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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 T-MOBILE US, INC., CLEARWIRE
SPECTRUM HOLDINGS LLC,
17 CLEARWIRE SPECTRUM
HOLDINGS II LLC, CLEARWIRE
18 SPECTRUM HOLDINGS III LLC,
FIXED WIRELESS HOLDINGS
19 LLC, NSAC LLC, TDI
ACQUISITION SUB LLC, AND
20 WBSY LICENSING LLC,

21 Plaintiffs,

22 vs.

23 WCO SPECTRUM LLC, SCH LLC,
ACADEMIA SPECTRUM LLC,
24 GARY WINNICK, CARL
KATERNDAHL, ASHOK
25 VASUDEVAN, ANDREAS
BITZARAKIS, AND TYLER
26 KRATZ,

27 Defendants.

Case No. 2:23-CV-4347

COMPLAINT FOR:
(1) VIOLATIONS OF RICO;
(2) CONSPIRACY TO VIOLATE
RICO;
(3) FRAUD;
(4) AIDING AND ABETTING
FRAUD;
(5) CONSPIRACY TO COMMIT
FRAUD;
(6) VIOLATION OF CAL. PENAL
CODE § 496;
(7) CONVERSION;
(8) VIOLATION OF CAL. BUS. &
PROF. CODE § 17200 et seq.;
(9) TORTIOUS INTERFERENCE
WITH BUSINESS EXPECTANCY
AND CONTRACTUAL
RELATIONSHIP;
(10) UNJUST ENRICHMENT; AND
(11) NEGLIGENT
MISREPRESENTATION.

DEMAND FOR JURY TRIAL

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1 Plaintiffs T-Mobile US, Inc., Clearwire Spectrum Holdings LLC, Clearwire
2 Spectrum Holdings II LLC, Clearwire Spectrum Holdings III LLC, Fixed Wireless
3 Holdings LLC, NSAC LLC, TDI Acquisition Sub LLC, and WBSY Licensing
4 LLC (collectively “T-Mobile” or “Plaintiffs”) for their complaint against WCO
5 Spectrum LLC, SCH LLC, Academia Spectrum LLC, Gary Winnick, Carl
6 Katerndahl, Ashok Vasudevan, Andreas Bitzarakis, and Tyler Kratz (collectively
7 “Defendants”), allege as follows:

8 NATURE OF THE CASE

9 1. T-Mobile brings this action to seek redress for Defendants’
10 nationwide criminal scheme to defraud T-Mobile US, Inc. and its subsidiaries out
11 of an amount believed to be more than \$10 million. T-Mobile leases the right to
12 use certain wireless spectrum from educational institutions that hold Federal
13 Communications Commission (“FCC”) licenses for that spectrum. T-Mobile’s
14 leases typically include a Right of First Refusal (“ROFR”) provision, which
15 provides that, if a third party makes a bona fide offer to purchase a spectrum license
16 and the licensee intends to accept that offer, then T-Mobile typically has 30 days
17 to match the third party’s terms and acquire the license itself. Beginning as early
18 as June 2020, Gary Winnick—publicly branded “The Emperor of Greed”¹ and the
19 “Master of Disaster”²—and his company WCO Spectrum LLC (“WCO”) formed
20 an illegal enterprise with their co-conspirators, including the other Defendants
21 here, in which they make sham offers to educational institutions to purchase
22 spectrum licenses that are intended to be conveyed to T-Mobile and to induce it to
23

24 ¹ Julie Creswell & Nomi Prins, The Emperor of Greed with the Help of his Bankers,
25 Gary Winnick Treated Global Crossing as his Personal Cash Cow—Until the
26 Company Went Bankrupt., FORTUNE Magazine (Jun. 24, 2002),
https://money.cnn.com/magazines/fortune/fortune_archive/2002/06/24/325183.

