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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

FRANCIS JANCIK, individually  
and on behalf of others similarly  
situated,

Plaintiffs,

v.

REDBOX AUTOMATED  
RETAIL, LLC, a Delaware limited  
liability company; VERIZON AND  
REDBOX DIGITAL  
ENTERTAINMENT SERVICES,  
LLC, a Delaware limited liability  
company; and DOES 1 through 10,  
inclusive,

Defendants.

**CASE NO. SACV13-01387-DOC(RNBx)**  
**CLASS ACTION**

**THIRD AMENDED COMPLAINT FOR:**

- (1) VIOLATION OF THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. §§ 12101, *et seq.*;
- (2) VIOLATION OF THE UNRUH CIVIL RIGHTS ACT, Cal. Civ. Code § 51, *et seq.*;
- (3) VIOLATION OF THE CALIFORNIA DISABLED PERSONS ACT, Cal. Civ. Code §§ 54-54.3;
- (4) VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT, Cal. Civ. Code §§ 1750 *et seq.*;
- (5) VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW, Cal. Bus. & Prof. Code §§ 17500, *et seq.*
- (6) VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW, Cal. Bus. & Prof. Code §§ 17200, *et seq.*

**DEMAND FOR JURY TRIAL**

1 Plaintiff, FRANCIS JANCIK, on behalf of himself and others similarly  
2 situated (hereinafter “Plaintiff” or “Mr. Jancik”), hereby files this Complaint against  
3 Defendants REDBOX AUTOMATED RETAIL, LLC a Delaware corporation  
4 (hereinafter “Redbox” or “Defendant”); VERIZON AND REDBOX DIGITAL  
5 ENTERTAINMENT SERVICES, LLC, a Delaware corporation (hereinafter  
6 “Verizon” or “Defendant”); and DOES 1 through 10, inclusive (hereinafter  
7 collectively referred to as “Defendants”). Plaintiff is informed and believes, and on  
8 the basis of that information and belief alleges, as follows:

9 **NATURE OF THE CASE**

10 1. This action seeks to put an end to systemic civil rights violations  
11 committed by Defendants against deaf and hard of hearing individuals in California  
12 and nationwide. Plaintiff alleges that Defendants have failed to provide equal access  
13 to their DVD and Blu-ray (hereafter “DVD”) and video streaming services by  
14 refusing to make available closed captioned text for the deaf and hard of hearing—a  
15 feature that is necessary for such individuals to understand the audio portion of the  
16 video content.

17 2. This action further seeks to put an end to Defendant Redbox’s  
18 misrepresentations and false statements that their DVDs either (1) contain closed  
19 captioned for the hearing impaired when in fact they do not; (2) contain English  
20 subtitles SDH (English subtitles for the deaf and hard of hearing) for when it in fact  
21 they do not; and (3) are labeled as having closed captions when in fact they contain  
22 English subtitles or English subtitles SDH (or vice versa).

23 3. Redbox DVD rentals account for approximately 34% of the DVD rental  
24 market nationwide, and Redbox has surpassed 2 billion DVD rentals nationally.  
25 Defendant Redbox operates a network of over 42,000 automated video rental kiosks  
26 at 34,600 locations, including grocery and convenience stores, mass merchant  
27 retailers, drugstores, and restaurants in California and through-out the United States.  
28 Among other services, these kiosks allow customers to browse, select, rent and/or

1 purchase DVDs. Customers also have the option of using Redbox's website to  
2 reserve DVDs for pick up at a kiosk location.

3 4. "Redbox Instant" is a service offered by Defendant Redbox and  
4 Defendant Verizon as part of a joint venture between Defendant Redbox and  
5 Verizon Communications, Inc.

6 5. Through Defendants' website, [www.redboxinstant.com](http://www.redboxinstant.com), consumers are  
7 provided immediate access to new-release DVD movie rentals through Redbox  
8 kiosks nationwide and instant access to popular entertainment content using the  
9 devices they prefer with a "Redbox Instant" subscription and video on-demand  
10 streaming service for \$8.00 per month.<sup>1</sup> All consumers, both subscribers and non-  
11 subscribers alike, can also use Defendants' website to select new releases available  
12 for purchase or rental, or reserve DVDs to pick up at one of Defendant Redbox's  
13 kiosk locations.<sup>2</sup>

14 6. Approximately 36 million Americans are deaf or hard of hearing.  
15 Many of these individuals require closed captioning to meaningfully access the  
16 audio component of television and video content. Just as buildings without ramps  
17 bar people who use wheelchairs, video content without captions excludes deaf and  
18 hard of hearing individuals. Closed captioning is a viewer activated system that  
19 displays text on, for instance, television programming, or DVD movies. (This is  
20 different from open captioning, which is automatically displayed for everyone, such  
21 as subtitles in foreign language movies.) With closed captioning, deaf and hard of  
22 hearing individuals have the opportunity to enjoy movies and television shows by  
23 reading the captioned text. With closed captioning, these individuals can also watch  
24 videos together with family and friends, whether or not deaf or hard of hearing.

25 7. Despite repeated requests by Plaintiff to Redbox to provide DVD  
26 content with closed captioning, Defendant has failed to do so. By not providing

27 <sup>1</sup> See <http://about.redboxinstant.com/learn/about-redbox-instant-by-verizon/>, accessed December 21, 2013.

28 <sup>2</sup> Press release dated December 12, 2012, Redbox Instant by Verizon Unveils Details of Disc + Digital Move Service, available online at <http://about.redboxinstant.com/media/partnership-press-release>, accessed December 21, 2013.

1 DVD and video streaming content with captioning, Defendants are creating barriers  
2 to full integration, independent living, and equal opportunity for persons with  
3 disabilities, increasing the sense of isolation and stigma that the Americans with  
4 Disabilities Act (“ADA”) was meant to redress.

5 8. The failure of Defendants to provide equal access to millions of deaf  
6 and hard of hearing individuals violates the mandate of the ADA to provide “full and  
7 equal enjoyment” of a public accommodation’s goods, services, facilities, and  
8 privileges, including “place[s] of exhibition and entertainment,” “place[s] of  
9 recreation,” “sales or rental establishment[s],” and “service establishments.”  
10 28 C.F.R. § 36.201(a); 42 U.S.C. §12181(7). Because the kiosks and Defendants’  
11 internet websites are “places of public accommodation,” denial of equal access  
12 violates the ADA. Remediating these violations is critical to the ADA’s goal of  
13 providing people with disabilities the same access that others take for granted.  
14 Accordingly, Plaintiff, on behalf of himself and members of the putative classes  
15 and/or subclasses, seeks injunctive and declaratory relief to ensure that deaf and hard  
16 of hearing individuals have equal access to Defendants’ services.

17 9. Furthermore, despite Defendants’ failure to provide equal access to deaf  
18 and hard of hearing individuals, Defendant Redbox has advertised, and continues to  
19 falsely advertise, that their video content is closed captioned when it is not, or has  
20 English subtitles SDH when it does not, or is closed captioned when it in fact  
21 contains English subtitles or English subtitles SDH (or vice versa). Defendants’  
22 misrepresentations and false statements appear onscreen at their thousands of kiosk  
23 locations in California and nationwide and on their websites. These  
24 misrepresentations specifically target disabled persons, the deaf and hearing  
25 impaired. Furthermore, at all relevant times, Defendants knew or should have  
26 known that their DVDs lacked closed captioning and/or English subtitles, yet made  
27 and continue to make false statements to the contrary. To this day, Defendants have  
28 taken no meaningful steps to clear up Plaintiff’s and members of the putative

1 classes' confusion based on Defendants' misrepresentations.

2 **PARTIES**

3 **A. Plaintiff Francis Jancik**

4 10. Plaintiff, Francis Jancik, is an individual over the age of eighteen (18)  
5 and is now, and at all relevant times mentioned in this Complaint was, a resident and  
6 domiciliary of the State of California in the County of Orange. Mr. Jancik is deaf  
7 and a member of a protected class under the Americans with Disabilities Act, the  
8 Unruh Civil Rights Act and the California Disabled Persons Act.

