

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JOSE LUIS GARCIA MORENO, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

T-MOBILE USA, INC.,

Defendant.

NO.

PLAINTIFF'S CLASS ACTION
COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Jose Luis Garcia Moreno ("Plaintiff"), by and through his attorneys, individually and behalf of all others similarly situated, brings this action against Defendant T-Mobile USA, Inc. ("T-Mobile"). Plaintiff alleges the following based on personal knowledge as to his own acts and based upon the investigation conducted by his counsel as to all other allegations:

I. INTRODUCTION

1. Plaintiff brings this consumer class action lawsuit because Defendant developed, marketed, distributed, and advertised the launch of their 5G Network (the "Network") without disclosing to its customers, including former Sprint customers following the merger between Sprint and T-Mobile, that they intended to shut down older networks without adequately addressing Network incompatibilities for numerous devices dependent upon them, including but not limited to the Samsung Galaxy S10 5G, LG V50

1 ThinQ 5G, HTC 5G Hub, OnePlus 7 Pro 5G, and various tablets, security systems, and
2 other devices (the “Class Devices”). Many of the Class Devices have or will become
3 wholly unusable as the non-Network older Sprint and T-Mobile networks with which they
4 are compatible, including Sprint’s 3G (CDMA), 5G, and LTE networks as well as T-
5 Mobile’s 3G UMTS network, get shutdown (the “Defect”). The Defect represents a
6 serious omission and is therefore a material fact. Defendant has been unwilling to
7 acknowledge the Defect, much less remedy it, and Plaintiff hereby seeks to correct that
8 injustice.

9 2. Defendant marketed the Network as “[t]he next generation of wireless
10 service” that delivers “coverage and mobility with blazing fast download speeds.”¹
11 Sprint, which is now owned by T-Mobile, advertised that its 5G network “covers
12 approximately 2,100 square miles, with approximately 11 million people expected to be
13 covered in total across all nine market areas in the coming weeks, more than any other
14 U.S. carrier to date.”²

15 3. Defendant marketed that, along with three other 5G-enabled devices, it
16 would expand its selection of 5G ready devices to include the OnePlus 7 Pro 5G and
17 “give Sprint customers a truly mobile 5G experience all across these great cities.”

18 4. Keeping the, at-the-time, upcoming merger in mind, and actively
19 advocating for it, Sprint pitched one advantage would allow the carriers “to accelerate
20 the deployment of a ubiquitous, nationwide 5G network that includes coverage in rural
21 locations.” Within months of touting the deployment of Sprint’s own 5G network, on July
22
23
24
25

26 ¹ Sprint Lights Up True Mobile 5G in New York City, prnewswire.com (Aug. 27 2019), *available at*
27 <https://www.prnewswire.com/news-releases/sprint-lights-up-true-mobile-5g-in-new-york-city-300907615.html>
(last visited January 5, 2021).

² Id.

1 2, 2020, T-Mobile shut down Sprint's 5G network.³ Tech websites noted the inoperability
2 of Sprint's 5G-enabled devices, including the OnePlus 7 5G, on T-Mobile's 5G network.⁴

3 5. The shutdown of Sprint's 5G network left approximately 75,000 sold 5G
4 phones without the ability to receive a 5G signal.⁵ Rather than offer owners of these
5 phones free upgrades, customers would have to switch their phone and phone plan to
6 a new offering from T-Mobile.

7 6. The inability to connect to a 5G network, despite some being equipped
8 with a 5G-enabled modem, limits the capabilities of these phones and devices to what
9 is already available on 4G LTE-only devices. Purchasers of 5G-enabled phones paid a
10 premium to benefit from massive improvements in download speeds and lower latency
11 enabled by 5G networks. Rather than achieving download speeds 100 times faster on
12 a 5G network, to a top speed of 20 gigabytes per second, owners of 5G devices will be
13 limited to a max download speed of 100 megabytes per second, with real world
14 performance topping out at 35 megabytes per second. Latency, too, increases between
15 the two networks, from one millisecond on a 5G network to fifty milliseconds on a 4G
16 network.⁶

17 7. Dozens of owners and lessees of 5G-enabled phones previously
18 compatible with Sprint's network have voiced complaints on various online forums. For
19 example, two complaints lodged with the Consumer Affairs website describes the
20 frustration felt by those whose devices are no longer supported because of the Defect:

21 The main reason I upgraded to the LG V-50 from my LG V-40 was its
22 supposed access to 5G networks. During the last year, I only got
23 connected to 5G about three times at a few hot spots around Austin,
where I live. Anyway, now that Sprint and T-Mobile have merged, the 5G

24 ³ T-Mobile shuts down Sprint's legacy 5G network, xda-developers.com (July 2, 2020), available at
<https://www.xda-developers.com/t-mobile-shuts-down-sprint-5g/> (last visited January 5, 2020).

25 ⁴ Sprint 5G rollout: Everything you need to know, digitaltrends.com (March 3, 2020), available at
<https://www.digitaltrends.com/mobile/sprint-5g-rollout/> (last visited January 5, 2020).


26 ⁵ T-Mobile shuts down Sprint's legacy 5G network, xda-developers.com (July 2, 2020), available at
<https://www.xda-developers.com/t-mobile-shuts-down-sprint-5g/> (last visited January 5, 2020).

27 ⁶ 4G vs. 5G: The key differences between the cellular network generations, businessinsider.com (December 22,
2020), available at <https://www.businessinsider.com/4g-vs-5g> (last accessed January 5, 2021).

