

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL BOBOWSKI, ALYSON BURN,
STEVEN COCKAYNE, BRIAN
CRAWFORD, DAN DAZELL, ANGELO
DENNINGS, CHEYENNE FEGAN,
SHARON FLOYD, GREGORY GUERRIER,
JOHANNA KOSKINEN, ELENA MUNOZ-
ALAZAZI, ELAINE POWELL, ROBERT
PRIOR, ALIA TSANG, and KYLE
WILLIAMS, on behalf of themselves and all
others similarly situated,

Plaintiffs,

vs.

CLEARWIRE CORPORATION,
Defendant.

Case No. C10-1859 JLR

**AMENDED AND SUPPLEMENTED
COMPLAINT — CLASS ACTION**

JURY TRIAL DEMANDED

Plaintiffs Michael Bobowski, Alyson Burn, Steven Cockayne, Brian Crawford, Dan Dazell, Angelo Dennings, Cheyenne Fegan, Sharon Floyd, Gregory Guerrier, Johanna Koskinen, Elena Munoz-Alazazi, Elaine Powell, Robert Prior, Alia Tsang, and Kyle Williams (“Plaintiffs”), by and through their attorneys, allege as follows.

INTRODUCTION

1. Defendant Clearwire Corporation and/or its operating subsidiaries (collectively, “Clearwire”) providers wireless Internet access to the public. Plaintiffs are subscribers or former subscribers of Clearwire’s Internet service.

2. Clearwire continually advertises “**High Speed Internet**” or “**faster Internet**” service (or substantially identical phrases) to induce prospective customers to

1 subscribe to the service. In reality, Clearwire throttles down the speed of its Internet service to
2 speeds similar to dial-up telephone modem speeds. These speeds make it difficult or impossible
3 to use the Internet in many ways that now are considered routine.

4 3. Customers soon realize they are not receiving the service that was advertised and
5 they were promised. If they seek to terminate the service, Clearwire adds insult to injury by
6 collecting or trying to collect certain early termination fees.

7 4. Clearwire's practice is akin to a bandwidth Ponzi scheme in the sense that
8 Clearwire advertises and sells a service, knowing in advance that there is no way it can provide
9 such service on an ongoing basis — *i.e.*, Clearwire sells subscriptions prior to build-out of
10 sufficient infrastructure to support the "High Speed Internet" it advertises. Someday, if
11 Clearwire sells enough subscriptions, it may have sufficient funds to go back and create the
12 infrastructure to support its Internet service and make good on its promises.

13 5. In the meantime, Plaintiffs, on behalf of themselves and all others similarly
14 situated, seek to end Clearwire's wrongful practices and to recover the subscription and
15 termination fees that subscribers paid for services they did not receive. They allege violations of
16 state statutes forbidding unfair and deceptive acts or practices in Plaintiffs' home states. They
17 also allege breach of contract, breach of the implied covenant of good faith and fair dealing, and
18 unjust enrichment.

19 6. Plaintiffs' allegations, which include acts and omissions that occurred after the
20 date of the filing of the initial complaint in this action up to the present date, are made on
21 personal knowledge as to themselves and their own activities, and on information and belief
22 based in part on counsel's research as to all other matters.

23 **PARTIES**

24 **Plaintiffs**

25 7. Plaintiff Michael Bobowski is a citizen of Illinois residing in Des Plaines, Illinois.
26 During the Class Period, Mr. Bobowski subscribed to Clearwire's purportedly high-speed
27 Internet service and was exposed to the false, misleading, and/or deceptive representations and

1 omissions made by Clearwire regarding that high-speed Internet service. Mr. Bobowski paid for
2 service that was not as advertised and not worth what he paid.

3 8. Plaintiff Alyson Burn is a citizen of Wisconsin residing in Janesville, Wisconsin.
4 During the Class Period, Ms. Burn subscribed to Clearwire's purportedly high-speed Internet
5 service and was exposed to the false, misleading, and/or deceptive representations and omissions
6 made by Clearwire regarding that high-speed Internet service while a resident of Oregon. Ms.
7 Burn paid for service that was not as advertised and not worth what she paid.

8 9. Plaintiff Steven Cockayne is a citizen of Oregon residing in Beaverton, Oregon.
9 During the Class Period, Mr. Cockayne subscribed to Clearwire's purportedly high-speed
10 Internet service and was exposed to the false, misleading, and/or deceptive representations and
11 omissions made by Clearwire regarding that high-speed Internet service. Mr. Cockayne paid for
12 service that was not as advertised and not worth what he paid.

13 10. Plaintiff Brian Crawford is a citizen of Washington residing in Monroe,
14 Washington. During the Class Period, Mr. Crawford subscribed to Clearwire's purportedly high-
15 speed Internet service and was exposed to the false, misleading, and/or deceptive representations
16 and omissions made by Clearwire regarding that high-speed Internet service. Mr. Crawford paid
17 for service that was not as advertised and not worth what he paid.

