Defendants should be enjoined from engaging in this type of conduct.

89. **Typicality.** The named Plaintiffs' claims are typical of the claims of the Class because, among other things, Plaintiffs, like all members of the class, purchased 4G/LTE-Capable Phones anticipating to receive 4G/LTE Services. Cricket never provided 4G/LTE Services or provided only extremely limited 4G/LTE Services in cities across the United States. In addition, named Plaintiffs have the same or similar remedies as the members of the putative class.

90. **Adequacy of Representation.** Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of the Class that they seek to represent; they have retained counsel competent and experienced in complex class action litigation; and Plaintiffs intend to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiffs and their counsel.

91. **Superiority.** A class action is superior to all other available means for the fair and efficient adjudication of this controversy, including, but not limited to, the following reasons:

- a. The damages or other financial detriment suffered by individual Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Cricket, so it would be impracticable for the members of the Class to individually seek redress for Cricket's wrongful conduct;



- a. A substantial part of the alleged misleading and deceptive conduct emanated from California; and
- b. The bad faith, unfair, and unlawful conduct occurred in California.

97. In the alternative, the laws of the states in which each Plaintiff and each class member resides apply. In that case, Plaintiffs and the putative class members hereby incorporate every state's laws relating to consumer protection, unconscionability, false advertising, unjust enrichment, negligence, and negligence per se.

**COUNT ONE:**  
**VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**  
**Cal. Civ. Code § 1750, et. seq.**  
(As to All Defendants)

98. Plaintiffs, on behalf of themselves and those similarly situated, re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs as though alleged in full herein.

99. This cause of action is brought pursuant to the California Consumers Legal Remedies Act, California Civil Code § 1750, et seq. ("CLRA").

100. Plaintiff and other proposed class members purchased from Defendants "goods", specifically Cal. Civ. Code § 1761(a) and "services", specifically Cal. Civ. Code § 1761(b).

101. Defendants' actions, representations and conduct have violated the CLRA because they extended to transactions that are intended to result, or which have resulted in, the sale or lease of goods or services to consumers.

102. Plaintiffs and other class members are "consumers" as that term is defined by the CLRA, specifically, Cal. Civ. Code § 1761(d).

103. By engaging in the conduct described above, Defendants violated the CLRA as follows:

- a. By representing that goods or services have sponsorship, approval, characteristics, etc. which they do not have, in violation of Cal. Civ. Code § 1770(a)(5);
- b. By representing that goods or services are of a particular standard, quality, or grade if they are of another, in violation of Cal. Civ. Code § 1770(a)(7); and
- c. By advertising goods or services with intent not to supply them as advertised, in violation of Cal. Civ. Code § 1770(a)(9).

104. Specifically, Defendants' acts and practices led customers to falsely believe that their "goods" and "services" would allow consumers to have access to a 4G/LTE network when they knew such representations to be false and/or misleading.

105. On or about May 1, 2015, Plaintiff Flor Barraza, upon filing this action in the Superior Court of the State of California for the County of San Francisco, Case Number CGC 15-545624, put Defendants on notice of her allegations and demanded that Defendants correct, repair, replace, or otherwise rectify the unlawful, unfair, false, and deceptive practices complained of herein within (30) days.

106. Defendant Leap Wireless International, Inc. was served on May 5, 2015.

107. Defendant Cricket Wireless, LLC and former Defendant AT&T Inc. were served on May 8, 2015.

108. On or about May 15, 2015, Plaintiff Flor Barraza sent each of the Defendants a separate letter, in compliance with CLRA § 1782, demanding that they take appropriate action to correct, repair, replace, or otherwise rectify the unlawful, unfair, false, and deceptive practices complained of herein. In addition, on June 4, 2015 counsel for Defendants was served with and accepted a copy of Plaintiff Flor Barraza's CLRA demand letter via e-mail.

109. Defendants have refused to correct, repair, replace, or otherwise rectify the unlawful, unfair, false, and deceptive practices complained of herein.

110. Because Defendants have failed to take corrective action as required under the CLRA, Plaintiff and the putative class are now permitted to amend this Amended Class Action Complaint to seek, pursuant to Cal. Civ. Code § 1780(a)(3), compensatory damages, punitive damages, and restitution for any ill-gotten gains due to Defendants' acts and practices.

