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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GORDON BEECHER, an individual, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

GOOGLE NORTH AMERICA INC., a
Delaware corporation.

Defendant.

No. 5:18-cv-753

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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I. INTRODUCTION¹

1
2 1. When a mobile phone service promises to charge its customers only for the data it
3 provides to its customers, it cannot charge for data independently provided by third parties. When it
4 agrees to bill on a per-gigabyte basis, the mobile phone service must track the usage of its data
5 service accurately so that it bills its customers only for the data service that they use, and no more.
6 When a mobile phone service makes such a promise and then bills its customers for data that
7 customers obtain independently, it violates the contractual rights of its customers as well as
8 California law prohibiting fraud, unjust enrichment, and unlawful, unfair, and deceptive practices.

9 2. Gordon Beecher (“Plaintiff”) is suing Google North America Inc. (“Google” or
10 “Defendant”) over Google’s practice of billing its mobile data customers for data usage beyond what
11 Google’s service itself provides. Google provides mobile phone and data services under a program
12 entitled “Project Fi.” Through the Project Fi service, Google provides customers with access to
13 mobile data services in partnership with various mobile data carriers. Google promises to deliver
14 mobile data and bill customers per each gigabyte that customers use through the Project Fi system
15 and its affiliated networks. But instead of tracking the data service customers receive using Project
16 Fi and its affiliates, Google’s software tracks the data service that customers receive from any source
17 and then takes credit for such service. This means that Google takes credit, and bills customers, for
18 data delivered over the customers’ home networks and public wi-fi connections that are available to
19 the customer independent of Google and its mobile data partners. Google bills users for data obtained
20 through alternate connections *even if Google is not providing access to that data service and in*
21 *many cases the customers are paying the third parties who actually provide the service.* When a
22 consumer pays separately for home wi-fi service or obtains free wi-fi service from an open
23 connection, Google by its own admission cannot take credit and bill for it.

24 3. Google has violated and continues to violate Plaintiff’s rights under California law by
25 marketing, selling, and providing mobile data service while inaccurately and unlawfully billing its
26

27
28 ¹ Plaintiff, by and through his attorneys, based on his individual experiences, makes these
allegations based on the investigation of counsel, and upon information and belief.

1 customers for services that Google does not provide. This practice unjustly enriches Google at the
2 expense of Plaintiff and class members. Google's conduct violates Plaintiff's rights under his written
3 agreement with Google as well as California statutory and common law prohibitions of fraud,
4 misrepresentation, unfair competition, and unjust enrichment. Plaintiff seeks, on behalf of himself
5 and a class of similarly situated consumers, compensation from Google, as well as injunctive relief
6 for violations of Plaintiff's rights flowing from Google's unlawful tracking of and billing for data not
7 provided through its service.

8 **II. JURISDICTION AND VENUE**

9 4. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act
10 of 2005, 28 U.S.C. § 1332(d), because at least one class member is of diverse citizenship from
11 Defendant, there are more than 100 class members, and the aggregate amount in controversy exceeds
12 \$5,000,000.

13 5. The Court has personal jurisdiction over Plaintiff because Plaintiff submits to this
14 Court's jurisdiction. This Court has personal jurisdiction over Defendant because Defendant has its
15 principal place of business in this district, Defendant transacts business in this district, and Defendant
16 consented to the jurisdiction of the federal or state courts of Santa Clara County, California, in
17 written terms of service on Google's website.

18 6. Venue is proper in this District under 28 U.S.C. § 1391(a) because a substantial part
19 of the events or omissions giving rise to the claims occurred and/or emanated from this District and
20 Defendant has caused harm to class members residing in this District. Further, venue is proper
21 because Defendant has consented to the venue of the federal or state courts of Santa Clara County,
22 California, in written terms of service on Google's website.

23 **III. PARTIES**

24 7. Plaintiff Gordon Beecher is a Colorado citizen and a consumer who has purchased
25 and continues to purchase Google's Project Fi services for his personal use.

26 8. Defendant Google North America Inc. is a Delaware corporation with its principal
27 place of business in Mountain View, California. Google North America Inc. owns and operates the
28 Project Fi mobile phone and data service as alleged throughout this Complaint.

1 9. Plaintiff brings this action individually and on behalf of a class of Google consumers
2 as defined below.

3 **IV. FACTUAL BACKGROUND**

4 **A. The Project Fi Mobile Data Plan**

5 10. Among its broad assortment of internet-related services and products, Google offers a
6 mobile phone and data service. Google calls the service “Project Fi.” Google has partnered with
7 several mobile data carriers to provide Project Fi users with access to mobile data on a pay-as-you-go
8 basis.

9 11. Users of the mobile data service choose a monthly data allocation as an estimate of
10 their monthly charge, but Google bills per gigabyte of data used. That is, Google generally charges
11 \$10 per gigabyte of data actually used, whether as part of the pre-purchased data allocation or
12 additional data used by the customer.

13 12. Google’s Terms of Service falsely assure customers that Google will bill them only
14 for their use of Google’s products and services (“Services”).

15 13. Under the Terms of Service, Google requires users only “to pay all applicable charges
16 for the Services you use.”