18 11. Plaintiff Dan Dazell is a citizen of Washington residing in Seattle, Washington.
19 During the Class Period, Mr. Dazell subscribed to Clearwire's purportedly high-speed Internet
20 service and was exposed to the false, misleading, and/or deceptive representations and omissions
21 made by Clearwire regarding that high-speed Internet service. Mr. Dazell paid for service that
22 was not as advertised and not worth what he paid.

23 12. Plaintiff Angelo Dennings is a citizen of Texas residing in Fort Worth, Texas.
24 During the Class Period, Mr. Dennings subscribed to Clearwire's purportedly high-speed
25 Internet service and was exposed to the false, misleading, and/or deceptive representations and
26 omissions made by Clearwire regarding that high-speed Internet service. Mr. Dennings paid for
27 service that was not as advertised and not worth what he paid.

1 13. Plaintiff Cheyenne Fegan is a citizen of Florida residing in St. Petersburg, Florida.
2 During the Class Period, Ms. Fegan subscribed to Clearwire's purportedly high-speed Internet
3 service and was exposed to the false, misleading, and/or deceptive representations and omissions
4 made by Clearwire regarding that high-speed Internet service. Ms. Fegan paid for service that
5 was not as advertised and not worth what she paid.

6 14. Plaintiff Sharon Floyd is a citizen of Illinois residing in Chicago, Illinois. During
7 the Class Period, Ms. Floyd subscribed to Clearwire's purportedly high-speed Internet service
8 and was exposed to the false, misleading, and/or deceptive representations and omissions made
9 by Clearwire regarding that high-speed Internet service. Ms. Floyd paid for service that was not
10 as advertised and not worth what she paid.

11 15. Plaintiff Gregory Guerrier is a citizen of New York residing in New York, New
12 York. During the Class Period, Mr. Guerrier subscribed to Clearwire's purportedly high-speed
13 Internet service and was exposed to the false, misleading, and/or deceptive representations and
14 omissions made by Clearwire regarding that high-speed Internet service. Mr. Guerrier paid for
15 service that was not as advertised and not worth what he paid.

16 16. Plaintiff Johanna Koskinen is a citizen of Missouri residing in Kansas City,
17 Missouri. During the Class Period, Ms. Koskinen subscribed to Clearwire's purportedly high-
18 speed Internet service and was exposed to the false, misleading, and/or deceptive representations
19 and omissions made by Clearwire regarding that high-speed Internet service. Ms. Koskinen paid
20 for service that was not as advertised and not worth what she paid.

21 17. Plaintiff Elena Munoz-Alazazi is a citizen of New York residing in New York,
22 New York. During the Class Period, Ms. Munoz-Alazazi subscribed to Clearwire's purportedly
23 high-speed Internet service and was exposed to the false, misleading, and/or deceptive
24 representations and omissions made by Clearwire regarding that high-speed Internet service.
25 Ms. Munoz-Alazazi paid for service that was not as advertised and not worth what she paid.

26 18. Plaintiff Elaine Powell is a citizen of Washington residing in Renton,
27 Washington. During the Class Period, Ms. Powell subscribed to Clearwire's purportedly high-

1 speed Internet service and was exposed to the false, misleading, and/or deceptive representations
2 and omissions made by Clearwire regarding that high-speed Internet service. Ms. Powell paid
3 for service that was not as advertised and not worth what she paid.

4 19. Plaintiff Robert Prior is a citizen of Washington residing in Vancouver,
5 Washington. During the Class Period, Mr. Prior subscribed to Clearwire's purportedly high-
6 speed Internet service and was exposed to the false, misleading, and/or deceptive representations
7 and omissions made by Clearwire regarding that high-speed Internet service. Mr. Prior paid for
8 service that was not as advertised and not worth what he paid.

9 20. Plaintiff Alia Tsang is a citizen of California residing in Davis, California.
10 During the Class Period, Ms. Tsang subscribed to Clearwire's purportedly high-speed Internet
11 service and was exposed to the false, misleading, and/or deceptive representations and omissions
12 made by Clearwire regarding that high-speed Internet service. Ms. Tsang paid for service that
13 was not as advertised and not worth what she paid.

14 21. Plaintiff Kyle Williams is a citizen of Oregon residing in Portland, Oregon.
15 During the Class Period, Mr. Williams subscribed to Clearwire's purportedly high-speed Internet
16 service and was exposed to the false, misleading, and/or deceptive representations and omissions
17 made by Clearwire regarding that high-speed Internet service. Mr. Williams paid for service that
18 was not as advertised and not worth what he paid.

19 **Defendant**

20 22. Defendant Clearwire is a corporation organized under the laws of Delaware,
21 headquartered at 4400 Carillon Point, Kirkland, Washington 98033. Defendant's most recent
22 form 10-Q, filed with the Securities and Exchange Commission on November 11, 2010, states
23 that, as of September 30, 2010, Defendant's "networks in launched markets cover an estimated
24 70.5 million people," including "approximately 1.0 million retail and 1.8 million wholesale
25 subscribers as of September 30, 2010."
26
27

1 Q: How does Clearwire's speed compare to DSL, cable and dial-up?

2 A: Clearwire lets you connect at broadband speeds of up to 2.0Mbps.^[1]
3 That's up to 25 times faster than typical dial-up! Check out our comparison chart or
4 speed demo to see how Clearwire compares to other Internet services.

