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County of San Diego
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Clerk of the Superior Court
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6 Attorney for Plaintiffs MATTI YOUSIF,
7 ELIZABETH IOANE, ZACH BEIMES,
8 and DAWN HARRELL

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SAN DIEGO**

11 MATTI YOUSIF, an individual,
12 ELIZABETH IOANE, an individual, and
13 ZACH BEIMES, an individual, and
14 DAWN HARRELL, an individual, on
15 behalf of themselves and all others
16 similarly situated,

15 Plaintiffs,

16 vs.

17 COXCOM, LLC, a Delaware limited liability
18 company;
19 COX COMMUNICATIONS CALIFORNIA,
20 LLC, a Delaware limited liability company;
21 and
22 DOES 1 through 100, ,

22 Defendants.

) Case No: 37-2015-00018071-CU-BT-CTL

) **CLASS ACTION COMPLAINT FOR:**

) **(1) VIOLATION OF CIVIL CODE**
SECTION 1750;

) **(2) VIOLATION OF CALIFORNIA**
BUSINESS AND PROFESSIONS
CODE SECTION 17200 ET. SEQ.;

) **(3) VIOLATION OF CALIFORNIA**
BUSINESS AND PROFESSIONS
CODE SECTION 17500;

) **(4) VIOLATIONS OF NEVADA'S**
DECEPTIVE TRADE PRACTICES
ACT (NRS 598 ET SEQ.);

) **(5) VIOLATION OF THE ARIZONA**
CONSUMER FRAUD ACT, ARIZ.
REV. STAT. § 44-1522(A).

) **(6) BREACH OF EXPRESS WARRANTY;**

) **(7) CONSTRUCTIVE TRUST;**

) **(8) CONVERSION.**

1 Plaintiffs Matti Yousif, Elizabeth Ioane, Zach Beimes, and Dawn Harrell individually, and
2 on behalf of all others similarly situated (hereinafter collectively “Plaintiffs”), hereby complain
3 and allege on information and belief as follows:

4 **PARTIES**

5 1. Plaintiff Matti Yousif (“Mr. Yousif” or “Plaintiff Yousif”) is an individual who at
6 all times herein relevant resided, and continues to reside in or around San Diego, California, the
7 County of San Diego.

8 2. Plaintiff Elizabeth Ioane (“Ms. Ioane” or “Plaintiff Ioane”) is an individual who at
9 all times herein relevant resided, and continues to reside, in or around Oceanside, California, in
10 the County of San Diego.

11 3. Plaintiff Zach Beimes (“Mr. Beimes” or “Plaintiff Beimes”) is an individual who
12 at all times herein relevant resided, and continues to reside, in or around Henderson, Nevada, in
13 Clark County.

14 4. Plaintiff Dawn Harrell (“Ms. Harrell” or “Plaintiff Harrell”) is an individual who at
15 all times herein resided, and continues to reside, in or around Phoenix, Arizona, in Maricopa
16 County. Mr. Yousif, Ms. Ioane, Mr. Beimes and Ms. Harrell are collectively referred to herein as
17 “Plaintiffs.”

18 5. Plaintiffs seek relief in their individual capacities and on behalf of the statewide
19 Class for the state in which each of them resides (defined below).

20 6. On information and belief, Cox Enterprises, Inc. is a privately-held media
21 conglomerate engaged in various industries, including but not limited to, providing Internet
22 broadband communications and entertainment-related services; operating broadcast television and
23 radio stations, metro newspapers and more than a dozen non-daily publications; and providing
24 vehicle remarketing services and digital marketing and software solutions for automotive dealers
25 and consumers.

26 7. On information and belief, defendant CoxCom, LLC is a limited liability company
27 organized and existing under the laws of the State of Delaware with its principal place of business
28 in Atlanta, Georgia. On information and belief, defendant CoxCom, LLC is the subsidiary of Cox

1 Enterprises, Inc. engaged in providing cable television, Internet broadband and other
2 entertainment-related services. On information and belief, Defendant CoxCom, LLC is the
3 nation's third largest television cable and broadband company and one of the largest broadband
4 communications companies in the United States, with services including residential and
5 commercial video, data and voice offerings in California, Nevada, Arizona and/or elsewhere.

6 8. On information and belief, defendant Cox Communications California, LLC is a
7 limited liability company organized and existing under the laws of the State of Delaware with its
8 principal place of business in Atlanta, Georgia. and is a subsidiary of CoxCom, LLC. On
9 information and belief, CoxCom, LLC provided television cable service to thousands of
10 California residents prior to January 1, 2012. On information and belief, on August 24, 2011
11 CoxCom, LLC formed, and became the sole member of, Cox Communications California, LLC
12 and, starting on January 1, 2012, Cox Communications California, LLC began providing
13 television cable services to thousands of California residents. On information and belief, during
14 the past four years prior to the filing of this Complaint, CoxCom, LLC and Cox Communications
15 California, LLC have collectively received millions of dollars from cable television subscribers in
16 California.

