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Attorneys for Plaintiffs JERMAINE THOMAS, JERMAINE MILLER, JAMIE POSTPICHAL, RONALD ELLISON, SARAH WATERS, MAISHIA JOHNSON, and URSULA FREITAS individuals, on behalf of themselves and others similarly situated,

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

**JERMAINE THOMAS, JERMAINE
MILLER, JAMIE POSTPICHAL,
RONALD ELLISON, SARAH WATERS,
MAISHIA JOHNSON, and URSULA
FREITAS individuals, on behalf of
themselves and others similarly situated,**

Plaintiffs,

v.

CRICKET WIRELESS, LLC,

Defendant.

) Case No. 19-07270 WHA
)
) **SECOND AMENDED CLASS ACTION**
) **COMPLAINT**
) 1. Consumer Legal Remedies Act (Cal. Civ.
) Code § 1750 et seq.)
) 2. Untrue or Misleading Advertising (Cal Bus.
) & Prof. Code §§ 17500 et seq.)
) 3. Negligence/Negligence Per Se
) 4. Unjust Enrichment
) 5. Unlawful, Unfair, and Fraudulent Business
) Acts and Practices (Cal. Bus. & Prof. Code §§
) 17200 et seq.)
) 6. Violations of the Missouri Merchandising
) Practices Act
) 7. Violations of the Illinois Consumer Fraud and
) Deceptive Business Practices Act.
) 8. Violations of the Virginia Consumer
) Protection Act
) 9. Violations of the Texas Deceptive Trade
) Practices and Consumer Protection Acts
) 10. Violations of the Pennsylvania Unfair Trade
) Practices Act and Consumer Protection Law.
) 11. Violations of the Washington Unfair
) Business Practices and Consumer Protection
) Act.
) 12. Various State Consumer Protection Acts.
) 13. Racketeering Influenced and Corrupt
) Organizations Act.
) 14. Public Injunctive Relief.
) **DEMAND FOR JURY TRIAL**

1 Plaintiffs, JERMAINE THOMAS, JERMAINE MILLER, JAMIE POSTPICHAL, RONALD
2 ELLISON, SARAH WATERS, MAISHIA JOHNSON, and URSULA FREITAS on behalf of
3 themselves and all others similarly situated, sue Defendant Cricket Wireless, LLC for selling 4G/LTE
4 phones that had no 4G/LTE capabilities on its network and allege as follows:
5

6 **NATURE OF THE ACTION**

7 1. This proposed class action arises from a deceptive marketing scheme by Defendant
8 Cricket Wireless, LLC (“Cricket”) that, from 2012 to 2014, duped many thousands of customers into
9 paying for a highly touted new feature—4th Generation/Long Term Evolution (“4G/LTE”) cellular,
10 internet, and data speeds using 4G/LTE-capable mobile phones—that Cricket promoted heavily
11 *nationwide* in consumer-facing marketing, all while not providing or being able to provide that feature
12 to over 90 percent of the country.
13

14 2. That Cricket engaged in such deception during this time period (2012-2014) was not
15 a coincidence: the wireless industry was then witnessing an intensive period of mergers and
16 acquisitions. In 2013, Sprint merged with Softbank, T-Mobile merged with MetroPCS, and AT&T
17 acquired Alltel’s wireless operations. Meanwhile, as the fifth-largest U.S. wireless carrier, Cricket
18 was bleeding cash, failing to build 4G capabilities, and facing obsolescence as the industry evolved.
19

20 3. In an attempt to keep pace, Cricket developed and implemented a scheme to try to
21 attract new customers to Cricket with advertisements for “unlimited” 4G/LTE service. As but one
22 example, here a Cricket advertisement reads, “**4GLTE SPEED MEETS UNLIMITED**
23 **EVERYTHING: Now get the latest smartphones from Cricket with unlimited data, talk and**
24 **text at 4G LTE speed, plus *no contract.*”** (emphasis added):
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1 4. Cricket’s scheme entailed selling more expensive 4G/LTE-capable phones with more
 2 expensive service while concealing from *consumers* that it did not in fact have the ability to provide
 3 anything remotely close to nationwide, let alone unlimited, 4G/LTE service to its customers. Indeed,
 4 Cricket had either limited or no 4G/LTE service whatsoever in most of the metro areas where it sold
 5 its products. As a result, many thousands of Cricket customers found themselves having paid for
 6 expensive 4G/LTE phones and/or service on a network that had very limited capabilities.

7 5. Plaintiffs and other members of the proposed classes overpaid Cricket for the 4G/LTE-
 8 capable phones and service purchased during that time period because Cricket falsely and
 9 misleadingly advertised and priced its phones and service as offering customers the promise of the
 10 same 4G/LTE technology that other rival carriers were providing. This action seeks compensation for
 11 Plaintiffs and class members damaged by Cricket’s deceptive and unlawful conduct.

12 6. Cricket’s parent company, Leap Wireless International, Inc. (“Leap”), was a spinoff
 13 of Qualcomm and publicly traded. As such, it was required to file with the Securities and Exchange
 14 Commission (“SEC”). Such SEC filings confirm the extremely limited coverage of Cricket’s 4G/LTE
 15 network: “[T]o date, **we [Leap] have covered approximately 21 million POPs with next-**
 16 **generation LTE network technology.** . . .”¹ For frame of reference, the U.S. Census Bureau
 17 estimated that there were nearly 319 million residents of the United States in 2014.²

18 7. Further, Cricket’s limited 4G/LTE deployments were significantly inefficient,
 19 meaning that an additional user would have an outsized slowing impact on the network relative to
 20 more developed 4G/LTE networks. This means that even customers in an area with some 4G/LTE
 21 coverage did not obtain the same quality of service as those customers on developed networks.

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 23
 24 ¹ “POPs” is a term that refers to the customers that a network could *potentially* cover. Specifically, it
 25 is defined as “information relating to population and potential customers, or ‘POPs,’ [that] is based
 26 on 2012 population estimates provided by Claritas, Inc., a market research company.” LEAP
 27 WIRELESS INTERNATIONAL, INC., Form 10-K (“2013 10-K”) for the Period Ending December 31,
 28 2013 (filed with the SEC on Mar. 6, 2014), at 1.

² U.S. CENSUS BUREAU, 2014 Population Estimate,
<https://data.census.gov/cedsci/all?q=2014%20population%20estimates&hidePreview=false&table=DP05&tid=ACSDP1Y2014.DP05&t=Counts,%20Estimates,%20and%20Projections&y=2014&lastDisplayedRow=15> (last visited Nov. 1, 2019).

1 8. Even further, to the extent the distinction may be significant, those 21 million POPs
2 were contained within Cricket network’s “footprint”³—i.e., even that figure may have been unduly
3 aspirational.

4 9. Even *if* Cricket had been able to provide robust 4G coverage to 21 million people—
5 again, a claim that is dubious—that would still amount to, approximately, **only 6.5% of the U.S.**
6 **population when Cricket began advertising “nationwide” 4G service.**

7 10. To make matters even worse, by the end of 2013 the company had given up all efforts
8 to even try to develop its 4G/LTE network: “. . . [G]iven the significant decrease in the size of our
9 customer base in recent quarters, our high level of indebtedness, and the high cost of LTE deployment,
10 **we have generally determined not to deploy LTE network technology in additional markets at**
11 **this time.**”⁴ Cricket, meanwhile, said nothing about this internal decision in its consumer-facing
12 marketing.

13 11. Despite the admissions that Cricket’s current 4G/LTE network was extremely limited
14 and that it had no plans to expand its 4G/LTE coverage, Cricket continued to advertise and market to
15 consumers nationwide that it offered 4G/LTE.

16 12. Defendant’s advertisements to consumers that it offered unlimited and/or nationwide
17 4G/LTE service were false.

18 13. Based on Leap’s own statements to the SEC and FCC, Cricket made such
19 advertisements and representations to consumers with full knowledge that they were false.

20 14. As such, Defendant’s advertisements and representations to consumers were willful,
21 malicious, and unconscionable.

22 15. Plaintiffs bring this lawsuit in federal court on behalf of themselves, individually, and
23 all other similarly situated consumers, to hold Cricket accountable for its wrongdoing.

24 16. Cricket has filed a motion attempting to compel arbitration, as it did in the prior case
25 before this Court. However, Ninth Circuit law now clearly asserts that this lawsuit should remain in
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27 ³ 2013 10-K at 5.

28 ⁴ *Id.* at 7.

1 federal court because no reasonably prudent smartphone user was put on notice of Cricket’s
2 arbitration provision, which was buried in the middle of a “Quick Start Guide” that initially described
3 Cricket as “the home of no contract, no hassle wireless” and did not mention that the booklet
4 contained terms and conditions for the use of Cricket’s service.⁵

5 17. Cricket did not have a policy of informing customers of an arbitration provision.

6 18. Cricket did not set up a contract formation process with customers that required a
7 purchaser to take any affirmative action to acknowledge acceptance of an arbitration provision.

8 19. Without obtaining affirmative consent to the arbitration provision, Cricket cannot now
9 claim an agreement to arbitrate was formed with Cricket customers. The Ninth Circuit has rejected
10 that a company like Cricket can put “terms in a box” and contend that despite only silence and
11 inaction, all purchasers consented to the arbitration provision.⁶

12 20. Based on the misrepresentations made by Cricket, Plaintiffs and thousands of other
13 consumers seeking better call connectivity and faster Internet and data speeds purchased high-end,
14 expensive 4G/LTE-capable mobile cellular phones (“4G/LTE-capable phones”), such as the iPhone
15 and Samsung Galaxy, in an attempt to take advantage of Cricket’s advertised 4G/LTE service
16 throughout the United States.

17 21. Such 4G phones purchased from Cricket were useful only on Cricket’s network as
18 “unlocking” phones was illegal during the relevant period. As did other carriers, Cricket had
19 engineered its phones to be network-reliant and not portable to other networks. It was not until August
20 1, 2014, that the Unlocking Consumer Choice and Wireless Competition Act, which legalized the
21 unlocking of phones, was passed into law.⁷ Therefore, at all times relevant to this lawsuit Cricket
22 customers could not legally switch their 4G-capable phones to a genuine 4G network.

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25 ⁵ See *Norcia v. Samsung Telecomms. Am., LLC*, 845 F.3d 1279, 1287 (9th Cir. 2017); *Dang v.*
26 *Samsung Electronics Co., Ltd.*, No. 15-16768, 2017 WL 218896 (9th Cir. Jan. 19, 2017);
27 *Velasquez-Reyes v. Samsung Elecs. Am.*, No. 17-56556, 777 Fed. App’x 241 (9th Cir. Sept. 17,
28 2019); *Samsung Elecs. Am. v. Ramirez*, No. 18-16094, 777 Fed. App’x 243 (9th Cir. Sept. 17, 2019).

⁶ See *id.*

⁷ See 17 U.S.C. § 1201(a)(1)(A) (Pub. L. 113-144, “Unlocking Consumer Choice and Wireless Competition Act”); 37 C.F.R. § 201.40(b)(5)(i).

PARTIES

1
2 28. Plaintiff Jermaine Thomas is a resident of California who was a resident of Missouri
3 during the proposed class period.

4 29. Plaintiff Jermaine Miller is a resident of Pennsylvania.

5 30. Plaintiff Ronald Ellison is a resident of Illinois.

6 31. Plaintiff Jamie Postpichal is a resident of Missouri.

7 32. Plaintiff Sarah Waters is a resident of Missouri who was a resident of California during
8 the proposed class period.

9 33. Plaintiff Maishia Johnson is a resident of Virginia who was a resident of Virginia and
10 Texas during the proposed class period.

11 34. Plaintiff Ursula Freitas is a resident of Washington.

12 35. Defendant is a wholly owned subsidiary of AT&T, Inc. (“AT&T”) which, at all times
13 relevant since the merger described below, has directly owned and controlled various entities
14 including, but not limited, to Cricket Wireless, LLC.

15 36. Plaintiffs have dismissed from this matter Cricket Communications, Inc. without
16 prejudice.

17 37. Cricket Wireless, LLC is/was a Delaware Limited Liability Company (File No.
18 5125642). As a Limited Liability Company, it is/was domiciled in each state in which its members
19 reside(d). At the time, Cricket Wireless, LLC’s only member was Leap, which is and was domiciled
20 in California. Since the merger, Cricket Wireless’ only member has become AT&T Mobility
21 Corporation, which has a principal place of business in Georgia.

22 38. In July of 2013, AT&T and Leap entered into an Agreement and Plan of Merger
23 (“Merger Agreement”).

24 39. In March of 2014, the Merger Agreement was formally consummated after approval
25 by the FCC.

26 40. Pursuant to the Merger Agreement, Mariner Acquisition Sub, Inc. (a Delaware
27 corporation and a wholly owned subsidiary of AT&T) merged with and into Leap, with Leap
28

1 surviving as a wholly owned subsidiary of AT&T (the “Merger”).⁹

2 41. As a result of the Merger, Cricket Communications remained a subsidiary of Leap,
3 which itself became a subsidiary of AT&T.

4 42. Leap still maintains its principal place of business in San Diego, California.¹⁰

5 **THE ATT – LEAP MERGER: TIMELINE AND FACTS**

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

9 44. In the Application, AT&T sought permission to purchase Cricket and Leap’s wireless
10 communication rights and licenses.

11 45. Included in the Application were the following statements made by the joint applicants
12 AT&T and Leap:

13 a. “Leap’s financial resources and limited spectrum depth make it uneconomic to
14 upgrade its current 3G CDMA platform to LTE throughout its network; **to date it has**
15 **deployed LTE technology in only 11 metropolitan areas** covering approximately 21 million
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17
18 ⁹On March 13, 2014, Leap made the following statement to the SEC in its Form 8-K: “Pursuant to
19 the Agreement and Plan of Merger, dated as of July 12, 2013 (the “Merger Agreement”), by and
20 among Leap Wireless International, Inc., a Delaware corporation (the “Company”), AT&T Inc., a
21 Delaware Corporation (“AT&T”), Laser, Inc., a Delaware corporation (the “Stockholder’s
22 Representative”), and Mariner Acquisition Sub Inc., a Delaware corporation and a wholly owned
23 subsidiary of AT&T (“Merger Sub”), on March 13, 2014, Merger Sub merged with and into the
24 Company with the Company surviving as a wholly owned subsidiary of AT&T (the “Merger”).
25 LEAP WIRELESS INTERNATIONAL, INC., Form 8-K, Introduction (filed with the SEC on Mar. 14,
26 2014). AT&T noted that it closed its acquisition of Leap Wireless Intl., Inc. on March 13, 2014.
27 AT&T, INC., Form 10-Q (filed with the SEC on Aug. 1, 2014), at 7.

28 ¹⁰ See, e.g., <https://www.bloomberg.com/profile/company/LEAP:US> (Address: 7337 Trade Street,
San Diego, CA 92121) (last visited Nov. 1, 2019); [https://www.linkedin.com/company/leap-
wireless/about/](https://www.linkedin.com/company/leap-wireless/about/) (“Headquarters: San Diego, CA” ... “Corporate Headquarters: 5887 Copley Drive,
San Diego, CA 92111”) (last visited October 25, 2019). On October 25, 2019, Plaintiffs also
conducted a search of the Georgia Corporations Division Business Search
(<https://ecorp.sos.ga.gov/BusinessSearch>, using “contains” filter) for “Leap Wireless,” but that search
returned zero results. The same day, Plaintiffs also utilized the “Service of Process Search”
(<https://ecorp.sos.ga.gov/SOPSearch>), with the same search criteria. That search also returned zero
results.

1 people and has little prospect today of financing significant upgrades to cover the remainder
2 of its network footprint” (emphasis added);

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

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

11 46. In March of 2014, the FCC approved the Merger.