5 The following is a comparison of the average time to download a 3.75MB video
6 clip:

7 28.8Kbps dial-up modem: 17 minutes, 47 seconds

8 56Kbps dial-up modem: 9 minutes, 9 seconds

9 Clearwire's 1.5Mbps: 20 seconds!

10 Clearwire, <http://www.clearwire.com/support/faqs.php> (last visited Mar. 3, 2011).

11 25. Elsewhere, Clearwire's website states:

12 Why is Clearwire better?

13 Fast – Up to 25x faster than dial-up

- 14 • Download pictures, music and videos
15 • Up to 2.0Mbps download / 256k upload speeds

16 Reliable – Always on, always secure

- 17 • No waiting for connections
18 • It's our network – we own it, we operate it

19 Clearwire, <http://www.clearwire.com/learn/broadband> (last accessed Mar. 3, 2011).

20 26. All but two of Clearwire's plans promise a minimum Internet speed of 1.0 mbps
21 with "No preset speed cap." Clear, <http://www.clear.com/plans> (last visited Mar. 3, 2011).²

22
23 ¹ "Mbps" means megabits per second.

24 ² The two exceptions are the "base home" and "base home + voice" plans as to which
25 Clearwire promises a minimum speed of 500 kbps and a maximum speed of 1.5 mbps.
26 Clearwire's representations with respect to these plans, however, are deceptive because
27 subscribers receive Internet service that is substantially slower than the 500 kbps that Clearwire
promises. Moreover, some Clearwire statements regarding the speed and capacity of its service
are not qualified by reference to a particular plan. Anyone reading the "base home" and "base
home + voice" limitations in conjunction with these general statements would have no reason to

1 Clearwire represents that it will provide the “fastest Home Internet [plan] with the speed you
2 need for gaming, streaming videos, downloading large files and more.” *Id.* All of the service
3 plans offered by Clearwire for home Internet access purport to offer “Unlimited usage.” *Id.*
4 Moreover, it represents it will provide “All the Internet you want with no extra service fees.” *Id.*

5 27. These representations are repeated with substantially uniform language
6 throughout Clearwire’s promotions regarding Internet speed and capacity. This allows Clearwire
7 to charge prices comparable to the DSL and cable Internet service providers it claims are its
8 competitors: Clearwire’s prices for Internet access range from \$35/month to \$110/month.
9 However, these representations and omissions were materially false, deceptive, and misleading
10 because, in truth and in fact, Clearwire subscribers cannot “upload, download, and surf” as much
11 as they want, and Clearwire does not provide an “always on,” “high-speed” connection. On the
12 contrary, Clearwire purposefully slows its subscribers’ connections to speeds well below the
13 promised minimum and well below the speeds necessary for use of the Internet in routine ways.

14 28. Why would Clearwire purposefully slow its subscribers’ service? In the face of
15 well-publicized financial pressure, Clearwire executed an aggressive campaign to increase its
16 subscriber base and thereby increase its revenues. On February 17, 2011, Clearwire CEO Bill
17 Morrow admitted that Clearwire achieved “aggressive network expansion goals [and] **grew [its]**
18 **subscriber base at an incredible rate.**” *Clearwire Reports Record Fourth Quarter and Full*
19 *Year 2010 Growth*, GlobeNewswire, Feb. 17, 2011, *available at* [http://www.globenewswire.com](http://www.globenewswire.com/newsroom/news.html?ref=rss&d=214093)
20 */newsroom/news.html?ref=rss&d=214093* [emphasis added]. Thus, rather than limiting its
21 subscribers to a number that its broadband infrastructure can accommodate — such that
22 Clearwire can make good on its representations regarding high-speed service and capacity —
23 Clearwire signed up many more subscribers than it could handle so as to maximize revenue and
24 profit.

25
26
27 suspect that such a plan would be inadequate for reasonable and customary Internet activities
such as web browsing, downloading movies, and sending email.

1 **Increased Internet Bandwidth Usage Automatically Triggers the Clearwire Cap**

2 29. Clearwire’s strategy for cramming as many subscribers as possible onto its
3 network relies on a policy pursuant to which, if a subscriber uses what Clearwire considers to be
4 too much Internet bandwidth, Clearwire’s systems automatically trigger a throttle on the speed of
5 that subscriber’s Internet connection. Clearwire throttles speeds down to rates well below the
6 promised minimums and as low as approximately 0.03 Mbps during peak Internet usage hours.
7 Clearwire’s throttled speeds are insufficient for users to perform any of the functions for which
8 broadband or “high-speed” Internet is necessary and, indeed, insufficient for any reasonable
9 Internet use; users cannot “stream movies” or “download music and video” as Clearwire
10 promises, and simply surfing the web becomes an exercise in patience. Thus Clearwire ensures
11 that at least during “peak hours” — which are “peak” because this is precisely when the most
12 Clearwire subscribers want to use the Internet — their service is at its slowest and least reliable.