17 9. Plaintiffs are unaware of the true names, identities or capacities, whether
18 individual, corporate, associate or otherwise, of those defendants sued herein as DOES 1 through
19 100, inclusive. Plaintiffs therefore sue said defendants by such fictitious names. Plaintiffs will
20 seek leave to amend this Complaint to set forth the true names and capacities of these defendants
21 when they are ascertained.

22 10. Plaintiffs are informed and believe and on that basis allege that defendants sued
23 herein as DOES 1 through 100, inclusive, and each of them, are in some way responsible for the
24 acts and events complained of herein, and proximately caused the injuries and damages to
25 Plaintiffs and the Class which are described in this Complaint. Plaintiffs will seek leave of court
26 to amend this Complaint to more specifically set forth these defendants' wrongful conduct when
27 it has been ascertained.

28 11. Plaintiffs are informed and believe and on that basis allege that at all times herein

1 mentioned, the named defendants and DOES 1 through 100, and each of them, were the
2 principals, agents, servants, employers, employees, representatives, subsidiaries, affiliates of said
3 defendants and operating within the purpose and scope of their relationships with defendant, and
4 engaged in conduct that was directed, authorized, ratified, approved, or otherwise sanctioned by
5 defendants and that DOES 1 through 100 are responsible in some manner for the occurrences
6 and/or acts complained of herein and are liable to Plaintiffs and the Class. Defendants CoxCom,
7 LLC and Cox Communications California, LLC and DOES 1 through 100 are collectively
8 referred to herein as “Defendant” or “Cox.”

9 **JURISDICTION AND VENUE**

10 12. This Court has subject matter jurisdiction over this action pursuant to California
11 Business and Professions Code §§ 17203, 17204 and 17535 and Civil Code § 1780.

12 13. This Court has personal jurisdiction over Cox because it conducted and continues
13 to conduct business in the State of California, County of San Diego, including supplying cable
14 television to residents of San Diego. Cox has sufficient minimum contacts with California and
15 purposely availed itself of the laws of the State of California by conducting the transactions that
16 are the subject of this action therein. Venue is proper in this Court pursuant to California Code of
17 Civil Procedure §§ 395 and 395.5, Business and Professions Code §§ 17203, 17204 and 17535,
18 and Civil Code § 1780(c) because Defendant conducts business in this County and because a
19 substantial portion of Defendant’s misconduct alleged herein occurred in this County.

20 14. Federal subject matter jurisdiction over this action does not exist. Plaintiffs are
21 informed and believes that the parties in this action do not meet the diversity requirements of the
22 Class Action Fairness Act of 2005, which allows Plaintiffs to bring this action in California State
23 Court. Plaintiffs are informed and believe and thereon alleges that the total amount in
24 controversy is less than \$5,000,000.00. If new facts are obtained with respect to the amount at
25 issue, Plaintiffs will seek leave to amend this Complaint. Plaintiffs and the members of the Class
26 assert no federal question. The state law claims mandate that this action be heard in a California
27 state court.

1 FACTUAL ALLEGATIONS

2 15. Defendant offers cable television services to consumers in various states
3 throughout the country, including the states where Plaintiffs herein reside. Defendant’s offerings
4 include various levels of cable television service, including but not limited to “Cox Essential TV”,
5 “Cox Advanced TV”, “Cox Advanced TV Preferred”, and “Cox Advanced TV Premier”, which
6 consist of various combinations of cable channels and other features. In addition to selling cable
7 service, Internet service, and/or phone service separately, Defendant offers “bundles” of cable
8 television, Internet, and telephone services; a number of Defendant’s bundled services include its
9 “Advanced TV” service, including but not limited to, “Cox Advanced TV and Internet Essential,”
10 “Cox Advanced TV and Internet Preferred,” “Cox TV and Phone Essential,” and “Cox TV and
11 Phone Premier.”

12 16. Defendant represents to consumers in its standardized, uniform marketing
13 materials that the advertised price of Advanced TV includes the total amount of the monthly
14 recurring fees for Advanced TV and applicable discounts (including, for example, temporary
15 “promotional” rates that expire after a few months) and that the only other charges not included in
16 the advertised price consist of government-mandated applicable taxes, fees, and surcharges. In
17 reality, however, unbeknownst to consumers, and without their authorization or consent,
18 Defendant has charged, and continues to charge, many Advanced TV subscribers separate,
19 additional amounts for Advanced TV. Defendant has failed, and continues to fail, to disclose
20 these additional, unauthorized fees to consumers or that the price for Advanced TV as advertised
21 by Defendant does not include these additional, unauthorized charges. Instead, on information
22 and belief, Defendant deliberately misleads consumers and obfuscates these additional,
23 unauthorized charges, including but not limited to, by misleadingly and confusingly labelling
24 them as fees for “Advanced TV”, the name of the television cable service. To the extent that
25 Defendant’s marketing materials alleged herein contain any qualifying disclosures concerning the
26 monthly price Plaintiffs and the Class consumers will pay for Advanced TV, any such disclosures
27 are and were inadequate in terms of their content, presentation, proximity, prominence or
28 placement such that consumers are unlikely to see or understand such disclosures. On

1 information and belief, consumers have purchased Advanced TV from Defendant as well as paid
2 these additional, unauthorized charges in reliance upon Defendant's misrepresentations,
3 misleading statements, omissions and other wrongful conduct. On information and belief, as a
4 result of Defendant's wrongful conduct, Defendant has wrongfully received millions of dollars
5 from Advanced TV subscribers.

