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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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SAN FRANCISCO DIVISION

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13 FEDERAL TRADE COMMISSION,

14 Plaintiff,

15 v.

16 TRACFONE WIRELESS, INC., also d/b/a  
17 STRAIGHT TALK WIRELESS, NET10  
WIRELESS, SIMPLE MOBILE, and  
18 TELCEL AMERICA,

19 Defendant.

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Case No.: \_\_\_\_\_

**COMPLAINT FOR PERMANENT  
INJUNCTION AND OTHER  
EQUITABLE RELIEF**

1 Plaintiff Federal Trade Commission (“FTC”) alleges:

2 **SUMMARY OF THE CASE**

3 1. Since 2009, Defendant TracFone Wireless, Inc. (“TracFone”) has solicited millions  
4 of consumers to purchase its prepaid mobile data service by advertising “unlimited talk, text, and  
5 data” for about \$45 per month.

6 2. TracFone’s promise of “unlimited” mobile data service, in particular, has been a  
7 powerful marketing tool. Mobile data service allows consumers to engage in online mobile  
8 activities such as viewing websites; navigating using GPS; communicating through emails, video  
9 chats, and texts; playing Internet-based mobile games; using mobile applications; and  
10 downloading or streaming audio and video content. These online mobile activities—all highly  
11 prized by consumers—are often data intensive.

12 3. Despite advertising its mobile data service as “unlimited,” TracFone throttled  
13 (significantly reduced the speed of) or suspended (completely cut off) the mobile data service of  
14 millions of customers who exceeded fixed limits that TracFone set on the amount of mobile data  
15 that its customers could use in a thirty-day period. TracFone’s data suspension practices  
16 prevented consumers from accessing mobile data service, and its data throttling practices seriously  
17 impaired consumers’ ability to engage in online mobile activities.

18 4. In numerous instances, TracFone failed to disclose or adequately disclose its  
19 practice of enforcing fixed limits on the amount of mobile data service its customers could use in a  
20 thirty-day service period. In fact, until at least September 2013, TracFone did not state in most of  
21 its advertising or terms and conditions that it would suspend or throttle its customers’ mobile data  
22 service if they used more than a fixed amount of mobile data in a thirty-day service period. In  
23 September 2013, TracFone began to include this information for all of its “unlimited” offerings,  
24 but often has tucked it away in small print that is not proximate to its claims of “unlimited” mobile  
25 data service.

26 5. Because TracFone failed to disclose or adequately disclose that it would throttle or  
27 suspend its customers’ mobile data service once they used a fixed amount of mobile data in a  
28 thirty-day service period, its advertising of “unlimited” mobile data service has been deceptive.



1 course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act,  
2 15 U.S.C. § 44.

3 **DEFENDANT TRACFONE’S DECEPTIVE ACTS AND PRACTICES**

4 *TracFone’s Business and Brands*

5 14. TracFone is the largest prepaid mobile phone service provider in the United States  
6 with approximately twenty-five million subscribers, of which approximately 25% subscribe to one  
7 of TracFone’s “unlimited” talk, text, and data plans.

8 15. Unlike the four largest network-based wireless providers (Verizon, AT&T, Sprint,  
9 and T-Mobile), TracFone does not own any wireless facilities. Instead, TracFone operates a  
10 “virtual” network by purchasing mobile services from network-based providers and then reselling  
11 those services to consumers under its own brands.

12 16. TracFone advertises and sells mobile phones, mobile phone SIM cards, and prepaid  
13 mobile phone service plans under a number of brands, including Straight Talk, Net10 Wireless,  
14 Simple Mobile, and Telcel America. It has registered trademarks for each of these brands.

15 17. TracFone does not manufacture the mobile phones or mobile phone SIM cards it  
16 sells to consumers. Nor does TracFone own the mobile network facilities that enable it to provide  
17 mobile phone services to consumers. It instead resells brand name phones and SIM cards from  
18 leading manufacturers, including Apple, Samsung, Motorola, and LG, and resells the services of  
19 leading mobile network providers, including AT&T, Verizon, Sprint, and T-Mobile.

20 18. TracFone advertises that it operates on the same networks as leading mobile  
21 networks providers. For example, many of TracFone’s advertisements claim: “same networks, half  
22 the cost.”

23 19. TracFone requires consumers to purchase a TracFone-branded mobile phone or  
24 mobile phone SIM card before subscribing to one of its prepaid mobile phone service plans. More  
25 than half of the phones sold for TracFone’s “unlimited” talk, text, and mobile data service plans  
26 are “locked,” meaning that they cannot be used with any other wireless provider.