13 30. This practice renders all Clearwire Internet service plans a bad choice for any
14 application, and especially bad for “gaming, streaming videos, downloading large files,” or
15 anything else requiring high-speed access. Even if a customer’s Internet service is unlimited and
16 fast when the customer’s service is activated, as promised, it is only a matter of time before it is
17 throttled down to a rate that makes routine Internet use excruciatingly slow.

18 **Subscriber Complaints are Unavailing**

19 31. Subscriber complaints about this practice are legion — but unavailing. As of the
20 date of this complaint there are at least six online forums where customers vent their frustration
21 with Clearwire’s misconduct.

22 32. The following are just a few examples of the many complaints regarding
23 Clearwire’s slow service:

24 (a) “I wish that Clear was telling the truth. They will cap your account if you
25 use more than they want you to use. My account is capped below 300 kbps. I just ran a
26 speed test and it said .27 kbps, and that is better than usual. I am paying for 1.5 Mbps and
27

1 I am only getting .27Mbps?." Facebook, <http://www.facebook.com/posted.php?id=12579>
2 8100763901&share_id=101105949 953180&comments=1 (last visited Mar. 3, 2011);

3 (b) weeks I have been given the run-around, reading the mac address over the
4 phone, rebooting my modem, telling my mother's middle name, culminating in this
5 fraudulent business behavior of modifying my account so that [C]learwire can get more
6 money for services not rendered (its already documented by a ticket that the speed is
7 crappy)." Consumer Complaints Board, [http://www.complaintsboard.com/complaints/
8 clearwire-c326200.html](http://www.complaintsboard.com/complaints/clearwire-c326200.html) (last visited Mar. 3, 2011);

9 (c) "I have been with Clear for about 1.5 years and daily I lose internet
10 several times with slower downloads than Comcast which I used to have and Quest.
11 Recently my speeds fell to dial up slow and they said they could not fix it . . . the
12 employees were not helpful but annoyed with my call . . . excuse I'm paying for this
13 service now it's messed up and they're the inconvenienced ones? If considering this joke
14 of an internet provider...think again! Quest . . . here I come." My3cents.com, [http://www.
15 my3cents.com/showReview.cgi?id=94413](http://www.my3cents.com/showReview.cgi?id=94413) (last visited Mar. 3, 2011); and

16 (d) "I have spent hours with various levels of technical support and no one
17 can explain why my speeds are great at times and almost useless at other times. I have
18 canceled my service due to the lack of dependability." DSLReports, [http://www.dsl
19 reports.com/comments/1592](http://www.dslreports.com/comments/1592) (last visited Mar. 3, 2011).

20 33. It is not surprising that customers are so angry. When they complain directly to
21 Clearwire, the company tries to pass off the problem as a technical glitch. Alternatively,
22 customer service representatives may reluctantly admit that Clearwire automatically caps or
23 "throttles" its Internet service but, pursuant to a "contract" with its subscribers — *i.e.*, its "Terms
24 of Service," Clearwire is entitled to do so — even though it has elsewhere and more prominently
25 promised its subscribers "No Preset Speed Cap." Clearwire thus takes the oxymoronic position
26 that it is authorized to engage in conduct that it already has said is unauthorized — *i.e.*, imposing
27 a speed cap and reducing speeds below advertised minimums. Hence, under these

1 circumstances, the contract / Terms of Service that Clearwire customer service representatives
2 refer to cannot really be the operative contract between Clearwire and its customers. Rather, the
3 operative contract between Clearwire and its customers is simply that the customers will pay for,
4 and Clearwire will provide, as promised in large, bold-faced letters, “unlimited,” “High Speed
5 Internet” service.

6 34. Clearwire sells its services in stores, kiosks at shopping centers, online, and by
7 phone. Electronics stores and Clearwire’s kiosks do not have copies of the terms of service on
8 hand for potential subscribers to read before they “agree” to them. Rather, the purported contract
9 (or “Terms of Service”) that Clearwire invokes is deeply embedded in a document that customers
10 never even see, much less agree to, before subscribing to Clearwire’s service. Consequently, if
11 many Clearwire customers ever see the “terms,” it is only after they have purchased Clearwire’s
12 service plan. Thus, when these customers leave a store or kiosk having purchased Clearwire
13 service, they have NOT agreed to Clearwire’s purported “terms of service.”