6 17. Within the past four years, Plaintiffs Yousif and Ioane subscribed to Defendant's
7 Advanced TV cable television service for service in San Diego County, California, Plaintiff
8 Beimes subscribed to Defendant's Advanced TV cable television service in Clark County,
9 Nevada, and Plaintiff Dawn Harrell subscribed to Defendant's Advanced TV cable television
10 service in Maricopa County, Arizona. Prior to Plaintiffs making their respective purchases of
11 Defendant's Advanced TV cable television service, Defendant represented to Plaintiffs in its
12 standardized, uniform marketing materials that the advertised price of Advanced TV includes the
13 total amount of the monthly recurring fees for Advanced TV and applicable discounts (including,
14 for example, temporary "promotional" rates that expire after a few months) and that the only other
15 charges not included in the advertised price consist of government-mandated applicable taxes,
16 fees, and surcharges. In reality, however, unbeknownst to Plaintiffs, and without their
17 authorization or consent, Defendant has charged, and continues to charge, Plaintiff separate,
18 additional amounts for Advanced TV. Defendant has failed, and continues to fail, to disclose
19 these additional, unauthorized charges to Plaintiffs and other consumers or that the price for
20 Advanced TV as advertised by Defendant does not include these additional, unauthorized
21 charges. Plaintiffs purchased Advanced TV from Defendant and paid these additional,
22 unauthorized charges in reliance upon Defendant's misrepresentations, misleading statements,
23 omissions and other wrongful conduct. As a result of Defendant's wrongful conduct, Plaintiffs
24 paid Defendant at least \$50 worth of additional, unauthorized "Advanced TV" charges, in
25 additional to other losses. Accordingly, Plaintiffs have suffered actual damages as a result of
26 Defendant's wrongful conduct.

27 CLASS ALLEGATIONS

28 18. Plaintiffs re-allege and incorporate by reference the allegations contained in the

1 paragraphs above as if fully set forth herein.

2 19. Plaintiffs brings this lawsuit on behalf of themselves and the members of the
3 proposed Class under California Code of Civil Procedure, Section 382, and California Civil
4 Code, Sections 1752, 1780, and 1781. The proposed California Class consists of: all persons in
5 the State of California who have paid Defendant a separate “Advanced TV” fee in addition to the
6 monthly, recurring charges for its Advanced TV television cable service (the “California Class”).
7 The proposed Nevada Class consists of: all persons in the State of Nevada who have paid
8 Defendant a separate “Advanced TV” fee in addition to the monthly, recurring charges for its
9 Advanced TV television cable service (the “Nevada Class”). The proposed Arizona Class
10 consists of: all persons in the State of Arizona who have paid Defendant a separate “Advanced
11 TV” fee in addition to the monthly, recurring charges for its Advanced TV television cable
12 service (the “Arizona Class”). (The California Class, Nevada Class, and Arizona Class are
13 individually and collectively referred to herein as “the Class”).

14 20. Subject to additional information obtained through further investigation and
15 discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or
16 amended complaint. Specifically excluded from the proposed Class is Defendant, its officers,
17 directors, agents, trustees, parents, children, corporations, trusts, representatives, employees,
18 principals, servants, partners, joint venturers, or entities controlled by Defendants, and its heirs,
19 successors, assigns, or other persons or entities related to or affiliated with Defendant and/or its
20 officers and/or directors, or any of them; the Judge assigned to this action, and any member of the
21 Judge’s immediate family.

22 21. This action may properly be maintained as a class action pursuant to California
23 Code of Civil Procedure § 382 and Civil Code §§ 1752, 1780 and 1781. Plaintiffs are informed
24 and believe that the Class consists of thousands of persons in the State of California. The
25 members of the Class are so numerous that separate joinder of each member is impractical.
26 Appropriate discovery can determine the exact number of Class members. The disposition of
27 their claims in a class action will provide substantial benefits to the parties and the Court.
28 Furthermore, the prosecution of separate actions by individual members of the Class would create

1 a risk of inconsistent or varying adjudications and would necessarily be dispositive of claims
2 owned by non-party class members. Further:

3 22. ***Numerosity.*** The members of the Class are so numerous that their individual
4 joinder is impracticable. Plaintiffs are informed and believe, and on that basis alleges, that the
5 proposed Class contains thousands of members. The precise number of Class members is
6 unknown to Plaintiffs. The true number of Class members is known by the Defendant, however,
7 and thus, may be notified of the pendency of this action by first class mail, electronic mail, and by
8 published notice.