17 14. The Terms of Service authorize Google only “to automatically collect payments of all
18 charges associated with the use of the Services from your designated payment method.”

19 15. And through the Terms of Service, Google promises that it will use information
20 collected from customers’ devices to “[b]ill you and collect payment for the Services and devices
21 that you [customers] purchased.”

22 16. Price and billing method are central and material considerations for consumers
23 shopping for and purchasing a mobile data plan. Google advertises Project Fi primarily through its
24 website, fi.google.com. Reasonable consumers considering whether to purchase Google’s mobile
25 data plan would investigate Google’s website to determine how the plan is priced and billed, and
26 they regularly do consult and rely upon it. Whether data usage is billed at a flat monthly rate or on a
27 pay-as-you-go basis is of paramount importance to the average consumer, as is the rate at which data
28

1 usage is billed. Consumers generally expect and assume that a mobile data service provider will not
2 bill them for mobile data that they obtain independently from other sources.

3 17. Google’s website contains numerous prominent statements, including the Terms and
4 Conditions above, which misrepresent that accuracy and affordability of the mobile data plan.
5 Google consistently emphasizes that customers will be billed only for the data provided through
6 Google’s service even though Google bills for data that the users access independent of Google and
7 its affiliated networks. Google falsely assures customers that they will not be billed for data that they
8 do not receive or need from Google.

9 18. Through early 2018, Google’s home page for the mobile data plan stated in large,
10 bold type: “Never pay for unused data. Mmm...sweet. \$10/GB for data you use and credit back for
11 data you don’t. No contracts and no sneaky fees.”

12 19. Immediately below that text, a link to “Plan Details” leads to a page that states “Never
13 pay for unused data” and “Data \$10/GB” in large print.

14 20. Google’s home page for the mobile data plan currently states that the plan “makes
15 saving twice as sweet” and assures consumers that “Bill Protection makes sure you’re never paying
16 for data you don’t need.”

17 21. Google’s Frequently Asked Questions page for Project Fi specifically assures
18 consumers that they will never be billed for data obtained from other sources independent of
19 Google’s mobile data service.

20 22. The Frequently Asked Questions link is prominently displayed at the top of the
21 service’s home page alongside links regarding “Plan,” “Phones,” and “Coverage.” Under the heading
22 “Plan and Pricing” in the Frequently Asked Questions, in response to the question “Am I charged for
23 data usage when I’m connected to an open Wi-Fi hotspot or my home Wi-Fi?” Google states, “No,
24 you are not charged for the data you use when connected to open or home Wi-Fi. We only charge
25 \$10 per GB for the cellular data you use.”

26 23. In 2015 and 2016, Google emphasized the accuracy of its billing plan and its promise
27 not to bill customers for data they independently obtain, by stating on its website, “Never pay for
28

1 unused data . . . you pay only for what you use.” Google further promised “A bill that’s easy to
2 understand.”

3 24. In 2017, Google continued with the same marketing angle, stating on its website,
4 “Get credited for the data you don’t use” and “You should never pay for something you don’t use.”

5 25. In 2015, Google published a promotional video stating that Project Fi offers “prices
6 that make sense, and tech that just works.”

7 26. In 2017, Google published a promotional video with the caption, “A simple plan with
8 no contracts and no hidden fees.”

9 27. In 2017, Google published a promotional video addressing the cost of its mobile data
10 service. The 15-second spot states, “Save for the things you want” while a beaming woman adds a
11 giant porcelain owl to her owl shrine. A second caption reads, “By never paying for data you don’t
12 use.”

13 28. In 2017, Google published a second promotional video addressing the cost of its
14 mobile data service. The 15-second spot states, “Save for the things you want” while a man hefts
15 a large bonsai tree into his bonsai salon. A second caption reads, “By never paying for data you
16 don’t use.”

17 29. As a further demonstration of Google’s offer to charge users only for the data that
18 they access through Google’s service, the Project Fi website contains a calculator allowing visitors to
19 calculate the monthly expense of the service based on the number of lines, the amount of monthly
20 data requested, and the amount of that data allocation that remains unused at the end of the month.

21 30. The clear implication of the fee calculator is that users will only be charged for the
22 data obtained by way of Google’s mobile data service—the reason their data usage is measured
23 against the monthly allocation—and that users will be rewarded for using less than all of the data
24 allocation that they pre-purchase from Google.

25 31. Google further touts the affordability of its mobile data service on its website with the
26 catchphrase, “All the bells and whistles without the nickels and dimes.”

1 32. Google promises its customers that they will be rewarded for limiting their usage of
2 Google’s data service because the service lets them “[r]ake in credits for [their] unused data with a
3 contract-free plan.”

4 33. Google promises prospective customers that they will “never pay for unused data.”

5 34. Google advertises Project Fi as being “Fair and simple. Just the phone plan you’ve
6 been craving.”

7 35. Google has also promoted the accuracy and ease of its billing system on Twitter. In
8 early 2018, Google posted, “Get data by the slice, or the pie, and only pay for the gigs you use.”

9 36. On Halloween 2017, Google posted on Twitter, “When it comes to pricing, we creep
10 it simple. Learn more about our plan.”