14 35. Customers who subscribe through the Internet or by phone are asked only to
15 select a plan, provide their home address, and input credit card information. Only at the bottom
16 of the page, in text substantially smaller and in lighter color than the rest of the page, does
17 Clearwire state ironically: “Want to read the fine print (and who doesn’t want to read the fine print?) It’s all there in the CLEAR Legal Index.”
18 (approximate actual size and color) [“Want to read the fine print (and who doesn’t want to read
19 the fine print?) It’s all there in the CLEAR Legal Index”]. *See* Clear, [http://www.clear.com/
20 plans](http://www.clear.com/plans) (last visited Mar. 3, 2011). This statement is obviously dismissive and sharply ironic;
21 mocks anyone who may have been fussy enough to have considered continuing; and fails to
22 disclose to users that the “fine print” contains important information — which is itself
23 ambiguous. Instead of urging prospective customers to read this important information about
24 their subscriptions, Clearwire belittles this segment as “fine print” that Clearwire ironically
25 acknowledges no one wants to read, but it then invokes this very same “fine print” to justify its
26 wrongful practices.

1 36. Moreover, if Clearwire subscribers ever in any way signal agreement to the “fine
2 print” it is only after they have received in their homes the modem required to enable their
3 service, at which point it is too late to back out without incurring the substantial inconvenience
4 of repackaging and returning the modem — not to mention the initial research required to obtain
5 Clearwire service.

6 37. Even if potential customers do click on the micro-sized self-mocking link, they
7 are not taken to the Terms of Service on which Clearwire relies but, rather, to a “Legal Index”
8 where they are presented with a confusing menu of 19 miscellaneous links on the left and 26
9 more links on the right, some of which are the same as each other but not in the same order. This
10 menu happens to include, as one of many menu items, “Terms of Service.” The web page gives
11 no special prominence to this item. On the contrary, it is less prominent than some of the
12 multitude of links.

13 38. Clearwire’s failure to show its Terms of Service to its customers at the time of
14 purchase does not stop it from enforcing a purported contract term that requires users to pay
15 cancellation and so-called “re-stocking” fees (together, “early termination fees” or “ETFs”).
16 Thus, although Clearwire breached its contract with its customers and deceptively induced its
17 customers to purchase and pay for Clearwire Internet service, Clearwire insists on the payment
18 of these ETFs when customers realize they are not getting what they bargained for. Many
19 customers are damaged in this regard because Clearwire generally does not allow them to cancel
20 their contracts unless they first pay the ETF contained in Clearwire’s one-sided contract.
21 Clearwire gives users the unappealing “choice” of paying a monthly fee for a service that is not
22 what was promised, paying a lump sum in advance to cancel that service, or not paying anything
23 and facing collection actions and damaged credit.

24 39. No one would deliberately make the decision to buy the slow and inconsistent
25 Internet access that Clearwire actually provides. Had Clearwire customers known the truth about
26 Clearwire’s practices, they would not have subscribed to Clearwire, particularly since most
27

1 customers had other high-speed Internet service options available to them. Or at the very least,
2 they would have paid a much lower price for the inferior Internet service they actually received.

3 **JURISDICTION AND VENUE**

4 40. This Court has jurisdiction over all causes of action asserted herein pursuant to 28
5 U.S.C. § 1332(d) because the aggregate claims of Plaintiffs and members of the Class exceed the
6 sum or value of \$5,000,000 and there is diversity of citizenship between at least one member of
7 the proposed Class and Clearwire.

8 41. Venue is proper in this District under 28 U.S.C. § 1391(a)(1) and (2). Clearwire
9 conducts substantial business in this District through the promotion, sale, marketing, and
10 provision of its services in this District, and is headquartered in this District.

11 **CLASS ALLEGATIONS**

12 42. Plaintiffs incorporate and reallege the above paragraphs.

13 43. Plaintiffs bring this action as a class action pursuant to Rule 23 on behalf of a
14 Class consisting of all persons in the United States (or, in the alternative, California, Florida,
15 Illinois, Missouri, New York, Oregon, Texas, and Washington) who purchased Internet access
16 from Clearwire during the period from November 15, 2004, until the final disposition of this
17 action (the "Class Period"). Excluded from the Class are Clearwire, any entity that has a
18 controlling interest in Clearwire, and Clearwire's current or former directors, officers, and
19 counsel.

20 44. The requirements of Rule 23 are satisfied because:

21 (a) Numerosity: The Class is so numerous that joinder of all members as
22 individual plaintiffs is impracticable. While the exact number of Class members is unknown and
23 can only be ascertained via discovery, Plaintiffs reasonably believe that there are many
24 thousands of Class members.

25 (b) Commonality: There are questions of law and fact common to the Class
26 and which predominate over individual questions, including:
27

- 1 (i) whether Clearwire's practices constitute unfair and deceptive acts
2 and practices under California, Illinois, Missouri, New York,
3 Texas, and Washington law;
- 4 (ii) whether Clearwire has breached its contract with customers;
- 5 (iii) whether it is unconscionable for Clearwire to charge users service
6 fees for Internet service that was not as advertised and for Internet
7 service that was not worth the service fees paid;
- 8 (iv) whether it is unconscionable for Clearwire to charge users ETFs
9 under the circumstances alleged;
- 10 (v) whether Clearwire has breached its duty of good faith and fair
11 dealing;
- 12 (vi) whether Clearwire has been unjustly enriched by the practices
13 alleged herein; and
- 14 (vii) whether, because of Clearwire's misconduct, Plaintiffs and the
15 Class are entitled to damages, treble damages, restitution, equitable
16 relief or other relief, and the amount and nature of such relief.