12 47. On or about May 18, 2014, the “New Cricket” re-launched under AT&T.

13 **PLAINIFFS’ EXPERIENCES**

14 **Plaintiff Jermaine Thomas¹¹**

15 48. Plaintiff Jermaine Thomas (“Thomas”) has been a customer of Cricket since
16 approximately 2006.

17 49. Thomas was lured to Cricket by its promise of “no contract” wireless service.

18 50. In late 2013, Thomas wanted to use his cellphone to download music, stream videos,
19 access the Internet, and have more reliable wireless coverage.

20 51. To be able to use his cellphone for such purposes, Thomas visited a Cricket store
21 located at 25 W. 39th Street, Kansas City, Missouri to purchase a new 4G/LTE-capable phone.

22 52. The Cricket store Thomas visited prominently displayed signs advertising unlimited
23 plans with 4G/LTE coverage.

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¹¹ In light of the Court’s recent order (Dkt. No. 130) granting Defendant’s motion to compel
27 Plaintiff Thomas to arbitration, Thomas is evaluating his options – which could include both a
28 reconsideration motion and an appeal of the order compelling arbitration. As such, Mr. Thomas is
included in this complaint to preserve his legal rights.

1 90. She noticed advertisements for Cricket 4G services during that time.

2 91. Johnson purchased a Cricket 4G service plan along with the above referenced
3 phone(s).

4 92. Despite paying for a Cricket 4G phone and service, she received little or no 4G
5 coverage from Cricket and experienced problems with her service including dropped calls and poor
6 data speeds.

7 **Plaintiff Ursula Freitas**

8 93. Plaintiff Ursula Freitas (“Freitas”) is a resident of the State of Washington and was a
9 resident of the State of Washington from 2012-2014.

10 94. On October 22, 2013, she purchased an Admire 2, a 4G-capable smartphone, from a
11 Cricket store located at 12010 NE 4th Plain Blvd., Vancouver, WA 98682.

12 95. She also purchased what she believed to be a 4G service plan for \$60/month.

13 96. She recalls seeing multiple Cricket advertisements related to 4G.

14 97. She believed that 4G would be an improvement over 3G and that she would receive
15 better service.

16 98. Despite paying for a 4G phone and a 4G service plan, she did not receive 4G coverage.

17 **COMMON FACTUAL ALLEGATIONS**

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

19 99. Cricket described itself as providing “innovative, high-value wireless services to a
20 fast-growing, young, and ethnically diverse customer base.”¹³

21 100. Beginning in 2012, Cricket advertised to many consumers across the United States the
22 opportunity to purchase a 4G/LTE-capable phone with 4G/LTE services without distinction,
23 clarification, or disclosure that such 4G/LTE coverage was extremely limited in size, scope, and
24 strength and, in most cities, nonexistent.

25
26 _____
27 ¹³ PR NEWswire, Press Release, *Leap Announces Expanded Availability of Cricket Products and*
28 *Services Through Key National Retail Outlets* (Sept. 22, 2011), <http://www.prnewswire.com/news-releases/leap-announces-expanded-availability-of-cricket-products-and-services-through-key-national-retail-outlets-130327813.html> (last visited Nov. 1, 2019).

1 101. Cricket advertised its 4G/LTE services via a variety of methods including, but not
2 limited to, in-store advertising, printed marketing materials, radio, television, billboards, and the
3 Internet.

4 102. Such advertisements included statements that Cricket’s 4G/LTE services provided
5 unlimited 4G/LTE in the United States without noting any areas of limited or nonexistent coverage.

6 103. 4G/LTE was the most advanced type of network currently available to the general
7 public.

8 104. 4G/LTE had/has several significant advantages over conventional 3G service.

9 105. Advantages for consumers include, but are not limited to: a significantly higher quality
10 cellular service for making phone calls, faster text messaging, and exponentially faster data and
11 Internet/data services (approximately eight times faster than 3G).

12 106. Cricket’s own current “Acceptable Use Policy” described data speeds as follows:¹⁴

- 13 a. Cricket’s 4G LTE service currently offers download speeds up to 8 Mbps;¹⁵
14 and,
15 b. 3G service as providing download speeds from 700 Kbps up to 1.7 Mbps.

16 107. 4G/LTE services allow a consumer to get the best and highest use out of a 4G/LTE-
17 capable phone. This includes, but is not limited to:

- 18 a. Ability to download or stream music and videos;
19 b. Greatly enhanced speed of downloading or streaming music and video;
20 c. Ability to use mobile applications that have practical, safety-enhancing
21 features such as turn-by-turn GPS directions;
22 d. The use of other mobile applications that would require 4G/LTE services as
23 advertised by Cricket (such as MUVE); and
24 e. In general, the ability of a consumer to have the full functionality of a 4G/LTE-
25 capable phone.

27 ¹⁴CRICKET WIRELESS, *Acceptable Use Policy* (Revised May 18, 2014),
<https://www.cricketwireless.com/legal-info/acceptable-use-policy.html> (further updated since).

28 ¹⁵ “Mbps” = Megabytes per second.

1 118. These measures were so significant and widespread that an objectively reasonable
2 consumer, having purchased a 4G/LTE-capable phone from Cricket, would believe that the phone
3 would receive 4G/LTE coverage; this is especially true when coupled with Cricket’s advertisements
4 of nationwide 4G/LTE without any disclaimer indicating that such 4G/LTE coverage was extremely
5 limited and, in most cases, nonexistent.

6 119. Such 4G/LTE branding included the packaging of the phone itself—for example:



14 120. Such 4G/LTE branding also included in the “Quick Start Guide: A Simple Guide to
15 Activating Your Phone”:



26 121. Such 4G/LTE branding also included the Subscriber Identification Module (“SIM”)
27 card holder contained in the box provided by Defendant. The SIM card holder had a large moniker
28

1 stating “4G/LTE” and a notation stating “4G/LTE Technology – Lets you live, work, and play **faster**
2 **than with 3G**” (emphasis added). For example:



9
10 122. Such 4G/LTE branding also included the 4G/LTE-capable phone itself.

11 123. This type of branding (SIM card, phone, booklet, etc.) is not typically found with any
12 other major carrier that has 4G/LTE coverage.

13 124. Upon information and belief, Cricket took these actions to intentionally deceive and
14 confuse Plaintiffs and the putative class members that after purchasing a 4G/LTE-capable phone,
15 Cricket would provide 4G/LTE coverage.

16 **The Ill-Fated Rollout of Cricket’s “Nationwide” 4G/LTE Network**

17 125. One can form, via various press releases, articles, and forum posts, a reasonable
18 timeline of Cricket’s ill-fated attempts to offer a competitive 4G/LTE network.

19 126. On or about March 14, 2012, Cricket announced a five-year LTE wholesale agreement
20 with Clearwire, a wireless network.¹⁶

21 127. Importantly, *Clearwire’s LTE network had not even been deployed at that time—it*
22 *was to be, speculatively, launched by June 2013*. Further, there was “no word on which markets
23 [would] be the first to get the high-speed network.”¹⁷

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25 ¹⁶ See, e.g., Ben Kersey, *Cricket Signs Five-Year Clearwire LTE Deal*, SLASHGEAR (Mar. 14, 2012),
26 <https://www.slashgear.com/cricket-signs-five-year-clearwire-lte-deal-14218329/> (last visited Nov. 1,
2019).

27 ¹⁷ Dante D’Orazio, *Clearwire’s LTE Network to Be Deployed Over 5,000 Cell Sites by June 2013*,
28 VERGE (Feb. 16, 2012), [https://www.theverge.com/2012/2/16/2802630/clearwire-lte-network-](https://www.theverge.com/2012/2/16/2802630/clearwire-lte-network-deployment)
[deployment](https://www.theverge.com/2012/2/16/2802630/clearwire-lte-network-deployment) (last visited Nov. 1, 2019).

1 228. Nonetheless, Cricket advertised its 4G/LTE services on a nationwide basis well before
2 June 2013.

3 229. Even if Cricket *aspired* to one day offer a nationwide 4G/LTE network, it did not even
4 *plan* to use Clearwire’s network to offer such coverage to more than, approximately, 60% of the
5 Cricket network.¹⁸

6 230. Clearwire was ultimately purchased by Sprint in July 2013; Sprint had entered a
7 merger agreement with Clearwire in late 2012.

8 231. Despite Clearwire’s ambitions to roll out 5,000 LTE sites by June 2013, the company
9 encountered substantial delays in its LTE expansion.

10 232. Per the May 2, 2013, Schedule 14A proxy statement filed on Clearwire’s behalf in
11 advance of the proxy vote concerning its acquisition by Sprint, the magnitude of these delays was
12 revealed.¹⁹

13 233. Specifically, that proxy statement cited Clearwire’s CEO, on a March 4, 2013,
14 earnings call, as stating that the company “expect[ed]” to have 2,000 LTE sites on air by June 2013.²⁰
15 That is, Clearwire’s expectations for June 2013 had fallen from 5,000 LTE sites to just 2,000 sites.

16 234. By comparison, AT&T reported that it covered “all major metropolitan areas and
17 nearly 280 million people” with its LTE technology in its 2013 10-K.²¹

18 235. By further comparison, Cricket’s own wireless network (i.e., the one that was
19 overwhelmingly 3G/CDMA) consisted of approximately 9,700 sites as of the end of 2012.²²

20 236. Thus, not even Cricket’s *wholesaler* could offer anything remotely close to
21 “nationwide” or “unlimited” 4G/LTE services by the time Cricket began marketing such.
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23

24 ¹⁸ Kersey, *supra* note 14 (“Cricket are hoping to expand LTE coverage to around 60% of its existing
25 network coverage.”)

26 ¹⁹ CLEARWIRE CORP., Schedule 14A (filed by Crest Fin. Ltd. and Crest Inv. Co. with the SEC).

27 ²⁰ *Id.* at 6.

28 ²¹ AT&T, INC., Form 10-K for the Fiscal Year Ended December 31, 2013 (filed with the SEC on Feb.
21, 2014), at 2.

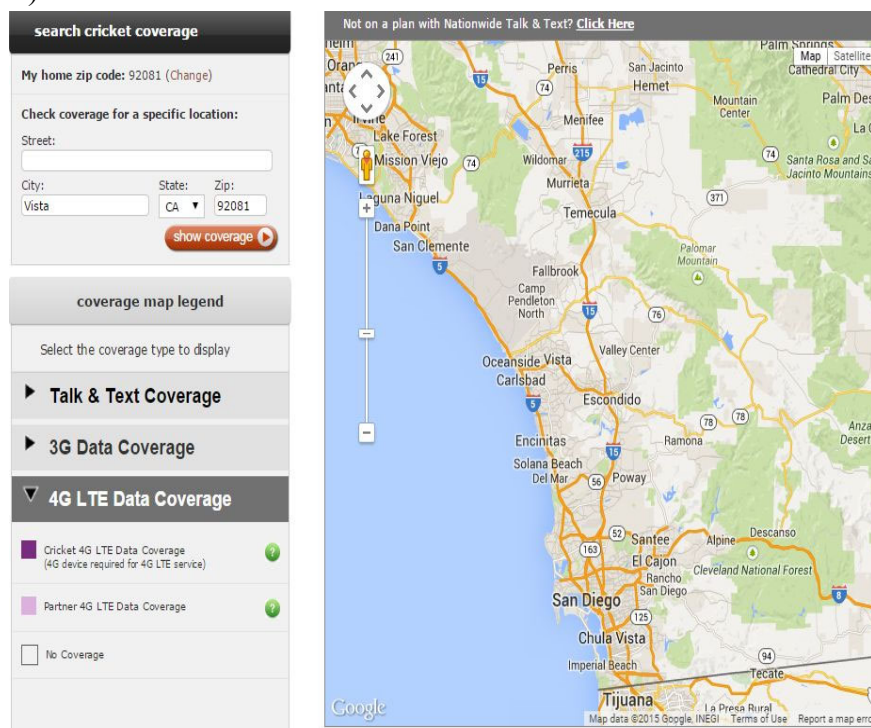
²² LEAP WIRELESS INTERNATIONAL, INC., Form 10-K for the Fiscal Year Ended December 31, 2012 (filed with the SEC on Feb. 25, 2013), at 5.

1 137. Further, it is not as if Cricket were naive with regard to thwarted 4G/LTE ambitions:
 2 in March 2011, Cricket had announced plans to enter into a 4G/LTE roaming agreement with
 3 LightSquared, another wireless network.²³ In May 2012, LightSquared declared bankruptcy.²⁴

4 138. As for Cricket's own 4G/LTE network, it was largely inchoate. Indeed, this is
 5 essentially why Cricket needed to approach wholesalers in the first place.

6 139. On information and belief, the only areas where Cricket's network offered any manner
 7 of 4G/LTE coverage when it began advertising such nationally were in parts of Arizona and perhaps
 8 greater Philadelphia.

9 140. For example, coverage maps taken from Cricket's own website show that Cricket did
 10 not have 4G/LTE coverage in Southern California, where Cricket was headquartered, as of December
 11 2014. Note that potential consumers are notified that "*a 4G device is required for 4G/LTE service*"
 12 (emphasis added):



25 ²³ See, e.g., Chris Ziegler, *Cricket Ties Up with LightSquared for Roaming Agreement*, ENGADGET
 26 (Mar. 23, 2011), <https://www.engadget.com/2011/03/23/cricket-ties-up-with-lightsquared-for-lte-roaming-agreement/> (last visited Nov. 1, 2019).

27 ²⁴ See, e.g., Tracy Rucinski, *LightSquared Strikes Spectrum Deal and Exits Bankruptcy*, REUTERS
 28 (Dec. 8, 2015), <https://www.reuters.com/article/us-lightsquared-bankruptcy-idUSKBN0TR2QL20151209> (last visited Nov. 1, 2019).

