Daniel M. Hattis (SBN 232141)
HATTIS LAW
P.O. Box 1645
Bellevue, WA 98009
Telephone: (650) 980-1990
Facsimile: (425) 412-7171
Email: dan@hattislaw.com

Jason Skaggs (SBN 202190)
SKAGGS FAUCETTE LLP
430 Lytton Ave 2nd FL
Palo Alto, CA 94301
Telephone: (650) 617-3226
Email: jason@skaggsfaucette.com

Tony J. Tanke (SBN 74054)
LAW OFFICES OF TONY J. TANKE
2050 Lyndell Terrace, Suite 240
Davis, CA 95616
Telephone: (530) 758-4530
Email: appeals@tankelaw.com

Attorneys for Plaintiff and the Proposed Class

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JOSEPH LOOMIS, individually and on behalf of all others similarly situated,

Plaintiff,

v.

COMCAST CORPORATION; and COMCAST CABLE COMMUNICATIONS, LLC,

Defendants.

Case No. 3:17-cv-02110

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

# TABLE OF CONTENTS

**I. INTRODUCTION AND SUMMARY ..... - 1 -**

**II. PARTIES ..... - 2 -**

**III. JURISDICTION AND VENUE ..... - 2 -**

**IV. COMMON FACTUAL ALLEGATIONS ..... - 2 -**

A. Background. ..... - 3 -

B. Comcast Sales Agents Mislead Customers into Believing that the Advertised and Promised "Sticker Price" is the Actual Price Except For Equipment Charges and Bona Fide Taxes and Government Fees, and Sales Agents Fail to Disclose the Broadcast TV Fee and the Regional Sports Fee.. ..... - 5 -

C. Comcast's Advertising Misleads Customers into Believing That the Advertised and Promised "Sticker Price" is the Actual Price Except For Equipment Charges and Bona Fide Taxes and Government Fees, and Fails to Adequately Disclose the Broadcast TV Fee and the Regional Sports Fee. ..... - 6 -

D. Comcast Fails to Disclose the Fees in Its Order Confirmation Emails. ..... - 9 -

E. Comcast's Form Subscriber Agreement Does Not Mention the Broadcast TV Fee or the Regional Sports Fee, and To the Contrary, Implies That All Additional Monthly Non-Equipment Fees Are Government-Related. ..... - 9 -

F. In the Minimum Term Agreement Document, Which Comcast Sometimes Emails To Customers, Comcast Hides and Disguises the Broadcast TV Fee and the Regional Sports Fee to Fool Its Customers into Believing They Are Imposed by the Government. ..... - 10 -

G. Comcast's Bills Either Fail to Disclose the Fees Altogether (the Short Version of the Bill), or Disclose the Fees in a Way To Make the Customer Falsely Believe That the Fees Are Imposed by the Government (the Long Version of the Bill). ..... - 11 -

H. Comcast Doubles Down on Its Deception By Lying to Inquiring or Complaining Customers By Telling Them That the Fees Are Government-Imposed Charges Outside of Comcast's Control. ..... - 13 -

I. Comcast Utilizes the Fees as a Backdoor Way To Increase Its Service Prices In the Middle of "Guaranteed" Fixed-Rate Contracts, In Breach of Its Agreements With Its Customers. ..... - 14 -

J. Comcast's Practices Are Fraudulent and Unfair and Are Intended To Mislead Consumers. ..... - 16 -

**V. PLAINTIFF'S INDIVIDUAL FACTUAL ALLEGATIONS ..... - 18 -**

**VI. CLASS ACTION ALLEGATIONS ..... - 25 -**

**VII. COMCAST'S ARBITRATION CLAUSE IS UNENFORCEABLE AGAINST CALIFORNIA CUSTOMERS. ..... - 29 -**

**VIII. CHOICE OF LAW ..... - 30 -**

**CAUSES OF ACTION** ..... **- 30 -**
COUNT I – Breach of Contract ..... - 30 -
COUNT II – Breach of the Covenant of Good Faith and Fair Dealing ..... - 31 -
COUNT III – Unjust Enrichment ..... - 33 -
COUNT IV – California Business and Professions Code § 17200 ("UCL") ..... - 33 -
COUNT V – California Business and Professions Code § 17500 ("FAL") ..... - 34 -
COUNT VI – California Consumer Legal Remedies Act ("CLRA"). ..... - 35 -
COUNT VII – Injunctive Relief ..... - 36 -
COUNT VIII – Declaratory Relief ..... - 37 -
**PRAYER FOR RELIEF** ..... **- 39 -**
**JURY DEMAND** ..... **- 39 -**

Plaintiff, individually and on behalf of all others similarly situated, alleges on personal knowledge, investigation of his counsel, and on information and belief, as follows:

## I. INTRODUCTION AND SUMMARY

1. This proposed class action is about a massive bait-and-switch scheme perpetrated by Comcast Corporation and Comcast Cable Communications, LLC (collectively, "Comcast") on its over two million California cable television customers, whereby Comcast falsely advertises its cable television service packages for much lower prices than it actually charges.

2. Comcast's advertising, and its sales staff, mislead consumers into falsely believing that the advertised price for its service packages is the actual price consumers will pay except for equipment charges and bona fide taxes and government fees.

3. However, Comcast intentionally chooses to exclude from the advertised price of its service packages certain invented fees (the Broadcast TV Fee and the Regional Sports Fee or the "Fees"). Comcast *never* qualifies the lower price with an asterisk or other adjacent marker, and any disclosures which Comcast makes about the Fees are not only inadequate, but are themselves deceptive. Comcast designed its disclaimers regarding the Fees to mislead consumers into falsely believing the Fees are taxes or government charges over which Comcast has no control, rather than disclosing the truth that the Fees are discretionary disguised double-charges for the channels that Comcast has promised are *already included* in the lower advertised package price (e.g., ABC, CBS, NBC, FOX, and local sports channels).

4. Comcast doubles down on this deception through its practice of lying to customers who ask or complain about the Fees, explicitly telling them that the Fees are taxes or government-imposed charges.

5. Comcast perpetrates this scheme to hook and trap new customers into one-year or two-year contracts at "guaranteed" fixed rates with significant early termination penalties, with the intent of charging the customers more than promised via the deceptive and hidden Fees. Even worse, Comcast then repeatedly and systematically raises its prices *even higher* on these trapped customers via the backdoor method of repeatedly increasing the Fees in the middle of their contract despite having promised the customers a locked-in monthly rate.

6. Comcast has increased the Fees by 800% since they were first introduced in 2014, and the Fees now add as much as $12 per month to customer cable bills, costing California consumers over $200 million per year.

7. Plaintiff brings this lawsuit on behalf of himself and the proposed Class to put an end to Comcast's unlawful actions, and to recover the money they have lost or imminently will lose as a result of Comcast's contractual breaches and deceptive, unfair, and unlawful conduct alleged in this Complaint.

## II. PARTIES

8. Plaintiff Joseph Loomis ("Plaintiff") is an individual residing in Moss Beach, California.

9. Defendant Comcast Corporation is a multinational, mass media company headquartered in Philadelphia, Pennsylvania, and incorporated in Pennsylvania. It is the largest broadcasting and cable company in the world by revenue, and it is the largest home television and Internet service provider in the United States.

10. Defendant Comcast Cable Communications, LLC, according to Comcast Corporation's 2015 Form 10-K, is a "100% owned cable holding company subsidiary" of Comcast Corporation. Comcast Cable Communications, LLC is headquartered in Philadelphia, Pennsylvania, and incorporated in Delaware.

## III. JURISDICTION AND VENUE

11. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332(d)(2) as the amount in controversy exceeds $5,000,000 among the members of the proposed California Class, believed to number in the hundreds of thousands, who are entitled to damages in the form of a full refund of all of the Broadcast TV Fee and the Regional Sports Fee amounts charged to them by Comcast within the applicable statutes of limitations.

12. This Court has personal jurisdiction over Comcast because it is authorized to do business and regularly conducts business in California, Comcast has marketed, sold and issued cable service plans in California including to Plaintiff, and Comcast has entered into contracts with California consumers and Plaintiff regarding their cable service plans. Comcast has

sufficient minimum contacts with this state to render the exercise of jurisdiction by this Court permissible.

13. Venue is proper under 28 U.S.C. §§ 1391(a) and (b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

## IV. COMMON FACTUAL ALLEGATIONS

### A. Background.

14. Comcast has over 2 million cable television subscribers in California out of its over 22.5 million cable television subscribers nationwide.

15. Comcast typically sells its television service "bundled" in service packages with Internet and/or telephone service, under the XFINITY brand. Comcast markets its service packages with standardized, uniform marketing materials to consumers via mass mailings, television commercials, print advertisements, and online advertising. Consumers buy these service packages over the telephone, on Comcast's website, or in person at one of Comcast's local stores.

16. Comcast advertises the service packages for a specified "sticker price." Comcast advertises broadcast television network programming such as ABC, NBC, CBS, and FOX as being part of the service packages. See **Exhibit A**, p. 1 ("TV: NBC, FOX, and more … Local channels like ABC, NBC, and FOX"); **Exhibit C**, p. 1 ("tons of channels … included at no additional cost").

17. To attract customers who are concerned about ever-increasing cable prices, Comcast prominently advertises a flat "guaranteed" monthly sticker price for a one-year or two-year contract that contains stiff early termination penalties. See **Exhibit C** at p. 1 ("89.99 per month for 12 months with a 2-year term agreement"), Exhibit A, p.1 ("54.99 per month for 12 mo. with 1-year agreement."); **Exhibit A**, p. 2 ("Early termination fee applies."); **Exhibit B**, p. 2 ("$89.99/mo 2 year comcast agreement for residential services starting upon installation").

18. Comcast's widespread marketing of promotional fixed-rate pricing for term contracts has induced millions of consumers to lock themselves into one-year or two-year service

plan contracts.

19. Starting in January 2014, Comcast began perpetrating a scheme by which it excluded some of its programming charges (i.e., some of the amounts it paid to broadcast television networks like ABC, CBS, NBC and FOX) from its advertised sticker price. Comcast disguised these programming charges in the form of a mysteriously named "Broadcast TV Fee" that was designed to appear as – and was buried in the fine print together with – government-related charges. In January 2015, Comcast expanded this scheme by introducing the "Regional Sports Fee" in order to similarly disguise programming price increases for local sports channels (which, like the broadcast channels, were already promised as being included in the lower advertised "sticker price" for the channel package). Comcast charges the Broadcast TV Fee to *all* Comcast cable television subscribers. Comcast charges the Regional Sports Fee to Comcast cable subscribers with the Digital Starter Package or above.

20. Comcast perpetrates this massive bait-and-switch massive scheme, which affects all of its over 2 million California subscribers, in order to increase demand for its services and to increase its profits. Comcast tricks customers into thinking they will pay the lower advertised "sticker price," rather than the significantly higher price they will actually be charged. The Fees now add as much as $12.00 per month to California customer bills, often accounting for more than 10% of the subscriber's total bill.

21. On July 23, 2016, Comcast's Senior Vice President Tom Karinshak admitted to the Senate Subcommittee which is currently investigating the Fees that: (1) prior to January 1, 2014 the programming fees represented by the current Broadcast TV Fee and Regional Sports Fee had been *included* in the advertised and billed "sticker price"; and (2) starting in 2014 Comcast "decided" to exclude some video programming charges from the "sticker price" in the form of these new Fees and to instead now bill them as separate line items "***as opposed to simply raising our sticker price***." See S. Hrg. 114-409, pp. 35, 54, emphasis added.[1]

[1] Senate Hearing on Customer Service and Billing Practices in the Cable and Satellite Industry, June 23, 2016, available at https://www.gpo.gov/fdsys/pkg/CHRG-114shrg21423/content-detail.html. See Comcast Senior Vice President Tom Karinshak's testimony at p. 35, excerpted below (emphasis added):

22. These Fees are essentially disguised double-charges to provide the very same broadcast channels and local sports channels already promised as included in the advertised and promised package price.

**B. Comcast Sales Agents Mislead Customers into Believing that the Advertised and Promised "Sticker Price" is the Actual Price Except For Equipment Charges and Bona Fide Taxes and Government Fees, and Sales Agents Fail to Disclose the Broadcast TV Fee and the Regional Sports Fee.**

23. Comcast sales agents - including telesales agents, online chat agents, and in-store sales staff - universally *do not disclose or mention the existence of the Broadcast TV Fee and the Regional Sports Fee to prospective customers*.

24. When Comcast sales agents quote customers the total order price (including the base package price and equipment fees), the agents falsely say that the stated price is the total price "*plus taxes*" or "*plus taxes and fees*." Comcast agents do not state the amount of these additional "taxes" or "taxes and fees" that will be charged, and tell customers they are unable to determine or calculate these charges.

25. It is telling that elsewhere, Comcast uses this phrase "taxes and fees" to specifically denote *only government-related fees and taxes.* The long version of the Comcast customer bill has a section titled "**Taxes and fees**," and under this section Comcast lists *only* government-related fees and taxes. See Plaintiff's customer bill at **Exhibit F**, p. 2. A reasonable consumer would assume that when Comcast sales agents quote them a price "plus taxes and fees," that phrase has the same common-sense meaning as utilized by Comcast on its own bill – i.e., government-related taxes and fees.[2]

---

> **Senator McCaskill**: Now, what I want to make sure I understand here is that this has been a decision, I believe by all of you—raise your hand if you did not—that you would take—OK, DISH did not. You did not put any RSN [Regional Sports Network] or broadcast surcharge fees in. OK. So DISH decided not to do this, but the rest of *you decided that you were going to take something that was in the basic programming fee for buying your service, and you were going to put it in another place on the bill and call it something else*. I would ask you, can you tell me why all of you decided—*isn't it true that all of these were previously in your video charges*?
> **Mr. Karinshak**. *Yes, Senator*.

*Id.* at 35 (emphasis added).

[2] Notably, in response to the concern of the Senate Subcommittee that cable companies should

26. Plaintiff Joseph Loomis received 5 different quotes from Comcast sales agents for service packages in the process of researching and signing up for Comcast service. In each and every case: (1) the Comcast sales agent did not disclose the Broadcast TV Fee and the Regional Sports Fee; and (2) the Comcast sales agent told Mr. Loomis that the only additional charges beyond the quoted price was "taxes." See ¶¶ 77-111 below.

27. In the course of investigating this case, Plaintiff's counsel received dozens of complaints from upset Comcast customers who, like Plaintiff, were told by Comcast sales agents that the quoted price was the total cost "plus taxes" or "plus taxes and fees," and who were not informed by the sales agents of the existence of the Broadcast TV Fee and the Regional Sports Fee.

### C. Comcast's Advertising Misleads Customers into Believing That the Advertised and Promised "Sticker Price" is the Actual Price Except For Equipment Charges and Bona Fide Taxes and Government Fees, and Fails to Adequately Disclose the Broadcast TV Fee and the Regional Sports Fee.

28. Paralleling the standard practice of its sales agents in failing to disclose the Broadcast TV Fee and the Regional Sports Fee, Comcast's advertising and online order process similarly and intentionally do not adequately disclose the Fees.

29. Comcast's advertising and online order process quote a "sticker price" for the service package, and imply that the sticker price is the actual price except for equipment charges and bona fide taxes and government fees.

30. Comcast *never* includes an asterisk or qualifier in its advertising next to the prominently displayed price for its service packages which would put the consumer on notice that the sticker price does not include additional programming charges which are hidden in the form of the automatically billed Fees. For example, see the web page advertisement for service packages available in Sacramento, California at **Exhibit A**, p. 1 (no asterisk next to the advertised

---

avoid putting the Broadcast TV Fee and the Regional Sports Fee in the same section as government fees and taxes, Comcast insisted that the "*Taxes, Surcharges, & Fees*" section of the bill was "dedicated to government-mandated taxes or regulatory fees. …*This is a clear distinction between those charges that are discretionary and those that are pursuant to taxes and regulatory assessments*." S. Hrg. 114-409 at p. 190 (July 23, 2016, emphasis added). Since then, Comcast has renamed the "Taxes, Surcharges, & Fees" section of the bill to simply "Taxes and fees."

price of $54.99 which purportedly includes "NBC, FOX and more"). For example, see the direct mail advertisement for service packages available in Sacramento, California at **Exhibit C**, p. 1 (no asterisk next to the advertised price of $89.99 with "tons of channels … included at no additional cost.").

31. Just as Comcast's sales agents fail to disclose the Fees, Comcast in its online order process fails to list the Broadcast TV Fee and the Regional Sports Fee in the online order configurator or on the order submittal page. See **Exhibit B**, pp 1-2.

32. On the "My Order Summary" of the online order process, there is a question mark next to the "Monthly Total" amount (which is calculated to include the package price plus specified equipment charges); when one hovers over the question mark, a text box appears stating:

> *This is the base monthly total of all recurring charges for the services you have selected*. It does not include *tax or one-time charges* (such as installation or Pay-Per-View fees) that may appear on individual bills.

See **Exhibit B**, p. 1, highlighted in red box, emphasis added.

33. But the stated "base monthly total" does not include the Broadcast TV Fee and the Regional Sports Fee, which are in fact recurring double-charges for ABC, NBC, CBS, FOX and local sports channels which Comcast had already advertised and promised were *included* in the lower package price.

34. Meanwhile, Comcast's advertising disclaimers, in the event they are seen by consumers[3], are themselves misleading. Comcast's advertising disclaimers are designed to falsely imply that the Fees are government-imposed charges. For example, in Comcast's ads, the Broadcast TV Fee and the Regional Sports Fee *are never defined*, are stated in the fine print to be part of "taxes and fees," and are grouped with "regulatory recovery fees":

> Equipment, installation, **taxes and fees, including** regulatory recovery fees, Broadcast TV Fee (up to $3.50/mo.), Regional Sports Fee (up to $1.00/mo.) and

[3] Comcast makes significant efforts to hide the disclaimers while still hoping to point to their existence to insulate itself for liability for its fraud. For example, in the advertising on its website, one can only view the disclaimer if one notices a small link titled "Pricing & Other Info" and hovers over or clicks on it (see **Exhibit A**, p.1). For example, in its direct mail advertising, the disclaimers are in tiny print on an entirely different page than the advertised offer itself (see **Exhibit C**).

other applicable charges extra, and subject to change during and after the promo. Emphasis added.[4]

35. The wording of the disclaimer blurs the distinction between true taxes and phony fees. The likelihood of such a misimpression is increased by the fact that the first of the "taxes and fees" which is named is "regulatory recovery fees," which has the plain meaning of a fee charged as a pass-through of regulatory costs imposed by the government. Meanwhile, as described above, Comcast defines the phrase "**taxes and fees**" on its own customer bills as referring to *only government-related fees and taxes*. See Plaintiff Loomis' customer bill at **Exhibit F**, p. 2 and Comcast's statement to the Senate Subcommittee quoted at footnote 2 above.

36. Further, it is no accident that Comcast mentions discrete pass-through items like equipment and installation and bona fide government imposts such as taxes and regulatory recovery fees *before* Comcast discloses the two phony surcharges. In legal terminology, Comcast is taking advantage of the ancient legal habit of *noscitur a sociis*, judging a word by the company it keeps; a person will naturally assume that the strange new terms of "Broadcast TV Fee" and "Regional Sports Fee" must possess the same characteristics as the immediately preceding terms, e.g., discrete, pass-through, government-imposed.[5]

37. Meanwhile, the Senate Subcommittee is *currently* investigating Comcast for this very practice of deceptively grouping the Broadcast TV Fee and the Regional Sports Fee with legitimate taxes and government-related fees.[6]

---

[4] This text, which is standard across all of Comcast's advertising such that only the amount of the Fees varies, is taken from the disclaimers in the "Pricing & Other Info." dialog box at **Exhibit A**, p. 2, and the direct mail advertisement at **Exhibit C**, p. 2 (red box highlight added).

[5] "When several nouns or verbs or adjectives or adverbs — any words — are associated in a context suggesting that the words have something in common, they should be assigned a permissible meaning that makes them similar." Antonin Scalia & Bryan A. Garner, *Reading Law* p. 195 (2012).

[6] See Senate Hearing on Customer Service and Billing Practices in the Cable and Satellite Industry, S. Hrg. 114-409 (July 23, 2016), available at https://www.gpo.gov/fdsys/pkg/CHRG-114shrg21423/content-detail.html. On December 23, 2016, the Subcommittee sent a follow-up letter to Comcast requesting an additional briefing and information, stating: "At the hearing, we expressed our concern that Comcast and its competitors obscured the cost of programming by *categorizing some programming costs as fees, such as the 'Broadcast TV Surcharge' or 'Regional Sports Network Fee.' We found that cable and satellite providers group those fees on the bill alongside taxes and regulatory charges. Such placement is misleading in that it suggests*

**D. Comcast Fails to Disclose the Fees in Its Order Confirmation Emails.**

38. Once a consumer orders Comcast service, Comcast sometimes emails the consumer an order confirmation email. Although Plaintiff placed three separate orders for Comcast service (two of which were cancelled due to the pricing not matching what he had been quoted), he only received one order confirmation email.[7]

39. Comcast hides the additional Broadcast TV Fee and Regional Sports Fee surcharges in the "Taxes, Surcharges and Fees" section of the order confirmation email, which displays a single-line total with no breakdown. The Broadcast TV Fee and the Regional Sports Fee are not broken out or disclosed anywhere in the email. For example, in the sole order confirmation email received by Plaintiff, the "Taxes, Surcharges and Fees" section consists of a single $17.59 line item, $8.00 of which in fact is comprised of the hidden and undisclosed Broadcast TV Fee and Regional Sports Fee. See **Exhibit D** (red box highlight added).

**E. Comcast's Form Subscriber Agreement Does Not Mention the Broadcast TV Fee or the Regional Sports Fee, and To the Contrary, Implies That All Additional Monthly Non-Equipment Fees Are Government-Related.**

40. Comcast has a form subscriber agreement for its residential customers which it calls the Comcast Agreement for Residential Services (hereinafter "Subscriber Agreement"). See **Exhibit H**. Comcast does not mention the Broadcast TV Fee or the Regional Sports Fee anywhere in the Residential Services Agreement's twenty-three pages of small type.

41. Section 2(a) of the Subscriber Agreement, which concerns the "Charges, Fees, and Taxes You Must Pay," is a *tour de force* of ambiguity and misdirection, larded from top to bottom with references to government-imposed taxes, fees, and programs:

---

*to the subscriber that the government requires the cable or satellite provider to impose these charges*." (Emphasis added; see letter at **Exhibit K**, also available at http://www.mccaskill.senate.gov/imo/media/doc/2016-12-23%20Portman%20and%20McCaskill%20letter%20to%20Comcast%20re%20billing%20practices.pdf.) While the letter focuses in particular on the misleading grouping of the Fees with taxes and regulatory fees in Comcast's bills and order confirmations, the Subcommittee's concerns logically apply equally to such grouping in Comcast's advertising.

[7] Plaintiff received an order confirmation email from Comcast for the order he placed with the salesperson at A Wireless on June 19, 2016 (which he later cancelled due to the price being much higher than the price he was promised), but Plaintiff did not receive an order confirmation for the order placed with Comcast chat agent "Eunice" on June 21, 2016, nor for the updated order placed with Comcast chat agent "Surinder" later that same day.

> **Charges, Fees, and Taxes You Must Pay.** You agree to pay all charges associated with the Service(s), including, but not limited to, installation/service call charges, monthly service charges, XFINITY Equipment (as defined below) charges, measured and per-call charges, applicable federal, state, and local taxes and fees (however designated), regulatory recovery fees for municipal, state and federal government fees or assessments imposed on Comcast, permitted fees and cost recovery charges, or any programs in which Comcast participates, including, but not limited to, public, educational, and governmental access, universal service, telecom relay services for the visually/hearing impaired, rights-of-way access, and programs supporting the 911/E911 system and any fees or payment obligations imposed by governmental or quasi-governmental bodies for the sale, installation, use, or provision of the Service(s). YOU WILL BE RESPONSIBLE FOR PAYING ANY GOVERNMENT IMPOSED FEES AND TAXES THAT BECOME APPLICABLE RETROACTIVELY. We will provide you with notice and an effective date of any change in our prices or fees, unless the change in price is related to a change in governmental or quasi-governmental taxes, fees, or assessments, in which case we may elect not to provide notice except where required by applicable law.

**Exhibit H**, Section 2(a).

42. A reasonable consumer would assume that consistent with Section 2(a) above, all monthly non-equipment fees charged by Comcast above the service package price (such as the Broadcast TV Fee and the Regional Sports Fee) must be part of this laundry list of "governmental or quasi-governmental taxes, fees, or assessments."

### F. In the Minimum Term Agreement Document, Which Comcast Sometimes Emails To Customers, Comcast Hides and Disguises the Broadcast TV Fee and the Regional Sports Fee to Fool Its Customers into Believing They Are Imposed by the Government.

43. Sometimes, when a customer signs up for a fixed-term Comcast contract, the customer is emailed a Minimum Term Agreement document which purportedly states the terms of the offer. The Minimum Term Agreement is also posted online in a hard-to-find section of the Comcast customer portal.[8]

44. Comcast did not email to Plaintiff, and Plaintiff did not receive, a Minimum Term Agreement when he signed up for his service package. Mr. Loomis only learned of the

[8] As of April 11, 2017, in order to access this Offer document on the Comcast customer portal, the customer must: (1) click on the "My Account" link; (2) click on the "Settings" link; (3) click on the "Account, Contact Information, and Legal Terms" link; (4) click on the "Legal agreements" link in the "Legal Information" section; and finally (5) click on the "My Account Terms of Service" link, which will download the document as a PDF.

document's existence three months into his contract when a Comcast "Executive Customer Relations" employee named "Mark," who was responding to Mr. Loomis' complaints about the surprise Fees, told Mr. Loomis about the document and Mr. Loomis asked Mark to mail it to him.

45. In bold, boxed text at the top of the Minimum Term Agreement, Comcast prominently displays the guaranteed monthly price for the contract term, *with no asterisk or qualifier*. See **Exhibit G.**

46. Comcast does not define the strange and unusual terms "Broadcast TV Fee" and "Regional Sports Fee" in the Minimum Term Agreement, and they are only mentioned in a single disclaimer sentence which groups them alongside "extra" taxes and regulatory charges:

> Equipment, installation, **taxes and fees, including** Broadcast TV Fee (currently up to $5.00/mo.), Regional Sports Fee (currently up to $3.00/mo.) and if XFINITY Digital Voice is included, regulatory recovery fees and other applicable charges (e.g. per-call or international charges) are extra, such charges and fees are subject to change during and after the term of this Agreement.

*Id.* (example of Minimum Term Agreement regarding Plaintiff's services, emphasis added).

47. On information and belief, Comcast's intent is to fool its customers into believing the Broadcast TV Fee and the Regional Sports Fee are imposed by the government. As a result of Comcast's clever drafting and omissions, a reasonable consumer would interpret these cryptic terms "Broadcast TV Fee" and "Regional Sports Fee" as relating to government charges outside of Comcast's control, which therefore are "subject to change" only because they are like the other government taxes and fees in that same sentence, consistent with the "governmental or quasi-governmental taxes, fees, or assessments" referenced in Section 2(a) of the Subscriber Agreement. Meanwhile, as described above, Comcast defines the phrase "**taxes and fees**" on its customer bills as referring to *only government-related fees and taxes*. See Plaintiff Loomis' customer bill at **Exhibit F**, p. 2 and Comcast's statement to the Senate Subcommittee quoted at footnote 2 above.

### G. Comcast's Bills Either Fail to Disclose the Fees Altogether (the Short Version of the Bill), or Disclose the Fees in a Way To Make the Customer Falsely Believe That the Fees Are Imposed by the Government (the Long Version of the Bill).

48. Comcast has two versions of the customer bill (a short version, and a long

version), both of which fail to adequately disclose the Fees.

49. The short bill is the default view of the bill displayed to customers when they log into their Comcast account (including by clicking on an email link in a Comcast "Your bill is ready" email). The short version of the bill in effect in October 2016 made no mention of the Broadcast TV Fee or the Regional Sports Fee, and instead silently included these charges in the total amount displayed under "Other charges and credits."[9] See **Exhibit E**, p. 1. Recently, Comcast updated the short version of the bill to strip it down even further; now there is only a single line "Total balance due." See May 2017 short bill at **Exhibit E**, p. 2. Comcast provides a link adjacent to the short bill labeled "View Bill Details (PDF)" which downloads the long version of the bill as a PDF.

50. The long version of the bill includes the amounts charged for the Broadcast TV Fee and the Regional Sports Fee; however, Comcast deceptively discloses and defines the Fees in a way to make the customer falsely believe that the Fees are imposed by the government.

51. First, Comcast intentionally omits the amount of the Fees from the top-line "XFINITY bundle" price. See **Exhibit F**, pp. 1, 2. A reasonable consumer would believe that this "XFINITY bundle" price is the actual total price for the bundled services, including the broadcast television programming which is in every channel package offered by Comcast, and including the local sports programming which is in the package selected by Mr. Loomis. And in fact, prior to 2014, the top-line "XFINITY bundle price" *did* include all the programming charges. But since January 2014, Comcast has excluded some of its programming charges (i.e., some of the amounts it purportedly pays to broadcast television networks like ABC, CBS, NBC[10] and FOX, and to local sports channels) from the top-line bundle price and has hidden those charges in the form of the Broadcast TV Fee and the Regional Sports Fee in a separate section of the bill called "Other

[9] The incomplete and misleading nature of the one-line summary of the "Other charges and credits" is further illustrated by this sample short bill where the displayed net charge of $2.50 is actually less than the hidden $5.00 charge for the Broadcast TV Fee that month (there was a simultaneous hidden one-time unrelated credit that month). *Id.*

[10] NBCUniversal is a wholly-owned subsidiary of Comcast Corporation. So presumably, a significant portion of the billions of dollars in revenues Comcast has collected in the form of the Broadcast TV Fee has essentially been paid to itself.

charges and credits."

52. Although, in an effort to exculpate itself from liability for its fraud, Comcast does not list the Fees under the "Taxes and fees" section, Comcast nonetheless presents and defines the Fees in a way that suggests to the customer that they are government-imposed charges. Comcast defines the Broadcast TV Fee as follows: "The Broadcast TV Fee recovers a portion of the costs of retransmitting television broadcast signals." Comcast defines the Regional Sports Fee as follows: "Regional Sports Fee recovers a portion of the costs to transmit certain regional sports networks." *Id.*, p. 2.

53. By using the technical phrase "recovers a portion of the cost of retransmitting television signals," Comcast falsely implies the Broadcast TV Fee is related to a government or FCC imposed cost on Comcast for signal transmission, instead of disclosing the truth that Comcast charges the fee to reimburse itself for its contractual payments for video programming from ABC, NBC, CBS, and FOX. Similarly, in describing the Regional Sports Fee with the technical phrase "recovers a portion of the costs to transmit certain regional sports networks," Comcast falsely implies the fee is to cover transmission fees imposed on Comcast by regional or local government, rather than disclosing the truth that Comcast charges the fee to reimburse itself for its contractual payments for video programming from local sports content providers.

54. In an effort to avoid being caught charging more than it advertised and promised to its customers, Comcast deceptively excludes these programming charges from the top-line XFINITY bundle price, and instead disguises them in the below-the-line Broadcast TV Fees and Regional Sports Fees which Comcast implies are government-related charges (rather than disclosing the truth that they are discretionary programming double-charges).

### H. Comcast Doubles Down on Its Deception By Lying to Inquiring or Complaining Customers By Telling Them That the Fees Are Government-Imposed Charges Outside of Comcast's Control.

