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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 CARLOS REYNA, Individually and on
16 Behalf of All Others Similarly Situated,

17 Plaintiff,

18 v.

19 ARRIS INTERNATIONAL plc,

20 Defendant.

No.

CLASS ACTION COMPLAINT

Jury Trial Demanded

1 Upon personal knowledge as to his own acts, and based upon his investigation, his
2 counsel’s investigation, and information and belief as to all other matters, Plaintiff Carlos Reyna
3 (“Plaintiff”), on behalf of himself and all others similarly situated, alleges:

4
5 **I. INTRODUCTION**

6 1. This is a class action brought on behalf of purchasers of the SURFboard SB6190
7 cable modem (the “Modem”) sold by Defendant Arris International plc (“Arris”). A cable
8 modem is a device that allows cable subscribers to connect to broadband Internet service.

9 2. As alleged herein, since its launch in late 2015, Arris marketed the Modem as a
10 high-end cable modem delivering “the fastest speeds and most reliable connection to the
11 Internet.” However, Arris failed to disclose that the Modem contains a serious defect that
12 prevents it from operating properly. News reports and customer complaints since the release of
13 the Modem indicate that it suffers from high spikes in network latency—delays in data
14 communication over the network—that degrades users’ Internet connectivity.

15 3. Plaintiff purchased a Modem for personal use and suffered network latency, an
16 experience shared by many purchasers of the Modem. Despite this widespread defect, Arris has
17 not announced a recall of the affected model, or otherwise offered to repair or replace it.

18 4. By shipping Modems with this defect, Arris sold consumer goods that were
19 substantially below the quality generally available in the market, were not fit for the for the
20 Internet connectivity for which they were generally used, and were not adequately packaged and
21 labeled. Arris, therefore, has breached its implied warranty of merchantability in violation of the
22 California Song-Beverly Consumer Warranty Act, CAL. CIV. CODE §§ 1790 *et seq.* As a result,
23 all purchasers of the Modem that contained the defect are entitled to recover monetary damages
24 for the full purchase price of their cable modems.

25 5. Arris also concealed the network latency problem with the Modem through its
26 marketing, advertising, and packaging of the product. Arris’ misrepresentations and omissions
27 violate the California Consumer Legal Remedies Act (“CLRA”), CAL. CIV. CODE §§ 1750 *et*
28 *seq.*, and the California False Advertising Law (“FAL”), CAL. BUS. & PROF. CODE §§ 17500 *et*

1 *seq.* Arris’s conduct is also unlawful, fraudulent, and unfair in violation of the California Unfair
2 Competition Law (“UCL”), CAL. BUS. & PROF. §§ 17200 *et seq.*

3
4 **II. PARTIES**

5 6. Plaintiff Carlos Reyna is a citizen of California. In 2016, Plaintiff purchased a
6 Modem online through Amazon.com.

7 7. Defendant Arris is a corporation organized under the laws of England and Wales
8 and maintains its headquarters at 3871 Lakefield Drive, Suwanee, Georgia 30024. Defendant
9 Arris is a citizen of Georgia. In its public statements, Arris describes itself as a “world leader in
10 entertainment and communications technology” and states that it provides “hardware, software,
11 and services across the cloud, network, and home to power TV and Internet for millions of people
12 around the globe.” Arris operates two business segments: Customer Premises Equipment and
13 Network & Cloud. Arris provides equipment and technology, including cable modems, that is
14 used by service providers to deliver media, voice, and data services to their subscribers.

15
16 **III. JURISDICTION AND VENUE**

17 8. This Court has subject matter jurisdiction over this action pursuant to the Class
18 Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), because there are more than 100 proposed
19 Class Members, some members of the proposed class and the Defendant are citizens of different
20 states, and the amount in controversy exceeds \$5 million.

21 9. This Court has personal jurisdiction over Defendant because Defendant has
22 sufficient minimum contacts with California such that the exercise of jurisdiction by this Court
23 over Defendant is consistent with notions of fair play and substantial justice. A substantial portion
24 of the wrongdoing alleged in this Complaint took place in California; Defendant conducts
25 business in California and otherwise avails itself of the protections and benefits of California law
26 through the promotion, marketing, and sale of its Modems in the State; and this action arises out
27 of or relates to these contacts.

1 10. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant
2 maintains an office in this District, a substantial part of the events or omissions giving rise to the
3 claims occurred in this District, and a substantial part of the property that is the subject of the
4 action is situated in this District.

5
6 **IV. SUBSTANTIVE ALLEGATIONS**

7 **A. The Cable Modem Market.**

8 11. A cable modem is a device that enables a computer to transmit data over a coaxial
9 cable line. The cable modem is located at the cable subscriber’s home, and connects to the cable
10 network to receive and transmit digital information between subscriber-owned devices (such as
11 desktop PCs or routers) and the service provider’s headend or central office, providing Internet
12 connectivity for data and/or voice services.