1 141. In contrast, coverage maps from Cricket’s own website show that there was abundant
 2 3G coverage throughout all of the major metropolitan areas of Southern California (the darker shade
 3 is used to denote Cricket’s own coverage and the lighter shade to denote partner (wholesale)
 4 coverage):

My home zip code: 92101 (Change)

Check coverage for a specific location:

Street:

City: State: Zip:

[show coverage](#)

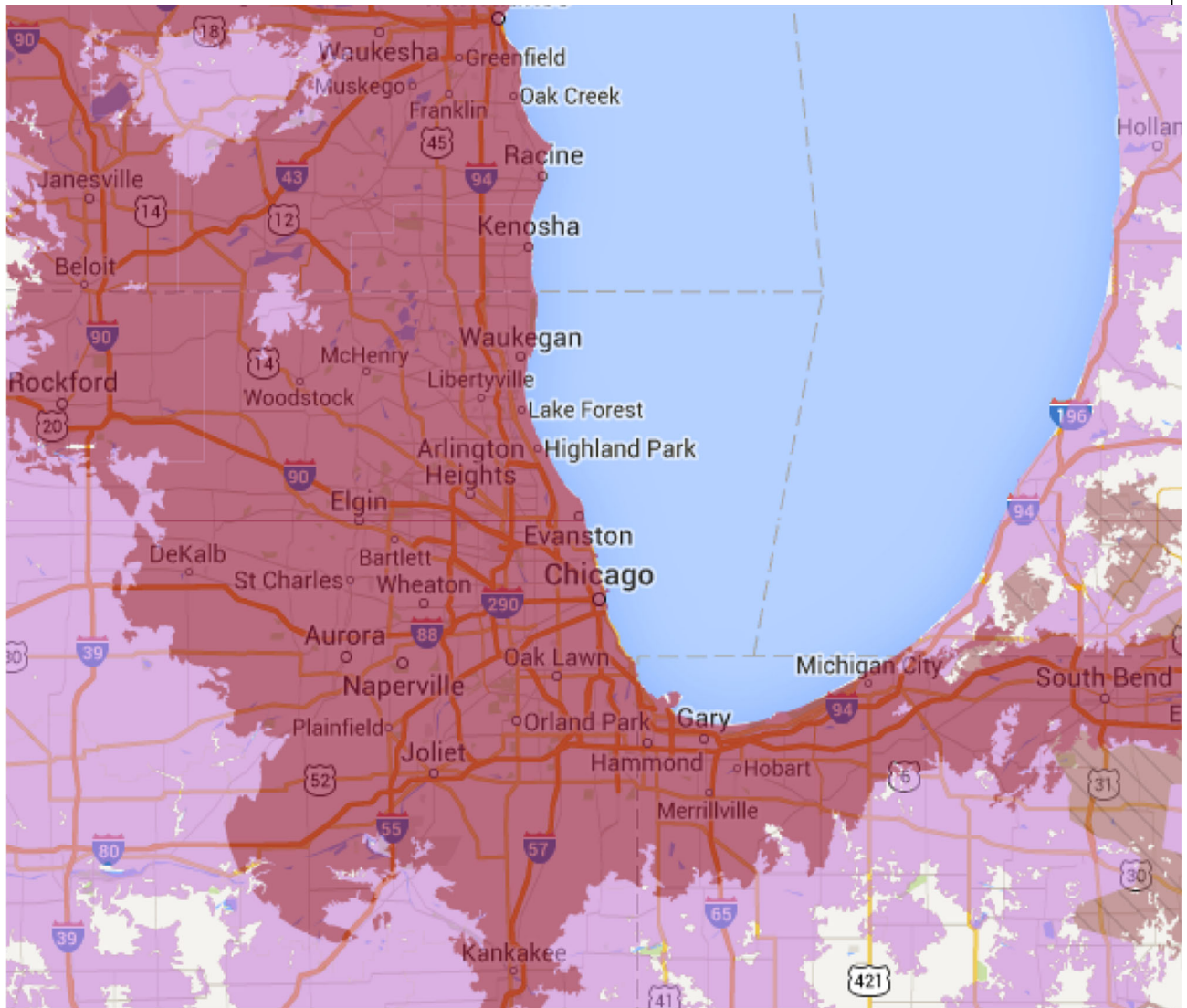
coverage map legend

Select the coverage type to display

- Talk & Text Coverage**
- 3G Data Coverage**
 - Cricket 3G Data Coverage
 - Partner 3G Data Coverage
 - Additional Partner Data Coverage (Phones only)
 - No Coverage
- 4G LTE Data Coverage**

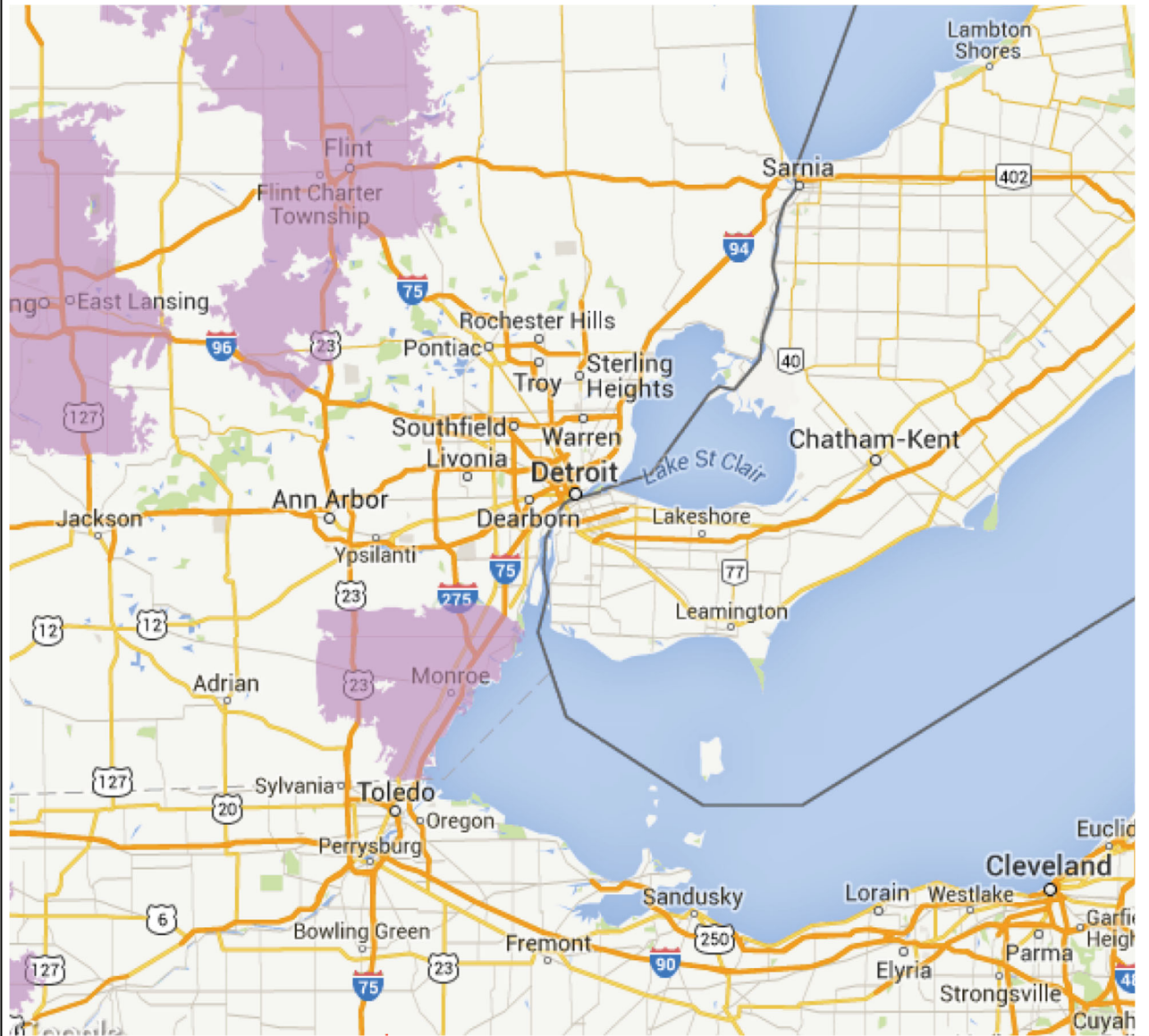
22 142. By way of further example, here is the same comparison in greater Chicago, as well
 23 as Milwaukee, a total metropolitan statistical area of approximately 11 million people, with the first
 24 map showing Cricket’s purported 4G coverage in greater Chicago-Milwaukee and the second
 25 showing its purported 3G coverage (the legends on the subsequent maps have been removed for the
 26 benefits of size and clarity):

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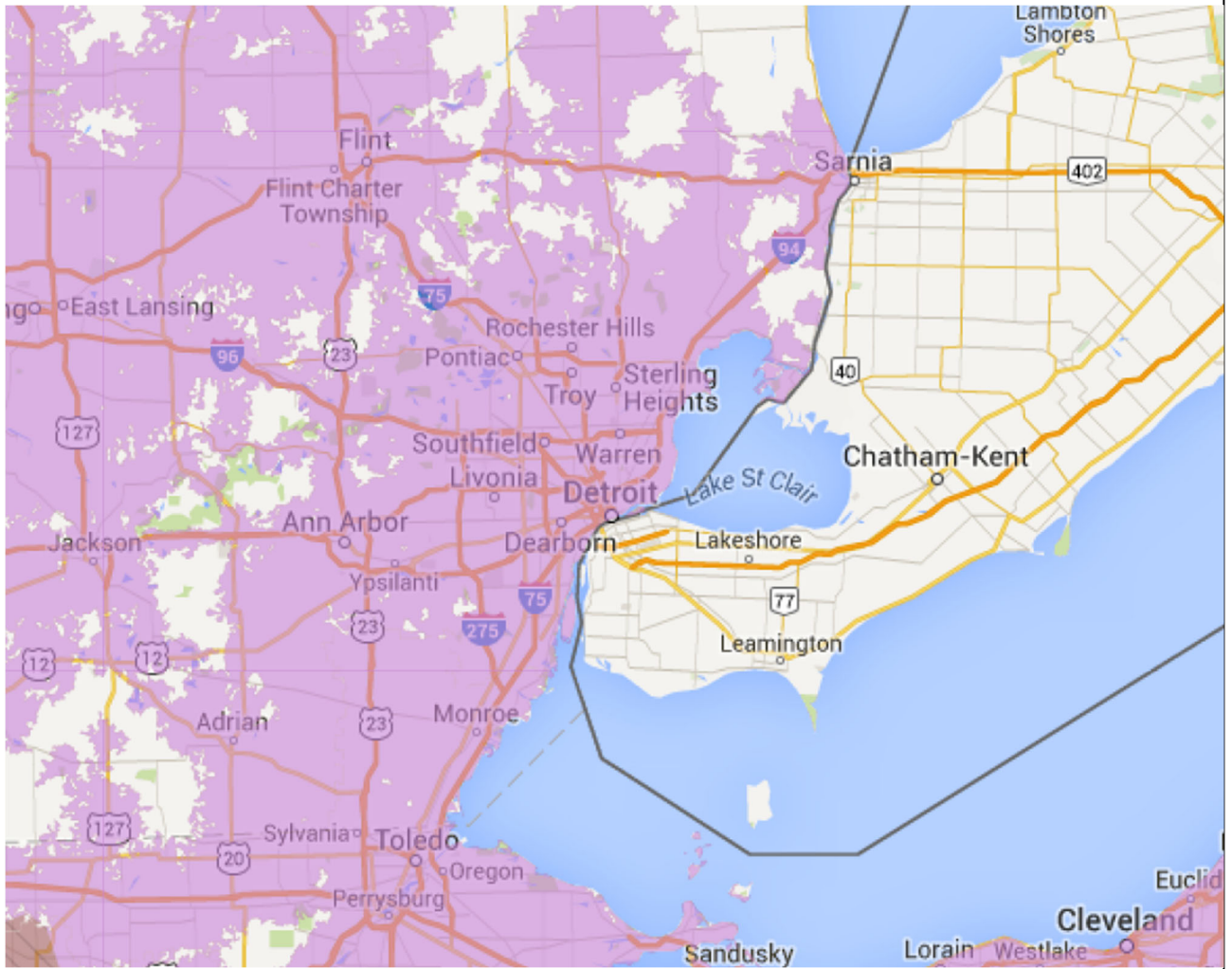


143. Detroit and, to the lower right, Cleveland, a total metropolitan statistical area of approximately 6.3 million people, with the first map showing Cricket’s purported 4G coverage in greater Detroit-Cleveland and the second showing its purported 3G coverage (the legends on the subsequent maps have been removed for the benefits of size and clarity):

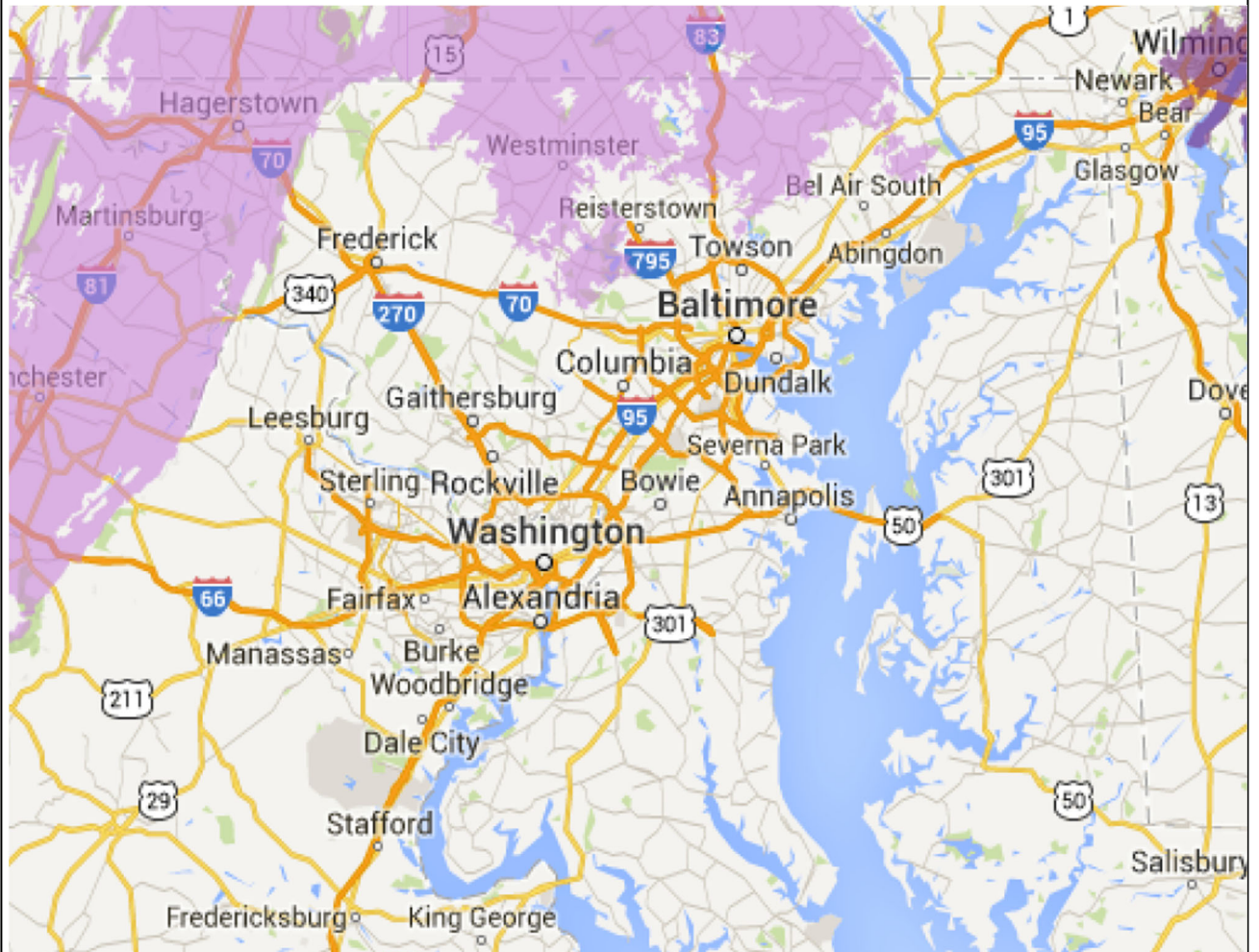
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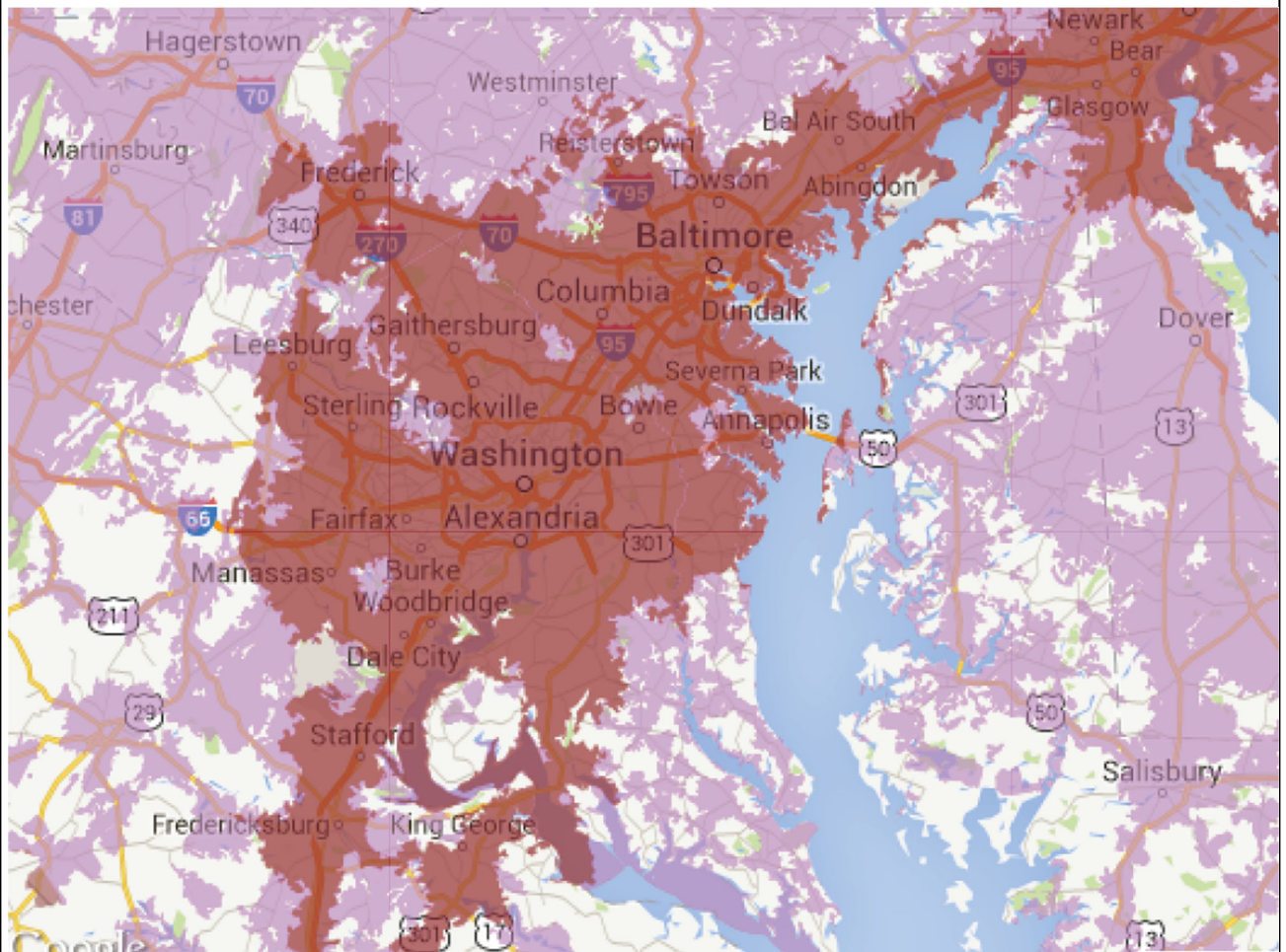
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1 144. Washington, D.C. and Baltimore, a total metropolitan statistical area of approximately
2 9 million people, with the first map showing Cricket’s purported 4G coverage in greater Washington,
3 D.C.-Baltimore and the second showing its purported 3G coverage (the legends on the subsequent
4 maps have been removed for the benefits of size and clarity):