1 networks that the V-50 could access are no longer going to be
2 supported. I got gypped on this phone, not because it isn't a great device
3 - it is - but the 5G promise has been broken by Sprint's being bought out
4 by T-Mobile. At minimum, owners of the Sprint version of the LG V-50s
5 should be compensated by getting a substantial allowance for a new 5G
6 capable phone that will work in the future.⁷

7 I purchased the new HTC 5G Hub to use with Sprint's 5G service. 45
8 days after I purchase it they remove 5G service from the ENTIRE service
9 area and expect me to honor my contract with them. Upload and
10 download speeds are now at 10% of what I had prior to the change.
11 They also lied to me for three months telling me they were overhauling
12 the system so it should be up in a month. Now they tell me it will no
13 longer be available. Watch out for this company.⁸

14 8. Other accounts from consumers who have been impacted by the Defect
15 show that the alternate "offers" made to transition them to 5G-enabled devices
16 compatible with T-Mobile's network would force them into more expensive plans and
17 new payments for replacement devices. For example:⁹

18  **TJ Denver** > Biggy Johnson
19 1 September, 2020

20 ... I'm sticking on sprints \$15/month unlimited everything plan until the cows come home!
21
22 can't beat \$15/month!! (July 2018)

23 Reply  

24  **Biggy Johnson**
25 4 July, 2020

26 This is both good and bad, I am a sprint customer with a Oneplus 7 Pro 5g. The reason why its not that big of a
27 deal is we never had 5g here in Minnesota. T-Mobil just sent me a email with offers on new 5g phones but I
28 need to switch my plan at an additional cost of \$45 per month + new phone payment to qualify for the
29 upgrade, no thanks

30 Reply  5  1

31 ⁷ Sprint, consumeraffairs.com (October 17, 2020), available at
32 https://www.consumeraffairs.com/cell_phones/sprint_pcs.htm?#sort=top_reviews&filter=none (last accessed
33 January 5, 2021).

34 ⁸ Sprint, consumeraffairs.com (August 10, 2020), available at
35 https://www.consumeraffairs.com/cell_phones/sprint_pcs.htm?page=5 (last accessed January 5, 2021).

36 ⁹ Sprint 5G is no more, as T-Mobile focuses on its own network, techcrunch.com (July 2, 2020), available at
37 <https://techcrunch.com/2020/07/02/sprint-5g-is-no-more-as-t-mobile-focuses-on-its-own-network/> (last
38 accessed January 5, 2021).

1 9. The rippling consequences of the impending Network release did not stop
2 with T-Mobile’s shutdown of Sprint’s 5G network. To the contrary, customers with other
3 Class Devices dependent on non-5G networks received similar notices wherein T-
4 Mobile marketed the Network as a beneficial change despite it requiring that many
5 customers purchase entirely new devices and/or sign up for more expensive and
6 comprehensive Network plans.

7 10. Specifically, less than a year after the shutdown of the 5G network, T-
8 Mobile announced intentions to “retire” Sprint’s “older 3G (CDMA) network” as well as
9 Sprint’s LTE network, their own 3G UMTS and GSM 2G networks all within 2022.¹⁰ The
10 first of these shutdowns was to be of the CDMA network, however it has quickly turned
11 into a convoluted and burdensome process for consumers, representative of the Defect
12 as a whole.

13 11. T-Mobile set December 31, 2021 as the final day of CDMA service, later
14 pushing the date to March 31, 2022 and offloading blame for the transitional failure and
15 consumer dissatisfaction onto their “partners,” like Dish who uses the CDMA network
16 for their Boost Mobile customers and has shown resistance to the shutdown.¹¹ T-Mobile
17 claims the delay resulted from these partners failing to appropriately “help their
18 customers through [the] shift,” ignoring their own role and duty to their customers.¹²
19 March 31, 2022 passed by without the end of the network and consumers are left
20 wondering about the longevity of the functionality of their devices. Certain consumer
21 advocates suspect T-Mobile “silently delayed the sunset of the [CDMA] cell service by
22 an additional two months to May 31, 2022.”¹³

23
24 ¹⁰ T-Mobile Coverage: T-Mobile Network Evolution

<https://www.t-mobile.com/support/coverage/t-mobile-network-evolution>

25 ¹¹ T-Mobile’s CDMA shutdown already harms consumers, says coalition

<https://www.fiercewireless.com/operators/t-mobile-s-cdma-shutdown-already-harms-consumers-says-coalition>

26 ¹²T-Mobile: Update on our CDMA Network Transition Plans

<https://www.t-mobile.com/news/business/update-on-our-cdma-network-transition-plans>

27 ¹³ T-Mobile once again delays Sprint’s CDMA network shutdown

<https://www.androidpolice.com/tmobile-again-delays-sprint-cdma-network-shutdown/>

1 12. If such delays have occurred in only the first of four network shutdowns,
2 consumers face unpredictable consequences and inconveniences as a direct result and
3 part of the Defect which may last throughout the coming year and perhaps beyond.
4 Defendant failed to adequately warn its customers that certain devices and contracts
5 that they bought into would become useless before their reasonably expected lifespans.
6 Now they fail even further to clearly communicate the impacts and timeline of the Defect
7 which places the already biased onus of the network transitions even further onto
8 consumers of the Class Devices.

9 13. Plaintiff and members of the Class (defined below) who have experienced
10 the Defect have been locked in their contract without being transitioned free of charge
11 to T-Mobile's Network, so that they may take advantage of 5G connectivity without
12 having to pay out of pocket for compatible devices or upgraded service to which they
13 did not anticipate nor initially agree upon.

14 14. Selling 5G data plans, in particular, with a limited shelf life and Class
15 Devices unable to connect to existing 5G and other networks is a fraud on consumers.
16 Sprint and T-Mobile refuse to honor their commitment to their loyal customers and are
17 forcing customers to bear the expense of their mistakes and malfeasance.

18 15. As a result of Defendant's unfair, deceptive and/or fraudulent business
19 practices, owners of the Class Devices, including Plaintiff, have suffered an
20 ascertainable loss of money and/or property and/or loss in value. Plaintiff and the Class
21 members expended monies to benefit from higher data speeds or signed on for limited
22 data plans to conserve money, but were not warned of the impending Defect and have
23 suffered and continue to suffer financial and other injuries relating thereto. They have
24 also suffered from a diminution in value of their non-Network compatible devices owing
25 to the existence of the Defect. Accordingly, Plaintiff and the Class members have
26 suffered injury in fact, incurred damages, and have otherwise been harmed by
27

1 Defendant's conduct. The unfair and deceptive trade practices committed by Defendant
2 were conducted in a manner giving rise to substantial aggravating circumstances.