13 12. Cable subscribers generally obtain their cable modem for Internet connectivity in
14 one of two ways – they either rent a cable modem that is owned by their cable service provider
15 (for example, Comcast), or they purchase the cable modem at retail. Arris is one of several
16 manufacturers of cable modem hardware and related equipment for service providers and
17 consumers. Other large competitors include Cisco Systems, Inc. and Netgear, Inc.

18 13. As of 2016, the cable subscriber base in the United States was approximately 50
19 million. Due to the size of the cable subscriber base, the market for cable modems is very large.
20 According to Arris’ public statements, the markets in which it participates are “dynamic, highly
21 competitive and require companies to react quickly and capitalize on change.”

22 14. Cable modem capability is measured by a telecommunications standard named
23 Data Over Cable Service Interface Specification (“DOCSIS”). DOCSIS is administered by Cable
24 Television Laboratories, Inc., known as CableLabs, a not-for-profit research and development
25 consortium composed of industry participants. DOCSIS provides cable modem manufacturers
26 and service providers a common method for products to work together in a predictable manner.
27 DOCSIS has evolved over time to support new capabilities, including higher Internet speeds. The
28 cable modems at issue in this case used the DOCSIS 3.0 standard.

1 15. Cable modems may be differentiated based on the “bits per second” or “bps” they
2 can process. A “bit” is a basic unit of information in computing and digital communications. The
3 term “Gbps” is a measurement in billions of bits per second, “Mbps” is a measurement in
4 millions of bits per second, and “Kbps” is a measurement in thousands of bits per second.
5 Generally speaking, larger bps units denote higher data speed capability. Similarly, cable
6 modems are equipped with “upload” and “download” channels for data. The more channels a
7 cable modem has, the more bps the it can handle, improving capability.

8 **B. Arris Markets the Modem as “Delivering the Fastest Speeds” and the “Most**
9 **Reliable” Connection to the Internet.**

10 16. On its website, Arris describes its SURFboard line of cable modems as follows:

11 The Internet brings us together. It lets us experience the wealth of our
12 global community with friends, family, and the entire world. If you want
13 an unmatched Internet experience, look no further than ARRIS
14 SURFboard modems. We’re the industry standard and the world’s
15 standard—with over 175 million ARRIS modems sold.

16 ARRIS continuously evolves the SURFboard product line to deliver the
17 fastest download speeds available.

18 When you choose an ARRIS SURFboard, you’re joining a 60-year legacy
19 of innovation from the company that invented digital TV and brought
20 wireless Internet into the home with the first cable modem gateway. The
21 same company that the world’s leading service providers choose to
22 connect millions of people around the world to the Internet.

23 17. During the Class Period, Arris prominently marketed and advertised the Modem
24 based on its purported speed and reliability. For example, on its website and on the Amazon e-
25 commerce platform, Arris included the following representation:

26 Introducing the first Gigabit+ Cable Modem available in retail. The
27 SURFboard SB6190 is a DOCSIS 3.0 modem [and] is capable of
28 download speeds up to 1.4 Gbps! That’s fast enough to download
multiple HD movies in one minute! Power your home network with the
SB6190 to deliver the fastest speeds and most reliable connection to the
Internet. Own yours today and stop paying rental.

1 18. In addition, on its website, Arris touted the Modem as “the First Gigabit Cable
2 Modem” able to achieve “download speeds up to 1.4 Gbps.” Arris further touted the Modem as
3 a “DOCSIS 3.0 Cable Modem” with “32 download and 8 upload channels.” Arris stated that the
4 Modem supported the Internet Protocols “IPv4 and IPv6 – the latest Internet standard.”

5 19. The packaging for the Modem repeated these claims and representations: (a) “32
6 Downstream Channels, Speeds up to 1.4 Gbps”; (b) “DOCSIS 3.0 Cable Modem”; (c) “32
7 Download and 8 Upload Channels”; and (d) “Get what you pay for – supports gigabit service
8 tiers.” The packaging further contains the statement “First Gigabit+ Cable Modem” and is
9 emblazoned with a seal stating “over 135 million sold” and “#1 selling modem.”

10 **C. High Network Latency Results in Connection Delays and Prevents Cable Modems**
11 **from Utilizing their Maximum Advertised Bandwidth.**

12 20. In the context of computer networking, network latency refers to delays that occur
13 in data communication over a network. Internet connections with low latency experience only
14 small delay times, while Internet connections with high latency suffer from long delays.

15 21. Although network speed is frequently only discussed in terms of bandwidth—the
16 data rate supported by a network interface (e.g., 1.4 Gbps)—network latency matters equally to
17 the end user’s ability to make use of a device’s advertised speeds. Excessive latency creates
18 bottlenecks that prevent data from filling the network pipe, thus decreasing the effective
19 throughput and limiting the maximum effective bandwidth of the connection.

