

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

RAUL CORTES SOLIS, on behalf of)	
himself and all others similarly situated,)	JURY TRIAL DEMANDED
)	
Plaintiff,)	Pursuant to 28 U.S.C. §§ 1332, 1441, 1446,
)	1453
)	
v.)	Case No. <u>4:15-CV-1343</u>
)	
AT&T MOBILITY LLC,)	State Court Case No. 15SL-CC02380
)	
Defendant.)	

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that defendant AT&T Mobility LLC hereby removes the above-captioned case, currently pending in the Circuit Court of St. Louis County, Missouri, to the United States District Court for the Eastern District of Missouri, Eastern Division.¹ As grounds for removal, Defendant states the following:

1. Plaintiff Raul Cortes Solis commenced this action by filing a Petition on July 13, 2015 in the Circuit Court of St. Louis County, Missouri, and the case was docketed as Case No. 15SL-CC02380. The Petition did not name AT&T Mobility LLC as a defendant, but instead its affiliate AT&T Corp.

2. Copies of the Petition and summons were served upon AT&T Corp. on July 29, 2015.

3. On August 3, 2015, Solis filed an Amended Petition in the Circuit Court of St. Louis County, Missouri, dropping the claims against AT&T Corp. and substituting in AT&T

¹ By removing this action, AT&T Mobility LLC does not waive the right to move to compel arbitration.

Mobility LLC as a defendant. Counsel for AT&T Mobility LLC accepted service of the Amended Petition by email on August 12, 2015.

FEDERAL JURISDICTION UNDER CAFA

4. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 (“CAFA”), which grants district courts original jurisdiction over putative class actions with more than 100 class members where the aggregate amount in controversy exceeds \$5 million and any member of the class of plaintiffs is a citizen of a state different from any defendant. 28 U.S.C. § 1332(d). As set forth below, this action satisfies each of the requirements of Section 1332(d)(2) for original jurisdiction under CAFA, making this action independently removable under 28 U.S.C. § 1453(b).

5. **Covered Class Action.** This action meets CAFA’s definition of a class action, which is “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure.” 28 U.S.C. §§ 1332(d)(1)(B), 1453(a). In the Amended Petition, Plaintiff alleges that he “intends to seek certification of a state wide class of Missouri residents under Missouri Rule of Civil Procedure 52.08[.]” Am. Pet. ¶ 7. As at least two judges of this District have observed, Rule 52.08 is “Missouri’s equivalent of [Federal] Rule [of Civil Procedure] 23[.]” *Mo. ex rel. Koster v. Portfolio Recovery Assocs., Inc.*, 686 F. Supp. 2d 942, 947 (E.D. Mo. 2010) (Shaw, J.); *see also Williams v. Employers Mut. Cas. Co.*, 2014 WL 1375470, at *2 (E.D. Mo. Apr. 8, 2014) (Limbaugh, J.) (describing “Missouri’s Rule 52.08” as “the Missouri class action rule”).

6. **Class Action Consisting of More than 100 Members.** Plaintiff alleges that he is a member of a “state wide class of Missouri residents * * * who in the last five (5) years, purchased one of Defendant’s unlimited data plans with the intention of using said plan primarily for personal use within Missouri.” Am. Pet. ¶ 7. Plaintiff further alleges that the putative class

is “sufficiently numerous that joinder of all members of the class is impracticable.” Am. Pet. ¶ 11. The number of such customers has varied over time. But as of July 2015, AT&T Mobility LLC had approximately 107,000 customers with unlimited wireless data plans and Missouri billing addresses. Although AT&T Mobility LLC denies that Plaintiff’s putative class could be certified, the number of members of that putative class exceeds CAFA’s requirement of at least 100 persons. 28 U.S.C. § 1332(d)(5)(B).

7. **Minimal Diversity.** To satisfy CAFA’s minimal diversity requirement, “any member of [the] class of plaintiffs” must be “a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). That requirement is met here.

