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Attorneys for Defendants Charter
Communications, Inc. and Spectrum
Management Holding Company, LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CARLA JIMENEZ, individually and
on behalf of all others similarly
situated,

Plaintiff,

v.

CHARTER COMMUNICATIONS,
INC., SPECTRUM MANAGEMENT
HOLDING COMPANY, LLC, and
DOES 1 through 25,

Defendants.

Case No. 2:18-cv-6480

NOTICE OF REMOVAL

From the Superior Court of California,
County of Los Angeles, No. BC
709676

Complaint Filed: June 19, 2018

1 **TO THE CLERK AND TO PLAINTIFF AND HER ATTORNEYS:**

2 **PLEASE TAKE NOTICE** that Defendants Charter Communications, Inc.
3 and Spectrum Management Holding Company, LLC (collectively, “Defendants”)
4 hereby remove this action from the Superior Court of the State of California for the
5 County of Los Angeles to the United States District Court for the Central District
6 of California, Western Division. Defendants are entitled to remove this action to
7 federal court pursuant to 28 U.S.C. §§ 1332(d) and 1441 based on the following:

8 **Commencement of the State Action**

9 1. On June 19, 2018, Plaintiff Carla Jimenez, purportedly acting on her
10 own behalf and on behalf of all others similarly situated, commenced an action in
11 the Superior Court of the State of California in and for the County of Los Angeles,
12 captioned *Jimenez v. Charter Communications, Inc., Spectrum Management*
13 *Holding Company, LLC, and Does 1 through 25*, No. BC 709676 (the “State
14 Action”). A true and complete copy of the complaint in the State Action is
15 attached hereto as Exhibit A (the “Complaint”).

16 2. On June 27, 2018, Defendants were each served with a copy of the
17 Complaint and a Summons from the State Action. True and complete copies of the
18 Summons served upon Defendants are attached hereto as Exhibit B and C.

19 **The State Action Is Removable**

20 3. The State Action is removable to this Court because this Court has
21 original jurisdiction and the Central District of California encompasses the location
22 in which the State Action is currently pending (*i.e.*, Los Angeles, California). *See*
23 28 U.S.C. § 1441(a) (“[A]ny civil action brought in a State court of which the
24 district courts of the United States have original jurisdiction, may be removed by
25 the defendant ... to the district court of the United States for the district and
26 division embracing the place where such action is pending.”).

27 4. This Court has original jurisdiction pursuant to the Class Action
28 Fairness Act of 2005 (“CAFA”), *see* 28 U.S.C. § 1332(d), as the State Action is a

putative civil class action. Indeed, Plaintiff expressly filed the State Action “under Cal. Code Civ. Proc. § 382.” Ex. A ¶ 18.

5. CAFA extends federal jurisdiction over class actions where: (1) any member of the proposed class is a citizen of a state different from any defendant (*i.e.*, minimal diversity exists); (2) there are at least 100 members in all proposed plaintiff classes combined; and (3) the amount in controversy exceeds \$5 million, taking into account all damages and equitable relief sought for all of the purported class members’ claims in the aggregate, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d). As explained in detail below, each of these requirements is satisfied in this case.

The Minimal Diversity Requirement Is Satisfied

6. A putative class action is removable based on diversity jurisdiction if “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). There is sufficient (and complete) diversity of citizenship between the relevant parties in this case.

7. Plaintiff alleges that she is a resident of California who currently receives Defendants’ residential Internet services. Ex. A ¶ 3. Plaintiff also alleges that “[f]or years and continuing through the present day” Defendants have defrauded herself, as well as other “similarly situated” California consumers who have received Defendants’ residential Internet services in California during that time period. *Id.* at 7 & ¶ 8. As such, Plaintiff is a California citizen. In addition, Plaintiff purports to represent a putative class of “tens of thousands” of other residents and citizens of California. *Id.* at 7 & ¶ 19.

8. At the time the State Action was filed and at the time this Notice is being filed, Charter Communications, Inc. was and is incorporated under the laws of Delaware, and its principal place of business is in Stamford, Connecticut.

9. At the time the State Action was filed and at the time this Notice is being filed, Spectrum Management Holding Company, LLC was and is organized

1 under the laws of Delaware, and its principal place of business is in Stamford,
2 Connecticut.

3 10. Thus, for purposes of determining diversity jurisdiction, Charter
4 Communications, Inc. and Spectrum Management Holding Company, LLC are
5 citizens of Delaware and Connecticut. *See* 28 U.S.C. §§ 1332(c)(1), (d)(10).

6 11. Although the Complaint purports to name Doe defendants, the
7 citizenship of Doe defendants “shall be disregarded” for purposes of the
8 removability analysis. 28 U.S.C. § 1441(b)(1).

9 **Plaintiff’s Proposed Class Exceeds 100 Members**

10 12. For a class action to be removable under CAFA, “the number of
11 members of all proposed plaintiff classes in the aggregate” must be at least 100.
12 28 U.S.C. § 1332(d)(5)(B). This requirement is met here.