20 22. Network latency is measured in milliseconds (“ms”), where the number of
21 milliseconds represents the amount of time each packet of data is delayed by. Smaller numbers
22 indicate smaller delays, and larger numbers indicate substantial delays in the connection and a
23 potential problem with the network device.

24 23. For a cable modem, typical network latency between a computer and the cable
25 modem ranges from approximately 5ms to 40ms. Latency above this range results in connection
26 delays and prevents a cable modem from utilizing its maximum advertised bandwidth.

1 **D. Reports Surface that the Modem Suffers “Severe Latency Spikes.”**

2 24. In late 2016, reports surfaced regarding network latency experienced by Modem
3 users. These reports attributed the problem to the Puma 6 Chipset made by Intel Corporation,
4 which is a component of the Modem. According to an article on *DSLreports* dated November
5 29, 2016 entitled “The Arris SB6190 Modem & Puma 6 Chipset Have Some Major Issues”:

6 An electrical engineer and Cox broadband subscriber in
7 our forums recently purchased the Arris SB6190, thinking it would be a
8 notable upgrade from the Arris SB6183 and prepare him for the likely
9 future launch of Cox gigabit broadband service in Arizona. The device,
10 which features the Intel Puma 6 chipset, supports 32 x 8 channel bonding
and is supposed to be relatively cutting edge -- at least among DOCSIS
3.0 devices.

11 Unfortunately for xymox1 [the user], he discovered that this supposed
12 upgrade is in fact a downgrade; one that results in notable connectivity
issues and consistently severe latency spikes.

13 The user, who has been charting home network performance for the better
14 part of eight years, documented . . . just how well this new device
15 performs. As in: it doesn't.

16 “The problem is extreme and, frankly, horrific,” notes the user. “Arris
17 and Intel Puma6/MaxLinear traded off speed for latency thinking no one
18 would notice. They tossed latency out the window to get 32 bonded
19 channels of speed. They tossed users under the bus as no user is really
gonna use 1 Gbps, but they will feel the latency and latency jitter in DNS
[domain name system] lookups.”

20 In fact, the new modem appears to have doubled his latency before the
21 first packet even leaves his house. The user contacted Cox, but even after
22 ensuring the modem was running the latest firmware the problem
persisted.

23 Curious as to why this problem exists at all, the user opened the device
24 and discovered that Arris appears to have replaced the Broadcom chipset
25 common to the more recent Surfboard modems, with an Intel Puma 6
26 chipset. There appear to have been more than a few complaints about this
27 particular chipset floating around the internet across North America, most
28 of them regarding the same severe latency and jitter issues xymox1 has
so carefully documented. Curiously, only some reviewers appear to have
even noticed the device’s performance issues.

1 It's unclear why such a problem wasn't caught earlier by CableLabs
2 during product certification. Whatever the cause, posts to
3 our forum appear to indicate that Arris is aware of the problem and
4 currently working on a firmware update. When that updated firmware
5 will arrive in the wild isn't clear.

6 25. Arris acknowledged the latency problem with the Modems discussed in the
7 November 29, 2016 article. A follow-up article in *DSLreports* dated December 1, 2016 entitled
8 "Arris tells us it's working with Intel on SB6190, Puma 6 Problems" reported as follows:

9 Arris tells DSLreports the company is working closely with Intel on a
10 problem in their SB6190 modem (more specifically the Intel Puma 6
11 Chipset) that causes owners to suffer significant jitter and latency on their
12 connections. As we noted earlier this week the problem results in users
13 seeing significant (250ms+) latency spikes and troubling DNS lookup
14 delays when browsing the internet or gaming. The problem was examined
15 in great detail in our forums by DSLreports regular xymox1.

16 Arris' statement makes it clear that Intel's Puma 6 chipset does appear to
17 be the culprit in the jitter and latency problem.

18 "ARRIS has been working actively with Intel to address the issue, which
19 resulted in some SURFboard SB6190 users reporting latency while
20 running high-performance apps," a company spokesperson tells me.

21 "Intel is providing a firmware fix to correct the condition, and we will
22 issue it as soon as it is available," the company added. "We remain
23 committed to providing the best broadband experience for all users of
24 ARRIS devices and regret any inconvenience this issue caused."

25 Granted the Puma 6 chipset isn't just embedded in the Arris SB6190, but
26 a wide variety of modems from an assortment of different vendors. Our
27 forums are filled with complaints from users on various ISPs all with one
28 thing in common: they're using a modem with the Intel Puma 6 chipset
as its CPU. For example users in our Cox forum note the same problem
is impacting users that bought the Netgear CM700 cable modem as well.