27 ² Jill Stewart, Master of Disaster: How L.A.’s Super-Rich Gary Winnick is Trying
28 to Wash Blood from the Global Crossing Implosion Off His Hands—and Make
More Money in the Bargain, New Times L.A., (Apr. 25, 2002).

1 exercise its ROFR. Simultaneously, WCO enters into secret side agreements with
2 these institutions whereby WCO pockets a kickback—in the form of a percentage
3 cut of the purchase price—in the likely event T-Mobile exercises its ROFR and
4 acquires the license. Through this scheme, Defendants already have siphoned an
5 amount believed to be more than \$10 million from T-Mobile to themselves, and
6 their illegal conduct continues unabated. T-Mobile fortuitously learned of
7 Defendants’ fraud only when a whistleblower (a former insider at WCO) came
8 forward to alert T-Mobile’s counsel to this scheme. Defendants’ fraudulent and
9 unfair conduct violates the Racketeer Influenced and Corrupt Organizations
10 (“RICO”) Act, 18 U.S.C. §§ 1961–1968, California Penal Code section 496, the
11 California Unfair Competition Law (“UCL”), and California Business and
12 Professions Code sections 17200, *et seq.*, and constitutes fraud, aiding and abetting
13 fraud, conspiracy to commit fraud, conversion, tortious interference with contract,
14 tortious interference with economic relations, unjust enrichment, and negligent
15 misrepresentation. It also has resulted in Defendants being unjustly enriched at T-
16 Mobile’s expense. At their core, Defendants are fraudsters whose racketeering and
17 unfair and deceptive conduct is precisely the type of behavior that the RICO and
18 UCL statutes were designed to redress.

19 **FACTUAL BACKGROUND**

20 2. This case concerns Educational Broadband Service (“EBS”) licenses
21 issued by the FCC. EBS is a range of spectrum that the FCC historically has
22 licensed to educational entities. There typically are twenty EBS channels in any
23 given geographic market, each of which physically occupies a unique place within
24 the radio frequency spectrum. These fall within the band of spectrum from 2496 to
25 2690 MHz, which is commonly referred to as the “2.5GHz” band of spectrum. Until
26 an FCC rule change in April 2020, EBS licenses could be held only by educational
27 institutions (and not commercial entities). To build its nationwide cellular and data
28 network, T-Mobile leased much of that wireless spectrum from the educational

1 institutions that hold the licenses. The leases typically include a ROFR provision.
2 In April 2020, the FCC changed course and allowed these licenses to be held by
3 commercial entities.

4 3. WCO and the other Defendants agreed and conspired together to take
5 advantage of this rule change by forming a racketeering enterprise that works as
6 follows: At the outset, WCO, usually through an entity called Parkview Consulting
7 (“Parkview”), issued public records requests to obtain spectrum lease agreements
8 between T-Mobile and educational institutions containing ROFR provisions.
9 Armed with this information, Defendants Winnick, Katerndahl, Kratz, and
10 Bitzarakis work together to identify licenses to pursue with sham offers. Through
11 Defendant Katerndahl, along with at least Defendants Academia Spectrum LLC
12 (“Academia”) and its principal Bitzarakis, WCO then enters into discussions with
13 the license holder, including negotiating a potential price for purchasing the license.
14 WCO makes a sham, non-binding written “offer” to purchase the license,
15 communicated to the license holder by Katerndahl or Academia/Bitzarakis.
16 Defendants make these sham offers intending that they will be communicated to T-
17 Mobile and cause T-Mobile to exercise its ROFR. At the same time, WCO and the
18 licensee execute a secret side contract, titled a “Commitment Costs Agreement”
19 (“CCA”), which provides that, if T-Mobile exercises its ROFR (and thus matches
20 WCO’s offer and purchases the license), the licensee will pay WCO a material
21 portion—usually 10%—of the purchase price. To account for the kickback, WCO
22 inflates its offers to EBS license holders—typically by the same percentage as the
23 kickback itself. That way, when T-Mobile exercises a ROFR and matches the
24 “offer,” it pays more than the license holder is willing to accept for its license and
25 funds the kickback. WCO tries to hide this kickback arrangement by requiring the
26 licensee to sign a non-disclosure agreement (“NDA”) that covers the CCA. That
27 same NDA expressly allows the sham offer to be communicated to T-Mobile. In
28 reality, WCO does not intend to honor its offer; instead its sole purpose is to deceive