3 16. Defendant was aware of the Defect. Not only did Defendant have
4 exclusive, non-public knowledge and data concerning the continuing functionality of the
5 Class Devices through their own testing and marketing data, customers' complaints, and
6 warranty claims, but also it is or should be aware of consumer complaints on public
7 forums. Therefore, Defendant was well aware of the Defect but failed to notify customers
8 of the nature and extent of the problems to arise with the Class Devices which they
9 continued to sell and for which they have failed to provide any adequate remedy.

10 17. The Defect is material because it makes it impossible for Class Devices to
11 take advantage of any T-Mobile network. Cellular network enabled and dependent
12 devices cannot possibly serve their purpose when no network is compatible with them.
13 As attested by Class members in scores of complaints on online forums, the Defect
14 completely eliminates the device's network capabilities because they are not configured
15 for the Network and compatible networks will no longer exist. As a result of the Defect,
16 customers paid more for devices, particularly for those who invested in Sprint's 5G
17 compatible devices, that can no longer meet even a fraction of their marketed
18 capabilities.

19 18. Defendant's failure to disclose the defect at the time of purchase is
20 material because no reasonable consumer expects to spend more for a device whose
21 advertised and differentiating features will be rendered useless in a few months' time or
22 otherwise before its reasonably anticipated lifespan.

23 19. Had Defendant disclosed the Defect, Plaintiff and Class members would
24 not have purchased the Class Devices or would have paid less for them.

25 20. Plaintiff demands that Defendant accept responsibility for phasing out
26 Sprint's 5G network and the other various Sprint and T-Mobile networks while continuing
27 to sell the Class Devices and allowing consumers to sign contracts for existing Devices.

1 T-Mobile refuses to accommodate, as well as reimburse Plaintiff and the Class for losses
2 suffered as a result of the Defect. In addition, or alternatively, Defendant should be
3 required to buy back the Class Devices.

4 21. This case seeks protection and relief for owners of Class Devices for the
5 harm they have suffered from Defendant's breaches of express and implied warranties
6 and Defendant's unfair, unlawful, and deceptive trade practices.

7 **II. JURISDICTION, VENUE AND GOVERNING LAW**

8 22. This Court has subject matter jurisdiction over this action pursuant to 28
9 U.S.C. § 1332(d) because: (i) there are 100 or more class members; (ii) the aggregate
10 amount in controversy exceeds \$5,000,000, exclusive of interest and costs; and (iii) at
11 least one Plaintiff and Defendant are citizens of different states. This Court has
12 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

13 23. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391
14 because Defendant transacts business in this district and is subject to personal
15 jurisdiction in this district, and therefore is deemed to be a citizen of this district.
16 Additionally, Defendant has advertised in this district and has received substantial
17 revenue and profits from the sales and/or leasing of Class Devices in this district.
18 Therefore, a substantial part of the events and/or omissions giving rise to the claims
19 occurred, in part, within this district.

20 24. This Court has personal jurisdiction over Defendant because it has
21 conducted substantial business in this judicial district, and intentionally and purposefully
22 placed Class Vehicles into the stream of commerce within this district and throughout
23 the United States.

24 25. In accordance with 28 U.S.C. § 1391, venue is proper in this district
25 because a substantial part of the conduct giving rise to Plaintiffs' claims occurred in or
26 emanated from this District, Defendant transacts business in this District, and Defendant
27 resides in this District.

1 III. PARTIES

2 A. Plaintiff Jose Moreno

3 26. Plaintiff Jose Moreno is a citizen of California and resides in 45-601
4 Monroe Street, Apt. 32, Indio, CA 92201.

5 27. On February 7, 2020 Plaintiff Garcia Moreno purchased a Class Device
6 from Sprint's retail store located in 81952 CA-111 B, Indio, CA 92201.

7 28. In deciding to purchase a Class Device, Plaintiff Garcia Moreno relied on
8 Sprint's representations about the compatibility of his phone with T-Mobile's 5G network,
9 none of which disclosed the Defect described herein.

10 29. To fully benefit from the increased data speeds and usage enabled by
11 Sprint's 5G network, Mr. Moreno opted to purchase Sprint's most expensive data plan,
12 the Unlimited Premium plan, at \$80/month.

13 30. Two weeks after purchasing his phone, Plaintiff lost 5G connectivity and
14 could only access 4G LTE data speeds.

15 31. Plaintiff contacted Sprint to try to regain 5G connectivity, spending a
16 considerable amount of time with customer support. He updated his device's profile and
17 completed all troubleshooting steps recommended.

18 32. Sprint advised Plaintiff to go to a T-Mobile Store to get a new SIM Card. A
19 T-Mobile employee told Plaintiff that their SIM card was incompatible with his device but
20 could not explain why. The T-Mobile employee told Plaintiff to search for his issue online
21 to see whether other users had experienced the same problem and even went so far as
22 to tell Mr. Moreno that Sprint had given him the short end of the bargain.

23 33. On April 25, 2020, Plaintiff spoke with a Sprint representative using
24 Sprint's chat feature and asked whether his device would lose 5G service due to the T-
25 Mobile and Sprint merger. The Sprint representative responded, "No it will not [be] like
26 that."
27

1 34. After months of going without 5G connectivity, Plaintiff again opened up
2 the chat support on December 3, 2020. The Sprint representative recommended going
3 through the same steps Plaintiff had already completed months back. Rather than being
4 provided with a T-Mobile compatible device, the Sprint representative advised Plaintiff
5 that he would have to pay off his current device and then upgrade to a new device.

6 35. The OnePlus 7 Pro 5G Mr. Moreno purchased features 5G logos
7 prominently on its packaging and even upon the device's start up screen.

8 36. Had Mr. Moreno known of the Defect at the time of sale, he would not have
9 purchased the phone or would have paid less for it to account for the defect.

10 **B. Defendant**

11 37. Defendant T-Mobile US, Inc. is a telecommunication corporation that
12 developed and distributed 5G infrastructure within the United States.

13 38. Defendant is incorporated and headquartered in the State of Washington
14 with its principal place of business at 3625 132nd Ave SE, Bellevue, Washington 98006.