55. When customers contact Comcast to ask or complain about the Fees, Comcast doubles down on its deception through its practice of lying to customers by saying that the Fees are taxes or government-imposed charges over which Comcast has no control.

56. For example, when Plaintiff Loomis called Comcast customer service to complain about the surprise Fees, he was repeatedly told that the charges could not be removed, and that everyone must pay the Fees because they are "required by federal law."

57. For example, other Comcast customers have posted on Comcast's official online "Help & Support Forums" that they were told by Comcast staff that the Broadcast TV Fee and the Regional Sports Fee are taxes or government fees:

> Posted on Comcast's Website on June 11, 2016:
> I called comcast today to complain about the extra [Broadcast TV Fee and Regional Sports Fee] charges that are added to the bill. I was told that it was a tax. IT IS NOT A TAX, it is a fee charged by Comcast. They are charging us an extra $8 per month, without giving us any additional services. I believe we have a class action lawsuit waiting to happen.[11]

> Posted on Comcast's Website on July 19, 2015:
> Upon review of my Comcast bills I called today, Sunday, to find out why I was being charged for a $3 Broadcast TV fee and a $1 Regional Sports Fee. These charges appeared in my June and July bills under the section "Other Charges & Credits" and I wanted to get a better understanding of what and why these charges appeared all of a sudden and if they can be removed. As an aside, I don't watch sports. The call center agent explained they were state and government taxes and could not be removed. I asked her why they didn't appear in the "Taxes, Surcharges, and Fees" section and she corrected herself and stated that they are not State fees but that they are government fees that Comcast had been approved to charge customers.[12]

58. In the process of investigating this case, Plaintiff's counsel received complaints from dozens of Comcast customers who similarly contacted Comcast to complain about the Broadcast TV Fee and the Regional Sports Fee and were falsely told by Comcast that the Fees were taxes, FCC fees, or some other form of government-imposed charge.

## I. Comcast Utilizes the Fees As a Backdoor Way To Increase Its Service Prices In the Middle of "Guaranteed" Fixed-Rate Contracts, In Breach of Its Agreements With Its Customers.

59. Comcast has induced millions of consumers to enter into one-year or two-year service contracts by promising them a "locked-in" and "guaranteed" promotional rate which will

[11] http://forums.xfinity.com/t5/Billing/Broadcast-TV-Fee/td-p/2671674

[12] http://forums.xfinity.com/t5/Billing/broadcast-tv-fee/td-p/2457405

not increase during the term of the contract. Pursuant to their contracts with Comcast, the customers cannot terminate their minimum term service agreement without paying a significant "termination fee." For example, Plaintiff Loomis's purported contract specifies a $230.00 termination fee, which is slowly reduced over time. See **Exhibit G** at ¶ 5.

60. However, in violation of its representations to and agreements with its customers, Comcast utilizes the Fees as a backdoor way to repeatedly raise its prices on these trapped customers during their contract term.

61. For example, Comcast notified Mr. Loomis in his March 10, 2017 bill that Comcast will be increasing the Broadcast TV Fee from $5.00 to $7.00, and the Regional Sports Fee from $3.00 to $5.00, effective July 1, 2017 - approximately half-way into his two-year "guaranteed" fixed-rate contract.

62. Meanwhile, Comcast preposterously insists that it is not breaching its agreements with its customers when it increases the Fees mid-contract because it claims the locked-in promotional price for their service package remains the same, and only the Fees, which are not subject to the lock-in, have increased.

63. For example, three different Comcast agents told Mr. Loomis that in spite of his guaranteed-price agreement, Comcast could increase the Broadcast TV Fee and the Regional Sports Fee at any time during the contract term. (Meanwhile Mr. Loomis never agreed to be charged the Fees in the first place.)

64. For example, Comcast posted the following response on its public message boards to a customer who asked why his service price had increased in the middle of his promised fixed-rate two-year agreement:

> Hello KMcGarvey,
> *You[r] 24 month agreement* will not increase, so your *package price will remain the same. However, you will notice an increase on your statement for the services/fees that are not included in your agreement*. After reviewing your account, it shows that the following factors of your monthly subscription will be effected:
> - **Broadcast TV Fee** will increase to $5.00
> - **Regional Sports Network Fee** will increase to $3.00

(Italics added, bold in original.)[13]

65. These responses by Comcast are of course nonsensical because the Fees are just another way Comcast is charging for the same broadcast television and sports programming which it previously promised was *included* in the locked-in rate for the service package.

### J. Comcast's Practices Are Fraudulent and Unfair and Are Intended To Mislead Consumers.

66. Comcast perpetrates this scheme in order to increase demand for its service packages and to increase its profits by advertising and promising a lower price for its service plans than it will actually charge. Comcast hooks and traps customers into one-year or two-year contracts, with the intent of charging them more than promised and then continuing to increase the service price in the middle of the promised fixed-rate term via the deceptive and inadequately disclosed Fees.

67. In a statement to the Senate Subcommittee, the National Association of Telecommunications Officers and Advisors ("NATOA"), whose members represent Local Franchising Authorities ("LFAs") that are actively involved in monitoring and enforcing cable customer service standards, described the practices and conduct alleged in this Complaint as deceptive:

> One issue that has risen to the top of consumer complaints has to do with increases to basic service tier rates and fees… *Consumer bills also have been complicated by the addition of new, unexplained fees for programming that was already included in their subscription packages*. In 2016, many LFAs saw huge increases in the "broadcast TV" fee - from $1.50 to $4.50 - and "regional sports network" fee - from $1.00 to $3.00. *These fees are not only confusing to consumers, but misleading, as well.* Many subscribers choose specific programming bundles to lower their costs and they sign contracts to keep those costs in place. However, because these fees are outside the agreed upon bundle price, subscribers see their budget busted and locked into an agreement they cannot get out of. Many LFAs could have questioned and reviewed many of these increased fees and costs under their existing basic rate regulatory authority. Unfortunately, just over one year ago, the FCC adopted regulations that stripped local governments of much of our remaining authority to protect our local residents from unfair cable billing and customer service practices.

[13] See post dated December 16, 2015 on the Comcast online Help & Support Forum available at: http://forums.xfinity.com/t5/Customer-Service/Question-regarding-new-rates-effective-in-January/td-p/2658968

S. Hrg. 114-409, p. 183 (July 23, 2016), emphasis added.

68. Meanwhile, the FCC has identified these fees by "MVPDs" (Multichannel Video Programming Distributors, such as Comcast) as potentially deceptive, stating the following and seeking public comment:

> Some MVPDs have added various video-related fees to monthly billing statements. Such fees include, for instance, a broadcast fee to partially recoup retransmission consent fees charged by local broadcast stations and a sports fee to defray the cost of sports programming. *Some MVPDs may raise subscribers' total monthly bills using these fees without raising the advertised package prices*. We seek comment on the competitive strategy associated with adding video-related fees as opposed to raising monthly subscription prices… Do such fees enable MVPDs to better attract new subscribers and retain existing subscribers? Are consumers less responsive to a $1 video-related fee than they are to a $1 increase in the price of video services?

See FCC Public Notice, 30 FCC Rcd 7114, released on July 2, 2015, available at https://www.fcc.gov/ecfs/filing/60001090312, emphasis added.

69. Consumer advocates and journalists have criticized the Broadcast TV Fee and Regional Sports Fee scheme.

70. Consumerist.com, a website published by a subsidiary of Consumer Reports, upon first learning of Comcast's plan to impose a Broadcast TV Fee, stated: "[S]ince this is a fee tacked on above the bill, the company may still be able to advertise the monthly rate without the fee. So this is an attempt to jack up your bill without being transparent about the total costs to potential subscribers."[14] Consumerist's prediction was of course borne out.

71. One journalist called the Broadcast TV Fee "maddening because of the way it's being conducted… [B]y tacking on the additional cost below the bill's main charges, the company is able to jack up prices without having to advertise that anything has changed."[15]

72. Another journalist stated that Comcast's charging a Broadcast TV Fee is "like The Cheesecake Factory listing a piece of cheesecake for $5.99 then adding a $1.50 sugar surcharge

---

[14] Morran, Chris, "Comcast Wants To Be Hated Even More, Adding $1.50 'Broadcast TV Fee'", Consumerist, November 25, 2013, available at https://consumerist.com/2013/11/25/comcast-wants-to-be-hated-even-more-adding-1-50-broadcast-tv-fee/.

[15] Duryee, Tricia, "Why Comcast Just Added a $1.50 'Broadcast TV Fee' to Your Monthly Bill", Geekwire, July 23, 2014, available at http://www.geekwire.com/2014/comcast-just-added-1-50-broadcast-tv-fee-bill.

when you get your bill."[16]

73. Comcast's false promises, misrepresentations, and failure to adequately disclose the Broadcast TV Fee and the Regional Sports Fee are material to reasonable consumers, and are unfair and done in bad faith.

74. Comcast's misrepresentations and practices injured and caused Plaintiff and Class members to lose money or property in that they paid more for their Comcast service packages than they were promised and otherwise should have paid.

75. Comcast will continue deceiving and cheating its customers with its Broadcast TV Fee and Regional Sports Fee scheme until it is forced by law to stop. The scheme is far too profitable. Plaintiffs estimate that Comcast earns approximately $2 billion per year from these hidden fees – *over $200 million annually from its California customers alone*.

## V. PLAINTIFF'S INDIVIDUAL FACTUAL ALLEGATIONS

76. On August 15, 2015, Plaintiff Joseph Loomis entered into a one-year fixed price contract with Comcast to provide broadband Internet to his Moss Beach, California home for $39.99 per month. Up until May 19, 2016, the monthly charge remained $39.99 per month. However on May 19, 2016 Comcast began charging Mr. Loomis an additional $4.99 for a Service Protection Plan which he did not order. Mr. Loomis contacted Comcast and an agent told him she would reverse the charge.

77. On June 19, 2016, Mr. Loomis went to the "A Wireless" store in Burlingame, California, an authorized Verizon Wireless retailer, regarding his Verizon wireless service. A salesperson at the store said they could offer him a special deal on a Comcast package because he was a Verizon customer. The salesperson promised Mr. Loomis he could upgrade his existing Comcast Internet service (whose contract would be expiring soon) to Preferred XF Double Play (Internet plus television) for $65.00 per month plus tax guaranteed for 24 months and with the installation fee waived, plus a DVR for an additional $9.95 per month. Based on this promise, Mr.

[16] Kline, Daniel, "The Truth Behind Comcast's $1.50 Retransmission Fee", The Motley Fool, July 25, 2014, available at http://www.fool.com/investing/general/2014/07/25/the-truth-behind-comcasts-150-retransmission-fee.aspx.

Loomis placed the order for the Comcast service package. The salesperson gave him a form summary of the transaction, which did not reflect what he had promised Mr. Loomis. At Mr. Loomis' request the salesperson made some hand written notations on the form agreement to reflect the terms he had promised, including crossing out the price of $99.99 and the HD Technology Fee of $10.00, and writing on the receipt "$65 plus tax." The salesperson never mentioned the existence of the Broadcast TV Fee or the Regional Sports Fee, and the form summary made no reference to the Fees.

78. Later that day, Mr. Loomis received a "service changes" confirmation email from Comcast regarding the order he had placed via the A Wireless agent. See **Exhibit D**, red highlight added. The order confirmation did not reflect what he had been promised, and showed a much higher monthly charge, installation charges, an additional monthly HD Technology Fee, and $17.59 of unspecified "Taxes, Surcharges and Fees." The order confirmation did not mention the Broadcast TV Fee or Regional Sports Fee.

79. The next day on June 20, 2016, Mr. Loomis went to Comcast's website and initiated a web chat with a Comcast agent to determine the reason for the pricing discrepancy and to correct his order to reflect what he had been promised. Mr. Loomis engaged in a web chat because he wanted to be able to document, in the form of saved chat logs, further conversations with and promises by Comcast regarding service package pricing.

80. The sales chat agent transferred Mr. Loomis to a billing chat agent. The billing chat agent, "Nikko," told Mr. Loomis that Comcast could not honor the price and contract given to him by the A Wireless salesperson.

81. Nikko then offered to cancel Mr. Loomis' current order, and to replace it with a new one. The agent offered a new service package for $59.99 plus "taxes and fees."

82. Mr. Loomis asked Nikko, "What would be the fees?"

83. Nikko responded, "Fees will include your modem rental, dvr rental and alike."

84. At no point did Nikko mention the existence of the Broadcast TV Fee or the Regional Sports Fee.

85. Mr. Loomis told Nikko that for now, he wanted to cancel the order placed by the A

Wireless salesperson, and to take some more time to consider his options.

86. Nikko again urged him to sign up for the $59.99 package, telling him, "So it will be 59.99 + one time shipping + taxes (since you have your own modem."

87. Mr. Loomis declined.

88. Mr. Loomis then asked Nikko to check his existing Comcast account and confirm the Service Protection Plan charge had in fact been reversed as promised by a previous customer service agent. Nikko indicated the charge had not been cancelled, promised to reverse the charges, and told Mr. Loomis he would no longer be charged for the Service Protection Plan.

89. The next day on June 21, 2016, Mr. Loomis initiated another web chat on the Comcast website to upgrade his service plan.

90. This time Mr. Loomis chatted with a sales agent named "Eunice."

91. Eunice offered Mr. Loomis a Starter Double play bundle deal at $79.99 per month for 24 months, with a DVR rental for $10.00 per month, no HD Technology Fee, and no other charges except taxes.

92. Eunice made no mention of the existence of the Broadcast TV Fee or the Regional Sports Fee.

93. Relying on the chat agent's representations, Mr. Loomis accepted the offer and told Eunice to place the order.

94. Eunice told Mr. Loomis that he would shortly receive an email order confirmation for the transaction. At the end of the chat, Mr. Loomis completed a chat survey, expecting to be able to email the chat transcript to himself at the end of the chat survey. But at the end of the survey there was no way for him to email the chat transcript to himself or to access the transcript.

95. Concerned that he had no documentation of the agreement made and order placed in the chat with Eunice, Mr. Loomis immediately initiated another web chat on Comcast's website to attempt to get a copy of the chat transcript.

96. This time Mr. Loomis spoke with a chat agent named "Linda."

97. Mr. Loomis asked Linda how he could obtain the chat transcript of the conversation with Eunice.

98. Linda told Mr. Loomis she could only give Mr. Loomis the chat ID number, but that she could not send him a copy of the chat, and that even she was unable to view the contents of the chat.

99. Linda told Mr. Loomis that although she could not access or email him the prior chat, she could describe the order that was placed. Linda also told Mr. Loomis that he would receive an email order confirmation of the order placed with Eunice within 24 hours.

100. Mr. Loomis told Linda, "What I need is what Eunice said the package would include, including pricing, in case there is a discrepancy between what is provided and what she said."

101. After going over the submitted order with Linda, Mr. Loomis determined that he was going to be charged more in months 13-24 than what Eunice had promised him. Mr. Loomis was going to be charged $79.99 plus $10.00 (not $0.00) for the monthly HD Technology Fee for all 24 months, and was going to be charged $0.00 (not $10.00) for the DVR for the first 12 months but then would be charged an additional $19.99 for the DVR for months 13-24.

102. Linda told Mr. Loomis that "the order has already been processed and I am unable to make any changes."

103. Linda then offered to transfer Mr. Loomis to a sales chat agent to see if the sales agent could reduce the price.

104. Linda transferred Mr. Loomis to a sales chat agent named "Surinder."

105. Surinder offered Mr. Loomis a fixed $79.99 monthly fee for all 24 months, and to waive the $9.95 DVR fee and the $10.00 HD Technology Fee for the first 12 months. Mr. Loomis calculated that this would result in the same total price paid at the end of 24 months as he had been previously promised by Eunice.

106. Surinder made no mention of the existence of the Broadcast TV Fee or the Regional Sports Fee.

107. Surinder told Mr. Loomis, "With the changes, the new monthly bill would be $79.99/mo + taxes for the next 12 months."

108. Relying on Surinder's representations, Mr. Loomis accepted the offer and told

Surinder to place the order. Surinder told Mr. Loomis that he would "receive an email confirmation within the next 2 hours with all the information."

109. Mr. Loomis never received an email order confirmation for the order placed with Surinder, just as he never received an email order confirmation for the prior order placed with Eunice.

110. Mr. Loomis also did not receive a copy of a Minimum Term Agreement or the Comcast Subscriber Agreement at that time.

111. The new service contract (i.e. the contract agreed to with Surinder which was documented in the chat transcript saved by Mr. Loomis) started June 25, 2016.

112. The first bill Mr. Loomis received from Comcast under the new contract was dated July 10, 2016. Mr. Loomis did not fully understand the July 10 bill due to the *twenty* different pro-rated credits and charges in the "Other charges and credits" section, such that it was unclear to him the items for which he was being charged versus the items for which there were offsetting credits.

113. The second bill Mr. Loomis received under the new contract was dated August 10, 2016. In this bill, the only line items listed in the "Other charges and credits" section were charges for the Broadcast TV Fee and the Regional Sports Fee for a total of $8.00, this time with no offsetting credits.

114. Mr. Loomis was upset about being charged this mysterious Broadcast TV Fee and Regional Sports Fee, which had not been previously disclosed to him and which caused his bill to be $8.00 higher than promised.

115. Mr. Loomis called Comcast customer service several times to complain about the Fees and spoke with several Comcast agents. Comcast agents falsely told him that the Fees were "required by federal law" and were "taxes."

116. When the agents told him that they could not remove the Fees from his bill and that everyone with television service had to pay them, Mr. Loomis requested that the agents simply reduce his base package price by $8.00 per month to offset the amount of the Fees, to honor his promised price. The agents refused to reduce his base package price to offset the Fees,

telling Mr. Loomis they were unable to do so and that their hands were tied.

117. On August 16, 2016, Mr. Loomis drafted a letter on his Attorney at Law letterhead in which he documented his experience, enclosed a copy of his chat session with Surinder containing the terms of his agreement, and demanded that Comcast remove the $8.00 in Fees from his monthly bills, or, alternatively, reduce his monthly bill by $8.00 to offset the amount of the Fees in order to comply with the agreed upon contractual terms. Mr. Loomis mailed the letter to three different Comcast addresses including Comcast's corporate headquarters in Philadelphia, Pennsylvania.

118. On September 12, 2016, in response to his letters, Mr. Loomis received an email and voicemail from "Mark" of Comcast "Executive Customer Relations." The email stated that Mark was his "case manager."

119. Mr. Loomis spoke to Mark, who stated he was located in Texas.

120. Mark, who appeared to have reviewed Mr. Loomis' letter and the enclosed chat transcript of the placement of the order with Surinder, offered to give Mr. Loomis a credit of $192.00, representing a refund of 24 months of $8.00 in monthly Fees.

121. But Mark told Mr. Loomis that despite this credit, Comcast could increase the Broadcast TV Fee or the Regional Sports Fee, or add other fees, *anytime* after the first three months of the two-year contract term.

122. Mr. Loomis asked Mark how could that be since he had an agreement with Comcast for a guaranteed fixed price per month.

123. Mark said the only thing Comcast can guarantee in a 24-month contract is that the "package price" will remain fixed.

124. Mr. Loomis responded to Mark that increasing the Fees after the first 3 months is just a surreptitious way of increasing the guaranteed package price.

125. Mark replied that "all the cable companies do this," and that Comcast's contract permitted it.

126. Mr. Loomis told Mark that he had never seen a contract, and he asked Mark to send him the contract.

127. Mark sent via postal mail a 24-month Minimum Term Agreement to Mr. Loomis, which Mr. Loomis received on September 21, 2016. (See **Exhibit G.**) Mr. Loomis had never seen the document before.

128. Mr. Loomis examined the Minimum Term Agreement, and saw that the undefined terms "Broadcast TV Fee" and "Regional Sports Fee" were buried in a sentence combined with taxes and government fees.

129. On October 23, 2016, Mr. Loomis submitted a complaint to the FCC about: (1) Comcast's practice of charging the Fees in breach of its promises to him; and (2) Comcast's assertion that it could increase the Fees after three months into his two-year contract despite Comcast's having promised him a guaranteed locked-in rate.

130. In response to this FCC complaint, Mr. Loomis received a call from a Comcast agent named "Robert."

131. Robert told Mr. Loomis that what Comcast was doing regarding its billing was "legal."

132. Mr. Loomis informed Robert that he had previously received a $192.00 credit from Comcast representing a refund of 24 months of $8.00 in monthly Fees.

133. Robert told Mr. Loomis he was "surprised" that Comcast had granted him the credit.

134. Mr. Loomis told Robert that Mark, the agent who had granted the credit, had told Mr. Loomis that Comcast could increase these Fees – which Mr. Loomis never agreed to in the first place – at any time, and that the $192.00 would not cover these future increases in the Fees. Mr. Loomis asked Robert if Comcast's position was indeed that it could increase the Fees at any time during the contract.

135. Robert responded that yes, Comcast could increase the Broadcast TV Fee and Regional Sports Fee from time to time even during the 24 month contract, and that Comcast could even add new fees if it so desired.

136. On November 18, 2016, Mr. Loomis received an email from the FCC that Comcast had provided the FCC with a response and that his complaint was now closed.

137. Mr. Loomis then mailed a second letter of complaint to Comcast. Mr. Loomis stated in the letter that despite granting him the $192.00 credit, Comcast agents had told him that Comcast could increase the Fees in the future at any time. Mr. Loomis wrote that he objected to any future increase in the Fees, and he reminded Comcast that he had not agreed to the Fees in the first place, let alone to their increase in the middle of his fixed-rate contract term.

138. On December 28, 2016, in response to his second letter of complaint, Mr. Loomis received a phone call from another agent named "Ryan." Ryan told Mr. Loomis, as Comcast agents Mark and Robert had told him previously, that Comcast could raise the Broadcast TV Fee and the Regional Sports Fee at any time during the term of the promised fixed-rate contract. Ryan then appeared to threaten Mr. Loomis that if he continued to complain, Comcast could even reverse the $192.00 credit.

139. Mr. Loomis decided not to pursue the matter further at that time.

140. A bit over two months later, Comcast notified Mr. Loomis in his March 10, 2017 bill that Comcast would be increasing the Broadcast TV Fee from $5.00 to $7.00, and the Regional Sports Fee from $3.00 to $5.00, effective July 1, 2017 - approximately half-way into his two-year fixed-rate contract.

141. In sum, Comcast failed to honor its agreements with and representations to Mr. Loomis, and Comcast is charging Mr. Loomis more for his service package than what Comcast promised him. Mr. Loomis materially relied upon Comcast's misrepresentations and omissions, which in conjunction with Comcast's acts and practices alleged herein caused Mr. Loomis to suffer imminent harm, injury in fact, and lost money or property.

## VI. CLASS ACTION ALLEGATIONS

142. Plaintiff brings this class-action lawsuit on behalf of himself and the members of the proposed Class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure. Plaintiff seeks certification of the following Class:

> **All persons in California whom Comcast has charged a "Broadcast TV Fee" and/or a "Regional Sports Fee" within the applicable statute of limitations.**

143. Specifically excluded from the Class are Comcast and any entities in which

Comcast has a controlling interest, Comcast's agents and employees, the judge to whom this action is assigned, members of the judge's staff, and the judge's immediate family.

144. ***Numerosity.*** Plaintiff does not know the exact number of Class members but believes that the Class comprises hundreds of thousands of consumers in California. As such, Class members are so numerous that joinder of all members is impracticable.

145. ***Commonality and predominance.*** Well-defined, nearly identical legal or factual questions affect all Class members. These questions predominate over questions that might affect individual Class members. These common questions include, but are not limited to, the following:

a. Whether Comcast falsely advertised its cable television service packages at flat monthly rates while in fact intending to charge more than promised via a Broadcast TV Fee and/or a Regional Sports Fee;

b. Whether Comcast's representations to Plaintiff and the Class regarding the monthly price to be charged were objectively material;

c. Whether Plaintiff and the Class relied on these promised flat monthly rates in contracting with Comcast for services;

d. Whether Comcast adequately disclosed and described its Broadcast TV Fee and Regional Sports Fee to Plaintiff and the Class;

e. Whether Comcast's advertising misled consumers into falsely believing that the advertised price for its service packages – which omits the charges for the Broadcast TV Fee and the Regional Sports Fee – is the actual price consumers will pay except for equipment charges and bona fide taxes and government fees;

f. Whether Comcast had a policy of instructing and/or encouraging its sales agents to mislead consumers into falsely believing that the quoted price for its service packages – which omits the charges for the Broadcast TV Fee and the Regional Sports Fee – is the actual price consumers will pay except for equipment charges and bona fide taxes and government fees;

g. Whether Comcast had a policy of instructing and/or encouraging its sales and customer service agents to make misleading or false statements to consumers regarding the nature and purpose of the Broadcast TV Fee and the Regional Sports Fee;

h. Whether Comcast's disclaimers in its advertising, Minimum Term Agreements, and/or customer bills were misleading because they falsely imply that the Broadcast TV Fee and the Regional Sports Fee are government-related fees;

i. Whether Comcast's representations and descriptions of the Broadcast TV Fee and the Regional Sports Fee in its customer bills were deceptive;

j. Whether Comcast breached its Subscriber Agreement and/or other agreements with Plaintiff and the Class by charging the Broadcast TV Fee and the Regional Sports Fee;

k. Whether Comcast breached its contractual obligations to Plaintiff and the Class by increasing the Broadcast TV Fee and the Regional Sports Fee in the middle of minimum term fixed-rate customer contracts;

l. Whether Comcast gave adequate notice to Plaintiff and the Class when it increased the amount of the Broadcast TV Fee and the Regional Sports Fee charged to them;

m. Whether Comcast wrongfully took possession of and has since retained monies belonging to Plaintiff and the Class;

n. Whether Comcast acted inconsistently with the reasonable expectations of Plaintiff and the Class;

o. Whether Comcast breached the implied covenant of good faith and fair dealing as to Plaintiff and the Class;

p. Whether Comcast failed to disclose objectively material information to Plaintiff and the Class regarding the true monthly price to be charged for its service plans;

q. Whether Comcast failed to disclose objectively material information to Plaintiff and the Class regarding the Broadcast TV Fee and the Regional Sports Fee;

r. Whether Comcast's representations and omissions had a tendency to deceive consumers;

s. Whether Comcast's Subscriber Agreement and/or Minimum Term Agreements with its customers contain unconscionable terms;

t. Whether Comcast's Subscriber Agreement and/or Minimum Term

Agreements with its customers contain illusory terms;

u. Whether Comcast was unjustly enriched;

v. Whether Comcast's conduct alleged herein violated California's consumer protection laws;

w. Whether Plaintiff and the Class have sustained monetary loss and the proper measure of that loss;

x. Whether Plaintiff and the Class are entitled to damages and/or restitution; and

y. Whether Comcast should be enjoined from further engaging in the misconduct alleged herein.

146. ***Typicality.*** Plaintiff's claims are typical of Class members' claims. Plaintiff and Class members all sustained injury as a direct result of Comcast's standard practice and scheme of advertising and promising a low, flat monthly rate while instead charging a much higher rate through the use of inadequately disclosed and deceptive Fees.

147. ***Adequacy.*** Plaintiff will fairly and adequately protect Class members' interests. Plaintiff has no interests antagonistic to Class members' interests, and Plaintiff has retained counsel who has considerable experience and success in prosecuting complex class action and consumer protection cases.

148. ***Superiority.*** A class action is the superior method for fairly and efficiently adjudicating this controversy for the following reasons without limitation:

a. Class members' claims are relatively small compared to the burden and expense required to litigate their claims individually, so it would be impracticable for Class members to seek individual redress for Comcast's illegal and deceptive conduct;

b. Even if Class members could afford individual litigation, the court system could not. Individual litigation creates the potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court; and

c. Plaintiff anticipates no unusual difficulties in managing this class action.

## VII. COMCAST'S ARBITRATION CLAUSE IS UNENFORCEABLE AGAINST CALIFORNIA CUSTOMERS

149. Pursuant to the terms in Comcast's Subscriber Agreement and California law, the arbitration clause contained in the Subscriber Agreement is unenforceable against Plaintiff and the Class and their claims *must* be decided by a Court and not in arbitration.

150. On April 6, 2017, the California Supreme Court unanimously ruled in *McGill v. Citibank, N.A.*, ____ Cal.5th _____ (attached hereto as **Exhibit J**), that a provision in an arbitration agreement which waives the right to seek public injunctive relief "is contrary to California public policy and is thus unenforceable under California law." Slip op. at 1.

151. More than one year earlier, on March 23, 2016, Comcast had modified the arbitration clause (Section 13 of its Subscriber Agreement, see **Exhibit H**) to state that if the arbitration clause's ban on public injunctive relief is found to be unenforceable, then *the entire arbitration clause will be unenforceable*.

152. Section 13(j) of the Subscriber Agreement reads as follows (emphasis added):

> **j. Severability and Waiver of Jury Trial.** If any part of Section (h) of this Arbitration Provision is found to be illegal or unenforceable, the entire Arbitration Provision will be unenforceable and the Dispute will be decided by a court. WHETHER IN COURT OR IN ARBITRATION, YOU AND COMCAST AGREE TO WAIVE THE RIGHT TO A TRIAL BY JURY TO THE FULLEST EXTENT ALLOWED BY LAW. If any other clause in this Arbitration Provision is found to be illegal or unenforceable, that clause will be severed from this Arbitration Provision, and the remainder of this Arbitration Provision will be given full force and effect.

153. Section 13(h) of the Subscriber Agreement reads as follows (emphasis added):

> **h. Waiver of Class Actions and Collective Relief.** THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CLASS ACTION, JOINT OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC (SUCH AS A PRIVATE ATTORNEY GENERAL), OTHER SUBSCRIBERS, OR OTHER PERSONS. THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT INDIVIDUAL PARTY'S CLAIM. THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR

CLASS PROCEEDING.

154. The California Supreme Court's *McGill v. Citibank* decision is currently the ultimate authority on the enforceability of arbitration clause waivers of public injunctive relief under California law.

155. It is thus irrefutable that under California law, Comcast's arbitration waiver of public injunctive relief - i.e., its waiver in Section 13(h) of "claims brought in a purported representative capacity on behalf of the public (such as a private attorney general)" – is, pursuant to the Supreme Court's decision in *McGill v. Citibank*, "contrary to California public policy and is thus unenforceable under California law."

156. Given Comcast's clear statement at Section 13(j) that "If any part of Section (h) of this Arbitration Provision is found to be illegal or unenforceable, the entire Arbitration Provision will be unenforceable and the Dispute will be decided by a court," it is irrefutable that because the arbitration clause's ban on public injunctive relief is now unenforceable, the *entire* arbitration clause is unenforceable, including its prohibition of class actions. It is also undeniable that this lawsuit is now subject to trial by jury.

## VIII. CHOICE OF LAW

157. The law of California applies.

## CAUSES OF ACTION

### COUNT I
### Breach of Contract

158. Plaintiff realleges and incorporates by reference every allegation set forth in the preceding paragraphs as though alleged in this Count.

159. Comcast entered into valid contractual agreements with Plaintiff and all Class members.

160. The essential terms of Comcast's contracts with Plaintiff and Class members included Comcast's obligation to provide services at the monthly promised rate for the contract's duration.

161. The essential terms of Comcast's contracts with Plaintiff and Class members included that the promised and quoted price was the actual price they would pay except for equipment charges and bona fide taxes and government-related fees.

162. Plaintiff and all Class members gave consideration that was fair and reasonable, and have performed all conditions, covenants, and promises required to be performed under their contracts with Comcast.

163. Comcast has breached its contracts with Plaintiff and Class members by charging more than it promised via an inadequately and deceptively disclosed Broadcast TV Fee and/or Regional Sports Fee.