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145. The coverage maps Cricket posted on its own website reveal a similar trend in numerous other metropolitan areas. Other markets where Cricket could provide little to no 4G/LTE service included, but were by no means limited to: Albuquerque, Anchorage, Buffalo, Charlotte, Cincinnati, Colorado Springs, Columbus, Dayton, Denver, El Paso, Fresno, Kansas City, greater Los Angeles, Little Rock, Louisville, Memphis, Minneapolis-St. Paul, Nashville, Newark, Omaha, Orlando, Pittsburgh, Portland, Raleigh-Durham, Richmond, Rochester, Sacramento, Salt Lake City, San Francisco (the West Bay area), San Jose, Seattle, St. Louis, Syracuse, and the entire state of Hawaii.

146. Further, the maps shown above, again, were as of December 2014—effectively two years after Cricket began marketing its 4G/LTE plans.

147. As of December 31, 2013, Cricket 3G service was offered in 48 states and the District

1 of Columbia across an extended area covering approximately 292 million POPs.

2 148. As discussed, Leap’s SEC filings admitted that 4G/LTE coverage extended to,
3 optimistically, only 21 million POPs in the entire United States.

4 149. Leap’s SEC filings also made the following public statements concerning its lack of
5 4G/LTE capabilities and accordant worries about its inability to compete in the 4G marketplace:

6 a. “Many of our competitors also offer LTE services over a significantly larger
7 geographic area than we do”;²⁵

8 b. “Given the significant decrease in the size of our customer base in recent
9 quarters, our high level of indebtedness, and high cost of LTE deployment, **we have generally**
10 **determined not to deploy LTE network technology in additional markets at this time**”
11 (emphasis added);²⁶ and

12 c. “[O]ur ability to compete effectively against wireless carriers with nationwide
13 networks and significantly greater deployment of 4G . . .” was a significant risk factor for
14 Cricket’s business.²⁷

15 150. By Cricket’s own admissions, it made a conscious decision not to expand its 4G/LTE
16 coverage—none of which was divulged in its nationwide advertising campaign for nationwide
17 coverage and unlimited 4G/LTE service.

18 151. Indeed, not only were Cricket’s national advertisements of 4G/LTE service entirely
19 premature but the company persisted in that campaign even though it was clear that it would not be
20 able to offer such service.

21 152. Cricket failed to inform customers that its 4G/LTE services were (and would continue
22 to be) only available in very limited geographic regions.

23 153. Essentially, Cricket told one story to the SEC and FCC but continued to engage in a
24 mass advertising campaign that told a very different story to its consumers regarding its ability to
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26 ²⁵ LEAP WIRELESS INTERNATIONAL, INC., Form 10-K for the Fiscal Year Ended Dec. 31, 2013 (filed
27 with the SEC on Mar. 6, 2014), at 8.

28 ²⁶ *Id.* at 5.

²⁷ *Id.* at 1.

1 provide nationwide 4G/LTE coverage.

2 154. Cricket’s overall failure to construct, or obtain access to, a competitive 4G/LTE
3 network during this time occurred within the context of intense competition in the wireless industry
4 and overall financial weakness for Cricket itself.

5 155. Generally, Cricket could not afford to obtain 4G/LTE coverage in many urban areas,
6 even though these were the precise areas targeted by Cricket.

7 156. It is thus reasonable to infer that Cricket, knowing that it could not realistically obtain
8 competitive 4G/LTE service and yet hoping that a “white knight” may wish to acquire it during a
9 period of mergers and consolidation in the industry, decided to falsely advertise its 4G/LTE
10 capabilities at the undue expense of its own customers in a desperate bid to increase revenues and
11 remain viable.

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

15 157. Any purported arbitration clause that Defendant may allege exists is unenforceable
16 because no contract or agreement between Cricket and consumers was ever formed.

17 **Cricket’s “No Contract” Representations**

18 a. During all relevant time periods in this Complaint, Cricket marketed itself to
19 all consumers, including Plaintiffs and the putative class, as the “Home of the No Contract,
20 No Hassle Wireless Carrier” (emphasis added).

21 b. For example, the “Quick Start Guide” that Defendant provided to Plaintiffs and
22 the putative class members welcomed them to Cricket Wireless includes this slogan:
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c. In addition, from approximately May 1, 2012, to June 1, 2014, Cricket advertised on its website that its services had Unlimited Data, Talk, Text & Music with “**No Contracts.**” (emphasis added). For example, this was posted on Cricket’s website in 2013:



d. Significantly, after AT&T finalized its acquisition of Leap/Cricket (on or about May 18, 2014), the marketing and advertising messages conveyed to consumers changed to “*No Annual Contract*” (emphasis added) instead of its prior message of “No Contract”. The clear implication is that AT&T knew the “No Contract” advertisement campaign was problematic and changed the advertising message accordingly.

1 e. Thus, Defendant cannot enforce an arbitration clause or other contractual
2 provision against any class-member consumers in this case since no contract or agreement,
3 including any arbitration provision, was ever offered or formed due to Defendant’s prior
4 representations to consumers (through marketing, advertisements, printed materials, etc.) that
5 Cricket’s 4G/LTE services had “no contract.”

6 **Cricket’s Failure to Meaningfully**
7 **Disclose Any Arbitration Provision**

8 f. Upon information and belief, Defendant provided the same or similar “Quick
9 Start Guide” to all consumers that purchased 4G/LTE-capable phones from 2012 to mid-2014.

10 g. The arbitration provision was included in a booklet titled “Quick Start Guide”
11 with the subtitle “A Simple Guide to Activating Your Phone” (herein, “Quick Start Guide:
12 Simple Activation Guide”).

13 h. The title of the booklet alone would not put a reasonably prudent consumer on
14 inquiry notice that the booklet contained important terms or conditions relating the customers’
15 relationship with Cricket and, in fact, would suggest the opposite to a reasonably prudent
16 consumer.

17 i. There is no statement or description on the front of the booklet about anything
18 being contained or included in the “Quick Start Guide: Simple Activation Guide” relating to
19 additional agreements, contracts, terms of service, or arbitration clauses.

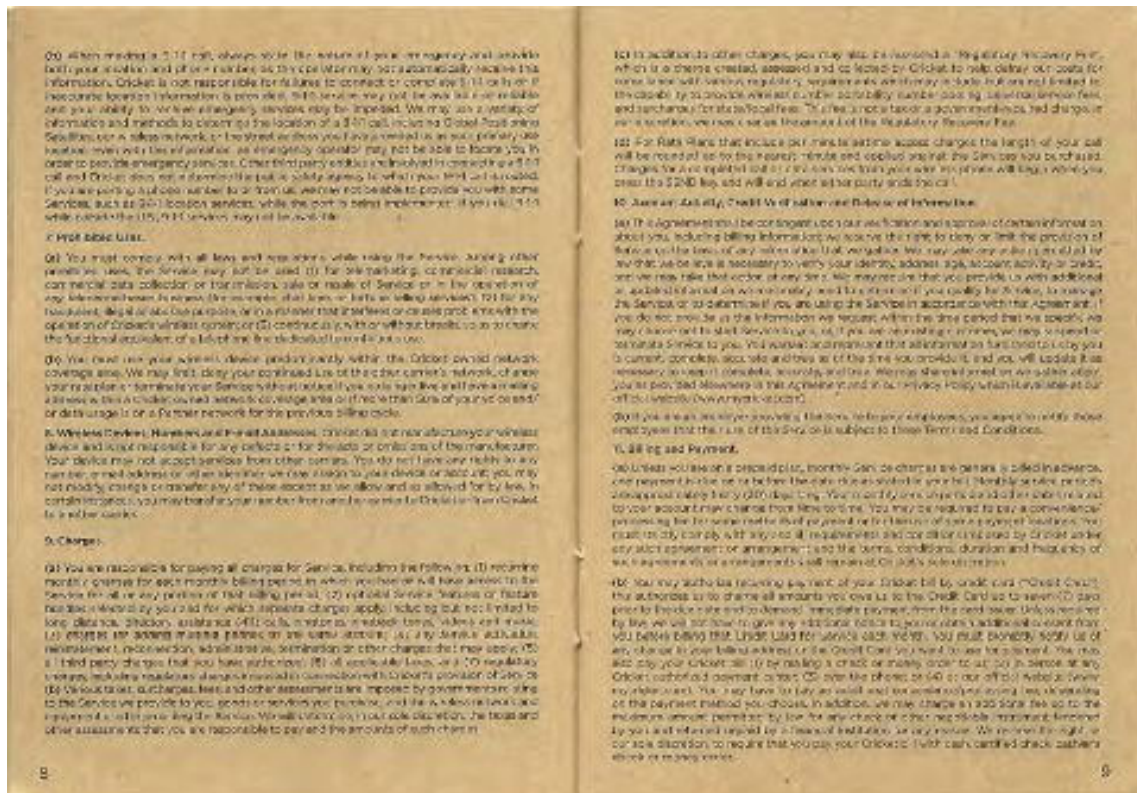
20 j. Because Cricket failed to meaningfully and conspicuously notify consumers of
21 the existence of any “terms of service” that contained an arbitration provision, no contract or
22 agreement was or could have been formed due to the following:

23 i. First, the “Quick Start Guide: Simple Activation Guide” could
24 only be accessed *after* the deal to purchase a 4G/LTE-capable phone.

25 ii. Second, Cricket included an arbitration clause in a “Quick Start
26 Guide: Simple Activation Guide,” which was described as a “*simple way of*
27 *activating your phone,*” (emphasis added), a misnomer designed to mislead
28 consumers about what was contained therein.

1 iii. Third, the arbitration provision was buried on the final pages of
2 the “Quick Start Guide: Simple Activation Guide”.

3 iv. Fourth, the entire “Terms of Service” included in the “Quick
4 Start Guide: Simple Activation Guide” was printed in an extremely small font
5 (either 5 or 6-point character size) that is very difficult, if not impossible, for
6 an average consumer to read or understand. Each page contained within the
7 “Quick Start Guide: Simple Activation Guide” was approximately 3x4 inches.
8 A sample page from the “Quick Start Guide” used by Cricket—in actual size—
9 is listed below:



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23 v. Fifth, because Cricket advertised that its services had “no
24 contract,” an objectively reasonable consumer would have no reason to believe
25 that the “Quick Start Guide: Simple Activation Guide,” designed to guide a
26 consumer through the process of activating the 4G/LTE-capable phone, would
27 contain any contractual provisions.
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1 vi. Sixth, *Cricket's own employees activated Plaintiffs' phones* in
2 the store, leaving Plaintiffs with no reason to even look at the "Quick Start
3 Guide: Simple Activation Guide."

4 **THE CRICKET ENTERPRISE**

5 158. Cricket entailed multiple related entities held by the parent, Leap.

6 159. Cricket phones were distributed through an expansive network of Cricket-branded
7 franchise stores ("dealers"), as well as retail locations that would sell Cricket phones along with other
8 brands.

9 160. Some of these dealers were owned by Cricket itself, while others comprised
10 franchisees that owned Cricket-branded stores under the banner of independent legal entities.

11 161. Specifically, in Cricket's own words: "Our indirect channel consists of our authorized
12 dealers and distributors, including premier dealers and local market authorized dealers. Premier
13 dealers are *independent* dealers that sell Cricket products exclusively in stores that *look and function*
14 *similar to our company-owned stores*, enhancing the in-store experience and the level of customer
15 service and expanding our brand presence within a market. *Premier dealers tend to generate*
16 *significantly more business than indirect dealers*. As of December 31, 2013, we had approximately
17 2,530 indirect dealer locations, of which approximately 2,100 were premier dealer locations."²⁸
18 (emphasis added).

19 162. Thus, Cricket directly stated that a network of "independent" dealers was essential to
20 its business model.

21 163. Further, as that same statement intimates, these independent dealers were also bound,
22 as is typical with franchisees, to a significant level of homogeneity in their offerings and marketing.
23 These offerings and marketing directives came on a "top-down" basis and were adopted by the
24 independent dealers.

25 164. For example, these independent dealers would receive standardized marketing media,
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28 ²⁸*Id.* at 6.

1 including various ones representing unlimited 4G/LTE coverage.

2 165. These independent dealers were also the recipients of group emails, which emanated
3 from a Cricket corporate entity and pertained to various aspects of the business, including marketing.

4 166. These relationships were formalized by Non-Exclusive Dealer Agreements.

5 167. As stated above, Cricket maintained relationships with over 2,000 independent,
6 *Cricket-only* dealers; these dealers were naturally concentrated in urban areas.

7 168. As detailed above, Cricket’s 4G/LTE coverage was extremely sparse or nonexistent in
8 many urban areas.