9 23. ***Existence and Predominance of Common Questions of Law and Fact.*** There
10 exists a well-defined community of interest in the questions of law and fact presented by this
11 controversy. Common questions of law and fact exist as to all members of the Class and
12 predominate over any questions affecting only individual Class members. These common legal
13 and factual questions include, but are not limited to, the following:

14 (a) whether Defendant made statements to Plaintiffs and the Class concerning
15 the amounts charged by Defendant for its Advanced TV;

16 (b) whether Defendant's alleged statements are false, or are misleading, or
17 reasonably likely to deceive;

18 (c) whether Defendant's alleged conduct is misleading or reasonably likely to
19 deceive;

20 (d) whether Defendant's alleged conduct violates public policy;

21 (e) whether Defendant's alleged conduct constitutes violations of the laws
22 asserted herein;

23 (f) whether Defendant engaged in false or misleading advertising;

24 (g) whether Defendant made express warranties to Plaintiffs and to the Class;

25 (h) whether Defendant breached express warranties made to Plaintiffs and to
26 the Class;

27 (i) whether Defendant has received ill-gotten gains from Plaintiffs and the
28 Class as a result of its alleged wrongful conduct;

1 (j) whether Defendant has been unjustly enriched because Defendant
2 knowingly gained and retained money in an inequitable manner at the expense of Plaintiffs and
3 the Class;

4 (k) whether Defendant wrongfully took possession of and has since retained
5 monies belonging to Plaintiffs and the Class;

6 (l) whether Plaintiffs and Class members have sustained monetary loss and the
7 proper measure of that loss;

8 (m) whether Plaintiffs and Class members are entitled to an award of
9 restitution;

10 (n) whether Plaintiffs and Class members are entitled to declaratory and
11 injunctive relief.

12 24. **Typicality.** Plaintiffs' claims are typical of the claims of the members of the Class
13 in that, among other reasons, Defendant was unjustly enriched as a result of Plaintiffs' and the
14 Class' respective purchases of Defendant's Advanced TV television cable service.

15 25. **Adequacy of Representation.** Plaintiffs will fairly and adequately protect the
16 interests of the members of the Class. Plaintiffs have retained counsel experienced in complex
17 consumer class action litigation, and Plaintiffs intend to prosecute this action vigorously.
18 Plaintiffs has no adverse or antagonistic interests to those of the Class.

19 26. **Superiority** (to the extent required). A class action is superior to all other available
20 means for the fair and efficient adjudication of this controversy. The damages or other financial
21 detriment suffered by individual Class members is relatively small compared to the burden and
22 expense that would be entailed by individual litigation of their claims against the Defendant. It
23 would thus be virtually impossible for the Class, on an individual basis, to obtain effective redress
24 for the wrongs done to them. Furthermore, even if Class members could afford such
25 individualized litigation, the court system could not. Individualized litigation would create the
26 danger of inconsistent or contradictory judgments arising from the same set of facts.
27 Individualized litigation would also increase the delay and expense to all parties and the court
28 system from the issues raised by this action. By contrast, the class action device provides the

1 benefits of adjudication of these issues in a single proceeding, economies of scale, and
2 comprehensive supervision by a single court, and presents no unusual management difficulties
3 under the circumstances here. In the alternative, the Class may also be certified because:

- 4 (a) the prosecution of separate actions by individual Class members would
5 create a risk of inconsistent or varying adjudication with respect to
6 individual Class members that would establish incompatible standards of
7 conduct for the Defendant;
- 8 (b) the prosecution of separate actions by individual Class members would
9 create a risk of adjudications with respect to them that would, as a practical
10 matter, be dispositive of the interests of other Class members not parties to
11 the adjudications, or substantially impair or impede their ability to protect
12 their interests; and/or
- 13 (c) Defendant has acted or refused to act on grounds generally applicable to
14 the Class thereby making appropriate final declaratory and/or injunctive
15 relief with respect to the members of the Class as a whole.

16 24. Adequate notice can be given to Class members directly using information
17 maintained in Defendant's records or through notice by publication.

18 25. Damages may be calculated, in part, from the sales information maintained in
19 Defendant's records, so that the cost of administering a recovery for the Class can be minimized.
20 However, the precise amount of damages available to Plaintiffs and the other members of the
21 Class is not a barrier to class certification.

22 26. Plaintiffs seek a preliminary and permanent injunction and equitable relief on
23 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin and
24 prevent Defendant from engaging in the acts described, and requiring Defendant to provide full
25 restitution to Plaintiffs and Class members.

26 27. Unless a class is certified, Defendant will retain monies received as a result of its
27 conduct that was taken from Plaintiffs and proposed Class members. Unless a class-wide
28

1 injunction is issued, Defendant will continue to commit the violations alleged, and the members
2 of the Class and the general public will continue to be misled.

3 28. Defendant has acted and refused to act on grounds generally applicable to the
4 Class, making appropriate final injunctive relief with respect to the Class as a whole.