8. Specifically, plaintiff Raul Cortes Solis alleges that he is a resident of St. Louis County, Missouri. Am. Pet. ¶ 3.

9. By contrast, defendant AT&T Mobility LLC is a limited liability corporation organized under Delaware law with its headquarters—and hence its principal place of business (*Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010))—in Atlanta, Georgia. Under CAFA, “an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.” 28 U.S.C. § 1332(d)(10); *see also, e.g., Ferrell v. Express Check Advance of SC LLC*, 591 F.3d 698, 699-700 (4th Cir. 2010) (“[F]or purposes of determining subject matter jurisdiction under the Class Action Fairness Act of 2005 (‘CAFA’), a limited liability company is an ‘unincorporated association’ as that term is used in 28 U.S.C. § 1332(d)(10)[.]”); *Heckemeyer v. NRT Mo., LLC*, 2013 WL 2250429, at *6 (E.D. Mo. May 22, 2013) (“This Court finds the reasoning of the Fourth Circuit persuasive and concludes * * * that Congress chose to treat LLCs like corporations for purposes of determining

citizenship under CAFA.”). Accordingly, AT&T Mobility LLC is a citizen of Delaware and Georgia.

10. **Amount in Controversy.** Under CAFA, the claims of the individual class members are aggregated to determine if the amount in controversy exceeds the required “sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. §§ 1332(d)(2), (d)(6); *see also*, *e.g.*, *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1348 (2013). Although AT&T Mobility LLC denies that it has any liability to Plaintiff or any member of the putative class, the amount placed in controversy by the Amended Petition satisfies CAFA’s jurisdictional threshold.

11. Specifically, Plaintiff seeks (on behalf of himself and all putative class members): (a) “compensatory damages” for “[t]he cost of” all “unlimited data plans” sold to Missouri customers since “at least 2011” and the “[c]ancellation costs associated with cancelling said data plans”; (b) “punitive damages”; and (c) “reasonable attorneys’ fees and costs of the action, including prejudgment interest[.]” Am. Pet. ¶¶ 23, 25, 34.

12. The alleged compensatory damages alone raise the stakes above CAFA’s \$5 million threshold. As discussed in paragraph 6, *supra*, in July 2015, AT&T Mobility LLC had approximately 107,000 customers with unlimited wireless data plans and Missouri billing addresses. The monthly rate for those plans is—and has been during the relevant period—\$30 per month. Thus, Plaintiff seeks at least \$3,210,000 in compensatory damages for the month of July 2015 alone—and he seeks damages for all data plans sold since 2011. Am. Pet. ¶ 18.

13. In addition, Plaintiff seeks “punitive damages.” Am. Pet. ¶¶ 25,34. The punitive damages sought in a complaint are “are included in determining the amount in controversy.” *Allison v. Security Ben. Life Ins. Co.*, 980 F.2d 1213, 1215 (8th Cir. 1992). Although AT&T Mobility LLC denies that Plaintiff or the putative class would be entitled to punitive damages

even if Plaintiff's allegations were true, that request for punitive damages confirms that CAFA's \$5 million amount-in-controversy requirement has been satisfied. *See* 28 U.S.C. § 1332(d)(2).

PROCEDURAL REQUIREMENTS

14. **Removal to Proper Court.** This Court is the federal district court for the district and division embracing the place where the state-court action was filed (St. Louis County, Missouri). 28 U.S.C. § 105(a)(1). Accordingly, this Court is the proper venue for removal. *Id.* §§ 1446(a), 1453(b).

15. **Removal Is Timely.** AT&T Corp. received service of the Petition on July 29, 2015, and AT&T Mobility LLC accepted service of the Amended Petition on August 12, 2015. Thus, this Notice of Removal is filed within thirty days after AT&T Mobility LLC's receipt of the initial pleading alleging a basis for removal, as required by 28 U.S.C. §§ 1446(b), 1453(b).

16. **Pleadings and Process.** Attached hereto as Exhibit 1 is a copy of all "process, pleadings, and orders served upon" AT&T Mobility LLC in the state-court action, as required by 28 U.S.C. §§ 1446(a), 1453(b).

17. **Notice.** A copy of this Notice of Removal will be served on Plaintiff's counsel, and a Notice of Filing of Notice of Removal will be timely filed with the clerk of the state court in which the action is pending, in accordance with 28 U.S.C. §§ 1446(d), 1453(b).

18. **Reservation of Rights.** AT&T Mobility LLC intends no admission of liability by this notice and expressly reserves all defenses, motions, and pleas, including without limitation defenses based upon jurisdiction, venue, and insufficiency of service of process, and its right to compel Plaintiff to resolve his dispute in arbitration in accordance with the terms of his service agreement.

19. In sum, this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, and the claims may be removed to this Court under 28 U.S.C. §§ 1441, 1446, and 1453.

20. In the event Plaintiff seek to remand this case, or the Court considers remand, AT&T Mobility LLC respectfully requests the opportunity to submit such additional argument or evidence in support of removal as may be necessary, in accordance with *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547 (2014).

