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Attorneys for Plaintiff and the Proposed Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEBRA WANLESS, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

BEST BUY COMPANY, INC., and DOES 1
through 20, inclusive,

Defendants.

Case No. **CV 12 2561**
CLASS ACTION

COMPLAINT FOR:

- (1) Violations of California Business & Professions Code Section 17200, *et seq.*;
- (2) Violations of California Business & Professions Code Section 17500, *et seq.*;
- (3) Violation of California's Consumer Legal Remedies Act, California Civil Code Section 1750, *et seq.*;
- (4) Breach of Contract and the Implied Covenant of Good Faith & Fair Dealing; and
- (5) Unjust Enrichment

DEMAND FOR JURY TRIAL

FILED
MAY 17 2012
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JSC



1 Plaintiff Debra Wanless, individually and on behalf of all others similarly situated,
2 alleges the following upon personal knowledge as to her own acts and, as to all other allegations,
3 upon information and belief, and based upon investigation by counsel:

4 INTRODUCTION

5 1. This is a class action against Best Buy Company, Inc. ("Best Buy" or the
6 "Company") for falsely advertising and misrepresenting that under Best Buy's mobile phone
7 service protection plan, also known as the Geek Squad Black Tie Protection Plan (hereinafter
8 referred to as the "Mobile Phone Plan" or "Plan"), customers would be provided a new phone if
9 their existing mobile phone suffered irreparable damage, from among other things, accidental
10 damage. In violation of federal and state law, Best Buy unlawfully concealed and failed to
11 disclose prior to or at the time of the sale of Mobile Phone Plan, that in fact, when purchasers of
12 the Plan brought their damaged mobile phones to Best Buy and needed a replacement, they
13 would never get a new phone and, at most would be provided a "refurbished" phone.
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16 2. Plaintiff brings this action for actual damages, equitable relief (including
17 restitution, injunctive relief and disgorgement of profits), and such other relief as appropriate on
18 behalf of similarly situated individuals and entities who purchased the Best Buy Mobile Phone
19 Plan. All of the claims asserted herein arise out of Best Buy's material misrepresentations and
20 omissions regarding the terms of the Mobile Phone Plan and its violations of federal and state
21 law which, among other things, required Best Buy to fully, clearly and conspicuously disclose in
22 simple and readily understood language, the terms and conditions of the Mobile Phone Plans,
23 particularly that consumers would, at most be provided with a "refurbished" phone. Plaintiff
24 also alleges claims on behalf of all California purchasers for violations of California unfair
25 competition and false advertising laws.
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JURISDICTION AND VENUE

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3. This Court has jurisdiction over all the causes of action asserted herein. The Court has jurisdiction over the state law claims under the Class Action Fairness Act, 28 U.S.C. §1332(d), because this is a class action in which: (1) there are 100 or more members in the proposed class; (2) at least some members of the proposed class have different citizenship from Best Buy; and (3) the claims of the members of the proposed class exceed \$5 million in the aggregate.

4. The Court has personal jurisdiction over Best Buy because it has purposefully availed itself of the privilege of conducting business within the State of California by marketing, advertising and selling the Mobile Phone Plan to plaintiff and members of the proposed class, as well as generally maintaining systematic and continuous business contacts within the State of California.

5. Venue is proper pursuant to 28 U.S.C. §1391(c) because Best Buy conducts substantial business in this District, has sufficient minimum contacts with this District, and otherwise purposely avails itself of the markets in this District, through the promotion, sale, marketing and administration of its products in this District.

PARTIES

6. Plaintiff Debra Wanless ("Wanless") is and has during the relevant period described herein, been a resident of Sacramento County, California.