164. Comcast has also breached its contracts with Plaintiff and Class members by increasing the amount of these Fees to effectively raise the monthly service price in the middle of customer contracts despite having promised a lower fixed monthly rate.

165. Comcast's contractual breaches are ongoing. Absent an order from the Court ordering Comcast to perform as it is required under its contracts with Plaintiff and Class members, Comcast will continue to breach its contracts to the detriment of the Class.

**COUNT II**
**Breach of the Covenant of Good Faith and Fair Dealing**

166. Plaintiff realleges and incorporates by reference every allegation set forth in the preceding paragraphs as though alleged in this Count.

167. A covenant of good faith and fair dealing is implied in every contract, including Comcast's contracts with Plaintiff and Class members.

168. The material terms of Comcast's contracts with Plaintiff and Class members include Comcast's obligation to provide services at the promised monthly rate for the contract's duration.

169. Where a contract vests one party with discretion, the duty of good faith and fair dealing applies, and the party exercising the discretion must do so in a manner that satisfies the objectively reasonable expectations of the other party. A party may not perform an agreement in a manner that would frustrate the basic purpose of the agreement and/or deprive the other party of

its rights and benefits under the agreement.

170. It was objectionably reasonable under the circumstances, based on Comcast's misrepresentations and omissions, for Plaintiff and the Class to expect that Comcast's advertised and promised monthly service price was price Comcast would actually charge them for their service.

171. It was objectionably reasonable under the circumstances for Plaintiff and the Class to expect that Comcast would not hide price increases in the form of deceptive and inadequately disclosed charges which Comcast called the Broadcast TV Fee and the Regional Sports Fee.

172. It was objectionably reasonable under the circumstances for Plaintiff and the Class to expect Comcast would not increase its service price via increases in said Fees in the middle of a minimum term contract contrary to its promise to charge a fixed monthly rate.

173. Comcast has abused any and all power it has to impose the prices charged to Plaintiff and the Class. Moreover, Comcast's conduct alleged herein is inconsistent with the reasonable expectations of Plaintiff and the Class, and is inconsistent with what an objectively reasonable consumer would have expected under the circumstances.

174. Comcast has acted in a manner that frustrates a basic purpose of its contracts with Plaintiff and the Class, and has deprived Plaintiff and the Class of benefits and rights that they are entitled to under their contracts with Comcast.

175. Plaintiff and all Class members gave consideration that was fair and reasonable, and have performed all conditions, covenants, and promises required under their contracts with Comcast.

176. By reason of Comcast's breach of the implied covenant of good faith and fair dealing, Plaintiff and all Class members suffered damages, in an amount to be proven at trial.

177. Comcast's breaches of the implied covenant of good faith and fair dealing are ongoing. Injunctive relief is required to prevent Comcast from further breaching the implied covenant to the detriment of the Class.

**COUNT III**
**Unjust Enrichment**

178. Plaintiff realleges and incorporates by reference every allegation set forth in the preceding paragraphs as though alleged in this Count.

179. Comcast has been knowingly enriched, at the expense of Plaintiff and the Class, as a result of its misconduct alleged herein. Such enrichment includes the substantial revenues that Comcast has received from Plaintiff and the Class for the inadequately disclosed and deceptive Broadcast TV Fees and Regional Sports Fees that Comcast charged them, over and above what Comcast should have charged them.

180. If Comcast had adequately disclosed the Fees, then Plaintiff and the Class could have evaluated whether to purchase Comcast services based on the amounts that Comcast would really charge them. Instead, Comcast chose to deceive consumers by tricking them into thinking they would pay less, and thus has been unjustly enriched.

181. Plaintiff's and Class members' detriment, and Comcast's enrichment, are traceable to, and resulted directly and proximately from, the misconduct challenged in this Complaint.

182. It would be inequitable for, and good conscience militates against permitting, Comcast to retain the amounts that it received as a result of the misconducted alleged herein.

183. Plaintiff and the Class are entitled to restitution of, disgorgement of, and/or the imposition of a constructive trust upon, all amounts obtained by Comcast as a result of its misconduct alleged herein.

**COUNT IV**
**Violations of California's Unfair Competition Law**
**California Business and Professions Code § 17200 *et seq.***

184. Plaintiff realleges and incorporates by reference every allegation set forth in the preceding paragraphs as though alleged in this Count.

185. Comcast's practices, misrepresentations, and omissions alleged herein constitute unlawful, unfair, or fraudulent business practices in violation of California Business and

Professions Code § 17200 *et seq*.

186. The misrepresentations and omissions by Comcast alleged herein were the type of representations and omissions that are regularly considered to be material, i.e., a reasonable person would attach importance to them and would be induced to act on the information in making purchase decisions.

187. Plaintiff and each of the Class members reasonably relied upon Comcast's material misrepresentations and omissions in purchasing their service contracts.

188. As a result of the foregoing, Plaintiff and each Class member have been injured and have lost money or property and are entitled to restitution and injunctive relief.

189. Unless restrained by this Court, Comcast will continue to engage in unfair, deceptive, and unlawful conduct, as alleged above, in violation of California Business and Professions Code § 17200 *et. seq*.

**COUNT V**

**Violations of California Business and Professions Code § 17500 *et seq.* ("FAL")**

190. Plaintiff realleges and incorporates by reference every allegation set forth in the preceding paragraphs as though alleged in this Count.

191. Comcast has committed acts of untrue and misleading advertising, as defined by California Business and Professions Code § 17500 ("False Advertising Law" or "FAL"), by engaging in the acts and practices described herein with the intent to induce consumers to purchase its service plans.

192. Comcast's misrepresentations and omissions deceive or have a tendency to deceive the general public.

193. The misrepresentations and omissions by Comcast alleged herein were the type of representations and omissions that are regularly considered to be material, i.e, a reasonable person would attached importance to them and would be induced to act on the information in making purchase decisions.

194. Plaintiff and each of the Class members reasonably relied on Comcast's false advertising in purchasing their service contracts.

195. As a result of the foregoing, Plaintiff and the members of the Class have been injured and have lost money or property and are entitled to restitution and injunctive relief.

196. Unless restrained by this Court, Comcast will continue to engage in untrue and misleading advertising, as alleged above, in violation of California Business and Professions Code § 17500 *et seq.*

**COUNT VI**
**Violations of California's Consumer Legal Remedies Act ("CLRA")**
**California Civil Code § 1750 *et seq.***

197. Plaintiff realleges and incorporates by reference every allegation set forth in the preceding paragraphs as though alleged in this Count.

198. Comcast is a "person," as defined by California Civil Code § 1761(c).

199. Plaintiff, and each of the Class members, are "consumers," as defined by California Civil Code § 1761(d).

200. The service plans marketed and sold by Comcast constitute "goods" and "services" as defined by California Civil Code § 1761(a) and (b).

201. Plaintiff's and the Class members' purchases of Comcast's services constitute "transactions," as defined by California Civil Code § 1761(e).

202. Venue is proper under California Civil Code § 1780(d) because a substantial portion of the transactions at issue occurred in this county. Plaintiff's declaration establishing that this Court has proper venue for this action is attached hereto as **Exhibit I**.

203. Comcast intentionally misled consumers to believe it would charge consumers an advertised and promised flat monthly rate for television programming, but in fact Comcast charged a much higher rate via an inadequately disclosed and deceptive Broadcast TV Fee and Regional Sports Fee. Comcast intentionally deceived consumers by hiding and disguising said Fees in its advertising, contracts, and customer bills, and by falsely implying and/or stating that the Fees were government-related charges.

204. Comcast's misrepresentations, active concealment, and failures to disclose violated the CLRA in ways including, but not limited to, the following:

a. Comcast misrepresented that its service plans had characteristics, benefits,

or uses that they did not have (Cal. Civ. Code § 1770(a)(5));

b. Comcast advertised its services with an intent not to sell them as advertised (Cal. Civ. Code § 1770(a)(9));

c. Comcast made false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions (Cal. Civ. Code § 1770(a)(13));

d. Comcast misrepresented that its service plans conferred rights, remedies or obligations that they did not have (Cal. Civ. Code § 1770(a)(14));

e. Comcast misrepresented that its service plans were supplied in accordance with previous representations when they were not (Cal. Civ. Code § 1770(a)(16)); and

f. Comcast inserted unconscionable provisions in its customer contracts (Cal. Civ. Code § 1770(a)(19)).

205. Comcast's misrepresentations and nondisclosures regarding its service plans were material to Plaintiff and members of the Class because a reasonable person would have considered them important in deciding whether to purchase Comcast's service plans, and because Comcast had a duty to disclose the truth.

206. Plaintiff and the Class members reasonably relied upon Comcast's material misrepresentations and nondisclosures, and had they known the truth, they would have acted differently.

207. As a direct and proximate result of Comcast's material misrepresentations and nondisclosures, Plaintiff and the Class members have suffered monetary damages and been irreparably harmed.

208. On behalf of the Class, Plaintiff seeks injunctive relief in the form of an order enjoining Comcast from making such material misrepresentations and omissions, and to cease charging the Fees to customers who are currently under Minimum Term Agreement contracts which were procured via said material misrepresentations and omissions.

**COUNT VII**
**Injunctive Relief**

209. Plaintiff realleges and incorporates by reference every allegation set forth in the

preceding paragraphs as though alleged in this Count.

210. If not enjoined by order of this Court, Comcast will continue to injure Plaintiff and the Class through the misconduct alleged herein.

211. Plaintiff seeks the following injunctive relief: (1) that Comcast be enjoined from advertising and promising a price for its services that does not include the applicable amounts currently described by Comcast as the Broadcast TV Fee and the Regional Sports Fee; (2) that Comcast be required to include all charges it imposes to reimburse itself for its contractual payments to the broadcast television stations and local sports channels in its advertised, promised, and stated price for its services, including in the top-line price for the service plans in its advertising and on its customer bills; (4) that Comcast be enjoined from falsely characterizing or implying that the Broadcast TV Fee and the Regional Sports Fee are taxes or government-related fees; and (5) that Comcast be enjoined from charging the Broadcast TV Fee and the Regional Sports Fee to customers who are currently under Minimum Term Agreement contracts which were procured via the misconduct alleged in this Complaint.

212. Plaintiff and the Class will be irreparably injured if Comcast continues in its present course of conduct.

213. Pecuniary compensation will not afford adequate relief.

214. The balance of the equities favors this Court's issuance of the relief requested by Plaintiff.

215. The public interest and public policy favor this Court's issuance of the relief requested by Plaintiff.

**COUNT VIII**
**Declaratory Relief**

216. Plaintiff realleges and incorporates by reference every allegation set forth in the preceding paragraphs as though alleged in this Count.

217. Plaintiff is a person interested under the California Declaratory Judgment Act (California Code of Civil Procedure § 1060 et seq.), and, as such, desires a declaration of his

rights or duties with respect to another, or in respect to property in this actual controversy relating to the legal rights and duties of the respective parties.

218. Plaintiff and the Class do not have a plain, speedy and/or adequate remedy in the ordinary course of law.

219. Plaintiff and the Class are entitled to the relief demanded, and the relief, or any part thereof, consists in declaratory relief to restrain the commission or continuance of the acts complained of.

220. For example, and without limitation, Plaintiff and the Class are entitled to the following declaratory relief: (1) a finding that Comcast has engaged in unfair, unlawful, and/or fraudulent business acts or practices in violation of California law; (2) that Comcast stop advertising and promising a price for its services that does not include the applicable amounts currently described by Comcast as the Broadcast TV Fee and the Regional Sports Fee; (3) that Comcast include all charges it imposes to reimburse itself for its contractual payments to the broadcast television stations and local sports channels in its advertised, promised, and stated price for its services, including in the top-line price for the service plans in its advertising and on its customer bills; (4) that Comcast stop falsely characterizing or implying that the Broadcast TV Fee and Regional Sports Fee are taxes or government-related fees; and (5) that Comcast cease charging the Broadcast TV Fee and Regional Sports Fee to customers who are currently under Minimum Term Agreement contracts which were procured via the misconduct alleged in this Complaint.

221. Plaintiff and the Class will be irreparably injured if Comcast continues in its present course of conduct.

222. Pecuniary compensation will not afford adequate relief.

223. The balance of the equities favors this Court's issuance of the relief requested by Plaintiff.

224. The public interest and public policy favor this Court's issuance of the relief requested by Plaintiff.

## PRAYER FOR RELIEF

On behalf of himself and the Class, Plaintiff requests that the Court order relief and enter judgment against Comcast as follows:

1. An order certifying the proposed Class and appointing Plaintiff and his counsel to represent the Class;

2. An order that Comcast is permanently enjoined from its misconduct as alleged herein;

3. An order that Comcast cease charging the Fees to customers who are currently under Minimum Term Agreement contracts which were procured via the misconduct alleged herein;

4. A judgment awarding Plaintiff and Class members restitution, including, without limitation, restitutionary disgorgement of all profits and unjust enrichment that Comcast obtained as a result of its misconduct as alleged;

5. A judgment awarding Plaintiff and Class members actual damages;

6. A judgment awarding Plaintiff and Class members punitive, exemplary and/or treble damages;

7. Pre-judgment and post-judgment interest;

8. Attorneys' fees, expenses, and the costs of this action; and

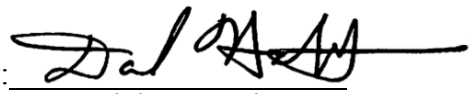
9. All other and further relief as this Court deems necessary, just and proper.

## JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: April 14, 2017

Respectfully submitted,

By: 
Daniel M. Hattis

Daniel M. Hattis (SBN 232141)
HATTIS LAW
P.O. Box 1645
Bellevue, WA 98009
Telephone: (650) 980-1990
Facsimile: (425) 412-7171
Email: dan@hattislaw.com

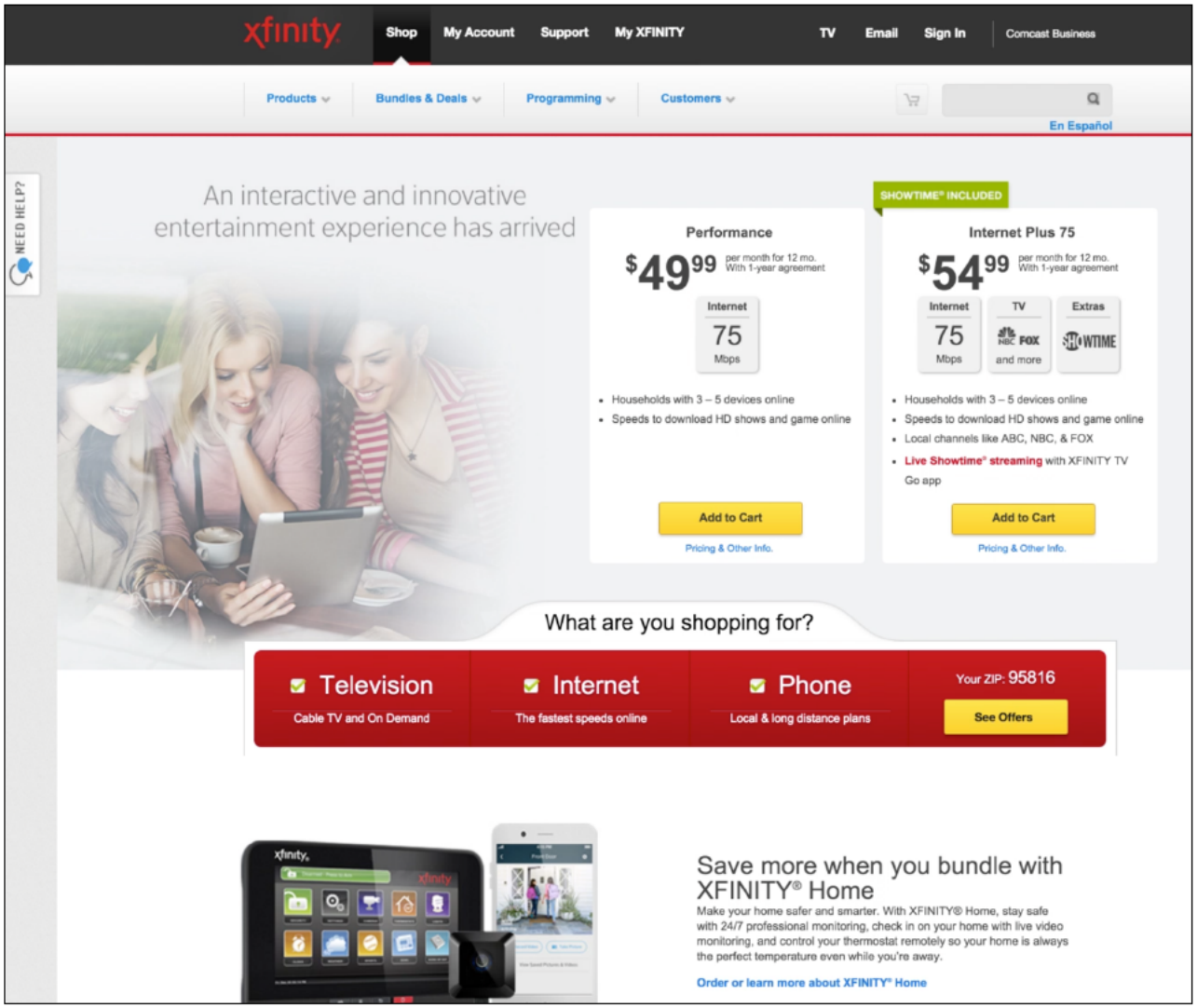
Jason Skaggs (SBN 202190)
SKAGGS FAUCETTE LLP
430 Lytton Ave 2nd FL
Palo Alto, CA 94301
Telephone: (650) 617-3226
Email: jason@skaggsfaucette.com

Tony J. Tanke (SBN 74054)
LAW OFFICES OF TONY J. TANKE
2050 Lyndell Terrace, Suite 240
Davis, CA 95616
Telephone: (530) 758-4530
Email: appeals@tankelaw.com

Attorneys for Plaintiff and the Proposed Class

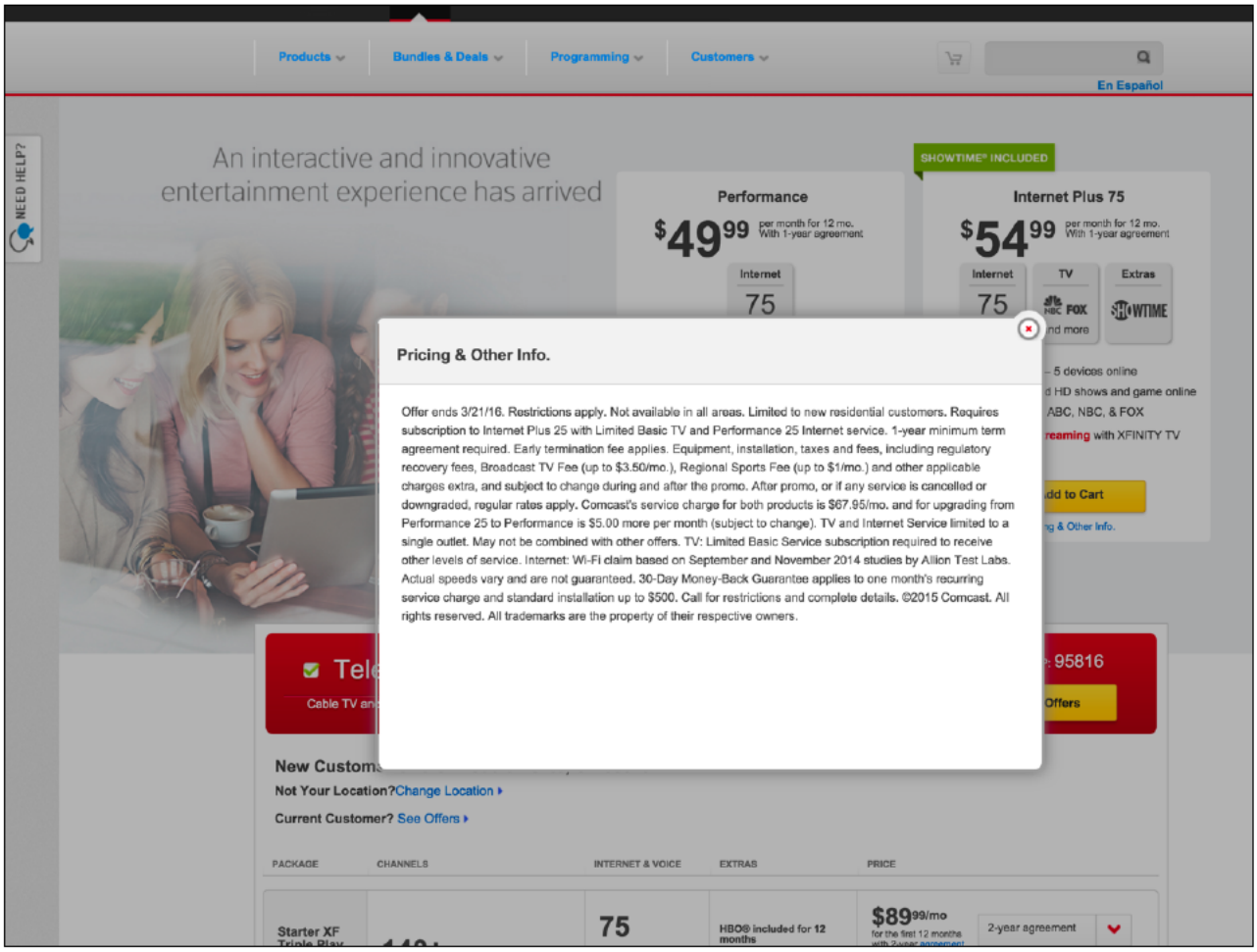
# EXHIBIT A

**Service Package Offer Page From Comcast Website – Sacramento, CA – January 14, 2016**



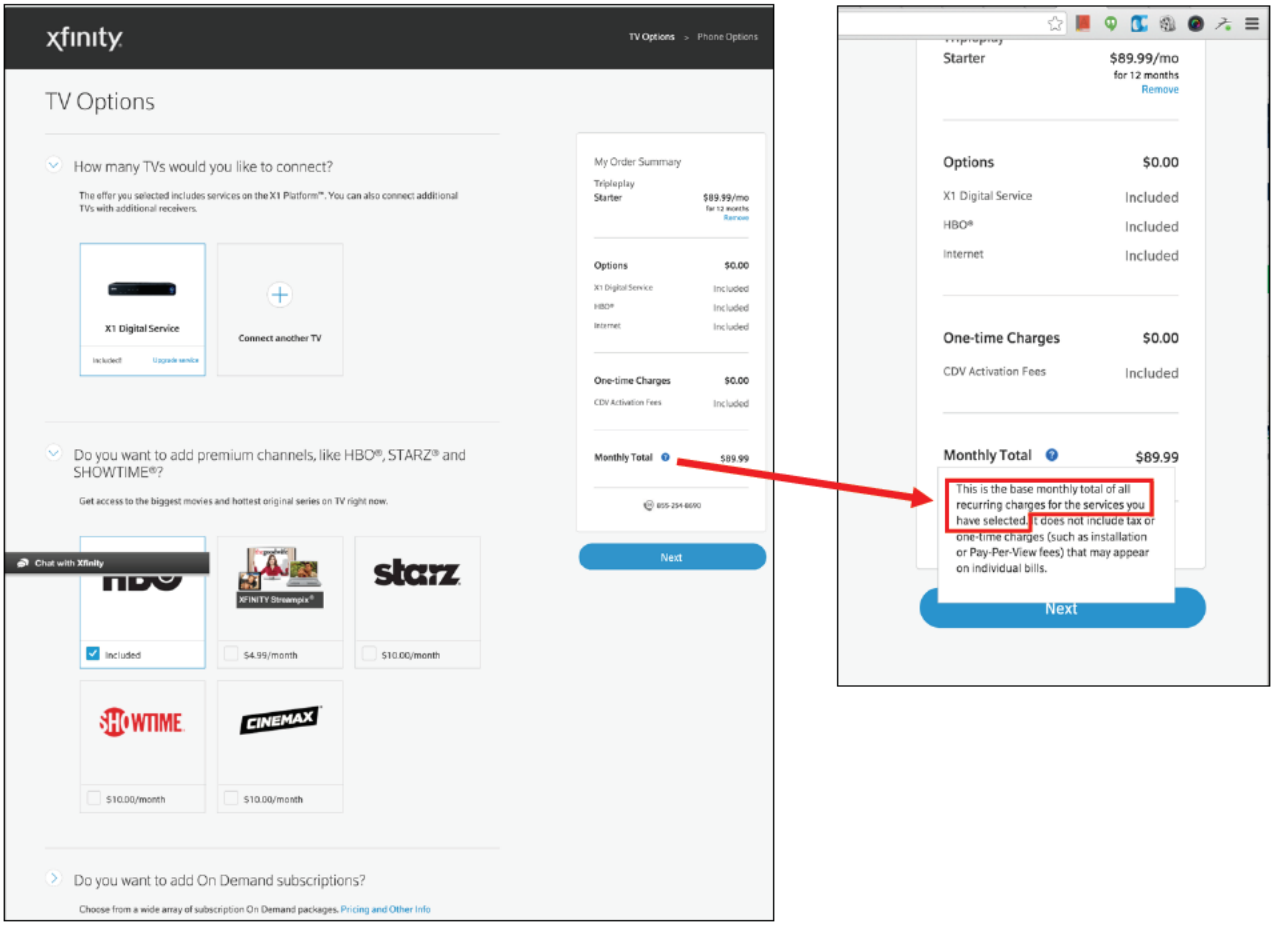
**Service Package Offer Page From Comcast Website – Sacramento, CA – January 14, 2016**

**"Pricing & Other Info." Dialog box**

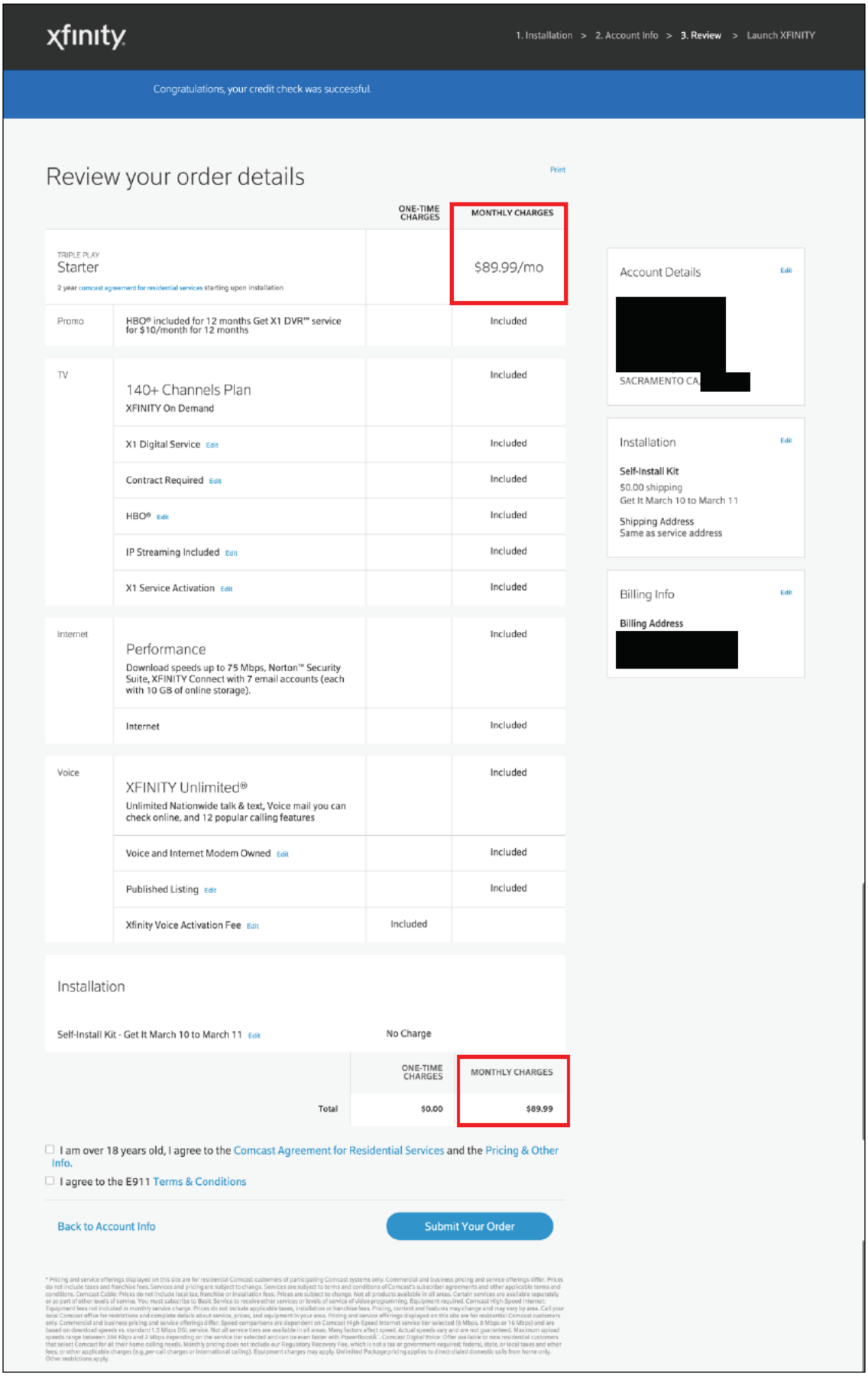


# EXHIBIT B

**Online Order Process – Sacramento, California – Page 1 (Screenshot from March 6, 2016)**



**Online Order Process – Sacramento, California – Order Submittal Page (March 6, 2016)**



xfinity

1. Installation > 2. Account Info > 3. Review > Launch XFINITY

Congratulations, your credit check was successful.

## Review your order details

Print

| | | ONE-TIME CHARGES | MONTHLY CHARGES |
|---|---|---|---|
| TRIPLE PLAY Starter<br>2 year comcast agreement for residential services starting upon installation | | | $89.99/mo |
| Promo | HBO® included for 12 months Get X1 DVR™ service for $10/month for 12 months | | Included |
| TV | 140+ Channels Plan<br>XFINITY On Demand | | Included |
| | X1 Digital Service Edit | | Included |
| | Contract Required Edit | | Included |
| | HBO® Edit | | Included |
| | IP Streaming Included Edit | | Included |
| | X1 Service Activation Edit | | Included |
| Internet | Performance<br>Download speeds up to 75 Mbps, Norton™ Security Suite, XFINITY Connect with 7 email accounts (each with 10 GB of online storage). | | Included |
| | Internet | | Included |
| Voice | XFINITY Unlimited®<br>Unlimited Nationwide talk & text, Voice mail you can check online, and 12 popular calling features | | Included |
| | Voice and Internet Modem Owned Edit | | Included |
| | Published Listing Edit | | Included |
| | Xfinity Voice Activation Fee Edit | Included | |

### Installation

| | | |
|---|---|---|
| Self-Install Kit - Get It March 10 to March 11 Edit | No Charge | |

| | ONE-TIME CHARGES | MONTHLY CHARGES |
|---|---|---|
| Total | $0.00 | $89.99 |

Account Details Edit

[redacted]
SACRAMENTO CA [redacted]

Installation Edit

Self-Install Kit
$0.00 shipping
Get It March 10 to March 11

Shipping Address
Same as service address

Billing Info Edit

Billing Address
[redacted]

☐ I am over 18 years old, I agree to the Comcast Agreement for Residential Services and the Pricing & Other Info.