11 37. In August 2017, Google posted on Twitter, “Getting automatic credits back for
12 unused data is kind of like finding a lucky penny (but way easier).”

13 38. Numerous media outlets have relied on false statements by Google on its website and
14 elsewhere to inform the public about the billing system.

15 39. For instance, based upon Google’s public marketing statements, *Forbes* reported that
16 Project Fi “has straightforward pricing and usage info” and that users “set how much you think
17 you’ll need in data each month . . . and then are only charged for exactly how much you use.”

18 40. Based upon Google’s public marketing statements, tech website The Verge reported
19 in 2017, “[Y]ou pay \$20 per month for your phone and \$10 per GB of data that you use. That’s
20 pretty much it.”

21 41. Based upon Google’s public marketing statements, tech website Androidcentral
22 reported in 2018, “Project Fi is focused on simplified billing. You pay \$20 per month for unlimited
23 talk and texting, and a flat rate of \$10 per gigabyte of data used.”

24 42. Based upon Google’s public marketing statements, *PC Magazine* reported in 2017,
25 “Fi’s plans can cost less than they appear to because you only get charged for the data you use.”

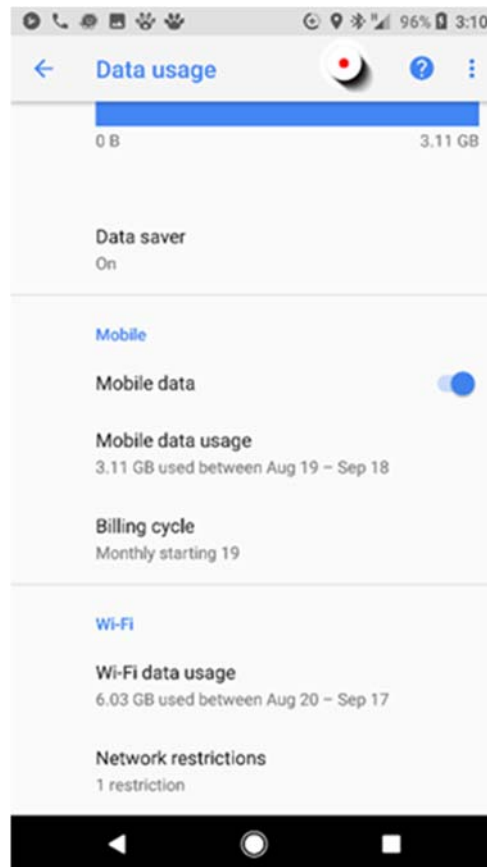
B. Google Bills Its Customers for Data Service It Did Not Provide

43. In early August 2017, Plaintiff Gordon Beecher switched his cell phone service to Project Fi.

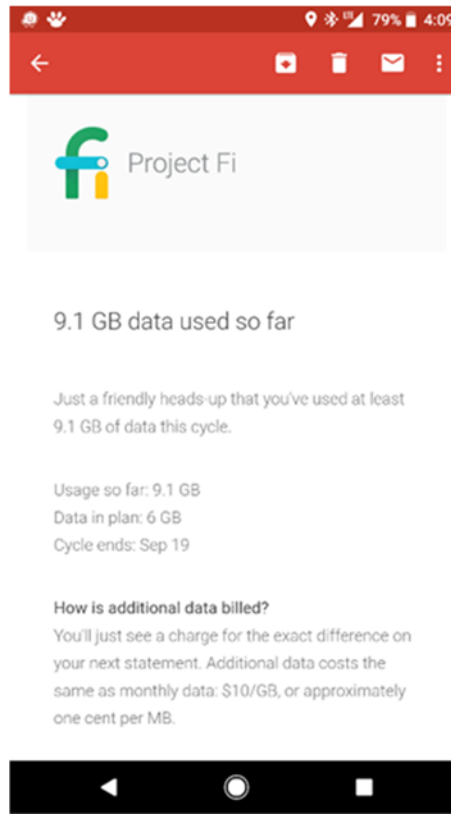
44. Later that same month, Mr. Beecher began receiving notices from the Project Fi software on his phone reflecting his data usage. The data usage notices were not correct because they included data that Mr. Beecher had received from data services unrelated to Project Fi.

45. Each month, while connected to third-party (non-Project Fi) wi-fi connections that are separately arranged or free, Mr. Beecher accesses approximately 4-14 gigabytes of data from wireless internet providers other than Google.

46. For example, the data usage indicator on Mr. Beecher's phone confirms that he accessed only 2-3 gigabytes of data for one month via mobile wireless, while he accessed approximately 6-7 gigabytes of data from other wireless internet services such as his home wireless network. A screenshot of Mr. Beecher's phone showing similar usage (3.11GB of mobile data and 6.03GB of non-mobile wifi data) for the August-September 2017 billing cycle appears below:



1 47. Nonetheless, even though Google did not provide non-mobile data service or bear the
 2 expense of it, Google tracked Mr. Beecher's use of data across all services, including non-Google,
 3 non-mobile data services. A screenshot of Mr. Beecher's phone showing that the Project Fi app
 4 failed to distinguish between mobile and non-mobile data usage for the August-September 2017
 5 billing cycle appears below:



19 48. Because Google calculated charges based upon Mr. Beecher's total data usage across
 20 all services not limited to Google's, Google wrongly charged Mr. Beecher for the use of data service
 21 that Google did not provide. Google billed Mr. Beecher for the use of other data services even when
 22 the mobile data feature on his phone was disabled, proving that Google billed Mr. Beecher for the
 23 use of data service that he could not have been receiving through Google's service.