111. Plaintiffs also request that this Court award her costs and reasonable attorneys' fees pursuant to Cal. Civ. Code § 1780(d).

**COUNT TWO:**  
**FALSE ADVERTISING, BUSINESS AND PROFESSIONS CODE,**  
**Business Professions Code § 17500, et. seq.**  
(As to All Defendants)

112. Plaintiffs, on behalf of themselves and those similarly situated, re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs as though alleged in full herein.

113. Beginning at an exact date unknown to Plaintiffs, but within three (3) years preceding the filing of this Class Action Complaint, Defendants made untrue, false, deceptive, and/or misleading statements in connection with the advertising and marketing of their products and services.

114. Defendants made representations through advertisement (through a variety of mediums) and product labeling/branding (the cellular phones purchased by Plaintiffs and others similarly situated were branded/labeled with the "4G" branding and the instruction booklet contained "4G" branding), that led reasonable customers to believe that they were purchasing a 4G/LTE-Capable Phone that would receive 4G/LTE Services in their respective geographic regions.

115. Defendants deceptively failed to inform Plaintiffs, and those similarly situated, that their goods and services did not actually provide for 4G/LTE Services in their respective geographic areas.

116. Defendants' acts and omissions were likely to deceive the general public.



117. Defendants engaged in these false, misleading, and deceptive advertising and marketing practices to increase their profits. Accordingly, Defendants have engaged in false advertising, as defined by Cal. Business and Professions Code § 17500.

118. The aforementioned practices, which Defendants used, and continue to use, to their significant financial gain also constitute unlawful competition and provide an unlawful advantage over Defendants' competitors and result in injury to the general public.

119. Plaintiffs seek, on behalf of those similarly situated, full restitution of monies as necessary and according to proof, to restore any and all monies acquired by Defendants from Plaintiff, the general public, or those similarly situated by means of the false, misleading, and deceptive advertising and marketing practices complained of herein, plus interest.

120. Plaintiffs and those similarly situated are further entitled to and do seek both a declaration that the above-described practices constitute false, misleading, and deceptive advertising.

121. As a direct and proximate result of such actions, Plaintiffs and the other members of the Class have suffered, and continue to suffer, injury in fact and have lost money and/or property as result of such false, deceptive, and misleading advertising in an amount which will be proven at trial, but which is in excess of the jurisdictional minimum of this Court.

**COUNT THREE:**  
**NEGLIGENCE/NEGLIGENCE PER SE**  
(As to All Defendants)

122. Plaintiffs, on behalf of themselves and those similarly situated, re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs as though alleged in full herein.

123. Cricket, for the relevant time period, owed Plaintiffs and the class a duty to be forthcoming and inform Plaintiffs and the class of the current and projected limits of its “**UNLIMITED**” 4G/LTE Services.

124. During the Class Period, Cricket represented – through in-store materials and various advertising mediums – to Plaintiffs and the Class that it had 4G/LTE Services, in breach of its duty.

125. Cricket’s violations of California’s Business and Professionals Code § 17200 et seq. and § 17500 et seq. constitute negligence per se.<sup>12</sup>

126. Cricket’s intentional breach of this duty constitutes gross negligence.

127. Cricket knew that its 4G/LTE Services were very limited and that its customers would rely upon their representations and advertisements, thus its actions were voluntary.

128. Plaintiffs and the proposed class did not know, and could not have known, that such representations and/or advertisements were false.

129. As a direct and proximate result of Defendants conduct, Plaintiffs and the class have been damaged.

130. Defendant’s negligence was a substantial factor of the harm Plaintiffs and the class suffered.

131. Plaintiffs and the class seek restitution and disgorgement of profits related to the false advertisement and offer and/or declaratory relief as may be appropriate.

**COUNT FOUR:**  
**UNCONSCIONABILITY and UNCONSCIONABLE CONDUCT**  
(As to All Defendants)

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<sup>12</sup> See Count Two and Count Six.



1 alleged in this Amended Complaint including, but not limited to, Defendants'  
2 4G/LTE Misrepresentations.

3 139. It would be inequitable for Defendants to retain the benefits they received  
4 and continue to receive from Plaintiffs and the putative class members without  
5 payment to Plaintiffs and the putative class members.

6 140. Plaintiffs and the class have no adequate remedy at law.