13 13. Plaintiff seeks to represent a class of “[a]ll individual consumers in
14 California who purchased Defendants’ residential Internet services during the
15 relevant time period.” Ex. A at 7. Plaintiff alleges that “[t]he members of the class
16 are so numerous that joinder of all class members is impracticable. Plaintiff
17 estimates that there are at least tens of thousands of putative class members.” *Id.*
18 ¶ 19. Indeed, there are over 100,000 residential Internet subscribers in California
19 currently receiving Internet service under the Spectrum brand. Thus, as pled,
20 Plaintiff’s proposed class contains well over 100 members.

21 **The Amount in Controversy Exceeds the Jurisdictional Minimum**

22 14. Based on the face of the Complaint, the amount in controversy
23 exceeds the jurisdictional minimum of \$5,000,000. *See* 28 U.S.C. § 1332(d)(2).
24 Where, as here, “the plaintiff’s complaint does not state the amount in controversy,
25 the defendant’s notice of removal may do so.” *Dart Cherokee Basin Operating*
26 *Co., LLC v. Owens*, 135 S. Ct. 547, 551 (2014). To establish the amount in
27 controversy, a notice of removal “need not contain evidentiary submissions.” *Id.*

28

1 Rather, “a defendant’s notice of removal need include only a plausible allegation
2 that the amount in controversy exceeds the jurisdictional threshold.” *Id.* at 554.

3 15. If the allegations in the Complaint are true and state a viable claim
4 (which Defendants dispute), it is apparent that the aggregated claims of the
5 putative class establish that the amount in controversy exceeds the jurisdictional
6 minimum of \$5,000,000, exclusive of interest and costs.

7 16. In a putative class action, “the claims of the individual class members
8 shall be aggregated to determine whether the matter in controversy exceeds the
9 [jurisdictional minimum].” 28 U.S.C. § 1332(d)(6).

10 17. Plaintiff seeks to represent a class of “[a]ll individual consumers in
11 California who purchased Defendants’ residential Internet services during the
12 relevant time period.” Ex. A at 7. Plaintiff brings her putative class claims during
13 the “relevant time period” without limitation. Ex. A at 7. Plaintiff’s claims are
14 necessarily limited, however, by the relevant statute of limitations for each of
15 Plaintiff’s putative class claims.

16 18. Among other claims, Plaintiff brings a claim under California’s Unfair
17 Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.* Ex. A
18 ¶¶ 50-59. “Any action to enforce any cause of action pursuant to [the UCL] shall
19 be commenced within four years after the cause of action accrued.” Cal. Bus. &
20 Prof. Code, § 17208.

21 19. Plaintiff alleges that “Defendants currently brand their Internet
22 services under the name ‘Spectrum’” and that “[f]or years and continuing through
23 the present day, Defendants have defrauded and misled Plaintiff and similarly
24 situated consumers by promising to deliver residential Internet service at speeds
25 that Defendants knew they could not reliably deliver and that consumers could
26 rarely, if ever, achieve.” Ex. A ¶¶ 7-8.

27 20. Specifically, Plaintiff brings her UCL claim based on allegations that
28 “[she] and similarly situated consumers relied on and took action based on

Defendants' unlawful, unfair, fraudulent, deceptive and untrue acts, practices, and advertisements and related representations and omissions and suffered actual harm and lost money or property as a result, including by purchasing Defendants' Internet services and paying a premium for Defendants' Internet services. Plaintiff and other consumers continue to rely on Defendants' unlawful, unfair, fraudulent, deceptive, and untrue acts, practices, and advertisements and related representations and omissions by continuing to pay for services which Defendants are not providing, hoping Defendants' services will fulfill their promises. Plaintiff and similarly situated consumers would not have taken such action had they not believed Defendants' false and misleading statements and material omissions, and they would not continue to pay for these services at all or at the same price if the truth were disclosed. ... As a result of Defendants' unlawful and unfair acts and practices, they have reaped and continue to reap unfair benefits and illegal profits at the expense of Plaintiff and other[s]." Ex. A ¶¶ 56, 58.

21. The UCL provides that a court may award a prevailing plaintiff restitution, "including disgorgement of all money ... obtained [through the use of an unfair business practice]." *Kraus v. Trinity Mgmt. Servs., Inc.*, 23 Cal. 4th 116, 129 (2000). As her relief for this claim, Plaintiff seeks on behalf of herself and the putative class "restitution that will restore the full amount of their money or property" and "disgorgement of Defendants' relevant profits and proceeds." Ex. A ¶ 59. That is, Plaintiff seeks to recover from Defendants, among other things, the funds that California consumers in the putative class have allegedly paid for residential Internet services during the putative class period. If Plaintiffs were to succeed in certifying a class and imposing liability on Defendants, that amount would be well over \$5,000,000, as total payments from California customers for residential Internet services under the Spectrum brand (as well as resultant profits) are far in excess of \$5,000,000 *per month* (and have been at that level for years). Plaintiff seeks restitution and disgorgement of funds paid not just for any single

1 month (any one of which, standing alone, would more than meet the amount in
 2 controversy requirement), but for at least the previous 48 months. Thus, even if
 3 Plaintiff only seeks to recover *part* of the funds alleged members of the putative
 4 class paid for these residential Internet services, that amount would almost
 5 certainly exceed \$5,000,000.