7. Defendant Best Buy is a Minnesota corporation, headquartered at 7601 Penn Avenue South, Richfield, Minnesota 55423-3645. According to Best Buy's website, as of the date of this filing, it has over 4,100 stores throughout the United States. The State of California has the most stores of any state – 126 Best Buy stores, 29 Best Buy Mobile Stand-alone stores, 31 Pacific sales stores, and 3 Magnolia Audio and Video stores. Best Buy operates as a retailer

1 of consumer electronics, home office products, entertainment products, appliances, and related
2 services primarily in the United States, Europe, Canada and China. Best Buy stores offer, *inter*
3 *alia*, notebook and desktop computers, tablets, monitors, mobile phones and related subscription
4 service commissions, hard drives, networking equipment and related accessories such as printers.
5 In addition, the Company offers service contracts, warranties, computer-related services, and
6 product repair, as well as delivery and installation services for home theaters, and mobile audio
7 and appliances.
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9 8. Plaintiff is currently unaware of the true names, capacities, or basis for liability of
10 defendants Does 1 through 20, inclusive, and therefore sues said defendants by their fictitious
11 names. Plaintiff will amend her complaint to allege their true names, capacities or basis for
12 liability when the same have been ascertained. Plaintiff is informed and believes, and on that
13 basis alleges, that defendants Does 1 through 20, inclusive, and each of them, are in some
14 manner liable to plaintiff, and/or are proper or necessary parties to this action in light of the relief
15 requested.
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17 **SUBSTANTIVE FACTUAL ALLEGATIONS**

18 9. Sometime in or around January 2009, Wanless purchased an iPhone 3G from the
19 AT&T store along with a two-year AT&T contract for wireless service. Wanless was interested
20 in obtaining service protection for her iPhone, but learned that AT&T or the AT&T store did not
21 sell such coverage at the time. In or around April 2010, Wanless upgraded her phone to an
22 iPhone 3GS from Best Buy. She went to Best Buy specifically because it sold a service and
23 protection plan for its mobile phones. At the time of her iPhone 3GS purchase, Wanless agreed
24 to have her credit card charged \$14.99+tax a month for two years for the coverage. Wanless
25 received a brochure at the time of purchase, but no documentation describing the details and
26 nature of coverage of that Plan. Wanless had paid approximately \$105.00 through November
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1 2010 for coverage on the iPhone 3GS when she upgraded to the iPhone 4. During the April-
2 November 2010 time period, she did not make any claims under that Plan.

3 10. In late 2010, Wanless sought to upgrade her iPhone 3GS to the then-recently
4 released iPhone 4. As before, she wanted service and protection coverage to specifically cover
5 breakage damage for her mobile phone. On November 6, 2010, Wanless went to the Citrus
6 Heights Best Buy store because it sold iPhones with service and protection plans on such mobile
7 phone purchases, intending to purchase the iPhone 4 and Best Buy's Mobile Phone Plan. At the
8 time, Wanless was informed that Best Buy's Mobile Phone Plan was the best insurance one
9 could buy for mobile phones. She was told that all she needed to do was bring in the broken
10 phone and Best Buy would hand her a new phone.
11

12 11. On November 6, 2010, plaintiff purchased an iPhone 4 16GB, for \$199.99 plus
13 \$55.34 tax. At the time of purchase, Wanless was offered, and also purchased, Best Buy's
14 Mobile Phone Plan, also known as the Geek Squad Black Tie Protection Plan, which included
15 coverage for accidental damage. Under the Plan, Wanless agreed that Best Buy would charge
16 her credit card \$14.99+tax/month for 23 months after the initial charge, which was made on the
17 day of the phone purchase, for a total of 24 months. The Best Buy iPhone purchase receipt also
18 stated the following of the Best Buy Mobile Phone Plan Wanless had purchased:
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21 SERVICE AND SERVICE OPTIONS: You want the following service plans:
22 NEW CORP MB PSP PLAN IPHO[NE] - 90203139 - I AUTHORIZE Best Buy
23 to charge my credit card \$14.99+tax/mo for 23 months after the initial charge of
24 \$14.99+tax for the purchase of the Geek Squad Black Tie Protection Plan for my
25 wireless phone. TERMS: Coverage expires 2 yrs. from the original product
26 purchase date as stated on your receipt and will be paid monthly by automatic
charge of \$14.99+tax. Payments must be current to receive service for this plan.
Call 888-237-8289 to cancel this plan. You will be responsible for all payments
through the month of your cancellation. See Terms and Conditions for complete
details.