15 39. Defendant T-Mobile US, Inc. merged with Sprint Corporation and now
16 oversees sales and other operations previously belonging to Sprint, across the United
17 States. Sprint Corporation, prior to and pending its merger with Defendant T-Mobile US,
18 Inc., through its various entities, marketed and distributed 5G-enabled devices in
19 Washington and multiple other locations in the United States.

20 **IV. FACTUAL ALLEGATIONS**

21 **A. Sprint's 5G Network**

22 40. Since at least May 30, 2019, Sprint rolled out its 5G coverage to include
23 major metropolitan centers throughout the country, starting with Houston, Kansas City,
24 Atlanta, and Dallas-Fort Worth.¹⁴ Over the following months it would expand its 5G
25

26 _____
27 ¹⁴ Sprint Lights Up True Mobile 5G in Houston, prnewswire.com (May 30, 2019), available at
<https://www.prnewswire.com/news-releases/sprint-lights-up-true-mobile-5g-in-houston-300858920.html> (last
accessed January 6, 2021).

1 network to nine metropolitan areas and increase its coverage to include approximately
2 16 million people.¹⁵

3 41. On August 27, 2019, Sprint supplemented its 5G offerings with an
4 additional 5G enabled device, the OnePlus 7 Pro 5G¹⁶, and a cloud gaming service that
5 would be preloaded on 5G handsets.¹⁷ Because of the faster download speeds and
6 lower latency made available by 5G, Vice President of Sprint's 5G strategies said:
7 "Sprint 5G customers will be able to play games instantly without having to wait to
8 download or update games – a true breakthrough in the mobile universe."¹⁸ Sprint's
9 development and rollout of its 5G network, along with the representations it made to its
10 customers, are material to a reasonable consumer because consumers want to ensure
11 that devices purchased through the carrier will be compatible with the carrier's network.

12 42. Sprint marketed, promoted, and expressly warranted that their deployed
13 5G network would work with 5G enabled devices.

14 43. The Samsung Galaxy S10 5G, LG V50 ThinQ 5G, HTC 5G Hub, and the
15 OnePlus 7 Pro 5G all run on Qualcomm's Snapdragon X50 5G modem. While the
16 modem used supported Sprint's 2.5 GHz 5G network, it did not support T-Mobile's
17 redeployed 5G network.¹⁹ By contrast, another Sprint offering, the Samsung Galaxy S20
18 5G, featured a newer iteration of the Qualcomm chip—the X55 5G modem—which was
19

20 ¹⁵ Sprint Expands True Mobile 5G to Cover Approximately 16 Million People Within Nine Metropolitan Areas,
21 prnewswire.com (Oct. 22, 2019), available at [https://www.prnewswire.com/news-releases/sprint-expands-true-
mobile-5g-to-cover-approximately-16-million-people-within-nine-metropolitan-areas-300942693.html](https://www.prnewswire.com/news-releases/sprint-expands-true-mobile-5g-to-cover-approximately-16-million-people-within-nine-metropolitan-areas-300942693.html) (last
22 accessed January 6, 2021).

23 ¹⁶ Sprint Lights Up True Mobile 5G in New York City, prnewswire.com (August 27, 2019), available at
24 <https://www.prnewswire.com/news-releases/sprint-lights-up-true-mobile-5g-in-new-york-city-300907615.html>
(last accessed January 6, 2021).

25 ¹⁷ Sprint & Hatch FTW! Hatch Cloud Gaming Now Available for Sprint 5G Customers, prnewswire.com (August
26 27, 2019), available at [https://www.prnewswire.com/news-releases/sprint--hatch-ftw-hatch-cloud-gaming-now-
available-for-sprint-5g-customers-300907292.html](https://www.prnewswire.com/news-releases/sprint--hatch-ftw-hatch-cloud-gaming-now-available-for-sprint-5g-customers-300907292.html) (last accessed January 6, 2021).

27 ¹⁸ *Id.*

¹⁹ T-Mobile deactivates Sprint's legacy 2.5GHz 5G ahead of redeployments, fiercewireless.com (July 1, 2020),
available at [https://www.fiercewireless.com/5g/t-mobile-deactivates-sprint-s-legacy-2-5-ghz-5g-ahead-re-
deployments](https://www.fiercewireless.com/5g/t-mobile-deactivates-sprint-s-legacy-2-5-ghz-5g-ahead-re-deployments) (last accessed January 6, 2021).

1 compatible with T-Mobile's 5G network because of its support for Sub-6 and Millimeter
2 Wave 5G connectivity.

3 44. T-Mobile's 5G network was initially based on a 600MHz low-band signal.
4 The carrier repurposed Sprint's 2.5 GHz mid-band spectrum into its own network.²⁰
5 When it did so, the Class Devices were no longer able to receive a 5G signal.

6 45. Sprint uniformly marketed, advertised, and warranted that its 5G
7 smartphones would be compatible with its 5G network, all the while it awaited approval
8 of its merger with T-Mobile, as shown in the packaging of the OnePlus 7 Pro 5G below:



23
24 46. Plaintiff Garcia Moreno purchased a OnePlus 7 Pro 5G Smartphone
25 through Sprint, along with its Unlimited Premium data plan, in order to fully utilize Sprint's
26 5G network. The fact that Sprint advertised and warranted that it possessed

27 ²⁰ Have a Sprint 5G phone? T-Mobile will force some of you to upgrade, mashable.com (April 25, 2020), available at <https://mashable.com/article/t-mobile-sprint-5g-incompatible-phones/> (last accessed January 6, 2021).

1 compatibility with its 5G network was material to Plaintiff Garcia Moreno and to other
2 reasonable consumers. Plaintiff Garcia Moreno specifically sought a phone with 5G
3 connectivity because it provides faster data speeds than what is available, or even
4 possible, on 4G LTE, and Plaintiff Garcia Moreno reasonably relied upon Sprint's
5 representations and warranties contained in Sprint's marketing materials when he
6 purchased his phone.

