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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARLO CARTER, individually, and
on behalf of other members of the
general public similarly situated,

Plaintiffs,

vs.

FIRST CHOICE
COMMUNICATIONS LLC; and
DOES 1-10, inclusive,

Defendants.

Case No.

CLASS ACTION COMPLAINT

- (1) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*) and
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17500 *et seq.*)

Jury Trial Demanded

1 Plaintiff Carlo Carter (“Plaintiff”), individually and on behalf of all other
2 members of the public similarly situated, allege as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against Defendant FIRST
5 CHOICE COMMUNICATIONS LLC. (hereinafter “Defendant” or First Choice)
6 to stop Defendant’s practice of falsely advertising that customers who signed up
7 and/or paid for Directv television service (hereinafter the “Class Product”) would
8 receive Visa Gift Cards in excess of \$100 and two years of NFL Sunday Ticket
9 for free, and to redress for a nationwide class of consumers (“Class Members”)
10 who signed up and/or paid for Directv television service, upon being promised
11 Visa Gift Cards in excess of \$100 and two years of NFL Sunday Ticket
12 programming for free, including activation, interest, service and late fees they did
13 not owe, within the applicable statute of limitations period, by Defendant.

14 2. Defendant misrepresented, omitted and falsely advertised that by
15 signing up for and/or purchasing Directv televisions services, customers would
16 receive: (1) Visa Gift Cards in excess of \$100; and (2) two years of NFL Sunday
17 Ticket programming for free, when in fact they would receive only \$100 in Visa
18 Gift Cards and not receive NFL Sunday Ticket programming for free, when in fact
19 they would not.

20 3. Plaintiff and others similarly situated signed up and/or purchased
21 television service from Defendant.

22 4. Defendant’s misrepresentations and/or omissions to Plaintiff and
23 others similarly situated caused them purchase the Class Product, which Plaintiff
24 and others similarly situated would not have purchased absent these
25 misrepresentations and/or omissions by Defendant and its employees. In so doing,
26 Defendant has violated California consumer protection statutes.

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NATURE OF THE CASE & COMMON ALLEGATIONS OF FACT

1 5. Consumers signed up for and/or purchased television service from
2 Defendant upon the promise that they would receive: (1) Visa Gift Cards in excess
3 of \$100; and (2) two years of NFL Sunday Ticket programming for free, when in
4 fact they would receive only \$100 in Visa Gift Cards and not receive NFL Sunday
5 Ticket programming for free.
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7 6. Consumers rely on the representations and advertisements of retailers
8 and service providers in order to know which television services to purchase based
9 on additional incentives being offered by such providers. With the abundance of
10 different providers occupying the market, most offer incentives for switching
11 providers which are a key factor influencing purchasing habits in most consumers.

12 7. Such incentives are important and material to consumers at the time
13 they sign up for services with a particular television service provider, as consumers
14 are sensitive to the benefits they receive for signing up and/or purchasing services,
15 compared to what they could receive as incentives from a competitor service
16 provider.

17 8. Defendant is engaged in the marketing, supplying, and distributing of
18 televisions products and services that are accompanied by deceptive advertising
19 and billing practices that are not disclosed at the time consumers purchase goods
20 and/or sign up for services.

21 9. When consumers purchase and/or sign up for services with an
22 television service provider, they reasonably believe that they will benefits offered
23 and promised in a transparent manner and will not be denied the benefits of the
24 offered incentives at the time they agree to initiate a relationship with the service
25 provider.

26 10. Defendant profits from the sale of television services. With deceptive
27 advertising and billing practices, many of the consumers would not have
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1 purchased or attempted to purchase these services, or would have chosen to the
2 services from a competitor.

3 11. In Plaintiff's case, Defendant expressly represented that he would
4 receive: (1) \$400 in Visa Gift Cards; and (2) two years of NFL Sunday Ticket
5 programming for free, for signing up and/or purchasing television service from
6 Directv.

7 12. Defendant misrepresented and/or omitted the actual incentives that
8 would be received.