1 T-Mobile into exercising the ROFR in T-Mobile's lease agreement. Indeed, on
2 information and belief, WCO's proposed offers to EBS license holders, when
3 totaled, amount to more than \$1.6 billion and cover 167 spectrum licenses. Even if
4 WCO intended to make good on any of its offers—to be clear, it did not—WCO
5 lacks the capacity to make good on anything remotely approaching all of these
6 offers.

7 4. To support this scheme, WCO entered into a fake line of credit
8 agreement with Defendant Vasudevan's entity, SCH LLC ("SCH"), pursuant to
9 which SCH purports to lend WCO the funds needed to purchase spectrum licenses
10 leased by T-Mobile. SCH's role in the scheme is essential, as it lends the
11 appearance of legitimacy to WCO's offers. But SCH's purported line of credit is a
12 farce. Under WCO's agreement with SCH, SCH purports to offer WCO **\$2 billion**
13 in credit. SCH does not have any apparent history, public presence, or lines of
14 business, and it purportedly is run out of Vasudevan's apartment. SCH exists to
15 create the illusion that WCO's offers are backed by legitimate financing so that, if
16 pressed, WCO could provide (false) evidence that its offers are real. In exchange
17 for SCH's fraudulent financing documents, SCH receives 8% of WCO's ill-gotten
18 kickbacks.

19 5. At its core, Defendants' goal is simple: they intend to defraud T-
20 Mobile of tens of millions of dollars through WCO's sham offers to purchase
21 spectrum licenses. This conduct is designed to funnel kickbacks from T-Mobile's
22 payments to educational institutions for purchase of EBS licenses to Defendants to
23 support their criminal activities and to reward and incentivize participation in the
24 scheme.

25 6. WCO's sham offers are intentionally coercive. By fraudulently
26 presenting its sham offers as legitimate, WCO intentionally and falsely led T-
27 Mobile to believe that it faced a Hobson's choice—in order to maintain its mobile
28 network, T-Mobile was required to either (1) spend vast sums of money to

1 purchase spectrum licenses at a price higher than what the license holder was
2 willing to accept and that T-Mobile otherwise was content to continue leasing, or
3 (2) risk the possibility that WCO would purchase the spectrum licenses and
4 become T-Mobile's spectrum landlord, almost certainly guaranteeing that T-
5 Mobile would have to pay a king's ransom later when its current lease agreements
6 expired. As WCO knows, T-Mobile needs access to the spectrum it currently
7 leases from educational institutions in order to maintain a contiguous and efficient
8 mobile network for its millions of customers.

9 7. WCO has attempted to conceal its scheme from T-Mobile in at least
10 two ways. First, it requires the license holders that engage with Defendants
11 regarding the supposed offers for their license to enter into NDAs that preclude
12 them from disclosing to T-Mobile the contents of their discussions with WCO,
13 including, critically, the existence of the CCAs between WCO and the licensees.
14 Second, WCO and Academia have taken every possible step to prevent the details
15 of their fraud from becoming public, including abandoning multiple deals rather
16 than producing documents to T-Mobile that would have reflected Defendants'
17 fraud and refusing to provide discovery related to Defendants' ROFR scheme in
18 separate litigation between T-Mobile and Defendants.