9 11. Mr. Jancik frequently rents DVDs from Defendant Redbox using  
10 Redbox's automated kiosks. In selecting DVDs, Mr. Jancik relies on Redbox's  
11 representations that they are closed captioned and/or contain English subtitles and/or  
12 English subtitles SDH. However, and despite Redbox's representations to the  
13 contrary, the DVDs Mr. Jancik rents frequently lack closed captioning and/or  
14 English subtitles SDH or English subtitles or are mislabeled as closed captioned  
15 when in fact the DVD contains English subtitles or English subtitles SDH (or vice  
16 versa). Mr. Jancik is harmed, inter alia, as he is denied equal access to the DVD  
17 content, is deceived and suffers economic injury based on not receiving the product  
18 or service he paid for.

19 12. Mr. Jancik has visited Defendant Verizon's website and is aware of the  
20 limited availability streaming videos that are closed captioned. As a deaf individual,  
21 Mr. Jancik is unable to enjoy streaming videos absent closed captioning. As a result  
22 of Defendant's failure to provide closed captioning, Plaintiff was and at all times  
23 relevant has remained deterred from patronage of Defendant Verizon's services.  
24 Accordingly, Plaintiff has never subscribed to Defendant Verizon's Redbox Instant  
25 service. He has been harmed, inter alia, by his exclusion from the service, as he  
26 feels it is unfair that he has inadequate access, which he believes to be the most  
27 competitively priced unlimited viewing option for streaming movies. If Defendant  
28 Verizon provided equal access to its Redbox Instant service, Mr. Jancik and other

1 members of the putative classes would subscribe.

2 **B. Defendant Redbox Automated Retail, LLC**

3 13. Plaintiff is informed and believes, and based thereon alleges, that  
4 Defendant Redbox is a Delaware corporation with its principal place of business at  
5 1800 114th Avenue S.E., Bellevue, Washington 98004. Defendant Redbox operates  
6 a network of automated video rental kiosks at grocery and convenience stores, mass  
7 merchant retailers, drugstores, and restaurants in California and through-out the  
8 United States. At all times relevant hereto, Defendant Redbox has transacted, and  
9 continues to transact, business throughout the State of California, including the  
10 Central District.

11 **C. Defendant Verizon and Redbox Digital Entertainment Services, LLC**

12 14. Plaintiff is informed and believes, and based thereon alleges, that  
13 Defendant Verizon is a Delaware corporation with its principal place of business at  
14 One Verizon Way, Basking Ridge, New Jersey 07920. Defendant Verizon operates  
15 a nationwide streaming business that offers its subscribers access to over 4,600 on-  
16 demand titles via the internet. At all times relevant hereto, Defendant Verizon has  
17 transacted, and continues to transact, business throughout the State of California,  
18 including the Central District.

19 **D. Defendants, Does 1 through 10, Inclusive**

20 15. Does 1 through 10, inclusive, are now, and/or at all times mentioned in  
21 this Complaint were, licensed to do business and/or actually doing business in the  
22 State of California. Plaintiff does not know the true names or capacities, whether  
23 individual, partner, or corporate, of DOES 1 through 10, inclusive, and for that  
24 reason, DOES 1 through 10 are sued under such fictitious names. Plaintiff will seek  
25 leave of court to amend this Second Amended Complaint (“SAC”) to allege such  
26 names and capacities as soon as they are ascertained.

27 **E. All Defendants**

28 16. Plaintiff is informed and believes, and based upon such information and

1 belief alleges, that Defendants, and each of them, are now and/or at all times  
2 mentioned in this SAC were in some manner legally responsible for the events,  
3 happenings and circumstances alleged in this SAC.

4 17. Plaintiff is informed and believes, and based upon such information and  
5 belief alleges, that at all times herein mentioned, Defendants, and each of them,  
6 proximately caused Plaintiff, all others similarly situated, and the general public to  
7 be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages  
8 alleged in this SAC.

9 18. Plaintiff is informed and believes, and based upon such information and  
10 belief alleges, that Defendants, and each of them, are now and/or at all times  
11 mentioned in this SAC were, members of and/or engaged in a joint venture,  
12 partnership and common enterprise, and were acting within the course and scope of,  
13 and in pursuit of said joint venture, partnership and common enterprise and, as such  
14 harmed Plaintiff and the putative class.

15 19. Plaintiff is informed and believes, and based upon such information and  
16 belief alleges, that Defendants, and each of them, at all times mentioned in this SAC,  
17 concurred with, contributed to, approved of, aided and abetted, condoned and/or  
18 otherwise ratified, the various acts and omissions of each and every one of the other  
19 Defendants in proximately causing the injuries and/or damages alleged in this SAC.

### 20 JURISDICTION

21 20. This Court has subject matter jurisdiction pursuant to Title 28, United  
22 States Code, Section 1331 and Title 42, United States Code, Section 12188 for  
23 Plaintiff's claims arising under the American with Disabilities Act, Title 42, United  
24 States Code, Section 12101, *et seq.*

25 21. This Court has supplemental jurisdiction pursuant to Title 28, United  
26 States Code, Section 1367, over Plaintiff's claims under the California Unruh Civil  
27 Rights Act (Cal. Civ. Code §§ 51, *et. seq.*), the Disabled Persons Act (Cal. Civ. Code  
28 §§ 54-54.3), the California Consumer Legal Remedies Act, (Cal. Civ. Code § 1750,

1 *et. seq.*), the California False Advertising Law (Cal. Bus. & Prof. Code §§ 17500, *et.*  
2 *seq.*) and the California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200,  
3 *et. seq.*).

4 **VENUE**

5 22. Venue for this matter properly lies in the Central District of California  
6 under Title 28, United States Code, Sections 1391(b)-(c) and 1441(a).

7 23. Defendants Redbox and Verizon are registered to do business in  
8 California and have been doing business in California, including in the Central  
9 District. Defendant Redbox maintains thousands of video rental kiosks in California,  
10 including several hundred in the Central District of California. Defendant Verizon  
11 operates its nationwide streaming business on the internet in this District.  
12 Defendants are subject to personal jurisdiction in this judicial district as the conduct  
13 described herein occurred in whole or in part in this judicial district as directed  
14 toward Plaintiff and the members of the below-described classes and/or subclasses.

15 **BACKGROUND**

16 **A. Defendants' Failure to Provide Deaf And Hard Of Hearing Individuals**  
17 **With Meaningful Access to Their DVD and/or Video Streaming Content.**

18 24. Redbox DVD rentals account for approximately 34% of the DVD rental  
19 market nationwide. Reports estimate Redbox's customers rent 62 million-plus  
20 DVDs each month from its more than 42,000 kiosks. Redbox kiosks are self-service  
21 automated machines that allow customers to rent and return DVDs by using a touch  
22 screen interface. Redbox also allows customers to reserve DVDs at its kiosks  
23 locations via the internet using its website at <http://www.redbox.com/>.

24 25. "Redbox Instant" offers consumers "a high value subscription package  
25 that combines unlimited streaming of thousands of popular movies, including titles  
26 from premium network EPIX, with four one-night credits per month for the latest  
27  
28

1 movie releases on DVD at Redbox kiosks.”<sup>3</sup> In addition, all consumers, both  
2 subscribers and non-subscribers alike, can use Defendants’ website to select new  
3 releases available for purchase or rental or reserve DVDs to pick up at one of  
4 Defendant Redbox’s kiosk locations.

5 26. Therefore, by subscribing to redboxinstant.com, customers are provided  
6 with four coupons a month for DVD rentals which can only be used and redeemed  
7 and the physical kiosks locations. Redboxinstant.com also allows customers of  
8 Defendant Redbox and/or Defendant Verizon to perform functions related to the  
9 “brick and mortar” kiosk locations. For example, through redboxinstant.com, com,  
10 consumers can browse through movies and other items available at the kiosk  
11 locations, find the locations nearest to them and check on the availability of a  
12 particular movie at kiosk locations nearby and reserve a DVD title to pick up at  
13 kiosk location.