How this large of a problem escaped multiple vendors and CableLabs for
so long remains unclear. In a statement to DSLreports, CableLabs
indicated that the performance issues inherent in the Puma 6 chipset
effectively falls outside of its jurisdiction.

"Products submitted for CableLabs certification are tested for compliance
with the DOCSIS specifications, which define the interface requirements
that allow devices from different manufacturers to interoperate with each

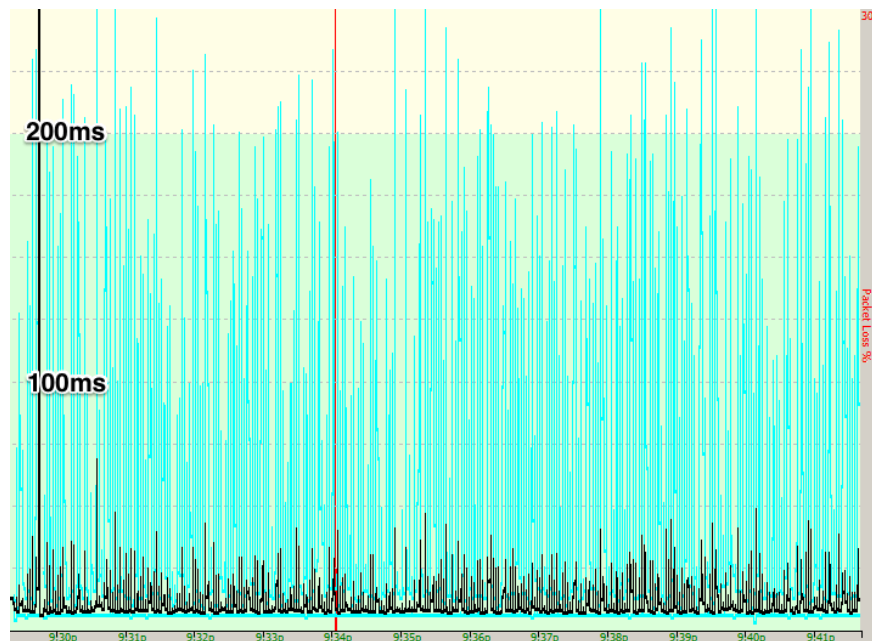
1 other,” the organization said. “The specifications specifically do not
2 address performance requirements, so that manufacturers can
3 differentiate their products through performance and additional features.
4 As a result, CableLabs certification does not include performance
5 testing.”

6 26. In a December 3, 2016 article posted to *The Register* entitled “Why Your Gigabit
7 Broadband Lags Like Hell – Blame Intel’s Chipset,” the Modem’s network latency problem was
8 further discussed. The article stated in part:

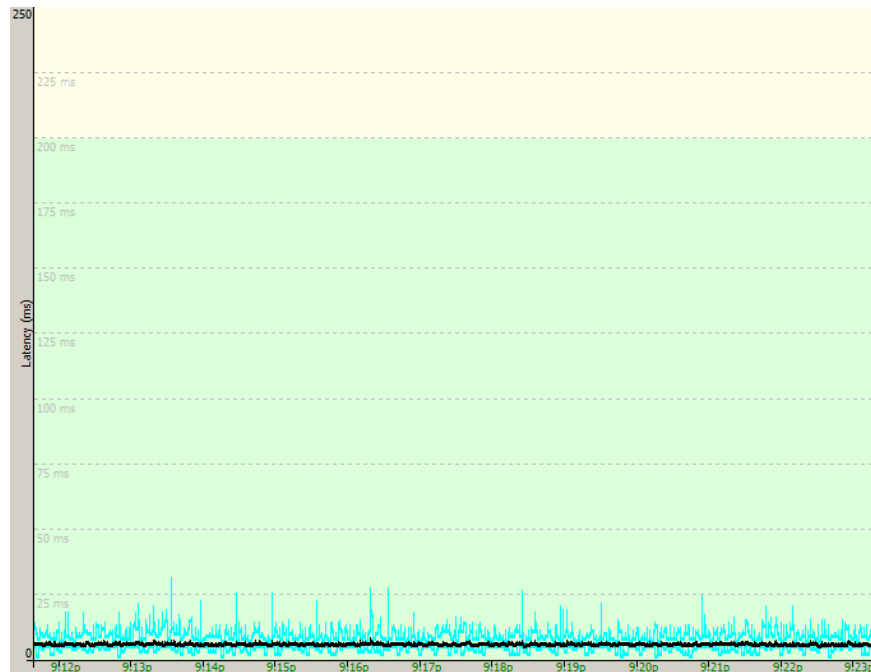
9 Modems powered by Intel’s Puma 6 chipset that suffer from bursts of
10 game-killing latency include the Arris Surfboard SB6190, the Hitron
11 CGNV4, and the Compal CH7465-LG, and Puma 6-based modems
12 rebadged by ISPs, such as Virgin Media’s Hub 3 and Comcast’s top-end
13 Xfinity boxes. There are other brands, such as Linksys and Cisco, that
14 use the system-on-chip that may also be affected.