5 **FIRST CAUSE OF ACTION**

6 **For Violations of the Consumers Legal Remedies Act (Civil Code §1750 *et seq.*)**

7 **On Behalf of Plaintiffs Yousif and Ioane and the California Class**

8 29. Plaintiffs re-allege and incorporate by reference the allegations contained in the
9 paragraphs above as if fully set forth herein.

10 30. This cause of action is brought pursuant to the Consumers Legal Remedies Act,
11 Civil Code, Section 1750, *et seq.* (the “Act”). Each of the named Plaintiffs is a consumer as
12 defined by Civil Code, Section 1761(d). Defendant’s Advanced TV television cable is a service
13 and/or good within the meaning of the Act.

14 31. Defendant violated and continues to violate the Act by engaging in the following
15 practices proscribed by Section 1770(a) of the Act in transactions with Plaintiffs and the Class
16 which were intended to result in, and did result in, the sale of Advanced TV television cable and
17 payment of Defendant’s additional, unauthorized charges to and Plaintiffs and the Class:

- 18 (a) Representing that [Advanced TV television cable] have....characteristics,
19 uses [or] benefits.....which [it does] not have.....
- 20 (b) Representing that a transaction confers or involves rights, remedies, or
21 obligations which it does not have or involve....
- 22 (c) Advertising [Advanced TV television cable] with intent not to sell [it] as
23 advertised.
- 24 (d) Representing that [Advanced TV television cable] [has] been supplied in
25 accordance with a previous representation when [it has] not.

26 32. Defendant violated the Act by making the representations and advertisements
27 concerning Advanced TV described above when it knew, or should have known, that the
28 representations and advertisements were false, deceptive and misleading.

1 33. Defendant's unfair methods of competition and unfair or deceptive acts or
2 practices were material to Plaintiffs' and other Class members' decision to purchase Defendant's
3 Advanced TV television cable and pay Defendant's additional, unauthorized charges for
4 Advanced TV. Plaintiffs and the Class reasonably relied on the misrepresentations and
5 misleading statements and omissions made by Defendant, and sustained injury in fact as a result
6 of Defendant's misconduct, including but not limited to, the loss of money used to purchase
7 Advanced TV television cable from Defendant, pay Defendant's additional unauthorized charges,
8 and loss of use of these funds. As a result of Defendant's conduct, Plaintiffs and Class members
9 have sustained actual damage and out-of-pocket losses.

10 34. Plaintiffs have standing to bring an action pursuant to the CLRA on behalf of
11 himself and the Class because Plaintiffs and the members of the Class have sustained damage as a
12 result of Defendant's wrongful conduct. Plaintiffs are seeking the recovery of monetary damages.

13 35. Pursuant to Section 1782 of the CLRA, Plaintiffs' counsel notified Defendant in
14 writing via certified mail (return receipt requested) of the particular violations of the CLRA
15 described more fully above and demanded that Defendant rectify the actions described above by,
16 among other things, providing complete monetary relief and agreeing to cease the unlawful
17 business practices alleged in this pleading (a copy of said letters is attached as Exhibit A).
18 Defendant, however, responded by denying that it has violated the CLRA and refusing to rectify
19 the actions discussed above, including refusing to provide any monetary relief and refusing to
20 cease its unlawful business practices.

21 36. Plaintiffs have incurred attorneys' fees and costs in connection with the filing of
22 this Complaint and anticipate incurring additional attorneys' fees and costs in connection with the
23 prosecution of this action. An award of attorneys' fees is therefore appropriate pursuant to,
24 among other grounds, Civil Code, Section 1780(d).

25 37. Pursuant to Section 1782(d) of the Act, Plaintiffs and the Class seek a Court
26 order enjoining the above-described wrongful acts and practices and for restitution and
27 disgorgement.

28

1 43. Plaintiffs and the Class reserve the right to allege other violations of law which
2 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to
3 this date.

4 44. Defendant's acts, omissions, misrepresentations, practices and non-disclosures as
5 alleged herein also constitute "unfair" business acts and practices within the meaning of Business
6 & Professions Code Section 17200 *et seq.* in that its conduct is substantially injurious to
7 consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the
8 gravity of the conduct outweighs any alleged benefits attributable to such conduct.

9 45. As stated in this Complaint, Plaintiffs allege violations of consumer protection,
10 unfair competition and truth in advertising laws resulting in harm to consumers. Plaintiffs assert
11 violations of the public policy of engaging in false and misleading advertising, unfair competition
12 and deceptive conduct towards consumers.

13 46. There were reasonably available alternatives to further Defendant's legitimate
14 business interests, other than the conduct described herein.

15 47. Defendant's claims, nondisclosures and misleading statements, as more fully set
16 forth above, were also false, misleading and/or likely to deceive the consuming public within
17 the meaning of Business & Professions Code, Section 17200, and actually *did* deceive
18 Plaintiff.

19 48. Defendant's labeling, website and other advertisements, as described herein, also
20 constitute unfair, deceptive, untrue and misleading advertising.