7 141. Plaintiffs and the class seek disgorgement and/or a constructive trust on  
8 all of the inequitable payments and profits Defendants retained from Plaintiffs and  
9 Class Members.

10 **COUNT SIX:**  
11 **VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW**  
12 **California Business & Professions Code § 17200 et seq.**

(As to All Defendants)

13 142. Plaintiffs, on behalf of themselves and those similarly situated, re-allege  
14 and incorporate by reference each and every allegation set forth in the preceding  
15 paragraphs as though alleged in full herein.

16 143. Section 17200 of the California Business & Professions Code ("UCL")  
17 prohibits any unlawful, unfair, or fraudulent business practice.

18 144. Defendants violated the "unlawful" prong of the UCL by making  
19 material misrepresentations that they offered **UNLIMITED 4G/LTE** when, in fact,  
20 such 4G/LTE coverage was extremely limited in size and strength and, in most cities,  
21 nonexistent, in violation of California's Consumer Legal Remedies Act, Cal. Civ.  
22 Code §1750 *et seq.*

23 145. Defendants' practice of advertising **UNLIMITED 4G/LTE** nationwide  
24 without regard for whether or not Defendants could actually provide such 4G/LTE  
25 coverage violated the "unfair" prong of the UCL because it was immoral, unethical,  
26 oppressive, unscrupulous, unconscionable, and/or substantially injurious to Plaintiffs  
27 and the putative class members. Defendants' practices were also contrary to  
28

1 legislatively declared and public policy and the harm it caused to consumers  
2 outweighed its utility (if any).

3 146. Defendants violated the “fraudulent” prong of the UCL by making  
4 material misrepresentations that they had **UNLIMITED 4G/LTE** when they did not,  
5 and by failing to disclose and actively concealing material information regarding their  
6 lack of 4G/LTE coverage. These material misrepresentations and nondisclosures  
7 were likely to mislead consumers.

8 147. As a direct and proximate result of Defendants’ unfair, unlawful, and  
9 fraudulent conduct, Plaintiff (and the class members) lost money or property.

10 148. Defendants’ conduct caused substantial injury to Plaintiffs and the  
11 putative class members. Accordingly, Plaintiffs seek an order enjoining Defendants.

12 **COUNT SEVEN:**  
13 **STATE CONSUMER PROTECTION STATUTES**  
14 (As to All Defendants)

15 149. Plaintiffs, on behalf of themselves and those similarly situated, re-allege  
16 and incorporate by reference each and every allegation set forth in the preceding  
17 paragraphs as though alleged in full herein.

18 150. Plaintiffs, on behalf of themselves and those similarly situated, allege  
19 that Defendants’ conduct, as set forth herein, violates the following consumer  
20 protection statutes:

- 21 a. Code of Ala. § 8-19-1, et seq.;
- 22 b. Alaska Stat. § 45.50.471, et seq.;
- 23 c. A.R.S. § 44-1522, et seq.;
- 24 d. A.C.A. § 4-88-101, et seq.;
- 25 e. Cal. Bus. & Prof. Code § 17200, et seq.;
- 26 f. C.R.S. § 6-1-105, et seq.;
- 27 g. Conn. Gen. Stat. § 42-110a, et seq.;
- 28 h. 6 Del. C. §§ 2511, et seq. and 2531, et seq.;