27 20. TracFone’s prepaid mobile phone service plans allow consumers to avoid entering  
28 long-term contracts like those offered by leading network providers that often last for two years.

1 Consumers instead pay an up-front fee for a service plan that provides a specified number of days  
2 of mobile service. The plans are renewable, and many consumers choose an “auto refill option”  
3 by which they are automatically reenrolled in their initially chosen service plans.

4 21. TracFone advertises and sells a number of prepaid mobile phone service plans,  
5 about a quarter of which offer “unlimited” talk, text, and mobile data service. Approximately 99%  
6 of TracFone’s “unlimited” talk, text, and mobile data service customers have a 30-day plan, which  
7 is typically sold at \$45 or \$50 per month.

8 22. TracFone advertises its mobile phones and mobile phone service plans through  
9 print, radio, Internet, and television advertisements. It sells its mobile phones and mobile phone  
10 service plans through a variety of marketing channels, including its own Internet websites, the  
11 Internet websites of third-party Internet retailers like Amazon.com, and national retail stores like  
12 Wal-Mart, Target, and Best Buy.

13 *TracFone’s “Unlimited” Mobile Data Service*

14 23. Since 2009, TracFone has solicited consumers to purchase its mobile data service  
15 by advertising “unlimited” talk, text, and mobile data service.

16 24. TracFone’s advertising and marketing of “unlimited” mobile data service has led  
17 consumers to believe that TracFone would not limit the amount of mobile data that they could use  
18 in a service period.

19 25. Mobile data service allows consumers to engage in online mobile activities such as  
20 accessing the Internet; viewing websites; navigating using GPS; communicating through emails,  
21 video chats, and texts; playing Internet-based mobile games; downloading or streaming audio and  
22 video content; and using mobile applications like YouTube, Netflix, and Skype.

23 26. Many online mobile activities are data-intensive and highly prized by consumers.  
24 Some data-intensive mobile applications such as YouTube come preinstalled on the smartphones  
25 that TracFone sells.

26 27. TracFone has emphasized its claim of “unlimited” talk, text, and mobile data  
27 service in all, or almost all, of its advertising and marketing efforts.

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**Straight Talk Wireless**

28. For instance, under its Straight Talk Wireless brand, TracFone aired a video advertisement in which a spokesperson tells consumers that TracFone offers “unlimited everything,” while the screen image below reinforces that representation:



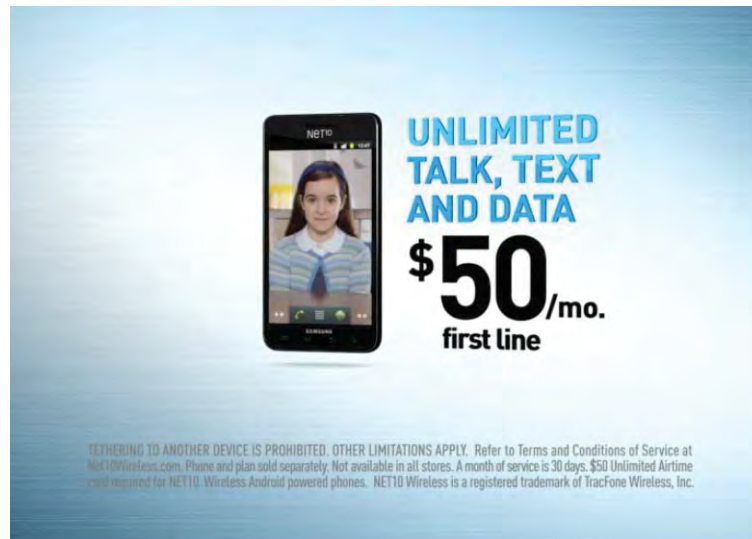
29. TracFone repeated the same representation of “unlimited” talk, text, and mobile data service in all, or almost all, of its Straight Talk branded marketing materials, including its print, radio, Internet, and television advertisements, product packaging, product labeling, and retail display advertising materials. The marketing materials below are representative:

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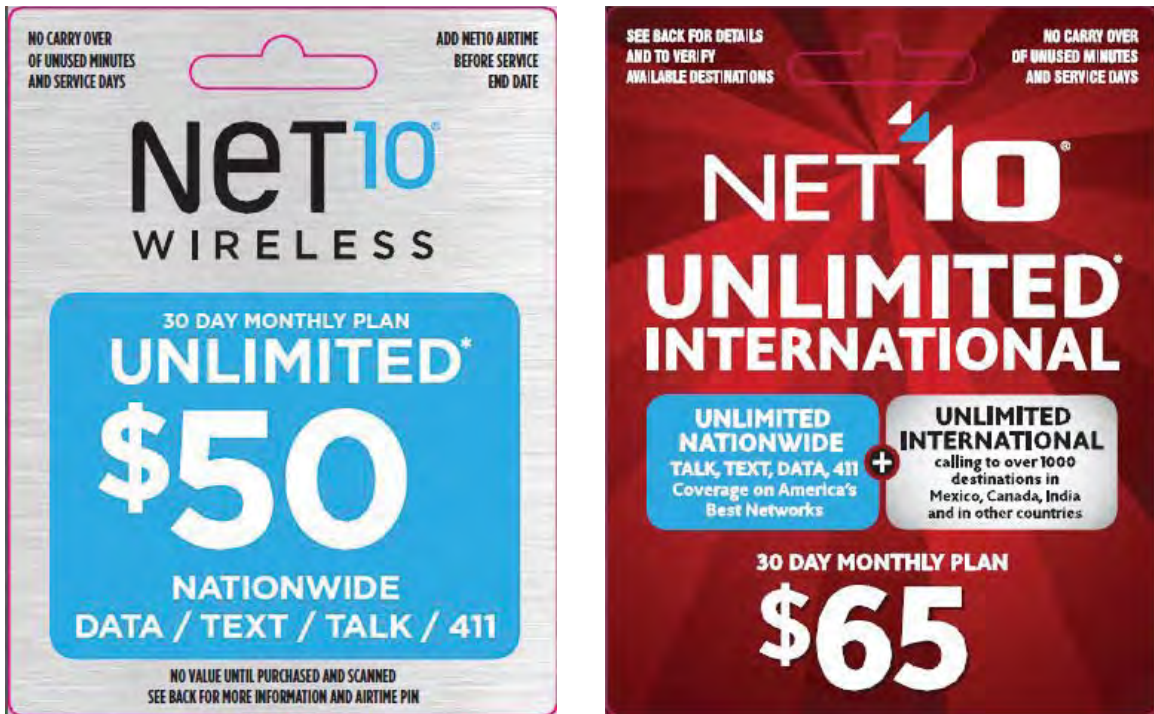
### Net10 Wireless

30. Similarly, under its Net10 Wireless brand, TracFone aired a video advertisement in which a spokesperson tells consumers that TracFone offers “unlimited everything,” while the screen image below reinforces that representation:



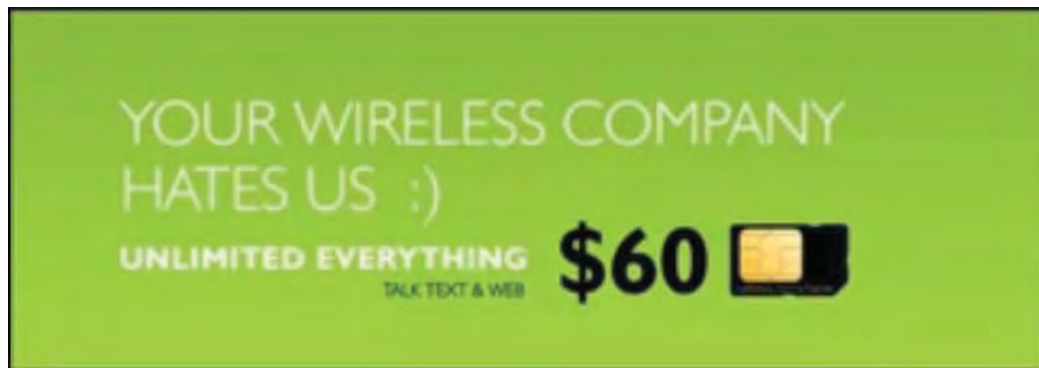
31. As with its Straight Talk brand, TracFone repeated the same representation of “unlimited” talk, text, and mobile data service in all, or almost all, of its Net10 Wireless branded marketing materials, including its print, radio, Internet, and television advertisements, product

1 packaging, product labeling, and retail display advertising materials. The marketing materials  
 2 below are representative:



15 **Simple Mobile**

16 32. TracFone’s advertisements and other marketing materials for its Simple Mobile  
 17 brand, which targets young adults, also generally repeated TracFone’s representation of  
 18 “unlimited” talk, text, and mobile data service:







**Telcel America**

33. Similarly, TracFone’s advertisements and other marketing materials for its Telcel America brand, which targets the Hispanic population, also generally repeated TracFone’s representation of “unlimited” mobile talk, text, and data service:



***TracFone’s Undisclosed Data Suspension and Throttling Practices***

34. Despite advertising “unlimited” mobile data service, TracFone suspended or throttled the mobile data service of customers who used more than a fixed amount of mobile data in a thirty-day service period.