9 169. On information and belief, a number of independent dealers received numerous
10 complaints about the quality and/or absence of 4G/LTE coverage.

11 170. Employees of independent dealers would commonly ascribe the poor quality or
12 absence of 4G/LTE coverage to some Cricket-controlled medium—for example, “the network is
13 down” or “a tower is down.”

14 171. Further, because employees of Cricket *and* the independent dealers would commonly
15 activate phones for customers, they would have had occasion to see firsthand the weakness or
16 nonexistence of 4G/LTE signals on the phones they were selling.

17 172. Per the above-cited 10-K, Cricket specifically stated that its competitors’ capacities,
18 including the ability to “*offer LTE services over a significantly larger geographic area than we do,*”
19 also allowed them to “*better attract and retain third-party dealers and distributors.*”²⁹ (emphasis
20 added).

21 173. It follows logically that Cricket’s false claims of “unlimited” nationwide 4G/LTE
22 coverage would have been important, if not essential, to retaining its independent dealer network, as
23 well as inducing new individuals to invest in Cricket franchises.

24 174. Likewise, from the viewpoint of an independent dealer who had already invested in a
25 Cricket store, it would obviously be valuable to offer potential customers 4G/LTE service.

26 175. It also follows logically that existing dealers, who had already committed to the
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28 ²⁹ *Id.* at 8.

1 national 4G/LTE ad campaign and more expensive 4G/LTE-capable phones, continued to market
2 such phones and services even when it was obvious that Cricket could not actually provide such
3 services.

4 176. As stated above, independent dealers were essential in marketing these false claims
5 regarding 4G/LTE coverage to consumers.

6 177. Likewise, independent dealers were responsible for selling 4G/LTE-capable phones
7 and/or “4G/LTE” plans to consumers.

8 **CLASS ACTION ALLEGATIONS**

9 178. Plaintiffs, pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3), bring
10 this action on behalf of all others similarly situated (the “Class”) from May 1, 2012, to October 1,
11 2014 (the “Class Period”³⁰), initially defined as:

12 **All persons in the United States who purchased a 4G/LTE-capable phone from Cricket**
13 **(including its affiliates and subsidiaries) during the Class Period.**

14 179. Plaintiffs, pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3), also
15 bring this action on behalf of all similarly situated California citizens and citizens of states with
16 consumer protection laws similar to the State of California (the “California Class”) from May 1, 2012
17 to October 1, 2014 (the same Class Period), initially defined as:

18 **All persons in California or other states with similar consumer protection laws who**
19 **purchased a 4G/LTE-capable phone from Cricket (including its affiliates and**
20 **subsidiaries) during the Class Period.**

21 180. Plaintiffs, pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3), also
22 bring this action on behalf of Missouri citizens and citizens of states with consumer protection laws
23 similar to the State of Missouri (the “Missouri Class”) from May 1, 2012 to October 1, 2014 (the
24 same Class Period), initially defined as:

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27 ³⁰ On information and belief, all 4G/LTE-capable phones purchased on or after May 19, 2014, were
28 a part of AT&T’s 4G network and, thus, not a part of this class action; however, the Class Period as
defined above may be revised and amended based on information uncovered in discovery.

1 **All persons in Missouri or other states with similar consumer protection laws who**
2 **purchased a 4G/LTE-capable phone from Cricket (including its affiliates and**
3 **subsidiaries) during the Class Period.**

4 181. Plaintiffs, pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3), also
5 bring this action on behalf of Illinois citizens and citizens of states with consumer protection laws
6 similar to the State of Illinois (the “Illinois Class”) from May 1, 2012 to October 1, 2014 (the same
7 Class Period), initially defined as:

8 **All persons in Illinois or other states with similar consumer protection laws who**
9 **purchased a 4G/LTE-capable phone from Cricket (including its affiliates and**
10 **subsidiaries) during the Class Period.**

11 182. Plaintiffs, pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3), also
12 bring this action on behalf of Virginia citizens and citizens of states with consumer protection laws
13 similar to the State of Virginia (the “Virginia Class”) from May 1, 2012 to October 1, 2014 (the same
14 Class Period), initially defined as:

15 **All persons in Virginia or other states with similar consumer protection laws who**
16 **purchased a 4G/LTE-capable phone from Cricket (including its affiliates and**
17 **subsidiaries) during the Class Period.**

18 183. Plaintiffs, pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3), also
19 bring this action on behalf of Texas citizens and citizens of states with consumer protection laws
20 similar to the State of Texas (the “Texas Class”) from May 1, 2012 to October 1, 2014 (the same
21 Class Period), initially defined as:

22 **All persons in Texas or other states with similar consumer protection laws who**
23 **purchased a 4G/LTE-capable phone from Cricket (including its affiliates and**
24 **subsidiaries) during the Class Period.**

25 184. Plaintiffs, pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3), also
26 bring this action on behalf of Pennsylvania citizens and citizens of states with consumer protection
27 laws similar to the State of Pennsylvania (the “Pennsylvania Class”) from May 1, 2012 to October 1,
28 2014 (the same Class Period), initially defined as:

1 **All persons in Pennsylvania or other states with similar consumer protection laws who**
2 **purchased a 4G/LTE-capable phone from Cricket (including its affiliates and**
3 **subsidiaries) during the Class Period.**

4 185. Plaintiffs, pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3), also
5 bring this action on behalf of Washington citizens and citizens of states with consumer protection
6 laws similar to the State of Washington (the “Washington Class”) from May 1, 2012 to October 1,
7 2014 (the same Class Period), initially defined as:

8 **All persons in Washington or other states with similar consumer protection laws who**
9 **purchased a 4G/LTE-capable phone from Cricket (including its affiliates and**
10 **subsidiaries) during the Class Period.**

11 186. The following persons shall be excluded from any Class: (1) Defendant and its
12 subsidiaries and affiliates; (2) governmental entities; and (3) the judge(s) to whom this case is
13 assigned and any immediate family members thereof.

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

16 a. There are common questions of law or fact common to the Class and California
17 Class;

18 b. The claims or defenses of the representative parties are typical of the claims or
19 defenses of the respective class;

20 c. The representative party will fairly and adequately protect the interests of the
21 respective class;

22 d. The questions of law or fact common to the respective class members
23 predominate over any questions affecting only individual members; and

24 e. A class action is superior to other available methods for fairly and efficiently
25 adjudicating the controversy.

26 188. **Numerosity.** The members of the Classes are so numerous that individual joinder of
27 all the members is impracticable. Although the exact size of the Classes are unknown, Defendant
28 submitted to a prior Court that over 10,000 Samsung Galaxy S4s were sold to California consumers

1 alone from June 1, 2012 to May 18, 2014. The identifying information of the group is unknown to
2 Plaintiffs; however, that information is readily available from Defendant.

3 189. **Commonality and Predominance.** This action involves common questions of law or
4 fact, which predominate over any questions affecting individual Class members, including, but not
5 limited to, the following:

6 a. Whether Defendant advertised “No Contract”;

7 b. Whether Defendant advertised and/or provided 4G/LTE-capable phones;

8 c. Whether Defendant advertised and/or provided “4G/LTE” service;

9 d. Whether Plaintiffs and Class members purchased 4G/LTE-capable phones
10 from Defendant;

11 e. Whether Plaintiffs and Class members purchased 4G/LTE wireless phone
12 plans from Defendant;

13 f. Whether and to what extent Defendant failed to provide 4G/LTE services;

14 g. Whether Defendant’s Terms of Service were adequately disclosed to and were
15 consented to by Plaintiffs and Class members;

16 h. Whether Defendant acted in bad faith by falsely advertising the scope of its
17 4G/LTE coverage;

18 i. Whether Defendant’s claim of “no contract” was likely to mislead objectively
19 reasonable consumers;

20 j. Whether Defendant’s “4G/LTE” advertisements and marketing were likely to
21 mislead an objectively reasonable consumer;

22 k. Whether Defendant engaged in deceptive and unfair business and trade
23 practices;

24 l. Whether Plaintiffs and Class members are entitled to restitution, damages,
25 and/or other equitable relief; and,

26 m. Whether Defendant should be enjoined from engaging in this type of conduct.
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1 190. **Typicality.** The named Plaintiffs' claims are typical of the claims of the Classes
2 because, among other things, Plaintiffs, like all members of the respective classes, purchased
3 4G/LTE-capable phones anticipating to receive 4G/LTE services. Cricket never provided 4G/LTE
4 services or provided only extremely limited 4G/LTE services in most cities across the United States.
5 In addition, named Plaintiffs have the same or similar remedies as the members of the putative classes.

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

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

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

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

22 c. No unusual difficulties are likely to be encountered in the management of this
23 class action.

24 193. **Ascertainability.** Defendant is in possession of the necessary records in the form of
25 receipts and billing statements to identify members of the classes; as such, the Classes will be easily
26 ascertainable.

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1 **NULLITY OF ARBITRATION PROVISION, AS APPLICABLE**

2 194. Because of the above-described Merger, some number of Cricket customers were
3 migrated to AT&T’s network and policies.

4 195. On information and belief, approximately half of Cricket customers at the time of the
5 Merger were eventually migrated to AT&T’s network and, in whatever manner and/or sequence,
6 received updated contractual terms and conditions that supplanted those that had existed under
7 Cricket.

8 196. To the extent that, as applicable, Defendant may argue that respective class members
9 are subject to such revised terms and conditions, the arbitration provision included in those terms is
10 null and void in its entirety here.

11 197. Under California law, parties may not agree to waive the right to seek public injunctive
12 relief under California’s Unfair Competition Law, False Advertising Law, and Consumer Legal
13 Remedies Act in any forum and any such agreements are contrary to California public policy and are
14 unenforceable. *See McGill v. Citibank, N.A.*, 393 P.3d 85 (Cal. 2017).

15 198. The terms and conditions, drafted by AT&T, that were sent to legacy Cricket
16 customers following the Merger contained language purporting to bar the arbitrator from granting the
17 type of public injunctive relief authorized under California law for claims under the Unfair
18 Competition Law, False Advertising Law, and Consumer Legal Remedies Act. That arbitration
19 provision is therefore unenforceable under *McGill*.

20 199. The AT&T-drafted terms and conditions also contained a non-severability, or “poison
21 pill,” provision declaring that the entire arbitration provision would be null and void should that
22 particular provision be found unenforceable.

23 200. Because the aforementioned improper waiver of public injunctive relief in any forum
24 is unenforceable under *McGill*, the entire arbitration provision is null and void.³¹

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26
27 ³¹ *See Roberts v. AT&T Mobility LLC*, No. 3:15-cv-3418-EMC, 2018 WL 1317346 (N.D. Cal. Mar.
28 14, 2018); *McArdle v. AT&T Mobility LLC*, No. 09-cv-1117-CW, 2017 WL 4354998 (N.D. Cal.
Oct. 2, 2017).

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STATUTES OF LIMITATIONS AND REPOSE

201. The statute(s) of limitations and statute(s) of repose for these claims, relating to the purchase of 4G/LTE-capable phones and 4G/LTE service plans “up through October 1, 2014,” were tolled by prior agreement with Defendant. That tolling agreement runs “up to and including November 4, 2019.”

202. Further, Defendant’s conduct was inherently deceptive, concealing the damage from the consumers, as more fully outlined herein. Accordingly, any and all applicable statutes of limitations are and were equitably tolled.

CAUSES OF ACTION

203. Plaintiffs do not plead, and hereby disclaim, any causes of action under the Federal Communications Act and regulations promulgated by the FCC.

CHOICE OF LAW

204. At all times relevant to this Complaint, Defendant’s (and Leap’s) principal place of business and principal executive offices were located in California; in addition, Leap owned and controlled Defendant and various other Cricket entities.

205. On information and belief, all business and marketing decisions, including decisions to not expand 4G/LTE coverage and continue to market “Unlimited 4G/LTE,” were made at Leap/Cricket’s offices in California.

206. As such, California law applies to Plaintiffs’ and the putative Class members’ claims because:

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

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

1
2 **COUNT ONE:**
3 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**
4 **Cal. Civ. Code § 1750, et. seq.**

5 208. Plaintiffs, on behalf of themselves and those similarly situated, reallege and
6 incorporate by reference each and every allegation set forth in the preceding paragraphs as though
7 alleged in full herein.

8 209. This cause of action is brought pursuant to the California Consumers Legal Remedies
9 Act, California Civil Code § 1750, et seq. (“CLRA”).

10 210. Plaintiff and other proposed Class members purchased from Defendant “goods”
11 (specifically, Cal. Civ. Code § 1761(a)) and “services” (specifically, Cal. Civ. Code § 1761(b)).

12 211. Defendant’s actions, representations, and conduct have violated the CLRA because
13 they extended to transactions that are intended to result, or which resulted in, the sale or lease of goods
14 or services to consumers.

15 212. Plaintiffs and other Class members are “consumers” as that term is defined by the
16 CLRA, specifically, Cal. Civ. Code § 1761(d).

17 213. By engaging in the conduct described above, Defendant violated the CLRA as follows:

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

24 214. Specifically, Defendant’s acts and practices led customers to falsely believe that its
25 “goods” and “services” would allow consumers to have access to a 4G/LTE network when they knew
26 such representations to be false and/or misleading.

27 215. On or about May 1, 2015, former plaintiff Flor Barraza, upon filing these claims in a
28 prior action, put Defendant on notice of her allegations and demanded that Defendant correct, repair,

1 replace, or otherwise rectify the unlawful, unfair, false, and deceptive practices complained of herein
2 within thirty days.

3 216. Plaintiffs Thomas and Postpichal also additionally put Defendants on notice of their
4 allegations and similarly demanded correction, repair, replacement, and/or other rectification via their
5 own prior lawsuit.

6 217. Defendant has refused to correct, repair, replace, or otherwise rectify the unlawful,
7 unfair, false, and deceptive practices complained of herein.

8 218. Cricket’s conduct alleged herein caused substantial injury to Plaintiffs and members
9 of the proposed classes, as well as the public generally. Cricket’s conduct is ongoing and is likely to
10 continue and recur absent a permanent injunction.

11 219. Specifically, as described above, Cricket is now entirely owned by AT&T and operates
12 on AT&T’s wireless network.

13 220. AT&T has continued to engage in conduct almost wholly similar to that alleged here.
14 Specifically, given that the incipient—*yet not yet arrived for consumers*—new wireless technology
15 is 5G, AT&T nonetheless began labeling its phones with a “5GE” logo:

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221. AT&T’s behavior in this regard essentially makes a mockery of consumer protection laws generally, the public, and the notion that a corporation should strive for some semblance of truth in its advertising.

222. AT&T competitor Sprint sued over this “5GE” labeling;³² competitors Verizon and T-Mobile also lambasted AT&T over its obvious deception.

223. Nonetheless, AT&T’s CEO lauded the “5GE” campaign, characterizing the underlying technology as “a step that is required to get to ultimate 5G. And it’s an evolutionary step to 5G. It’s a critical step. So we are characterizing this as 5GE, 5G Evolution.”³³

224. The “5GE” label refers to what is commonly considered late-stage 4G technology; this can be seen plainly by the fact that AT&T debuted a separate 5G network in limited cities and *only for business customers*.

³² See, e.g., Anne Cullen, *AT&T and Sprint Settle “5G” False Advertising Suit*, LAW360 (Apr. 22, 2019).

³³ Jacob Wolinsky, *AT&T CEO Randall Stephenson on 5G Lawsuit*, VALUEWALK (Feb. 8, 2019; citing a CNBC interview transcription).