- i. D.C. Code § 28-3901, et seq.;
- j. Fla. Stat. § 501.201, et seq.;
- k. O.C.G.A. §§ 10-1-372, et seq, 10-1-392 and 10-1-420;
- l. HRS § 480-1, et seq.;
- m. Idaho Code § 48-601, et seq.;
- n. 815 ILCS § 505/1, et seq.;
- o. Burns' Ind. Code Ann. § 24-5-.05-1, et seq.;
- p. Iowa Code § 714.16, et seq.;
- q. Kan. Stat. Ann. § 50-623, et seq.;
- r. KRS § 367.170, et seq.;
- s. La. R.S. § 51:1401, et seq.;
- t. 10 M.R.S. § 1211, et seq.;
- u. Md. Com. Law Code § 13-101, et seq.;
- v. Mass. Gen. L. Ch. 93A § 1, et seq.;
- w. MCLS § 445.901, et seq.;
- x. Minn. Stat. §§ 325D.43, et seq., 325F.67, et seq., and 325F.68, et seq.;
- y. Miss. Code Ann. § 75-24-1, et seq.;
- z. § 407.010 RSMo., et seq.;
- aa. Mont. Code Ann. § 30-14-101, et seq.;
- bb. Neb. Rev. Stat. § 59-1601, et seq.;
- cc. Nev. Rev. Stat. Ann. § 598.0903, et seq.;
- dd. N.H. Rev. Stat. §385-A:1, et seq.;
- ee. N.J. Stat. § 56:8-1, et seq.;
- ff. N.M. Stat. Ann. § 57-12-1, et seq.;
- gg. N.Y. Gen. Bus. Law §§ 349, et seq. and 350, et seq.;
- hh. N.C. Gen. Stat. § 75-1.1, et seq.;
- ii. N.D. Cent. Code, §§ 51-12-01, et seq. and 51-15-01, et seq.;



- jj. Ohio Rev. Code Ann. § 1345.01, et seq.;
- kk. 15 Okl. St. §751, et seq.;
- ll. Or. Rev. Stat. § 646.605, et seq.;
- mm. 73 Pa. Stat. § 201-1, et seq.;
- nn. R.I. Gen. Laws § 6-13.1-1, et seq.;
- oo. S.C. Code Ann. § 39-5-10, et seq.;
- pp. S.D. Codified Laws § 37-24-1, et seq.;
- qq. Tenn. Code § 47-18-101, et seq.;
- rr. Tex. Bus. & Com. Code § 17.41, et seq.;
- ss. Utah Code Ann. § 13-11-1, et seq.;
- tt. 9 Vt. Stat. Ann. § 2451, et seq.;
- uu. Va. Code Ann. § 59.1-196, et seq.;
- vv. Rev. Code Wash. § 19.86.010, et seq.;
- ww. W. Va. Code § 46A-6-101, et seq.;
- xx. Wis. Stat. § 100.20, et seq.; and,
- yy. Wyo. Stat. § 40-12-101, et seq.

151. As a result of Defendants' violations of the foregoing state consumer protection statutes, Plaintiffs and the class are entitled to compensatory damages, statutory damages, restitution, and/or any other damages allowed by law.

### **PRAYER FOR RELIEF**

Plaintiffs, on behalf of themselves and those similarly situated request that the Court order relief and enter judgment against the Defendants as follows:

1. Approving of the Class, certifying Plaintiffs as representatives of the Class, and designating their counsel as counsel for the Class;
2. Declaring that Defendants committed the violations alleged herein;

3. Granting damages, restitution, or disgorgement to Plaintiffs and the Class;
4. Granting compensatory damages, the amount of which is to be determined at trial;
5. Granting punitive damages;
6. Granting pre- and post-judgment interest;
7. Granting attorneys' fees and costs; and
8. Granting further relief as this Court may deem proper.

Dated: October 5, 2015

Respectfully submitted,  
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**JURY DEMAND**

Plaintiffs on behalf of themselves and others similarly situated demand a trial by jury for all issues so triable under the law.

Dated: October 5, 2015

Respectfully submitted,

By: /s/Keith A. Robinson  
Keith A. Robinson  
Attorney for Plaintiffs

**ATTESTATION OF SIGNATURES**

Pursuant to Civil Local Rule 5-1(i)(3), I, Keith A. Robinson, hereby attest that I have obtained concurrence in the filing of this document, *Corrected Amended Complaint Class Action and Demand for Jury Trial*, from the other signatories to this document.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 5<sup>th</sup> day of October, 2015 in Woodland Hills, California.

/s/ Keith A. Robinson  
Keith A. Robinson

**CERTIFICATE OF SERVICE**

I certify that, on October 6, 2015, I electronically filed the foregoing document *Corrected Amended Complaint Class Action and Demand for Jury Trial* with the Clerk of Court using the CM/ECF system which will send a notice of electronic filing to the following: Archis A. Parasharami (aparasharami@mayerbrown.com) and Raymond P. Bolaños (rb2659@att.com). Catherine C. Hwang (ch0171@att.com) is not a registered ECF user for this action and was not served through ECF.

/s/ Keith A. Robinson  
Keith A. Robinson  
Attorney for Plaintiffs