15 (c) Typicality: Plaintiffs' claims are typical of the claims of the Class because
16 Plaintiff and members of the Class each sustained damages arising out of Clearwire's centralized
17 wrongful conduct as complained of herein; and

18 (d) Adequacy: Plaintiffs will fairly and adequately protect the interests of the
19 Class. Plaintiffs have no interests that are antagonistic to, or in conflict with, the interests of the
20 Class as a whole, and have engaged competent counsel who are highly experienced in class
21 actions and complex litigation.

22 (e) The prosecution of separate actions by the members of the Class would
23 create a risk of adjudications with respect to individual members of the Class that would, as a
24 practical matter, be dispositive of the interests of the other members not parties to the
25 adjudications, or substantially impair or impede their ability to protect their interests; (b) the
26 prosecution of separate actions by the members of the Class would create a risk of inconsistent or
27 varying adjudications with respect to the individual members of the Class, which would establish

1 incompatible standards of conduct for Clearwire; (c) Clearwire acted or refused to act on grounds
2 generally applicable to the Class; (d) questions of law and fact common to members of the Class
3 predominate over any questions affecting only individual members, and a class action is
4 manageable and superior to other available methods for the fair and efficient adjudication of the
5 controversy.

6 **COUNT I**

7 **By Plaintiff Tsang**
8 **for violation of California Business and Professions Code § 17200 et seq.,**
9 **Unlawful, Unfair, or Fraudulent Business Acts or Practices,**
10 **on behalf of a California subclass**

11 45. Plaintiffs incorporate and reallege the above paragraphs.

12 46. Clearwire has engaged and continues to engage in California in the unlawful,
13 unfair, and fraudulent business acts and practices described above, in violation of California
14 unfair competition law, Cal. Bus. & Prof. Code § 17200 et seq. (the “UCL”).

15 47. Clearwire’s acts and practices are unlawful under the UCL by virtue of violating
16 Cal. Bus. & Prof. Code § 17500 et seq., which forbids unfair, deceptive, untrue, or misleading
17 advertising. Clearwire’s acts and practices are also unlawful under the California Consumer
18 Legal Remedies Act, Cal. Civ. Code § 1770(a), including at least subparts (5), (7), (9), (14), (16),
19 and (19). Clearwire is therefore in violation of the “unlawful” prong of the UCL.

20 48. Clearwire’s acts and practices are unfair because they cause harm and injury in
21 fact to Plaintiff and members of the California subclass and for which Clearwire has no
22 justification other than to increase, beyond what Clearwire would have otherwise realized, its
23 profit from subscription fees and/or certain ETFs. Clearwire’s conduct lacks reasonable and
24 legitimate justification in that Clearwire has benefited from such conduct while Plaintiff and the
25 members of the California subclass have been misled as to the nature and integrity of Clearwire’s
26 Internet service and have, in fact, suffered material disadvantage in the form of subscription fees
27 and/or certain ETFs. Clearwire is therefore in violation of the “unfair” prong of the UCL.

1 49. Clearwire's acts and practices are fraudulent within the meaning of the UCL
2 because they are likely to mislead a substantial portion of the members of the public to whom the
3 practices are directed. As evidence that Clearwire's practices are likely to mislead, those
4 practices actually did mislead a great many people, as indicated in the forums described in this
5 complaint. Clearwire is therefore in violation of the "fraudulent" prong of the UCL.

6 50. The practices that Clearwire has used, and continues to use to its significant gain,
7 also constitute unlawful competition and provide an unlawful advantage over Clearwire's
8 competitors, as well as injury to Plaintiff Tsang.

9 51. As a direct and proximate result of such violations of the UCL, Plaintiff Tsang
10 and the members of the California subclass have suffered, and/or continue to suffer, injury in fact
11 and have lost money and/or property in an amount that will be proved at trial.

12 52. Plaintiff Tsang and the California subclass seek restitution of all funds that
13 Clearwire may have acquired in violation of the UCL, in an amount that will be proved at trial.

14 **COUNT II**

15 **By Plaintiff Tsang**
16 **for violation of California Business and Professions Code § 17500 et seq.,**
17 **Unfair, Deceptive, Untrue, or Misleading Advertising,**
18 **on behalf of a California subclass**

19 53. Plaintiffs incorporate and reallege the above paragraphs.

20 54. Plaintiff Tsang asserts this cause of action against Clearwire for violations of
21 California's false advertising law, Business and Professions Code § 17500, et seq. for unfair,
22 deceptive, untrue, or misleading advertising.