9 13. Defendant misrepresented and/or omitted that consumers would only
10 receive \$100 if Visa Gift Cards and/or would not receive two years of NFL Sunday
11 Ticket for free, in order to deceive consumers into switching television service
12 providers.

13 14. Defendant does not present consumers with a written copy of the
14 correct terms of the purchase prior to purchase, in order to conceal the deception
15 that is at issue in this case.

16 15. Defendant makes written and oral representation to consumers which
17 contradict the actual incentives to be received after the consumer purchases the
18 Class Product.

19 16. The aforementioned written and oral representations are objectively
20 unlawful, unfair, or deceptive business practices under Cal. Bus. & Prof. Code §§
21 17200 et. seq. and Cal. Bus. & Prof. Code §§ 17500 et seq.

22 17. Defendant's violations of the law include, but not limited to, the false
23 advertising, marketing, representations, and sale of the Class Products to
24 consumers in California and nationwide.

25 18. On behalf of the class and subclass, Plaintiff seeks an injunction
26 requiring Defendant to cease advertising and selling the Class Products and an
27 award of damages to the Class Members, together with costs and reasonable
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1 attorneys' fees.

2 **JURISDICTION AND VENUE**

3 19. This class action is brought pursuant to Federal Rule of Civil
4 Procedure 23. All claims in this matter arise exclusively under California law.

5 20. This matter is properly venued in the United States District Court for
6 the Eastern District of California, in that Plaintiff signed up for and/or purchased
7 the Class Product from Defendant in Vacaville, California. Defendant does
8 business in the Eastern District of California. A substantial portion of the events
9 giving rise to Defendant's liability took place in this district.

10 21. There is original federal subject matter jurisdiction over this matter
11 pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (Feb.
12 18, 2005), by virtue of 28 U.S.C. §1332(d)(2), which explicitly provides for the
13 original jurisdiction of federal courts in any class action in which at least 100
14 members are in the proposed plaintiff class, any member of the plaintiff class is a
15 citizen of a State different from the State of citizenship of any defendant, and the
16 matter in controversy exceeds the sum of \$5,000,000.00, exclusive of interests and
17 costs.

18 22. In the case at bar, there are at least 100 members in the proposed Class
19 and Sub-classes, the total claims of the proposed Class members are in excess of
20 \$5,000,000.00 in the aggregate, exclusive of interests and costs, and Plaintiff seeks
21 to represent a nationwide class of consumers, establishing minimum diversity.

22 **THE PARTIES**

23 23. Plaintiff Carlo Carter is a citizen and resident of the State of
24 California, County of Solano.

25 24. Defendant First Choice Communications LLC (hereinafter,
26 "Defendant") is a limited liability company with its principle place of business
27 located and headquartered in Mesa, Arizona. Defendant's State of Incorporation
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1 is in Delaware.

2 25. Plaintiff is informed and believes, and thereon alleges, that each and
3 all of the acts and omissions alleged herein were performed by, or is attributable
4 to, Defendant and/or its employees, agents, and/or third parties acting on its behalf,
5 each acting as the agent for the other, with legal authority to act on the other's
6 behalf. The acts of any and all of Defendant's employees, agents, and/or third
7 parties acting on its behalf, were in accordance with, and represent, the official
8 policy of Defendant Plaintiff alleges, on information and belief, that Defendant's
9 marketing campaigns, as pertains to this matter, were created by Defendant at its
10 principle place of business in California, and were disseminated from California,
11 nationwide.

12 26. Plaintiff is informed and believes, and thereon alleges, that said
13 Defendant is in some manner intentionally, negligently, or otherwise responsible
14 for the acts, omissions, occurrences, and transactions of each and all its employees,
15 agents, and/or third parties acting on its behalf, in proximately causing the
16 damages herein alleged.

17 27. Plaintiff is informed and believes, and thereon alleges, that at all time
18 relevant, Defendant's sales of products and services are governed by the
19 controlling law in the state in which they do business and from which the sales or
20 products and services, and the allegedly unlawful acts originated, which is
21 California.