WHEREFORE, AT&T Mobility LLC respectfully requests that this case should proceed in this Court as properly removed.

Respectfully submitted,

By: _____ s/ Thomas D. Veltz _____
Thomas D. Veltz (45585MO)
AT&T Services, Inc.
One AT&T Center, Suite 3564
St. Louis, MO 63101
Phone: (314) 235-1386
Fax: (314) 737-2795
tv459@att.com

Kevin S. Ranlett
(*pro hac vice* application forthcoming)
Mayer Brown LLP
1999 K Street NW
Washington, D.C. 20006
Phone: (202) 263-3000
Fax: (202) 263-3300
kranlett@mayerbrown.com

Attorneys for Defendant AT&T Mobility LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid on August 28, 2015, to:

Jeremy D. Hollingshead
John M. Eccher
Hollingshead, Paulus & Eccher
7777 Bonhomme Avenue, Suite 2400
Saint Louis, Missouri 63105
j.hollingshead@hpelaw.com
j.eccher@hpelaw.com

Ryan Paulus
Hollingshead, Paulus & Eccher
8350 N. St. Clair Avenue, Suite 225
Kansas City, Missouri 64151
r.paulus@hpelaw.com

Attorneys for Plaintiff Raul Cortes Solis

/s/ Thomas D. Veltz

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff Saint Louis County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Jeremy D. Hollingshead, John M. Eccher, Ryan M. Paulus Hollingshead, Paulus & Eccher, 777 Bonhomme Avenue, Suite 2400, St. Louis, MO 63105, 314-480-5474

DEFENDANTS

County of Residence of First Listed Defendant DeKalb County, GA (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Thomas D. Veltz, AT&T Services, Inc., One AT&T Center, Suite 3564, St. Louis, MO 63101 314-235-1386

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332(d); 1453. Brief description of cause: Alleged consumer fraud and violation of Missouri Merchandising Practices Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE August 28, 2015 SIGNATURE OF ATTORNEY OF RECORD /s Thomas D. Veltz

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Exhibit 1



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Missouri
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15SL-CC02380 - RAUL CORTES SOLIS V AT&T CORP (E-CASE)

[Case Header](#)[Parties & Attorneys](#)[Docket Entries](#)[Charges, Judgments & Sentences](#)[Service Information](#)[Filings Due](#)[Scheduled Hearings & Trials](#)[Civil Judgments](#)[Garnishments/ Execution](#)

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All Entries

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08/03/2015

[Amend Pet/Mot to Modify Filed](#)

First Amended Petition; Electronic Filing Certificate of Service.

Filed By: JEREMY DANIEL HOLLINGSHEAD**On Behalf Of:** RAUL CORTES SOLIS

07/23/2015

[Summons Issued-Circuit](#)

Document ID: 15-SMCC-5609, for AT&T CORP. Summons Attached in PDF Form for Attorney to Retrieve from Secure Case.Net and Process for Service.

07/16/2015

[Motion Special Process Server](#)

Request for Appointment of Process Server; Electronic Filing Certificate of Service. APPROVED JULY 23 2015

Filed By: JEREMY DANIEL HOLLINGSHEAD**On Behalf Of:** RAUL CORTES SOLIS

07/15/2015

Judge/Clerk - Note

MISSING \$36.00 ST LOUIS COUNTY SHERIFF'S SERVICE FEE. PLEASE SUBMIT A NOTICE OF FILING FOR SERVICE FEE ALONG WITH PAYMENT. SUMMONS NOT ISSUED.

07/13/2015

Filing Info Sheet eFiling**Filed By:** JEREMY DANIEL HOLLINGSHEAD[Pet Filed in Circuit Ct](#)

Petition.

On Behalf Of: RAUL CORTES SOLIS**Judge Assigned**

DIV 15

as “the MMPA”), further, Plaintiff has conferred a benefit that Defendant is retaining unjustly.

PARTIES AND VENUE

2. The allegations contained in Paragraph 1 is hereby realleged and fully incorporated as if fully set forth herein.

3. Plaintiff at all times relevant hereto, was a resident Saint Louis County, State of Missouri. At all relevant times herein, Plaintiff carried an unlimited data plan with Defendant.

4. Defendant is a for-profit foreign corporation that conducts systematic and continuous business in the State of Missouri.

5. All events and occurrences mentioned herein occurred in the State of Missouri, and therefore venue is proper in the Circuit Court of St. Louis County pursuant to MO. REV. STAT. § 508.010.