7 **B. Defendant Had Superior and Exclusive Knowledge of the Defect**

8 47. Upon information and belief, Defendant knew, or should have known,
9 about the Defect through their exclusive knowledge of non-public, internal data about
10 the Defect, including: (1) Network testing and market data; (2) their own records of
11 customer complaints about the Defect from Defendant's retailers; (3) their own records
12 of customers' complaints on consumer forums run by Defendant; (4) large swaths of
13 consumer complaints on various public forums; (5) warranty and post-warranty claims;
14 (6) any research, surveys, or other internal processes followed to investigate and
15 respond to customer complaints described herein; and (7) other internal sources of
16 aggregate information about the Defect. Defendant was well aware—or could and
17 should have been reasonably aware—of the Defect but failed to notify its customers of
18 the nature and extent of the problems with Class Devices or provide any adequate
19 remedy for the Defect.

20 **C. Defendant Has Actively Concealed the Defect**

21 48. Despite its knowledge of the Defect impacting the Class Devices,
22 Defendant actively concealed the existence and nature of the Defect from Plaintiff and
23 Class members. Specifically, Defendant failed to disclose or actively concealed at and
24 after the time of purchase of Class Devices:

- 25 a. that the Class Devices would become useless upon launch of Defendant's
26 Network and consequent network shutdowns;

1 b. that the Class Devices grandfathered into previous service deals would be
2 forced to not only end their contracts, often early, but also purchase new
3 devices on more expensive plans in order to receive any level of service

4 c. that the Defendant had no intention of offering an adequate remedy to the
5 class members even upon notifying consumers of the Defect.

6 **D. Defendant Has Unjustly Retained A Substantial Benefit**

7 49. On information and belief, Plaintiff alleges that Defendant unlawfully failed
8 to disclose the alleged defect to induce him and other putative Class members to
9 purchase Class Devices.

10 **V. CLASS ALLEGATIONS**

11 50. Plaintiff brings this action on behalf of himself, and on behalf of the
12 following nationwide class pursuant to FED. R. CIV. P. 23(a), 23(b)(2), and/or 23(b)(3).
13 Specifically, the nationwide class consists of the following:

14 **Nationwide Class:**

15 All persons or entities in United States who are current or former owners and/or
16 lessees of a Class Device (the "Nationwide Class").

17 51. In the alternative to the Nationwide Class, and pursuant to FED. R. CIV.
18 P. 23(c)(5), Plaintiff seeks to represent the following state subclass only in the event that
19 the Court declines to certify the Nationwide Class above:

20 **Washington Subclass:**

21 All persons or entities in Washington who are current or former owners and/or
22 lessees of a Class Device (the "Washington Subclass").

23 52. The Nationwide Class and the Washington Subclass are referred to herein
24 as the "Class." Plaintiff reserves the right to modify, change, or expand the definitions of
25 the Class based upon discovery and further investigation.

26 53. The Class excludes the following: Defendant, its affiliates, and its current
27 and former employees, officers and directors, and the Judge assigned to this case. Also

1 excluded are any current or former owners or lessees of Class Devices with
2 individualized claims related to the Defect. Plaintiffs reserve the right to modify, change,
3 or expand the definitions of the Nationwide Class and Washington Subclass based upon
4 discovery and further investigation.

5 54. *Numerosity*: The Class is so numerous that joinder of all members is
6 impracticable. At least hundreds of thousands of Class members have been subjected
7 to Defendant' conduct. The class is ascertainable by reference to records in the
8 possession of Defendant.

9 55. *Predominance*: Common questions of law and fact exist as to all members
10 of the Class. These questions predominate over questions affecting individual members
11 of the Class and include:

- 12 a. Whether the Class Devices were sold with a Defect;
- 13 b. Whether Defendant knew of the Defect at the time of sale;
- 14 c. Whether Defendant failed to disclose the Defect;
- 15 d. Whether Defendant actively concealed the Defect;
- 16 e. Whether a reasonable consumer would consider the Defect or its
17 manifestation to be material;
- 18 f. Whether Defendant breached express and/or implied warranties;
- 19 g. Whether Defendant must disclose the Defect; and
- 20 h. Whether Defendant violated consumer protection statutes and the other
21 claims asserted herein.

22 56. *Typicality*: Plaintiff's claims are typical of the claims of the members of the
23 Class, as all such claims arise out of Defendant's conduct in designing, manufacturing,
24 marketing, advertising, warranting, and selling the Class Devices. All of Plaintiff's claims
25 are typical of the claims of the Class since Plaintiff and all Class members were injured
26 in the same manner by Defendant's uniform course of conduct described herein.
27 Plaintiff and all Class members have the same claims against Defendant relating to the

1 conduct alleged herein, and the same events giving rise to Plaintiff's claims for relief are
2 identical to those giving rise to the claims of all Class members. Plaintiff and all Class
3 members sustained economic injuries including, but not limited to, ascertainable losses
4 arising out of Defendant's course of conduct as described herein. Plaintiff is advancing
5 the same claims and legal theories on behalf of himself and all absent Class members.

6 57. *Adequacy*: Plaintiff will fairly and adequately protect the interests of the
7 members of the Class and has no interests antagonistic to those of the Class. Plaintiff
8 has retained counsel experienced in the prosecution of complex class actions including,
9 but not limited to, consumer class actions involving, *inter alia*, breaches of warranties,
10 product liability, product design defects, and state consumer fraud statutes.

11 58. *Superiority*: A class action is superior to other available methods for the
12 fair and efficient adjudication of this controversy, since individual joinder of all members
13 of the Class is impracticable, and the amount at issue for each Class member would not
14 justify the cost of litigating individual claims. Should individual Class members be
15 required to bring separate actions, this Court would be confronted with a multiplicity of
16 lawsuits burdening the court system while also creating the risk of inconsistent rulings
17 and contradictory judgments. In contrast to proceeding on a case-by-case basis, in
18 which inconsistent results will magnify the delay and expense to all parties and the court
19 system, this class action presents far fewer management difficulties while providing
20 unitary adjudication, economies of scale and comprehensive supervision by a single
21 court.

22 59. *Manageability*: Plaintiff is unaware of any difficulties that are likely to be
23 encountered in the management of this action that would preclude its maintenance as a
24 class action.