22 28. At all relevant times, Defendant ratified each and every act or
23 omission complained of herein. At all relevant times, Defendant, aided and
24 abetted the acts and omissions as alleged herein.

25 **PLAINTIFF'S FACTS**

26 29. In or around November of 2017, Plaintiff visited Defendant's booth
27 at an auto show and offered \$400 in Visa Gift Cards and two years of NFL Sunday
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1 Ticket for free for signing up for Directv television programming services.
2 Plaintiff decided to sign up for and/or purchase Directv television services from
3 Defendant's agent, who assured Plaintiff orally and in writing that he would
4 indeed three Visa Gift Cards totalling four hundred dollars (\$400), and NFL
5 Sunday Ticket programming for 2017 through, and including, 2019.

6 30. A few days later, Plaintiff received an electronic message from
7 Defendant about only a \$100 Visa Gift Card.

8 31. Disappointed in Defendant's misrepresentation, he called Defendant
9 and was told by Defendant's agent that he would only receive one \$100 Visa Gift,
10 but nothing further.

11 32. Defendant expressly represented to Plaintiff, through written and
12 oral statements, that by signing up for and/or purchasing Directv televisions
13 services, he would receive: (1) \$400 in Visa Gift Cards; and (2) two years of NFL
14 Sunday Ticket programming for free, when in fact he would not.

15 33. Such sales tactics rely on falsities and have a tendency to mislead and
16 deceive a reasonable consumer.

17 34. Plaintiff alleges that such representations were part of a common
18 scheme to mislead consumers and incentivize them to purchase sign up for and/or
19 purchase the Class Product in spite of the fact that Defendant did not have any
20 intention of providing more than one \$100 Visa Gift Card nor two years of NFL
21 Sunday Ticket for free as Defendant had previously misrepresented.

22 35. In purchasing the Class Product, Plaintiff relied upon Defendant's
23 representations as to the promised benefits of purchasing the Class Product.

24 36. Not only were such representations clearly false because Defendant
25 had no intention of providing more than one \$100 Visa Gift Cards nor two years
26 of NFL Sunday Ticket for free.

27 37. Plaintiff would not have purchased the Class Product if he knew that
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1 the above-referenced statements made by Defendant were false.

2 38. Had Defendant properly marketed, advertised, and represented the
3 consumer would only receive one \$100 Visa Gift Card upon signing up for and/or
4 purchasing the Class, Plaintiff would not have purchased the Class Product.

5 39. Plaintiff gave his money to Defendant because of the promised
6 benefits. Defendant benefited from falsely advertising the additional benefits.
7 Plaintiff did not receive the benefits promised for giving his money to Defendant
8 for the Class Product. Defendant benefited on the loss to Plaintiff and provided
9 nothing of benefit to Plaintiff in exchange.

10 40. Had Defendant properly marketed, advertised, and represented that
11 only one \$100 Visa Gift Card would be given upon the sign up for and/or purchase
12 of the Class Product, no reasonable consumer who purchased the Class Product
13 would expect to receive in excess of \$100 in Visa Gifts Cards, nor believe that
14 they would receive NFL Sunday ticket for free for two years, as Defendant
15 promised.

16 CLASS ACTION ALLEGATIONS

17 41. Plaintiff brings this action, on behalf of himself and all others
18 similarly situated, and thus, seeks class certification under Federal Rule of Civil
19 Procedure 23.

20 42. The class Plaintiff seeks to represent the Class and Subclass as
21 defined as follows:

22 Class

23 All consumers, who, between the applicable statute of
24 limitations and the present, signed up for and/or
25 purchased one or more of the Class Product, and who
never received or only received one \$100 Visa Gift Card.

26 Subclass

27 All consumers, who, between the applicable statute of
28 limitations and the present, purchased or attempted to
purchase one or more of the Class Product, and who

1 never received two years of NFL Sunday Ticket and
2 promised.

3 43. As used herein, the term “Class Members” shall mean and refer to the
4 members of the Class and Subclass described above.

5 44. Excluded from the Class and Subclass are Defendant, its affiliates,
6 employees, agents, and attorneys, and the Court.