19 8. Notably, this is not the first time Gary Winnick finds himself
20 enmeshed in a pattern of fraud and related misconduct. Winnick began his career
21 in partnership with Michael Milken, who was convicted of securities and tax
22 violations for his work selling junk bonds while at Drexel Burnham Lambert. Most
23 notably, Winnick founded Global Crossing Limited in the 1990s, and for four years
24 extracted more than \$700 million for himself, while the company failed to realize
25 any profits. Global Crossing ultimately imploded in 2002, leaving its investors
26 and employees in economic ruin. As set forth more fully herein, Winnick's
27 fraudulent scheme to defraud T-Mobile is merely the latest episode in a career
28 marred by deceitful and unfair business dealings.

1 12. Plaintiff Clearwire Spectrum Holdings II LLC (“Clearwire II”) is a
2 limited liability company organized under the laws of Delaware, with a principal
3 office at 12920 SE 38th Street, Bellevue, Washington, 98006. Its ultimate parent
4 is T-Mobile US. Clearwire II’s sole member is Clearwire Legacy LLC, a limited
5 liability company organized under the laws of Delaware. Clearwire Legacy LLC’s
6 sole member is Clearwire Communications LLC, a limited liability company
7 organized under the laws of Delaware. Clearwire Communications LLC’s sole
8 member is Sprint Communications LLC, a limited liability company organized
9 under the laws of Delaware. Sprint Communications LLC’s sole member is Sprint
10 LLC, a limited liability company organized under the laws of Delaware. Sprint
11 LLC’s sole member is T-Mobile USA, Inc., a Delaware corporation with its
12 principal place of business located at 12920 SE 38th Street, Bellevue, Washington
13 98006. Accordingly, Clearwire II is a citizen of Delaware, Washington, and no
14 other state.

15 13. Plaintiff Clearwire Spectrum Holdings III LLC (“Clearwire III”) is a
16 limited liability company organized under the laws of Delaware, with a principal
17 office at 12920 SE 38th Street, Bellevue, Washington, 98006. Its ultimate parent
18 is T-Mobile US. Clearwire III’s sole member is Clearwire XOHM LLC, a limited
19 liability company organized under the laws of Delaware. Clearwire XOHM LLC’s
20 sole member is Nextel West Corp., a Delaware corporation with its principal place
21 of business located at 12920 SE 38th Street, Bellevue, Washington 98006.
22 Accordingly, Clearwire III is a citizen of Delaware, Washington, and no other
23 state.

24 14. Plaintiff Fixed Wireless Holdings LLC (“Fixed Wireless”) is a limited
25 liability company organized under the laws of Delaware, with a principal office at
26 12920 SE 38th Street, Bellevue, Washington, 98006. Its ultimate parent is T-
27 Mobile US. Fixed Wireless’s sole member is Clearwire Legacy LLC, a limited
28 liability company organized under the laws of Delaware. Clearwire Legacy LLC’s

1 sole member is Clearwire Communications LLC, a limited liability company
2 organized under the laws of Delaware. Clearwire Communications LLC's sole
3 member is Sprint Communications LLC, a limited liability company organized
4 under the laws of Delaware. Sprint Communications LLC's sole member is Sprint
5 LLC, a limited liability company organized under the laws of Delaware. Sprint
6 LLC's sole member is T-Mobile USA, Inc., a Delaware corporation with its
7 principal place of business located at 12920 SE 38th Street, Bellevue, Washington
8 98006. Accordingly, Fixed Wireless is a citizen of Delaware, Washington, and no
9 other state.

10 15. Plaintiff NSAC LLC ("NSAC") is a limited liability company
11 organized under the laws of Delaware, with a principal office at 12920 SE 38th
12 Street, Bellevue, Washington, 98006. Its ultimate parent is T-Mobile US. NSAC's
13 sole member is Clearwire XOHM LLC, a limited liability company organized
14 under the laws of Delaware. Clearwire XOHM LLC's sole member is Nextel West
15 Corp., a Delaware corporation with its principal place of business located at 12920
16 SE 38th Street, Bellevue, Washington 98006. Accordingly, NSAC is a citizen of
17 Delaware, Washington, and no other state.