1 225. This logo can only have one *reasonable* meaning (that it somehow demarcates a new
2 *generation*—the 5th—markedly distinct from 4G), yet AT&T has claimed that it reasonably refers to
3 late-stage 4G technology. It is not, for example, as if AT&T adopted an entirely new network-speed
4 naming convention or claimed something entirely outlandish (e.g., “7G” or “10G”). Rather, AT&T
5 selected a logo referring to a network type that was just close enough to be plausible and yet was not
6 actually available to consumers.

7 226. Put simply, Cricket’s parent AT&T, just like Cricket itself, has shown little or no
8 compunction about lying to consumers in this regard.

9 227. If consumers are to pay more for a given service—and they *do*—then terms like “4G”
10 and “5G” must have some substantive meaning or else the notion of “misrepresentation,” a bedrock
11 of consumer protection law, is likewise rendered meaningless.

12 228. Cricket is, again, owned by AT&T, operates on AT&T’s network, and adopted AT&T-
13 drafted terms and conditions.

14 229. Thus, because Cricket’s conduct alleged herein is likely to continue and recur absent
15 a permanent injunction, Plaintiffs seek an order enjoining Cricket from such practices.

16 230. Plaintiffs provided notice to Defendant of its violations of the Consumers Legal
17 Remedies Act concurrent with the filing of the complaint in this action. More than 30 days since
18 Plaintiffs provided notice passed and Defendant failed to remedy its conduct pursuant to the notice,
19 therefore Plaintiffs and the Class are entitled to recover their actual monetary damages as a result of
20 Cricket’s conduct.

21 231. In the alternative to damages, and because in such a case Plaintiffs and the Class would
22 have no adequate remedy at law, Plaintiffs and the Class, Pursuant to Cal. Civ. Code § 1780, are
23 entitled to restitution of the purchase price of the 4G/LTE-capable phones and 4G/LTE service plans.

24 232. Plaintiffs and the Class are also entitled to an order and injunctive relief requiring
25 Defendant to correct the misrepresentation to its Customers, and to recover reasonable attorneys’ fees
26 and costs.

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1 failing to disclose and actively concealing material information regarding its lack of 4G/LTE
2 coverage. These material misrepresentations and nondisclosures were likely to mislead consumers.

3 270. As a direct and proximate result of Defendant’s unfair, unlawful, and fraudulent
4 conduct, Plaintiffs and the Class members lost money or property.

5 271. Defendant’s conduct caused substantial injury to Plaintiffs and the putative Class
6 members.

7 272. Defendant has refused to correct, repair, replace, or otherwise rectify the unlawful,
8 unfair, false, and deceptive practices complained of herein.

9 273. Cricket’s conduct alleged herein caused substantial injury to Plaintiffs and members
10 of the proposed Class, as well as the public generally. For the reasons described above, Cricket’s
11 conduct is ongoing and is likely to continue and recur absent a permanent injunction.

12 274. Because Cricket’s conduct alleged herein is likely to continue and recur absent a
13 permanent injunction, Plaintiffs seek an order enjoining Cricket from such unfair and fraudulent
14 practices.

15 275. Plaintiffs individually seek public injunctive relief, under the Unfair Competition Law,
16 to protect the general public from Cricket’s false and/or misleading advertisements and omissions.

17 276. In the alternative to actual damages, because in such case there would be no adequate
18 remedy at law, Plaintiffs seek an order granting restitution to Plaintiffs and members of the Class in
19 an amount to be proven at trial.

20 277. Plaintiffs further seek an award of attorneys’ fees and costs under Cal. Code Civ. Proc.
21 § 1021.5.

22 **COUNT SIX:**
VIOLATION OF THE MISSOURI MERCHANDISING PRACTICES ACT

23 278. Plaintiffs, on behalf of themselves and those similarly situated, reallege and
24 incorporate by reference each and every allegation set forth in the preceding paragraphs as though
25 alleged in full herein.

26 279. Plaintiffs Jermaine Thomas (“Thomas”) and Jamie Postpichal (“Postpichal”) were
27 residents of Missouri during the Class Period.

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1 280. The Missouri Merchandising Practices Act (“MMPA”) forbids the use of any
2 deception, fraud, false pretense, false promise, misrepresentation, unfair practice, or the concealment,
3 suppression, or omission of any material fact in connection with the sale or advertisement of any
4 merchandise in trade or commerce.

5 281. Cricket, as alleged in this Complaint, engaged in conduct that was deceptive,
6 fraudulent, a false pretense, a false promise, a misrepresentation, an unfair practice, and the
7 concealment, suppression, and/or omission of material fact(s) (herein, the “unlawful conduct”).

8 282. Defendant’s unlawful conduct was the “sale” and/or “advertisement” of
9 “merchandise,” as defined by the MMPA, specifically §§ 407.010.1, 407.010.4 and 407.010.6 RSMo.

10 283. Pursuant to 15 C.S.R. § 60-8.020, **Unfair Practice in General**, an “Unfair Practice is
11 any practice which – (A) either (1) offends any public policy as it has been established by the ...
12 statutes or common law of this state or (2) is unethical, oppressive or unscrupulous; and (B) represents
13 a risk of, or causes, substantial injury to consumers.”

14 284. Pursuant to 15 C.S.R. § 60-8.090, **Illegal Conduct**, “(1) it is an unfair practice for any
15 person in connection with advertisement or sale of merchandise to engage in any method, use or
16 practice which – (A) violates state or federal law intended to protect the public; and (B) presents a
17 risk of, or causes, substantial injury to consumers.”

18 285. Pursuant to 15 C.S.R. § 60-9.040, **Fraud in General**, “(1) Fraud includes any acts,
19 omissions or artifices which involve falsehood, deception, trickery, breach of legal or equitable duty,
20 trust, or confidence, and are injurious to another or by which an undue or unconscientious advantage
21 over another is obtained.”

22 286. Pursuant to 15 C.S.R. § 60-8.040 **Duty of Good Faith**, “(1) It is an unfair practice for
23 any person in connection with the advertisement or sale of merchandise to violate the duty of good
24 faith in solicitation, negotiation and performance, or in any manner fail to act in good faith.

25 287. Defendant’s sale and/or advertisement of merchandise occurred within the state of
26 Missouri.

27 288. Defendant’s unlawful conduct occurred in the course of commerce within Missouri.

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1 289. Defendant’s unlawful conduct was committed in connection with the sale and/or
2 advertisement of cellular equipment to Plaintiffs Thomas and Postpichal and other consumers.

3 290. Defendant’s violations of the MMPA include, but are not limited to, the following:

4 a. Falsely representing that that the 4G/LTE-capable phones sold to be used on its
5 network by members of the putative Class could be used as 4G/LTE devices with all
6 of the aforementioned benefits, when in fact the telephones it sold could not be used
7 as 4G/LTE devices in the vast majority of locations served by Defendant’s network;

8 b. Falsely advertising 4G/LTE-capable phones as operable on Defendant’s “unlimited
9 4G/LTE” network with the intent to sell mobile telephones that could not be used as
10 such with Defendant’s network;

11 c. Engaging in other fraudulent and deceptive conduct that created a likelihood of
12 confusion or misunderstanding and constituted unfair and deceptive practices under
13 Mo. Rev. Stat. § 407.020.; and

14 d. In other particulars at present unknown to Plaintiffs Thomas and Postpichal but which
15 Plaintiffs Thomas and Postpichal believe will be revealed during discovery.
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18 291. Defendant intended for Plaintiffs Thomas and Postpichal and similarly situated
19 consumers to rely upon the unlawful conduct described above.

20 292. Defendant’s actions violated a statute that has a public interest impact and has potential
21 for repetition by this Defendant.

22 293. Defendant’s actions were wanton, willful and/or reckless in that Defendant knew it
23 was not capable of providing its customers with the service it was advertising and selling in
24 connection with the purchase of 4G/LTE-capable phones.

25 294. The value of the goods and services Plaintiffs Thomas and Postpichal and others
26 received was not equal to the value that was promised.
27

1 311. The Virginia Consumer Protection Act (“VCPA”) makes unlawful “fraudulent acts or
2 practices.” Va. Code § 59.1-200(A).

3 312. Cricket, as alleged in this complaint, engaged in conduct that was deceptive,
4 fraudulent, a false pretense, a false promise, a misrepresentation, an unfair practice, and the
5 concealment, suppression, and/or omission of material fact(s), each of which is declared unlawful by
6 the VCPA.

7 313. Defendant’s violations of the VCPA include, but are not limited to, the following:

8 a. Falsely representing that that the 4G/LTE-capable phones sold to be used on its
9 network by members of the putative Virginia Class could be used as 4G/LTE devices
10 with all of the aforementioned benefits, when in fact the telephones it sold could not
11 be used as 4G/LTE devices in the vast majority of locations served by Defendant’s
12 network;

13 b. Falsely advertising 4G/LTE-capable phones as operable on Defendant’s “unlimited
14 4G/LTE” network with the intent to sell mobile telephones that could not be used as
15 such with Defendant’s network;

16 c. Engaging in other fraudulent and deceptive conduct that created a likelihood of
17 confusion or misunderstanding; and

18 d. In other particulars at present unknown to Plaintiff Johnson but which Plaintiff
19 Johnson believes will be revealed during discovery.

20 314. Cricket owed and continues to owe Plaintiff Johnson and members of the Virginia
21 Class a duty to refrain from such unfair and deceptive acts and practices.

22 315. Defendant knew or should have known its conduct was in violation of the VCPA.

23 316. Despite knowing the true state of its 4G/LTE capabilities, Cricket continued to market
24 its unlimited and nationwide 4G/LTE with the intent to mislead the members of the Virginia Class.

25 317. Defendant’s unfair and deceptive acts and practices, as described herein, were material
26 and likely to and/or did deceive reasonable consumers, including members of the Virginia Class.

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1 327. Cricket, as alleged in this complaint, engaged in conduct that was deceptive, false,
2 and/or misleading. Defendant’s violations of the TDTPCPA include, but are not limited to, the
3 following:

- 4 a. Falsely representing that that the 4G/LTE-capable phones sold to be used on its
5 network by members of the putative Texas Class could be used as 4G/LTE devices
6 with all of the aforementioned benefits, when in fact the telephones it sold could not
7 be used as 4G/LTE devices in the vast majority of locations served by Defendant’s
8 network;
- 9 b. Falsely advertising 4G/LTE-capable phones as operable on Defendant’s “unlimited
10 4G/LTE” network with the intent to sell mobile telephones that could not be used as
11 such with Defendant’s network;
- 12 c. Engaging in other fraudulent and deceptive conduct that created a likelihood of
13 confusion or misunderstanding; and
- 14 d. In other particulars at present unknown to Plaintiff Johnson but which Plaintiff
15 Johnson believes will be revealed during discovery.

16 328. Cricket owed and continues to owe Plaintiff Johnson and members of the Texas Class
17 a duty to refrain from such unfair and deceptive acts and practices.

18 329. Defendant knew or should have known its conduct was in violation of the TDTPCPA.

19 330. Despite knowing the true state of its 4G/LTE capabilities, Cricket continued to market
20 its unlimited and nationwide 4G/LTE with the intent to mislead the members of the Texas Class.

21 331. Defendant’s unfair and deceptive acts and practices, as described herein, were material
22 and likely to and/or did deceive reasonable consumers, including members of the Texas Class.

23 332. Plaintiff Johnson, and members of the Texas Class relied upon Cricket’s
24 misrepresentations regarding its 4G/LTE service, as described above, which proximately caused them
25 to overpay for Cricket 4G/LTE-capable phones and 4G/LTE service plans.

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1 333. Plaintiff Johnson, and members of the Texas Class suffered injury-in-fact,
2 ascertainable loss, and actual damages as a direct and proximate result of Defendant’s unfair acts and
3 practices.

4 334. Pursuant to Tex. Bus. & Com. Code § 17.50, Plaintiff Johnson, and the members of
5 the Texas Class seek an order enjoining Cricket’s unfair and deceptive practices, multiple damages,
6 attorneys’ fees, punitive damages, and any other relief that may be just and proper under the
7 TDTPCPA.

8 **COUNT TEN:**
9 **VIOLATIONS OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES ACT &**
10 **CONSUMER PROTECTION LAW**
11 **(73 P.S. § 201-1, et seq.)**

12 335. Plaintiffs, on behalf of themselves and those similarly situated, reallege and
13 incorporate by reference each and every allegation set forth in the preceding paragraphs as though
14 alleged in full herein.

15 336. Plaintiff Jermaine Miller (“Miller”) brings this action on behalf of herself and all
16 members of the Class who were residents of Pennsylvania during the Class Period.

17 337. Defendant, Miller, and members of the Pennsylvania Class are “persons” within the
18 meaning of 73 P.S. § 201-2(2).

19 338. Defendant is engaged in “trade” and “commerce” within the meaning of 73 P.S. § 201-
20 2(3) with regard to conduct described throughout this complaint.

21 339. The Pennsylvania Unfair Trade Practices Act and Consumer Protection Law
22 (“PUTPACPL”) makes unlawful “unfair or deceptive acts or practices in the conduct of any trade or
23 commerce.” 73 P.S. § 201-2(4).

24 340. Cricket, as alleged in this complaint, engaged in unfair or deceptive acts or practices,
25 including but not limited to the following:

- 26 a. Falsely representing that that the 4G/LTE-capable phones sold to be used on its
27 network by members of the putative Pennsylvania Class could be used as 4G/LTE
28 devices with all of the aforementioned benefits, when in fact the telephones it sold

1 could not be used as 4G/LTE devices in the vast majority of locations served by
2 Defendant's network;

3 b. Falsely advertising 4G/LTE-capable phones as operable on Defendant's "unlimited
4 4G/LTE" network with the intent to sell mobile telephones that could not be used as
5 such with Defendant's network;

6 c. Engaging in other fraudulent and deceptive conduct that created a likelihood of
7 confusion or misunderstanding; and

8 d. In other particulars at present unknown to Plaintiff Miller but which Plaintiff Miller
9 believes will be revealed during discovery.

10 341. Cricket owed and continues to owe Plaintiff Miller and members of the Pennsylvania
11 Class a duty to refrain from such unfair and deceptive acts and practices.

12 342. Defendant knew or should have known its conduct was in violation of the PUTPACPL.

13 343. Despite knowing the true state of its 4G/LTE capabilities, Cricket continued to market
14 its unlimited and nationwide 4G/LTE with the intent to mislead the members of the Pennsylvania
15 Class.

16 344. Defendant's unfair and deceptive acts and practices, as described herein, were material
17 and likely to and/or did deceive reasonable consumers, including members of the Pennsylvania Class.

18 345. Plaintiff Miller and members of the Pennsylvania Class reasonably relied upon
19 Cricket's misrepresentations regarding its 4G/LTE service, as described above, which proximately
20 caused them to overpay for Cricket 4G/LTE-capable phones and 4G/LTE service plans.

21 346. Plaintiff Miller and members of the Pennsylvania Class suffered injury-in-fact,
22 ascertainable loss, and actual damages as a direct and proximate result of Defendant's unfair acts and
23 practices.

24 347. Plaintiff Miller and the members of the Pennsylvania Class, pursuant to 73 P.S. § 201-
25 9.2(a), seek an order enjoining Cricket's unfair and/or deceptive practices, damages, punitive
26 damages, attorneys' fees and costs, and any other relief that may be just and proper under the
27 PUTPACPL.

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COUNT ELEVEN
VIOLATIONS OF WASHINGTON’S CONSUMER PROTECTION ACT
RCW § 19.86, *et seq.*

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3 348. Plaintiffs, on behalf of themselves and those similarly situated, reallege and
4 incorporate by reference each and every allegation set forth in the preceding paragraphs as though
5 alleged in full herein.

6 349. Plaintiff Ursula Freitas brings this action on behalf of herself and all members of the
7 Class who were residents of Washington during the Class Period.