25 60. Defendant has acted, and refused to act, on grounds generally applicable
26 to the Class, thereby making appropriate final equitable relief with respect to the Class
27 as a whole.

FIRST CAUSE OF ACTION

BREACH OF EXPRESS WARRANTY, U.C.C. § 2-313

(On Behalf of the Nationwide Class and the Washington Subclass)

61. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

62. Plaintiff brings this claim on behalf of himself and on behalf of the Class.

63. “Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.” U.C.C. § 2-313(a)(1).

64. Defendant’s warranty of the Class Devices is an express warranty within the meaning of U.C.C. § 2-313.

65. The express warranty covers the Defect and any damage proximately caused by the Defect, including repair or replacement of the Class Devices.

66. Plaintiff and Class members reasonably and justifiably relied on Defendant’s express warranty when purchasing the Class Devices.

67. The express warranty fails of its essential purpose to the extent it excludes the Defect because: (1) the Defect unreasonably hinders the normal and foreseeable use of the Class Devices; (2) the Defect is not caused by improper use, neglect, accident, or any other cause outside of Defendant’s control; and (3) Defendant is unable or unwilling to provide an adequate, effective, and lasting remedy and return the Class Devices to warranted condition.

68. Defendant breached the express warranty because the Defect constitutes a defect in the fundamental material functionality of the Class Devices and Defendant is unable or unwilling to provide an adequate, effective, and lasting remedy and return the Class Devices to warranted condition.

1 69. Defendant's breach deprived Plaintiff and Class members of the benefit of
2 the bargain.

3 70. As a direct and proximate result of Defendant's conduct, Plaintiff and Class
4 members have been injured and sustained damages.

5 **SECOND CAUSE OF ACTION**

6 **BREACH OF IMPLIED WARRANTY**

7 **(On Behalf of the Nationwide Class and the Washington Subclass)**

8 71. Plaintiff incorporates by reference all preceding paragraphs as though fully
9 set forth herein.

10 72. Plaintiff brings this claim on behalf of himself and on behalf of the Class.

11 73. Defendant is and was at all relevant times a merchant and seller of cellular
12 and other network-connecting devices within the meaning of the Uniform Commercial
13 Code and relevant state law.

14 74. The Class Devices are and were at all relevant times goods within the
15 meaning of the Uniform Commercial Code and relevant state law.

16 75. A warranty that the Class Devices were in merchantable condition and fit
17 for the ordinary purpose for which such devices are used as defined herein is implied by
18 law under the Uniform Commercial Code and relevant state law.

19 76. Defendant knew or had reason to know of the specific use for which the
20 Class Devices were purchased. Defendant directly sold and marketed Class Devices to
21 customers through authorized retailers, like those from whom Plaintiff and members of
22 the Classes bought their devices, for the intended purpose of consumers purchasing the
23 devices. Defendant knew that the Class Devices would and did pass unchanged from
24 the authorized dealers to Plaintiff and members of the Classes, with no modification to
25 network compatibility.

1 77. Defendant provided Plaintiff and Class members with an implied warranty
2 that the Class Devices and their components and parts are merchantable and fit for the
3 ordinary purposes for which they were sold.

4 78. This implied warranty included, among other things: (i) a warranty that the
5 Class Devices and their hardware that were manufactured, supplied, distributed, and/or
6 sold by the Defendant with network connectivity in mind, including reliable, affordable,
7 and lasting connection; and (ii) a warranty that the Class Devices would be fit for this
8 intended use while the Class used the Class Devices.

9 79. Contrary to the applicable implied warranties, the Class Devices at the
10 time of sale and thereafter were not fit for their ordinary and intended purpose of
11 providing Plaintiff and Class members with reliable, affordable, and lasting network
12 connection. Instead, the Class Devices are defective, including, but not limited to, the
13 existence of the Defect at the time of sale and thereafter. Moreover, Defendant knew of
14 the Defect at the time of sale and sold the Class Devices anyways.

15 80. As a result of Defendant's breach of the applicable implied warranties,
16 Plaintiff and members of the Classes of the Class Devices suffered an ascertainable
17 loss of money, property, and/or value of their Class Devices. Additionally, as a result of
18 the Defect, Plaintiff and members of the Classes were harmed and suffered actual
19 damages in that the Class Devices are substantially certain to become non-functional
20 before their reasonably expected lifespan has run its course.

21 81. Defendant's actions, as complained of herein, breached the implied
22 warranty that the Class Devices were of merchantable quality and fit for such use in
23 violation of the Uniform Commercial Code and relevant state law.

24 82. Plaintiff and members of the Classes have complied with all obligations
25 under the warranty, or otherwise have been excused from performance of said
26 obligations as a result of Defendant's conduct described herein.

27

1 83. Plaintiff and members of the Classes were not required to notify Defendant
2 of the breach because affording Defendant a reasonable opportunity to cure its breach
3 of warranty would have been futile. Defendant was, however, on notice of the Defect
4 from the complaints it received from various Class members and through other internal
5 sources.

6 84. Moreover, Plaintiff has sent a notice letter to the Defendant seeking a
7 remedy for the Defect alleged herein. When confronted with the allegations herein,
8 Defendant has failed to remedy or otherwise provide adequate solution to the Defect.

9 85. As a direct and proximate cause of Defendant's breach, Plaintiff and
10 members of the Classes suffered damages and continue to suffer damages, including
11 economic damages at the point of sale and diminution of value of their Class Devices.
12 Additionally, Plaintiff and members of the Classes have incurred or will incur economic
13 damages at the point of replacing their Class Devices and the heightened cost of
14 Defendant's only Network option as well as additional losses.

15 86. As a direct and proximate result of Defendant's breach of the implied
16 warranty of merchantability, Plaintiff and members of the Classes have been damaged
17 in an amount to be proven at trial.

18 **THIRD CAUSE OF ACTION**

19 **BREACH OF WRITTEN WARRANTY UNDER THE MAGNUSON-MOSS**

20 **WARRANTY ACT**

21 **(15 U.S.C. § 2301, et seq.)**

22 **(On Behalf of the Nationwide Class and the Washington Subclass)**

23 87. Plaintiff incorporates by reference all preceding paragraphs as though fully
24 set forth herein.