7 45. Plaintiff reserves the right to amend the Class and Subclass, and to
8 add additional subclasses, if discovery and further investigation reveals such
9 action is warranted.

10 46. Upon information and belief, the proposed Class and Subclass is
11 composed of thousands of persons. The members of the Class and Subclass are
12 so numerous that joinder of all members would be unfeasible and impractical.

13 47. No violations alleged in this complaint are contingent on any
14 individualized interaction of any kind between Class Members and Defendant.

15 48. Rather, all claims in this matter arise from the identical, false,
16 affirmative written statements that the services would be provided for Class
17 Members’, when in fact, such representations were false.

18 49. There are common questions of law and fact as to the Class Members
19 that predominate over questions affecting only individual members, including but
20 not limited to:

- 21 (a) Whether Defendant engaged in unlawful, unfair, or deceptive
22 business practices in selling the Class Product to Plaintiff and
23 other Class Members;
24 (b) Whether Defendant that the Class Product had sponsorship,
25 approval, characteristics, ingredients, uses, benefits, or
26 quantities that they do not have;
27 (c) Whether Defendant made misrepresentations with respect to
28 the quantity, cost, or quality of Class Products to consumers;

- 1 (d) Whether Defendant misrepresentations that the sign up or
- 2 purchase of the Class Product confers or involves rights,
- 3 remedies, or obligations that it does not have or involve;
- 4 (e) Whether Defendant profited from the sale of the goods and
- 5 services;
- 6 (f) Whether Defendant violated California Bus. & Prof. Code §
- 7 17200, *et seq.*, and California Bus. & Prof. Code § 17500, *et*
- 8 *seq.*;
- 9 (g) Whether Plaintiff and Class Members are entitled to equitable
- 10 and/or injunctive relief;
- 11 (h) Whether Defendant's unlawful, unfair, and/or deceptive
- 12 practices harmed Plaintiff and Class Members; and
- 13 (i) The method of calculation and extent of damages for Plaintiff
- 14 and Class Members.

15 50. Plaintiff is a member of the class and subclass he seeks to represent

16 51. The claims of Plaintiff are not only typical of all class members, they
17 are identical.

18 52. All claims of Plaintiff and the class are based on the exact same legal
19 theories.

20 53. Plaintiff has no interest antagonistic to, or in conflict with, the class
21 or subclass.

22 54. Plaintiff is qualified to, and will, fairly and adequately protect the
23 interests of each Class Member, because Plaintiff relied upon Defendant's
24 advertisements and representations and purchased the Class Products from
25 Defendant during the Class Period. Defendant's unlawful, unfair and/or
26 fraudulent actions concerns the same business practices described herein
27 irrespective of where they occurred or were experiences. Plaintiff's claims are
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1 typical of all Class Members as demonstrated herein.

2 55. Plaintiff will thoroughly and adequately protect the interests of the
3 class and subclass, having retained qualified and competent legal counsel to
4 represent himself and the class.

5 56. Common questions will predominate, and there will be no unusual
6 manageability issues.

7 **FIRST CAUSE OF ACTION**

8 **Violation of Unfair Business Practices Act**

9 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

10 57. Plaintiff incorporates by reference each allegation set forth above.

11 58. Actions for relief under the unfair competition law may be based on
12 any business act or practice that is within the broad definition of the UCL. Such
13 violations of the UCL occur as a result of unlawful, unfair or fraudulent business
14 acts and practices. A plaintiff is required to provide evidence of a causal
15 connection between a defendant's business practices and the alleged harm--that is,
16 evidence that the defendant's conduct caused or was likely to cause substantial
17 injury. It is insufficient for a plaintiff to show merely that the defendant's conduct
18 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory
19 definition of unfair competition covers any single act of misconduct, as well as
20 ongoing misconduct.