14 27. In addition, “Redbox Instant” subscribers can log into their accounts  
15 using Defendants’ redboxinstant.com website to check on the number of credits they  
16 have available. These credits can only be redeemed at the physical kiosk locations;  
17 they cannot be used for streaming rental on the reboxinstant.com website.

18 28. The overwhelming majority of the content available at Defendants’  
19 kiosks and on their websites is not closed captioned and is therefore inaccessible to  
20 Plaintiff and members of the putative classes and/or subclasses.

21 29. Defendants acknowledge as much on their redboxinstant.com website  
22 stating,

23 We also are continuing to expand the library of movies that have closed  
24 captioning available for customers. To find out if a title is close-  
25 captioned, just click its poster. If (CC) appears at the end of the  
26 synopsis, that title is close-captioned.<sup>4</sup>

27 <sup>3</sup> Press release dated December 12, 2012, Redbox Instant by Verizon Unveils Details of Disc + Digital Move Service,  
available online at <http://about.redboxinstant.com/media/partnership-press-release>, accessed December 21, 2013.

28 <sup>4</sup>Redbox Instant By Verizon, Help Center, *Does Redbox Instant by Verizon Offer Closed Captioning (CC)?*, available  
at: [http://redboxinstant.custhelp.com/app/answers/detail/a\\_id/224](http://redboxinstant.custhelp.com/app/answers/detail/a_id/224), accessed Aug. 30, 2013.

1 30. Because of the way Defendants' kiosks and websites are set up, it is  
2 difficult, if not impossible, to determine the exact percentage of closed captioned  
3 content available from Defendants. For example, while customers can search for  
4 titles based on whether they are formatted as Blu-Ray disks, DVDs, in high  
5 definition or in standard definition, there is no feature that allows customers to  
6 search for titles that are closed captioned.

7 31. In addition, titles that are closed captioned are hard to locate because  
8 captioned films are not identified in the same manner as non-captioned films. One  
9 must comb through the kiosk touchscreens and/or Defendants' websites and open  
10 each movie icon to determine if closed captioning is available. Since closed  
11 captions are generally not available, this exercise is time consuming and ineffective.

12 32. Defendants therefore have designed, constructed, implemented and  
13 maintained policies, practices, procedures that provide accommodations, advantages,  
14 facilities, privileges and services to customers that contain access barriers to the deaf  
15 and hard of hearing. In so doing, Defendants' conduct specifically target and  
16 discriminate against Plaintiff and other deaf and hard of hearing individuals. These  
17 barriers deny full and equal access to Plaintiff and other deaf and hard of hearing  
18 individuals who would otherwise be able to fully and equally enjoy Defendant's  
19 benefits and services.

20 33. Over the course of the past year,<sup>5</sup> Plaintiff repeatedly notified  
21 Defendants of the unlawful accessibility barriers related to Defendants' goods and  
22 services. Plaintiff further repeatedly requested that Defendants make closed  
23 captioned video content available in order to accommodate his disability and afford  
24 him full and equal access under the law. Plaintiff alleges his requests for  
25 accommodation, the provision of closed captioned video content, imposes no undue  
26 financial or administrative burden on Defendants. Nevertheless, Defendants have  
27 failed and refused to accommodate Plaintiff. As a result, Plaintiff is effectively

28 <sup>5</sup> Among others, Plaintiff provided notice to Defendant on August 4, 2013.

1 excluded from the benefits of the goods, services, privileges and advantages offered  
2 by Defendants.

3 34. In failing and refusing to make reasonable and necessary modifications  
4 to their policies, procedures and practices, Defendant wrongfully and unlawfully  
5 denied Plaintiff, and other deaf and hard of hearing individuals, with equal access to  
6 the benefits of the goods, services, privileges and advantages offered by Defendants  
7 with the knowledge of the effect of on disabled persons.

8 **B. Defendant Redbox's Misrepresentations And False Statements**  
9 **Regarding Closed Captioning and/or availability of English Subtitles**

10 35. Defendant has made, and continues to make, misrepresentations  
11 regarding the closed captioning and/or availability of English subtitles related to  
12 their DVDs. Defendants voluntarily represents, advertises and promotes that DVD  
13 content available at their kiosks is (a) closed captioned and/or contains English  
14 subtitles, when, in fact, it does not, or (b) contains closed captions, when in fact, it  
15 contains English subtitles or English subtitle SDH (or vice versa).

16 36. An example of the first scenario of a DVD containing a closed  
17 captioned label but no closed captioning is the movie "Alexander."

18 37. An example of the second scenario where Plaintiff rented a DVD which  
19 was labeled closed captioned at the kiosk but in fact had only English subtitles is  
20 "Pompeii."

21 38. A further example of the second scenario is a DVD rented by Plaintiff  
22 called "Blue Jasmine," which was labeled at the kiosk as containing closed  
23 captioning when in fact it contained only English subtitles SDH.

24 39. Defendant's business practice of advertising and marketing their DVD  
25 content as containing closed captions and/or English subtitles when they do not, or  
26 as containing closed captions when in fact they contain English subtitles or English  
27 subtitles SDH (or vice versa) constitutes "unfair, deceptive, untrue or misleading  
28 advertising" under the California Business and Professions Code, Sections 17200 *et.*

1 *seq.*, and 17500 *et. seq.*

2 40. Plaintiff and other reasonable consumers must and do rely on  
3 companies such as Defendant to honestly state the characteristics and particular  
4 standards of their goods and services. Defendant intends and knows that consumers  
5 rely upon their statements made on labels, advertisements and on their websites in  
6 making their purchase or rental decisions. Such reliance by consumers is reasonable  
7 because companies are prohibited from making false or misleading statements on  
8 their products' labels under the law.

9 41. English subtitles SDH differ from closed captions in a few important  
10 ways. The first, and most important difference, is that they are encoded differently.  
11 Most DVDs playing through a HDMI connection will not play closed captioning, but  
12 will support subtitles. Thus, proper labeling of the DVD as closed captioned or  
13 English subtitles is especially important for the deaf and hard of hearing, who must  
14 not only have certain types of equipment to watch a DVD so that the closed  
15 captioned or English subtitles SDH are viewable, but must also have the equipment  
16 hooked up in a particular way depending on whether the DVD is closed captioned,  
17 English subtitled, or English SDH subtitled. The second difference is in appearance.  
18 Closed captions are traditionally displayed as white text on a black band, while SDH  
19 subtitles are usually displayed with the same proportional font of translation  
20 subtitles. The third difference is in terms of placement. Closed captions can usually  
21 be aligned to different parts of the screen, which is helpful for speaker identification,  
22 overlapping conversation, and avoiding interference with important on-screen  
23 activity. SDH text is usually centered and locked in the lower bottom third of the  
24 screen. Currently, English subtitles SDH does not satisfy the FCC's requirements for  
25 closed captioning of broadcast video.

26 42. Defendant Redbox's representations that their DVDs contain closed  
27 captions and/or English subtitles when they do not, or contained closed captions  
28 when in fact they contained English subtitles or English subtitles SDH (or vice

1 versa), are misleading and/or fail to disclose material facts. Defendant knew, or  
2 should have known, or was reckless in making its misrepresentations, that its  
3 conduct targeted disabled consumers, the deaf and hard of hearing. Defendant knew  
4 or should have known that their representations of standards, qualities,  
5 characteristics, grade, affirmations of fact, and promises regarding the goods and  
6 services were likely to deceive consumers and disabled consumers in particular into  
7 believing they were purchasing or renting goods and services that had the qualities  
8 and attributes, which they did not possess.