18 16. Plaintiff TDI Acquisition Sub LLC ("TDI") is a limited liability
19 company organized under the laws of Delaware, with a principal office at 12920
20 SE 38th Street, Bellevue, Washington, 98006. Its ultimate parent is T-Mobile US.
21 TDI's sole member is T-Mobile License LLC, a limited liability company
22 organized under the laws of Delaware. T-Mobile License LLC's sole member is
23 T-Mobile USA, Inc., a Delaware corporation with its principal place of business
24 located at 12920 SE 38th Street, Bellevue, Washington 98006. Accordingly, TDI
25 is a citizen of Delaware, Washington, and no other state.

26 17. Plaintiff WBSY Licensing LLC ("WBSY") is a limited liability
27 company organized under the laws of Delaware, with a principal office at 12920
28 SE 38th Street, Bellevue, Washington, 98006. Its ultimate parent is T-Mobile US.

1 Its sole member is SprintCom LLC, a limited liability company organized under
2 the laws of Delaware. SprintCom LLC's sole member is Sprint Communications
3 LLC, a limited liability company organized under the laws of Delaware. Sprint
4 Communications LLC's sole member is Sprint LLC, a limited liability company
5 organized under the laws of Delaware. Sprint LLC's sole member is T-Mobile
6 USA, Inc., a Delaware corporation with its principal place of business located at
7 12920 SE 38th Street, Bellevue, Washington 98006. Accordingly, WBSY is a
8 citizen of Delaware, Washington, and no other state.

9 18. Plaintiffs Clearwire, Clearwire II, Clearwire III, Fixed Wireless,
10 NSAC, TDI, and WBSY are T-Mobile US subsidiaries that lease EBS spectrum
11 from educational institutions.

12 19. Defendant WCO Spectrum LLC ("WCO") is a limited liability
13 company organized and existing under the laws of the state of Delaware and doing
14 business in the state of California with its principal office located at 9355 Wilshire
15 Boulevard, Suite 200, Beverly Hills, California 90210. WCO purports to "help
16 license holders generate significant liquidity by selling their licenses."

17 20. On information and belief, Defendant Gary Winnick ("Winnick") is
18 an individual residing in Beverly Hills, California. Winnick is WCO's founder.

19 21. Defendant Carl Katerndahl ("Katerndahl") is an individual residing in
20 Manhattan Beach, California. Katerndahl is WCO's Chief Executive Officer
21 ("CEO") and Chairman.

22 22. Defendant Tyler Kratz ("Kratz") is an individual residing in San Juan,
23 Puerto Rico. Kratz is a consultant hired by WCO to assist in implementing the
24 fraudulent scheme at issue in this Complaint.

25 23. Defendant SCH LLC ("SCH") is a limited liability company
26 organized and existing under the laws of the state of California and doing business
27 in the state of California with its principal office at 10139 South Blaney Avenue,
28 Apartment A, Cupertino, California 95014. SCH is WCO's supposed financier.

1 24. On information and belief, Defendant Ashok Vasudevan
2 (“Vasudevan”) is an individual residing in Cupertino, California. Vasudevan is
3 SCH’s principal.

4 25. SCH is the alter ego of Vasudevan. There exists a unity of interest
5 between SCH and Vasudevan, and allowing SCH’s actions to be treated as SCH’s
6 alone would produce an inequitable result. Specifically, on information and belief:

- 7 a. SCH is a shell company and a sham created as a means of carrying
8 out Vasudevan’s and his co-Defendants’ fraudulent scheme;
- 9 b. Vasudevan is the sole owner and employee of SCH;
- 10 c. SCH’s registered address is the same address as Vasudevan’s
11 residential address;
- 12 d. SCH, while purporting to have extended a \$2 billion line of credit,
13 has no apparent assets or funds, and as a result, SCH is
14 undercapitalized;
- 15 e. SCH has no public presence and no lines of business;
- 16 f. SCH does not follow traditional corporate formalities, such as
17 conducting business with the approval of a board of directors (or
18 any other employees at all), carrying out shareholder meetings, or
19 maintaining corporate records;
- 20 g. Vasudevan transfers SCH’s ill-gotten proceeds from the
21 fraudulent scheme to himself for personal use;
- 22 h. Vasudevan created SCH in order to use SCH’s corporate form for
23 purposes of preparing sham financing documents to provide false
24 support for WCO’s fraudulent offers. As a result, Vasudevan used
25 SCH’s corporate form in order to perpetrate this fraud, and
26 allowing Vasudevan and SCH to be treated as distinct entities
27 would permit a wrongful or inequitable purpose; and
28

1 i. Because SCH has no assets, Plaintiffs would be unable to collect
2 any judgment from SCH.

3 26. Defendant Academia Spectrum LLC (“Academia”) is a limited
4 liability company organized under the laws of the state of Virginia and doing
5 business in the state of Connecticut with its principal office at 294 Watch Hill
6 Road, Berlin, Connecticut 06037. Academia is a broker that aids WCO in targeting
7 specific transactions for its fraudulent scheme and communicating with licensees
8 on behalf of WCO.

9 27. Defendant Andreas Bitzarakis (“Bitzarakis”) is an individual residing
10 in Berlin, Connecticut. Bitzarakis is Academia’s principal and personally
11 participates in the fraudulent scheme against T-Mobile on behalf of Academia and
12 WCO.

13 **JURISDICTION AND VENUE**

14 28. This Court has subject matter jurisdiction over T-Mobile’s federal law
15 claims pursuant to 28 U.S.C. § 1331 and 18 U.S.C. § 1964(c). This Court has
16 supplemental subject matter jurisdiction over T-Mobile’s state law claims pursuant
17 to 28 U.S.C. § 1367(a) because those claims are so closely related to the federal
18 claims brought herein as to form part of the same case or controversy.

19 29. This Court has subject matter jurisdiction over T-Mobile’s claims
20 pursuant to 28 U.S.C. § 1332 because (a) the amount in controversy exceeds
21 \$75,000, exclusive of interest and costs; and (b) upon information and belief, there
22 is complete diversity between Plaintiffs and Defendants.

23 30. Personal jurisdiction is proper over all Defendants in this district
24 pursuant to 18 U.S.C. § 1965(a) and (b) and Federal Rule of Civil Procedure 4(k).

25 31. Venue is proper in this court under 18 U.S.C. § 1965 and 28 U.S.C. §
26 1391(b)(2). A substantial part of the events or omissions giving rise to the claims
27 herein occurred in this District.
28

STATEMENT OF THE CASE

I. The Spectrum Marketplace

32. Wireless spectrum refers to the invisible radio frequencies over which wireless signals travel, and it is the lifeblood of wireless networks. The spectrum frequencies used for wireless communications comprise only one portion of the radio frequency spectrum. Other parts of the electromagnetic spectrum are used for things like radio, television broadcasts, and government uses. Spectrum is grouped in “bands” depending on its wavelength—the full electromagnetic spectrum ranges from 3 Hz to 300 EHz. The portion used for wireless communication ranges from 20 KHz to 300 GHz. To better understand how spectrum works, consider a radio dial. As you go up and down the dial, you locate radio stations operating on particular frequencies. Now imagine the radio dial expands much further in both directions—at those higher and lower frequencies you would find the frequencies assigned to other uses like wireless phones, satellite TV, air traffic control, and police radios.

33. The FCC oversees commercial spectrum allocation and works closely with the National Telecommunications and Information Administration—which manages government use of spectrum—international bodies, and Congress to allocate spectrum bands. The FCC designates certain spectrum as licensed, meaning it is bought or allocated for exclusive use by a specific provider, and other spectrum as unlicensed, meaning anyone can use the frequency (e.g., Bluetooth and Wi-Fi connections rely on unlicensed bands).