21 **UNFAIR**

22 59. California Business & Professions Code § 17200 prohibits any
23 "unfair ... business act or practice." Defendant's acts, omissions,
24 misrepresentations, and practices as alleged herein also constitute "unfair"
25 business acts and practices within the meaning of the UCL in that its conduct is
26 substantially injurious to consumers, offends public policy, and is immoral,
27 unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs
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1 any alleged benefits attributable to such conduct. There were reasonably available
2 alternatives to further Defendant's legitimate business interests, other than the
3 conduct described herein. Plaintiff reserves the right to allege further conduct
4 which constitutes other unfair business acts or practices. Such conduct is ongoing
5 and continues to this date.

6 60. In order to satisfy the "unfair" prong of the UCL, a consumer must
7 show that the injury: (1) is substantial; (2) is not outweighed by any countervailing
8 benefits to consumers or competition; and, (3) is not one that consumers
9 themselves could reasonably have avoided.

10 61. Here, Defendant's conduct has caused and continues to cause
11 substantial injury to Plaintiff and members of the Class and Subclass. Plaintiff
12 and members of the Class have suffered injury in fact due to Defendant's decision
13 to sell them falsely described television services thereto, i.e., Class Product. Thus,
14 Defendant's conduct has caused substantial injury to Plaintiff and the members of
15 the Class and Subclass.

16 62. Moreover, Defendant's conduct as alleged herein solely benefits
17 Defendant while providing no benefit of any kind to any consumer. Such
18 deception utilized by Defendant convinced Plaintiff and members of the Class and
19 Subclass that by signing up for and/or purchasing Directv televisions services, they
20 would receive: (1) Visa Gift Cards in excess of \$100; and (2) two years of NFL
21 Sunday Ticket programming for free, when in fact they would not, in order to
22 induce them to spend money. In fact, knowing that the above was false, Defendant
23 unfairly profited in that Defendant knew that the Class Product did not confer the
24 benefits represented. Thus, the injury suffered by Plaintiff and the members of the
25 Class and Subclass is not outweighed by any countervailing benefits to consumers.

26 63. Finally, the injury suffered by Plaintiff and members of the Class and
27 Subclass is not an injury that these consumers could reasonably have avoided.
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1 After Defendant, falsely represented the benefits conferred upon signing up for
2 and/or purchasing the Class Product, these consumers suffered injury in fact due
3 to Defendant’s sale of the Class Product to them, minus the benefits Defendant
4 misrepresented and/or omitted. Defendant failed to take reasonable steps to
5 inform Plaintiff and Class Members that would not receive: Visa Gift Cards in
6 excess of \$100, nor two years of NFL Sunday Ticket programming for free, even
7 though they were told otherwise. As such, Defendant took advantage of
8 Defendant’s position of perceived power in order to deceive Plaintiff and the Class
9 members to purchase the Class Product Defendant without the benefits Defendant
10 advertised and/or represented. Therefore, the injury suffered by Plaintiff and
11 members of the Class and Subclass is not an injury which these consumers could
12 reasonably have avoided.

13 64. Thus, Defendant’s conduct has violated the “unfair” prong of
14 California Business & Professions Code § 17200.

15 **FRAUDULENT**

16 65. California Business & Professions Code § 17200 prohibits any
17 “fraudulent ... business act or practice.” In order to prevail under the “fraudulent”
18 prong of the UCL, a consumer must allege that the fraudulent business practice
19 was likely to deceive members of the public.

20 66. The test for “fraud” as contemplated by California Business and
21 Professions Code § 17200 is whether the public is likely to be deceived. Unlike
22 common law fraud, a § 17200 violation can be established even if no one was
23 actually deceived, relied upon the fraudulent practice, or sustained any damage.

24 67. Here, not only were Plaintiff and the Class members likely to be
25 deceived, but these consumers were actually deceived by Defendant. Such
26 deception is evidenced by the fact that Plaintiff paid for a Class Product Defendant
27 without receiving the benefits promised, and paid higher prices for lower quality
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1 goods and services other than what was advertised and/or represented. Plaintiff's
2 reliance upon Defendant's deceptive statements is reasonable due to the unequal
3 bargaining powers of Defendant and Plaintiff. For the same reason, it is likely that
4 Defendant's fraudulent business practice would deceive other members of the
5 public.