21 49. Defendant's conduct caused and continues to cause substantial injury to Plaintiffs
22 and the other Class members. Plaintiffs have suffered injury in fact and has lost money as a result
23 of Defendant's unfair conduct. Plaintiffs were exposed to, saw, and relied on Defendant's
24 representations and purchased Advanced TV television cable and paid Defendant's additional,
25 unauthorized "Advanced TV" charges from Defendant in reliance on Defendant's claims.

26 50. Defendant has thus engaged in unlawful, unfair and fraudulent business acts and
27 practices and false advertising, entitling Plaintiffs to judgment and equitable relief against
28 Defendant, as set forth in the Prayer for Relief.

1 **FOURTH CAUSE OF ACTION**

2 **For Violation of Nevada's Deceptive Trade Practices Act (NRS 598 *et seq*) On Behalf of**
3 **Plaintiff Beimes and the Nevada Class**

4 58. Plaintiff re-alleges and incorporates by reference the allegations contained in the
5 paragraphs above as if fully set forth herein.

6 59. The acts, omissions, and practices of Defendant as alleged herein constituted, and
7 continue to constitute deceptive trade practices within the meaning of NRS §§ 598.0915 and
8 598.0925. Plaintiff has standing to bring this action under NRS § 598.0993 because he has
9 suffered injury in fact and has lost money because of Defendant's conduct.

10 60. Defendant has engaged in “deceptive trade practices” by, in the course of its
11 business or occupation, knowingly making false representations and statements and omissions as
12 alleged above in connection with its offering of Advanced TV. Defendant's actions described
13 herein constitute deceptive trade practices within the meaning of NRS §§ 598.0915 and 598.0925
14 in that Defendant's failure to disclose was likely to mislead Plaintiff and the Class.

15 61. As a result of the conduct described above, Defendant has been and will be
16 unjustly enriched at the expense of Plaintiff and the Class.

17 62. The aforementioned unlawful or unfair business acts or practices conducted by
18 Defendant has been committed in the past and continue to this day. Defendant has failed to
19 acknowledge the wrongful nature of its actions or take steps to correct its wrongful conduct or
20 provide full restitution and disgorgement of all ill-gotten monies either acquired or retained by
21 Defendant as a result thereof, thereby depriving Plaintiff and the Class of money.

22 63. Pursuant to NRS § 598.0993, Plaintiff and the Class seek an order of this Court
23 requiring Defendant to disgorge all ill-gotten gains and awarding Plaintiff and the Class full
24 restitution of all monies wrongfully acquired by Defendant by means of such deceptive conduct,
25 so as to restore any and all monies to Plaintiff and the Class and the general public, which were
26 acquired and obtained by means of such deceptive conduct, and which ill-gotten gains are still
27 retained by Defendant. Plaintiff and the Class additionally request that such funds be impounded
28 by the Court or that an asset freeze or constructive trust be imposed upon such monies by

1 Defendant. Plaintiff and the Class may be irreparably harmed and/or denied an effective and
2 complete remedy if such an order is not granted.

3 **FIFTH CAUSE OF ACTION**

4 **Violation of the Arizona Consumer Fraud Act (Ariz. Rev. Stat. §§ 44-1521 *et seq.*) On**
5 **Behalf of Plaintiff Harrell and the Arizona Class**

6 64. Plaintiff re-alleges and incorporates by reference the allegations contained in the
7 paragraphs above as if fully set forth herein.

8 65. As alleged above, Defendant knowingly and intentionally misrepresented and
9 omitted material facts to Plaintiff and the Class and violated its duty not to do so.

10 66. Plaintiff and the Class reasonably relied on Defendant's material
11 misrepresentations and omissions in its marketing of its Advanced TV television cable in paying
12 for Advanced TV.

13 67. Defendant's use of deception, false promises, misrepresentations and material
14 omissions in connection with the sale and advertisement of Advanced TV violates the Arizona
15 Consumer Fraud Act, Ariz. Rev. Stat. § 44-1522(A).

16 68. Had Plaintiff and the Class known that Defendant had engaged in the wrongful
17 conduct alleged above, they would not have purchased the Advanced TV or would have paid
18 less for Advanced TV.

19 69. Plaintiff and the Class suffered injury in fact to a legally protected interest. As a
20 result of Defendant's wrongful conduct, Plaintiff and Class members were harmed and suffered
21 actual damages, including but not limited to, the amounts they paid for the unauthorized
22 Advanced TV charges. Had Plaintiff and other Class Members known that they were being
23 charged unauthorized Advanced TV charges, they would not have purchased Advanced TV or
24 would have paid less for it.

25 70. As a result of Defendant's conduct, Plaintiff and Class Members were harmed
26 and suffered actual damages.

27 //

28 //

1 **SIXTH CAUSE OF ACTION**

2 **Breach of Express Warranty On Behalf of Plaintiffs and the Class**

3 71. Plaintiffs re-allege and incorporate by reference the allegations contained in the
4 paragraphs above as if fully set forth herein.