27 12. Wanless was provided with a two-page brochure at the time she paid for the Plan
28 (attached hereto as Exhibit A). The brochure described the Best Buy Plan as "Probably the Best

1 Mobile Phone Service Plan in the Known Universe” and summarily highlighted the Plan’s
2 benefits. It stated:

3 **PEACE OF MIND** With Geek Squad Black Tie Protection, you can relax since
4 your mobile phone is covered against things like normal wear and tear, random
5 freak power surges, and even those times you drop your phone on the sidewalk
6 and then accidentally kick it when you bend down to pick it up. We know that
7 these things happen. And with our in-store support, it means we’re always on
8 call.* So it’s like having a Geek always with you. (*Services performed outside the
9 plan coverage will result in an additional fee.)

10 13. At no time was plaintiff ever given a copy of the terms and conditions, nor was
11 she directed to some place where she could find them. She did not subsequently receive either a
12 Plan contract or the detailed terms and conditions.

13 14. In accordance with the terms of the Mobile Phone Plan, Best Buy deducted
14 \$14.99+tax at the time of purchase and \$14.99+tax every month thereafter. As of March 2012,
15 Wanless had paid \$254.83. During that time she had no occasion to make any claims or seek any
16 service under the Plan.

17 15. On or about March 17, 2012, Wanless dropped and shattered the casing on her
18 iPhone 4. On or about March 20, 2012, she took the phone into the Folsom Best Buy store and
19 asked for a replacement phone under the Mobile Phone Plan. At the time, she was informed that
20 Best Buy could not give her a new phone right away because Apple would not let Best Buy
21 replace the phone until the broken one was received by Apple. Wanless inquired whether she
22 would receive a new phone under the Plan, and was informed for the first time, that she would
23 get a refurbished phone. When she complained that was not what the Plan provided, she was
24 informed that most of the refurbished phones are basically new phones that are returned by
25 customers who, after just a month of use, want to upgrade to a newer version. In the interim,
26 Best Buy provided Wanless with a loaner phone. The loaner phone, an iPhone 3G – a
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1 downgrade from her iPhone 4 – was not a comparable replacement: The loaner phone did not
2 hold a charge and was thus not useful during the course of the day.

3 16. Approximately one week later, Wanless returned to the store, and was given her
4 replacement, refurbished iPhone. The refurbished phone came in a baggie, in a brown box and
5 only the phone was handed to her. Given her experience with the loaner phone, and that fact that
6 the replacement was not a new phone as she had been led to believe, in an effort to determine
7 whether the replacement was even remotely a comparable phone, Wanless inquired into the
8 history of the replacement phone: such as any previous damage/problems, how much it had been
9 used, or what company had provided it, whether it had similar problems as the loaner phone, or
10 whether it was her original phone that had been repaired. Best Buy informed her that it had no
11 idea as to the history/prior damage/repairs to the refurbished phone, or the name of the company
12 that had refurbished and provided it to Best Buy. When Wanless inquired how one was
13 supposed to know whether the replacement was comparable, Best Buy's response was that
14 refurbished phones were good phones.
15

16
17 17. At the point Wanless made a claim under the Geek Squad Mobile Phone Service
18 Plan, she had paid over \$254.00 for the Mobile Phone Plan. Had she known at the time of
19 purchase of the Mobile Phone Plan that she would *only* ever get a refurbished phone instead of a
20 new one, including, a difficult and inconvenient loaner phone process, she would never have
21 paid so much for the Best Buy Mobile Phone Plan or bought it in the first place.
22

23 CLASS ACTION ALLEGATIONS

24 18. Plaintiff brings this action individually and as a class action pursuant to Rule 23
25 of the Federal Rules of Civil Procedure. Plaintiff seeks certification of the following class:

26 All California residents who within the last four (4) years purchased
27 service contracts or protection plans with their wireless or mobile phone
28 purchase from Best Buy Company Inc.

1 19. Subject to additional information obtained through further investigation and
2 discovery, the foregoing definition may be expanded or narrowed by amendment or amended
3 complaint.

4 20. Excluded from the definition of the Class are: Defendants and their subsidiaries
5 and affiliates, all persons who make a timely election to opt out of the proposed Class, and
6 governmental entities.
7

8 21. Plaintiff and the members of the Class are so numerous that joinder of all
9 members individually, in one action or otherwise, is impractical.