6 68. As explained above, Defendant deceived Plaintiff and other Class
7 Members by representing falsely that the sign for and/or purchase of the Class
8 Product conferred or involve rights, remedies, or obligations that it does not have
9 or involve.

10 69. Thus, Defendant's conduct has violated the "fraudulent" prong of
11 California Business & Professions Code § 17200.

12 UNLAWFUL

13 70. California Business and Professions Code Section 17200, et seq.
14 prohibits "any unlawful...business act or practice."

15 71. As explained above, Defendant deceived Plaintiff and other Class
16 Members by representing that by signing up for and/or purchasing Directv
17 televisions services, they would receive: (1) Visa Gift Cards in excess of \$100;
18 and (2) two years of NFL Sunday Ticket programming for free, when in fact they
19 would not.

20 72. Defendant used false advertising, marketing, and misrepresentations
21 to induce Plaintiff and Class Members to purchase and pay for goods and services
22 that conferred or involve rights, remedies, or obligations that it did not have or
23 involve than what was advertised and represented, in violation of California Civil
24 Code Section 1750, et seq. Had Defendant not falsely advertised, marketed or
25 misrepresented the benefits conferred in signing up for and/or purchasing the Class
26 Product, Plaintiff and Class Members would not have purchased the Class Product
27 from Defendant and/or paid the higher price for the lower quality goods and
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1 services. Defendant's conduct therefore caused and continues to cause economic
2 harm to Plaintiff and Class Members.

3 73. These representations by Defendant are therefore an "unlawful"
4 business practice or act under Business and Professions Code Section 17200 *et seq*
5 and Business and Professions Code Section 17500 *et seq.*.

6 74. Defendant has thus engaged in unlawful, unfair, and fraudulent
7 business acts entitling Plaintiff and Class Members to judgment and equitable
8 relief against Defendant, as set forth in the Prayer for Relief. Additionally,
9 pursuant to Business and Professions Code section 17203, Plaintiff and Class
10 Members seek an order requiring Defendant to immediately cease such acts of
11 unlawful, unfair, and fraudulent business practices and requiring Defendant to
12 correct its actions.

13 **SECOND CAUSE OF ACTION**

14 **Violation of the California False Advertising Act**

15 **(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)**

16 75. Plaintiff incorporates by reference each allegation set forth above.

17 76. Pursuant to California Business and Professions Code section 17500,
18 *et seq.*, it is unlawful to engage in advertising "which is untrue or misleading, and
19 which is known, or which by the exercise of reasonable care should be known, to
20 be untrue or misleading...or...to so make or disseminate or cause to be so made or
21 disseminated any such statement as part of a plan or scheme with the intent not to
22 sell that personal property or those services, professional or otherwise, so
23 advertised at the price stated therein, or as so advertised."

24 77. California Business and Professions Code section 17500, *et seq.*'s
25 prohibition against false advertising extends to the use of false or misleading
26 written statements.

27 78. Defendant misled consumers by making misrepresentations and
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1 untrue statements about the Class Products, namely, Defendant convinced Plaintiff
2 and members of the Class and Subclass that by signing up for and/or purchasing
3 Directv televisions services, they would receive: (1) Visa Gift Cards in excess of
4 \$100; and (2) two years of NFL Sunday Ticket programming for free, when in fact
5 they would not, and made false representations to Plaintiff and other putative class
6 members in order to solicit these transactions.

7 79. Defendant knew that their representations and omissions were untrue
8 and misleading, and deliberately made the aforementioned representations and
9 omissions in order to deceive reasonable consumers like Plaintiff and other Class
10 Members.

11 80. As a direct and proximate result of Defendant's misleading and false
12 advertising, Plaintiff and the other Class Members have suffered injury in fact and
13 have lost money or property. Plaintiff reasonably relied upon Defendant's
14 representations regarding the Class Products, namely that by signing up for and/or
15 purchasing Directv televisions services, they would receive: (1) Visa Gift Cards in
16 excess of \$100; and (2) two years of NFL Sunday Ticket programming for free. In
17 reasonable reliance on Defendant's false advertisements, Plaintiff and other Class
18 Members purchased the Class Products. In turn Plaintiff and other Class Members
19 did not receive: Visa Gift Cards in excess of \$100, nor two years of NFL Sunday
20 Ticket programming for free, even though they were told otherwise., and therefore
21 Plaintiff and other Class Members have suffered injury in fact.