5 72. Plaintiffs, and each member of the Class, formed a contract with Defendant at
6 the time Plaintiffs and the other members of the Class purchased Advanced TV television cable.
7 The terms of that contract include the promises and affirmations of fact made by Defendant, as
8 described above. These representations constitute express warranties, became part of the basis of
9 the bargain, and is part of a standardized contract between Plaintiffs and the members of the
10 Class on the one hand, and Defendant on the other.

11 73. All conditions precedent to Defendant’s liability under this contract have been
12 performed by Plaintiffs and the Class and/or these conditions have otherwise been satisfied.

13 74. Defendant breached the terms of this contract, including the express warranties,
14 with Plaintiff and the Class by not providing the Advanced TV television cable service which
15 could provide the benefits described above at the price advertised by Defendant.

16 75. As a result of Defendant’s breach, Plaintiffs and the Class have been damaged
17 in an amount to be proven at trial.

18 **SEVENTH CAUSE OF ACTION**

19 **For Imposition of Constructive Trust On Behalf of Plaintiffs and the Class**

20 76. Plaintiffs re-allege and incorporate by reference the allegations contained in the
21 paragraphs above as if fully set forth herein.

22 77. Plaintiffs bring this claim individually and on behalf of the Class.

23 78. Defendants have been unjustly enriched because they knowingly gained and
24 retained money in an inequitable manner at the expense of its customers and is thus accountable
25 to the Plaintiffs and Class members to restore such money and are holding in constructive trust
26 such monies for the benefit of Plaintiffs and the Class.

27 79. Defendants may not in good conscience and equity retain the benefits from their
28 wrongful conduct and those monies belong instead to Plaintiffs and members of the Class.

1 B. For declaratory relief finding that Defendant has engaged in unfair, unlawful, or
2 fraudulent business acts or practices in violation of the CLRA and California Business &
3 Professions Code §§ 17200, *et seq.* and 17500, *et seq.*; Ariz. Rev. Stat. §§ 44-1521 *et seq.* and
4 NRS 598 *et seq.*

5 C. For preliminary and permanent injunctive relief enjoining Defendant and its
6 officers, directors, agents, distributors, servants, employees, attorneys, and all others in active
7 concert or participation with Defendant from engaging in the false advertising campaign and
8 selling Advanced TV television cable service using false and misleading statements and
9 omissions and wrongful conduct;

10 D. For restitution to all persons from whom Defendant unlawfully, unfairly, or
11 fraudulently took money, including a full refund of all money spent on the illegal charges alleged
12 above, and accrued interest, in addition to other unjust enrichment of Defendant, in an amount to
13 be proven at trial;

14 E. For restitution, disgorgement, or any other equitable relief this Court deems
15 proper, including imposing a constructive trust on Defendant's excess profits from the improper
16 and unlawful marketing and sale of Defendant's Advanced TV television cable offerings;

17 F. For actual damages suffered by Plaintiffs and members of the Class;

18 G. For punitive damages;

19 H. For interest at the maximum rate allowed by law;

20 I. For costs of suit;

21 J. For Plaintiffs to be awarded attorneys' fees and all litigation expenses pursuant to
22 the California Civil Code § 1780(d) and California Code of Civil Procedure § 1021.5.

23 Alternatively, for all attorneys' fees and all litigation expenses to be awarded pursuant to the
24 substantial benefit doctrine, the common fund doctrine, or any other provision of law; and

25 K. For such other and further relief as the Court may deem just and proper.

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JURY DEMAND

Plaintiffs demand a trial by jury on all causes of action where a trial by jury is permitted.

COLEMAN FROST LLP

Dated: May 29, 2015

By:



Derrick Coleman
Attorneys for Plaintiffs MATTI YOUSIF, ELIZABETH
IOANE, ZACH BEIMES, and DAWN HARRELL

EXHIBIT A



COLEMAN FROST LLP

429 SANTA MONICA BLVD.
SUITE 700
SANTA MONICA, CA 90401

February 17, 2015

Sent Via Certified Mail, Return Receipt Requested

David A. Bialis, Senior Vice-President and General Manager
Cox Communications California, LLC
5651 Copley Dr.
San Diego CA 92111

Cox Communications California, LLC
c/o CSC – Lawyers Incorporating Service
2370 Gateway Oaks Dr., Suite 100
Sacramento CA 95833

Cox Communications California, LLC
c/o Coxcom, LLC, Manager
6205 Peachtree Dunwoody Rd.
Atlanta GA 30328
Attn: Patrick J. Esser, President

Patrick J. Esser, President
CoxCom, LLC
1400 Lake Hearn Dr. N E
Atlanta GA 30319

Coxcom, LLC
c/o CSC – Lawyers Incorporating Service
2370 Gateway Oaks Dr., Suite 100
Sacramento CA 95833

Re: *Matti Yousif v. Cox Communications California, LLC and Coxcom, LLC*

Greetings:

We represent Matti Yousif and all other consumers similarly situated with regard to their claims against Cox Communications California, LLC and Coxcom, LLC (collectively hereafter

“Cox”) arising out of, inter alia, misrepresentations, either express or implied, by Cox to consumers concerning the amounts charged for its Advanced TV services.