9 43. Plaintiff has been renting movies from Defendant for over a year.  
10 Because Plaintiff is deaf, he relies on closed captioned text and/or English subtitles  
11 to understand the audio portion of the video content. Thus, Plaintiff's purchases are  
12 based upon Defendants' advertisements, labeling and representations including, but  
13 not limited to, their representations that the movies are closed captioned and/or  
14 contain English subtitles. Had Plaintiff known the movies he was selecting were not  
15 closed captioned and did not contain English subtitles, or were mislabeled closed  
16 captioned when they were in fact English or SDH subtitled (or vice versa), he would  
17 not have rented and/or purchased them, or would have known to rearrange his  
18 equipment or purchase certain equipment so that the closed captions or English  
19 subtitles were viewable. As a result, Plaintiff has lost money and did not receive the  
20 product he bargained for.

21 44. After renting a number of movies from Defendants, which were  
22 advertised and labeled as closed captioned and/or containing English subtitles, only  
23 to learn they were not, or were English or SDH subtitled when in fact they were  
24 labeled closed captioned, or vice versa, Plaintiff began calling Defendants and  
25 requesting that the false advertising be removed and that the closed captioning  
26 and/or English subtitles be added or properly labeled.

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**CLASS ACTION ALLEGATIONS**

45. Plaintiff brings this suit as a class action on behalf of himself and on behalf of others similarly situated pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and/or 23(b)(3). Subject to additional information obtained through further investigation and/or discovery, the foregoing definition of the Class may be expanded or narrowed. Plaintiff brings this suit on behalf of a proposed nation-wide class and a California Sub-Class (collectively "the Classes") defined as follows:

**The Disabled Persons Class**

All deaf or hard of hearing persons residing in the United States during the time period permitted by applicable statutes of limitations and continuing until present.

**The California Disabled Persons Sub-Class**

All deaf or hard of hearing persons residing in the State of California during the time period permitted by applicable statutes of limitations and continuing until present.

**The California False Advertising Class**

All deaf or hard of hearing persons residing in California who rented and/or purchased DVD/Blu-Ray and/or video streaming from Defendant Redbox during the time period permitted by applicable statutes of limitations and continuing until present which Defendant represented to (1) have closed captioning and/or English subtitles but which did not actually provide these features or (2) have closed captioning and actually had English subtitles or English subtitles SDH (or vice versa).

**The California Unfair Competition Law Class**

- a. All deaf or hard of hearing persons residing in the State of California who have been or are being denied equal access to Defendants' DVD/Blu-Ray and/or video streaming content during the time period permitted by the applicable statute of limitations and

1 continuing until present;

2 b. All deaf or hard of hearing persons residing in California who rented  
3 an/or purchased DVD/Blu-Ray and/or video streaming content from  
4 Defendants during the time period permitted by the applicable  
5 statute of limitations and continuing until present which Defendant  
6 represented to (1) have closed captioning and/or English subtitles  
7 but did not actually provide this feature; or (2) have closed  
8 captioning and actually had English subtitles or English subtitles  
9 SDH (or vice versa).

10 46. Numerosity: The members of the Classes are so numerous that joinder  
11 of all members is impracticable. The Classes are comprised of thousands of  
12 consumers throughout the United States and across California.

13 47. Commonality: Common questions of law and fact exist as to all  
14 members of the Classes. These common questions predominate over the questions  
15 affecting only individual members of the Classes. These common legal and factual  
16 questions include, but are not limited to, the following:

- 17 a. Whether Defendants' kiosk locations are places of public  
18 accommodation under the Americans Disabilities Act;
- 19 b. Whether Defendants' websites are places of public accommodation  
20 under the Americans Disabilities Act;
- 21 c. Whether, by failing to provide closed captioned content on their  
22 DVD and video streaming content, Defendants have discriminated  
23 against the deaf and hard of hearing on the basis of disability in the  
24 full and equal enjoyment of the goods, services, facilities, privileges,  
25 advantages, or accommodations of places of public accommodation  
26 in violation of the Americans Disabilities Act;
- 27 d. Whether Defendants have failed to provide equal access for people  
28 with disabilities to the accommodations, advantages, facilities,

- 1           privileges, and services of their business establishments in Violation  
2           of the Unruh Civil Rights Act;
- 3           e. Whether Defendants have failed to provide equal access for people  
4           with disabilities to the accommodations, advantages, facilities and  
5           privileges of places of public accommodation and other places to  
6           which the public is invited in violation of the California Disabled  
7           Persons Act;
- 8           f. Whether Defendant Redbox made representations, expressly or by  
9           implication, that their DVDs contained closed captions when they  
10          did not;
- 11          g. Whether Defendant Redbox made representations, expressly or by  
12          implication, that their DVDs contained English subtitles when they  
13          did not;
- 14          h. Whether Defendant Redbox made representations, expressly or by  
15          implication, that their DVDs contained closed captioning when in  
16          fact they contained English subtitles or English subtitles SDH (and  
17          vice versa);
- 18          i. Whether Defendants' conduct constitutes a violation of the  
19          California Legal Remedies Act;
- 20          j. Whether Defendants' are liable for additional remedies pursuant to  
21          California Civil Code section 1780(b)(1);
- 22          k. Whether Defendants' conduct constitutes a violation of §17500, *et*  
23          *seq.*, of the *Business and Professions Code*;
- 24          l. Whether Defendants' conduct constitutes an unlawful business act  
25          or practice within the meaning of *Business and Professions Code*  
26          §17200;
- 27          m. Whether Defendants' conduct constitutes an unfair business act or  
28          practice within the meaning of *Business and Professions Code*

1 §17200;

2 n. Whether Defendants' conduct constitutes a fraudulent business act  
3 or practice within the meaning of *Business and Professions Code*  
4 §17200;

5 o. Whether Plaintiff and members of the Class are entitled to damages,  
6 restitution, and other relief.

7 48. Typicality: Plaintiff's claims are typical of the claims of the members of  
8 the Classes as all members of the Classes are similarly affected by Defendants'  
9 wrongful conduct. Plaintiff, like other members of the Classes, were denied equal  
10 access and exposed to the same material misrepresentations. Plaintiff is advancing  
11 the same legal theories on behalf of himself and all absent class members.

12 49. Adequacy of Representation: Plaintiff's claims are made in a  
13 representative capacity on behalf of the other members of the Classes. Plaintiff has  
14 no interests antagonistic to the interests of the other members of the proposed  
15 Classes and is subject to no unique defenses. Plaintiff is committed to the vigorous  
16 prosecution of this action and has retained competent counsel experienced in the  
17 prosecution of class actions. Accordingly, Plaintiff is an adequate representative of  
18 the proposed Classes and will fairly and adequately protect the interests of the  
19 Classes.

20 50. Superiority: A class action is superior to other available means for the  
21 fair and efficient adjudication of this dispute. Joinder of all members is  
22 impracticable. The damages suffered by each individual member of the Classes  
23 likely will be relatively small, especially given the relatively small cost of the DVD  
24 rental and streaming services at issue and the burden and expense of individual  
25 prosecution of the complex litigation necessitated by Defendants' conduct. Thus, it  
26 would be virtually impossible for members of the Classes individually to effectively  
27 redress the wrongs done to them. Moreover, even if members of the Classes could  
28 afford individual actions, it would still not be preferable to class-wide litigation. The

1 burden of individual litigation on the court system would be significant.  
2 Individualized actions present the potential for inconsistent or contradictory  
3 judgments. By contrast, a class action presents far fewer management difficulties  
4 and provides the benefits of single adjudication, economies of scale, and  
5 comprehensive supervision by a single court.

6 51. This suit may be maintained as a class action under Fed. R. Civ. Pro.  
7 23(b)(2) because Defendants have acted, and/or refused to act, on grounds generally  
8 applicable to the Classes, thereby making appropriate final injunctive relief.  
9 Specifically, injunctive relief is necessary and appropriate to require Defendants to:

- 10 a. Discontinue its unfair business practices;
- 11 b. Undertake an immediate public information campaign to inform  
12 members of the proposed Classes as to their conduct as alleged in  
13 this Complaint; and
- 14 c. Correct any erroneous impression consumers may have obtained  
15 concerning the nature, characteristics, or qualities of the DVD rental  
16 and streaming services provided by Defendants, including without  
17 limitation, the placement of corrective marketing, advertising,  
18 promoting and labeling, and providing written notice to the public.