24 49. Google automatically charged Mr. Beecher's Google Payments account for his data
 25 use for August-September and the succeeding months.

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1 50. Google charged Mr. Beecher for the use of approximately 6-11 gigabytes per month,
2 at \$10 per gigabyte, that Mr. Beecher had obtained from other data service providers, resulting in
3 overcharges totaling more than \$200 over the first three months of his contract with Project Fi.

4 51. Google's charges for data obtained from unrelated data service providers were made
5 without authorization and in violation of Google's contracts with its customers.

6 52. Google's advertisements and charges were also deceptive because they would lead a
7 reasonable customer to believe that payments were limited to Project Fi data usage only when, in
8 reality, Google was charging customers for the use of data independently obtained from other data
9 providers. A reasonable customer relying on Google's advertising statements and billing documents
10 would be misled into thinking that charges were limited to the use of data from Project Fi and its
11 affiliates. Further, Google has actively concealed the overcharge from its customers by misstating the
12 basis for amounts billed and establishing a company policy of refusing to answer or address
13 customer complaints relating to the overbilling.

14 53. Over the course of multiple phone inquiries by Plaintiff during September, October,
15 and November 2017 regarding the overbilling, Google failed to reveal or explain defect in its billing
16 system and failed to redress Plaintiff's billing disputes. During these phone calls, Google
17 acknowledged that the billing errors were an issue that other users had reported and an issue known
18 to Google.

19 54. To discover the overcharge, a customer would have to inspect the data usage on his
20 phone through the technical features of his operating system if possible or a third-party app, compare
21 it to Google's bill, and determine what portion of the billed charges actually derive from the use of
22 Google's mobile data service.

23 55. Google's wrongful billing procedure is not limited to Mr. Beecher's account, but
24 extends across all users of the Project Fi wireless internet service, numbering in the thousands.

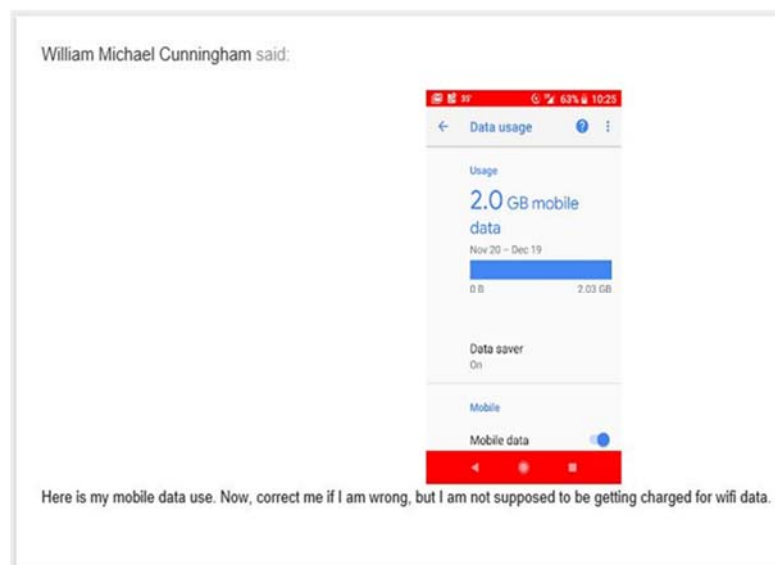
25 56. Google has received complaints from other customers who were billed for data not
26 provided by Google, and despite knowing of the problem for many months, Google has failed to
27 rectify it.