☐ I agree to the E911 Terms & Conditions

Back to Account Info

Submit Your Order

* Pricing and service offerings displayed on this site are for residential Comcast customers of participating Comcast systems only. Commercial and business pricing and service offerings differ. Prices do not include taxes and franchise fees. Services and pricing are subject to change. Services are subject to terms and conditions of Comcast's subscriber agreements and other applicable terms and conditions. Comcast Cable: Prices do not include local tax, franchise or installation fees. Prices are subject to change. Not all products available in all areas. Certain services are available separately or as part of other levels of service. You must subscribe to Basic Service to receive other services or levels of service of video programming. Equipment required. Comcast High-Speed Internet: Equipment fees not included in monthly service charge. Prices do not include applicable taxes, installation or franchise fees. Pricing, content and features may change and may vary by area. Call your local Comcast office for restrictions and complete details about service, prices, and equipment in your area. Pricing and service offerings displayed on this site are for residential Comcast customers only. Commercial and business pricing and service offerings differ. Speed comparisons are dependent on Comcast High-Speed Internet service tier selected (5 Mbps, 8 Mbps or 16 Mbps) and are based on download speeds vs. standard 1.5 Mbps DSL service. Not all service tiers are available in all areas. Many factors affect speed. Actual speeds vary and are not guaranteed. Maximum upload speeds range between 384 Kbps and 2 Mbps depending on the service tier selected and can be even faster with PowerBoost®. Comcast Digital Voice: Offer available to new residential customers that select Comcast for all their home calling needs. Monthly pricing does not include our Regulatory Recovery Fee, which is not a tax or government-required; federal, state, or local taxes and other fees; or other applicable charges (e.g., per-call charges or international calling). Equipment charges may apply. Unlimited Package pricing applies to direct-dialed domestic calls from home only. Other restrictions apply.

# EXHIBIT C

**Direct Mail Ad From Late 2015 – Sacramento, California – Page 1**

C00381
[redacted]
Sacramento CA [redacted]

# Get the X1 Triple Play at a special holiday price.

Now with FASTER download speeds

$89.99 xfinity
XFINITY® Triple Play
$99 per month for 12 months
Act now!
Call today! 1-855-611-9980

Dear Cvhristopher,

This holiday season, we're making a great deal even better. For a limited time, you'll get fast, reliable Internet, ~~incredible entertainment, and home phone~~ — **at a lower price.** You'll also get **X1. ~~It'll change the way you~~ experience TV.**

XFINITY® Triple Play
TV, Internet & Voice
~~$99~~ $89.99
per month for 12 months

The fastest in-home WiFi

**HBO® or SHOWTIME®** included for 12 months

Add **X1 DVR™ service** for $10 more per month for 12 months

## XFINITY gives you more to celebrate.

- Get the **X1 Entertainment Operating System®** — search smarter, get personalized recommendations, even change channels with your voice
- Over 140 channels plus **HBO®** or **SHOWTIME®**
- **XFINITY Internet** — now with download speeds up to 75 Mbps
- **XFINITY Voice** with unlimited nationwide talk and text, plus international calling
- Enjoy the largest On Demand library with the top 100 shows preloaded
- Plus, add **X1 DVR** service for just $10 more per month for 12 months so you can watch and record up to 6 shows at the same time

## Hurry! This limited-time holiday offer ends 11/22/15!

Take advantage of this exciting opportunity to switch to the **XFINITY Triple Play** at the reduced price of **just $89.99 per month for 12 months with a 2-year term agreement.** You'll get tons of channels, including HBO® or SHOWTIME® and thousands of XFINITY On Demand™ shows and movies — included at no additional cost. Call **1-855-611-9980** today.

Sincerely,

Your XFINITY Team

P.S. Ask how you can get a **FREE Samsung Galaxy Tab® A** or a **$500 Visa® Prepaid Card** when you select a qualifying HD Triple Play.

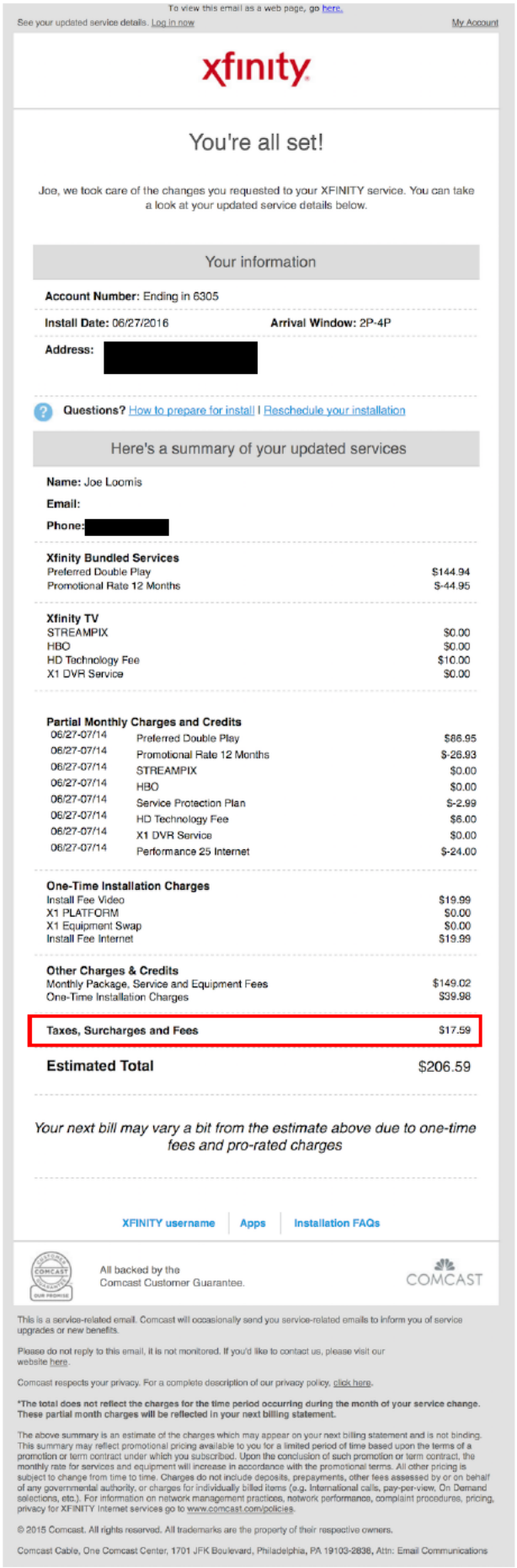



**CALL NOW! 1-855-611-9980** or visit **xfinity.com**

**Direct Mail Ad From Late 2015 – Sacramento, California – Page 2**

# EXHIBIT D

# Email Order Confirmation June 19, 2016



To view this email as a web page, go here.

See your updated service details. Log in now | My Account

xfinity

## You're all set!

Joe, we took care of the changes you requested to your XFINITY service. You can take a look at your updated service details below.

### Your information

**Account Number:** Ending in 6305

**Install Date:** 06/27/2016 **Arrival Window:** 2P-4P

**Address:** [redacted]

**Questions?** How to prepare for install | Reschedule your installation

### Here's a summary of your updated services

**Name:** Joe Loomis

**Email:**

**Phone:** [redacted]

| | |
|---|---|
| **Xfinity Bundled Services** | |
| Preferred Double Play | $144.94 |
| Promotional Rate 12 Months | $-44.95 |
| **Xfinity TV** | |
| STREAMPIX | $0.00 |
| HBO | $0.00 |
| HD Technology Fee | $10.00 |
| X1 DVR Service | $0.00 |

**Partial Monthly Charges and Credits**

| | | |
|---|---|---|
| 06/27-07/14 | Preferred Double Play | $86.95 |
| 06/27-07/14 | Promotional Rate 12 Months | $-26.93 |
| 06/27-07/14 | STREAMPIX | $0.00 |
| 06/27-07/14 | HBO | $0.00 |
| 06/27-07/14 | Service Protection Plan | $-2.99 |
| 06/27-07/14 | HD Technology Fee | $6.00 |
| 06/27-07/14 | X1 DVR Service | $0.00 |
| 06/27-07/14 | Performance 25 Internet | $-24.00 |

| | |
|---|---|
| **One-Time Installation Charges** | |
| Install Fee Video | $19.99 |
| X1 PLATFORM | $0.00 |
| X1 Equipment Swap | $0.00 |
| Install Fee Internet | $19.99 |
| **Other Charges & Credits** | |
| Monthly Package, Service and Equipment Fees | $149.02 |
| One-Time Installation Charges | $39.98 |
| **Taxes, Surcharges and Fees** | $17.59 |
| **Estimated Total** | $206.59 |

*Your next bill may vary a bit from the estimate above due to one-time fees and pro-rated charges*

XFINITY username | Apps | Installation FAQs

All backed by the Comcast Customer Guarantee.

COMCAST

This is a service-related email. Comcast will occasionally send you service-related emails to inform you of service upgrades or new benefits.

Please do not reply to this email, it is not monitored. If you'd like to contact us, please visit our website here.

Comcast respects your privacy. For a complete description of our privacy policy, click here.

***The total does not reflect the charges for the time period occurring during the month of your service change. These partial month charges will be reflected in your next billing statement.**

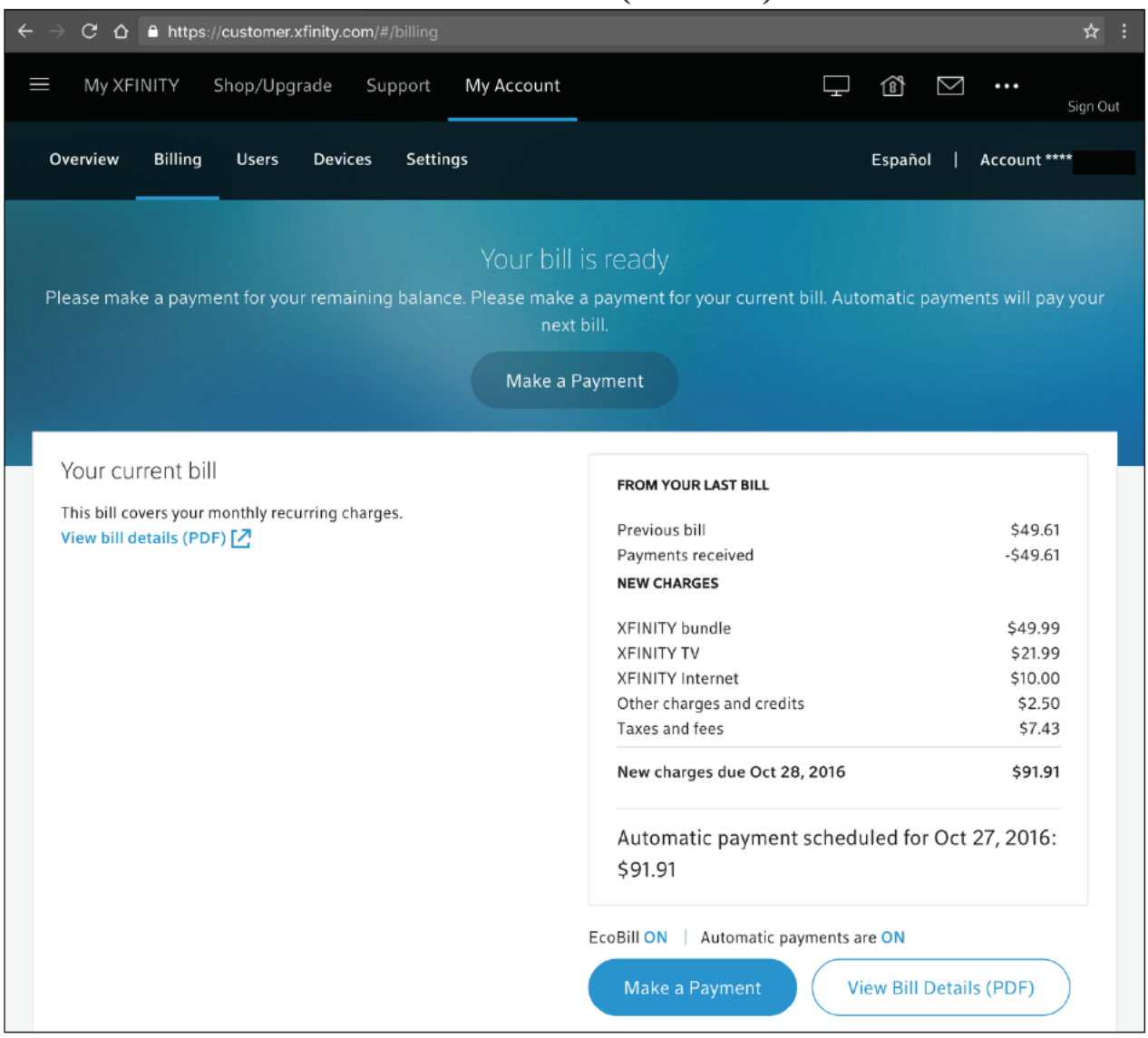
The above summary is an estimate of the charges which may appear on your next billing statement and is not binding. This summary may reflect promotional pricing available to you for a limited period of time based upon the terms of a promotion or term contract under which you subscribed. Upon the conclusion of such promotion or term contract, the monthly rate for services and equipment will increase in accordance with the promotional terms. All other pricing is subject to change from time to time. Charges do not include deposits, prepayments, other fees assessed by or on behalf of any governmental authority, or charges for individually billed items (e.g. International calls, pay-per-view, On Demand selections, etc.). For information on network management practices, network performance, complaint procedures, pricing, privacy for XFINITY Internet services go to www.comcast.com/policies.

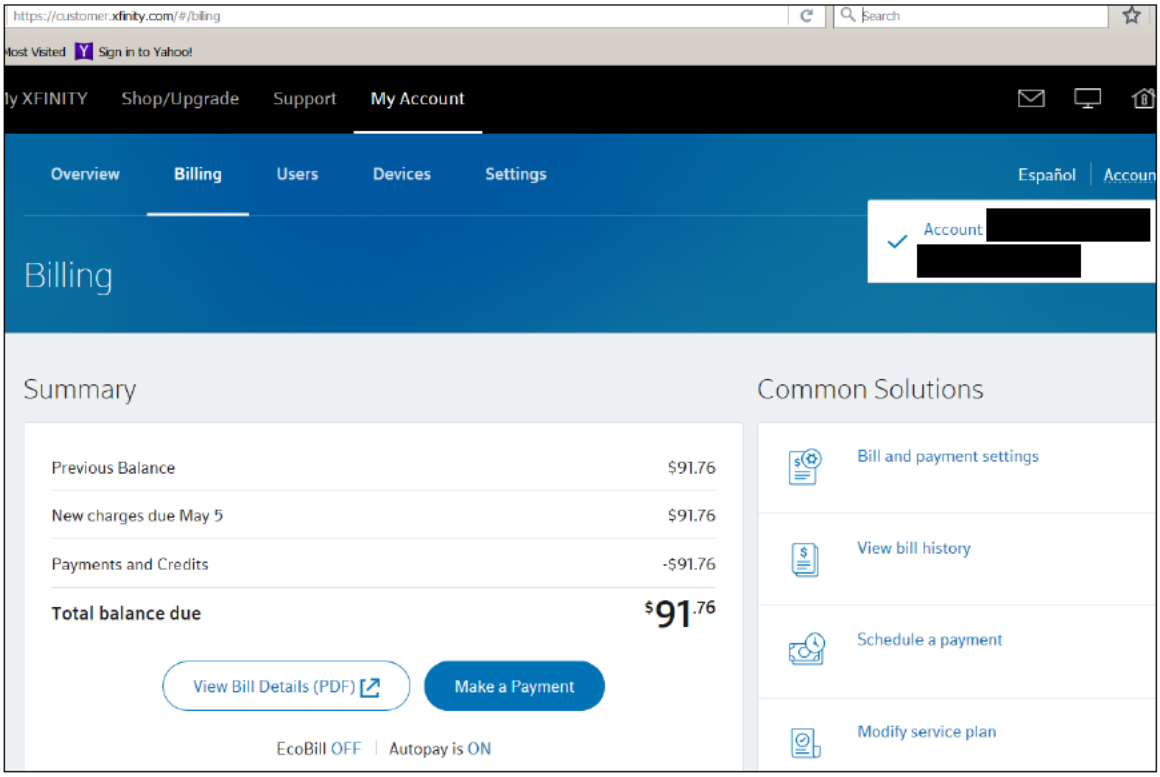
© 2015 Comcast. All rights reserved. All trademarks are the property of their respective owners.

Comcast Cable, One Comcast Center, 1701 JFK Boulevard, Philadelphia, PA 19103-2838, Attn: Email Communications

# EXHIBIT E

**Comcast Bill – Default Short Version on Website (04/13/2017)**




https://customer.xfinity.com/#/billing
Search
Most Visited
Sign in to Yahoo!
My XFINITY
Shop/Upgrade
Support
My Account
Overview
Billing
Users
Devices
Settings
Español
Account
Billing
Summary
Previous Balance $91.76
New charges due May 5 $91.76
Payments and Credits -$91.76
Total balance due $91.76
View Bill Details (PDF)
Make a Payment
EcoBill OFF
Autopay is ON
Common Solutions
Bill and payment settings
View bill history
Schedule a payment
Modify service plan

# EXHIBIT F

**Comcast Long Version of Bill – Page 1**

xfinity

Joe Loomis

Account number
[redacted]

For service at:
[redacted]

**Thanks for choosing XFINITY from Comcast**

Bill date Aug 10, 2016
Services from Aug 15, 2016 to Sep 14, 2016

**Your monthly account summary**

| | |
|---|---|
| Previous balance | 96.03 |
| Credit Card Payment Aug 05, 2016 | -96.03 cr |
| **New charges** | |
| XFINITY bundle | 79.99 |
| Additional services and equipment | 0.00 |
| Other charges and credits | 8.00 |
| Taxes and fees | 3.78 |

**Amount due** **$91.77**
Payment due Sep 05, 2016

Need help?
Visit xfinity.com/customersupport, use the My Account app, or call 1-800-934-6489 (1-800-XFINITY)

Ready to pay?
Visit xfinity.com/myaccount or use the My Account app

**Manage your services online or on the go**
Access the one-stop destination to pay your bill and manage your services. Visit xfinity.com/myaccount or use the My Account app.

**Service updates**
See the "additional information" section for upcoming service updates.

---

xfinity

9602 S 300 W. STE B SANDY UT 84070-3302
8155 2000 NO RP 10 08112016 YYNNNNNN 01 005165 0032

JOE LOOMIS
[redacted]

Account number [redacted]

Automatic payment due **Sep 05, 2016**

**Please pay** **$91.77**

**Credit Card Payment to Be Applied 09/05/16**

COMCAST
PO BOX 34744
SEATTLE WA 98124-1744

81552004801863050000791777

## Comcast Long Version of Bill – Page 2

Account number [redacted]

8155 2000 NO RP 10 08112016 YYNNNNNN 01 005165 0032

Services from Aug 15, 2016 to Sep 14, 2016

### Your new charges in detail

| XFINITY bundle | $79.99 |
|---|---|
| Starter Double Play | 129.95 |
| Includes Digital Starter, Digital Converter With Access to On Demand Programming and Performance Pro Internet | |
| Bundle Discount | -49.96 cr |

| Additional services and equipment | $0.00 |
|---|---|
| **XFINITY TV** | |
| Term Agreement Applies | 0.00 |
| 24 Month Term Agreement On Account. Visit Www.xfinity.com/myaccount For Details. | |
| X1 DVR Service | 9.95 |
| Service Discount | -9.95 cr |
| HBO | 15.00 |
| Service Discount | -15.00 cr |
| Streampix | 4.99 |
| Service Discount | -4.99 cr |
| HD Technology Fee | 10.00 |
| Service Discount | -10.00 cr |

| Other charges and credits | $8.00 |
|---|---|
| Broadcast TV Fee | 5.00 |
| Regional Sports Fee | 3.00 |

| Taxes and fees | $3.78 |
|---|---|
| Franchise Fee | 2.99 |
| PEG Access Support | 0.55 |
| FCC User Fee | 0.08 |
| State Sales Tax | 0.16 |
| **New charges** | **$91.77** |

### Additional information

The Broadcast TV Fee recovers a portion of the costs of retransmitting television broadcast signals.

The Regional Sports Fee recovers a portion of the costs to transmit certain regional sports networks.

Hearing/speech impaired call 711

**Closed captioning**
Our products and services are made for everyone to enjoy.

For closed captioning concerns and other accessibility issues affecting customers with disabilities, visit comcastsupport.com/accessibility for live chat, email accessibility@comcast.com, call 1-855-270-0379, fax 1-888-612-7402 or write to Comcast, 1701 John F. Kennedy Blvd., Philadelphia, PA 19103-2838, Attn: K Wilkinson.

Beginning July 28, TV One (ch 483) and TV One HD (ch 740) will be moved from the Digital Preferred package to the Digital Starter package.

With parental controls, you can choose and manage the programming that's right for your family. Learn more at http://parents.xfinity.com/tv/

Your Local Franchise Authority Is:
County of San Mateo
555 County Center
Redwood City, CA 94603
FCC Unit #CA0079
(The above is not a payment or service center)

# EXHIBIT G

DocuSign Envelope ID: 117B2009-F6B2-470D-825B-53C2C95D37AB

2016 06 25 00:00:00 EST

[redacted]

Account Number: [redacted]

**Offer:**

**Digital Starter Video and Performance Internet XF Double Play includes:**

- **XFINITY Digital Starter for primary outlet**
- **XFINITY Performance Internet or Performance Pro Internet (where available)**
- **For $79.99 per month for months 1-12 and $99.99 per month for months 13-24.**

**24 MONTH TERM CUSTOMER AGREEMENT**

Dear JOE LOOMIS

Thank you for choosing Comcast!

A description of the Offer ("Offer") you have ordered is set forth above. The Offer is subject to the terms and conditions of this agreement ("Agreement"), including the minimum term and early termination provisions under Section 5 below, and Comcast's Agreement for Residential Services.

Term and Conditions

1. If you do not cancel this Agreement within 30 days of the date of service installation/activation, as applicable, you will be billed for the services at the rates specified under the Offer. If you wish to cancel this Agreement, you must call Comcast at 1 800 XFINITY. Upon cancellation you are required to return all equipment provided by Comcast.

2. If you cancel this Agreement within 30 days of the date services are installed / activated, as applicable, the early termination fee specified in Section 5 shall not apply.

3. If you install service with a self installation kit, the 30 day period referenced above begins on the day your service is activated and if your service is installed by a Comcast installer, the 30 day period begins on the date of installation.

4. You will receive the services under the Offer for the first 24 MONTH S from the date the service is activated / installed, at the price specified above. Equipment, installation, taxes and fees, including Broadcast TV Fee (currently up to $5.00/mo.), Regional Sports Fee (currently up to $3.00/mo.) and if XFINITY Digital Voice is included, regulatory recovery fees and other applicable charges (e.g. per call or international charges) are extra, such charges and fees are subject to change during and after the term of this Agreement. AFTER THE 24 MONTH PERIOD, COMCAST'S THEN CURRENT APPLICABLE CHARGES WILL APPLY. You agree to maintain the service for 24 MONTH S ("Term") with your account in good standing. Comcast is not responsible for lost or misdirected agreements.

5. AN EARLY TERMINATION FEE OF UP TO $230.00 SHALL APPLY IF YOU TERMINATE ALL XFINITY SERVICES DURING THE TERM OF THIS AGREEMENT. DURING THE TERM OF THIS AGREEMENT, THE EARLY TERMINATION FEE WILL BE REDUCED BY $10.00 EVERY MONTH, BEGINNING WITH THE SECOND MONTH AFTER THE ACTIVATION /

DocuSign Envelope ID: 117B2009-F6B2-470D-825B-53C2C95D37AB

INSTALLATION DATE. IN ADDITION, IF SERVICE IS DOWNGRADED, COMCAST'S APPLICABLE CHARGES FOR SERVICE AND EQUIPMENT WITHOUT A 24 MONTH AGREEMENT WILL APPLY TO ANY REMAINING SERVICES. YOU ALSO AGREE THAT FOLLOWING THE 24 MONTH PERIOD, COMCAST'S APPLICABLE CHARGES FOR SERVICES AND EQUIPMENT WITHOUT A 24 MONTH TERM AGREEMENT SHALL APPLY UNLESS SERVICE IS CANCELLED BY CALLING 1 (800) XFINITY.

6. If during the Term of this Agreement you cancel service because you move your residence to a location within a Comcast serviceable area and you reconnect to XFINITY TV, XFINITY Internet, XFINITY Digital Voice or XFINITY Home service within 30 days of your service disconnection, the amount of the early termination fee will be credited upon proof of installation. To receive the credit, you must contact Comcast by calling 1 855 487 0252 within forty five (45) days of service disconnection.

7. Services under the Offer are for one outlet (except as may be specified under the above Offer and for XFINITY Digital Voice). Comcast's applicable charges for installation, equipment, and other services not specifically included in the Offer described above (including without limitation, pay per view, and other non recurring charges) are additional. The provisions of this Agreement supplement the Comcast Agreement for Residential Services (as amended in accordance with its terms).

8. Comcast may rearrange, delete, add to or otherwise change programming or features or offerings contained in the services.

Again, thank you for choosing Comcast. Please call us if you have any questions.

Sincerely,

Comcast Customer Service

DP_VI_STPI_$79.99x12_2Y_Q414_230ETF

# EXHIBIT H

# COMCAST AGREEMENT FOR RESIDENTIAL SERVICES

**ABOUT THIS AGREEMENT, OUR SERVICES, AND YOUR RIGHTS**

**XFINITY® Service(s) will be provided to you ("you," "your," or "Customer") on the terms and conditions set forth in this Agreement for Residential Services (the "Agreement") and applicable law by the operating company subsidiary or affiliate of Comcast Cable Communications, LLC that (i) owns and/or operates the cable television system in your area and/or (ii) the subsidiary that is the XFINITY Digital Voice service provider ("Comcast," "we," "us," or "our"). For purposes of this Agreement, "affiliate" means any entity that controls, is controlled by or is under common control with Comcast Cable Communications, LLC. Service(s) may include, but are not limited to, XFINITY TV cable television service ("XFINITY Video"), XFINITY Internet service including XFINITY WiFi ("XFINITY Internet"), and XFINITY Voice (herein collectively "XFINITY Voice") (each a "Service" and collectively the "Services"). The Service(s) do not include Comcast owned or controlled websites such as Comcast.com, Comcast.net, Xfinity.com, or XfinityTV.com. Those websites have their own terms of service and policies that are accessible directly from those sites.**

**We may change our prices, fees, the Service(s) and/or the terms and conditions of this Agreement in the future. Unless this Agreement or applicable law specifies otherwise, we will give you thirty (30) days prior notice of any significant change to this Agreement. If you find the change unacceptable, you have the right to cancel your Service(s). However, if you continue to receive Service(s) after the end of the notice period (the "Effective Date") of the change, you will be considered to have accepted the changes. You may not modify this Agreement by making any typed, handwritten, or any other changes to it for any purpose.**

**Note: THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION IN SECTION 13 THAT AFFECTS YOUR RIGHTS UNDER THIS AGREEMENT WITH RESPECT TO ALL SERVICE(S). These terms and conditions are subject to applicable tariffs and service guides.**

## GENERAL TERMS AND CONDITIONS

1. **ACCEPTANCE OF THIS AGREEMENT**
   **You will have accepted this Agreement and be bound by its terms if you use the Service(s) or otherwise indicate your affirmative acceptance of such terms.**
2. **CHARGES AND BILLINGS**
   a. **Charges, Fees, and Taxes You Must Pay.** You agree to pay all charges associated with the Service(s), including, but not limited to, installation/service call charges, monthly service charges, XFINITY Equipment (as defined below) charges, measured and per-call charges, applicable federal, state, and local taxes and fees (however designated), regulatory recovery fees for municipal, state and federal government fees or assessments imposed on Comcast, permitted fees and cost recovery charges, or any programs in which Comcast participates, including, but not limited to, public, educational, and governmental access, universal service, telecom relay services for the visually/hearing impaired, rights-of-way access, and programs supporting the 911/E911 system and any fees or payment obligations imposed by governmental or quasi-governmental bodies for the sale, installation, use, or provision of the Service(s). **YOU WILL BE RESPONSIBLE FOR PAYING ANY GOVERNMENT IMPOSED FEES AND TAXES THAT BECOME APPLICABLE RETROACTIVELY.** We will provide you with notice and an effective date of any change in our prices or fees, unless the change in price is related to a change in governmental or quasi-governmental taxes, fees, or assessments, in which case we may elect not to provide notice except where required by applicable law. Not all fees apply to all Service(s).
      - **For XFINITY Video Customers.** XFINITY Video price information is supplied with our Welcome Kit.

- **For XFINITY Internet Customers.** XFINITY Internet price information is available at www.comcast.com (or an alternative site if we notify you).
- **For XFINITY Voice Customers.** XFINITY Voice price information is available at www.comcast.com/voice/terms-of-service (or an alternative site if we notify you).
- **For Minimum Term Customers.** If you have agreed to a minimum term arrangement, your price for Service(s) is as specified in the minimum term arrangement.

**b. How We Will Bill You.** Unless you are subject to a minimum term arrangement, Service(s) are provided to you on a month-to-month basis. **If you are receiving Service(s) at a trial or introductory rate, you may cancel your Service(s) at the end of the trial or introductory period by calling your local Comcast customer service center.** You will generally be billed monthly, in advance, for recurring service charges, equipment charges, and fees. **YOU MUST PAY, ON OR BEFORE THE DAY WE INSTALL ANY OR ALL OF THE SERVICE(S), THE FIRST MONTH'S SERVICE CHARGES, XFINITY EQUIPMENT CHARGES, ANY DEPOSITS, AND ANY INSTALLATION CHARGES.** Your first bill may include pro-rated charges from the date you first begin receiving Service(s), as well as monthly recurring charges for the next month and charges for non-recurring services you have received. You may be billed for some Service(s) individually after they have been provided to you; these include measured and per-call charges (as explained below) and charges for pay-per-view movies or events, interactive television, and e-commerce. If you receive Service(s) under a promotion, after the promotional period ends, regular charges for the Service(s) will apply.

We do not waive our rights to collect the full balance owed to us by accepting partial payment. We will apply the partial payment to the outstanding charges in the amounts and proportions that we determine.

- **For XFINITY Voice Customers.** If you pay a flat monthly fee for your calling plan, that fee may not cover certain types of calls. You will be billed for these excluded call types on a per-call basis (e.g., operator services) or a measured basis (e.g., international calls). Generally, for billing purposes, a measured call begins when the call is answered by the called party or an automated answering device (such as an answering machine or fax machine); it ends when one of the parties disconnects the call. However, some providers (e.g., those involved in calls to foreign countries) charge for a completed call when the called party's line rings or after a certain number of rings. If such a provider charges Comcast, its affiliates, or suppliers as if your call were answered by the called party, Comcast will charge you for a completed call.

  Measured calls are recorded in whole minutes, with partial minutes rounded up to the next whole minute. If the charge for a measured call or for taxes or surcharges includes a fraction of a cent, the fraction is rounded up to the nearest whole cent. See www.comcast.com/voice/terms-of-service for information on per-call charges and the timing of measured-call charges.

  If your usage charges for XFINITY Voice exceed typical residential usage charges, we may: (i) require you to make advance payments for XFINITY Voice, which we may offset against any unpaid balance on your account; (ii) establish a credit limit for usage charges for XFINITY Voice and/or features; and/or (iii) restrict XFINITY Voice or features. If you exceed your credit limit, we reserve the right to suspend XFINITY Voice and require payment for usage charges assessed to your account.