19 **FIRST CAUSE OF ACTION**

20 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT**

21 **(On Behalf of Plaintiff, the Disabled Person Class and the**  
22 **California Disabled Person Subclass, Against all Defendants)**

23 52. Plaintiff hereby incorporates by reference each and every one of the  
24 allegations contained in the preceding paragraphs as if the same were fully set forth  
25 herein.

26 53. Title III of the ADA provides that “places of public accommodation”  
27 may not discriminate against people with disabilities. Specifically, it directs that:

28 No individual shall be discriminated against on the basis of disability in  
the full and equal enjoyment of the goods, services, facilities, privileges,

1 advantages, or accommodations of any place of public accommodation  
2 by any person who owns... or operates a place of public  
3 accommodation.

42 U.S.C. §§ 12101 *et. seq.*

54. Plaintiff is deaf and is therefore disabled and a member of a protected  
6 class under the ADA.

55. Defendant Redbox operates places of public accommodation as defined  
7 by Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181(7)(E)-(F),  
8 because Redbox DVD kiosks are “sales or rental establishments” and “service  
9 establishments.”

56. Defendant Verizon operates places of public accommodation as defined  
10 by Title III of the ADA, 42 U.S.C. § 12181(7)(C), (I), (E)-(F), because “Redbox  
11 Instant” is a “place of exhibition and entertainment,” “sales or rental establishment,”  
12 “service establishment” and “place of recreation.” Moreover, Defendant Verizon’s  
13 website provides DVD and streaming video rental services for both Defendant  
14 Redbox and Defendant Verizon. As described above, redboxinstant.com allows  
15 customers to perform functions related to the physical kiosk locations, including,  
16 among others, browsing through DVD titles, finding nearby kiosk locations,  
17 confirming availability of and reserving DVD titles to pick up at kiosk locations and  
18 providing coupons which can only be redeemed at kiosk locations.

57. Title III prohibits places of public accommodation from denying  
19 disabled individuals “the opportunity ... to participate in or benefit from the goods,  
20 services, facilities, privileges, advantages, or accommodations of an entity” and from  
21 providing service that is not as effective as what is provided to others. 42 U.S.C.  
22 § 12182(b)(1)(A)(i-iii).

58. Defendants have discriminated against Plaintiff and other deaf and hard  
23 of hearing individuals by denying them the opportunity to participate programs or  
24 services and by providing a service that is not as effective as what is provided to  
25 others. 42 U.S.C. § 12182(b)(1)(A)(i-iii).

1           59. Because Plaintiff is deaf, he relies on closed captioning to enjoy DVDs.  
2 Defendant Redbox is Plaintiff's preferred DVD rental service because of its  
3 convenient and inexpensive DVD rental terms and because of the proximity of a  
4 several of its rental establishments to Plaintiff's home. Therefore, Plaintiff  
5 frequently attempts to rent closed captioned DVDs from Defendant Redbox.  
6 However, because Defendant Redbox provides closed captions on only a limited  
7 number of its DVD titles, Plaintiff does not have full and equal enjoyment of  
8 Defendant Redbox's DVD rental service, in violation of Title III of the ADA.  
9 Further, because Plaintiff relies on Defendant Redbox for DVD rental services,  
10 Plaintiff will continue to suffer this unequal access.

11           60. Defendant Verizon offers what Plaintiff believes to be the most  
12 competitively priced unlimited viewing option for streaming movies. However,  
13 because Plaintiff is deaf, he is only able to fully enjoy video streaming services with  
14 closed captions. Plaintiff has visited Defendant Verizon's website and is aware that  
15 closed captions are provided on only a limited number of its streaming titles and  
16 DVDs. Therefore, Defendant Verizon does not offer Plaintiff the same "unlimited  
17 access" or full and equal enjoyment it offers hearing individuals, in violation of Title  
18 III of the ADA. As a result, of this unequal access based on Plaintiff's disability,  
19 Plaintiff has been and remains deterred from patronizing Defendant Verizon's rental  
20 service.

21           61. Discrimination under Title III also includes the "failure to make  
22 reasonable modifications in policies, practices, or procedures, when such  
23 modifications are necessary to afford such goods, services, facilities, privileges,  
24 advantages, or accommodations to individuals with disabilities, unless the entity can  
25 demonstrate that making such modifications would fundamentally alter the nature of  
26 such goods, services, facilities, privileges, advantages, or accommodations." *Id.*  
27 § 12182(b)(2)(A)(ii).

28           62. Modifying its policies and providing closed captions as auxiliary aids

1 and services to make Defendant Redbox's DVDs accessible to Plaintiff and other  
2 deaf and hard of hearing individuals is reasonable and would not fundamentally alter  
3 the nature of Redbox's DVD rental business, nor would it pose an undue burden to  
4 this flourishing company.

5 63. Likewise, modifying its policies and providing closed captions as  
6 auxiliary aids and services to make Defendant Verizon's Redbox Instant video  
7 streaming accessible to Plaintiff and other deaf and hard of hearing individuals is  
8 reasonable would not fundamentally alter the nature of Verizon's home  
9 entertainment business, nor would it pose an undue burden to this burgeoning  
10 company.

11 64. Unless Defendants provide closed captions, Plaintiff and other deaf and  
12 hard of hearing individuals will remain effectively excluded from Defendants video  
13 sale and rental services.

14 65. By failing to provide closed captioned videos Defendants, in violation  
15 of the auxiliary aids and services provision of the ADA, 42 U.S.C.  
16 § 12182(b)(2)(A)(iii), have failed to make their goods and services fully accessible  
17 to Plaintiff and other deaf and hard of hearing individuals.

18 66. Defendants' conduct constitutes an ongoing and continuous violation of  
19 the law. Defendants have failed to take any prompt and equitable steps to remedy  
20 their discriminatory conduct. Unless restrained from doing so, Defendants will  
21 continue to so violate the law. Defendants' conduct has caused, and will continue to  
22 cause, Plaintiff and members of the putative class injury. Plaintiff and members of  
23 the putative class have no adequate remedy at law for the injuries they suffer and  
24 will continue to suffer. Thus, Plaintiff and the members of the putative class are  
25 entitled to injunctive relief.

26 67. Pursuant to 42 U.S.C. §§ 2000a-3 and 12188 and the remedies,  
27 procedures, rights set forth and incorporated therein, Plaintiff and members of the  
28 putative class request relief as set forth below.

**SECOND CAUSE OF ACTION**

**VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**

**(On Behalf of Plaintiff and the California Disabled Person Subclass**

**Against all Defendants)**

68. Plaintiff hereby incorporates by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

69. The California Unruh Civil Rights Act, California Civil Code §§ 51, *et seq.*, guarantees equal access for people with disabilities to the accommodations, advantages, facilities, privileges, and services of all business establishments of any kind whatsoever. Defendants are systematically violating the Unruh Civil Rights Act.

70. Defendant Redbox’s system of offering DVD rentals to the public through its system of kiosks at thousands of locations throughout California is a “business establishment” within the meaning of the Unruh Civil Rights Act. Redbox generates hundreds of millions of dollars in revenue from the rental of goods at its kiosks throughout California. Because Defendant Redbox provides captions on only a limited number of DVDs, the goods, services, advantages, accommodations, facilities, and privileges accorded to other persons by Defendant Redbox are not fully and equally available to deaf and hard of hearing individuals in violation of the Unruh Civil Rights Act.

71. Defendant Verizon’s system of offering live streaming video content through the internet is a “business establishment” within the meaning of the Unruh Civil Rights Act. See *National Federation of Blind v. Target Corp.*, 582 F.Supp.2d 1185 (N.D. Cal. 2007) (Unruh Civil Rights Act and California Disabled Persons Act applied to retailer’s website as a business establishment and accommodation, advantage, facility, and privilege of a place of public accommodation.). Because Defendant Verizon provides captions on only a limited number of its Redbox Instant

1 titles, the goods, services, advantages, accommodations, facilities, and privileges  
2 accorded to other persons by Defendant Verizon are not fully and equally available  
3 to deaf and hard of hearing individuals in violation of the Unruh Civil Rights Act.