10 22. This action involves questions of law and fact common to plaintiff and all
11 members of the Class, which include the following:

12 (a) Whether Best Buy engaged in unlawful, unfair or deceptive business practices
13 by failing to provide details of the Mobile Phone Plan coverage prior to its
14 sale to consumers;

15 (b) Whether Best Buy violated California Business & Professions Code Section
16 17200, *et seq.*;

17 (c) Whether Best Buy violated California Business & Professions Code Section
18 17500, *et seq.*;

19 (d) Whether Best Buy violated the Consumer Legal Remedies Act, California
20 Civil Code Section 1750, *et seq.* ("CLRA");

21 (e) Whether Best Buy violated the CLRA by offering a Mobile Phone Plan that
22 was deceptive and unlawful in that it appears to provide coverage that it did
23 not provide;
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- (f) Whether Best Buy breached its agreements with the Class by failing to honor the terms of the agreements and provide the consumer with a new phone rather than a refurbished phone;
- (g) Whether Best Buy breached its duty of good faith and fair dealing to consumers by providing a refurbished phone rather than a new phone; and
- (h) Whether plaintiff and members of the Class sustained damages resulting from Best Buy's conduct and, if so, the proper measure of damages, restitution, equitable, or other relief, and the amount and nature of such relief.

23. Plaintiff understands and is willing to undertake the responsibilities of acting in a representative capacity on behalf of the proposed Class. Plaintiff will fairly and adequately protect the interests of the Class and has no interests adverse to, or which directly conflict with, the interests of the other members of the Class.

24. Plaintiff has engaged the services of counsel who are experienced in complex class litigation, who will adequately prosecute this action, and who will assert and protect the rights of and otherwise represent plaintiff and the absent members of the Class.

25. Plaintiff's claims are typical of those of the absent members of the Class because plaintiff and the members of the Class each sustained damages arising from Best Buy's wrongful conduct, as alleged more fully herein.

26. This action is brought under Federal Rule of Civil Procedure 23 because Best Buy has acted on grounds generally applicable to all members of the Class and/or because questions of law or fact common to members of the Class predominate over any questions affecting only individual members.

1 27. Judicial determination of the common legal and factual issues essential to this
2 case would be far more efficient and economical as a class action than piecemeal individual
3 determinations.

4 28. A class action is the only method for the fair and efficient adjudication of this
5 controversy. Plaintiff and members of the Class have suffered and will continue to suffer
6 irreparable harm as a result of Best Buy's unfair, unlawful, and unconscionable conduct.
7 Because of the nature of most of individual class members' claims, few, if any, members of the
8 Class could afford to seek legal redress for the wrongs complained of herein. A class action is
9 therefore appropriate, the superior method of proceeding, and essential to the interests of justice.

10 29. Absent this class action, the members of the Class will continue to suffer losses
11 and the violations of law described herein will continue without a practical remedy, and Best
12 Buy would unjustly retain the proceeds of its ill-gotten gains. Best Buy continues to engage in
13 the unlawful, unfair, and unconscionable conduct that is the subject of this Complaint. Even if
14 separate actions could be brought by individual members of the Class, the resulting multiplicity
15 of lawsuits would cause undue hardship and expense for both the Court and the litigants and
16 would create a risk of inconsistent or varying rulings and adjudications that might, as a practical
17 matter, be dispositive of the interests of the other members of the Class who are not parties to
18 such adjudications, may substantially impede their ability to protect their interests, and/or would
19 establish incompatible standards of conduct for Best Buy.

20 30. Plaintiff knows of no difficulty that will be encountered in the management of this
21 litigation that would preclude maintenance as a class action.
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COUNT I

For Violations of California Business & Professions Code Section 17200, *et seq.*

31. Plaintiff incorporates the above allegations contained in all preceding paragraphs of this Complaint by reference as though fully set forth herein.

32. Plaintiff brings this claim individually and on behalf of the Class. Plaintiff has standing to bring this action under California's Unfair Trade Practices Act, California Business & Professions Code Section 17200, *et seq.* (the "UCL"), because she has suffered injury in fact as a result of Best Buy's conduct and has lost money in the form of monthly payments of \$14.99+tax made from the first month of purchase of the Mobile Phone Plan.