Cox represented to consumers in its standardized, uniform marketing materials that the advertised price of Advanced TV includes the total amount of the monthly recurring fees for Advanced TV and applicable discounts (including, for example, temporary “promotional” rates that expire after a few months) and that the only other charges not included in the advertised price consist of government-mandated applicable taxes, fees, and surcharges. In reality, however, unbeknownst to Mr. Yousif and other consumers, and without their authorization or consent, Cox has charged, and continues to charge, separate, additional amounts for Advanced TV. Cox has failed, and continues to fail, to disclose these additional, unauthorized charges to consumers or that the price for Advanced TV as advertised by Cox does not include these additional, unauthorized charges. Mr. Yousif purchased Advanced TV from Cox and paid these additional, unauthorized charges in reliance upon Cox’s misrepresentations, misleading statements, omissions and other wrongful conduct.

Cox’s representations are false and misleading and, along with the deceptive over billing practices, constitute unfair methods of competition and unlawful, unfair and fraudulent acts or practices, undertaken by Cox with the intent to result in the sale of its Advanced TV offerings to the public. In fact, these representations do not assist consumers; they simply mislead them.

This practice constitutes a violation of the California Civil Code Section 1770(a) under, inter alia, the following subdivisions:

- (a) Representing that [Advanced TV television cable] has . . . characteristics, . . . uses [or] benefits . . . which [it does] not have
- (b) Representing that the purchase of the Advanced TV service confers or involves rights, remedies, or obligations which it does not have or involve....
- (c) Advertising [Advanced TV television cable] with intent not to sell [it] as advertised.
- (d) Representing that [Advanced TV television cable] [has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code Section 1770(a)(5)-(16).

February 17, 2015

Re: Cox Communications California, LCC and Coxcom, LLC

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Cox's claims and billing practices also constitute violations of California Business and Professions Code Sections 17200 and 17500 *et seq*, conversion and a breach of the express and implied warranties related to the sale of the Advance TV services.

Pursuant to California Civil Code Section 1782, we hereby demand on behalf of our client and all others similarly situated in California that Cox immediately correct and rectify this violation of California Civil Code Section 1770 by ceasing the misleading marketing campaign, ceasing the dissemination of false and misleading information, and by engaging in an appropriate corrective advertising campaign. In addition, Cox should offer to refund the improper Advanced TV charges to all consumer purchasers of these services, plus reimbursement for interest, costs and fees.

Mr. Yousif will, after 30 days from the date of this letter, file a Complaint against Cox seeking, among other remedies, claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims would also include claims under theories of unlawful business acts and practices, unfair and fraudulent business acts and practices, false and deceptive advertising, as well as the claims under the Consumer Legal Remedies Act, conversion and breach of express and implied warranties. Thus, to avoid further litigation, it is in the interest of all parties concerned that Cox address this problem immediately.

Cox must undertake all of the following actions to satisfy the requirements of California Civil Code Section 1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the Cox Advanced TV services who reside in California;
2. Notify all such consumers so identified that upon their request, Cox will offer an appropriate correction for its wrongful conduct, which can include a full refund of the purchase price paid for such services, plus interest, costs and fees;
3. Undertake (or promise to undertake within reasonable time if it cannot be done immediately) the actions described above for all purchasers who so request; and
4. Cease from expressly or impliedly representing to consumers that Cox's price for Advanced TV services includes the total amount of the monthly recurring fees for Advanced TV and applicable discounts (including, for example, temporary "promotional" rates that expire after a few months) and that the only other charges not included in the advertised price consist of government-mandated applicable taxes, fees, and surcharges.

In addition, we remind you of your legal duty to preserve all records relevant to such litigation. This firm anticipates that all e-mails, letters, reports, and internal corporate instant

February 17, 2015

Re: Cox Communications California, LCC and Coxcom, LLC

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messages that relate to the formulation and marketing of the Advanced TV services will be sought in the forthcoming discovery process. Therefore, you must inform any employees, contractors, and third-party agents (for example, advertising agencies handling your services account) to preserve all such relevant information.

We await your response.

Sincerely,



Derrick Coleman
COLEMAN FROST LLP

EXHIBIT B

DECLARATION OF MATTI YOUSIF

I, Matti Yousif, declare as follows:

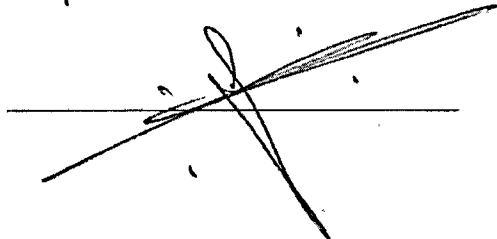
I am the plaintiff in the above-entitled action and make this declaration to the best of my knowledge, information and belief of the facts stated herein.

I am over twenty-one years of age and am a resident of San Diego, California.

I purchased the television subscription at issue in this action while in San Diego County.

Defendant conducts business in the County of San Diego.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was signed on the 27 day of May 2015, at San Diego, California.



Matti Yousif