25 88. Plaintiff brings this claim on behalf of himself and on behalf of the Class.

26 89. Plaintiff and Class members are each a "consumer" within the meaning of
27 15 U.S.C. § 2301(3).

1 90. Defendant is a “supplier” and “warrantor” within the meaning of 15 U.S.C.
2 §§ 2301(4) and (5).

3 91. The Class Devices are a “consumer product” within the meaning of 15
4 U.S.C. § 2301(1).

5 92. Defendant’s warranty is a “written warranty” within the meaning of 15
6 U.S.C. § 2301(6).

7 93. Defendant’s implied warranty of merchantability implied in the contract for
8 sale of the Class Devices is an “implied warranty” within the meaning of 15 U.S.C. §
9 2301(7).

10 94. The amount in controversy of each individual claim is greater than \$25 and
11 the amount in controversy is greater than \$50,000 (exclusive of interests and costs)
12 computed on the basis of all claims to be determined in this suit.

13 95. The warranties cover the Defect and any damage proximately caused by
14 the Defect, including replacement of the Class Devices and increased monthly network
15 service costs.

16 96. Plaintiff and Class members reasonably and justifiably relied on
17 Defendant’ warranty when purchasing the Class Devices.

18 97. Defendant represented to Plaintiff and Class members that the Class
19 Devices were merchantable, high-quality, durable, and safe.

20 98. The Defect caused the Class Devices to fail to conform to Defendant’s
21 representations.

22 99. The Defect caused the Class Devices to be unfit for their ordinary
23 purposes because the Defect prevents consumers from using the Class Devices for their
24 primary intended purpose.

25 100. The warranty fails of its essential purpose to the extent it excludes the
26 Defect because the Defect unreasonably hinders the normal and foreseeable use of the
27 Class Devices, the Defect is not caused by improper use, neglect, accident, or any other

1 cause outside of Defendant's control, and Defendant is unable or unwilling to provide
2 an adequate, effective, and lasting remedy and return the Class Devices to warranted
3 condition.

4 101. Defendant's exclusion of implied warranties is void to the extent it excludes
5 a warranty of merchantability applicable to the Defect because the Defect causes the
6 warranty to fail of its essential purpose.

7 102. Defendant breached the warranty because the Defect constitutes a defect
8 in materiality or workmanship and Defendant is unable or unwilling to provide an
9 adequate, effective, and lasting remedy and return the Class Devices to warranted
10 condition.

11 103. Defendant breached the implied warranty because the Defect causes the
12 Class Devices to fail to conform to Defendant's representations and to be unfit for their
13 ordinary purpose and Defendant is unable or unwilling to provide an adequate, effective,
14 and lasting remedy and return the Class Devices to warranted condition.

15 104. Defendant's breach deprived Plaintiff and Class members of the benefit of
16 the bargain.

17 105. Accordingly, Defendant has also violated 15 U.S.C. § 45(a)(1) by way of
18 15 U.S.C. § 2310(b).

19 106. As a direct and proximate result of Defendant's conduct, Plaintiff and Class
20 members have been injured and sustained damages.

21 **FOURTH CAUSE OF ACTION**

22 **VIOLATIONS OF THE**

23 **WASHINGTON CONSUMER PROTECTION ACT**

24 **(Wash. Rev. Code. 19.86, et seq.)**

25 **(On Behalf of the Washington Subclass)**

26 107. Plaintiff incorporates by reference each preceding paragraph as though
27 fully set forth herein.

1 108. Plaintiff Garcia Moreno brings this claim on behalf of himself and the
2 Washington Subclass.

3 109. Defendant is a “person” within the meaning of the Washington Consumer
4 Protection Act (“WCPA”), Wash. Rev. Code § 19.86.010(1), and conducts “trade” and
5 “commerce” within the meaning of the WCPA, WRC § 19.86.010(2).

6 110. Plaintiff Garcia Moreno and members of the Washington Subclass are
7 “persons” within the meaning of the WCPA, Wash. Rev. Code § 19.86.010(1).

8 111. In the course of Defendant’s business, it intentionally or negligently
9 concealed and suppressed material facts concerning the Defect affecting the primary
10 functionality of the Class Devices. Defendant accomplished this by failing to disclose the
11 known and intended Network release and consequent shutdown of Class Device
12 compatible networks, denying warranty claims arising from the defect, and denying the
13 existence of the Defect.

14 112. Defendant thus violated the WCPA, at a minimum by: (1) representing that
15 the Class Devices have characteristics, uses, benefits, and qualities which they do not
16 have; (2) representing that the Class Devices are of a particular standard, quality, and
17 grade when they are not; (3) advertising the Class Devices with the intent not to sell
18 them as advertised; (4) failing to disclose information concerning the Class Devices with
19 the intent to induce consumers to purchase the Class Devices; and (5) otherwise
20 engaging in conduct likely to deceive.

21 113. Defendant intentionally and knowingly misrepresented material facts
22 regarding the Class Devices with intent to mislead Plaintiff and the Washington
23 Subclass.

24 114. Defendant knew or should have known that its conduct violated the
25 WCPA.

1 115. Defendant owed Plaintiff and Washington class members a duty to
2 disclose, truthfully, all the facts concerning the reliability of the Class Devices because
3 it:

- 4 a. Possessed exclusive knowledge of the Defect;
5 b. Intentionally concealed the Defect from consumers; and
6 c. Made incomplete or negligent representations about the Class Devices
7 generally, while purposefully withholding material facts from Plaintiff and
8 the Washington Subclass.

9 116. Plaintiff and Washington Subclass members suffered ascertainable loss
10 and actual damages as a direct and proximate result of Defendant' misrepresentations
11 and its concealment of and failure to disclose material information. Plaintiff and the
12 Washington Subclass members who purchased the Class Devices would not have
13 purchased them at all and/or—if the Devices' true nature had been disclosed—would
14 have paid significantly less for them. Plaintiff also suffered diminished value of his
15 device, as well as lost or diminished use.