28

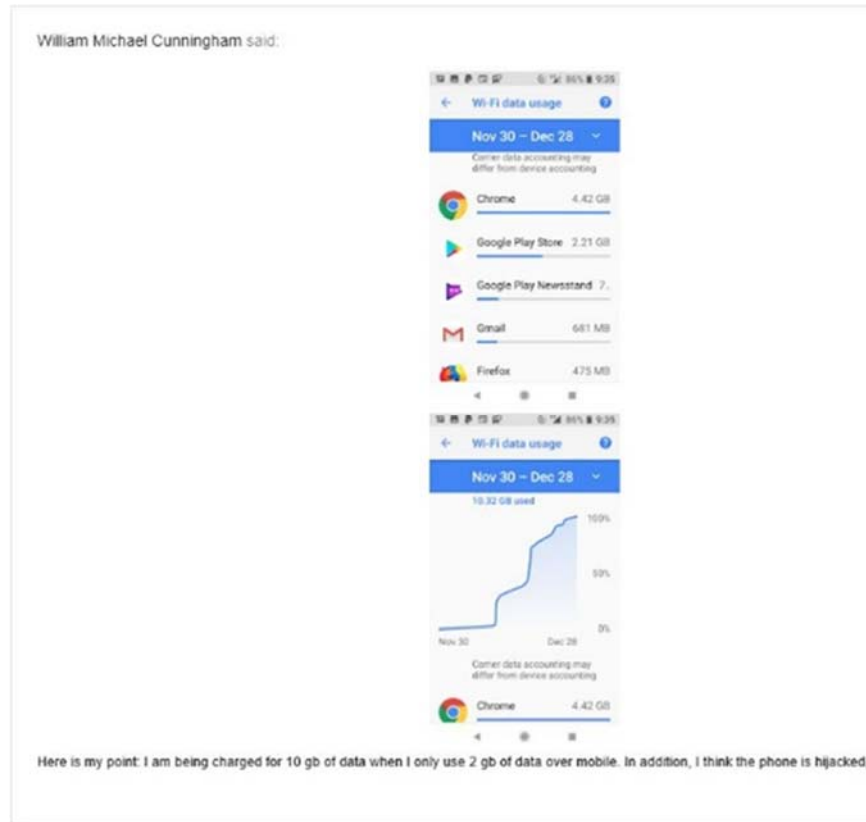
1 57. For example, in February 2017, a customer with the username arthurjguy reported on
 2 Reddit.com, in the subreddit /r/ProjectFi, that Google was overbilling him by several gigabytes each
 3 month. The customer contacted Google's customer support department, but Google failed to identify
 4 the source of the problem or rectify it. An excerpt from this subreddit appears below:



13 58. As recently as January 2018, another customer named William Michael Cunningham
 14 reported in an online Project Fi Help Forum that he was being billed for data usage well in excess of
 15 the mobile data accessed on his phone, as recorded by his phone's data usage meter, going back at
 16 least as far as March 2017. Mr. Cunningham opened at least nine separate cases with Google's
 17 customer support department. Despite his repeated complaints, Google failed to identify the source
 18 of the problem or rectify it. Excerpts from Mr. Cunningham's forum posts appear below:



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V. CLASS ACTION ALLEGATIONS

59. Plaintiff Gordon Beecher brings this action under Federal Rule of Civil Procedure 23(b)(2) and (b)(3) on his own behalf and on behalf of the following class of plaintiffs:

All past and present subscribers of Google mobile data services who have been charged by Google for the use of data services independently provided by third parties.

60. The persons in the class are so numerous that individual joinder of all members is impracticable under the circumstances of this case. Although the precise number of such persons is unknown, the exact size of the class is easily ascertainable as each class member can be identified by using Defendant's records. Plaintiff is informed and believes that there are many thousands of class members.

61. There are common questions of law and fact specific to the class that predominate over any questions affecting individual members, including:

- (a) Whether Google's contract allows for it to charge for data services independently provided by third parties;
- (b) Whether Google overcharges its Project Fi subscribers;

- 1 (c) Whether such overcharges breach Google's contracts with its subscribers;
- 2 (d) Whether Google concealed its billing problem from its subscribers;
- 3 (e) Whether Google misrepresented its billing practices to subscribers;
- 4 (f) Whether Google's misrepresentations and omissions regarding its billing practices
5 were likely to deceive a reasonable person in violation of the CLRA, Cal. Civ. Code
6 §1750 et seq.;
- 7 (g) Whether Google violated the unlawful prong of the UCL, Cal. Bus. & Prof. Code
8 §17200 et seq., by its violation of the CLRA;
- 9 (h) Whether Google's misrepresentations and omissions regarding its billing practices
10 were likely to deceive a reasonable person in violation of the fraudulent prong of the
11 UCL;
- 12 (i) Whether Google's business practices, including the marketing and sale of Project Fi
13 services, offend established public policy and cause harm to consumers that greatly
14 outweighs any benefits associated with those practices;
- 15 (j) Whether Google's misrepresentations and omissions regarding its billing practices
16 were likely to deceive a reasonable person in violation of the FAL, Cal. Bus. & Prof.
17 Code §17500 et seq.;
- 18 (k) Whether Google breached its Project Fi subscriber contracts regarding its billing
19 practices;
- 20 (l) Whether Plaintiff and class members are entitled to damages, restitution,
21 restitutionary disgorgement, equitable relief, and/or other relief; and
- 22 (m) The amount and nature of such relief to be awarded to Plaintiff and the class.

23 62. Plaintiff's claims are typical of the class's claims, as they arise out of the same course
24 of conduct and the same legal theories as the rest of the class, and Plaintiff challenges the practices
25 and course of conduct engaged in by Defendant with respect to the class as a whole.

26 63. Excluded from both classes are Defendant, its employees, co-conspirators, officers,
27 directors, legal representatives, heirs, successors, and wholly or partly owned subsidiaries or
28 affiliated companies; class counsel and their employees; and the judicial officers and associated court
staff assigned to this case.

64. Plaintiff will fairly and adequately protect the interests of the class. He will vigorously
pursue the claims and has no antagonistic conflicts. Plaintiff has retained counsel who are able and

1 experienced class action litigators and are familiar with representing plaintiffs in large-scale
2 consumer and commercial claims.