8 350. Defendant, Freitas, and members of the Washington Class are “persons” within the
9 meaning of RCW § 19.86.010.

10 351. Defendant is engaged in “trade” and “commerce” within the meaning of RCW §
11 19.86.010.

12 352. Washington’s Consumer Protection Act (“WCPA”) makes unlawful any “[u]nfair
13 methods of competition and unfair or deceptive acts or practices in the conduct of any trade or
14 commerce.” RCW 19.86.020.

15 353. Cricket, as alleged in this complaint, engaged in unfair or deceptive acts or practices,
16 including but not limited to the following:

- 17 a. Falsely representing that the 4G/LTE-capable phones sold to be used on its network
18 by members of the putative Washington Class could be used as 4G/LTE devices with
19 all of the aforementioned benefits, when in fact the telephones it sold could not be
20 used as 4G/LTE devices in the vast majority of locations served by Defendant’s
21 network;
- 22 b. Falsely advertising 4G/LTE-capable phones as operable on Defendant’s “unlimited
23 4G/LTE” network with the intent to sell mobile telephones that could not be used as
24 such with Defendant’s network;
- 25 c. Engaging in other fraudulent and deceptive conduct that created a likelihood of
26 confusion or misunderstanding; and
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1 d. In other particulars at present unknown to Plaintiff Freitas but which Plaintiff Freitas
2 believes will be revealed during discovery.

3 354. Despite knowing the true state of its 4G/LTE capabilities, Cricket continued to market
4 its unlimited and nationwide 4G/LTE with the intent to mislead the members of the Washington Class.

5 355. Defendant's unfair and deceptive acts and practices, as described herein, were material
6 and likely to and/or did deceive reasonable consumers, including members of the Washington Class.

7 356. Plaintiff Freitas and members of the Washington Class reasonably relied upon
8 Cricket's misrepresentations regarding its 4G/LTE service, as described above, which proximately
9 caused them to overpay for Cricket 4G/LTE-capable phones and/or 4G/LTE service plans.

10 357. Defendant's unfair and deceptive acts and practices were intentional, knowing, and
11 occurred in the conduct of Defendant's trade and commerce. These bad acts were intended to, and
12 did, result in injury to the business or property of Freitas and the Washington Class in an amount to
13 be determined at trial.

14 358. Plaintiff Freitas and the members of the Washington Class, pursuant to RCW §
15 19.86.090, seek an order enjoining Cricket's unfair and/or deceptive practices and awarding damages,
16 treble damages, punitive damages, attorneys' fees and costs, and any other relief that may be just and
17 proper under the WCPA.

18 **COUNT TWELVE:**
STATE CONSUMER PROTECTION STATUTES

19 359. Plaintiffs, on behalf of themselves and those similarly situated, reallege and
20 incorporate by reference each and every allegation set forth in the preceding paragraphs as though
21 alleged in full herein.

22 360. As more fully outlined above, Defendant's false advertising campaign with respect to
23 **UNLIMITED 4G/LTE, NO CONTRACTS**, and **NATIONWIDE** coverage was conducted across
24 the nation, in, upon information and belief, all 50 states and in Washington, D.C.

25 361. Plaintiffs, on behalf of themselves and those similarly situated, allege that Defendants'
26 conduct, as set forth herein, violated the following consumer protection statutes:

27 a. Code of Ala. § 8-19-1, et seq.;

- 1 b. Alaska Stat. § 45.50.471, et seq.;
- 2 c. A.R.S. § 44-1522, et seq.;
- 3 d. A.C.A. § 4-88-101, et seq.;
- 4 e. Cal. Civ. Code § 1750, et seq.;
- 5 f. Cal. Bus. & Prof. Code § 17200, et seq. and § 17500, et seq.;
- 6 g. C.R.S. § 6-1-105, et seq.;
- 7 h. Conn. Gen. Stat. § 42-110a, et seq.;
- 8 i. 6 Del. C. §§ 2511, et seq. and 2531, et seq.;
- 9 j. D.C. Code § 28-3901, et seq.;
- 10 k. Fla. Stat. § 501.201, et seq.;
- 11 l. C.G.A. §§ 10-1-372, et seq., 10-1-392, et seq., and 10-1-420, et
12 seq.;
- 13 m. HRS § 480-1, et seq.;
- 14 n. Idaho Code § 48-601, et seq.;
- 15 o. 815 ILCS § 505/1, et seq.;
- 16 p. Burns' Ind. Code Ann. § 24-5-.05-1, et seq.;
- 17 q. Iowa Code § 714.16, et seq.;
- 18 r. Kan. Stat. Ann. § 50-623, et seq.;
- 19 s. KRS § 367.170, et seq.;
- 20 t. La. R.S. § 51:1401, et seq.;
- 21 u. 10 M.R.S. § 1211, et seq.;
- 22 v. Md. Com. Law Code § 13-101, et seq.;
- 23 w. Mass. Gen. L. Ch. 93A § 1, et seq.;
- 24 x. MCLS § 445.901, et seq.;
- 25 y. Minn. Stat. §§ 325D.43, et seq., 325F.67, et seq., and 325F.68, et
26 seq.;
- 27 z. Miss. Code Ann. § 75-24-1, et seq.;

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- 1 aa. § 407.010 RSMo., et seq;
- 2 bb. Mont. Code Ann. § 30-14-101, et seq.;
- 3 cc. Neb. Rev. Stat. § 59-1601, et seq.;
- 4 dd. Nev. Rev. Stat. Ann. § 598.0903, et seq;
- 5 ee. N.H. Rev. Stat. §385-A:1, et seq.;
- 6 ff. N.J. Stat. § 56:8-1, et seq.;
- 7 gg. N.M. Stat. Ann. § 57-12-1, et seq.;
- 8 hh. N.Y. Gen. Bus. Law §§ 349, et seq. and 350, et seq.;
- 9 ii. N.C. Gen. Stat. § 75-1.1, et seq.;
- 10 jj. N.D. Cent. Code, §§ 51-12-01, et seq. and 51-15-01, et seq.;
- 11 kk. Ohio Rev. Code Ann. § 1345.01, et seq.;
- 12 ll. 15 Okl. St. §751, et seq.;
- 13 mm. Or. Rev. Stat. § 646.605, et seq.;
- 14 nn. 73 Pa. Stat. § 201-1, et seq.;
- 15 oo. R.I. Gen. Laws § 6-13.1-1, et seq.;
- 16 pp. S.C. Code Ann. § 39-5-10, et seq.;
- 17 qq. S.D. Codified Laws § 37-24-1, et seq.;
- 18 rr. Tenn. Code § 47-18-101, et seq.;
- 19 ss. Tex. Bus. & Com. Code § 17.41, et seq.;
- 20 tt. Utah Code Ann. § 13-11-1, et seq.;
- 21 uu. 9 Vt. Stat. Ann. § 2451, et seq.;
- 22 vv. Va. Code Ann. § 59.1-196, et seq.;
- 23 ww. Rev. Code Wash. § 19.86.010, et seq.;
- 24 xx. W. Va. Code § 46A-6-101, et seq.;
- 25 yy. Wis. Stat. § 100.20, et seq.; and,
- 26 zz. Wyo. Stat. § 40-12-101, et seq.

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1 362. As a result of Defendant’s violations of the foregoing state consumer protection
2 statutes, Plaintiffs and the Class are entitled to compensatory damages, statutory damages, restitution,
3 and/or any other damages allowed by law (including but not limited to costs and attorneys’ fees).³⁵

4 **COUNT THIRTEEN:**
5 **VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT**
6 **ORGANIZATIONS ACT**

7 363. Plaintiffs, on behalf of themselves and those similarly situated, reallege and
8 incorporate by reference each and every allegation set forth in the preceding paragraphs as though
9 alleged in full herein.

10 364. The RICO defendants are all “persons” under 18 U.S.C. § 1961(3) because they are
11 and were, and actually do/did, capable of holding “a legal or beneficial interest in property.”

12 365. The Racketeer Influenced and Corrupt Organizations Act (“RICO”) makes it unlawful
13 for any person employed by or associated with any enterprise engaged in, or the activities of which
14 affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct
15 of such enterprise’s affairs through a pattern of racketeering activity.

16 **A. Plaintiffs and Class Members Have Suffered Injuries Sufficient to Support RICO Claims**

17 366. Plaintiffs and Class members have suffered harm to business and/or property interests
18 because of Defendant’s actions.

19 367. Specifically, as described above, Plaintiffs and Class members overpaid for 4G/LTE-
20 capable phones and/or “4G/LTE” service because Cricket marketed that it offered 4G/LTE service
21 on a “nationwide” and “unlimited” basis when it did not.

22 368. A Cricket 4G/LTE-capable phone was only useful on Cricket’s network or those of its
23 partners; more expensive 4G/LTE-capable phones derived the bulk of their relatively high expense
24 from actually being able to access 4G/LTE service on those networks; as stated, such service was
25 broadly scant to nonexistent when Defendant began advertising “4G/LTE” service on a nationwide
26 basis.

27 ³⁵ With regard to the California Consumer Legal Remedies Act, the pleading of Count One is intended
28 to supersede this paragraph, at least until Plaintiffs amend.

1 369. Plaintiffs and Class members also overpaid for “4G/LTE” service; such service was
2 more valuable than 3G service only to the extent it actually existed.

3 370. The 4G/LTE-capable phones and “4G/LTE” service sold by Cricket to Plaintiffs and
4 putative Class members had a fair market value below what was paid because Cricket’s actual
5 4G/LTE offerings were quite slim.

6 371. The overpayment for such phones and service constituted property interests for the
7 purposes of RICO.

8 372. Because of such overpayment, Plaintiffs and proposed Class members suffered a
9 concrete loss.

10 373. Such loss was directly traceable to Cricket, which was responsible for making the
11 “4G/LTE” misrepresentations to consumers.

12 **B. Pattern of Racketeering**

13 374. 18 U.S.C. § 1962(c) makes it “unlawful for any person employed by or associated with
14 any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct
15 or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of
16 racketeering activity or collection of unlawful debt.”

17 375. Plaintiffs allege that Defendant conspired to commit, and did in fact commit, mail
18 fraud (18 U.S.C. § 1341) and wire fraud (18 U.S.C. § 1343) so as to satisfy RICO’s predicate acts
19 requirement.

20 376. As noted above, Cricket’s 4G/LTE advertisements were disseminated nationwide
21 through TV, radio, mail, and the Internet—including via Cricket’s website at the time. During the
22 relevant period, Cricket was the fifth-largest wireless carrier in the country and its 3G network was
23 likewise deployed on a nationwide basis. Thus, its activities clearly impacted interstate commerce.

24 377. Plaintiffs know that Cricket had begun advertising 4G/LTE plans nationwide *at least*
25 by Jan. 1, 2013.

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1 378. These advertisements were displayed/aired/televised/etc. countless times during 2013
2 until the time Cricket could actually offer nationwide 4G/LTE services—when it was migrated to
3 AT&T’s network following the Merger in, approximately, May 2014.

4 379. As stated, the wires and mails were used to perpetuate this fraudulent scheme on a
5 near-constant basis during, especially, 2013. As such, there were many thousands, if not millions, of
6 instances of this fraud.

7 380. Upon information and belief, the physical advertisements—which included posters
8 and large banners—were delivered to the storefronts through the use of the mails and/or a common
9 courier. For instance, some advertisements, such as the “4G/LTE Meets Unlimited Everything”
10 advertisement displayed above (at ¶ 3), appear to have also been delivered to consumers directly
11 through the mail.

12 381. Cricket’s website at the time included advertisements for a 4G/LTE plan that would
13 have “**NATIONWIDE COVERAGE**,” “**NO CONTRACTS**,” and “**NO OVERAGES**” (emphasis
14 added).³⁶

15 382. When the iPhone 4S was introduced, Cricket’s website included advertisements such
16 as “**ONLY \$55/MONTH WITH UNLIMITED TALK/TEXT/DATA AND NO CONTRACT**”
17 (emphasis added).³⁷

18 383. When the iPhone 5S was rolled out, Cricket advertised “**NATIONWIDE**
19 **talk/text/date**” with “**NO CONTRACTS**” (emphasis added).³⁸

20 384. The common purpose of this racket, as described, was to perpetuate the illusion of
21 4G/LTE service on a nationwide basis in order to profit.

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25 ³⁶See, e.g., <https://www.youtube.com/watch?v=B20TaR4b7d0> (approximately 0:42 mark) (last
viewed October 25, 2019); see also <https://www.youtube.com/watch?v=-Rd2MDiD-aM>
26 (approximately 0:45 mark through 1:02 mark) (last viewed October 25, 2019).

27 ³⁷ Plaintiffs do not know exactly when these advertisements began, but the iPhone 4S was released in
2011.

28 ³⁸ Plaintiffs do not know exactly when these advertisements began, but the iPhone 5S was released in
September 2013.

1 385. Cricket’s leadership was well aware of the greatly limited nature of the company’s
2 4G/LTE offerings. For example, in its “Updated Business Outlook” contained in the Form 8-K filed
3 on April 30, 2013 (thus, at least four months after it had debuted the nationwide “4G/LTE” campaign),
4 Cricket announced that “. . . up to \$100 million . . . *may* be spent to deploy next-generation LTE
5 network technology [during the 2013 business year]” and “The Company *may* elect to cover up to
6 approximately 10 million additional POPs with LTE in 2013 . . .”³⁹ (emphasis added).

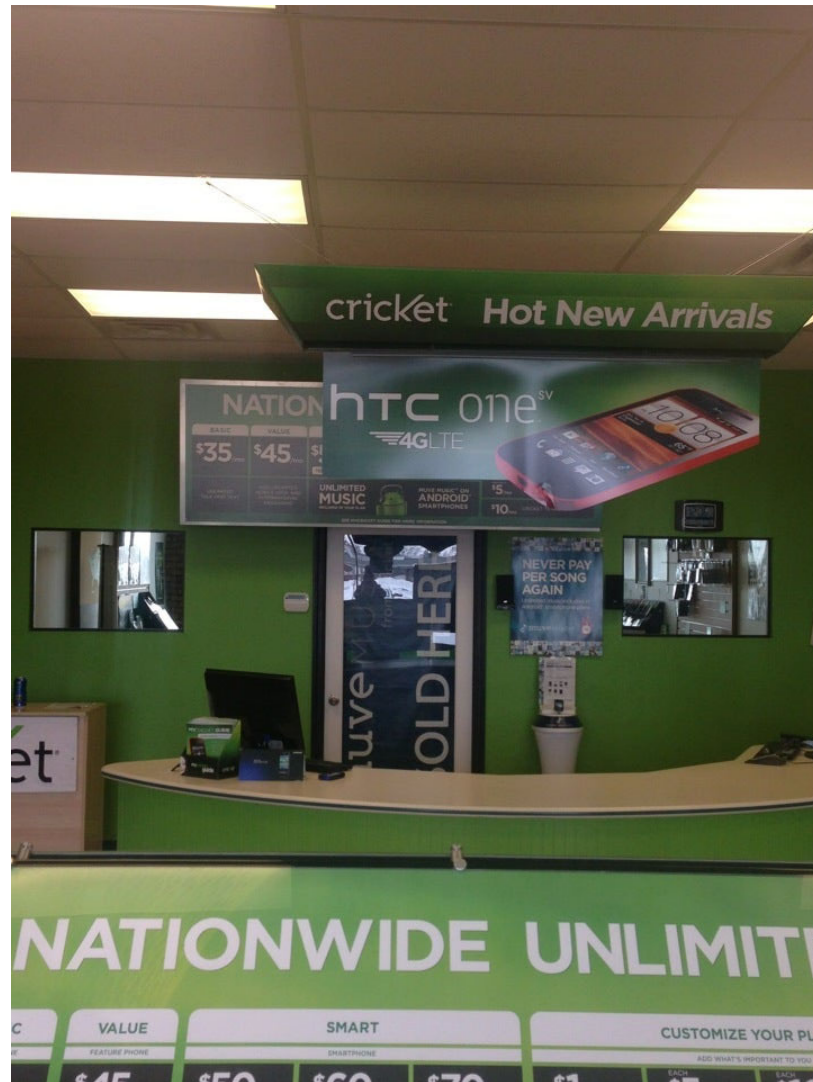
7 386. As cited above, Cricket ultimately did *not* deploy substantial capital expenditure on its
8 4G/LTE network during 2013 because of significant financial constraints. Further, even if it had been
9 able to follow the aforementioned plan, it would have only added 10 million POPs to its network,
10 leaving it about 250 million POPs short of a genuine nationwide 4G/LTE network.