16 117. Defendant's violations present a continuing risk to Plaintiff and the general
17 public. Defendant's unlawful acts and practices complained of herein affect the public
18 interest and are likely to be repeated.

19 118. As a direct and proximate result of Defendant's actions described above,
20 Plaintiff and the Washington Subclass members have been injured in fact and suffered
21 damages, and seek relief in the form of actual damages, treble damages, and
22 reasonable attorneys' fees, pursuant to Wash. Rev. Code § 19.86.090.

23 **FIFTH CAUSE OF ACTION**

24 **COMMON LAW FRAUD**

25 **(On Behalf of the Nationwide Class and the Washington Subclass)**

26 119. Plaintiff and the Class incorporate by reference each preceding and
27 succeeding paragraph as though fully set forth at length herein.

1 120. Plaintiff brings this claim on behalf of himself and the Nationwide Class
2 and the Washington Subclass.

3 121. Defendant committed fraud by failing to disclose and actively concealing,
4 at the point of sale and otherwise, that the Class Devices are defective and would soon
5 be non-functional for their ordinary purpose. Defendant concealed the truth about the
6 Defect, intending for Plaintiffs and the Class to rely upon such concealment— which they
7 did.

8 122. A reasonable consumer would not have expected their network compatible
9 Device to suffer from the Defect described herein. Plaintiff and the members of the Class
10 did not know of the facts which were concealed from them by Defendant. Moreover, as
11 consumers, Plaintiff and the members of the Class did not, and could not, unravel the
12 deception on their own.

13 123. Defendant had a duty to disclose the defect. Defendant had such a duty
14 because the true facts were known and/or accessible only to it and because it knew
15 these facts were not known or reasonably discoverable by Plaintiff or the members of
16 the Class.

17 124. As a direct and proximate result of Defendant's conduct, Plaintiff and
18 members of the Class have been harmed in that they purchased Class Devices they
19 otherwise would not have, paid more for Class Devices than they otherwise would, are
20 now being forced to pay a premium for network service outside of their contract, and are
21 left with Class Devices of diminished value and utility because of the defect. Meanwhile,
22 Defendant has sold more Class Devices than it otherwise could have and charged
23 inflated prices for Class Devices, unjustly enriching itself thereby.

24 125. Based on the foregoing, Plaintiff is entitled to all remedies available,
25 including refunds, actual damages, liquidated damages, punitive damages, attorney
26 fees and other reasonable costs. Plaintiff and Class members request that the Court
27 award equitable relief, including an order requiring Defendant to adequately disclose

1 and offer adequate remedy for the Defect and an order enjoining Defendant from failing
2 to disclose the Defect in future sales of Class Devices.

3 126. Defendant's acts and omissions were done wantonly, maliciously,
4 oppressively, deliberately, with intent to defraud; in reckless disregard of the rights of
5 Plaintiff and the classes; and to enrich itself. Its misconduct warrants an assessment of
6 punitive damages in an amount sufficient to punish them and deter such conduct in the
7 future, which amount shall be determined according to proof at trial.

8 **SIXTH CAUSE OF ACTION**

9 **UNJUST ENRICHMENT**

10 **(On Behalf of the Nationwide Class and the Washington Subclass)**

11 127. Plaintiff and the Class incorporate by reference each preceding and
12 succeeding paragraph as though fully set forth at length herein.

13 128. Plaintiff brings this claim on behalf of himself and the Nationwide Class
14 and the Washington Subclass.

15 129. This claim is pled in the alternative to Plaintiff's contract-based claims.

16 130. Defendant knew or should have known that Plaintiff and the Class paid for
17 the Class Devices with the expectation that they would perform as represented and were
18 free from defects.

19 131. Plaintiff and the Class conferred substantial benefits on Defendant by
20 purchasing the defective Class Devices. Defendant knowingly and willingly accepted
21 and enjoyed those benefits.

22 132. Defendant's retention of these benefits is inequitable.

23 133. As a direct and proximate cause of Defendant's unjust enrichment, Plaintiff
24 and the Class are entitled to an accounting, restitution, attorneys' fees, costs and
25 interest.

26 **RELIEF SOUGHT**

27 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 1 A. determine that the claims alleged herein may be maintained as a
2 class action under Rule 23 of the Federal Rules of Civil Procedure,
3 and issue an order certifying the Class(es) as defined above;
4 B. appoint Plaintiff as the representatives of the Class and his counsel
5 as Class Counsel;
6 C. award all actual, general, special, incidental, statutory, punitive, and
7 consequential damages to which Plaintiff and Class members are
8 entitled;
9 D. award pre-judgment and post-judgment interest on such monetary
10 relief;
11 E. grant appropriate injunctive and/or declaratory relief, including,
12 without limitation, an order that requires Defendant to replace the
13 Class Devices, offer adequate remedy for network changes and
14 corresponding service fees and to extend the applicable warranties
15 to a reasonable period of time, or, at a minimum, to provide Plaintiff
16 and Class members with appropriate curative notice regarding the
17 existence and cause of the Defect;
18 F. award reasonable attorney's fees and costs; and
19 G. grant such further relief that this Court deems appropriate.

20 **JURY DEMAND**

21 Plaintiff and the Class members hereby demand trial by jury of all issues triable
22 as of right by jury.
23
24
25
26
27

DATED: June 15, 2022.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BRESKIN JOHNSON & TOWNSEND, PLLC

By: s/ Cindy Heidelberg
Cindy Heidelberg, WSBA #44121
1000 Second Avenue, Suite 3670
Seattle, WA 98104
(206) 652-8660
cheidelberg@bjtlegal.com

MIGLIACCIO & RATHOD LLP

By: s/ Nicholas Migliaccio
s/ Jason Rathod
Nicholas Migliaccio, *pro hac vice* anticipated
Jason Rathod, *pro hac vice* anticipated
412 H Street NE, Suite 302
Washington, DC 20002
(415) 489-7004
nmigliaccio@classlawdc.com
jathod@classlawdc.com

Attorneys for Plaintiffs