CLASS ALLEGATIONS

6. The allegations contained in the foregoing Paragraphs are hereby realleged and fully incorporated as if fully set forth herein.

7. Plaintiff brings this action for himself individually and as representative of a class of all other similarly situated plaintiffs. Plaintiff intends to seek certification of a state wide class of Missouri residents under Missouri Rule of Civil Procedure 52.08 who in the last five (5) years, purchased one of Defendant’s unlimited data plans with the intention of using said plan primarily for personal use within Missouri.

8. Plaintiff expects to further define the putative Class prior to seeking class and/or conditional class certification.

9. Excluded from the classes above are Defendant and any of its officers or directors and immediate families, the court and its immediate family, and any other individuals who have brought individual lawsuits arising from the same allegations against the Defendants.

10. Plaintiff reserves the right to amend or modify the class definitions and/or to move for certification of a class or classes defined differently than set forth above depending on the facts or law as discovered in this action.

11. The Class is sufficiently numerous that joinder of all members of the class is impracticable. The exact number and identify of all class members may be ascertained by appropriate discovery, but it is Plaintiff's belief that the proposed classes consist of thousands of individuals who purchased or maintained one of Defendant's unlimited data plans for primarily personal use in the past five (5) years. Class members may be notified of the pending action by email, mail, and by publication as necessary.

12. There are questions of fact and law common to the class, which common questions predominate over questions affecting only individual members. The common questions include, but are not limited to, the following:

- a. whether Defendant's failure to inform Plaintiffs that their unlimited data plan's speed would be reduced based on the quantity of data downloaded constitutes a violation of the MMPA; and
- b. whether Defendant's actions of reducing the speed of Plaintiff's unlimited data plans constitutes a violation of the MMPA.

13. The claims of the representative Plaintiff are typical of the claims of the members of the classes. Plaintiff, like all other members of the Class, has sustained legal injuries arising from Defendants' conduct, as alleged herein. The representative Plaintiff and the members of the class have suffered and continue to suffer similar or identical injuries-in-fact caused by the same unlawful conduct engaged in by Defendant.

14. Plaintiff can and will fairly and adequately represent the interests of the class and has no interests that conflict with or are antagonistic to the interests of the class. Plaintiffs have retained attorneys who are highly skilled, competent, and experienced in complex and class action litigation, and who will vigorously assert the claims on behalf of the class members. No conflict exists between Plaintiff and the classes. Plaintiff is willing and able to vigorously prosecute this action on behalf of the classes.

15. The class action is an appropriate method for the fair and efficient adjudication of this controversy given the following:

- a. common questions of fact and law predominate over any individual questions that may arise, such as the class action mechanism is superior to other available means for the fair and efficient adjudication of this dispute;
- b. there will be enormous economies to the Court and the parties in litigating the common issues in a class action instead of in multiple individual claims;

- c. class treatment is required for optimal resolution of this matter and for limiting the court-awarded reasonable legal expenses incurred by class members;
- d. if the size and individual class members' claims are small, their aggregate volume, coupled with the economies of scale in litigating similar claims on a common basis, will enable this case to be litigated as a class action on a cost-effective basis, especially when compared with the cost of individual litigation; and
- e. the trial of this case as a class action will be fair and efficient because the questions of law and fact which are common to the Plaintiff Class(es) predominate over any individual issues that may arise.

CLAIMS

COUNT I - Violation of the Missouri Merchandising Practices Act RSMo § 407.020.20

- 16. The allegations contained in the foregoing Paragraphs are hereby realleged and fully incorporated as if fully set forth herein.
- 17. Plaintiff and other class members purchased "unlimited data plans" in Missouri from Defendant within the last five years.
- 18. Beginning in at least 2011, Defendant implemented a policy of "throttling" down the speed of unlimited data plans when users reached certain usage points.
- 19. When users' speeds were "throttled," the users' download speeds were reduced by as much as 60 times the standard 4G LTE service speeds.

20. Such plans were sold to Plaintiff and other class members without conspicuously disclosing that the data plans were subject to speed restrictions based upon usage.
21. Plaintiffs' losses were the result of deceptive, fraudulent, and unfair practices by Defendant.
22. All data plans under this class action were purchased primarily for personal use.
23. Plaintiffs have suffered significant and ascertainable losses including but not limited to:
 - a. The cost of said data plans; and
 - b. Cancellation costs associated with cancelling said data plans;
24. Defendant's conduct constituted unlawful merchandising practices in violation of RSMo § 407.020.
25. Defendant is therefore liable to Plaintiffs for actual damages, punitive damages, and reasonable attorney fees, as provided by RSMo § 407.025.