1 35. Data suspension involved terminating consumers' mobile data service so that they  
2 could not send or receive mobile data.

3 36. Data throttling involved significantly reducing the speed of consumers' mobile data  
4 service, which significantly impaired their ability to engage in online mobile activities.

5 37. Consumers whose mobile data service was throttled by TracFone often experienced  
6 at least a 60% reduction in speed, and numerous consumers experienced more than a 90%  
7 reduction in speed.

8 38. The reduced speed from throttling significantly impaired the ability of many  
9 consumers to engage in online mobile activities. For example, throttled consumers often could not  
10 use mobile applications such as YouTube, Netflix, or Skype.

11 39. Although throttling may not have always prevented consumers from using email or  
12 navigating the Internet, it often made those activities substantially more difficult to perform. For  
13 example, throttling caused many web pages and email messages and attachments to load  
14 significantly slower than they would have loaded if the mobile data service had not been throttled.  
15 As described by a TracFone employee who tested the effects of throttling: "Customer experience  
16 is deeply affected as It [sic] is very slow... 'Regular' users like me may get really upset. . . ."

17 40. TracFone varied the data limits at which it suspended or throttled its customers'  
18 mobile data service over time and, during some periods, varied them based on which mobile  
19 network provider TracFone used. TracFone set most limits for throttling between one and three  
20 gigabytes, and set most limits for suspension between four and five gigabytes.

21 41. Once customers began to approach TracFone's fixed data limits, TracFone would  
22 usually send them a prerecorded voice message that did not disclose TracFone's data limits, but  
23 instead provided a warning similar to the following: ". . . if your excessive data use continues, we  
24 may need to suspend or deactivate your data service or terminate your phone service altogether as  
25 specified in the terms and conditions of service. . . ."

26 42. Although this message referenced TracFone's terms and conditions, TracFone did  
27 not disclose in its terms and conditions that it had fixed data limits or that it would suspend or  
28 throttle service once a consumer reached a fixed limit.

1 43. In numerous instances, customers who received these warnings decreased their data  
2 usage because they feared that TracFone would suspend or deactivate their data service.

3 44. In numerous instances, TracFone suspended or throttled the data service of  
4 customers who continued their data usage and exceeded certain undisclosed data limits that  
5 TracFone set internally.

6 45. TracFone suspended the mobile data service of hundreds of thousands of customers  
7 and throttled the mobile data service of millions of customers for exceeding its undisclosed fixed  
8 data limits.

9 46. TracFone's terms of sale did not permit returns or refunds of mobile service. While  
10 TracFone processed some requests for refunds anyway, those refunds were only provided to a  
11 small fraction of the customers whose mobile data service TracFone suspended or throttled.

12 47. Customers whose mobile data service was suspended by TracFone typically could  
13 only restore service by purchasing another month of service at full cost (usually \$45 to \$50).

14 48. The data limits set by TracFone were not driven by technological constraints. They  
15 were not, for instance, a response to real-time network congestion.

16 49. As a reseller, TracFone must purchase the mobile data service that it sells to  
17 consumers from mobile network service providers. Because TracFone offered its "unlimited"  
18 mobile data service at a fixed price, more data usage by its customers meant more costs, and less  
19 profit, for TracFone.

20 50. With the increasing popularity of online mobile activities, TracFone sought to  
21 benefit from marketing its mobile data service as "unlimited," while at the same time protecting its  
22 profit margins by throttling or suspending consumers' mobile data service. As expressed by  
23 TracFone in internal documents: "In an effort to control excessive data usage and reduce the high  
24 costs related to it, TracFone created and implemented a Throttling and Data Suspension policy. . .  
25 ."

26 ***TracFone's Failure to Disclose its Data Suspension and Throttling Practices***

27 51. In numerous instances, from 2009 to at least September 2013, TracFone failed to  
28 disclose in its advertising or terms and conditions that customers' mobile data service would be

1 throttled or suspended if they used a fixed amount of mobile data in a thirty-day service period.