34. The FCC historically has licensed spectrum in the 2.5 GHz band to educational institutions under its EBS licensing program. *In re Transforming the 2.5 GHz Band*, 34 FCC Rcd. 5446, 5451 (2019), 2019 WL 3065514. The original intent of the program was to reserve certain wireless spectrum for educational programming. *See id.* at 5448. To that end, the FCC issued EBS licenses to educational institutions across the country. *See id.*

1 35. Prior to April 2020, FCC regulations allowed only non-commercial
2 entities that provided educational services to hold EBS spectrum licenses. *See id.*
3 at 5447. The FCC, however, permitted EBS licensees—most of which lack the
4 technical knowledge, expertise, and infrastructure to operate a telecommunications
5 network—to lease all but 5% of the spectrum authorized by their licenses to
6 commercial entities like T-Mobile. *See id.* at 5448. As of 2019, nearly all of the
7 1,300 EBS licensees had leased their excess capacity. *See id.* These leases took
8 spectrum that otherwise would have gone unused and put it to work supporting
9 modern, high-speed broadband and telecommunications services. *See id.* at 5447–
10 48.

11 36. Effective April 27, 2020, the FCC eliminated the requirement that
12 EBS licenses could only be owned by educational institutions, making it possible
13 for licensees to sell their licenses to commercial entities. According to the FCC,
14 “technological changes of the last 30 years enable any educator with a broadband
15 connection to access a myriad of educational resources” and “most licensees
16 rel[ied] on lessees to deploy and operate broadband networks and use the leases as
17 a source for revenues or devices.” *Id.* at 5451.

18 **II. T-Mobile Spectrum Marketplace Participation**

19 37. T-Mobile relies heavily on 2.5 GHz spectrum for its nationwide
20 cellular and data network. Prior to the FCC’s rule change in April 2020, T-Mobile
21 primarily accessed this wireless spectrum through leases with educational
22 institutions across the country. At the time of the rule change in April 2020, T-
23 Mobile held leases on 1,722 licenses for 2.5 GHz spectrum.

24 38. Notwithstanding the April 2020 rule change, thousands of EBS
25 licenses remain subject to lease agreements with commercial entities, under which
26 the licensees make money by leasing the spectrum. T-Mobile continues to lease
27 spectrum from institutions that still own licenses. At the time of this complaint, T-
28 Mobile holds leases on more than 1,500 licenses for 2.5 GHz spectrum.

1 39. T-Mobile’s lease agreements with these institutions contain various
2 provisions that protect its contractual rights in the event a third party makes an
3 offer to acquire the EBS license, including ROFR and right to participate
4 provisions. The ROFR provision states that, if a third party makes a bona fide offer
5 to purchase an EBS license subject to a lease and the licensee intends to accept
6 such an offer, then the licensee must provide T-Mobile with a ROFR notice, upon
7 receipt of which T-Mobile has 30 days to decide whether to match the third party’s
8 terms and acquire the license or, alternatively, to allow the licensee to sell the
9 license to the third-party. In the latter event, the third party would assume the
10 licensee’s obligations under T-Mobile’s lease, effectively becoming T-Mobile’s
11 new landlord. To trigger this type of provision, an EBS licensee must, *inter alia*,
12 intend to accept an offer from a third party, send T-Mobile a ROFR notice (which
13 starts the clock on the ROFR period), and establish that the offer is “bona fide,”
14 meaning the third-party offeror has the financial ability and intent to consummate
15 the purchase and otherwise satisfies all of the requirements set forth in the lease.