WHEREFORE, Plaintiff respectfully prays that this Court certify the Purported Class described herein as a Missouri Rule of Civil Procedure 52.08 class action and enter judgment in favor of the Class and against Defendant, award compensatory damages, punitive damages, as well as reasonable attorneys' fees and costs of the action, including prejudgment interest, and for such other and further relief as this Court deems just and proper.

COUNT II – Fraudulent Misrepresentation

26. The allegations contained in the foregoing Paragraphs are hereby realleged and fully incorporated as if fully set forth herein.

27. Defendant represented to Plaintiff that its unlimited data plan was, in fact, unlimited.

28. This representation by Defendant was false and Defendant knew the representation was false.

29. Defendant's representation to Plaintiff that its data plan was unlimited was material to Plaintiff and those similarly situated.

30. Defendant knew that its unlimited data plan was subject to throttling which, in effect, made it limited. Alternatively, Defendant was ignorant as to the truth that it was throttling Plaintiff's data plans resulting in a limit to the data downloads.

31. Defendant intended for Plaintiff to rely upon its representations in purchasing said unlimited data plans.

32. Plaintiff, and all those similarly situated, were ignorant of the fact that their data plans were being throttled by Defendant.

33. Plaintiff and all those similarly situated relied on, and had a right to rely on, Defendant's misrepresentations as to the nature of their unlimited data plan.

34. Plaintiff and those similarly situated consequently purchased unlimited data plans which were, in fact, limited and suffered damages there from.

WHEREFORE, Plaintiff respectfully prays that this Court certify the Purported Class as a Missouri Rule of Civil Procedure 52.08 class action and enter judgment in favor of the Class and against Defendant, award compensatory damages, punitive damages, as well as reasonable attorneys' fees and costs of the action, including prejudgment interest, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

HOLLINGSHEAD, PAULUS & ECCHER

/s/ Jeremy D. Hollingshead

Jeremy D. Hollingshead #60447

John M. Eccher #62869

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Email: r.paulus@hpelaw.com

ATTORNEYS FOR PLAINTIFF

In the
CIRCUIT COURT
Of St. Louis County, Missouri



For File Stamp Only

Raul Cortes Solis
Plaintiff/Petitioner

July 16, 2015
Date

15SL-CC02380
Case Number

vs.

AT&T Corporation
Defendant/Respondent

15
Division

REQUEST FOR APPOINTMENT OF PROCESS SERVER

Comes now Plaintiff, pursuant

Requesting Party

to Local Rule 28, and at his/her/its own risk requests the appointment of the Circuit Clerk of

William Sidney 6731 Etzel, St. Louis, MO 63130 314-305-9369
Name of Process Server Address Telephone

Name of Process Server Address or in the Alternative Telephone

Name of Process Server Address or in the Alternative Telephone

Natural person(s) of lawful age to serve the summons and petition in this cause on the below named parties. This appointment as special process server does not include the authorization to carry a concealed weapon in the performance thereof.

SERVE:
The Corporation Company
Name
120 South Central Avenue
Address
Clayton, Missouri 63105
City/State/Zip

SERVE:
Name
Address
City/State/Zip

SERVE:
Name
Address
City/State/Zip

SERVE:
Name
Address
City/State/Zip

Appointed as requested:
JOAN M. GILMER, Circuit Clerk

/s/ Jeremy D. Hollingshead
Attorney/Plaintiff/Petitioner
60447
Bar No.
7777 Bonhomme Ave., Ste. 2401, St. Louis, MO 63105
Address
(314) 480-5474 (314) 594-0825
Phone No. Fax No.

By _____
Deputy Clerk

Date _____



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: JOHN D WARNER JR	Case Number: 15SL-CC02380
Plaintiff/Petitioner: RAUL CORTES SOLIS	Plaintiff's/Petitioner's Attorney/Address JEREMY DANIEL HOLLINGSHEAD 7777 BONHOMME AVE SUITE 2401 ST LOUIS, MO 63105
Defendant/Respondent: AT&T CORP	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Tort	

(Date File Stamp)

Summons in Civil Case

The State of Missouri to: AT&T CORP
Alias:
THE CORPORATION COMPANY
120 SOUTH CENTRAL AVE
CLAYTON, MO 63105

COURT SEAL OF

ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.
SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739 or TTY at 314-615-4567, at least three business days in advance of the court proceeding.