3 65. Google has acted or refused to act on grounds that apply generally to both classes, and
4 final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a
5 whole. A class action is also appropriate because Google has acted and refused to take steps that are,
6 upon information and belief, generally applicable to thousands of individuals, thereby making
7 injunctive relief appropriate with respect to both classes as a whole.

8 66. Questions of law or fact common to class members predominate over any questions
9 affecting only individual members. Resolution of this action on a class-wide basis is superior to other
10 available methods and is a fair and efficient adjudication of the controversy because in the context of
11 this litigation no individual class member can justify the commitment of the large financial resources
12 to vigorously prosecute a lawsuit against Google. Separate actions by individual class members
13 would also create a risk of inconsistent or varying judgments, which could establish incompatible
14 standards of conduct for Google and substantially impede or impair the ability of class members to
15 pursue their claims. It is not anticipated that there would be difficulties in managing this case as a
16 class action.

17 67. Plaintiff reserves the right to amend all class allegations as appropriate, and to request
18 any state law subclasses or other subclasses if necessary, upon completion of class-related discovery
19 and motions for class certification.

20 68. California law governs the claims of Plaintiff and the class because Google's Terms
21 of Service provide, "The laws of California, U.S.A., excluding California's conflict of laws rules,
22 will apply to any disputes arising out of or relating to these terms or the [Project Fi] Services."

23 **VI. CLAIMS FOR RELIEF**

24 **COUNT I**
25 **VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT**
(CAL. CIV. CODE § 1750, ET SEQ.)

26 69. Plaintiff incorporates the allegations set forth above as if fully set forth herein.

27 70. Defendant is a "person" under Cal. Civ. Code § 1761(c).

28

1 71. Plaintiff is a “consumer,” as defined by Cal. Civ. Code § 1761(d), who purchased the
2 Project Fi service.

3 72. Plaintiff has filed concurrently with this Complaint an affidavit that shows venue in
4 this District is proper, as required by Cal. Civ. Code § 1780(d).

5 73. Google participated in unfair or deceptive acts or practices that violated the Consumer
6 Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, et seq., as described above and below.
7 Defendant is directly liable for these violations of law.

8 74. By failing to disclose and actively concealing the Project Fi overcharges, and by
9 misrepresenting that consumers would be charged only for data services provided through Google’s
10 service, Google engaged in deceptive business practices prohibited by the CLRA, Cal. Civ. Code
11 § 1750, et seq., including (1) representing that Project Fi has characteristics, uses, benefits, and
12 qualities which it does not have, (2) representing that the Project Fi service is of a particular
13 standard, quality, and grade when it is not, (3) advertising Project Fi with the intent not to bill
14 customers for the service as advertised, (4) representing that a transaction involving Project Fi
15 confers or involves rights, remedies, and obligations which it does not, and (5) representing that the
16 subject of a transaction involving Project Fi has been supplied in accordance with a previous
17 representation when it has not.

18 75. As alleged above, Google made numerous material statements about the accuracy
19 and scope of charges for its service that were either false or misleading. Each of these statements
20 contributed to the deceptive context of Google’s unlawful advertising and representations as a whole.

21 76. Google knew that the Project Fi service was miscalculating data usage and
22 overcharging customers and was not suitable for providing mobile data on a pay-as-you-go basis to
23 customers to the extent represented in promotional materials. Numerous consumers have complained
24 to Google about this issue over a period of many months. Google nevertheless failed to disclose the
25 defects in its service despite having a duty to do so.

26 77. A reasonable consumer would not have paid as much as he or she did for Project Fi if
27 Google had disclosed (i) that Google overcharged customers; (ii) that Google charged customers for
28 the use of data service provided independently of Google; (iii) that Google was aware of and not

1 adequately investigating its billing problems; and (iv) that Google did not comply with promotional
2 statements regarding its billing system. Google has wrongfully billed customers and collected
3 payment for services that customers obtained independently from third parties.

4 78. Google owed Plaintiff a duty to disclose the defective nature of the Project Fi system,
5 including its miscalculation of data usage and overcharges because Google:

- 6 a. Possessed exclusive knowledge of the defects causing Project Fi to miscalculate data
7 usage and overcharge customers;
- 8 b. Intentionally concealed the unlawful and misleading way in which customers were
9 billed through a deceptive marketing campaign; and/or
- 10 c. Made incomplete representations about the quality and reliability of the billing
11 system, while purposefully withholding material facts from Plaintiff that contradicted
12 these representations.

13 79. Whether or not Google accurately bills for data usage is a fact that a reasonable
14 consumer would consider important in selecting a mobile data service. When Plaintiff subscribed to
15 Project Fi, he reasonably expected to be billed by Google for Project Fi-provided data only and not
16 for data usage provided independently by other data services.

17 80. As a current Project Fi subscriber, Plaintiff faces an increased risk of future property
18 loss that would not be present if Google had not marketed and sold its defective Project Fi service.

19 81. Google's unfair or deceptive acts or practices were likely to and did in fact deceive
20 reasonable consumers, including Plaintiff, about the billing practices.

21 82. As a result of its violations of the CLRA detailed above, Google caused actual
22 damage to Plaintiff and, if not stopped, will continue to harm Plaintiff.