33. Best Buy sold Mobile Phone Plans nationwide and in California in the period described above.

34. Best Buy's conduct in marketing, advertising, selling and other promotional efforts in connection with the Plan constitutes unfair business acts and practices in violation of the UCL.

35. Best Buy failed to provide material details to the consumers of the coverage under the Plan except to provide them a short summary brochure of the categories of coverage. Consumers purchased the Mobile Phone Plan believing that they have "Probably the Best Mobile Phone Service Plan in the Known Universe" and that this coverage meant that, in the event the mobile phone needed to be replaced, they would receive a new phone once they provided the damaged phone to Best Buy. No reasonable consumers would pay \$14.99+tax a month for two years, i.e., almost \$360.00 for the Plan when the phone cost only \$199.00, if they did not believe that they would get a new, rather than a refurbished phone, under the Plan. This becomes even clearer when one considers the dynamic nature of mobile or wireless technology; nearly every

1 mobile phone carrier offers a reduced price for a new phone with an agreement to use the
2 service.

3 36. By engaging in the acts and practices described above, defendant committed one
4 or more acts of "unfair competition" within the meaning of California Business & Professions
5 Code Section 17200. "Unfair competition" is defined to include any "unlawful, unfair or
6 fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and
7 any act prohibited by [Business & Professions Code §17500, *et seq.*]."

9 37. Best Buy committed "unlawful" business acts or practices by, among other things,
10 violating California Business & Professions Code Section 17500.

11 38. Best Buy committed "unfair" business acts or practices by, among other things,
12 engaging in conduct:

13 (a) where the utility of such conduct, if any, is outweighed by the gravity of the
14 consequences to plaintiff and the Class members;

15 (b) that is immoral, unethical, oppressive, unscrupulous, or substantially injurious
16 to plaintiff and The Class members; and

17 (c) that undermines or violates the spirit or intent of the consumer protection laws
18 alleged in this Complaint.
19

20 39. Best Buy committed "fraudulent" business acts or practices by, among other
21 things, engaging in conduct defendant knew or should have known was likely to and did deceive
22 the public, including plaintiff and other Class members.
23

24 40. As detailed above, Best Buy's unlawful, unfair, and/or fraudulent practices
25 include failing to provide sufficient details of the coverage or service protection under the
26 Mobile Phone Plan; representing that consumers would obtain a new phone under the Plan, when
27 defendant intended that not to mean a new phone, but rather a refurbished phone.
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1 41. Plaintiff would not have purchased the Plan, but for defendant's omission and
2 misleading statements about the coverage provided by the Plan. Plaintiff has suffered injury in
3 fact as a result of Best Buy's conduct and has lost money in the form of monthly payments of
4 \$14.99+tax made from the first month of purchase of the Plan.
5

6 42. Plaintiff and the Class members seek restitution for monies wrongfully obtained,
7 disgorgement of ill-gotten revenues and/or profits, and injunctive relief, and other relief
8 allowable under California Business & Professions Code Section 17203, including, but not
9 limited to, enjoining Best Buy from continuing to engage in its unfair, unlawful and/or fraudulent
10 conduct as alleged.

11 **COUNT II**

12 **For Violations of California Business & Professions Code Section 17500, et seq.**

13 43. Plaintiff incorporates the above allegations contained in all preceding paragraphs
14 of this Complaint by reference as though fully set forth herein.
15

16 44. Plaintiff brings this claim individually and on behalf of the Class for misleading
17 and deceptive advertising against Best Buy. Defendant Best Buy sold the Mobile Phone Plan in
18 California and nationwide during the period described above.

19 45. In making and disseminating or permitting to disseminate the statements alleged
20 herein, Best Buy knew or should have known that the statements were untrue or misleading in
21 that they failed to provide a complete picture of the coverage so that a consumer could make an
22 informed decision about whether the Mobile Phone Plan would be beneficial to the California
23 consumer.
24

25 46. Plaintiff believed Best Buy's representations that under the Mobile Phone Plan,
26 Best Buy would, in the event that replacement was necessary, replace her iPhone with a new
27 comparable model iPhone and not merely a "refurbished" phone. Plaintiff would not have
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1 purchased the Plan but for Best Buy's misleading statements and omissions regarding the nature
2 of the coverage provided under the Mobile Phone Plan. Plaintiff was injured in fact and lost
3 money in the form of monthly payments of \$14.99+tax as a result of Best Buy's improper
4 conduct. Defendant's representations and omissions are, therefore, misleading, untrue, and
5 likely to and did deceive the public.
6

7 47. Plaintiff and the Class members seek restitution for monies wrongfully obtained,
8 and injunctive relief, enjoining Best Buy from continuing to disseminate – either directly or
9 indirectly – untrue and misleading statements, and other relief allowable under California
10 Business & Professions Code Section 17535.