23 55. At all material times, Clearwire, with the intent to sell its purported high-speed
24 Internet service in California, made and disseminated to the public in California substantially
25 uniform promotional statements concerning its services and facts connected with its proposed
26 provision of those services, that were unfair, deceptive, untrue, or misleading; and which
27 Clearwire knew or in the exercise of reasonable care should have known were unfair, deceptive,
untrue, or misleading.

1 70. Clearwire engaged in unlawful practices, including, but not limited to, the act,
2 use, or deception, false pretense, false promise, misrepresentation, unfair practice and/or
3 concealment, suppression, and omission of material facts in connection with the sale or
4 advertisement of merchandise in trade or commerce, in or from the State of Missouri in violation
5 of the Missouri Merchandising Practices Act § 407.020 et seq. by stating that it would provide a
6 certain level of Internet service without plainly disclosing to Plaintiff and the members of the
7 Missouri Class that that Internet service would be throttled. As a result, when Plaintiff Koskinen
8 and the other members of the Missouri class purchased their Internet service, they were unaware
9 that they were not going to receive the Internet service promised.

10 71. Clearwire's unlawful practices have directly damaged Plaintiff Koskinen and the
11 other members of the Missouri Class. Plaintiff Koskinen and the other members of the Missouri
12 Class paid subscription fees and/or certain ETFs relating to fast Internet service they did not
13 receive. Instead Plaintiff Koskinen and the other members of the Missouri Class received a level
14 of Internet service that could have been bought for a fraction of the cost. Thus, Clearwire has
15 unjustly profited at the expense of Plaintiff Koskinen and the other members of the Missouri
16 Class because Defendant has received payments for Internet service it would not have received if
17 not for its unlawful conduct.

18 72. Plaintiff Koskinen and the other members of the Missouri Class have suffered
19 and/or continue to suffer an ascertainable loss of money directly and proximately caused by
20 Clearwire's use or employment of a method, act, and/or practice declared unlawful under the
21 Missouri Merchandising Practices Act, as more fully described herein.

22 73. Further, Clearwire has engaged in an unfair practice that offends established
23 public policy, and is one that is immoral, unethical, oppressive, unscrupulous and/or substantially
24 injurious to consumers.

25 74. Upon information and belief, Clearwire acted and continues to act in an identical
26 or substantially similar manner with respect to the entire putative Missouri Class by adopting or
27 implementing identical or substantially similar practices.

1 interfered with their connections to the Internet by delaying and/or blocking altogether certain
2 communications.

3 80. As a direct and proximate cause of Clearwire's violation of N.Y. Gen. Bus. Law
4 § 349, Plaintiffs Munoz-Alazazi and Guerrier and the other New York Class members and all
5 others similarly situated have been damaged in an amount that will be proven at trial.

6 **COUNT VI**

7 **By Plaintiff Dennings**
8 **for violation of Texas Deceptive Trade Practices – Consumer Protection Act,**
9 **V.T.C.A. § 17.41 et seq., on behalf of a Texas subclass**

10 81. Plaintiffs incorporate and reallege the above paragraphs.

11 82. This cause of action is brought under the Texas Deceptive Trade Practices –
12 Consumer Protection Act, Tex. Bus. and Com. Code § 17.41 *et seq.* (the “TDTP-CPA”).

13 83. Plaintiff Dennings and other Texas Class members are “consumers” and
14 Clearwire's Internet service is a “service” as defined by §17.45 of the TDTP-CPA.

15 84. The TDTP-CPA prohibits false, misleading and deceptive acts and practices.

16 85. Clearwire violated the TDTP-CPA by engaging in the following practices
17 prohibited by § 17.46(b) in transactions with Plaintiff Dennings and other Texas Class members
18 which were intended to and did cause Plaintiff Dennings and other Texas Class members to
19 purchase Clearwire's Internet service:

20 (a) representing that goods and services have sponsorship, approval,
21 characteristics, ingredients, uses, benefits, or quantities which they do not have . . . ;

22 (b) representing that goods or services are of a particular standard, quality, or
23 grade, or that goods are of a particular style or model, if they are of another;

24 (c) advertising goods or services with intent not to sell them as advertised;

25 (d) failing to disclose information concerning goods or services, which was
26 known at the time of the transaction if such failure to disclose such information was intended to
27

1 induce the consumer into a transaction into which the consumer would not have entered had the
2 information been disclosed[.]

3 86. Clearwire’s false, misleading and deceptive acts or practices were made in
4 connection with the advertisement and sale of services within the scope of the TDTP-CPA.

5 87. Clearwire misrepresented the speed of Internet service to be provided and failed
6 to notify consumers that they would be charged certain ETFs if consumers cancel their service,
7 even if consumers cancel their service when their service is being throttled.

8 88. Clearwire’s acts, omissions, misrepresentations, practices and non-disclosures, as
9 alleged herein, also constitute “unconscionable” business acts or practices within the meaning of
10 the TDTP-CPA. Clearwire took advantage of Plaintiff Dennings’s and Class members’ lack of
11 knowledge, ability, experience and/or capacity to a grossly unfair degree by misrepresenting the
12 speed of Internet service to be provided in Clearwire’s advertising, and marketing materials and
13 by failing to notify consumers that they would be charged certain ETFs if consumers cancel their
14 service, even if consumers cancel their service when their service is being throttled.