11 387. Without the willing participation of Defendant and the dealers in the Cricket
12 enterprise, this scheme and common course of conduct would not have been successful because the
13 enterprise, as a franchise network, relied upon national advertising combined with meaningfully
14 homogenous in-store advertising and local distribution of phones and wireless services.

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³⁹ LEAP WIRELESS INTERNATIONAL, INC., Form 8-K, Updated Business Outlook (filed with the SEC on Apr. 30, 2013).

1 388. For example, this photo of a Rockford, Illinois Cricket dealer was uploaded to a
2 website in March 2013; it shows a range of marketing materials of the sort availed to dealers by the
3 corporate parent, including the ad for the 4G/LTE-capable HTC One phone and “Nationwide
4 Unlimited” plans:



23 389. Per the Chicago-area coverage map shown at ¶ 184, Cricket offered no 4G/LTE
24 coverage in Rockford, Illinois proper *as of December 2014*, while its partner purportedly offered such
25 coverage in some nearby, highly rural areas.

26 390. Cricket formulated its scheme—a nationwide 4G/LTE marketing campaign—even as
27 it was evident that the company would not have the financial resources to construct its own viable
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1 4G/LTE network, its wholesale agreement with LightSquared was thwarted, and its wholesale
2 agreement with Clearwire was nowhere near fruition.

3 391. Defendant utilized this racket to intentionally defraud consumers. Specifically, as
4 described above, Cricket had no good-faith basis on which it could roll out its nationwide 4G/LTE
5 campaign at the time that it did. Further, even as the rollout of its own network *and* its eventual
6 wholesaler's stalled out in 2013, Defendant continued to perpetrate this fraud. Rather than, for
7 example, simply admit *to consumers* that its 4G/LTE plans had stalled and perhaps offer discounts
8 on its 3G services, Cricket opted to deceive its own customers in an effort to construct a viable but
9 deceptive business model over the short term.

10 392. Cricket's core customer base was, and is, relatively urban and lower income. As stated,
11 the most expensive wireless spectrum is that accessing dense urban areas, so its premature nationwide
12 "4G/LTE" was particularly deceptive and malicious relative to its own customer base.

13 393. There could have been no legitimate purpose for advertising Cricket "4G/LTE" service
14 and Cricket selling 4G/LTE-capable phones on a nationwide basis because Cricket did not offer, as
15 described, anything approaching such service when the campaign was introduced—the scheme was
16 inherently fraudulent.

17 394. And, again, rather than halting the nationwide "4G/LTE" campaign at some point,
18 Cricket simply stuck with it even though it was not able to offer such service until approximately a
19 year and a half later, when it merged with AT&T.

20 395. This scheme was, logically, formulated at the senior executive levels given the top-
21 down nature of the campaign, the cost of running a national ad campaign, and the strategic importance
22 of such a campaign.

23 396. As described, the Cricket enterprise went ahead with its fraudulent "4G/LTE"
24 marketing scheme even as Cricket's most senior management expressly recognized that the company
25 possessed only a nascent 4G/LTE network and could not afford to build it out.

26 397. That is, Cricket told a more honest story to the SEC and FCC while it deliberately
27 deceived its own customers.

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1 398. The interstate mails and wires, as well as the Internet, were utilized by the Cricket
2 enterprise for the purpose of obtaining money or property by means of the omissions, false pretense,
3 and misrepresentations described herein.

4 **C. Enterprise-in-Fact**

5 399. An enterprise includes any individual, partnership, organization, corporation,
6 association, or other entity, and also includes any union or group of individuals associated in fact,
7 even if they do not comprise a formal legal entity. Accordingly, there are generally two varieties of
8 RICO enterprises: (1) one or more corporate entities being used as a vessel by one or more bad actor(s)
9 to commit acts of racketeering; and (2) an association-in-fact enterprise.

10 400. Defendant, as described above, did not own and operate many (over 2,000) Cricket-
11 branded stores; rather, these were owned and operated by independent dealers. Thus, Cricket utilized
12 a franchise model not dissimilar to that of many popular fast food chains.

13 401. This association-in-fact enterprise therefore consists of Cricket and each
14 franchisee/licensee who operated a Cricket store that deployed the 4G/LTE advertisements in a
15 market where Cricket could not provide 4G/LTE service.

16 402. Upon information and belief, at least one of the stores from which Plaintiffs purchased
17 their phones was actually owned and/or operated by an independent dealer.

18 403. Like virtually all RICO enterprises, the ultimate purpose of the Cricket-independent
19 dealer enterprise was to profit.

20 404. Here, as described above, the common purpose of the enterprise as it pertains to this
21 suit was to profit by marketing 4G/LTE service that was much desired by consumers.

22 405. This common purpose was, in large part, literally common—that is, business entities
23 that were owned by Cricket and business entities that were controlled by many different, independent
24 entities displayed and otherwise marketed the same messages and materials pertaining to “4G/LTE”
25 service.

26 406. This Cricket enterprise profited, as described above, using fraudulent means.
27 Specifically, the 4G/LTE advertisements were known by all parties to this enterprise to be false.

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1 407. Cricket knew such advertisement was false, as proven by its statements to the SEC,
2 outlined above.

3 408. The independent dealers also knew of this falsity given the fact that they activated
4 customers' phones in-store (so as to be able to personally see the lack of 4G/LTE signal) and received
5 persistent complaints about lack of 4G/LTE coverage. To the extent that any number of independent
6 dealers and their employees actually owned Cricket 4G/LTE-capable phones, they would have had
7 firsthand experience of such.

8 409. This knowledge was further informed by Cricket emails that were sent to all indirect
9 dealers.

10 410. The enterprise's fraud can be traced along a particular timeline. As alluded to above,
11 Cricket—including its independent dealers—began advertising 4G/LTE plans *at least* as early as
12 January 1, 2013. These advertisements appeared on Cricket's website, in stores, and elsewhere.

13 411. Based upon, as detailed above, the actuality of Cricket's 4G/LTE services during that
14 timeframe, it would not have even consummated its wholesale deal with Clearwire yet—indeed, that
15 was not announced until March 2013 and Clearwire's own capabilities were also formative;
16 LightSquared, its former putative LTE provider, was about to enter bankruptcy.

17 412. Cricket's own 4G/LTE network at the very beginning of 2013 would not have been
18 extant beyond, as stated above, some parts of Arizona (e.g., Cricket first rolled its own network out
19 in Tucson) and, possibly, parts of greater Philadelphia.

20 413. Even in those few places where Cricket was able to offer its own 4G/LTE services, its
21 bandwidth deployment was less spectrally efficient and therefore less able to provide the marginal
22 user with robust 4G/LTE services than more efficient deployers of bandwidth.

23 414. Further, Cricket offered "unlimited" plans to the extent that it would substantially
24 throttle, but not sever, service once a certain data limit was reached; to the small extent that Cricket
25 offered genuine 4G/LTE service, this could in no way be "unlimited" as Cricket would soon enough
26 slow service speeds to a crawl.

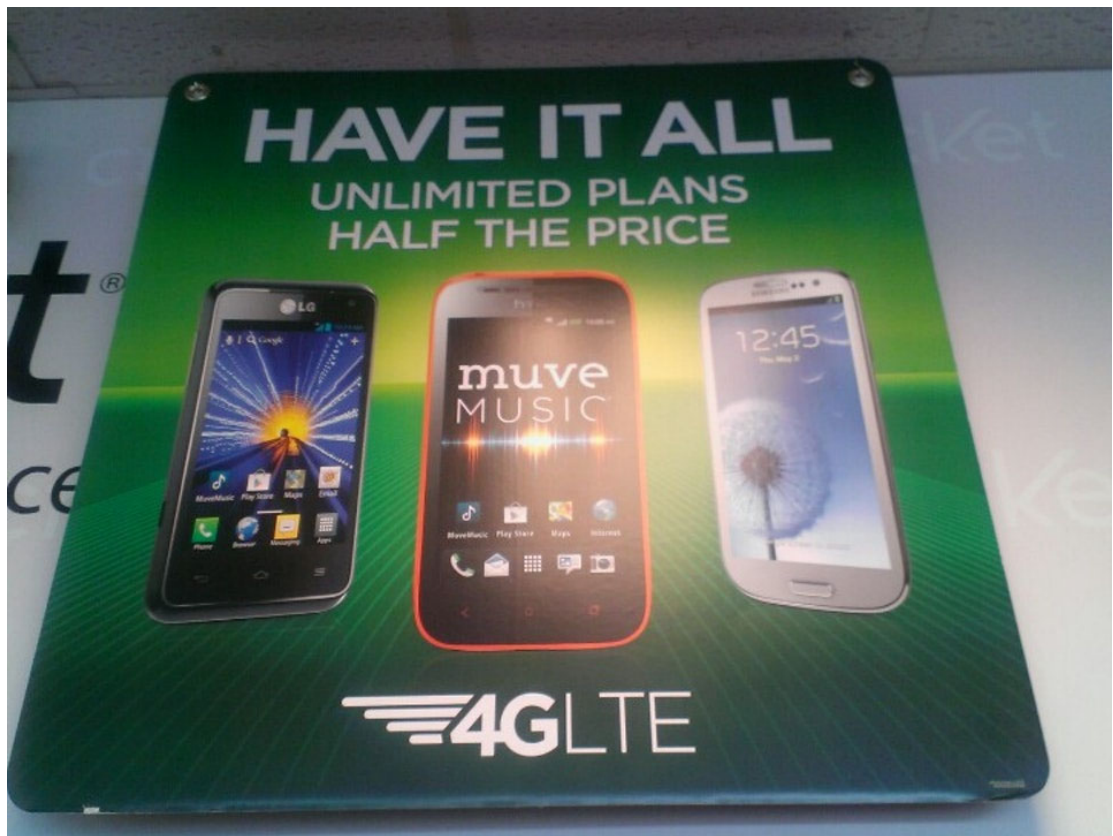
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1 415. As averred above, Cricket and its dealers did not inform *consumers* with regard to the
2 greatly limited availability of 4G/LTE coverage. That is, Cricket made an executive decision
3 sometime before the beginning of 2013 to begin marketing nationwide 4G/LTE services before they
4 could offer them and the dealers participated in such fraud.

5 416. Likewise, Cricket and the independent dealers sold more expensive 4G/LTE-capable
6 phones during this same time period, regardless of whether the customer purchased a 4G/LTE plan
7 to go along with it and/or regardless of whether Cricket could actually provide them with such service
8 for the phone they had purchased.

9 417. Put simply, the Cricket enterprise's reach greatly exceeded its grasp: in an attempt to
10 remain financially viable and perhaps attract suitors, it rolled out a national ad campaign that bore no
11 relationship to its national 4G/LTE capabilities. This was, again, at the expense of its own customers.

12 418. This fraud was ongoing and can be documented via any number of sources, many of
13 which are preserved online. For example, the following poster was hanging in a Columbus, Georgia
14 Cricket store on or about February 5, 2013:



1
2 419. Meanwhile, Cricket’s own 4G/LTE coverage map for Columbus, Georgia from late
3 December 2014—*nearly two years later*—showed no 4G/LTE coverage in the area even then.

4 **D. Defendant’s Conduct Caused These Injuries**

5 420. Defendant’s unlawful conduct was both the direct and proximate cause of the concrete
6 losses suffered by the Plaintiffs and Class members.

7 421. Specifically, Defendant, as described above, were aware of the state of its 4G/LTE
8 capabilities and misrepresented them on a national basis.

9 422. As stated above, Cricket rolled out a national “4G/LTE” ad campaign months before
10 it had even secured a wholesale deal for such services.

11 423. Cricket supplied its stores, including the independent dealers, across the country with
12 a variety of “4G/LTE” marketing materials before it could offer anything approaching nationwide
13 4G/LTE service.

14 424. Cricket utilized the Internet, television, radio, and/or mail system to fraudulently
15 advertise its “4G/LTE” service and distribute such materials to its dealers.

16 425. Cricket misrepresented its own 4G/LTE capabilities and consumers reasonably paid
17 more for 4G/LTE-capable phones and Defendant’s “4G/LTE” service because of these
18 misrepresentations.

19 426. Further, there were no significant discontinuities in this causal relationship as Cricket
20 was misrepresenting its own capabilities to its own customers. Thus, Defendant’s conduct was the
21 direct and proximate cause of Plaintiffs’ and Class members’ injuries.

22 427. These damages include the difference in the cost between a 4G/LTE-capable phone
23 and a 3G phone, as well as the difference in cost per line per month between a 4G/LTE plan and a 3G
24 plan.

25 428. Under 18 U.S.C. § 1964(c), defendants are each jointly and severably liable to
26 Plaintiffs and the Class members for three times the damages sustained plus the costs of bringing this
27 suit, including reasonable attorneys’ fees.

COUNT FOURTEEN (Individually):
PERMANENT PUBLIC INJUNCTIVE RELIEF
Under Cal. Civ. Code § 3422 and All Inherent or Other Authority

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3 429. Plaintiffs reallege and incorporate by reference each and every allegation set forth in
4 the preceding paragraphs as though alleged in full herein.

5 430. If not enjoined by this Court, Cricket will continue to injure the general public through
6 its false advertising and omissions alleged herein, which are directed at the consuming public,
7 including in California.

8 431. In order to prevent injury to the general public, Plaintiffs individually seek public
9 injunctive relief in the form of a judgment and injunction to permanently enjoin Cricket from falsely
10 advertising its wireless capabilities, as well as any other relief this Court deems just and proper.

11 432. The balance of equities favors the entry of permanent public injunctive relief. The
12 general public will be harmed as Cricket, as well as its controlling parent, AT&T, continue to show
13 no compunction regarding their blatant misrepresentations, as described above; this behavior is likely
14 to recur absent a permanent injunction. Therefore, a public permanent public injunction is in the
15 public interest.

PRAYER FOR RELIEF

16
17 Plaintiffs, on behalf of themselves and those similarly situated request that the Court order
18 relief and enter judgment against Defendant as follows:

- 19 1. Approving of the Class, certifying Plaintiffs as representatives of the Class, and
20 designating their counsel as counsel for the Class;
- 21 2. Declaring that Defendant committed the violations alleged herein;
- 22 3. Granting a permanent public injunction for the benefit of the public enjoining
23 the unlawful practices described herein;
- 24 4. Granting damages, restitution, treble damages, and/or disgorgement to Plaintiffs
25 and Class members;
- 26 5. Granting compensatory damages, the amount of which is to be determined at
27 trial;
- 28 6. Granting punitive damages;

- 1 7. Granting pre- and post-judgment interest;
- 2 8. Granting attorneys' fees and costs; and
- 3 9. Granting further relief as this Court may deem proper.

4 **JURY DEMAND**

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

7
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9 /s/ Tyler W. Hudson

10 Dated: January 27, 2021

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