  Our paper bills for XFINITY Voice contain only a summary of charges. Detailed information is available for a limited period at a password-protected portion of our website. You may call 1-800-XFINITY for a paper copy of outbound toll call records related to your most recent bill. There may be an additional charge for these paper copies except as otherwise required by applicable law.

**c. Third-Party Charges That Are Your Responsibility.** You acknowledge that you may incur charges with third-party service providers such as accessing on-line services, calling parties who charge for their telephone-based services, purchasing or subscribing to other offerings via the Internet or interactive options on your XFINITY Video Service that are separate and apart from the amounts charged by us. You are solely responsible for all

such charges payable to third parties, including all applicable taxes. In addition, you are solely responsible for protecting the security of credit card and other personal information provided to others in connection with such transactions.

**d. Alternative Billing Arrangements.** Comcast may agree to provide billing services on behalf of third parties, as the agent of the third party. Any such third-party charges shall be payable pursuant to any contract or other arrangement between you and the third party. We will not be responsible for any dispute regarding these charges between you and any third party. You must address all such disputes directly with the third party.

**e. Payment by Credit Card or Check.** If you use a credit card to pay for the Service(s), use of the card is governed by the card issuer agreement, and you must refer to that agreement for your rights and liabilities as a cardholder. If Comcast does not receive payment from your credit card issuer or its agents, you agree to pay all amounts due upon demand. If you make payment by check, you authorize Comcast to collect your check electronically. You agree that you may not amend or modify this Agreement with any restrictive endorsements (such as "paid in full"), or other statements or releases on or accompanying checks or other payments accepted by Comcast and any such notations shall have no legal effect.

**f. Our Remedies if You Pay Late or Fail to Pay.**

**1. Late or Non-Payments:** You may be billed fees, charges, and assessments related to late or non-payments if for any reason (a) Comcast does not receive payment for the Service(s) by the payment due date or (b) you pay less than the full amount due for the Service(s).

- **For Maryland Customers. YOU WILL BE ASSESSED A LATE FEE OF 10% PER MONTH FOR ANY PAYMENT AMOUNT THAT HAS NOT BEEN PAID IN FULL AFTER 45 DAYS FROM THE DATE THE INVOICE WAS SENT, EXCEPT IN GARRETT AND ALLEGANY COUNTIES AND HANCOCK, MD. No more than three (3) monthly late fees will be imposed for any single payment amount that is past due, regardless of the period during which the payment remains past due.**
- **For Garrett and Allegany County, Maryland Customers. YOU WILL BE ASSESSED A LATE FEE OF $4.95 PER MONTH FOR EACH ACCOUNT THAT HAS NOT BEEN PAID IN FULL AFTER 45 DAYS FROM THE DATE THE INVOICE WAS SENT.**
- **For Hancock, Maryland Customers. YOU WILL BE ASSESSED A LATE FEE OF $2.00 PER MONTH FOR EACH ACCOUNT THAT HAS NOT BEEN PAID IN FULL AFTER 45 DAYS FROM THE DATE THE INVOICE WAS SENT.**

**2. Fees Not Considered Interest or Penalties:** Comcast does not anticipate that you will fail to pay for the Service(s) on a timely basis, and we do not extend credit to customers. Any fees, charges, and assessments due to late payment or nonpayment are liquidated damages intended to be a reasonable advance estimate of our costs resulting from late payments and non-payments. These costs will be difficult to calculate or to predict when we set such fees, charges, and assessments, because we cannot know in advance: (a) whether you will pay for the Service(s) on a timely basis, if ever; (b) if you do pay late, when you will actually pay; and (c) what costs we will incur because of your late payment or non-payment.

**3. Collection Costs:** If we use a collection agency or attorney to collect money owed by you, you agree to pay the reasonable costs of collection. These costs include, but are not limited to, any collection agency's fees, reasonable attorneys' fees, and arbitration or court costs.

**4. Suspension/Disconnect:** If you fail to pay the full amount due for any or all of the Service(s) then Comcast, at its sole discretion in accordance with and subject to applicable law, may suspend or disconnect any or all the Service(s) you receive.

**g. Reconnection Fees and Related Charges.** If you resume Service(s) after any suspension, we may require you to pay a reconnection fee. If you reinstate any or all Service(s) after disconnection, we may require you to pay an installation fee and/or service activation fee. These fees are in addition to all past due charges and other fees.

Reconnection of the Service(s) is subject to our credit policies, this Agreement and applicable law.

h. **Our Right to Make Credit Inquiries. YOU AUTHORIZE COMCAST TO MAKE INQUIRIES AND TO RECEIVE INFORMATION ABOUT YOUR CREDIT EXPERIENCE FROM OTHERS, TO ENTER THIS INFORMATION IN YOUR FILE, AND TO DISCLOSE THIS INFORMATION CONCERNING YOU TO APPROPRIATE THIRD PARTIES FOR REASONABLE BUSINESS PURPOSES.** Comcast will not discriminate in the application of its credit inquiries and deposit policy on the basis of race, color, sex, creed, religion, nationality, sexual orientation, or marital status. Any risk assessments conducted by either Comcast or its third party credit bureau will be done in conformance with the requirements of all applicable state or federal laws.

i. **Your Responsibilities Concerning Billing Questions.** Subject to applicable law, if you intend to dispute a charge or request a billing credit, you must contact Comcast within 120 days of the date on the bill. You waive any disputes or credits that you do not report within 120 days.

- **For Sacramento, California Customers.** If there are any billing errors or other requests for credit, you must bring those to our attention within 120 days of the time you receive the bill for which you are seeking correction, unless applicable law provides for a longer period which cannot be waived or otherwise modified. We will investigate and respond to all complaints within five (5) business days of the receipt of the complaint. In some cases, an investigation might require a search of historical records that could take up to 14 business days. If you believe a payment was made which was not credited to your account, a copy of a cancelled check or money order may be required and the disputed amount will be set aside for up to fourteen (14) days while you gather that documentation.

**3. REFUNDABLE DEPOSIT**

We may require you to pay a refundable deposit when you activate the Service(s), if you add XFINITY Equipment and/or Service(s) or if you fail to pay any amounts when they are due. If we disconnect your Service(s) or are otherwise required under applicable law to refund the deposit, we shall within forty-five (45) days or as otherwise specified by applicable law return a sum equal to the deposit(s) you paid (without interest unless otherwise required by law) minus any amounts due on your account (including without limitation, any amounts owed for the Service(s) or for any XFINITY Equipment that is damaged, altered, or not returned).

- **For Prince Georges, Maryland Customers.** If we disconnect your Service(s) or are otherwise required under applicable law to refund the deposit, we shall within thirty (30) days or your next billing cycle, whichever is earlier, return a sum equal to the deposit(s) you paid (without interest unless otherwise required by law) minus any amounts due on your account (including without limitation, any amounts owed for the Service(s) or for any XFINITY Equipment that is damaged, altered, or not returned).

**4. CHANGES TO SERVICES**

Subject to applicable law, we have the right to change our Service(s), XFINITY Equipment and rates or charges, at any time with or without notice. We also may rearrange, delete, add to, or otherwise change programming or features or offerings contained in the Service(s), including, but not limited to, content, functionality, hours of availability, customer equipment requirements, speed, and upstream and downstream rate limitations. If we do give you notice, it may be provided on your monthly bill, as a bill insert, e-mail, in a newspaper or other communication permitted under applicable law. If you find a change in the Service(s) unacceptable, you have the right to cancel your Service(s). However, if you continue to receive Service(s) after the change, this will constitute your acceptance of the change.

**5. ACCESS TO YOUR PREMISES AND CUSTOMER EQUIPMENT**

a. **Premises.** You agree to allow us and our agents the right to enter your property at which the Service(s) and/or XFINITY Equipment will be provided (the "Premises") at reasonable times, for purposes of installing, configuring, maintaining, inspecting, upgrading, replacing and removing the Service(s) and/or XFINITY Equipment used to receive any of the

Service(s). You warrant that you are either the owner of the Premises or that you have the authority to give us access to the Premises. If you are not the owner of the Premises, you are responsible for obtaining any necessary approval from the owner to allow us and our agents into the Premises to perform the activities specified above. In addition, you agree to supply us or our agent, if we ask, the owner's name, address, and phone number and/or evidence that the owner has authorized you to grant access to us and our agents to the Premises.

- **For California West Bay Area and San Francisco, California Customers.** If we fail to keep an appointment, we will credit your account with free installation or service call free of charge if the appointment was for an installation or service call for which a fee was to be charged or a minimum credit of $20.
- **For Sacramento, California Customers.** If we fail to keep an appointment, we will credit your account with one month of Limited Basic up to a maximum credit equal to one month of the Standard Cable price.

**b. Customer Equipment.** "Customer Equipment" means software, hardware or services that you elect to use in connection with the Service(s) or XFINITY Equipment. You agree to allow us and our agents the rights to insert cable cards and other hardware in the Customer Equipment, send software, firmware, and/or other programs to the Customer Equipment and install, configure, maintain, inspect and upgrade the Customer Equipment and XFINITY Equipment. You warrant you are either the owner of the Customer Equipment or that you have the authority to give us access to the Customer Equipment. If you are not the owner of the Customer Equipment, you are responsible for obtaining any necessary approval from the owner to allow us and our agents' access to the Customer Equipment to perform the activities specified above. In addition, you agree to supply us or our agents, if we ask, the owner's name, address and phone number and/or evidence that the owner has authorized you to grant access to us and our agents to the Customer Equipment to perform the activities specified above.

## 6. MAINTENANCE AND OWNERSHIP OF EQUIPMENT AND SOFTWARE

**a. XFINITY Equipment.** "XFINITY Equipment" means any equipment provided by Comcast such as gateways, routers, cable modems, voice-capable modems, wireless gateway/routers, CableCARDs, converters, digital adapters, remote controls, and any other equipment provided or leased to you by us or our agents, excluding equipment purchased by you from Comcast and Customer Equipment. XFINITY Equipment also includes any software, firmware, or other programs contained within Customer Equipment or XFINITY Equipment. You agree that all XFINITY Equipment belongs to us or other third parties and will not be deemed fixtures or in any way part of the Premises. You agree to use XFINITY Equipment only for the Service(s) pursuant to this Agreement. We may remove or change the XFINITY Equipment at our discretion at any time the Service(s) are active or following the termination of your Service(s). You acknowledge and agree that our addition or removal of or change to the XFINITY Equipment may interrupt your Service(s). You may not sell, lease, abandon, or give away the XFINITY Equipment, or permit any other provider of video, broadband Internet (high speed data) or telephone services to use the XFINITY Equipment. The XFINITY Equipment may only be used in the Premises. At your request, we may relocate the XFINITY Equipment in the Premises for an additional charge, at a time agreeable to you and us. YOU UNDERSTAND AND ACKNOWLEDGE THAT IF YOU ATTEMPT TO INSTALL OR USE THE XFINITY EQUIPMENT OR SERVICE(S) AT A LOCATION OTHER THAN THE PREMISES, THE SERVICE(S) MAY FAIL TO FUNCTION OR MAY FUNCTION IMPROPERLY. You agree that you will not allow anyone other than Comcast or its agents to service the XFINITY Equipment. We suggest that the XFINITY Equipment in your possession be covered by your homeowners, renters, or other insurance. You will be directly responsible for loss, repair, replacement and other costs, damages, fees and charges if you do not return the XFINITY Equipment to us in an undamaged condition.

**b. Customer Equipment.**

**1. Responsibility:** Comcast has no responsibility for the operation or support,

maintenance, or repair of any Customer Equipment including, but not limited to, Customer Equipment to which Comcast or a third party has sent software, firmware, or other programs.

- **For XFINITY Video, XFINITY Internet, and XFINITY Voice Customers.** You agree by using the Service(s), you are enabling and authorizing (i) Comcast, its authorized agents and equipment manufacturers to send code updates to the XFINITY Equipment and Customer Equipment, including, but not limited to, cable modems, digital interactive televisions with CableCARDs, and voice-capable modems at any time it is determined necessary to do so as part of the Service(s): and (ii) Comcast and its authorized agents to use the XFINITY Equipment, Customer Equipment and Inside Wiring connected to our cable network to provide the Service(s) to you and others, including, but not limited to, the XFINITY Internet WiFi Home Hotspot ("HHS"). Such code updates may change, add or remove features or functionality of any such equipment or the Service(s).
- **For XFINITY Internet and XFINITY Voice Customers.** You can find Comcast's current minimum technical and other requirements for XFINITY Internet customers at http://customer.comcast.com/help-and-support/internet and for XFINITY Voice customers at http://customer.comcast.com/help-and-support/phone. These requirements may be located at an alternative site if we so notify you. To use XFINITY Voice, you will need a voice-capable modem that meets our specifications. In some areas, we may permit you to use XFINITY Voice with a voice-capable modem that you have purchased. Depending on availability in your area, you may have an option to install the voice-capable modem yourself or to have Comcast install it for you. You agree to keep the voice-capable modem plugged into a working electrical power outlet at all times. Whether a cable modem, gateway/router, voice-capable modem or other device is owned by you or us, we have the unrestricted right, but not the obligation, to upgrade or change the firmware in these devices remotely or on the Premises at any time that we determine it necessary or desirable in order to provide Service(s) to you in accordance with our specifications and requirements.
- **For XFINITY Voice Customers.** You acknowledge and understand XFINITY Voice may not support or be compatible with non-recommended configurations including, but not limited to, voice-capable modems not currently certified by Comcast as compatible with XFINITY Voice; Customer Equipment, including, but not limited to, non-voice communications equipment, including certain makes or models of alarm and security systems or devices, certain medical monitoring devices, personal emergency alert, and home detention devices, certain fax machines, and certain "dial-up" modems; rotary-dial phone handsets, pulse-dial phone handsets, and models of other voice-related communications equipment such as private branch exchange (PBX) equipment, answering machines, and traditional Caller ID units. In order to use XFINITY Voice, you are required to provide certain equipment such as a phone handset or equivalent, inside phone wiring and outlets, and an electrical power outlet. CERTAIN MAKES AND MODELS OF CORDLESS PHONES USE THE ELECTRICAL POWER IN YOUR HOME. IF THERE IS AN ELECTRICAL POWER OUTAGE, THE CORDLESS PHONE WILL CEASE TO OPERATE DURING THE OUTAGE, PREVENTING USE OF XFINITY VOICE VIA THE CORDLESS PHONE. DO NOT ATTEMPT TO CONNECT XFINITY VOICE TO INSIDE PHONE WIRING YOURSELF. In order to use online features of XFINITY Voice, where we make those features available, you are required to provide certain hardware, such as a personal computer, software, an Internet browser, and access to the Internet.

2. **Non-Recommended Configurations:** Customer Equipment that does not meet Comcast's minimum technical or other specifications constitutes a "Non-Recommended Configuration." NEITHER COMCAST NOR ANY OF ITS AFFILIATES, SUPPLIERS OR AGENTS WARRANT THAT A NON-RECOMMENDED CONFIGURATION WILL ENABLE YOU TO SUCCESSFULLY INSTALL, ACCESS, OPERATE, OR USE THE SERVICE(S). YOU ACKNOWLEDGE THAT ANY SUCH INSTALLATION, ACCESS, OPERATION, OR USE

COULD CAUSE CUSTOMER EQUIPMENT TO FAIL TO OPERATE OR CAUSE DAMAGE TO CUSTOMER EQUIPMENT, YOU, YOUR PREMISES OR XFINITY EQUIPMENT. NEITHER COMCAST NOR ANY OF ITS AFFILIATES, SUPPLIERS OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY SUCH FAILURE OR DAMAGE. Comcast reserves the right to deny you customer support for the Service(s) and/or terminate Service(s) if you use a Non-Recommended Configuration.

3. **No Unauthorized Devices or Tampering:** You agree not to attach or assist any person to attach, any unauthorized device to our cable network, XFINITY Equipment or the Service(s). If you make or assist any person to make any unauthorized connection or modification to XFINITY Equipment or the Service(s) or any other part of our cable network, we may terminate your Service(s) and recover such damages as may result from your actions.

   You also agree that you will not attach anything to the Inside Wiring, XFINITY Equipment, or Customer Equipment, whether installed by you or us, which singly or together impairs the integrity of our cable network or degrades our cable network's signal quality or strength or creates signal leakage.

   You also agree that we may recover damages from you for tampering with any XFINITY Equipment or any other part of our cable network or for receiving unauthorized Service(s). You agree that it would be difficult, if not impossible, to calculate precisely the lost revenue resulting from your receipt of unauthorized Service(s) or the tampering with XFINITY Equipment or our cable network. You therefore agree to pay us as liquidated damages, the sum of $500.00 per device used to receive the unauthorized Service(s) in addition to our cost to replace any altered, damaged, or unreturned XFINITY Equipment or other equipment owned by Comcast, including any incidental costs. The unauthorized reception of the Service(s) may also result in criminal fines and/or imprisonment.

   - **For XFINITY Voice Customers.** You will be liable for all authorized and unauthorized XFINITY Voice use at the Premises. You agree to notify us immediately in writing or by calling 1-800-XFINITY during normal business hours if your voice-capable modem has been stolen or your Service(s) are being stolen or used without your authorization. When you call or write, you must provide your account number and a detailed description of the circumstances of the theft of your voice-capable modem or unauthorized XFINITY Voice use. If you fail to notify us in a timely manner, your Service(s) may be terminated without notice and you may incur additional charges.

**c. Inside Wiring.** You may install wiring inside your Premises ("Inside Wiring"), such as additional cable wiring and outlets, provided it does not interfere with the normal operations of our cable network. If you have us install Inside Wiring, we will charge you for that service. Regardless of who installed it, we consider the Inside Wiring your property or the property of whomever owns the Premises. Accordingly, you are responsible for the repair and maintenance of the Inside Wiring, unless you and Comcast have agreed otherwise in writing. (If you do not own the Premises, contact your landlord or building manager about the installation, repair or maintenance of Inside Wiring.) If you have us repair or maintain the Inside Wiring, we will charge you for that service.

- **For Sacramento, California Customers.** Comcast will be responsible to repair any defects of the Inside Wiring installed by Comcast for thirty (30) days after new residential video installations.
- **For XFINITY Voice Customers.** Except as described below, you may use XFINITY Voice with your telephone Inside Wiring, as long as we have reasonable access to it and you have the right to give us access to it. If you wish to have your voice-capable modem connected to your telephone Inside Wiring, you are advised to have a Comcast technician perform the installation. To make that connection, we must first disconnect your telephone Inside Wiring from the network of your existing telephone provider, which may disable any services you receive from them. If you install XFINITY Voice yourself (where self-installation is an option), you should connect the voice-capable modem to a cordless phone, not directly to your telephone Inside Wiring. If the voice-capable modem

is connected to your telephone Inside Wiring without first disconnecting the wiring from any existing telephone provider's network, the voice-capable modem may be damaged and/or XFINITY Voice may not operate properly.

**d. End User Software Licenses.** Your use of the software, firmware, and other programs contained within the XFINITY Equipment, and of any other software or plug-ins to such software distributed or used in connection with the Services shall comply with the terms of the Comcast Software License Agreement (http://my.xfinity.com/terms/license), the terms applicable to the particular XFINITY Equipment (xfinity.com/usermanuals), and any other end user license agreements accompanying such software, as such agreements may be amended from time to time. All such agreements are incorporated in this Agreement by reference. When this Agreement terminates, all end user licenses also terminate; you agree to destroy at that time all versions and copies of all software received by you in connection with the Services.

**7. USE OF SERVICES**

You agree that the Service(s) and the XFINITY Equipment will be used only for personal, residential, non-commercial purposes, unless otherwise specifically authorized by us in writing. You will not use the XFINITY Equipment at any time at an address other than the Premises without our prior written authorization. You agree and represent that you will not resell or permit another to resell the Service(s) in whole or in part. You will not use or permit another to use the XFINITY Equipment or the Service(s), directly or indirectly, for any unlawful purpose, including, but not limited to, in violation of any posted Comcast policy applicable to the Service(s). Use of the XFINITY Equipment or Service(s) for transmission, communications or storage of any information, data or material in violation of any U.S. federal, state or local regulation or law is prohibited. You acknowledge that you are accepting this Agreement on behalf of all persons who use the XFINITY Equipment and/or Service(s) at the Premises and that you shall have sole responsibility for ensuring that all other users understand and comply with the terms and conditions of this Agreement and any applicable Comcast policies including, but not limited to, acceptable use and privacy policies. You further acknowledge and agree that you shall be solely responsible for any transactions, including, without limitation, purchases made through or in connection with the Service(s). You agree to indemnify, defend and hold harmless Comcast and its affiliates, suppliers, and agents against all claims and expenses (including reasonable attorneys' fees) arising out of the use of the Service(s), the XFINITY Equipment and/or the Customer Equipment or the breach of this Agreement or any of the applicable Comcast policies by you or any other user of the Service(s) at the Premises. You shall not be required to indemnify Comcast and its affiliates, suppliers, and agents with respect to third parties use of HHS.

If you use any of the voice control features of the Service(s), such as the voice control feature of an XFINITY TV remote control, you acknowledge all voice commands are sent to Comcast or its suppliers. Comcast, and its suppliers, use these voice commands to provide the voice control service (including quality assurance, troubleshooting, and customer support), improve features of the Service(s) including voice recognition algorithms. If you use any of the voice control features of the Service(s), you consent to Comcast or its supplier recording, storing, and using your voice commands as described herein.

- **For XFINITY Internet Customers.** The Comcast Acceptable Use Policy ("AUP") and other policies concerning XFINITY Internet are posted at http://www.comcast.com/Corporate/Customers/Policies/Policies.html (or an alternative website if we so notify you). You further agree that Comcast may modify the AUP or other policies from time to time. Notwithstanding anything to the contrary in this Agreement, YOU ACKNOWLEDGE AND AGREE THAT THE TERMS OF THE AUP AND ANY OTHER APPLICABLE COMCAST POLICIES MAY BE PUT INTO EFFECT OR REVISED FROM TIME TO TIME WITH OR WITHOUT NOTICE BY POSTING A NEW VERSION OF THE AUP OR POLICY AS SET FORTH ABOVE. YOU AND OTHER USERS OF THE SERVICE(S) SHOULD CONSULT THE AUP AND ALL POSTED POLICIES REGULARLY TO CONFORM TO THE MOST RECENT VERSION.
- **For XFINITY Voice Customers.** The Comcast Acceptable Use Policy for Residential

Voice Services ("Voice AUP") is posted at http://www.comcast.com/Corporate/Customers/Policies/Policies.html (or an alternative website if we so notify you). COMCAST RESERVES THE RIGHT TO LIMIT OR BLOCK ANY XFINITY VOICE USAGE AS COMCAST DEEMS NECESSARY TO PREVENT HARM TO ITS NETWORK, FRAUD, OR OTHER ABUSE OF XFINITY VOICE SERVICES. You agree the voice-capable modem and XFINITY Voice will only be used at the Premises, except that certain online features may be accessible from locations other than the Premises. You understand and acknowledge that if you improperly install the XFINITY Equipment or XFINITY Voice at another location in the Premises, then XFINITY Voice, including, but not limited to, 911/E911, may fail to function or may function improperly. If you move the voice-capable modem or XFINITY Voice to another location without notifying us, you do so in violation of this Agreement and at your own risk. You agree not to use XFINITY Voice for auto-dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting or fax blasting, or for any other use that results in usage inconsistent with normal residential calling patterns. If we determine, in our sole discretion, that your use of XFINITY Voice is in violation of this Agreement, we reserve the right (1) to terminate or modify immediately and without notice or (2) to assess additional charges for each month in which such violation occurred.

**8. ASSIGNABILITY**

This Agreement and the Service(s) furnished hereunder may not be assigned by you. You agree to notify us immediately of any changes of ownership or occupancy of the Premises. We may freely assign our rights and obligations under this Agreement with or without notice to you.

**9. TERMINATION OF THIS AGREEMENT**

**a. Term.** This Agreement will be in effect from the time that the Service(s) are activated until (1) it is terminated as provided for by this Agreement or by any addendum to this Agreement or (2) it is replaced by a revised Agreement. If you self-install XFINITY Equipment, Service(s) charges begin the earliest of (1) the day on which you picked up XFINITY Equipment at our service center, (2) the day you install the Service(s), or (3) five (5) days after the date we ship the XFINITY Equipment to you. If you self-install a voice-capable modem, cable modem, or converter you obtained from a source other than Comcast, charges begin the day your order for the Service(s) is entered into our billing system. The option to self-install a voice-capable modem, cable modem, or converter and/or to use a non-Comcast-supplied voice-capable modem, cable modem or converter is subject to availability.

**b. Termination by You.** Unless you have signed a minimum term addendum, you may terminate this Agreement for any reason at any time by notifying Comcast in one of three ways: (1) send a written notice to the postal address of your local Comcast business office; (2) send an electronic notice to the e-mail address specified on www.comcast.com; or (3) call our customer service line during normal business hours. Prior to affecting such termination, or any other change to your account, Comcast may undertake actions to verify your identity and confirm your election. Subject to applicable law or the terms of any agreements with governmental authorities, all applicable fees and charges for the Service(s) will accrue until this Agreement has terminated, the Service(s) have been disconnected, and all XFINITY Equipment has been returned. We will refund all prepaid monthly service fees charged for Service(s) after the date of termination (less any outstanding amounts due Comcast for the Service(s), affiliate services, XFINITY Equipment, or other applicable fees and charges).

- **For Prince Georges County, Maryland Customers.** All applicable fees and charges will accrue until the termination of this Agreement or the date you request the Service(s) to be disconnected, whichever is earlier.

**c. Suspension and Termination by Comcast.** Under the conditions listed below, Comcast reserves the right, subject to applicable law, to act immediately and without notice to terminate or suspend the Service(s) and/or to remove from the Service(s) any information transmitted by or to any authorized users (e.g., email or voicemail). Comcast may take these actions if it: (1) determines that your use of the Service(s) does not conform with the requirements set forth in this Agreement, (2) determines that your use of the Service(s)

interferes with Comcast's ability to provide the Service(s) to you or others, (3) reasonably believes that your use of the Service(s) may violate any laws, regulations, or written and electronic instructions for use, or (4) reasonably believes that your use of the Service(s) interferes with or endangers the health and/or safety of our personnel or third parties. Comcast's action or inaction under this Section shall not constitute review or approval of your or any other users' use of the Service(s) or information transmitted by or to you or users.

**d. Your Obligations Upon Termination.** You agree that upon termination of this Agreement you will do the following:

1. You will immediately cease all use of the Service(s) and all XFINITY Equipment;
2. Except as provided in Section 9(b) for Prince Georges County Customers, you will pay in full for your use of the Service(s) up to the date that this Agreement has been terminated and the Service(s) are disconnected; and
3. Within ten (10) days of the date on which Service(s) are disconnected, you will return all XFINITY Equipment to us at our local business office or to our designee in working order, normal wear and tear excepted. Otherwise, you will be charged the amount set forth in the current pricing lists for such XFINITY Equipment, or the revised amount for which you receive notice; if no amount has been specified for the particular model of XFINITY Equipment, you will be charged the retail price for a new replacement. You may also be charged incidental costs that we incur in replacing the XFINITY Equipment. Upon our request during regular business hours at a time agreed upon by you and us, you will permit us and our employees, agents, contractors, and representatives to access the Premises during regular business hours to remove all XFINITY Equipment and other material provided by Comcast.
   - **For Prince Georges County, Maryland Customers.** Within five (5) business days of the date on which Service(s) are disconnected, you will return all XFINITY Equipment to us at our local business office or to our designee in working order, normal wear and tear excepted or make arrangements for Comcast to recover the XFINITY Equipment. Otherwise, you will be charged the amount set forth in the current pricing lists for such XFINITY Equipment, or the revised amount for which you receive notice; if no amount has been specified for the particular model of XFINITY Equipment, you will be charged the retail price for a new replacement. You may also be charged incidental costs that we incur in replacing the XFINITY Equipment. Upon our request, you will permit us and our employees, agents, contractors, and representatives to access the Premises during regular business hours to remove the XFINITY Equipment and other material provided by Comcast. We will conduct this removal at a time agreed on by you and us, and you will ensure that all XFINITY Equipment is returned to Comcast.
   - **For Montgomery County, Maryland XFINITY Internet Customers.** If you are mobility impaired, upon your request, we will arrange for the pickup or exchange of your cable modem at the Premises.

**10. LIMITED WARRANTY**

THE XFINITY EQUIPMENT AND THE SERVICE(S) ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER COMCAST NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS WARRANT THAT THE XFINITY EQUIPMENT OR THE SERVICE(S) WILL MEET YOUR REQUIREMENTS, PROVIDE UNINTERRUPTED USE, OR OPERATE AS REQUIRED, WITHOUT DELAY, OR WITHOUT ERROR. NEITHER COMCAST NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS WARRANT THAT ANY COMMUNICATIONS WILL BE TRANSMITTED IN UNCORRUPTED FORM. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF PERFORMANCE, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, ARE HEREBY DISCLAIMED AND EXCLUDED UNLESS OTHERWISE

PROHIBITED OR RESTRICTED BY APPLICABLE LAW.

**11. LIMITATION OF COMCAST'S LIABILITY**

**a. Application.** The limitations of liability set forth in this Section apply to any acts, omissions, and negligence of Comcast and its underlying third-party service providers, agents, suppliers, distributors, licensors and business partners (and their respective officers, employees, agents, contractors or representatives) which, but for that provision, would give rise to a cause of action in contract, tort or under any other legal doctrine. YOU MUST COMMENCE YOUR ACTION WITHIN ONE (1) YEAR OF THE DATE OF THE OCCURRENCE OF THE EVENT OR FACTS GIVING RISE TO A DISPUTE OR YOU WAIVE THE RIGHT TO PURSUE ANY CLAIM BASED ON SUCH EVENTS, OR FACTS. AS PROVIDED IN SECTION 2, YOU MUST NOTIFY US OF ANY BILLING DISPUTE WITHIN 120 DAYS OF RECEIVING THE CHARGES YOU DISPUTE OR YOU WAIVE THE RIGHT TO PURSUE ANY CLAIM BASED ON SUCH EVENT OR FACTS. IF FOLLOWING SUCH NOTIFICATION THE DISPUTE IS NOT RESOLVED TO YOUR SATISFACTION YOU MAY COMMENCE AN ACTION IN ACCORDANCE WITH THIS AGREEMENT FOR UP TO ONE (1) YEAR FROM THE RECEIPT OF THE DISPUTED CHARGES.

**b. Customer Equipment.** CUSTOMER EQUIPMENT MAY BE DAMAGED OR SUFFER SERVICE OUTAGES AS A RESULT OF THE INSTALLATION, SELF-INSTALLATION, USE, INSPECTION, MAINTENANCE, UPDATING, REPAIR, AND REMOVAL OF XFINITY EQUIPMENT, CUSTOMER EQUIPMENT AND/OR THE SERVICE(S). EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER COMCAST NOR ANY OF ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE, LOSS, OR DESTRUCTION TO THE CUSTOMER EQUIPMENT. IN THE EVENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY COMCAST, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS WE SHALL PAY AT OUR SOLE DISCRETION FOR THE REPAIR OR REPLACEMENT OF THE DAMAGED CUSTOMER EQUIPMENT UP TO A MAXIMUM OF $500. THIS SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY RELATING TO SUCH ACTIVITY.