15 The surges in lag are experienced by subscribers on various big ISPs,
16 from Comcast, Charter and Cox in the US to Rogers in Canada and Virgin
17 Media in the UK. You don’t need a full 1Gbps connection to trigger the
18 latency spikes – just at least a super-fast package and a buggy modem.

19 27. The *Register* article reproduced a graph created by “xymox1,” the same Modem
20 user quoted in the November 29, 2016 *DSLreports* article, which demonstrated the Modem’s
21 latency spikes:



1 28. By contrast, a similar cable modem, also manufactured by Arris but using a
2 Broadcom chipset, the SB6183, exhibited no similar latency issues in the test:



15 29. The *Register* article quoted “xymox1” as follows:

16 “I excitedly swapped out my Arris SB1683 Broadcom modem for the
17 new SB6190 Intel one expecting gigabit performance and immediately
18 noticed slower webpage loads,” he told *The Register*. “During first-
19 person gaming, I was getting killed way more often for no apparent
20 reason. I looked at an eight-year graph of latency from my home logs,
21 and was horrified. Swapping back to my SB6183 solved all the issues.”

22 30. Finally, the *Register* article stated that Arris was aware of and acknowledged the
23 network latency problems suffered by Modem users:

24 “Arris has been working actively with Intel to address the issue, which
25 resulted in some SURFboard SB6190 users reporting latency concerns,”
26 a spokeswoman for Arris said.

27 “We plan to quickly issue Intel’s firmware updates to resolve any latency.
28 We remain committed to providing the best broadband experience for all
users of Arris devices and regret any inconvenience this issue caused.”

1 31. Notwithstanding Arris’ awareness and acknowledgement of the Modem’s
2 network latency problems and customer complaints, Arris continues to fail to disclose the defect
3 in its marketing of the Modem, and continues to refuse to repair or replace the Modems.

4 **E. Plaintiff Experiences Network Latency Caused by the Modem.**

5 32. Plaintiff purchased a Modem for personal use in 2016, which he used to connect
6 his devices to the Internet. Plaintiff purchased the Modem through Amazon.com. Plaintiff’s
7 Modem was new and in its original packaging when he received it.

8 33. Plaintiff relied on the statements that Arris made about the Modem, and based on
9 those statements, believed that the Modem was a reliable cable modem that would perform as
10 represented, including that it provided the “fastest speeds” and the “most reliable connection” to
11 the Internet. Plaintiff did not know that the Modem suffered from abnormally high network
12 latency and unreliable Internet connectivity.

13 34. Since his purchase of the Modem, Plaintiff has repeatedly suffered abnormally
14 high network latency and unreliable Internet connectivity, and continues to do so. Had Plaintiff
15 known that the Modem was defective, he would not have purchased the Modem.

16
17 **V. CLASS ACTION ALLEGATIONS**

18 35. Plaintiff brings this action as a class action pursuant to Rules 23(a) and 23(b)(3)
19 of the Federal Rules of Civil Procedure, on behalf of himself and a proposed Class defined as
20 follows:

21 All persons in the State of California who purchased an Arris SB6190
22 Cable Modem.

23 36. Within the Class, there is one subclass for purposes of Plaintiff’s claims under
24 the Song-Beverly Consumer Warranty Act and the Consumer Legal Remedies Act (the
25 “Subclass”). The proposed Subclass is defined as follows:

26 All persons in the State of California who purchased an Arris SB6190
27 Cable Modem for personal, family or household purposes.

1 37. Excluded from the Class are governmental entities, Defendant, any entity in
2 which Defendant has a controlling interest, and Defendant's officers, directors, affiliates, legal
3 representatives, employees, coconspirators, successors, subsidiaries, and assigns. Also excluded
4 from the Class are any judges, justices, or judicial officers presiding over this matter and the
5 members of their immediate families and judicial staff.

6 38. This action is brought and may be properly maintained as a class action pursuant
7 to Rule 23. This action satisfies the requirements of Rule 23, including numerosity,
8 commonality, typicality, adequacy, predominance, and superiority.

9 39. **Numerosity.** The Class and Subclass are so numerous that the individual joinder
10 of all members is impracticable. While the Class's and Subclass's exact number are currently
11 unknown and can only be ascertained through appropriate discovery, Plaintiff, on information
12 and belief, alleges that the Class and Subclass include at least thousands of persons.