4 72. Plaintiff is informed and believes, and based upon such information and  
5 belief alleges, that Defendants, and each of them, have engaged in intentional  
6 discrimination, including but not limited to:

- 7 a. designing, constructing, implementing and maintaining policies,  
8 practices, procedures and barriers that discriminate against Plaintiff  
9 and the other members of the putative class with knowledge of such  
10 discrimination; and/or  
11 b. designing, constructing, implementing and maintaining policies,  
12 practices, procedures and barriers that are sufficiently intuitive  
13 and/or obvious as to constitute intentional conduct; and/or  
14 c. failing to act in the face of the substantial likelihood of harm to  
15 Plaintiff's and the other putative class members' rights protected  
16 under federal and state law.

17 73. Defendants are additionally violating California Civil Code § 51, in that  
18 the conduct alleged herein constitutes a violation of various provisions of the ADA,  
19 42 U.S.C. §§ 12101, *et seq.*, as set forth above. California Civil Code § 51(f)  
20 provides that a violation of the right of any individual under the ADA shall also  
21 constitute a violation of the Unruh Civil Rights Act.

22 74. The actions of Defendants were and are in violation of the Unruh Civil  
23 Rights Act, California Civil Code §§ 51, *et seq.*, and therefore Plaintiff and members  
24 of the putative class are entitled to injunctive relief remedying the discrimination.  
25 Unless the Court enjoins Defendants from continuing to engage in these unlawful  
26 practices, Plaintiff and members of the putative class will continue to suffer  
27 irreparable harm.

28 75. Plaintiff and members of the putative class are also entitled to statutory

1 minimum damages pursuant to California Civil Code § 52 for each and every  
2 offense.

3 76. Pursuant to California Civil Code § 52 and the remedies, procedures,  
4 and rights set forth and incorporated therein, Plaintiff and the other members of the  
5 putative class also request relief as described below.

6 **THIRD CAUSE OF ACTION**

7 **VIOLATION OF THE CALIFORNIA DISABLED PERSONS ACT**

8 **(On Behalf of Plaintiff and the California Disabled Person Subclass,**

9 **Against all Defendants)**

10 77. Plaintiff hereby incorporates by reference each and every one of the  
11 allegations contained in the preceding paragraphs as if the same were fully set forth  
12 herein.

13 78. The California Disabled Persons Act, California Civil Code §§ 54-54.3,  
14 guarantees full and equal access for people with disabilities to all accommodations,  
15 advantages, facilities, and privileges of “all places of public accommodation” and  
16 “other places to which the general public is invited.”

17 79. Redbox’s DVD rental kiosks throughout California constitute “places of  
18 public accommodation” or “other places to which the general public is invited.”  
19 Because Defendant Redbox provides captions on only a limited number of its DVDs,  
20 the advantages, facilities, and privileges accorded to other persons by Defendant  
21 Redbox are not fully and equally available to deaf and hard of hearing individuals.

22 80. Defendant Verizon’s live streaming video website constitutes a “place[]  
23 of public accommodation” or “other place[] to which the general public is invited.”  
24 See *National Federation of Blind v. Target Corp.*, 582 F.Supp.2d 1185 (N.D. Cal.  
25 2007) (finding Unruh Civil Rights Act and California Disabled Persons Act applied  
26 to retailer’s website as a business establishment and accommodation, advantage,  
27 facility, and privilege of a place of public accommodation.). Because Defendant  
28 Verizon provides captions on only a limited number of its Redbox Instant titles, the

1 advantages, facilities, and privileges accorded to other persons by Defendant  
2 Verizon are not fully and equally available to deaf and hard of hearing individuals.

3 81. Defendants are also violating California Civil Code §§ 54-54.3, in that  
4 their actions are a violation of the ADA. Any violation of the ADA is also a  
5 violation of California Civil Code § 54.1.

6 82. As a result of Defendants' wrongful conduct, Plaintiff and members of  
7 the putative class are entitled to statutory minimum damages under California Civil  
8 Code §§ 54.3 and 55 for each offense.

9 83. Pursuant to California Civil Code §§ 54.3 and 55 and the remedies,  
10 procedures, and rights set forth and incorporated therein, Plaintiff and the other  
11 members of the putative class also request relief as described below.

12 **FOURTH CAUSE OF ACTION**

13 **CALIFORNIA CONSUMER LEGAL REMEDIES ACT**

14 **(On Behalf of Plaintiff and the California False Advertising Class,**  
15 **Against Defendant Redbox)**

16 84. Plaintiff hereby incorporates by reference each and every one of the  
17 allegations contained in the preceding paragraphs as if the same were fully set forth  
18 herein.

19 85. The California Consumers Legal Remedies Act ("CLRA"), California  
20 Civil Code §§ 1750, *et seq.*, was designed and enacted "to protect consumers against  
21 unfair and deceptive business practices and to provide efficient and economical  
22 procedures to secure such protection." California Civil Code §1760. The CLRA  
23 should be liberally construed and applied to promote these underlying purposes. *Id.*

24 86. Defendant Redbox's DVDs are "goods" as defined by the CLRA,  
25 California Civil Code § 1761(a).

26 87. Plaintiff and members of the putative class are "consumers" as defined  
27 by the CLRA, California Civil Code § 1761(d).

28 88. Defendant's conduct as alleged herein constitutes a "transaction" within

1 the meaning of the CLRA, California Civil Code §1761(e).

2 89. Defendant has engaged in unfair and deceptive practices to the  
3 detriment of Plaintiff and members of the putative class. Plaintiff and members of  
4 the putative class have suffered harm as a proximate result of the violations of law  
5 and wrongful conduct of Defendant as alleged in this Complaint.

6 90. Defendant has violated and continues to violate, the CLRA in the  
7 following respects, among others:

8 a. In violation of California Civil Code § 1770(a)(2), Defendant has  
9 misrepresented the certification of their DVDs as closed captioned;

10 b. In violation of California Civil Code § 1770(a)(5), Defendant has  
11 represented that their DVDs have characteristics, uses and benefits they  
12 do not have;

13 c. In violation of California Civil Code § 1770(a)(7), Defendant has  
14 represented that their DVDs are of a particular standard or particular  
15 style when they are not; and

16 d. In violation of California Civil Code § 1770(a)(9), Defendant has  
17 advertised their DVD with an intent not to sell or rent them as  
18 advertised.

19 91. Defendant's conduct constitutes intentional misrepresentation, deceit,  
20 and concealment of a material fact known to Defendant with the intention of thereby  
21 depriving Plaintiff and members of the Classes of property or otherwise causing  
22 injury.

23 92. Unless Defendant is permanently enjoined from continuing to engage in  
24 such violations of the CLRA, other consumers will be damaged by their acts and  
25 practices in the same way as Plaintiff and members of the putative class have.

26 93. Plaintiff and members of the putative class further request this Court to  
27 enjoin Defendant from continuing to employ the unlawful methods, acts and  
28 practices alleged, pursuant to California Civil Code § 1780(a)(2).

1 94. Pursuant to California Civil Code §1782, Plaintiff gave Defendant  
2 notice by letters dated September 5, 2013, by certified mail of the particular  
3 violations of Civil Code § 1770. The notice requested that Defendant take  
4 appropriate actions to remedy the violations of the CLRA alleged in this complaint  
5 and give notice to all affected consumers of Defendant's intent to so act.  
6 Accordingly, Plaintiff and members of the putative class seek damages for such  
7 deceptive practices pursuant to California Civil Code § 1782 and restitution pursuant  
8 to Civil Code § 1780(a)(3).