23 83. There is no adequate remedy at law for Google's continued overbilling for Project Fi
24 services in violation of the CLRA, and these violations present a continuing risk to Plaintiff as well
25 as to the general public.

26 84. On or about February 5, 2018, Plaintiff sent a notice and demand letter via certified
27 mail to Google's principal place of business in California, thereby satisfying Cal. Civ. Code §
28

1 1782(a). After thirty days have passed without Google’s taking, or agreeing to take, appropriate
2 corrective measures, Plaintiff may amend to seek damages on this claim.

3 85. Pursuant to Cal. Civ. Code § 1780(a), Plaintiff seeks monetary relief against Google
4 measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory
5 damages in the amount of \$1,000 for each plaintiff and each member of the class they seek to
6 represent.

7 86. Plaintiff also seeks punitive damages against Google because Google carried out
8 despicable conduct with willful and conscious disregard of the rights of others. Google intentionally
9 and willfully misrepresented the accuracy of its billing system and concealed material facts that only
10 it knew, all to avoid the expense and public relations nightmare of correcting a flaw in its mobile
11 data plan that it repeatedly promised Plaintiff was reliable, accurate, and affordable. Google is fully
12 aware of the way its billing system operates, the amount of data access that Google’s service
13 provides to a given customer, and whether the billing system calculates monthly charges based only
14 upon that data or also based upon data provided independently by other services. Google’s unlawful
15 conduct constitutes malice, oppression, and fraud warranting punitive damages.

16 87. Plaintiff further seeks an order enjoining Google’s unfair or deceptive acts or
17 practices, restitution, punitive damages, costs of Court, attorney’s fees under Cal. Civ. Code
18 § 1780(e), and any other just and proper relief available under the CLRA.

19 **COUNT II**
20 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW**
(CAL. BUS. & PROF. CODE § 17200, ET SEQ.)

21 88. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

22 89. Plaintiff asserts this claim on behalf of himself and members of the Class on behalf of
23 all persons or entities that purchased the Project Fi mobile data service.

24 90. California Business and Professions Code section 17200 prohibits any “unlawful,
25 unfair, or fraudulent business act or practices.” Google has engaged in unlawful, fraudulent, and
26 unfair business acts and practices in violation of the UCL.

1 91. Google has violated the unlawful prong of section 17200 by its violations of the
2 Consumer Legal Remedies Act, CAL. CIV. CODE § 1750, et seq., as set forth in Count I by the acts
3 and practices set forth in this Complaint.

4 92. Google has violated the fraudulent prong of section 17200 because the
5 misrepresentations and omissions regarding the billing system as set forth in this Complaint were
6 likely to deceive a reasonable consumer, and the information would be material to a reasonable
7 consumer.

8 93. Google has violated the unfair prong of section 17200 because the acts and practices
9 set forth in the Complaint, including the marketing and sale of services that miscalculate data usage
10 and overbill customers, and Google's failure to adequately investigate, disclose and remedy, offend
11 established public policy, and because the harm they cause to consumers greatly outweighs any
12 benefits associated with those practices. Google's conduct has also impaired competition within the
13 mobile data market and has prevented Plaintiff from making fully informed decisions about whether
14 to purchase Project Fi services and/or the price to be paid to purchase Project Fi services.

15 94. Plaintiff has suffered an injury in fact, including the loss of money or property,
16 because of Google's unfair, unlawful and/or deceptive practices. As set forth in the allegations
17 above, in purchasing Project Fi services, Plaintiff relied on the misrepresentations and/or omissions
18 of Google with respect to how Google tracks and bills data usage. Google's representations turned
19 out not to be true because Google tracks and bills for data service provided independently by third
20 parties. Had Plaintiff known this he would not have subscribed to Project Fi and/or paid as much for
21 it. Moreover, Google has wrongfully billed Plaintiff and collected payment for services
22 independently provided by third parties.

23 95. All of the wrongful conduct alleged herein occurred, and continues to occur, in the
24 conduct of Google's business. Google's wrongful conduct is part of a pattern or generalized course
25 of conduct that is still perpetuated and repeated, both in the State of California and nationwide.
26 Google is fully aware of the way its billing system operates, the amount of data that Google and its
27 partners provide to a given customer, and whether the billing system calculates monthly charges
28 based only upon that data or also based upon data independently provided by other services.

1 Numerous consumers have complained to Google about this problem over a period of many months,
2 but Google has failed to rectify it.

3 96. Plaintiff requests that this Court enter such orders or judgments as may be necessary
4 to enjoin Google from continuing their unfair, unlawful, and/or deceptive practices, and to restore to
5 Plaintiff and members of the Class any money Google acquired by unfair competition, including
6 restitution and/or restitutionary disgorgement, as provided in CAL. BUS. & PROF. CODE § 17203
7 and CAL. CIV. CODE § 3345; and for such other relief set forth below.

8 **COUNT III**
9 **VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW**
10 **(CAL. BUS. & PROF. CODE § 17500, ET SEQ.)**

11 97. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

12 98. Plaintiff asserts this claim on behalf of themselves and members of the Class on
13 behalf of any person or entity that purchased Project Fi services.