13 40. **Commonality.** Common legal and factual questions exist that predominate over
14 any questions affecting only individual Class or Subclass Members. These common questions,
15 which do not vary among Class Members and which may be determined without reference to
16 any Class Member's individual circumstances, include, but are not limited to:

- 17 a. Whether the Modem contains a defect that causes abnormally high network
18 latency;
- 19 b. Whether the Modem is of the same quality as those generally acceptable in the
20 market;
- 21 c. Whether the Modem is fit for the ordinary purposes for which the goods are
22 used;
- 23 d. Whether the Modem was adequately contained, packaged, and labeled;
- 24 e. Whether Arris breached its implied warranty of merchantability in violation of
25 the Song-Beverly Consumer Warranty Act;
- 26 f. Whether Arris represented that the Modem has characteristics, uses, or benefits
27 that it does not have in violation of the CLRA;
- 28

- 1 g. Whether Arris represented that the Modem is of a particular standard, quality, or
2 grade when it is of another in violation of the CLRA;
- 3 h. Whether Arris' representations and omissions regarding the Modem were false
4 and misleading and constitute false advertising in violation of the FAL;
- 5 i. Whether Arris engaged in unlawful, fraudulent, or unfair business practices in
6 violation of the UCL,
- 7 j. Whether Plaintiff, the Class, and the Subclass have been damaged by the wrongs
8 alleged and are entitled to compensatory or punitive damages;
- 9 k. Whether Plaintiff and the Class are entitled to injunctive or other equitable relief,
10 including restitution.

11
12 41. Each of these common questions is also susceptible to a common answer that is
13 capable of classwide resolution and will resolve an issue central to the validity of the claims.

14 42. ***Adequacy of Representation.*** Plaintiff is an adequate Class and Subclass
15 representative because he is a Class and Subclass Member, and his interests do not conflict with
16 the Class's or Subclass's interests. Plaintiff retained counsel who are competent and experienced
17 in consumer-protection class actions. Plaintiff and his counsel intend to prosecute this action
18 vigorously for the Class's and Subclass's benefit and will fairly and adequately protect their
19 interests.

20 43. ***Predominance and Superiority.*** The Class and Subclass can be properly
21 maintained because the above common questions of law and fact predominate over any questions
22 affecting individual Class or Subclass Members. A class action is also superior to other available
23 methods for the fair and efficient adjudication of this litigation because individual litigation of
24 each Class and Subclass Member's claim is impracticable. Even if each Class Member could
25 afford individual litigation, the court system could not. It would be unduly burdensome
26 if thousands of individual cases proceed. Individual litigation also presents the potential
27 for inconsistent or contradictory judgments, the prospect of a race to the courthouse, and the risk
28 of an inequitable allocation of recovery among those with equally meritorious claims. Individual

1 litigation would increase the expense and delay to all parties and the courts because it requires
2 individual resolution of common legal and factual questions. By contrast, the class-action device
3 presents far fewer management difficulties and provides the benefit of a single adjudication,
4 economies of scale, and comprehensive supervision by a single court.

5
6 **VI. CLAIMS FOR RELIEF**

7
8 **First Claim for Relief**

9 **Violation of California Song-Beverly Consumer Warranty Act,**

10 **Cal. Civ. Code §§ 1790 et seq.**

11 44. Plaintiff, individually and on behalf of the Subclass, incorporates by reference all
12 of the allegations contained in the preceding paragraphs of this Complaint.

13 45. Plaintiff brings this claim individually and on behalf of the Subclass against
14 Defendant.

15 46. Plaintiff and the Subclass purchased the SB6190 Modem manufactured by
16 Defendant that was marketed for fast and reliable Internet connectivity.

17 47. Plaintiff and the Subclass purchased the SB6190 Modem new and in its original
18 packaging and did not alter their Modems.

19 48. At the time of purchase, Defendant was in the business of manufacturing and
20 selling cable modems, including the SB6190 Modem.

21 49. The SB6190 Modems were used and bought primarily for personal, family, or
22 household purposes and are therefore consumer goods.

23 50. Arris's SB6190 Modem contained a defect that causes severe network latency.
24 This defect was present in Arris' SB6190 Modems when they left the exclusive control of
25 Defendant and therefore existed during the duration of the warranty period.

26 51. Arris's SB6190 Modems were not of the same quality as those generally
27 acceptable in the trade; were not fit for the ordinary purposes of fast and reliable Internet
28

1 connectivity for which the goods are used; were not adequately contained, packaged, and
2 labeled; and did not conform to the promises and facts stated on the container and label.

3 52. Defendant, therefore, breached the implied warranty of merchantability, which
4 by law is provided in every consumer agreement for the sale of goods, including for the sale of
5 Arris's SB6190 Modem.

6 53. As a direct and proximate cause of Defendant's breach of the implied warranty
7 of merchantability, Plaintiff and the Subclass have been damaged by receiving an inferior
8 product from that which they were promised. Plaintiff and the Subclass, therefore, have the right
9 to cancel and recover the purchase price of their SB6190 Modem.