9 95. Defendant's conduct was willful, fraudulent, oppressive and done in  
10 wanton disregard for the rights of Plaintiff and members of the putative class.  
11 Plaintiff and the putative class should therefore be awarded punitive damages against  
12 Defendant in an amount to be established that is appropriate to punish Defendant and  
13 deter others from engaging in such conduct.

14 96. Because Defendant knew that their conduct was directed at deaf and  
15 hard of hearing individuals and have thus caused those individuals, including  
16 Plaintiff members of the putative class, substantial damage, Plaintiff and members of  
17 the putative class seek additional relief as disabled persons pursuant to California  
18 Civil Code § 1780(b).

19 97. Plaintiff and members of the putative class also request the Court to  
20 award them their costs and reasonable attorney's fees pursuant to Civil Code  
21 § 1780(e).

22 98. Plaintiff and the other members of the putative class also request relief  
23 as described below.

24 **FIFTH CAUSE OF ACTION**

25 **VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW**

26 **(On Behalf of Plaintiff and the California False Advertising Class,**

27 **Against Defendant Redbox)**

28 99. Plaintiff hereby incorporates by reference each and every one of the

1 allegations contained in the preceding paragraphs as if the same were fully set forth  
2 herein.

3 100. The California False Advertising Law, California Business &  
4 Professions Code §17500, *et seq.*, prohibits the dissemination of false or misleading  
5 statements in connection with advertising.

6 101. Defendant's conduct, misrepresentations and false statements of  
7 material facts alleged in this Complaint constitute false advertising in violation of  
8 California Business & Professions Code §17500, *et seq.*

9 102. At all times relevant hereto, Defendant's advertising regarding the  
10 closed captioning and/or subtitling of their DVD was untrue, misleading and likely  
11 to deceive the public and/or has deceived the Plaintiff and consumers.

12 103. In making and disseminating the misrepresentations and false  
13 statements alleged herein, Defendant knew or should have known that the statements  
14 were untrue or misleading.

15 104. Defendant engaged in the false and/or misleading advertising,  
16 marketing and labeling alleged herein with intent to directly or indirectly induce and  
17 deceive deaf and hard of hearing individuals into purchasing or renting their DVDs.

18 105. As alleged in this Complaint, a result of Defendant's misrepresentations  
19 and false statements, Plaintiff and members of the Class rented or purchased a  
20 product or service that they otherwise would not have rented or purchased. Thus,  
21 Plaintiff and members of the class did not receive what they paid for, and Plaintiff  
22 and the members of the class have suffered an injury in fact as a result of  
23 Defendant's misrepresentations and false statements.

24 106. Through these acts, Defendant has been able to reap unjust revenue and  
25 profit, and have unfairly acquired money from Plaintiff and the members of the  
26 class. Plaintiff requests that this Court restore this money, with interest, and enjoin  
27 Defendant from continuing to violate California Business & Professions Code  
28 §§ 17500, *et seq.*

1 107. Unless restrained and enjoined, Defendant will continue to engage in  
2 the conduct alleged in this Complaint. Accordingly, injunctive relief is appropriate.

3 108. Plaintiff and members of the class seek an order requiring Defendant to  
4 undertake a public information campaign to inform members of the class of its prior  
5 acts or practices.

6 109. Plaintiff is entitled to an award of attorneys' fees and costs in  
7 prosecuting this action against Defendant under California Code of Civil Procedure,  
8 Section 1021.5 and other applicable law in part because:

- 9 a. a successful outcome in this action will result in the enforcement of  
10 important rights affecting the public interest by maintaining the  
11 integrity of representations made concerning Defendant's goods and  
12 services;
- 13 b. this action will result in a significant benefit to consumers or a large  
14 class of persons by bringing to a halt unlawful, unfair, deceptive,  
15 and misleading activity and by causing the return of ill-gotten gains  
16 obtained by Defendant;
- 17 c. unless this action is prosecuted, members of a large class of persons  
18 will not recover those monies, and many consumers would not be  
19 aware that they were victimized by Defendant's wrongful acts and  
20 practices;
- 21 d. unless this action is prosecuted, Defendant will continue to mislead  
22 consumers; and
- 23 e. an award of attorneys' fees and costs is necessary for the prosecution  
24 of this action and will result in a benefit to each member of the  
25 Class, and consumers in general.

26 110. Plaintiff and the other members of the putative class also request relief  
27 as described below.

28 ///

**SIXTH CAUSE OF ACTION**

**VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW  
(On Behalf of Plaintiff and the California Unfair Competition Law Class,  
Against all Defendants)**

111. Plaintiff hereby incorporates reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

112. The California Unfair Competition Law (“UCL”) prohibits “unfair competition,” which is defined by Business and Professions Code, Section 17200 as including “any unlawful, unfair or fraudulent business act or practice . . . .”

113. Because it contains no express intent, knowledge, or negligence requirement, the UCL “imposes strict liability.” *Searle v. Wyndham International, Inc.*, 102 Cal.App.4th 1327, 1333 (2002); *see also, Community Assisting Recovery, Inc. v. Aegis Security Insurance Co.*, 92 Cal.App.4th 886 (2001); *South Bay Chevrolet v. General Motors Acceptance Corp.*, 72 Cal.App.4th 861, 877 (1999). Nor is it a “necessary to show that the defendant intended to injure anyone.” [Citation.]” *Hewlett v. Squaw Valley Ski Corp.*, 54 Cal.App.4th 499, 520 (1997).

114. The unlawful prong of Section 17200 “embrac[es] anything that can properly be called a business practice and that at the same time is forbidden by law.” *Rubin v. Green*, 4 Cal.4th 1187, 1200 (1993) (internal quotation marks omitted). It “borrows violations of other laws and treats them as independently actionable.” *Daugherty v. American Honda Motor Co., Inc.*, 144 Cal.App.4th 824, 837 (2006).

115. The unfair prong of Section 17200 “provides an independent basis for relief.” *Smith v. State Farm Mutual Automobile Insurance Co.*, 93 Cal.App.4th 700, 718 (2001). “It is not necessary,” therefore, “for a business practice to be ‘unlawful’ in order to be subject to an action under the unfair competition law.” *Id.* “In general the ‘unfairness’ prong ‘has been used to enjoin deceptive or sharp practices. . . .’ [Citation.]” *South Bay Chevrolet v. General Motors Acceptance*

1 *Corp.*, 72 Cal.App.4th 861, 887 (1999).

2 116. The fraudulent prong of section 17200 “affords protection against the  
3 probability or likelihood as well as the actuality of deception or confusion.” *Payne*  
4 *v. United California Bank*, 23 Cal.App.3d 850, 856 (1972). The test is whether  
5 ““members of the public are likely to be deceived.’ [Citation.]” *In re Tobacco II*  
6 *Cases*, 46 Cal.4th 298, 312 (2009). As the California Supreme Court has explained,  
7 “our concern with thwarting unfair trade practices has been such that we have  
8 consistently condemned not only those alleged unfair practices which have in fact  
9 deceived the victims, but also those which are likely to deceive them.” *Fletcher v.*  
10 *Security Pacific National Bank*, 23 Cal.3d 442, 451 (1979).