23-JUL-2015
Date

Joan P. Delaney
Clerk

Further Information:
TLC

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.

leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years.

(for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).

other _____

Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:
Subscribed and sworn to before me on _____ (date).
My commission expires: _____ Date _____ Notary Public

Sheriff's Fees, if applicable

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary \$ _____

Supplemental Surcharge \$ 10.00

Mileage \$ _____ (_____ miles @ \$. _____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on **each** Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

Twenty First Judicial Circuit

NOTICE OF ALTERNATIVE DISPUTE RESOLUTION SERVICES

Purpose of Notice

As a party to a lawsuit in this court, you have the right to have a judge or jury decide your case. However, most lawsuits are settled by the parties before a trial takes place. This is often true even when the parties initially believe that settlement is not possible. A settlement reduces the expense and inconvenience of litigation. It also eliminates any uncertainty about the results of a trial.

Alternative dispute resolution services and procedures are available that may help the parties settle their lawsuit faster and at less cost. Often such services are most effective in reducing costs if used early in the course of a lawsuit. Your attorney can aid you in deciding whether and when such services would be helpful in your case.

Your Rights and Obligations in Court Are Not Affected By This Notice

You may decide to use an alternative dispute resolution procedure if the other parties to your case agree to do so. In some circumstances, a judge of this court may refer your case to an alternative dispute resolution procedure described below. These procedures are not a substitute for the services of a lawyer and consultation with a lawyer is recommended. Because you are a party to a lawsuit, you have obligations and deadlines which must be followed whether you use an alternative dispute resolution procedure or not. **IF YOU HAVE BEEN SERVED WITH A PETITION, YOU MUST FILE A RESPONSE ON TIME TO AVOID THE RISK OF DEFAULT JUDGMENT, WHETHER OR NOT YOU CHOOSE TO PURSUE AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE.**

Alternative Dispute Resolution Procedures

There are several procedures designed to help parties settle lawsuits. Most of these procedures involve the services of a neutral third party, often referred to as the "neutral," who is trained in dispute resolution and is not partial to any party. The services are provided by individuals and organizations who may charge a fee for this help. Some of the recognized alternative dispute resolutions procedures are:

(1) Advisory Arbitration: A procedure in which a neutral person or persons (typically one person or a panel of three persons) hears both sides and decides the case. The arbitrator's decision is not binding and simply serves to guide the parties in trying to settle their lawsuit. An arbitration is typically less formal than a trial, is usually shorter, and may be conducted in a private setting at a time mutually agreeable to the parties. The parties, by agreement, may select the arbitrator(s) and determine the rules under which the arbitration will be conducted.

(2) Mediation: A process in which a neutral third party facilitates communication between the parties to promote settlement. An effective mediator may offer solutions that have not been considered by the parties or their lawyers. A mediator may not impose his or her own judgment on the issues for that of the parties.

(3) Early Neutral Evaluation (“ENE”): A process designed to bring the parties to the litigation and their counsel together in the early pretrial period to present case summaries before and receive a non-binding assessment from an experienced neutral evaluator. The objective is to promote early and meaningful communication concerning disputes, enabling parties to plan their cases effectively and assess realistically the relative strengths and weaknesses of their positions. While this confidential environment provides an opportunity to negotiate a resolution, immediate settlement is not the primary purpose of this process.

(4) Mini-Trial: A process in which each party and their counsel present their case before a selected representative for each party and a neutral third party, to define the issues and develop a basis for realistic settlement negotiations. The neutral third party may issue an advisory opinion regarding the merits of the case. The advisory opinion is not binding.

(5) Summary Jury Trial: A summary jury trial is a non binding, informal settlement process in which jurors hear abbreviated case presentations. A judge or neutral presides over the hearing, but there are no witnesses and the rules of evidence are relaxed. After the “trial”, the jurors retire to deliberate and then deliver an advisory verdict. The verdict then becomes the starting point for settlement negotiations among the parties.

Selecting an Alternative Dispute Resolution Procedure and a Neutral

If the parties agree to use an alternative dispute resolution procedure, they must decide what type of procedure to use and the identity of the neutral. As a public service, the St. Louis County Circuit Clerk maintains a list of persons who are available to serve as neutrals. The list contains the names of individuals who have met qualifications established by the Missouri Supreme Court and have asked to be on the list. The Circuit Clerk also has Neutral Qualifications Forms on file. These forms have been submitted by the neutrals on the list and provide information on their background and expertise. They also indicate the types of alternative dispute resolution services each neutral provides.