10
11 **Second Claim for Relief**

12 **Violation of California Consumer Legal Remedies Act,**

13 **Cal. Civ. Code §§ 1750 *et seq.***

14 54. Plaintiff, individually and on behalf of the Subclass, incorporates by reference all
15 of the allegations contained in the preceding paragraphs of this Complaint.

16 55. Plaintiff brings this claim individually and on behalf of the Subclass against
17 Defendant.

18 56. Defendant is a "person" as defined in CAL. CIV. CODE § 1761(c).

19 57. Plaintiff and the Subclass acquired and purchased the SB6190 Modem for
20 personal, family, or household purposes and are therefore "consumers" as defined in CAL. CIV.
21 CODE § 1761(d).

22 58. The SB6190 Modems that Plaintiff and the Subclass purchased from Defendant
23 are "goods" as defined by CAL. CIV. CODE § 1761(a).

24 59. The purchases by Plaintiff and the Subclass of the goods sold by Defendant
25 constitute "transactions" as defined by CAL. CIV. CODE §§ 1761(e) and 1770.

26 60. In connection with its sale of goods to Plaintiff and the Subclass, Defendant
27 violated the CLRA by:
28

- 1 a. Misrepresenting to Plaintiff and the Subclass that the SB6190 Modems were
- 2 reliable cable modems, when in fact, they have a defect that causes severe
- 3 network latency, in violation of CAL. CIV. CODE §§ 1770(a)(5), (7), (9), and (16);
- 4 b. Misrepresenting to Plaintiff and the Subclass that Defendant's goods had
- 5 characteristics, uses, and benefits that they did not have, in violation of CAL. CIV.
- 6 CODE § 1770(a)(5);
- 7 c. Representing to Plaintiff and the Subclass that Defendant's goods were of a
- 8 particular standard, quality, or grade, when they were of another in violation of
- 9 CAL. CIV. CODE § 1770(a)(7);
- 10 d. Advertising goods to Plaintiff and the Subclass with the intent not to sell them as
- 11 advertised, in violation of CAL. CIV. CODE § 1770(a)(9); and
- 12 e. Misrepresenting to Plaintiff and the Subclass that the subject of a transaction has
- 13 been supplied in accordance with a previous representation when it had not, in
- 14 violation of CAL. CIV. CODE § 1770(a)(16).

15 61. In addition, under California law, a duty to disclose arises in four circumstances:

16 (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant
17 has exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant
18 actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial
19 representations but also suppresses some material facts.

20 62. Defendant had a duty to disclose to Plaintiff and the Subclass that the SB6190
21 Modem contains a defect that causes it to fail for the following three independent reasons: (a)
22 Defendant had exclusive knowledge of the information at the time of sale; (b) Defendant actively
23 concealed from Plaintiff and the Subclass this defect, which causes substantial Internet
24 connectivity failures and is important to customers; and (c) Defendant made partial
25 representations to Plaintiff and the Subclass regarding the speed and reliability of the Modem.

26 63. Defendant violated the CLRA by supplying defective Modems and by further
27 concealing this defect from Plaintiff and the Subclass.

1 72. Defendant engaged in advertising and marketing to the public and offered for sale
2 the SB6190 Modem.

3 73. Defendant engaged in the advertising and marketing alleged herein with the intent
4 to induce the sale of the Modems to consumers like Plaintiff.

5 74. Defendant's advertising and marketing representations regarding its SB6190
6 Modems were false, misleading, and deceptive as set forth in detail above. Defendant also
7 concealed the material information from consumers that these cable modems contained a defect
8 that causes severe network latency and unreliable Internet connectivity.

9 75. Defendant's misrepresentations and omissions alleged herein deceive or have the
10 tendency to deceive the general public regarding the reliability of its SB6190 Modems for
11 ordinary consumer use.

12 76. Defendant's misrepresentations and omissions alleged herein were the type of
13 misrepresentations that are material, i.e., a reasonable person would attach importance to them
14 and would be induced to act on the information in making purchase decisions.

15 77. Defendant's misrepresentations and omissions alleged herein are objectively
16 material to a reasonable consumer, and therefore reliance upon such misrepresentations may be
17 presumed as a matter of law.

18 78. At the time Defendant made the misrepresentations and omissions alleged herein,
19 Defendant knew or should have known that they were untrue or misleading and acted in violation
20 of CAL. BUS. & PROF. CODE §§ 17500 *et seq.*

21 79. Unless restrained by this Court, Defendant will continue to engage in untrue and
22 misleading advertising in violation of CAL. BUS. & PROF. CODE §§ 17500 *et seq.*

23 80. As a result, Plaintiff and each member of the Class has been injured, has lost
24 money or property, and is entitled to relief. Plaintiff and the Class seek restitution, injunctive
25 relief, and all other relief permitted under CAL. BUS. & PROF. CODE §§ 17500 *et seq.*

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1 **Fourth Claim for Relief**

2 **Violation of California Unfair Competition Law,**

3 **Cal. Bus. & Prof. §§ 17200 *et seq.***

4 81. Plaintiff, individually and on behalf of the Class, incorporates by reference all of
5 the allegations contained in the preceding paragraphs of this Complaint.