14 99. California Business and Professions Code § 17500 states: “It is unlawful for any ...
15 corporation ... with intent directly or indirectly to ... perform services, professional or otherwise ...
16 to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to
17 be made or disseminated ... from this state before the public in any state, in any newspaper or other
18 publication, or any advertising device, ... or in any other manner or means whatever, including over
19 the Internet, any statement ... which is untrue or misleading, and which is known, or which by the
20 exercise of reasonable care should be known, to be untrue or misleading.”

21 100. Google caused to be made or disseminated through California and the United States,
22 through advertising, marketing and other publications, statements that were untrue or misleading,
23 and which were known, or which by the exercise of reasonable care should have been known to
24 Google, to be untrue and misleading to consumers and Plaintiff.

25 101. Google has violated section 17500 because the misrepresentations and omissions
26 regarding its billing practices as set forth in this Complaint were material and likely to deceive a
27 reasonable consumer.

28 102. Plaintiff and members of the Class have suffered an injury in fact, including the loss
of money or property, because of Google’s unfair, unlawful and/or deceptive practices. In

1 subscribing to Project Fi, Plaintiff relied on the misrepresentations and/or omissions of Google with
2 respect to the affordability of Project Fi and the accuracy of its billing practices. Google's
3 representations turned out not to be true because Google tracks and bills for data service provided
4 independently by third parties. Had Plaintiff known this, he would not have subscribed to Project Fi
5 and/or paid as much for it. And Google has wrongfully billed Plaintiff and collected payment for
6 services independently provided by third parties.

7 103. Accordingly, the Plaintiff overpaid for Project Fi and did not receive the benefit of his
8 bargain.

9 104. All of the wrongful conduct alleged herein occurred, and continues to occur, in the
10 conduct of Google's business. Google's wrongful conduct is part of a pattern or generalized course
11 of conduct that is still perpetuated and repeated, both in the State of California and nationwide.
12 Google is fully aware of the way its billing system operates, the amount of data that Google itself
13 provides to a given customer, and whether the billing system calculates monthly charges based only
14 upon that data or also based upon data independently provided by other services. Numerous
15 consumers have complained to Google about this problem over a period of many months, but Google
16 has failed to rectify it.

17 105. Plaintiff requests that this Court enter such orders or judgments as may be necessary
18 to enjoin Google from continuing its unfair, unlawful, and/or deceptive practices and to restore to
19 Plaintiff and members of the Class any money Google acquired by unfair competition, including
20 restitution and/or restitutionary disgorgement, and for such other relief set forth below.

21 **COUNT IV**
22 **BREACH OF CONTRACT**

23 106. Plaintiff incorporates by reference and realleges all paragraphs alleged herein.

24 107. This Count is asserted on behalf of those plaintiffs and class members who purchased
25 Project Fi services.

26 108. By soliciting and obtaining Plaintiff's subscription to the Project Fi service, Google
27 entered into a contract with Plaintiff.

28 109. The Project Fi Terms of Service form part of that contract and bind Google.

1 110. Through the Terms of Service, Google promises to bill its customers only for their use
2 of Google's products and services and requires users only to pay charges for the services they use.

3 111. Through the Terms of Service, Google promises only to use information collected
4 from devices to bill and collect payment for the Project Fi services.

5 112. Despite these express obligations, Google has tracked its customers' data usage across
6 independent data services and billed its customers for the use of that data whether or not it was
7 provided through Google's mobile data service.

8 113. Google has therefore breached the contract with Plaintiff and the class.

9 114. Accordingly, the Plaintiff overpaid for Project Fi and did not receive the benefit of his
10 bargain.

11 115. As a direct and proximate result of Google's breach of contract, Plaintiff and the
12 Class have been damaged in an amount to be determined at trial, which shall include, but is not
13 limited to, all compensatory damages, incidental and consequential damages, and other damages
14 allowed by law.

15 116. There is no adequate remedy at law for Google's continued overbilling for mobile
16 data services in breach of its contract, and these breaches present a continuing risk to Plaintiff as well
17 as to the public. Numerous consumers have complained to Google about this problem over a period
18 of many months, but Google has failed to rectify it.

19 117. Plaintiff requests that this Court enter such orders or judgments as may be necessary
20 to enjoin Google from continuing its breaches of contract and to restore to Plaintiff and members of
21 the Class any money Google acquired by way of breach, including restitution and/or restitutionary
22 disgorgement, and for such other relief set forth below.

23 **PRAYER FOR RELIEF**

24 A. Injunctive relief, restitution, statutory, and punitive damages under the CLRA;

25 B. Restitution or restitutionary disgorgement as provided in Cal. Bus. & Prof. Code
26 § 17203 and Cal. Civ. Code § 3343;

27 C. Injunctive relief, restitution and appropriate relief under Cal. Bus. & Prof. Code
28 § 17500;

- 1 D. Compensatory damages, according to proof;
2 E. Rescission of contracts with Google concerning the mobile data services;
3 F. Punitive damages;
4 G. Reasonable costs and expenses and attorneys' fees, including counsel and expert fees;
5 and
6 H. Any other relief this Court determines to be necessary and appropriate.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff demands a trial by jury on all issues so triable.
9

10 DATED: February 5, 2018

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