15 89. As the provider of Internet services to consumers, Clearwire possesses specialized
16 knowledge regarding its capacity to provide the Internet speed promised. This information was
17 not known by or available to the public. As a result, Clearwire knew, should have had reason to
18 know, or recklessly disregarded that their representations were false, misleading, and deceptive.
19 Further, there is a gross disparity between the value of the Internet service consumers received
20 and the price they paid for the Internet service that was actually provided.

21 90. Clearwire’s misrepresentations in its adverting and marketing regarding the speed
22 of Internet service to be provided was intended to, had the capacity to and did, deceive Plaintiff
23 Dennings and the other Texas Class members into purchasing the Clearwire’s Internet service.

24 91. Plaintiff Dennings and all other Texas Class members purchased Clearwire’s
25 Internet service when Clearwire’s advertising and marketing uniformly misrepresented the
26 Internet speed that would be provided.

1 ETFs and/or (b) misleadingly and deceptively promising to provide a certain level Internet
2 service while, at the same time, impeding the Internet service of Plaintiffs Crawford, Dazell,
3 Powell, and Prior, and the other members of the Washington class.

4 100. Clearwire's unfair and deceptive business acts and practices impact the public
5 interest. Clearwire committed the unfair and deceptive acts described herein in the course of its
6 business as part of a pattern and generalized course of conduct. Clearwire's unfair and deceptive
7 business acts and practices have affected, and continue to affect, a great many consumers.

8 101. As a result of Clearwire's unfair and deceptive acts and practices in the conduct of
9 its business, Plaintiffs Crawford, Dazell, Powell, and Prior and the other members of the
10 Washington Class have suffered financial damages.

11 **COUNT VIII**

12 **By all Plaintiffs for Breach of Contract**

13 102. Plaintiffs incorporate and reallege the above paragraphs.

14 103. Plaintiffs and the Class members entered into a contract with Clearwire to pay
15 monthly fees in exchange for unlimited high-speed Internet service.

16 104. Plaintiffs and Class members, for their consideration, promised to make monthly
17 payments for high-speed Internet service having the characteristics detailed above. Clearwire,
18 for its consideration, promised to deliver high-speed Internet service having the characteristics
19 detailed above.

20 105. Plaintiffs and the Class members performed their obligations under the contract
21 by paying their monthly fees.

22 106. Clearwire unjustifiably breaches the contract by intentionally interfering with
23 Plaintiff and Class members' access and use of Clearwire's high-speed Internet service and,
24 therefore, Plaintiffs and the class are entitled to damages subject to proof at trial.
25
26
27

1 **COUNT IX**

2 **By all Plaintiffs for Breach of the Covenant of Good Faith and Fair Dealing**

3 107. Plaintiffs incorporate and reallege the above paragraphs.

4 108. Clearwire, through its advertising and marketing of its high-speed Internet
5 service, makes uniform representations and offers regarding the quality of its high-speed Internet
6 service.

7 109. Plaintiffs and Class members' acceptance of Clearwire's offer was premised on
8 Clearwire's promises regarding the nature of its high-speed Internet service and gave
9 consideration to Clearwire by paying their monthly fees. Plaintiffs and Class members
10 performed all their obligations under the contracts by paying for their service.

11 110. Clearwire breached the implied covenant of good faith and fair dealing by
12 knowingly, unreasonably, and/or arbitrarily failing to provide and interfering with Plaintiffs' and
13 Class members' ability to receive with the service they desired, paid consideration for, and
14 thought they would receive.

15 111. Clearwire further breached the implied covenant of good faith and fair dealing by
16 unreasonably and/or arbitrarily charging ETF or re-stocking fees to Plaintiffs and the Class
17 members, while knowing that it had failed to hold up its end of the bargain.

18 112. As a direct and proximate result of the breaches set forth herein, Plaintiffs and
19 Class members have suffered, and continue to suffer, damages in an amount to be proven at trial.

20 **COUNT X**

21 **By all Plaintiffs for Unjust Enrichment**

22 113. Plaintiffs incorporate and reallege the above paragraphs.

23 114. Clearwire's conduct unjustly enriched Clearwire, to the detriment of the Class, by
24 causing Clearwire to receive payments for a high-speed Internet service that it did not provide,
25 and allowing it to reap early termination fees or re-stocking fees from those who would not abide
26 by Clearwire's breach of contract.
27

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Respectfully submitted,

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Attorneys for Plaintiffs

21 Certificate of Service

22 I certify that, on Mar. 3, 2011, I caused this document to be filed with the Clerk of the
23 Court by means of the CM/ECF system, which will send notification of filing to all counsel of
24 record.

25 s/ Cliff Cantor, WSBA # 17893