11 117. Within four year preceding the filing of this complaint, Defendants  
12 engaged in the following unlawful, unfair and fraudulent business acts and practices,  
13 among others:

- 14 a. Denying deaf and hard of hearing individuals, on the basis of their  
15 disability, full and equal enjoyment of Defendants’ goods, services,  
16 facilities, privileges, advantages, or accommodations in violation of  
17 the ADA, 42 U.S.C. §§ 12101 *et seq.*;
- 18 b. Denying deaf and hard of hearing individuals, on the basis of their  
19 disability, equal access to the accommodations, advantages,  
20 facilities, privileges, and services of Defendants’ business  
21 establishments in violation of the California Unruh Civil Rights Act,  
22 California Civil Code §§ 51, *et seq.*;
- 23 c. Denying deaf and hard of hearing individuals, on the basis of their  
24 disability, equal access to the accommodations, advantages, facilities  
25 and privileges of Defendants’ places of public accommodation in  
26 violation of the California Disabled Persons Act, California Civil  
27 Code §§ 54-54.3;
- 28 d. Engaging in unfair and deceptive business practices in violation of

1 the California Consumers Legal Remedies Act, California Civil  
2 Code §§ 1750, *et seq.* (Defendant Redbox);

3 e. Engaging in the false and misleading advertising, marketing and  
4 labeling of their DVD and video streaming services and content in  
5 violation of the California False and Misleading Advertising Law,  
6 California Business & Professions Code §17500, *et seq.* (Defendant  
7 Redbox);

8 f. Failing to comply with Federal Communication Commission  
9 (“FCC”) rules and regulations promulgated under the Twenty-First  
10 Century Communications and Video Accessibility Act of 2010;

11 g. Providing to deaf and hard of hearing individuals goods and services  
12 that were not as effective as those provided to others;

13 h. Creating barriers to full integration, independent living, and equal  
14 opportunity for persons with disabilities;

15 i. Increasing the sense of isolation and stigma that the ADA was meant  
16 to redress;

17 j. Knowingly advertising and labeling their DVD and video streaming  
18 content as closed captioned when in fact they were not such that deaf  
19 and hard of hearing consumers were in fact and/or likely to be  
20 deceived; and

21 k. Failing to remove the false and misleading statements their DVD  
22 and video streaming content as closed captioned.

23 118. Defendants, through their acts of unfair competition, have been able to  
24 reap unjust revenue and profit, and have unfairly acquired money from Plaintiff and  
25 the members of the class. As a direct and proximate result of Defendants’ unlawful  
26 business acts and practices, Plaintiff and members of the class have suffered  
27 economic and other injuries.

28 119. Unless restrained and enjoined, Defendants will continue to engage in

1 the conduct alleged in this Complaint. Accordingly, pursuant to California Business  
2 & Professions Code § 17203, injunctive relief is appropriate and Plaintiff and  
3 members of the class seek a Court order enjoining Defendants from continuing to  
4 engage in the unlawful, unfair and fraudulent business practices complained of  
5 herein.

6 120. Plaintiff and members of the class seek, pursuant to California Business  
7 & Professions Code § 17203, full restitution on account of the economic injuries  
8 they have suffered to restore any and all monies acquired by Defendants by means of  
9 the unlawful, unfair and fraudulent business practices complained of herein.

10 121. Plaintiff and the Class Members seek appointment of a receiver, as  
11 necessary, to oversee said restitution.

12 122. Plaintiff is entitled to an award of attorneys' fees and costs in  
13 prosecuting this action against Defendants under California Code of Civil Procedure,  
14 Section 1021.5 and other applicable law in part because:

- 15 a. a successful outcome in this action will result in the enforcement of  
16 important rights affecting the public interest by maintaining the  
17 integrity of representations made concerning Defendants' goods and  
18 services;
- 19 b. this action will result in a significant benefit to consumers or a large  
20 class of persons by bringing to a halt unlawful, unfair, deceptive,  
21 and misleading activity and by causing the return of ill-gotten gains  
22 obtained by Defendants;
- 23 c. unless this action is prosecuted, members of a large class of persons  
24 will not recover those monies, and many consumers would not be  
25 aware that they were victimized by Defendants' wrongful acts and  
26 practices;
- 27 d. unless this action is prosecuted, Defendants will continue to mislead  
28 consumers; and

1 e. an award of attorneys' fees and costs is necessary for the prosecution  
2 of this action and will result in a benefit to each member of the  
3 Class, and consumers in general.

4 123. Plaintiff and the other members of the putative class also request relief  
5 as described below.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays as follows:

- 8 a. That this Court assume jurisdiction;
- 9 b. That this Court certify the classes and sub-classes identified herein;
- 10 c. That this Court certify Plaintiff Jancik as a representative of the classes  
11 and sub-classes identified herein;
- 12 d. That this Court declare Defendant to be in violation of Title III of the  
13 Americans with Disability Act, 42 U.S.C. §§ 12181, et seq., the Unruh  
14 Civil Rights Act, Cal. Civ. Code §51, et. seq., and the California  
15 Disabled Persons Act, Cal. Civ. Code, § 54, et. seq.;
- 16 e. That this Court issue an injunction ordering Defendant to comply with  
17 the statutes set forth herein;
- 18 f. That this Court award minimum statutory damages, defined as \$4,000  
19 per incident of discrimination under the Unruh and \$1,000 per incident  
20 under the CDPA, to Plaintiff and members of the proposed class for  
21 violations of their civil rights under state law;
- 22 g. That this Court award actual damages in an amount to be determined at  
23 trial;
- 24 h. That this Court award general damages in an amount to be determined  
25 at trial;
- 26 i. That this Court award punitive damages in an amount to be determined  
27 at trial;
- 28 j. That this Court award interest on these sums at the legal rate from the

1 date of each unlawful collection of funds paid to Defendants by  
2 Plaintiff and others similarly situated;

3 k. That this Court award reasonable attorneys' fees and costs pursuant to  
4 federal and state law;

5 l. That this Court award such other and further relief as the Court may  
6 deem necessary or appropriate.

7

8 DATED: September 25, 2014

**MARLIN & SALTZMAN, LLP**

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By: /s/ Christina Humphrey  
Stanley D. Saltzman, Esq.  
Christina A. Humphrey, Esq.  
Leslie H. Joyner, Esq.  
Attorneys for Plaintiff

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**DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands trial of Plaintiff's and the putative class' claims by  
20 jury to the extent authorized by law.

21

22 DATED: September 25, 2014

**MARLIN & SALTZMAN, LLP**

23

24

By: /s/ Christina A. Humphrey  
Stanley D. Saltzman, Esq.  
Christina A. Humphrey, Esq.  
Leslie H. Joyner, Esq.  
Attorneys for Plaintiff

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1 STATE OF CALIFORNIA )  
 ) ss.  
2 COUNTY OF LOS ANGELES )

3 I am employed in the County of Los Angeles, State of California. I am over  
4 the age of 18 and not a party to the within action. My business address is  
29229 Canwood Street, Suite 208, Agoura Hills, California 91301-1555.

5 On September 25, 2013, I served the foregoing document described as **THIRD**  
6 **AMENDED COMPLAINT** on all interested parties in said action:

7  (VIA US MAIL) I caused such envelope(s) to be deposited in the mail at  
8 Agoura Hills, California with postage thereon fully prepaid.

9 I am "readily familiar" with the firm's practice of collection and processing  
10 correspondence for mailing. It is deposited with the U.S. Postal Service on  
that same day in the ordinary course of business. I am aware that on motion of  
party served, service is presumed invalid if postal cancellation date or postage  
meter date is more than one day after date of deposit for mailing in affidavit.

11  (VIA FEDERAL EXPRESS) I caused to have served such document(s) by  
12 depositing them in the drop box at Agoura Hills, California, for priority  
overnight next day delivery.

13  (VIA FACSIMILE) I caused such document to be faxed to the persons  
14 identified with fax numbers on the attached Mailing List.

15  (VIA PERSONAL SERVICE) I delivered such envelope(s) by hand to the  
16 offices of the addressee.

17  (VIA E-MAIL) I caused to have such documents sent by electronic service  
18 [Fed. Rule Civ. Proc. Rule 5(b)(2)(a)] by electronically mailing a true and  
correct copy through Marlin & Saltzman's electronic mail system to the e-mail  
address(s) set forth below, or as stated on the attached service list per  
agreement in accordance with Federal Rules of Civil Procedure rule 5(b).

19  (STATE) I declare under penalty of perjury under the laws of the State of  
20 California that the above is true and correct.

21  (FEDERAL) I declare that I am employed in the office of a member of the bar  
22 of this court at whose direction the service was made.

23 Executed on September 25, 2013, at Agoura Hills, California.

24 \_\_\_\_\_  
Kiley Grombacher

*Jancik, et al. v. Redbox, et al.*  
**CASE NO. SACV13-01387-DOC (RNBx)**

**Service List**

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