A copy of the list may be obtained by request in person and in writing to: Circuit Clerk, Office of Dispute Resolution Services, 7900 Carondelet Avenue, 5th Floor, Clayton, Missouri 63105. The Neutral Qualifications Forms will also be made available for inspection upon request to the Circuit Clerk.

The List and Neutral Qualification Forms are provided only as a convenience to the parties in selecting a neutral. The court cannot advise you on legal matters and can only provide you with the List and Forms. You should ask your lawyer for further information.

**IN THE CIRCUIT COURT OF SAINT LOUIS COUNTY
STATE OF MISSOURI**

Raul Cortes Solis)	
On behalf of himself and all others)	
similarly situated)	
)	Case No. 15SL-CC02380
)	
v.)	
)	
AT&T Mobility, LLC)	JURY TRIAL DEMANDED
)	
)	
PLAINTIFFS,)	
)	
DEFENDANT.)	
)	
SERVE REGISTERED AGENT:)	
The Corporation Company)	
120 South Central Avenue)	
Clayton, Missouri 63105)	

FIRST AMENDED PETITION

Raul Cortes Solis, individually and on behalf of those similarly situated (hereinafter referred to as “Plaintiff”), for his Class Action First Amended Petition against Defendant AT&T Mobility, LLC (hereinafter referred to as “Defendant”) states as follows:

INTRODUCTION

1. Defendant is a for-profit corporation engaged in the sale of telecommunications services and products throughout the country, including in the State of Missouri. Specifically, Defendant is in the business of selling cellular phone services, including data plans, to customers. For at least the last five years, Defendant has been selling “unlimited data plans” to customers without informing customers that said plans had built in restrictors, based upon the quantity of data used by the customer. Such conduct is in violation of the Missouri Merchandising Practices Act (hereinafter sometimes referred to

as “the MMPA”), further, Plaintiff has conferred a benefit that Defendant is retaining unjustly.

PARTIES AND VENUE

2. The allegations contained in Paragraph 1 is hereby realleged and fully incorporated as if fully set forth herein.

3. Plaintiff at all times relevant hereto, was a resident Saint Louis County, State of Missouri. At all relevant times herein, Plaintiff carried an unlimited data plan with Defendant.

4. Defendant is a for-profit foreign corporation that conducts systematic and continuous business in the State of Missouri.

5. All events and occurrences mentioned herein occurred in the State of Missouri, and therefore venue is proper in the Circuit Court of St. Louis County pursuant to MO. REV. STAT. § 508.010.

CLASS ALLEGATIONS

6. The allegations contained in the foregoing Paragraphs are hereby realleged and fully incorporated as if fully set forth herein.

7. Plaintiff brings this action for himself individually and as representative of a class of all other similarly situated plaintiffs. Plaintiff intends to seek certification of a state wide class of Missouri residents under Missouri Rule of Civil Procedure 52.08 who in the last five (5) years, purchased one of Defendant’s unlimited data plans with the intention of using said plan primarily for personal use within Missouri.

8. Plaintiff expects to further define the putative Class prior to seeking class and/or conditional class certification.

9. Excluded from the classes above are Defendant and any of its officers or directors and immediate families, the court and its immediate family, and any other individuals who have brought individual lawsuits arising from the same allegations against the Defendants.

10. Plaintiff reserves the right to amend or modify the class definitions and/or to move for certification of a class or classes defined differently than set forth above depending on the facts or law as discovered in this action.

11. The Class is sufficiently numerous that joinder of all members of the class is impracticable. The exact number and identify of all class members may be ascertained by appropriate discovery, but it is Plaintiff's belief that the proposed classes consist of thousands of individuals who purchased or maintained one of Defendant's unlimited data plans for primarily personal use in the past five (5) years. Class members may be notified of the pending action by email, mail, and by publication as necessary.

12. There are questions of fact and law common to the class, which common questions predominate over questions affecting only individual members. The common questions include, but are not limited to, the following:

- a. whether Defendant's failure to inform Plaintiffs that their unlimited data plan's speed would be reduced based on the quantity of data downloaded constitutes a violation of the MMPA; and
- b. whether Defendant's actions of reducing the speed of Plaintiff's unlimited data plans constitutes a violation of the MMPA.

13. The claims of the representative Plaintiff are typical of the claims of the members of the classes. Plaintiff, like all other members of the Class, has sustained legal injuries arising from Defendants' conduct, as alleged herein. The representative Plaintiff and the members of the class have suffered and continue to suffer similar or identical injuries-in-fact caused by the same unlawful conduct engaged in by Defendant.