6 82. Plaintiff brings this claim individually and on behalf of the Class against
7 Defendant.

8 83. Plaintiff has standing to pursue this claim because he has suffered injury in fact
9 and has lost money or property as a result of Defendant's actions as described *supra*. All Class
10 Members overpaid for the SB6190 Modem due to Defendant's concealment of a defect with the
11 SB6190 Modem.

12 84. Defendant's actions as alleged herein constitute an "unlawful" practice as
13 encompassed by CAL. BUS. & PROF. CODE §§ 17200 *et seq.* because Defendant breached the
14 implied warranty of merchantability in violation of the California Song-Beverly Consumer
15 Warranty Act, CAL. CIV. CODE §§ 1790 *et seq.* and further violated the CLRA, CAL. CIV. CODE
16 §§ 1750 *et seq.* and the FAL, CAL. BUS. & PROF. CODE §§ 17500 *et seq.*

17 85. Defendant's actions as alleged herein constitute a "fraudulent" practice because,
18 by representing that the SB6190 Modems were reliable for ordinary consumer use but concealing
19 that the cable modems actually contained a defect, Defendant's conduct was likely to deceive
20 consumers. Defendant's failure to disclose this defect, especially in light of its claims about
21 speed and reliability, constitute a material omission in violation of the UCL.

22 86. Defendant's actions as alleged in this Complaint constitute an "unfair" practice,
23 because they offend established public policy and are immoral, unethical, oppressive,
24 unscrupulous, and substantially injurious to Arris's customers. The harm caused by Arris's
25 wrongful conduct outweighs any utility of such conduct and has caused—and will continue to
26 cause—substantial injury to Plaintiff and the Class. Arris could and should have chosen one of
27 many reasonably available alternatives, including not selling cable modems that contained a
28 defect, disclosing the defect to prospective purchasers, and/or not representing that its cable

1 modems were suitable for consumer use. Additionally, Defendant's conduct was "unfair,"
2 because it violated the legislatively declared policies reflected by California's strong consumer
3 protection, consumer warranty, and false advertising laws, including the California Song-
4 Beverly Consumer Warranty Act, CAL. CIV. CODE §§ 1790 *et seq.*, the CLRA, CAL. CIV. CODE
5 §§ 1750 *et seq.*, and the FAL, CAL. BUS. & PROF. CODE §§ 17500 *et seq.*

6 87. As a result of Defendant's unlawful, fraudulent, and unfair conduct, Plaintiff and
7 the Class were damaged. Plaintiff and the Class received an inferior product from that which
8 they were promised. Had Defendant disclosed the defect with the SB6190 Modems, Plaintiff and
9 the Class would not have purchased the cable modems or would have paid substantially less.

10 88. Defendant's wrongful business practices constitute a continuing course of unfair
11 competition because it continues to represent that the SB6190 is reliable, continues to fail to
12 disclose the defect, and continues to refuse to repair or replace the modems. Plaintiff and the
13 Class, therefore, seek equitable relief to remedy Arris's deceptive marketing, advertising, and
14 packaging and to recall all affected cable modems.

15 89. Plaintiff and the Class also seek an order requiring Defendant to make full
16 restitution of all monies they have wrongfully obtained from Class Members, as well as all other
17 relief permitted under CAL. BUS. & PROF. CODE §§ 17200 *et seq.*

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PRAYER FOR RELIEF

20 Plaintiff, on behalf of himself and the Class, requests that the Court order the following
21 relief and enter judgment against Defendant as follows:
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- 23 A. An order certifying the proposed Class and Subclass under Rule 23;
 - 24 B. An order appointing Plaintiff and his counsel to represent the Class and Subclass;
 - 25 C. A declaration that Defendant has engaged in the illegal conduct alleged;
 - 26 D. An order that Defendant be permanently enjoined from its improper conduct;
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- 1 E. A judgment awarding Plaintiff and the Class restitution and disgorgement of
2 all compensation obtained by Defendant from its wrongful conduct;
3 F. A judgment awarding Plaintiff and the Class compensatory damages pursuant to
4 its breach of implied warranty claim in an amount to be proven at trial;
5 G. Prejudgment and postjudgment interest at the maximum allowable rate;
6 H. Attorneys' fees and expenses and the costs of this action; and
7 I. All other relief that the Court deems necessary, just, and proper.
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10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a trial by jury on all claims so triable.
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13 Dated: March 31, 2017

By: /s/ Noah M. Schubert

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