2 52. In or around September 2013, TracFone began for the first time to state in most of  
3 its advertising materials and terms and conditions that it would throttle its customers' mobile data  
4 service if they used a fixed amount of mobile data in a thirty-day service period. But these post-  
5 September 2013 statements often were not clear and conspicuous. (TracFone at the same time  
6 ceased suspending consumers' mobile data service and started relying solely on throttling to  
7 enforce its fixed data limits.)

8 53. For example, TracFone's post-September 2013 product packaging and activation  
9 cards for its most popular "unlimited" brand, Straight Talk, typically included this information in  
10 small font on the backside of the package or card—far away from its representations of  
11 "unlimited" mobile data service. Because these product packaging and activation cards are  
12 frequently locked on display racks, consumers often cannot even turn to the backside without the  
13 assistance of a store employee.

14 54. Many of TracFone's post-September 2013 store banners and product stands also  
15 contained disclosures in small font that were dwarfed by prominent claims of "unlimited" mobile  
16 data.

17 55. In addition to the lack of adequate disclosures on its product packaging, activation  
18 cards, store banners, and product stands, many of TracFone's post-September 2013 webpages  
19 contained representations of "unlimited" data without clear and conspicuous disclosures. On  
20 many of these webpages, the disclosures were displayed in small font with poor contrast and could  
21 only be viewed by scrolling down the pages.

22 56. Throughout the entire time that TracFone has advertised "unlimited" mobile data  
23 service, numerous consumers who responded to TracFone's advertising by purchasing "unlimited"  
24 mobile data service did not know that TracFone would throttle or suspend their mobile data  
25 service if they used a fixed amount of mobile data in a thirty-day service period. This information  
26 would have been important for them to know in evaluating whether to purchase TracFone's  
27 "unlimited" mobile data service.

28 57. In sum, from 2009 to present, despite advertising its mobile data service as

1 “unlimited,” TracFone failed in numerous instances to disclose or adequately disclose that it  
2 suspended or throttled the mobile data service of its customers once they used a fixed amount of  
3 mobile data in a thirty-day service period.

4 **VIOLATIONS OF THE FTC ACT**

5 58. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts  
6 or practices in or affecting commerce.”

7 59. Misrepresentations or deceptive omissions of material fact constitute deceptive acts  
8 or practices prohibited by Section 5(a) of the FTC Act.

9 **Count I**

10 **Section 5(a) Deceptive Failure to Disclose**

11 60. In the advertising and sale of “unlimited” mobile data service, TracFone has  
12 represented, directly or indirectly, expressly or by implication, to consumers that the amount of  
13 mobile data that they could access in any service period would not be limited.

14 61. TracFone failed to disclose or adequately disclose that it imposed significant and  
15 material restrictions on the quantity and speed of mobile data available to customers who used  
16 more than a fixed amount of mobile data in a given service period. The failure to disclose or  
17 adequately disclose these restrictions, in light of the representations made, is a deceptive act or  
18 practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

19 **CONSUMER INJURY**

20 62. Consumers have suffered and will continue to suffer substantial injury as a result of  
21 TracFone’s violations of the FTC Act. In addition, TracFone has been unjustly enriched as a  
22 result of its unlawful acts or practices. Absent injunctive relief by this Court, TracFone is likely to  
23 continue to injure consumers, reap unjust enrichment, and harm the public interest.

24 **THIS COURT’S POWER TO GRANT RELIEF**

25 63. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant  
26 injunctive and such other relief as the Court may deem appropriate to halt and redress violations  
27 of any provision of law enforced by the FTC. The Court, in the exercise of its equitable  
28 jurisdiction, may award ancillary relief, including rescission or reformation of contracts,

1 restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and  
2 remedy any violation of any provision of law enforced by the FTC.

3 **PRAYER FOR RELIEF**

4 Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the  
5 Court’s own equitable powers, respectfully requests that the Court:

6 A. Enter a permanent injunction to prevent future violations of the FTC Act by  
7 TracFone;

8 B. Award such relief as the Court finds necessary to redress injury to consumers  
9 resulting from TracFone’s violations of the FTC Act, including but not limited to, rescission or  
10 reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten  
11 monies; and

12 C. Award the FTC the costs of bringing this action, as well as such other and  
13 additional relief as the Court may determine to be just and proper.

14

15 Dated: January 28, 2015

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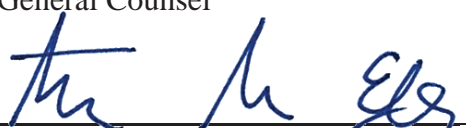
Respectfully submitted,

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FEDERAL TRADE COMMISSION

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