6 22. Accordingly, based on Plaintiff’s allegations and asserted theories of
 7 recovery as pled, the amount in controversy far exceeds \$5,000,000. 28 U.S.C.
 8 § 1332(d)(2).

9 23. It is not necessary under CAFA to establish that *each* of Plaintiff’s
 10 claims meets the relevant amount in controversy; it suffices that the UCL claim,
 11 standing alone, meets the jurisdictional minimum. 28 U.S.C. § 1332(d)(6) (“In any
 12 class action, the claims of the individual class members shall be aggregated to
 13 determine whether the matter in controversy exceeds the sum or value of
 14 \$5,000,000, exclusive of interest and costs.”). But, in any event, Plaintiff’s other
 15 claims allege a substantially similar theory of harm and seek substantially the same
 16 relief as Plaintiff’s UCL claim during the “relevant time period,” *i.e.* allegedly the
 17 past three years.¹ *See* Ex. A ¶¶ 29-34 (alleging common law fraud and
 18 misrepresentation, and seeking “actual damages; punitive damages ... and costs
 19 and attorneys’ fees”); *id.* ¶¶ 35-41 (alleging violations of Cal. Bus. & Prof. Code
 20 §§ 17500 *et seq.* and seeking “restitution that will restore the full amount of
 21 [putative class members’] money or property” and “disgorgement of Defendants’
 22 relevant profits and proceeds”); *id.* ¶¶ 42-49 (alleging violations of Cal. Civ. Code
 23 §§ 1750 *et seq.* and seeking “restitution that will restore the full amount of their

24 ¹ Although Plaintiff fails to expressly state the “alleged time period” for these
 25 putative class claims, these claims would be limited by, among other things, the
 26 relevant statutes of limitations. *See* Cal. Civ. Code § 1783 (three year statute of
 27 limitations under Cal. Civ. Code §§ 1750 *et seq.*); Cal. Civ. Proc. Code § 338(d)
 28 (three year statute of limitations for fraud); *id.* § 338(a) (providing a default three-
 year statute of limitations for actions created by statute).

money or property” and “disgorgement of Defendants’ relevant profits and proceeds”). Because each of these claims is premised on substantially the same facts as the UCL claim, and seeks substantially the same relief in restitution or damages, it is clear that each of these claims independently seeks to recover many multiples of \$5,000,000.²

24. Plaintiff further seeks “punitive damages.” Ex. A at 18. Punitive damages may be considered in calculating the amount in controversy. *See Davenport v. Mut. Benefit Health & Accident Ass’n*, 325 F.2d 785, 787 (9th Cir. 1963).

25. Plaintiff further seeks equitable relief on behalf of the class, including “[i]ndividual, representative, and public equitable, injunctive, and declaratory relief to remedy Defendants’ violations of California law,” including “enjoining Defendants from continuing the[] [alleged] ... business practices and advertisements” and “requiring Defendants to correct all false and misleading statements and material omissions.” Ex. A at 18. Defendants dispute that such relief would be appropriate, but nonetheless if such relief is ordered the costs could easily exceed \$5,000,000. For example, the costs of issuing corrective statements via advertising or other means to the entire California market to allegedly address prior “false and misleading statements and material omissions” could easily exceed \$5,000,000. Such equitable relief may be considered in calculating the amount in controversy. *See Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002).

Defendants Satisfy the Requirements of 28 U.S.C. § 1446

26. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure. *See* 28 U.S.C. § 1446(a).

² Defendants expressly reserve the right to argue that Plaintiff and the putative class are not entitled to recover under multiple claims premised on the same or similar underlying facts, because, among other things, such a result would improperly award multiple, duplicative recoveries.

1 27. This Notice of Removal has been filed within thirty days of service of
2 the Complaint and summons on Defendants.

3 28. Concurrently with the filing of this Notice, Defendants will give
4 written notice to all adverse parties and will file a copy of this Notice with the
5 clerk of the Superior Court of the State of California in and for the County of Los
6 Angeles. *See* 28 U.S.C. § 1446(d).

7 29. Pursuant to 28 U.S.C. § 1446(a), Defendants have attached all copies
8 of pleading, process, and orders they received as Exhibit A, B, C, and D.

9 30. Defendants do not waive, and expressly preserve, all objections,
10 defenses, and exceptions authorized by law, including but not limited to those
11 permitted pursuant to Rule 12 of the Federal Rules of Civil Procedure.

12 WHEREFORE, Defendants remove the State Action to this Court.

13
14 Dated: July 27, 2018

Respectfully submitted,

15 LATHAM & WATKINS LLP

16
17 By /s/ Daniel Scott Schecter
18 Daniel Scott Schecter

19 Daniel Scott Schecter
20 Matthew A. Brill (*pro hac vice*
21 application forthcoming)
22 Andrew D. Prins (*pro hac vice*
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24 Alexander L. Stout (*pro hac vice*
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