- **For XFINITY Internet and XFINITY Video Customers.** YOU UNDERSTAND THAT YOUR COMPUTER OR OTHER DEVICES MAY NEED TO BE OPENED, UPDATED, ACCESSED OR USED EITHER BY YOU OR BY US OR OUR AGENTS, IN CONNECTION WITH THE INSTALLATION, UPDATING OR REPAIR OF XFINITY INTERNET OR VIDEO SERVICE(S). THE OPENING, ACCESSING OR USE OF YOUR COMPUTER, OTHER DEVICES USED IN CONNECTION WITH XFINITY INTERNET OR VIDEO SERVICE(S) MAY VOID WARRANTIES PROVIDED BY THE COMPUTER OR OTHER DEVICE MANUFACTURER OR OTHER PARTIES RELATING TO THE COMPUTER'S OR DEVICE'S HARDWARE OR SOFTWARE. NEITHER COMCAST NOR ANY OF ITS AFFILIATES, SUPPLIERS, OR AGENTS, SHALL HAVE ANY LIABILITY WHATSOEVER AS THE RESULT OF THE VOIDING OF ANY SUCH WARRANTIES.

**c. Other Services or Equipment.** BY ACCEPTING THIS AGREEMENT, YOU WAIVE ALL CLAIMS AGAINST COMCAST FOR INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY BETWEEN THE XFINITY EQUIPMENT OR THE SERVICE(S) AND ANY OTHER SERVICE, SYSTEMS, OR EQUIPMENT. IN THE EVENT OF SUCH INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY, YOUR SOLE REMEDY SHALL BE TO TERMINATE THE SERVICE(S) IN ACCORDANCE WITH SECTION 9.

**d. Software.** When you use certain features of the Service(s), such as online features (where available), you may require special software, applications, and/or access to the Internet. Comcast makes no representation or warranty that any software or application installed on Customer Equipment, downloaded to Customer Equipment, or available through the Internet does not contain a virus or other harmful feature. It is your sole responsibility to take appropriate precautions to protect any Customer Equipment from damage to its software, files, and data as a result of any such virus or other harmful feature. We may, but are not

required to, terminate all or any portion of the installation or operation of the Service(s) if a virus or other harmful feature or software is found to be present on your Customer Equipment. We are not required to provide you with any assistance in removal of viruses. If we decide, in our sole discretion, to install or run virus check software on your Customer Equipment, we make no representation or warranty that the virus check software will detect or correct any or all viruses. You acknowledge that you may incur additional charges for any service call made or required on account of any problem related to a virus or other harmful feature detected on your Customer Equipment. NEITHER COMCAST NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OF ANY HARDWARE, SOFTWARE, FILES, OR DATA RESULTING FROM A VIRUS, ANY OTHER HARMFUL FEATURE, OR FROM ANY ATTEMPT TO REMOVE IT.

In addition, as part of the installation process for the software and other components of the Service(s), system files on your Customer Equipment may be modified. Comcast does not represent, warrant or covenant that these modifications will not disrupt the normal operations of any Customer Equipment including without limitation your computer(s), or cause the loss of files. Comcast does not represent, warrant, or covenant that the installation of the special software or applications or access to our Web portal(s) will not cause the loss of files or disrupt the normal operations of any Customer Equipment, including, but not limited to, your computer(s). FOR THESE AND OTHER REASONS, YOU ACKNOWLEDGE AND UNDERSTAND THE IMPORTANCE OF BACKING UP ALL FILES TO ANOTHER STORAGE MECHANISM PRIOR TO SUCH ACTIVITIES. YOU UNDERSTAND AND ACCEPT THE RISKS IF YOU DECIDE NOT TO BACK UP FILES. NEITHER COMCAST NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OF ANY SOFTWARE, FILES, OR DATA.

**e. Disruption of Services.** The Service(s) are not fail-safe and are not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Service(s) could lead to severe injury to business, persons, property, or environment ("High Risk Activities"). These High Risk Activities may include, without limitation, vital business, or personal communications, or activities where absolutely accurate data or information is required. You expressly assume the risks of any damages resulting from High Risk Activities. We shall not be liable for any inconvenience, loss, liability, or damage resulting from any interruption of the Service(s), directly or indirectly caused by, or proximately resulting from, any circumstances beyond our control, including, but not limited to, causes attributable to you or your property; inability to obtain access to the Premises; failure of any signal at the transmitter; failure of a communications satellite; loss of use of poles, or other utility facilities; strike; labor dispute; riot or insurrection; war; explosion; malicious mischief; fire, flood, lightning, earthquake, wind, ice, extreme weather conditions, or other acts of God; failure or reduction of power; or any court order, law, act or order of government restricting or prohibiting the operation or delivery of the Service(s). In all other cases of an interruption of the Service(s), you shall be entitled upon a request made within 120 days of such interruption, to a pro rata credit for any Service(s) interruption exceeding twenty-four consecutive hours after such interruption is reported to us, or such other period of time as may be specifically provided by law. Unless specifically provided by law, such credit shall not exceed the fixed monthly charges for the month of such Service(s) interruption and excludes all nonrecurring charges, one-time charges, per call or measured charges, regulatory fees and surcharges, taxes and other governmental and quasi-governmental fees. **EXCEPT AND UNLESS SPECIFICALLY PROHIBITED BY LAW, SUCH CREDIT SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY FOR AN INTERRUPTION OF SERVICE(S).** Any credits provided by Comcast are at our sole discretion and in no event shall constitute or be construed as a course of conduct by Comcast.

- **For Connecticut XFINITY Video Customers.** In the event of an interruption of XFINITY Video of more than twenty four (24) consecutive hours and of which Comcast has received actual notice, a credit will be issued to your XFINITY Video monthly service

charges for the length of time XFINITY Video was interrupted.

- **For Maine XFINITY Video Customers.** In the event your XFINITY Video services are interrupted for more than six (6) consecutive hours in a thirty (30) day period, you may request a pro-rate credit or refund by calling 1-800-XFINITY.
- **For New York XFINITY Video Customers.** In the event of an interruption of XFINITY Video for at least four (4) hours between 6:00 p.m. and 12:00 a.m., except for emergency notice events, a credit equal to one day will be issued to your XFINITY Video monthly service charges. If your XFINITY Video is interrupted for less than four (4) hours or outside of the hours of 6:00 p.m. and 12:00 a.m., please call 1-800-XFINITY to request a credit.
- **For Vermont XFINITY Video Customers.** In the event of an interruption of XFINITY Video for more than twenty-four (24) consecutive hours and of which Comcast has received actual notice, Comcast will issue a credit to your XFINITY Video monthly service charges for the total period of the interruption in an amount proportionate to your regular monthly service charge. If Comcast has not been made aware of the interruption, you must call 1-800-XFINITY to request a credit.
- **For Montgomery County, Maryland.**
  - **XFINITY Video Customers.** Under its franchise with Montgomery County, Maryland, Comcast has the following rebate policy: In the event of a XFINITY Video Service interruption (loss of picture or sound of one or more channels to any customer) Comcast shall repair the XFINITY Video Service interruption as soon as possible. This obligation is satisfied if Comcast offers you the next available repair appointment within the 24-hour period following the XFINITY Video Service interruption, or at your request, to a mutually convenient later time for the repair call, and successfully repairs the XFINITY Video Service interruption during the agreed upon appointment. If the Service interruption is not repaired at the time of the scheduled appointment, you will receive a credit of 10% of your normal monthly bill for XFINITY Video for each 24-hour period, or segment thereof, that the Service interruption continues beyond the scheduled repair call. You may contact Comcast at (301) 424-4400.
  - **XFINITY Internet Customers.** Under its franchise with Montgomery County, Maryland, Comcast has the following rebate policy: In the event of a Service interruption of XFINITY Internet (loss of cable modem service) Comcast shall repair the XFINITY Internet Service interruption as soon as possible. This obligation is satisfied if Comcast offers you the next available repair appointment within the 24-hour period following the XFINITY Internet Service interruption, or at your request, to a mutually convenient later time for the repair call, and successfully repairs the XFINITY Internet Service interruption during the agreed upon appointment. If the XFINITY Internet Service interruption is not repaired at the time of the scheduled appointment, you will receive a prorated credit for each 24-hour period, or segment thereof, that the XFINITY Internet Service interruption continues beyond the scheduled repair call. You may contact Comcast at (301) 424-4400.
- **For Prince Georges County, Maryland Customers.** In the event of a XFINITY Video Service interruption (loss of picture or sound of one or more channel to any customer) lasting between two (2) and six (6) hours, you shall be entitled upon request, to a pro-rata credit for such XFINITY Video Service interruption. In the event of a XFINITY Video Service interruption lasting between six (6) and twenty-four (24) consecutive hours, you shall be entitled to a pro-rata credit equal to one day of your monthly XFINITY Video Service charge.
- **For New Jersey Customers.** Comcast will issue credit for XFINITY Video Service outages or service interruptions in accordance with N.J.A.C. 14:18-3.5.
- **For XFINITY Voice Customers.** You understand and acknowledge that you will not be able to use XFINITY Voice under certain circumstances, including, but not limited to, the following: (1) if our network or facilities are not operating or (2) if normal electrical power to the voice-capable modem is interrupted and the voice-capable modem does

not have a functioning battery backup. You also understand and acknowledge that the performance of a battery backup is not guaranteed. If the battery backup does not provide power, XFINITY Voice will not function until normal power is restored. You also understand and acknowledge that Comcast does not support priority restoration of XFINITY Voice. You also understand and acknowledge that you will not be able to use online features of XFINITY Voice (where available), under certain circumstances including, but not limited to, the interruption of your Internet connection.

**f. Directory Listings.** IF WE MAKE AVAILABLE AN OPTION TO LIST YOUR NAME, ADDRESS, AND/OR TELEPHONE NUMBER IN A PUBLISHED DIRECTORY (WHETHER IN PRINT OR ONLINE) OR DIRECTORY ASSISTANCE DATABASE, AND ONE OR MORE OF THE FOLLOWING CONDITIONS OCCURS: (1) YOU REQUEST THAT YOUR NAME, ADDRESS AND/OR PHONE NUMBER BE OMITTED FROM A DIRECTORY OR DIRECTORY ASSISTANCE DATABASE, BUT THAT INFORMATION IS INCLUDED IN EITHER OR BOTH; (2) YOU REQUEST THAT YOUR NAME, ADDRESS AND/OR PHONE NUMBER BE INCLUDED IN A DIRECTORY OR DIRECTORY ASSISTANCE DATABASE, BUT THAT INFORMATION IS OMITTED FROM EITHER OR BOTH; OR (3) THE PUBLISHED OR LISTED INFORMATION FOR YOUR ACCOUNT CONTAINS MATERIAL ERRORS OR OMISSIONS, THEN THE AGGREGATE LIABILITY OF COMCAST AND ITS AFFILIATES, SUPPLIERS OR AGENTS SHALL NOT EXCEED THE MONTHLY CHARGES, IF ANY, WHICH YOU HAVE ACTUALLY PAID TO COMCAST TO LIST, PUBLISH, NOT LIST, OR NOT PUBLISH THE INFORMATION FOR THE AFFECTED PERIOD. YOU SHALL HOLD HARMLESS COMCAST AND ITS AFFILIATES, SUPPLIERS OR AGENTS AGAINST ANY AND ALL CLAIMS FOR DAMAGES CAUSED OR CLAIMED TO HAVE BEEN CAUSED, DIRECTLY OR INDIRECTLY, BY THE ERRORS AND OMISSIONS REFERENCED ABOVE.

**g. Third Parties.** Notwithstanding anything to the contrary in this Agreement, you acknowledge and understand that we may use third parties to provide components of the Service(s), including without limitation, their services, equipment, infrastructure, or content. Comcast is not responsible for the performance (or non-performance) of third-party services, equipment, infrastructure, or content, whether or not they constitute components of the Service(s). Comcast shall not be bound by any undertaking, representation or warranty made by an agent, or employee of Comcast or of our underlying third-party providers and suppliers in connection with the installation, maintenance, or provision of the Service(s), if that undertaking, representation, or warranty is inconsistent with the terms of this Agreement. In addition, you understand that you will have access to the services and content of third parties through the Service(s), including without limitation that of content providers [whether or not accessible directly from the Service(s)]. Comcast is not responsible for any services, equipment, infrastructure, and content that are not provided by us [even if they are components of the Service(s)], and we shall have no liability with respect to such services, equipment, infrastructure, and content. You should address questions or concerns relating to such services, equipment, infrastructure, and content to the providers of such services, equipment, infrastructure, and content. We do not endorse or warrant any third-party products, services, or content that are distributed or advertised over the Service(s).

**h. Damages.** EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER COMCAST NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS SHALL UNDER ANY CIRCUMSTANCES OR UNDER ANY LEGAL THEORY (INCLUDING, BUT NOT LIMITED TO, TRESPASS, CONVERSION, TORT OR CONTRACT) HAVE ANY LIABILITY TO YOU OR TO ANY OTHER PERSON OR ENTITY FOR THE FOLLOWING LOSSES, DAMAGES, OR COSTS: (1) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, TREBLE, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSSES OR DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF EARNINGS, LOSS OF BUSINESS OPPORTUNITIES, PERSONAL INJURIES, OR DEATH) THAT RESULT DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH (a) YOUR RELIANCE ON OR USE OF THE XFINITY EQUIPMENT OR THE SERVICE(S); (b) THE INSTALLATION, SELF-INSTALLATION, MAINTENANCE,

FAILURE, OR REMOVAL OF THE SERVICE(S) (INCLUDING, BUT NOT LIMITED TO, ANY MISTAKES, OMISSIONS, INTERRUPTIONS, COMPUTER OR OTHER HARDWARE OR SOFTWARE BREACH, FAILURES OR MALFUNCTIONS, DELETION OR CORRUPTION OF FILES, WORK STOPPAGE, ERRORS, DEFECTS, DELAYS IN OPERATION, DELAYS IN TRANSMISSION, OR FAILURE OF PERFORMANCE OF THE SERVICE(S), THE XFINITY EQUIPMENT, OR THE CUSTOMER EQUIPMENT, OR ANY OTHER MISTAKES, OMISSIONS, LOSS OF CALL DETAIL, E-MAIL, VOICEMAIL, OR OTHER INFORMATION OR DATA); (c) THE USE OF XFINITY EQUIPMENT OR CUSTOMER EQUIPMENT TO PROVIDE THE SERVICES, INCLUDING, BUT NOT LIMITED TO, DAMAGES RESULTING FROM OTHERS ACCESSING CUSTOMER EQUIPMENT,COMCAST'S NETWORK, OR THE CONTENTS OF YOUR TRANSMISSIONS MADE THROUGH THE SERVICE(S), OR YOUR USE OF FILE SHARING, PRINT SHARING, OR OTHER CAPABILITIES THAT ALLOW OTHERS TO GAIN ACCESS TO YOUR COMPUTER NETWORK. OR

(2) ANY LOSSES, CLAIMS, DAMAGES, EXPENSES, LIABILITIES, LEGAL FEES, OR OTHER COSTS THAT RESULT DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH ANY ALLEGATION, CLAIM, SUIT, OR OTHER PROCEEDING BASED UPON A CONTENTION THAT THE USE OF THE XFINITY EQUIPMENT OR THE SERVICE(S) BY YOU OR ANY OTHER PERSON OR ENTITY INFRINGES UPON THE CONTRACTUAL RIGHTS, PRIVACY, CONFIDENTIALITY, COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

i. **Customer's Sole Remedies.** Your sole and exclusive remedies under this Agreement are as expressly set forth in this Agreement. Certain of the above limitations may not apply if your state does not allow the exclusion or limitation of implied warranties or does not allow the limitation or exclusion of incidental or consequential damages. In those states, the liability of Comcast and its employees, affiliates, suppliers, agents, contractors, distributors, licensors and business partners is limited to the maximum extent permitted by law.

j. **Survival of Limitations.** All representations, warranties, indemnifications, and limitations of liability contained in this Agreement shall survive the termination of this Agreement; any other obligations of the parties hereunder shall also survive, if they relate to the period before termination or if, by their terms, they would be expected to survive such termination.

**12. INDEMNIFICATION AND LIABILITY OF CUSTOMER**

YOU AGREE THAT YOU SHALL BE RESPONSIBLE FOR AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS COMCAST AND ITS EMPLOYEES, AFFILIATES, SUPPLIERS, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS AND BUSINESS PARTNERS AND SHALL REIMBURSE US FOR ANY DAMAGES, LOSSES OR EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS) INCURRED BY US IN CONNECTION WITH ANY CLAIMS, SUITS, JUDGMENTS, AND CAUSES OF ACTION ARISING OUT OF (a) YOUR USE OF THE SERVICE(S) OR XFINITY EQUIPMENT; (b) VIOLATION OR INFRINGEMENT OF CONTRACTUAL RIGHTS, PRIVACY, CONFIDENTIALITY, COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS ARISING FROM YOUR USE OF THE SERVICE(S) OR ANY UNAUTHORIZED APPARATUS OR SYSTEM; (c) ANY CLAIMS OR DAMAGES ARISING OUT OF THE LACK OF 911/E911 OR DIALING ASSOCIATED WITH A HOME SECURITY, HOME DETENTION, OR MEDICAL MONITORING SYSTEM; AND (d) YOUR BREACH OF ANY PROVISION OF THIS AGREEMENT.

**13. BINDING ARBITRATION**

a. **Purpose.** Any Dispute involving you and Comcast shall be resolved through individual arbitration. In arbitration, there is no judge or jury and there is less discovery and appellate review than in court.

b. **Definitions.** This Arbitration Provision shall be broadly interpreted. "Dispute" means any claim or controversy related to Comcast, including but not limited to any and all: (1) claims for relief and theories of liability, whether based in contract, tort, fraud, negligence, statute, regulation, ordinance, or otherwise; (2) claims that arose before this or any prior Agreement; (3) claims that arise after the expiration or termination of this Agreement, and

(4) claims that are currently the subject of purported class action litigation in which you are not a member of a certified class. As used in this Arbitration Provision, "Comcast" means Comcast and any of its predecessors, successors, assigns, parents, subsidiaries, and affiliates, and each of their respective officers, directors, employees and agents, and "you" means you and any users or beneficiaries of the Service(s).

c. **Exclusions.** NOTWITHSTANDING THE FOREGOING, THE FOLLOWING DISPUTES WILL NOT BE SUBJECT TO ARBITRATION: (i) DISPUTES RELATING TO THE SCOPE, VALIDITY, OR ENFORCEABILITY OF THIS ARBITRATION PROVISION; (ii) DISPUTES THAT ARISE BETWEEN COMCAST AND ANY STATE OR LOCAL REGULATORY AUTHORITY OR AGENCY THAT IS EMPOWERED BY FEDERAL, STATE, OR LOCAL LAW TO GRANT A FRANCHISE UNDER 47 U.S.C. § 522(9); AND (iii) DISPUTES THAT CAN ONLY BE BROUGHT BEFORE THE LOCAL FRANCHISE AUTHORITY UNDER THE TERMS OF THE FRANCHISE.

d. **Right to Opt Out.** IF YOU DO NOT WISH TO ARBITRATE DISPUTES, YOU MAY DECLINE TO HAVE YOUR DISPUTES WITH COMCAST ARBITRATED BY NOTIFYING COMCAST IN WRITING, WITHIN 30 DAYS OF THE DATE THAT YOU FIRST RECEIVE THIS AGREEMENT OR BY VISITING WWW.COMCAST.COM/ARBITRATIONOPTOUT, OR BY MAIL TO COMCAST 1701 JOHN F. KENNEDY BLVD., PHILADELPHIA, PA 19103-2838, ATTN: LEGAL DEPARTMENT/ARBITRATION. YOUR WRITTEN NOTIFICATION TO COMCAST MUST INCLUDE YOUR NAME, ADDRESS AND COMCAST ACCOUNT NUMBER AS WELL AS A CLEAR STATEMENT THAT YOU DO NOT WISH TO RESOLVE DISPUTES WITH COMCAST THROUGH ARBITRATION. YOUR DECISION TO OPT OUT OF THIS ARBITRATION PROVISION WILL HAVE NO ADVERSE EFFECT ON YOUR RELATIONSHIP WITH COMCAST OR SERVICE(S) PROVIDED BY COMCAST. IF YOU HAVE PREVIOUSLY OPTED OUT OF ARBITRATION WITH RESPECT TO THE ACCOUNT GOVERNED BY THIS AGREEMENT, YOU DO NOT NEED TO DO SO AGAIN. YOU MUST SEPARATELY OPT OUT FOR EACH ACCOUNT UNDER WHICH YOU RECEIVE SERVICES.

e. **Initiation of Arbitration Proceeding/Selection of Arbitrator.** The party initiating the arbitration proceeding may open a case with the American Arbitration Association ("AAA") by visiting its website (www.adr.org) or calling its toll free number (1-800-778-7879. You may deliver any required or desired notice to Comcast by mail to Comcast, 1701 JFK Boulevard, Philadelphia, PA 19103-2838 – ATTN: LAW DEPARTMENT.

f. **Right to Sue in Small Claims Court.** Notwithstanding anything in this Arbitration Provision to the contrary, either you or Comcast may bring an individual action in a small claims court in the area where you receive Service(s) from Comcast if the claim is not aggregated with the claim of any other person and if the amount in controversy is properly within the jurisdiction of the small claims court.

g. **Arbitration Procedures.** This Arbitration Provision shall be governed by the Federal Arbitration Act. Arbitrations shall be administered by AAA pursuant to its Consumer Arbitration Rules (the "AAA Rules") as modified by the version of this Arbitration Provision that is in effect when you notify Comcast about your Dispute. You can obtain the AAA Rules from the AAA by visiting its website (www.adr.org) or calling its toll-free number (1-800-778-7879). If there is a conflict between this Arbitration Provision and the rest of this Agreement, this Arbitration Provision shall govern. If there is a conflict between this Arbitration Provision and the AAA rules, this Arbitration Provision shall govern. If the AAA will not administer a proceeding under this Arbitration Provision as written, the parties shall agree on a substitute arbitration organization. If the parties cannot agree, the parties shall mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will administer a proceeding under this Arbitration Provision as written applying the AAA Consumer Arbitration Rules. A single arbitrator will resolve the Dispute. Unless you and Comcast agree otherwise, any arbitration hearing will take place at a location convenient to you in the area where you receive Service(s) from Comcast. If you no longer receive Service(s) from Comcast when you notify Comcast of your Dispute, then any arbitration hearing will take place at a location convenient to you in the county where you reside when you notify Comcast of your Dispute provided that Comcast offers Service(s) in that county, or in the area where you received Service(s) from Comcast at the time of the

events giving rise to your Dispute. The arbitrator will honor claims of privilege recognized by law and will take reasonable steps to protect customer account information and other confidential or proprietary information. The arbitrator shall issue a reasoned written decision that explains the arbitrator's essential findings and conclusions. The arbitrator's award may be entered in any court having jurisdiction over the parties only if necessary for purposes of enforcing the arbitrator's award. An arbitrator's award that has been fully satisfied shall not be entered in any court.

**h. Waiver of Class Actions and Collective Relief.** THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CLASS ACTION, JOINT OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC (SUCH AS A PRIVATE ATTORNEY GENERAL), OTHER SUBSCRIBERS, OR OTHER PERSONS. THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT INDIVIDUAL PARTY'S CLAIM. THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING.

**i. Arbitral Fees and Costs.** If your claim seeks more than $75,000 in the aggregate, the payment of the AAA's fees and costs will be governed by the AAA rules. If your claims seek less than $75,000 in the aggregate, the payment of the AAA's fees and costs will be Comcast's responsibility. However, if the arbitrator finds that your Dispute was frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), the payment of the AAA's fees and costs shall be governed by the AAA Rules and you shall reimburse Comcast for all fees and costs that were your obligation to pay under the AAA Rules. You may hire an attorney to represent you in arbitration. You are responsible for your attorneys' fees and additional costs and may only recover your attorneys' fees and costs in the arbitration to the extent that you could in court if the arbitration is decided in your favor. Notwithstanding anything in this Arbitration Provision to the contrary, Comcast will pay all fees and costs that it is required by law to pay.

**j. Severability and Waiver of Jury Trial.** If any part of Section (h) of this Arbitration Provision is found to be illegal or unenforceable, the entire Arbitration Provision will be unenforceable and the Dispute will be decided by a court. WHETHER IN COURT OR IN ARBITRATION, YOU AND COMCAST AGREE TO WAIVE THE RIGHT TO A TRIAL BY JURY TO THE FULLEST EXTENT ALLOWED BY LAW. If any other clause in this Arbitration Provision is found to be illegal or unenforceable, that clause will be severed from this Arbitration Provision, and the remainder of this Arbitration Provision will be given full force and effect.

**k. Survival.** This Arbitration Provision shall survive the termination of your Service(s) with Comcast.

**l. For New York XFINITY Video Customers.** You may elect to resolve a Dispute through the New York Public Service Commission in accordance with NYCRR 16§890.709(a) and NYCRR 16§709(c).

## 14. CUSTOMER PRIVACY NOTICE AND SECURITY

**a.** Comcast will provide you with a copy of our customer privacy notice at the time we enter into an agreement to provide any Service(s) to you, and annually afterwards, or as otherwise permitted by law. You can view the most current version of our privacy notice by going to www.comcast.com/customerprivacy.

**b.** To the extent Comcast is expressly required to do so by applicable law, we will provide notice to you of a breach of the security of certain personally identifiable information about you. It is Comcast's information security policy to provide such notice to you in the manner set forth in Section 16.

## 15. GENERAL

**a. Entire Agreement.** This Agreement and any other documents incorporated by reference constitute the entire agreement and understanding between you and Comcast with respect

to the subject matter of this Agreement, and replace any and all prior written or verbal agreements. If any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties, and the remainder of the provisions shall remain in full force and effect. Comcast does not waive any provision or right if it fails to insist upon or enforce strict performance of any provision of this Agreement. Neither the course of conduct between you and Comcast nor trade practice shall act to modify any provision of this Agreement.

**b. Additional Representations and Warranties.** In addition to representations and warranties you make elsewhere in this Agreement, you also represent and warrant that:

**i. Age:** You are at least 18 years of age.

**ii. Customer Information:** You represent and warrant that you have provided us with information that is accurate, complete and current, including without limitation your legal name, address, telephone number(s), the number of devices on which or through the Service(s) is being used, and payment data (including without limitation information provided when authorizing recurring payments). YOU AGREE TO NOTIFY US IMMEDIATELY IF THERE IS ANY CHANGE IN THE INFORMATION THAT YOU HAVE PROVIDED TO US. INCLUDING WITHOUT LIMITATION ANY CHANGE IN YOUR TELEPHONE OR MOBILE TELEPHONE NUMBER FAILURE TO DO SO IS A BREACH OF THIS AGREEMENT. IF YOU OWE ANY OUTSTANDING AMOUNTS FOR THE SERVICE(S) OR HAVE ANY UNRETURNED EQUIPMENT, THIS OBLIGATION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT AND SHALL CONTINUE UNTIL YOU PAY ALL OUTSTANDING AMOUNTS IN FULL AND RETURN ALL EQUIPMENT YOU AGREE THAT YOU SHALL INDEMNIFY DEFEND AND HOLD COMCAST HARMLESS FROM ANY CLAIM OR LIABILITY RESULTING FROM YOUR FAILURE TO NOTIFY COMCAST OF A CHANGE IN THE INFORMATION YOU HAVE PROVIDED, INCLUDING ANY CLAIM OR LIABILITY UNDER THE TELEPHONE CONSUMER PROTECTION ACT (47 U.S.C. SEC. 227), AND ANY REGULATIONS PROMULGATED THEREUNDER RESULTING FROM COMCAST ATTEMPTING TO CONTACT YOU AT THE MOBILE TELEPHONE NUMBER YOU PROVIDED.

**c. Information Provided to Third Parties.** Comcast is not responsible for any information provided by you to third parties, and this information is not subject to the privacy provisions of this Agreement or the privacy notice for the Service(s). In addition you are responsible for controlling access to any XFINITY Equipment and any other device you use to access the Services ("Connected Device"). You assume all privacy, security, and other risks associated with providing any individual with access to a Connected Device or providing any information, including CPNI or personally identifiable information, to third parties via the Service(s). For a description of the privacy protections associated with providing information to third parties, you should refer to the privacy policies, if any, provided by those third parties.

**d. Protection of Comcast's Information and Marks.** The Service(s), XFINITY Equipment and related documents are protected by trademark, copyright or other intellectual property laws, and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos, and domain names (collectively "marks") of Comcast and its affiliates are and shall remain the exclusive property of Comcast. Nothing in this Agreement shall grant you the right or license to use any of the marks.

**e. Export Laws.** You expressly agree to comply with all applicable export and re-export laws, including, but not limited to, the Export Administration Act, the Arms Export Control Act, and their implementing regulations. You further expressly agree not to use the Service(s) in any way that violates any provision of such laws or their implementing regulations.

**f. Retention of Rights.** Nothing contained in this Agreement shall be construed to limit Comcast's rights and remedies available at law or in equity. Upon termination of this Agreement for any reason, Comcast and its suppliers reserve the right to delete all your data, files, electronic messages or other Customer information that is stored on Comcast's or its suppliers' servers or systems. In addition, you may forfeit your account user name and

all e-mail, IP and Web space addresses, and voice mail. In the event you cancel XFINITY Voice without porting your voice service and the telephone number to another service provider, you will forfeit the telephone number. We shall have no liability whatsoever as the result of the loss of any such data, names, addresses, or numbers.

**16. NOTICE METHOD FOR CHANGES TO THIS AGREEMENT**

Comcast may deliver any notice concerning our relationship with you, including notice of any change to this Agreement, in any one or more of the following ways, as determined in our discretion: (1) by posting it on www.comcast.net, www.comcast.com or any other website about which you have been notified; (2) by mail or hand delivery to your Premises; (3) by e-mail to the address for your account in Comcast's records; or (4) by including it on or with your bill for Service(s). You agree that any one of the foregoing will constitute sufficient and effective notice under this Agreement. Because we may from time to time notify you about important information regarding the Service(s) and this Agreement by these methods, you agree it is your responsibility to regularly check your postal mail, e-mail and all postings at www.comcast.net, www.comcast.com or any other website about which you have been notified. If you find any change to this Agreement to be unacceptable, you have the right to cancel your Service(s). Your continued receipt of the Service(s) for more than 30 days after Comcast delivers notice of the change, however, will constitute your acceptance of the change.

**17. IMPORTANT INFORMATION**

If you are unable to get a problem resolved to your satisfaction at your local Comcast office, you may write to the Comcast Corporate Offices at 1701 John F. Kennedy Blvd., Philadelphia, PA 19103-2838 with concerns and complaints.

- **Massachusetts Customers:** In addition if you are unsatisfied with our handling of your complaint, you may contact your local franchise authority: the Consumer Division of the Department of Telecommunications and Cable (DTC) toll free at 1-800-392-6066 or you may write to them at Two South Station, Boston, MA 02110.
- **Connecticut Customers:** If you experience a problem with your Service(s), please contact us first and give us an opportunity to resolve your problem. If the matter is not resolved to your satisfaction please contact the Connecticut Department of Utility Control at 1-800-382-4586 (toll free within Connecticut) or 1-860-827-2622 (outside Connecticut) or TDD 1-860-827-2837.
- **New York Customers:** If you experience a problem with your Service(s), please contact us first and give us an opportunity to resolve your problem. If your concerns have not been resolved contact your local government, or call the **New York State Public Service Commission (PSC) at 1-800-342-3377,** or write to: **Customer Service Representative, New York State Public Service Commission, Office of Customer Services,** Three Empire State Plaza, Albany, New York 12223-1350.
- **New Hampshire and Maine Customers:** The Office of the Attorney General Consumer Protection and Antitrust Bureau has the authority to enforce Consumer Protection Laws and provide assistance in the mediation of consumer complaints. Customers should file written complaints concerning any alleged misrepresentations and unfair or deceptive practices of the cable company to:
  Maine – Office of the Attorney General, Department of Consumer Fraud and Antitrust, State House Station #6, Augusta, ME 04333
  New Hampshire – Office of the Attorney General, Department of Consumer Fraud and Antitrust, 25 Capital Street, Concord, NH 03301
- **Vermont Customers:** The Vermont Department of Public Service can provide assistance in the resolution of consumer complaints. Customers should file complaints with the Customer Hotline at 1-800-622-4496.