11 **COUNT III**

12 **For Violation of California's Consumers Legal Remedies Act, California Civil Code** 13 **Section 1750, et seq. (Injunctive Relief only)**

14 48. Plaintiff incorporates the above allegations contained in all preceding paragraphs
15 of this Complaint by reference as though fully set forth herein.

16 49. Plaintiff brings this claim individually and on behalf of the Class.

17 50. This cause of action is brought pursuant to the CLRA. This cause of action does
18 not currently seek monetary damages and is limited solely to injunctive relief.

19 51. Best Buy's actions, representations, and conduct have violated, and continue to
20 violate, the CLRA because they extend to transactions that are intended to result, or that have
21 resulted, in the sale of goods or services to consumers.

22 52. Plaintiff and members of the Class are "consumers" as that term is defined by the
23 CLRA in California Civil Code Section 1761(d).

24 53. Defendant Best Buy sold to plaintiff and other Class members, mobile or wireless
25 phones, which are "goods" within the meaning of California Civil Code Section 1761(a), and
26 Plans, which are "services" within the meaning of California Civil Code Section 1761(b).
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1 54. California Civil Code Section 1770(a) provides that it is unlawful to use unfair or
2 deceptive practices or acts and unfair competition in a transaction intended to result or which
3 results in a sale or lease of goods or services to a consumer. Specifically, California Civil Code
4 Section 1770(a) prohibits, among other things:

5 (a) Representing that goods or services have characteristics, uses, benefits, or
6 quantities which they do not have (Cal. Civ. Code §1770(a)(5));

7 (b) Advertising goods or services with intent not to sell them as advertised (Cal.
8 Civ. Code §1770(a)(9));

9 (c) Representing that a transaction confers or involves rights, remedies, or
10 obligations which it does not have or involve, or which are prohibited by law
11 (Cal. Civ. Code §1770(a)(14)); and

12 (d) Representing that a subject of a transaction has been supplied in accordance
13 with a previous representation when it has not (Cal. Civ. Code §1770(a)(16)).

14 55. By engaging in the actions, misrepresentations, and misconduct set forth in this
15 Complaint, Best Buy violated, and continues to violate, California Civil Code Section
16 1770(a)(5), by failing to provide details of the coverage offered under the Mobile Phone Plan;
17 misrepresenting that under the Plan, it would when necessary replace plaintiff's mobile phone
18 with a comparable new phone and not a "refurbished" phone. Plaintiff would not have
19 purchased the Plan, but for Best Buy's misleading statements and omissions about the coverage
20 provided by the Plan. Plaintiff has suffered injury in fact and lost money as a result of Best
21 Buy's conduct.

22 56. By engaging in the actions, misrepresentations, and misconduct set forth in this
23 Complaint, Best Buy violated, and continues to violate, California Civil Code Section
24 1770(a)(9), by advertising the Mobile Phone Plans with intent not to sell them as advertised.

1 63. Plaintiff and members of the Class accepted the offers by making regular
2 contractual payments of \$14.99+tax monthly pursuant to their Plans.

3 64. Best Buy breached the express terms of its agreement with plaintiff and members
4 of the Class by failing to honor the agreement to replace plaintiff's mobile phone with a
5 comparable new phone and not a "refurbished" phone. All conditions precedent to Best Buy's
6 liability under the contract have been performed by plaintiff and the Class, when they purchased
7 the Plan.
8

9 65. Plaintiff and members of the Class have suffered harm as a proximate result of
10 Best Buy's breach of its agreements.