14. Plaintiff can and will fairly and adequately represent the interests of the class and has no interests that conflict with or are antagonistic to the interests of the class. Plaintiffs have retained attorneys who are highly skilled, competent, and experienced in complex and class action litigation, and who will vigorously assert the claims on behalf of the class members. No conflict exists between Plaintiff and the classes. Plaintiff is willing and able to vigorously prosecute this action on behalf of the classes.

15. The class action is an appropriate method for the fair and efficient adjudication of this controversy given the following:

- a. common questions of fact and law predominate over any individual questions that may arise, such as the class action mechanism is superior to other available means for the fair and efficient adjudication of this dispute;
- b. there will be enormous economies to the Court and the parties in litigating the common issues in a class action instead of in multiple individual claims;

- c. class treatment is required for optimal resolution of this matter and for limiting the court-awarded reasonable legal expenses incurred by class members;
- d. if the size and individual class members' claims are small, their aggregate volume, coupled with the economies of scale in litigating similar claims on a common basis, will enable this case to be litigated as a class action on a cost-effective basis, especially when compared with the cost of individual litigation; and
- e. the trial of this case as a class action will be fair and efficient because the questions of law and fact which are common to the Plaintiff Class(es) predominate over any individual issues that may arise.

CLAIMS

COUNT I - Violation of the Missouri Merchandising Practices Act RSMo § 407.020.20

- 16. The allegations contained in the foregoing Paragraphs are hereby realleged and fully incorporated as if fully set forth herein.
- 17. Plaintiff and other class members purchased "unlimited data plans" in Missouri from Defendant within the last five years.
- 18. Beginning in at least 2011, Defendant implemented a policy of "throttling" down the speed of unlimited data plans when users reached certain usage points.
- 19. When users' speeds were "throttled," the users' download speeds were reduced by as much as 60 times the standard 4G LTE service speeds.

20. Such plans were sold to Plaintiff and other class members without conspicuously disclosing that the data plans were subject to speed restrictions based upon usage.
21. Plaintiffs' losses were the result of deceptive, fraudulent, and unfair practices by Defendant.
22. All data plans under this class action were purchased primarily for personal use.
23. Plaintiffs have suffered significant and ascertainable losses including but not limited to:
 - a. The cost of said data plans; and
 - b. Cancellation costs associated with cancelling said data plans;
24. Defendant's conduct constituted unlawful merchandising practices in violation of RSMo § 407.020.
25. Defendant is therefore liable to Plaintiffs for actual damages, punitive damages, and reasonable attorney fees, as provided by RSMo § 407.025.

WHEREFORE, Plaintiff respectfully prays that this Court certify the Purported Class described herein as a Missouri Rule of Civil Procedure 52.08 class action and enter judgment in favor of the Class and against Defendant, award compensatory damages, punitive damages, as well as reasonable attorneys' fees and costs of the action, including prejudgment interest, and for such other and further relief as this Court deems just and proper.

COUNT II – Fraudulent Misrepresentation

26. The allegations contained in the foregoing Paragraphs are hereby realleged and fully incorporated as if fully set forth herein.

27. Defendant represented to Plaintiff that its unlimited data plan was, in fact, unlimited.

28. This representation by Defendant was false and Defendant knew the representation was false.

29. Defendant's representation to Plaintiff that its data plan was unlimited was material to Plaintiff and those similarly situated.

30. Defendant knew that its unlimited data plan was subject to throttling which, in effect, made it limited. Alternatively, Defendant was ignorant as to the truth that it was throttling Plaintiff's data plans resulting in a limit to the data downloads.

31. Defendant intended for Plaintiff to rely upon its representations in purchasing said unlimited data plans.

32. Plaintiff, and all those similarly situated, were ignorant of the fact that their data plans were being throttled by Defendant.

33. Plaintiff and all those similarly situated relied on, and had a right to rely on, Defendant's misrepresentations as to the nature of their unlimited data plan.

34. Plaintiff and those similarly situated consequently purchased unlimited data plans which were, in fact, limited and suffered damages there from.

WHEREFORE, Plaintiff respectfully prays that this Court certify the Purported Class as a Missouri Rule of Civil Procedure 52.08 class action and enter judgment in favor of the Class and against Defendant, award compensatory damages, punitive damages, as well as reasonable attorneys' fees and costs of the action, including prejudgment interest, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

HOLLINGSHEAD, PAULUS & ECCHER

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