## ADDITIONAL PROVISIONS APPLICABLE TO XFINITY INTERNET SERVICE

**In addition to the provisions above that are applicable to XFINITY Video, XFINITY Internet and XFINITY Voice, the following are specifically applicable to XFINITY Internet Customers.**

**1. INTELLECTUAL PROPERTY RIGHTS**

a. **Ownership of Addresses.** You acknowledge that use of XFINITY Internet does not give you any ownership or other rights in any Internet/on-line addresses provided to you, including, but not limited to, Internet Protocol ("IP") addresses, e-mail addresses, and Web addresses. We may modify or change these addresses at any time without notice and shall in no way be required to compensate you for these changes. Upon termination of an XFINITY Internet account, we reserve the right permanently to delete or remove any or all addresses associated with the account.

b. **Authorization.** Comcast does not claim any ownership of any material that you publish, transmit or distribute using XFINITY Internet. By using XFINITY Internet to publish, transmit, or distribute material or content, you (1) warrant that the material or content complies with the provisions of this Agreement, (2) consent to and authorize Comcast, its agents, suppliers, and affiliates to reproduce, publish, distribute, and display the content worldwide and (3) warrant that you have the right to provide this authorization. You acknowledge that material posted or transmitted using XFINITY Internet may be copied, republished or distributed by third parties, and you agree to indemnify, defend, and hold harmless Comcast, its agents, suppliers, and affiliates for any harm resulting from these actions.

c. **Copyright.** Title and intellectual property rights to XFINITY Internet are owned by Comcast, its agents, suppliers, or affiliates or their licensors or otherwise by the owners of such material and are protected by copyright laws and treaties. You may not copy, redistribute, resell, or publish any part of XFINITY Internet without any required express prior written consent from Comcast or other owner of such material.

d. **Material Downloaded Through XFINITY Internet.** In addition to any content that may be provided by us, you may access material through XFINITY Internet that is not owned by Comcast. Specific terms and conditions may apply to your use of any content or material made available through XFINITY Internet that is not owned by Comcast. You should read those terms and conditions to learn how they apply to you and your use of any non-Comcast content.

2. **ADDITIONAL LIMITATIONS ON COMCAST'S LIABILITY FOR XFINITY INTERNET**

a. **Responsibility for Content.** You acknowledge that there is some content and material on the Internet or otherwise available through XFINITY Internet that may be offensive to some individuals, may be unsuitable for children, may violate federal, state or local laws, rules or regulations, or may violate your protected rights or those of others. We assume no responsibility for this content or material. Anyone who accesses such content and material does so at his or her own risk. NEITHER COMCAST NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS ARISING OUT OF OR OTHERWISE RELATING TO ACCESS TO SUCH CONTENT OR MATERIAL BY YOU OR OTHERS. Questions or complaints regarding content or material should be addressed to the content or material provider. You acknowledge that software programs are commercially available that claim to be able to restrict access to sexually explicit or other objectionable material on the Internet. We make no representation or warranty regarding the effectiveness of such programs.

b. **Eavesdropping.** The public Internet is used by numerous persons or entities including, without limitation, other subscribers to XFINITY Internet. As is the case with all shared networks like the public Internet, there is a risk that you could be subject to "eavesdropping." This means that other persons or entities may be able to access and/or monitor your use of XFINITY Internet. If you post, store, transmit, or disseminate any sensitive or confidential information, you do so at your sole risk. NEITHER COMCAST NOR ITS AFFILIATES, SUPPLIERS, OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS ARISING OUT OF OR OTHERWISE RELATING TO SUCH ACTIONS BY YOU. You acknowledge that software programs are commercially available that claim to be capable of encryption or anonymization. We make no representation or warranty regarding the effectiveness of these programs.

c. **FTP/HTTP Service Setup.** You acknowledge that when using XFINITY Internet there are certain applications such as FTP (File Transfer Protocol) or HTTP (Hyper Text Transfer Protocol) that may be used by other persons or entities to gain access to your Customer Equipment. You are solely responsible for the security of your Customer Equipment or any other equipment you choose to use in connection with the Service(s), including without limitation any data stored on such equipment. NEITHER COMCAST NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, OR CONTRACTORS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS OR PROCEEDINGS RESULTING FROM, ARISING OUT OF, OR OTHERWISE RELATING TO THE USE OF SUCH APPLICATIONS BY YOU, OR THE ACCESS BY OTHERS TO YOUR CUSTOMER EQUIPMENT OR OTHER EQUIPMENT OF YOURS.

d. **Facilities Allocation.** Comcast reserves the right to determine, in its discretion, and on an ongoing basis, the nature and extent of its facilities allocated to support XFINITY Internet, including, but not limited to, the amount of bandwidth to be utilized and delivered in conjunction with XFINITY Internet.

i. The Terms and Conditions of Sale for Products for XFINITY Internet Customers is available at www.comcast.com/termsofservice/termHSI.html.

3. **WIRELESS INTERNET ACCESS THROUGH XFINITY WIFI**

If you subscribe to the XFINITY Performance Internet service or above you may also access the Internet and use XFINITY Internet wirelessly ("XFINITY WiFi") through our access points, HHS and access points of affiliated companies providing wireless Internet access at no additional charge by using your XFINITY user ID and password to log in. If you use an XFINITY WiFi access point owned or operated by Comcast to access XFINITY Internet, including an HHS your use will be subject to the terms of this Agreement, the XFINITY WiFi terms of service and our acceptable use policies. If you use an access point owned or operated by one of our affiliated companies to access the Internet, you may be subject to the terms and conditions and acceptable use policies of our affiliate as well. If you subscribe to XFINITY Internet at a level below XFINITY Performance Internet service, XFINITY WiFi may be made available to you on a trial, sponsored or pay per use basis subject to different terms. Your use of XFINITY WiFi indicates your acceptance of the applicable terms. If you do not accept the applicable terms, you should not use XFINITY WiFi Service. XFINITY WiFi is not available in all locations and availability is subject to change without notice.

## ADDITIONAL PROVISIONS APPLICABLE TO XFINITY VOICE SERVICE

**In addition to the General Terms and Conditions above, the following terms and conditions are specifically applicable to XFINITY Voice Customers.**

1. **SPECIAL NOTICE FOR COMCAST DIGITAL VOICE SUBSCRIBERS: LIMITATIONS OF XFINITY VOICE SERVICE**

a. **Limitations.** XFINITY Voice includes 911/Enhanced 911 and certain plans include text-to-911 (where emergency authorities make such service available) functionality (collectively "911/E911") that may differ from the 911/E911 functionality furnished by other providers. As such, it may have certain limitations. CAREFULLY READ THE INFORMATION BELOW. YOU ACKNOWLEDGE AND ACCEPT ANY LIMITATIONS OF 911/E911. YOU AGREE TO CONVEY THESE LIMITATIONS TO ALL PERSONS WHO MAY PLACE CALLS OR TEXTS OVER THE SERVICES. IF YOU HAVE ANY QUESTIONS ABOUT 911/E911, CALL 1-800-XFINITY.

i. **Correct Address:** In order for your 911/E911 calls to be properly directed to emergency services, Comcast must have your correct Premises address. If you move XFINITY Voice to a different address without Comcast's approval, 911/E911 calls may be directed to the wrong emergency authority, may transmit the wrong address, and/or XFINITY Voice (including 911/E911) may fail altogether. Therefore, you must call 1-800-XFINITY before you move XFINITY Voice to a new address. Comcast will need several business days to update your Premises address in the E911 system so that your 911/E911 calls can be properly directed. All changes in service address require Comcast's prior approval.

In order to utilize text-to-911 service, you must be eligible to use the XFINITY Connect Mobile Application ("XCMA") and activate Voice 2go,™ properly authenticated and logged into the XCMA using a supported mobile device and operating system, and connected to the Internet over a Wi-Fi or commercial mobile radio service network. In order for text-to-911 (where emergency authorities make such service available) to be properly directed to emergency services, you must provide permission for the XCMA to request and receive your location from your mobile device's operating system.

ii. **Service Interruptions:** XFINITY Voice uses the electrical power in your home. If there is an electrical power outage, 911 calling may be interrupted if a battery backup in the associated voice-capable modem is not installed, fails, or is exhausted after several hours. Furthermore, calls, including calls and texts to 911/E911, may not be completed if there is a problem with network facilities, including network congestion, network/equipment/power failure, or another technical problem.

iii. **Suspension and Termination by Comcast:** You understand and acknowledge that all XFINITY Voice, including 911/E911, as well as all online features of XFINITY Voice, where we make these features available, will be disabled if your account is suspended or terminated.

iv. **Telephone Number Assignments:** The telephone numbers utilized for XFINITY Voice are assigned in accordance with applicable federal and state numbering rules. Therefore, XFINITY Voice cannot accommodate the assignment of a telephone number outside of the telephone rate center to which that number is appropriately assigned.

**b. Limitation of Liability and Indemnification.** YOU ACKNOWLEDGE AND AGREE THAT COMCAST WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE, INABILITY TO DIAL OR TEXT 911 USING THE SERVICE(S), AND/OR INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL. YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS COMCAST AND ITS AFFILIATES, SUPPLIERS OR AGENTS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS, AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES) BY, OR ON BEHALF OF, YOU OR ANY THIRD PARTY OR USER OF THE SERVICE(S) RELATING TO THE FAILURE OR OUTAGE OF THE SERVICE(S), INCLUDING THOSE RELATED TO 911/E911.

**2. ADDITIONAL XFINITY VOICE-SPECIFIC PROVISIONS REGARDING CUSTOMER EQUIPMENT**

**a. Incompatible Equipment and Services.** You acknowledge and understand that XFINITY Voice may not support or be compatible with:

i. Non-Recommended Configurations as defined in Section 6(b) [including, but not limited to, voice-capable modems not currently certified by Comcast as compatible with the Service(s)];

ii. Certain non-voice communications equipment, including certain makes or models of alarm and home security systems, certain medical monitoring devices, personal emergency alert, and home detention devices, certain fax machines, and certain "dial-up" modems;

iii. Rotary-dial phone handsets, and certain makes and models of other voice-related communications equipment including key systems, private branch exchange (PBX) equipment, answering machines, and traditional Caller ID units;

iv. Casual/dial around (10-10) calling; 976, 900, 700, or 500 number calling;

v. 311, 511, or other N11 calling (other than 411, 611, 711, and 911); and

vi. Other call types not expressly set forth in our product literature (e.g., outbound shore-to-ship calling); and

vii. Certain service codes such as automatic callback and automatic recall (e.g., *66, *69) due to compatibility limitations with other carrier signal functions.

**3. VOICE-CAPABLE MODEM BACKUP BATTERY**

If the voice-capable modem is equipped with a backup battery, such battery is used to provide service during a power outage to your home where power to Comcast's network remains available. The length of time that XFINITY Voice will be available during a power outage will depend on the following: (i) the backup battery remains properly installed in the voice-capable modem; (ii) the condition and age of the backup battery; and (iii) the amount of XFINITY

Voice usage when the voice-capable modem is utilizing power from the backup battery. You understand and acknowledge that: (i) the performance of the backup battery is not guaranteed; and (ii) you will not be able to use XFINITY Voice if electrical power to the voice-capable modem is interrupted and the voice-capable modem does not have a functioning backup battery. A voice-capable modem backup battery does not power cordless phones or other equipment connected to the telephone line that require electricity from your Premises, such as telecommunications devices used to assist customers with disabilities.

4. **TRANSFER OF YOUR PHONE NUMBER(S)**
For information about switching to another provider from XFINITY Voice and the assignment of telephone numbers related to XFINITY Voice Service please call 1-800-XFINITY.

5. **CUSTOMER INFORMATION**
Comcast and its suppliers reserve the right both during the term of this Agreement and upon its termination to delete your voicemail, call detail, data, files, or other information that is stored on Comcast's or its suppliers' servers or systems, in accordance with our storage policies. You understand and acknowledge that we shall have no liability whatsoever as a result of the loss or removal of any such voicemail, call detail, data, files, or other information.

6. **INTEGRATED SERVICES**
Use of XFINITY Voice's integrated services provided through online portals such as applicable communications center or voice center are governed by the GENERAL TERMS AND CONDITIONS of this Agreement.

7. **ADDITIONAL TERMS OF SERVICE**
To view additional terms of service applicable to XFINITY Voice in Maine, please go to http://www.comcast.com/tariffs.

Stnd 0716

# EXHIBIT I

DocuS gn Enve ope ID: 59D3E342-808E-4367-9775-647E17958BAA


Daniel M. Hattis (SBN 232141)
HATTIS LAW
P.O. Box 1645
Bellevue, WA 98009
Telephone: (650) 980-1990
Email: dan@hattislaw.com

Jason Skaggs (SBN 202190)
SKAGGS FAUCETTE LLP
430 Lytton Ave 2nd FL
Palo Alto, CA 94301
Telephone: (650) 617-3226
Email: jason@skaggsfaucette.com

Tony J. Tanke (SBN 74054)
LAW OFFICES OF TONY J. TANKE
2050 Lyndell Terrace, Suite 240
Davis, CA 95616
Telephone: (530) 758-4530
Email: appeals@tankelaw.com

Attorneys for Plaintiff and the Proposed Class

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JOSEPH LOOMIS, individually and on behalf of all others similarly situated,

Plaintiff,

v.

COMCAST CORPORATION; COMCAST CABLE COMMUNICATIONS, LLC; and DOES 1 through 100 inclusive,

Defendants.

Case No. _____

**DECLARATION OF JOSEPH LOOMIS PURSUANT TO CALIFORNIA CONSUMER LEGAL REMEDIES ACT**

I, Joseph Loomis, hereby declare and state as follows:

1. I am over the age of 18, and a Plaintiff in this action. The facts contained in this declaration are based on my personal knowledge, and if called upon to do so, I could and would testify competently hereto.

DocuSign Envelope ID: 59D3E342-808E-4367-9775-647E17958BAA


2. The complaint in this action, filed concurrently with this declaration, is filed in the proper place for trial under California Civil Code § 1780(d), because this is a county in which Defendants do business and where a substantial portion of the transactions occurred.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on 4/9/2017, in Moss Beach, California.

By: DocuSigned by: Joseph Loomis 04BDBBEB075F41B...
JOSEPH LOOMIS

# EXHIBIT J

Filed 4/6/17

# IN THE SUPREME COURT OF CALIFORNIA

| | |
|---|---|
| SHARON MCGILL,<br><br>Plaintiff and Respondent;<br><br>v.<br><br>CITIBANK, N.A.,<br><br>Defendant and Appellant. | S224086<br><br>Ct.App. 4/3 G049838<br><br>Riverside County<br>Super. Ct. No. RIC1109398 |

In previous decisions, this court has said that the statutory remedies available for a violation of the Consumers Legal Remedies Act (CLRA; Civ. Code, § 1750 et seq.), the unfair competition law (UCL; Bus. & Prof. Code, § 17200 et seq.), and the false advertising law (*id.*, § 17500 et seq.) include public injunctive relief, i.e., injunctive relief that has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public. (*Cruz v. PacifiCare Health Systems, Inc.* (2003) 30 Cal.4th 303, 315-316 (*Cruz*); *Broughton v. Cigna Healthplans* (1999) 21 Cal.4th 1066, 1077 (*Broughton*).) The question we address in this case is the validity of a provision in a predispute arbitration agreement that waives the right to seek this statutory remedy in any forum. We hold that such a provision is contrary to California public policy and is thus unenforceable under California law. We further hold that the Federal Arbitration Act (FAA; 9 U.S.C. § 1 et seq.) does not preempt this rule of California law or require enforcement of the waiver provision. We therefore reverse the judgment of the Court of Appeal.

## I. FACTUAL BACKGROUND

In 2001, plaintiff Sharon McGill opened a credit card account with defendant Citibank, N.A. (Citibank) and purchased a "credit protector" plan (Plan). Under the Plan, Citibank agreed to defer or to credit certain amounts on McGill's credit card account when a qualifying event occurred, such as long-term disability, unemployment, divorce, military service, or hospitalization. Citibank charged a monthly premium for the Plan based on the amount of McGill's credit card balance.

McGill's original account agreement did not contain an arbitration provision. In October 2001, Citibank sent her a "Notice of Change in Terms Regarding Binding Arbitration to Your Citibank Card Agreement" (2001 Notice), which amended the original agreement by adding the following arbitration provisions: "Either you or we may, without the other's consent, elect mandatory, binding arbitration for any claim, dispute, or controversy between you and us (called 'Claims')." "All Claims relating to your account or a prior related account, or our relationship are subject to arbitration, including Claims regarding the application, enforceability, or interpretation of this Agreement and this arbitration provision. All Claims are subject to arbitration, no matter what legal theory they are based on or what remedy (damages, or injunctive or declaratory relief) they seek. This includes Claims based on contract, tort (including intentional tort), fraud, agency, your or our negligence, statutory or regulatory provisions, or any other sources of law; . . . and Claims made independently or with other claims . . . . Claims and remedies sought as part of a class action, private attorney general or other representative action are subject to arbitration on an individual (non-class, non-representative) basis, and the arbitrator may award relief only on an individual (non-class, non-representative) basis." "This arbitration provision is governed by the Federal Arbitration Act (the 'FAA')." "Claims must be brought in the name of an individual person or entity and must proceed on an individual (non-class, non-representative) basis. The arbitrator will not award relief for or

against anyone who is not a party. If you or we require arbitration of a Claim, neither you, we, nor any other person may pursue the Claim in arbitration as a class action, private attorney general action or other representative action, nor may such Claim be pursued on your or our behalf in any litigation in any court."

The 2001 Notice stated that McGill had the option to decline the arbitration provision and to continue using her credit card under the existing terms until the "later" of "the end of [her] current membership year or the expiration date on [her] card(s)." McGill did not decline and, according to Citibank, the arbitration provision became effective on November 30, 2001.

In February 2005, Citibank sent McGill a "Notice of Change in Terms, Right to Opt Out, and Information Update" (2005 Notice), which informed her of changes to the arbitration provisions and to several other aspects of her account agreement. The 2005 Notice contained an opt-out provision similar to the opt-out provision in the 2001 Notice. Again, McGill did not opt out and continued using her credit card. In January 2007, Citibank sent McGill a complete copy of her account agreement, which included arbitration provisions identical to those quoted above.

In 2011, McGill filed this class action based on Citibank's marketing of the Plan and the handling of a claim she made under it when she lost her job in 2008. The operative complaint alleges claims under the UCL, the CLRA, and the false advertising law, as well as the Insurance Code. For relief, it requests, among other things, an injunction prohibiting Citibank from continuing to engage in its allegedly illegal and deceptive practices.

Pursuant to the arbitration provision, Citibank petitioned to compel McGill to arbitrate her claims on an individual basis. The trial court granted the petition in part and denied it in part based on *Broughton* and *Cruz*, which together established the following rule: Agreements to arbitrate claims for public injunctive relief under the CLRA, the UCL, or the false advertising law are not enforceable in California. Applying this rule — known as the *Broughton-Cruz*

rule — the trial court ordered McGill to arbitrate all claims other than those for injunctive relief under the UCL, the false advertising law, and the CLRA. The Court of Appeal reversed and remanded "for the trial court to order all of McGill's claims to arbitration," concluding that the FAA, as recently construed by the United States Supreme Court in *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333 (*Concepcion*), preempts the *Broughton-Cruz* rule.

During oral argument in the Court of Appeal, McGill asserted that the arbitration agreement is unenforceable because it purports to prohibit her from pursuing claims for public injunctive relief, not just in arbitration, but *in any forum*. The Court of Appeal did not mention this argument in its opinion. McGill made the argument again in a petition for rehearing, which the Court of Appeal denied without addressing the merits of the issue.

McGill filed a petition for review in this court, asserting (1) the Court of Appeal erred in finding FAA preemption of the *Broughton-Cruz* rule, and (2) the arbitration provision is invalid and unenforceable because it waives her right to seek public injunctive relief in any forum. For reasons explained below, we agree with her latter claim and we do not address the former.

## II. DISCUSSION

We begin by summarizing the California consumer protection laws here at issue. The Legislature enacted the CLRA "to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection." (Civ. Code, § 1760.) "[T]o promote" these purposes, the Legislature directed that the CLRA "be liberally construed and applied." (*Ibid*.) After setting forth a list of unlawful "methods of competition and unfair or deceptive acts or practices" (*id.*, § 1770), the CLRA authorizes any consumer who has been damaged by an unlawful method, act, or practice to bring an action for various forms of relief, including "[a]n order enjoining the methods, acts, or practices" (*id.*, § 1780, subd. (a)(2)). The CLRA also expressly declares that

"[a]ny waiver by a consumer" of the CLRA's provisions "is contrary to public policy and shall be unenforceable and void." (*Id.*, § 1751.)

The UCL addresses "unfair competition," which "mean[s] and include[s] any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [the false advertising law]." (Bus. & Prof. Code, § 17200.) Its purpose "is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services." (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 949.) "Actions for relief" under the UCL may be brought by various government officials and "by a person who has suffered injury in fact and has lost money or property as a result of the unfair competition." (Bus. & Prof. Code, § 17204.) "[T]he primary form of relief available under the UCL to protect consumers from unfair business practices is an injunction." (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 319.) In this regard, the UCL provides: "Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments . . . as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition." (Bus. & Prof. Code, § 17203.)

The false advertising law makes unlawful "untrue or misleading" statements designed to "induce the public to enter into any obligation" to purchase various goods and services. (Bus. & Prof. Code, § 17500.) Like the UCL, the false advertising law allows an action for relief to be brought by specified government officials and "by any person who has suffered injury in fact and has lost money or property as a result of a violation." (Bus. & Prof. Code, § 17535.) It also authorizes injunctive relief, stating: "Any person, corporation, firm, partnership, joint stock company, or any other association or organization which

violates or proposes to violate this chapter may be enjoined by any court of competent jurisdiction. The court may make such orders or judgments . . . as may be necessary to prevent the use or employment by any person, corporation, firm, partnership, joint stock company, or any other association or organization of any practices which violate this chapter, or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful." (*Ibid.*)

In *Broughton* and *Cruz*, this court discussed the nature of the injunctive relief available under these statutes. It distinguished between private injunctive relief — i.e., relief that primarily "resolve[s] a private dispute" between the parties (*Broughton*, *supra*, 21 Cal.4th at p. 1080) and "rectif[ies] individual wrongs" (*id.* at p. 1080, fn. 5), and that benefits the public, if at all, only incidentally — and public injunctive relief — i.e., relief that "by and large" benefits the general public (*id.* at p. 1079) and that benefits the plaintiff, "if at all," only "incidental[ly]" and/or as "a member of the general public" (*id.* at p. 1080, fn. 5). For example, the court explained in *Broughton*, an injunction under the CLRA against a defendant's deceptive methods, acts, and practices "generally benefit[s]" the public "directly by the elimination of deceptive practices" and "will . . . not benefit" the plaintiff "directly," because the plaintiff has "already been injured, allegedly, by such practices and [is] aware of them." (*Ibid.*) "[E]ven if a CLRA plaintiff stands to benefit from an injunction against a deceptive business practice, it appears likely that the benefit would be incidental to the general public benefit of enjoining such a practice." (*Ibid.*) Likewise, the court explained in *Cruz*, an injunction under the UCL or the false advertising law against deceptive advertising practices "is clearly for the benefit of . . . the general public"; "it is designed to prevent further harm to the public at large rather than to redress or prevent injury to a plaintiff." (*Cruz*, *supra*, 30 Cal.4th at pp. 315-316.) To summarize, public injunctive relief under the UCL, the CLRA, and the false advertising law is relief that has "the primary purpose and effect of" prohibiting

unlawful acts that threaten future injury to the general public. (*Broughton*, *supra*, at p. 1077.) Relief that has the primary purpose or effect of redressing or preventing injury to an individual plaintiff — or to a group of individuals similarly situated to the plaintiff — does not constitute public injunctive relief.

As noted *ante*, *Broughton* and *Cruz* collectively established the following rule: Agreements to arbitrate claims for public injunctive relief under the CLRA, the UCL, or the false advertising law are not enforceable in California. As also noted *ante*, in the proceedings below, the parties and the courts focused on the effect of this rule on Citibank's petition to compel McGill to arbitrate her claims on an individual basis. The trial court applied the rule in declining to order arbitration of claims for injunctive relief under the UCL, the false advertising law, and the CLRA. The Court of Appeal, applying the high court's post-*Cruz* decisions, concluded that the rule was preempted by the FAA and ordered all claims to arbitration.

Although we granted review to consider the Court of Appeal's conclusion, it is now clear that the *Broughton-Cruz* rule is not at issue in this case. As detailed above, late in the Court of Appeal proceedings, McGill asserted that the arbitration provision purports to preclude her from seeking public injunctive relief *in any forum*. She repeats that assertion in this court, citing the following clauses of the arbitration provision: (1) "[a]n award in arbitration shall determine the rights and obligations between the named parties only, and only in respect of the Claims in arbitration, and shall not have any bearing on the rights and obligations of any other person, or on the resolution of any other dispute"; (2) "[t]he arbitrator will not award relief for or against anyone who is not a party"; (3) "the arbitrator may award relief only on an individual (non-class, nonrepresentative) basis"; and (4) "neither you, we, nor any other person may pursue the Claims in arbitration as a class action, private attorney general action or other representative action." At oral argument before us, Citibank agreed with McGill's reading of the arbitration provision.

Given the parties' agreement, we do not independently analyze the arbitration provision, but proceed based on the parties' shared view that it purports to preclude McGill from seeking public injunctive relief in arbitration, in court, or *in any forum*. Because, as Citibank states, the parties "elected . . . to exclude public injunctive relief from arbitration," the *Broughton-Cruz* rule — which applies only when parties have *agreed* to arbitrate requests for such relief — is not at issue, and we need not consider the rule's vitality in light of the high court's post-*Cruz* FAA decisions. Instead, the question before us is whether the arbitration provision is valid and enforceable insofar as it purports to waive McGill's right to seek public injunctive relief *in any forum*.

In answering this question, we first conclude that McGill's complaint does, in fact, appear to seek the type of public injunctive relief that *Broughton* and *Cruz* identified. The UCL claim alleges in part that Citibank's "advertising and marketing" of the Plan "is unfair, deceptive, untrue and misleading" in various respects, and that Citibank "continue[s] to violate" the UCL by selling the Plan "with advertising that includes false, misleading or deceptive information, and material omissions." For relief, it asks, among other things, for an order requiring Citibank "to immediately cease such acts of unfair competition and enjoining [Citibank] from continuing to conduct business via the unlawful, fraudulent or unfair business acts and practices complained of herein and from failing to fully disclose the true nature of its misrepresentations."

The false advertising claim incorporates the allegations of the UCL claim and additionally alleges in part that Citibank "engaged in unfair, deceptive, untrue, and misleading advertising, relating to" the Plan, and "disseminated or caused to be disseminated materially untrue, and misleading advertising statements with the intent to either directly or indirectly induce members of the public . . . to purchase" the Plan. For relief, it requests, among other things, "injunctive relief."

The CLRA claim incorporates the allegations of the UCL and false advertising law claims and additionally alleges in part that Citibank made

"representations and omissions" about the Plan that "were false, deceptive and/or misleading," and that Citibank "continue[s] to violate the CLRA by making misrepresentations and concealing material facts relating to" the Plan "and by selling the [P]lan based upon these misrepresentations and material omissions." For relief, it requests, among other things, "injunctive relief."

More generally, the complaint's prayer for relief requests, among other things: (1) a declaration that Citibank violated the UCL, the false advertising law, and the CLRA by "disseminating . . . unfair, deceptive, or misleading advertising, and material omissions"; (2) "injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code sections 17200 *et seq.*" and "California Civil Code section 1750 *et seq.*"; (3) entry of an order requiring Citibank "to immediately cease the wrongful conduct as set forth above" and "enjoining" Citibank "from continuing to falsely advertise or conceal material information and conduct business via the unlawful and unfair business acts and practices complained of herein"; and (4) entry of a judgment "for injunctive relief." In light of these allegations and requests for relief, which Citibank ignores, we disagree with Citibank that McGill has failed adequately to specify "the actual nature of the injunctive relief" she seeks or "to explain how the public at large would benefit from" that relief.[1]

We also disagree with Citibank that, because "McGill has not established that any of the alleged conduct she challenges is ongoing or likely to recur," she "has failed to establish that the relief she seeks is, in fact, public injunctive relief." As detailed *ante*, McGill alleges in her complaint that the conduct *is* ongoing. At this stage of the proceeding — a motion to compel arbitration — it is premature to

---

[1] As Citibank observes, McGill's complaint also requests compensatory, monetary and punitive damages, and "injunctive relief in the form of restitution and/or disgorgement." These remedies do not constitute public injunctive relief within the meaning of *Broughton* and *Cruz*. (*Cruz*, *supra*, 30 Cal.4th at pp. 317-320; *Broughton*, *supra*, 21 Cal.4th at p. 1084.)

consider whether she "has . . . established" these allegations with proof or how her failure to do so would ultimately affect her request for injunctive relief. (See *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 133 (plur. opn. of George, C. J.) ["The mere fact that a defendant refrains from unlawful conduct during the pendency of a lawsuit does not necessarily preclude the trial court from issuing injunctive relief to prevent a posttrial continuation of the unlawful conduct."]; *Robinson v. U–Haul Co. of California* (2016) 4 Cal.App.5th 304, 315 ["[T]here is no hard-and-fast rule that a party's discontinuance of illegal behavior makes injunctive relief . . . unavailable. 'While voluntary cessation of conduct may be a factor in a court's exercise of its equitable jurisdiction to issue an injunction, it is not determinative.' "].) In arguing otherwise, Citibank, quoting *Green Tree Financial Corp.-Ala. v. Randolph* (2000) 531 U.S. 79, 91, asserts that " 'the party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration.' " But Citibank cites no authority — and we are aware of none — applying this principle, which governs an effort to resist arbitration of a claim the parties *agreed* to arbitrate, to an effort to pursue a claim the parties *excluded* from arbitration.

We next address the following threshold issue: whether post-*Cruz* amendments to the UCL and the false advertising law eliminated the ability of private plaintiffs like McGill to seek public injunctive relief under those laws.[2] Before 2004, these statutes authorized action by "any person acting for the interests of itself, its members or the general public." (Bus. & Prof. Code, former § 17204, as amended by Stats. 1993, ch. 926, § 2, p. 5198 [UCL]; *id.*, former §

---

[2] We invited the parties and amicus curiae to submit supplemental briefs on this issue. Citibank's response, in addition to discussing the UCL and the false advertising law, added that public injunctive relief is unavailable in this case under *the CLRA* because the CLRA "does not apply to credit cards in the first place." Because Citibank did not raise this issue in earlier briefing and it is outside the scope of our request for supplemental briefing, we decline to address it.