22 81. Plaintiff alleges that these false and misleading written
23 representations made by Defendant constitute a "scheme with the intent not to sell
24 that personal property or those services, professional or otherwise, so advertised
25 at the price stated therein, or as so advertised."

26 82. Defendant advertised to Plaintiff and other putative class members,
27 through written representations and omissions made by Defendant and its
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1 employees, that the Class Products would include the HP Smart Install feature.

2 83. Defendant knew that the Class Products did not in fact (1) Visa Gift
3 Cards in excess of \$100; and (2) two years of NFL Sunday Ticket programming for
4 free.

5 84. Thus, Defendant knowingly sold Class Products to Plaintiff and other
6 putative class members that did not include (1) Visa Gift Cards in excess of \$100;
7 and (2) two years of NFL Sunday Ticket programming for free. The misleading and
8 false advertising described herein presents a continuing threat to Plaintiff and the
9 Class Members in that Defendant persists and continues to engage in these practices,
10 and will not cease doing so unless and until forced to do so by this Court.
11 Defendant's conduct will continue to cause irreparable injury to consumers unless
12 enjoined or restrained. Plaintiff is entitled to preliminary and permanent injunctive
13 relief ordering Defendant to cease their false advertising, as well as disgorgement
14 and restitution to Plaintiff and all Class Members Defendant's revenues associated
15 with their false advertising, or such portion of those revenues as the Court may find
16 equitable.

17 **MISCELLANEOUS**

18 85. Plaintiff and Class Members allege that they have fully complied with
19 all contractual and other legal obligations and fully complied with all conditions
20 precedent to bringing this action or all such obligations or conditions are excused.

21 **REQUEST FOR JURY TRIAL**

22 86. Plaintiff requests a trial by jury as to all claims so triable.

23 **PRAYER FOR RELIEF**

24 87. Plaintiff, on behalf of himself and the Class, requests the following
25 relief:

- 26 (a) An order certifying the Class and appointing Plaintiff as
27 Representative of the Class;

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- (b) An order certifying the undersigned counsel as Class Counsel;
- (c) An order requiring Defendant, at its own cost, to notify all Class Members of the unlawful and deceptive conduct herein;
- (d) An order requiring Defendant to engage in corrective advertising regarding the conduct discussed above;
- (e) Actual damages suffered by Plaintiff and Class Members as applicable or full restitution of all funds acquired from Plaintiff and Class Members from purchase of the Class Products and the charging fees and taxes therefor, during the relevant class period;
- (f) Punitive damages, as allowable, in an amount determined by the Court or jury;
- (g) Any and all statutory enhanced damages;
- (h) All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
- (i) Pre- and post-judgment interest; and
- (j) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.

Dated: September 27, 2018 Respectfully submitted,

LAW OFFICES OF TODD M. FRIEDMAN , PC

By: /s/ Todd M. Friedman

TODD M. FRIEDMAN, ESQ.
Attorney for Plaintiff Carlo Carter

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

CARLO CARTER, individually, and on behalf of other members of the general public similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Law Offices of Todd M. Friedman, P.C., 21550 Oxnard St., Suite 780 Woodland Hills, CA 91367; (877) 206-4741

DEFENDANTS

FIRST CHOICE COMMUNICATIONS LLC; and DOES 1-10, inclusive,

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

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

Attorneys (If Known)

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

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

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Cal. Business & Professions Code 17500, et seq. and Cal. Business & Professions Code 17200, et seq. Brief description of cause: Violation of California False Advertising Act and Violation of Unfair Business Practices Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 09/27/2018 SIGNATURE OF ATTORNEY OF RECORD s/Todd M. Friedman

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Man Never Received Promised Gift Cards, Free NFL Programming After Switching to DirecTV](#)