11 66. Best Buy is liable to plaintiff and members of the Class for damages sustained as
12 a result of its breach.
13

14 **COUNT V**

15 **For Unjust Enrichment**

16 67. Plaintiff incorporates the above allegations contained in all preceding paragraphs
17 of this Complaint by reference as though fully set forth herein.

18 68. Plaintiff brings this claim individually and on behalf of the Class.

19 69. This Count is brought in the alternative. *See* Fed. R. Civ. P. 8(e)(2).

20 70. Plaintiff and the Class conferred a benefit upon Best Buy by paying for a product
21 with benefits that could not be provided or delivered. As set forth above, Best Buy induced
22 plaintiff and the Class to purchase the Mobile Phone Plans by promising to replace plaintiff's
23 mobile phone with a comparable new phone and not a "refurbished" phone in exchange for
24 payment of the contractual amount of the agreement, i.e., \$14.99+tax on a monthly basis for two
25 years. As a consequence of such misrepresentations and misconduct, plaintiff and the members
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1 of the Class have paid or continue to pay monthly fees that they otherwise would have paid
2 absent the misrepresentations and misconduct.

3 71. Best Buy voluntarily accepted and retained the benefit of the monies paid by
4 plaintiff and the Class.

5 72. Best Buy has been enriched, at the expense of plaintiff and the Class, by retaining
6 monies from Mobile Phone Plan buyers for benefits, which they did not provide.

7 73. Plaintiff and members of the Class who have paid for benefits that could not be
8 provided or delivered by Best Buy have been damaged as a result of defendant's unjust
9 enrichment and are entitled to a refund, plus interest thereupon.
10

11 74. As a direct and proximate result of Best Buy's misconduct, plaintiff and the Class
12 have suffered injury and are entitled to reimbursement, restitution, and disgorgement in the
13 amount necessary to restore them to the position they would have been in if Best Buy had not
14 retained monies for benefits which they could not provide or deliver.
15

16 75. Plaintiff and the Class have no adequate remedy at law.

17 76. It would be inequitable for Best Buy to retain the profits, benefits, and other
18 compensation obtained from its wrongful conduct as alleged herein.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, plaintiff, individually and on behalf of all others similarly situated, pray
21 for judgment against Best Buy as follows:
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23 A. An order certifying this case as a class action for the Class and appointing
24 plaintiff and her counsel to represent the members of the Class;

25 B. An order declaring that the acts and practices of Best Buy constitute violations of
26 California Business & Professions Code Sections 17200 and 17500, *et seq.*, California Civil
27 Code Section 1750, *et seq.*, and breach of contract;
28

1 C. A permanent injunction enjoining Best Buy from continuing to harm plaintiff and
2 the members of the Class and violating applicable California and federal law;

3 D. For actual and statutory damages suffered by plaintiff and the members of the
4 Class pursuant to California law (except as to the CLRA claim until such time that plaintiff
5 amends her complaint to see such relief) in an amount to be determined at trial, including
6 interest;
7

8 E. For full restitution of all funds acquired from Best Buy's unfair business
9 practices, including disgorgement of profits;

10 F. For imposition of a constructive trust upon all monies and assets Best Buy has
11 acquired as a result of its unfair practices;

12 G. For an order requiring Best Buy to immediately cease and desist from selling its
13 Plan in violation of law; enjoining Best Buy from continuing to market, advertise, distribute and
14 sell the Mobile Phone Plans in the unlawful manner described herein; and ordering Best Buy to
15 engage in corrective action;
16

17 H. For all equitable remedies available pursuant to California Civil Code Section
18 1780;

19 I. For both pre- and post-judgment interest on any amounts awarded;

20 J. For payment of reasonable costs of suit and attorneys' fees pursuant to, *inter alia*,
21 California Civil Procedure Code Section 1021.5, and California Civil Code Section 1780(d); and
22

23 K. Such other relief as this Court may deem just and proper.

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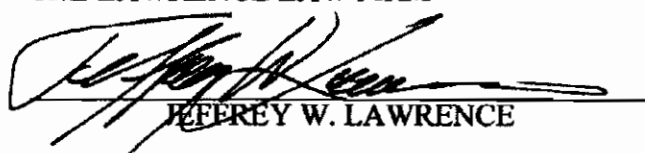
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

DATED: May 17, 2012

THE LAWRENCE LAW FIRM



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