17535, as amended by Stats. 1972, ch. 711, § 1, p. 1299 [false advertising law].) In 2004, the voters, by passing Proposition 64, amended these statutes to provide that private individuals may (1) file an action for relief only if they have "suffered injury in fact and [have] lost money or property as a result of" a violation (Bus. & Prof. Code, §§ 17204, 17535), and (2) "pursue representative claims or relief on behalf of others only if [they] meet[] [these] standing requirements . . . and compl[y] with Section 382 of the Code of Civil Procedure," which relates to representative suits (*id.*, §§ 17203, 17535). The amended statutes also specify that "these limitations do not apply to claims brought . . . by the Attorney General, or a[ny] district attorney, county counsel, city attorney, or city prosecutor in this state." (*Ibid*.) In uncodified sections, Proposition 64 identified the "[f]il[ing] [of] lawsuits" by private attorneys "on behalf of the general public" as a misuse of the unfair competition laws (Prop. 64, § 1, subd. (b)(4), 4D West's Ann. Bus. & Prof. Code (2008 ed.) foll. § 17203, p. 409, hereafter Annotated Code), and stated the voters' "intent . . . that only the California Attorney General and local public officials be authorized to file and prosecute actions on behalf of the general public" (*id*., § 1, subd. (f)).

We conclude that these provisions do not preclude a private individual who has "suffered injury in fact and has lost money or property as a result of" a violation of the UCL or the false advertising law (Bus. & Prof. Code, §§ 17204, 17535) — and who therefore has standing to file a private action — from requesting public injunctive relief in connection with that action. A person who meets these requirements is "fil[ing]" the "lawsuit[]" or "action[]" on his or her own behalf, not "on behalf of the general public." (Prop. 64, § 1, subds. (b)(4)), (f), Ann. Code, *supra*, at p. 409.) This remains true even if the person seeks, as one of the requested remedies, injunctive relief "the primary purpose and effect of" which is "to prohibit and enjoin conduct that is injurious to the general public." (*Broughton*, *supra*, 21 Cal.4th at p. 1077.) We find nothing in the ballot materials for Proposition 64 suggesting that voters, in stating their intent "that only

the California Attorney General and local public officials be authorized to file and prosecute actions on behalf of the general public" (Prop. 64, § 1, subd. (f), Ann. Code, *supra*, at p. 409), meant to preclude individuals who meet the standing requirements for bringing a private action from requesting such relief. On the contrary, the Attorney General's "Official Title and Summary" explained that, under Proposition 64, "if [an] individual was actually injured by, and suffered financial/property loss because of, an unfair business practice," he or she could "sue" for "private enforcement of [the] unfair business competition laws." (Voter Information Guide, Gen. Elec. (Nov. 2, 2004), official title and summary of Prop. 64, p. 38.) As we have already noted *ante*, "an injunction" is "the primary form of relief available under the UCL to protect consumers from unfair business practices." (*In re Tobacco II Cases*, *supra*, 46 Cal.4th at p. 319; see *Clayworth v. Pfizer, Inc.* (2010) 49 Cal.4th 758, 789 [ "[i]f a party has standing under" the UCL, "it may seek injunctive relief"].)

For several reasons, we also conclude that a request for such relief does not constitute the "pursu[it]" of "representative claims or relief on behalf of others" within the meaning of Business and Professions Code sections 17203 or 17535, such that "compli[ance] with Section 382 of the Code of Civil Procedure" is required. First, reading the phrase "on behalf of others" (Bus. & Prof. Code, §§ 17203 or 17535) as referring to the general public would create conflict with other parts of Proposition 64. This reading would seem to *authorize* private individuals to proceed *on behalf of the general public* if they "compl[y] with Section 382 of the Code of Civil Procedure" (Bus. & Prof. Code, §§ 17203, 17535), which would conflict with the voters' stated intent "that only the California Attorney General and local public officials be authorized to file and prosecute actions *on behalf of the general public*" (Prop. 64, § 1, subd. (f), Ann. Code, *supra*, at p. 409, italics added). We must, if possible, "harmonize all of the relevant provisions of" Proposition 64. (*Spanish Speaking Citizens' Foundation, Inc. v. Low* (2000) 85 Cal.App.4th 1179, 1227 [construing Prop. 103].)

Second, we have held that the phrase "compl[y] with Section 382 of the Code of Civil Procedure" (Bus. & Prof. Code, §§ 17203, 17535) "imposes a requirement that the action be brought as a class action." (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 978.) This requirement has never been imposed with regard to requests to enjoin future wrongful business practices that will injure the public, and we find nothing in the ballot materials for Proposition 64 suggesting an intent to link or restrict such relief to the class action context. Indeed, imposing this requirement would largely eliminate the ability of a private plaintiff to pursue such relief, because class certification requires "the existence of both an ascertainable class and a well-defined community of interest among the class members" (*Washington Mutual Bank v. Superior Court* (2001) 24 Cal.4th 906, 913), and " 'the general public' . . . fails to meet" this requirement (*Czap v. Credit Bureau of Santa Clara Valley* (1970) 7 Cal.App.3d 1, 6).

Supporting this conclusion is our 2000 decision in *Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 121, which explained that under the UCL's then-existing standing provision, not all actions "brought on behalf of absent persons by a private party" had to be "certified as a class action." After noting that that standing provision authorized " '[a]ny person acting for the interests of itself, its members or the general public' . . . [to] seek UCL relief on behalf of the general public," we stated: "We use the term '*representative* action' to refer to a UCL action that is not certified as a class action in which a private person is the plaintiff and *seeks disgorgement and/or restitution* on behalf of persons other than or in addition to the plaintiff." (*Kraus*, at p. 126, fn. 10, italics added.) It seems likely that when the voters, just a few years later in 2004, revised the UCL's standing provisions to require "representative claims" to be brought as class actions (Bus. & Prof. Code, § 17203), they had in mind, not an action requesting public injunctive relief, but the kind of " 'representative action' " we discussed in *Kraus*, i.e., "a UCL action that is not certified as a class action in which a private person is the plaintiff and seeks *disgorgement and/or restitution*

on behalf of persons other than or in addition to the plaintiff." (*Kraus*, at p. 126, fn. 10, italics added.)

Having determined that public injunctive relief remains a remedy available to private plaintiffs under the UCL and the false advertising law, as well as under the CLRA, we next conclude that the arbitration provision here at issue is invalid and unenforceable under state law insofar as it purports to waive McGill's statutory right to seek such relief. Civil Code section 3513 provides: "Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement." Consistent with this provision, we have explained that "a party may waive a statutory provision if a statute does not prohibit doing so [citation], the statute's 'public benefit . . . is merely incidental to [its] primary purpose' [citation], and 'waiver does not seriously compromise any public purpose that [the statute was] intended to serve' [citation]." (*DeBerard Properties, Ltd. v. Lim* (1999) 20 Cal.4th 659, 668-669.) By definition, the public injunctive relief available under the UCL, the CLRA, and the false advertising law, as discussed in *Broughton* and *Cruz*, is primarily "for the benefit of the general public." (*Broughton*, *supra*, 21 Cal.4th at p. 1082; see *Cruz*, *supra*, 30 Cal.4th at p. 315.) Its "evident purpose," the court said in *Broughton*, is "to remedy a public wrong," "not to resolve a private dispute" (*Broughton*, at p. 1080), and any benefit to the plaintiff requesting such relief "likely . . . would be incidental to the general public benefit of enjoining such a practice." (*Id.* at p. 1080, fn. 5.) Accordingly, the waiver in a predispute arbitration agreement of the right to seek public injunctive relief under these statutes would seriously compromise the public purposes the statutes were intended to serve. Thus, insofar as the arbitration provision here purports to waive McGill's right to request in any forum such public injunctive relief, it is invalid and unenforceable under California law.

Citibank does not argue that the waiver is valid under California law. Instead, it argues that a California rule precluding enforcement of the waiver

would be preempted by the FAA. According to Citibank, the FAA requires enforcement of the arbitration provision "as written, regardless of what it says or implies about claims seeking public injunctive relief." "[A] court," Citibank asserts, "may not avoid the FAA by applying state-law rules of contract interpretation to limit the scope of an agreement to arbitrate."

We reject Citibank's overbroad view of the FAA. As Citibank observes, the high court has stated that section 2 of the FAA requires courts to "place arbitration agreements on an equal footing with other contracts [citation] and [to] enforce them according to their terms." (*Concepcion*, *supra*, 563 U.S. at p. 339.) However, the high court has qualified this statement by reference to "[t]he final phrase of § 2," which is known as the FAA's "saving clause" and which "permits arbitration agreements to be declared unenforceable 'upon such grounds as exist at law or in equity for the revocation of any contract.' " (*Concepcion*, at p. 339.) This clause, the high court has stated, "indicates" that Congress's "purpose" in enacting the FAA "was to make arbitration agreements as enforceable as other contracts, *but not more so*." (*Prima Paint v. Flood & Conklin* (1967) 388 U.S. 395, 404, fn. 12, italics added (*Prima Paint*).) Thus, arbitration agreements, "[l]ike other contracts," "may be invalidated by 'generally applicable contract defenses, such as fraud, duress, or unconscionability.' " (*Rent-A-Center, West, Inc. v. Jackson* (2010) 561 U.S. 63, 68.) They may not, however, be invalidated "by defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue." (*Concepcion*, at p. 339.)

The contract defense at issue here — "a law established for a public reason cannot be contravened by a private agreement" (Civ. Code, § 3513) — *is* a generally applicable contract defense, i.e., it is a ground under California law for revoking any contract. (*Little v. Auto Stiegler, Inc.* (2003) 29 Cal.4th 1064, 1079 (*Little*) ["long-standing ground for refusing to enforce a contractual term is that it would force a party to forgo unwaivable public rights"].) It is not a defense that applies only to arbitration or that derives its meaning from the fact that an

agreement to arbitrate is at issue. As explained above, a provision in *any* contract — even a contract that has no arbitration provision — that purports to waive, in all fora, the statutory right to seek public injunctive relief under the UCL, the CLRA, or the false advertising law is invalid and unenforceable under California law. The FAA does not require enforcement of such a provision, in derogation of this generally applicable contract defense, merely because the provision has been inserted into an arbitration agreement. To conclude otherwise would, contrary to Congress's intent, make arbitration agreements not merely "as enforceable as other contracts, but . . . more so." (*Prima Paint*, *supra*, 388 U.S. at p. 404, fn. 12.)

Our conclusion is consistent with the high court's statement that, "[b]y agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum." (*Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.* (1985) 473 U.S. 614, 628.) This statement, this court has said, "is as much prescriptive as it is descriptive. That is, it sets a standard by which arbitration agreements and practices are to be measured, and disallows forms of arbitration that in fact compel claimants to forfeit certain substantive statutory rights." (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 99-100.) Likewise, the high court has recently indicated that the FAA does not require enforcement of a provision in an arbitration agreement that "forbid[s] the assertion of certain statutory rights" or that "eliminates . . . [the] right to pursue [a] statutory remedy." (*American Express Co. v. Italian Colors Restaurant* (2013) 570 U.S. __, __ [133 S.Ct. 2304, 2310-2311] (*Italian Colors*); see *Mitsubishi Motors Corp.*, at p. 637, fn. 19 ["[I]n the event the [arbitration] and choice-of-law clauses operated in tandem as a prospective waiver of a party's right to pursue statutory remedies for antitrust violations, we would have little hesitation in condemning the agreement as against public policy."].) Consistent with this principle, we have held that the FAA does not require enforcement of a provision

in an arbitration agreement that, in violation of generally applicable California contract law, "limit[s] statutorily imposed remedies such as punitive damages and attorney fees." (*Armendariz*, at p. 103.) Here, we likewise conclude that the FAA does not require enforcement of a provision in a predispute arbitration agreement that, in violation of generally applicable California contract law, waives the right to seek *in any forum* public injunctive relief under the UCL, the CLRA, or the false advertising law.

Citibank argues that the above principles apply only when enforcement of an arbitration agreement would lead to forfeiture of a *federal* statutory right. This is so, Citibank asserts, because only *federal* statutes "stand on equal footing with and therefore *modify* the FAA, whereas a state law that is in conflict with federal law is *preempted by* the FAA."

Citibank's argument is inconsistent with high court authority. In *Preston v. Ferrer* (2008) 552 U.S. 346, 349-350, the high court held that the FAA preempts state laws that lodge in a judicial or administrative forum primary jurisdiction over claims the parties have agreed to arbitrate. In stating its reasoning, the court explained in part: "[I]t bears repeating that [the petition to arbitrate] presents precisely and only a question concerning the forum in which the parties' dispute will be heard. [Citation.] 'By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral . . . forum.' [Citation.] So here, [the party resisting arbitration] relinquishes no substantive rights the [California Talent Agencies Act] or other California law may accord him. But under the contract he signed, he cannot escape resolution of those rights in an arbitral . . . forum.' " (*Preston*, at p. 359.) This discussion would make no sense if, as Citibank asserts, the fact an arbitration agreement purports to waive a substantive right under state law were irrelevant to whether the FAA requires the agreement's enforcement.

More fundamentally, Citibank's argument misunderstands the nature of the FAA's saving clause. As noted above, that clause provides that an arbitration

agreement may be declared unenforceable "upon such grounds as exist at law or in equity for the revocation of any contract." (9 U.S.C. § 2.) The high court has explained that this clause "explicitly retains an external body of [state] law governing revocation." (*Arthur Andersen LLP v. Carlisle* (2009) 556 U.S. 624, 630.) Under it, " '[s]tate law' . . . is applicable to determine which contracts are binding . . . and enforceable under" the FAA, " '*if* that law arose to govern issues concerning the validity, revocability, and enforceability of contracts generally.' " (*Arthur Andersen*, at pp. 630-631.) As previously explained, the contract defense to the waiver at issue here — "a law established for a public reason cannot be contravened by a private agreement" (Civ. Code, § 3513) — *is* a "ground[]" that "exist[s]" under California law "for the revocation of any contract." (9 U.S.C. § 2; see *Little*, *supra*, 29 Cal.4th at p. 1079.) Thus, applying this defense to invalidate the waiver does not "*modify* the FAA," as Citibank asserts; it *implements* the FAA *as written*.

Supporting this analysis is the high court's decision in *Concepcion*, a decision on which Citibank heavily relies. There, the high court held that the FAA preempts the California rule, announced by a majority of this court in *Discover Bank v. Superior Court* (2005) 36 Cal.4th 148 (*Discover Bank*), that certain waivers of classwide arbitration procedures are unconscionable and unenforceable. (*Concepcion*, *supra*, 563 U.S. at p. 352.) In announcing this rule, the *Discover Bank* majority held that the rule is permissible under the FAA's saving clause because it is simply a specific application of the following "principle of California law that" governs "contracts generally": "class action waivers are, under certain circumstances, unconscionable as unlawfully exculpatory." (*Discover Bank*, at p. 165.) Were Citibank's argument correct, the high court, in finding preemption, would have simply said that generally applicable principles of *state* contract law may never overcome the FAA's requirement that arbitration agreements be enforced according to their terms. Instead, the high court *reaffirmed* that the "saving clause permits agreements to arbitrate to be invalidated by 'generally

applicable contract defenses' " under *state* law (*Concepcion*, at p. 339), and the court looked specifically to "California law" on unconscionability in first evaluating the *Discover Bank* rule's validity (*Concepcion*, at p. 340). The court then added that the FAA preempts even a "generally applicable" state law contract defense if that defense (1) is "applied in a fashion that disfavors arbitration" (*Concepcion*, at p. 341), or (2) "interferes with fundamental attributes of arbitration" (*id*. at p. 344), such as " 'lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes' " (*id*. at p. 348). The *Discover Bank* rule fails the latter test, the high court held, because by requiring a class arbitration procedure, the rule (1) "sacrifices" arbitration's "informality" (*Concepcion*, at p. 348), (2) "makes the process slower, more costly, and more likely to generate procedural morass than final judgment" (*ibid*.), (3) "*requires* procedural formality" (*id*. at p. 349), and (4) "greatly increases risks to defendants" (*id.* at p. 350).

Citibank argues that the antiwaiver rule at issue here interferes with the fundamental attributes of arbitration in the same way as the *Discover Bank* antiwaiver rule regarding class procedures. "As a practical matter," Citibank asserts, "there is little difference between broad-based public injunctions and the class-wide relief at the heart of" the *Discover Bank* rule that *Concepcion* invalidated. "Neither is necessary nor intended to protect an individual's rights; rather, both aim to provide relief on behalf of others that are not parties to the proceeding in question. Both necessarily transform arbitration from a procedure involving distinct parties into a procedure involving and/or affecting numerous other unknown persons, with the stakes in public injunctive relief actions often just as great as the stakes in class actions." Moreover, "broad-based injunctive relief and class actions both impose procedures in addition to the arbitration itself. These violate the FAA"s 'prime objective' of 'streamlined proceedings and expeditious results.' " Thus, Citibank asserts, no basis exists "to draw a distinction between class claims and public injunctions."

For several reasons, Citibank's argument fails. First, contrary to Citibank's assertion, *Concepcion* and its high court progeny actually *support* the "draw[ing]" of "a distinction between class claims and public injunctions." The latter is a *substantive statutory remedy* that the Legislature, through the UCL, the CLRA, and the false advertising law, has made available to those, like McGill, who meet the statutory standing requirements for filing a private action. A class action, by contrast, "is a *procedural* device that enforces *substantive* law by aggregating many individual claims into a single claim . . . . It does not change that substantive law." (*In re Tobacco II Cases*, *supra*, 46 Cal.4th at p. 313, italics added; see *Deposit Guaranty Nat. Bank, Jackson, Miss. v. Roper* (1980) 445 U.S. 326, 332 [right to use federal class action procedure "is a procedural right only, ancillary to the litigation of substantive claims"].) In *Italian Colors*, *supra*, 570 U.S. at page __ [133 S.Ct. at p. 2312], the high court, drawing on *Concepcion*, held that the FAA requires enforcement of an arbitration provision that precludes class arbitration of federal antitrust claims. In reaching this conclusion, the court distinguished between the " 'waiver of a party's *right to pursue statutory remedies*' " — such as "a provision in an arbitration agreement forbidding the assertion of certain statutory rights" (*Italian Colors*, at pp. ____ [133 S.Ct. at pp. 2307, 2310], italics added) — and the waiver of a "*procedural path* to the vindication of every claim" — such as a provision forbidding class action arbitration (*id*. at p. __ [133 S.Ct. at p. 2309], italics added). Even though a class arbitration waiver may make the statutory remedy "not worth the expense" of pursuing, because the waiver does "not constitute the elimination of the *right to pursue* that remedy," the FAA requires its enforcement. (*Italian Colors*, at p. __ [133 S.Ct. at p. 2307].) Under *Italian Colors*, because the waiver at issue here is a waiver of the right *to pursue statutory remedies* — rather than of a *procedural path* to vindicating the statutory claim — it is, contrary to *Citibank*'s assertion, distinguishable from a waiver of class procedures.

Second, invalidation of the waiver will not, as Citibank asserts, interfere with any of arbitration's attributes. "Arbitration under the [FAA] is a matter of consent, not coercion, and parties . . . may limit by contract the issues [that] they will arbitrate." (*Volt Info. Sciences v. Leland Stanford Jr. U.* (1989) 489 U.S. 468, 479.) The FAA "does not . . . prevent parties who . . . agree to arbitrate from excluding certain claims from the scope of their arbitration agreement." (*Id.* at p. 478.) Here, the parties agree that they "elected in the Arbitration Agreement to exclude public injunctive relief [requests] from arbitration," and we are not holding that McGill's requests for such relief must, contrary to the parties' agreement, be arbitrated. Moreover, case law establishes that a stay of proceedings as to any inarbitrable claims is appropriate until arbitration of any arbitrable claims is concluded. (*Cruz, supra*, 30 Cal.4th at p. 320.) Thus, arbitration of claims the parties *have agreed* to arbitrate may proceed pursuant to whatever procedures the arbitration agreement specifies, unaffected by any subsequent proceedings made necessary by invalidation of the waiver regarding the public injunctive relief claims the parties *did not agree to arbitrate*. According to the high court, " 'piecemeal' litigation" of claims the parties have agreed to arbitrate and claims they have not agreed to arbitrate is *consistent* with the FAA. (*Dean Witter Reynolds Inc. v. Byrd* (1985) 470 U.S. 213, 221.) In *Broughton, supra*, 21 Cal.4th at page 1088, this court extended this principle to piecemeal litigation of "arbitrable and inarbitrable remedies derived from the same statutory claim." We therefore reject Citibank's assertion that "*post*-arbitration judicial or other procedures" to resolve requests for statutory relief the parties did not agree to arbitrate would "violate the FAA's objectives."

Our invalidation of the arbitration provision insofar as it purports to waive McGill's statutory right to seek public injunctive relief in any forum gives rise, under the terms of the parties' agreement, to the following question: Is the rest of the provision enforceable? The arbitration provision contained in the 2001 Notice stated: "If any portion of the arbitration provision is deemed invalid or

unenforceable, the entire arbitration provision shall *nevertheless* remain in force." (Italics added.) However, the arbitration provision set forth in the 2005 Notice and the 2007 account agreement states: "If any portion of the arbitration provision is deemed invalid or unenforceable, the entire arbitration provision shall *not* remain in force." (Italics added.) Because the parties have not mentioned, let alone discussed, this language, we do not decide whether, in light of our holding, it renders the remainder of the arbitration provision unenforceable. But because our holding raises this question, we need not detail each respect in which McGill's injunctive relief request constitutes a request for public injunctive relief. We leave these issues to the Court of Appeal on remand, should the parties raise them and should the court find it necessary to decide them.

## III. DISPOSITION

The Court of Appeal's judgment is reversed and the matter is remanded for further proceedings consistent with this opinion.

**CHIN, J.**

**WE CONCUR:**

**CANTIL-SAKAUYE, C. J.**
**WERDEGAR, J.**
**LIU, J.**
**CUÉLLAR, J.**
**KRUGER, J.**
**HALLER, J.***

---

* Associate Justice of the Court of Appeal, Fourth Appellate District, Division One, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

*See next page for addresses and telephone numbers for counsel who argued in Supreme Court.*

**Name of Opinion** McGill v. Citibank, N.A.

---

**Unpublished Opinion**
**Original Appeal**
**Original Proceeding**
**Review Granted** XXX 232 Cal.App.4th 753
**Rehearing Granted**

---

**Opinion No.** S224086
**Date Filed:** April 6, 2017

---

**Court:** Superior
**County:** Riverside
**Judge:** John W. Vineyard, Temporary Judge*

---

**Counsel:**

Stroock & Stroock & Lavan, Julia B. Strickland, Stephen J. Newman, David W. Moon and Marcos D. Sasso for Defendant and Appellant.

Horvitz & Levy, Lisa Perrochet, John F. Querio and Felix Shafir for Association of Southern California Defense Counsel as Amicus Curiae on behalf of Defendant and Appellant.

Deborah J. La Fetra for Pacific Legal Foundation as Amicus Curiae on behalf of Defendant and Appellant.

Leland Chan for California Bankers Association as Amicus Curiae on behalf of Defendant and Appellant.

Haynes and Boone and Mary-Christine Sungaila for International Association of Defense Counsel as Amicus Curiae on behalf of Defendant and Appellant.

Mayer Brown, Andrew J. Pincus, Archis A. Parasharami and Donald M. Falk for Chamber of Commerce of the United States of America as Amicus Curiae on behalf of Defendant and Appellant.

Capstone Law, Raul Perez, Melissa Grant, Glenn A. Danas, Ryan H. Wu, Liana Carter and Katherine W. Kehr for Plaintiff & Respondent.

Scott L. Nelson; Chavez & Gertler, Mark A. Chavez and Nance F. Becker for Public Citizen, Inc., as Amicus Curiae on behalf of Plaintiff and Respondent.

Barbara Jones for AARP as Amicus Curiae on behalf of Plaintiff and Respondent.

*Pursuant to California Constitution, article VI, section 21.

**Counsel who argued in Supreme Court (not intended for publication with opinion):**

Julia B. Strickland
Stroock & Stroock & Lavan
2029 Century Park East, Suite 1800
Los Angeles, CA 90067
(310) 556-5800

Glenn A. Danas
Capstone Law
1840 Century Park East, Suite 450
Los Angeles, CA 90067
(310) 556-4811

# EXHIBIT K

RON JOHNSON, WISCONSIN, CHAIRMAN

JOHN McCAIN, ARIZONA
ROB PORTMAN, OHIO
RAND PAUL, KENTUCKY
JAMES LANKFORD, OKLAHOMA
MICHAEL B. ENZI, WYOMING
KELLY AYOTTE, NEW HAMPSHIRE
JONI ERNST, IOWA
BEN SASSE, NEBRASKA

THOMAS R. CARPER, DELAWARE
CLAIRE McCASKILL, MISSOURI
JON TESTER, MONTANA
TAMMY BALDWIN, WISCONSIN
HEIDI HEITKAMP, NORTH DAKOTA
CORY A. BOOKER, NEW JERSEY
GARY C. PETERS, MICHIGAN

CHRISTOPHER R. HIXON, STAFF DIRECTOR
GABRIELLE A. BATKIN, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510–6250

December 23, 2016

Brian Roberts
President and Chief Executive Officer
Comcast Corporation
1701 JFK Boulevard
Philadelphia, PA 19103

Dear Mr. Roberts:

As you know, the U.S. Senate Permanent Subcommittee on Investigations held a hearing on June 23, 2016, as part of its investigation into the customer service and billing practices of cable and satellite television providers.[1] The Subcommittee's Minority Staff Report detailed deficiencies in these practices for each of the cable and satellite providers it investigated, including Comcast.[2] Two of the issues identified in the report and addressed at the hearing were the confusing placement of broadcast retransmission and regional sports network fees on customer bills and the inadequate disclosure of package pricing in advertisements.

At the hearing, we expressed our concern that Comcast and its competitors obscured the cost of programming by categorizing some programming costs as fees, such as the "Broadcast TV Surcharge" or "Regional Sports Network Fee." We found that cable and satellite providers group those fees on the bill alongside taxes and regulatory charges.[3] Such placement is misleading in that it suggests to the subscriber that the government requires the cable or satellite provider to impose these charges. As you are aware, no federal, state, or local government levies the "Broadcast TV Surcharge" or "Regional Sports Network Fee," which are charged entirely at the discretion of Comcast and other cable and satellite companies. When we asked at the hearing about why these fees are displayed in a section devoted to taxes, Comcast replied, "We agree with you around the importance of the disclosure. We did notice our customers, and *we do not include it in the area with taxes or any government-mandated fees or surcharges*."[4] We would like to know whether Comcast's statement is accurate for *all* of its billing displays, *i.e.,* not only for monthly paper statements, but also for order confirmations and online bills.

Also at the hearing, Senator McCaskill discussed how the price of service Comcast advertises reflects only the promotional price of service, even though the expiration of promotional pricing could lead to a significant increase in a customer's bill.[5] She asked each

---

[1] Permanent Subcommittee on Investigations, *Hearing on Customer Service and Billing Practices in the Cable and Satellite Television Industry*, 114th Cong. (June 23, 2016) (S. Hrg. 114-409).
[2] Permanent Subcommittee on Investigations, *Inside the Box – Customer Service and Billing Practices in the Cable and Satellite Industry,* Minority Staff Report, 114th Cong. (June 23, 2016).
[3] Permanent Subcommittee on Investigations, *Hearing on Customer Service and Billing Practices in the Cable and Satellite Television Industry*, 114th Cong. (June 23, 2016) (S. Hrg. 114-409).
[4] *Id.*
[5] *Id.*

cable and satellite provider present whether it disclosed the non-promotional price of service in its advertisements as conspicuously as it did the limited promotional price. She also asked whether the companies disclosed the non-promotional price *at all* to potential customers. The Subcommittee did not get an adequate response to these questions.[6]

In light of these outstanding concerns, we ask that you provide the Subcommittee with recent reproductions of order confirmations, online bills, and paper bills in which its customers were charged Broadcast TV surcharges and Regional Sports Network Fees. We also ask that you provide a briefing for Subcommittee staff on any changes in its advertising or billing practices since the hearing that increase transparency for consumers.

We appreciate your cooperation with the investigation and thank you for your assistance in this matter. Please contact Rachael Tucker with the majority staff or Jackson Eaton with the minority staff at (202) 224-3721 with any questions. Please send any official correspondence relating to this request to Kelsey_Stroud@hsgac.senate.gov.

Sincerely,

Rob Portman
Chairman
Permanent Subcommittee on Investigations

Claire McCaskill
Ranking Member
Permanent Subcommittee on Investigations

[6] *Id.*

JS-CAND 44 (Rev. 07/16)

# CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

## I. (a) PLAINTIFFS

DAN ADKINS; JONATHAN BAILEY; REINIER BROKER; JAMES MCLAUGHLIN; NOLA PALMER; CHRISTOPHER ROBERTSON; DEREK VILLEGAS; and DALE WYNN, individually and on behalf of all others similarly situated

**(b)** County of Residence of First Listed Plaintiff: Alameda
*(EXCEPT IN U.S. PLAINTIFF CASES)*

**(c)** Attorneys *(Firm Name, Address, and Telephone Number)*

Daniel M. Hattis (SBN 232141)
HATTIS LAW
P.O. Box 1645
Bellevue, WA 98009
Telephone: (650) 980-1990

Jason Skaggs (SBN 202190)
SKAGGS FAUCETTE LLP
430 Lytton Ave 2nd FL
Palo Alto, CA 94301
Telephone: (650) 617-3226

## DEFENDANTS

COMCAST CORPORATION

County of Residence of First Listed Defendant
*(IN U.S. PLAINTIFF CASES ONLY)*

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

Attorneys *(If Known)*

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 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)*
*(For Diversity Cases Only)*

| | PTF | DEF | | PTF | DEF |
|---|---|---|---|---|---|
| Citizen of This State | ☒ 1 | ☐ 1 | Incorporated *or* Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☒ 2 | ☐ 2 | Incorporated *and* Principal Place of Business In Another State | ☐ 5 | ☒ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

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

**CONTRACT**
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment Of Veteran's Benefits
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☒ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

**TORTS**

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury – Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

**FORFEITURE/PENALTY**
- ☐ 625 Drug Related Seizure of Property 21 USC § 881
- ☐ 690 Other

**BANKRUPTCY**
- ☐ 422 Appeal 28 USC § 158
- ☐ 423 Withdrawal 28 USC § 157

**PROPERTY RIGHTS**
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

**LABOR**
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

**SOCIAL SECURITY**
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

**OTHER STATUTES**
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC § 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

**REAL PROPERTY**
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

**CIVIL RIGHTS**
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities–Employment
- ☐ 446 Amer. w/Disabilities–Other
- ☐ 448 Education

**PRISONER PETITIONS**

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee–Conditions of Confinement

**IMMIGRATION**
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

**FEDERAL TAX SUITS**
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS–Third Party 26 USC § 7609

## 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 *(specify)* ☐ 6 Multidistrict Litigation–Transfer ☐ 8 Multidistrict Litigation–Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
Cal. B&P Code Sec. 17200, 17500; Cal. Civ. Code Sec. 1750; Colo. Rev. Stat 6-1-101; Florida Stat. 501.201; Ill 815 Ill. Comp. Stat. 505/1-12 & 510/2; NJ Stat. Ann. 56:8-1; Ohio Rev Code 1345.01; WA RCW 19.86

Brief description of cause:
Defendant breached contractual obligations and made false representations about pricing

## VII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, Fed. R. Civ. P.

**DEMAND $**

CHECK YES only if demanded in complaint:
**JURY DEMAND:** ☒ Yes ☐ No

## VIII. RELATED CASE(S), IF ANY *(See instructions):*

JUDGE

DOCKET NUMBER

## IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

**(Place an "X" in One Box Only)** ☒ **SAN FRANCISCO/OAKLAND** ☐ **SAN JOSE** ☐ **EUREKA-MCKINLEYVILLE**

**DATE:** 10/15/2016

**SIGNATURE OF ATTORNEY OF RECORD:**