16 **III. Defendants’ Fraudulent Scheme**

17 **A. Defendants Hatch Their Scheme**

18 40. On information and belief, in March 2020, Defendants Winnick and
19 Katerndahl were introduced to Defendant Kratz at Winnick’s office in Los
20 Angeles, California. Kratz was pursuing a business strategy related to purchasing
21 EBS licenses. Over the course of several months, Katerndahl explored the
22 opportunity, and ultimately Winnick and Katerndahl agreed to pursue the business
23 with Kratz.

24 41. To that end, WCO was formed in Delaware on June 12, 2020.
25 Winnick runs the company as founder, Katerndahl serves as a senior executive,
26 and Kratz serves as a key consultant.

1 **B. Defendants Target T-Mobile ROFR Leases with Sham, Non-**
2 **Binding Offers to Receive Kickbacks**

3 42. Notwithstanding that WCO describes itself as “a private investment
4 firm investing in EBS spectrum licenses,” WCO’s strategy has been to target
5 institutions that have lease agreements with T-Mobile that are subject to ROFRs.
6 By making non-binding offers to these institutions, WCO generates revenue for
7 itself through what it misleadingly has described as “breakup fees” or “diligence
8 fees,” but which in reality are improper kickbacks, without having to actually ever
9 purchase the licenses on which those fees are paid.

10 43. Not long after the FCC rule change permitting commercial entities to
11 own spectrum licenses, WCO began using Parkview to issue public records
12 requests—under Parkview’s name in an effort to hide WCO’s involvement—to
13 educational institutions across the country seeking copies of T-Mobile’s EBS lease
14 agreements. WCO obtained a number of T-Mobile’s confidential lease agreements
15 this way. As a result, WCO knows the terms of many T-Mobile leases, including
16 which agreements contain ROFRs.

17 44. In spring 2021, Defendants targeted a license owned by Albright
18 College (“Albright”) that is subject to a lease agreement with T-Mobile subsidiary
19 TDI. Albright’s license is for certain EBS spectrum in the Reading, Pennsylvania
20 area, and for years TDI had leased the right to use most of that spectrum from
21 Albright. The relationship between TDI and Albright had been amicable and
22 uneventful.

23 45. Although it was neither the first nor the last license that Defendants
24 have targeted, Defendants’ engagement with Albright is notable because it was
25 through this purported offer that Plaintiffs first caught wind of the fraud that is
26 afoot.

27 46. On February 22, 2021, Winnick, Katerndahl, Kratz, and Bitzarakis
28 received a “deal memo” for Albright. Consistent with their strategy to target

1 institutions that have lease agreements with T-Mobile that are subject to ROFRs,
2 the “deal memo” shows that WCO specifically considered whether the lease was
3 subject to a ROFR and assessed the “potential TMO Strategy,” including the
4 likelihood that T-Mobile would exercise its ROFR.

5 47. On April 30, 2021, WCO emailed a non-binding term sheet to
6 Albright in which it proposed to purchase Albright’s license for \$16,200,000. Soon
7 after, Albright emailed TDI a purported ROFR notice. Pursuant to its contractual
8 rights, TDI sought certain information from Albright and WCO about the supposed
9 offer. Neither Albright nor WCO provided the required information. Because
10 Albright failed to establish that the offer was “bona fide,” TDI sued Albright in the
11 Court of Common Pleas of Berks County, Pennsylvania to enforce its contractual
12 rights. That case was captioned *TDI Acquisition Sub LLC v. Albright College*, No.
13 21-04881 (Nevius, J.) (the “*Albright case*”).

14 48. On October 25, 2021, during the pendency of the *Albright case*, a self-
15 described whistleblower—who stated that he is a former insider at WCO, but
16 whose identity remains unknown to Plaintiffs—called TDI’s Pennsylvania
17 counsel, Steven J. Engelmyer. In a series of phone calls, the whistleblower
18 described how WCO, in conjunction with numerous co-conspirators and EBS
19 licensees, is perpetrating a fraudulent scheme against T-Mobile by which it uses
20 sham offers to purchase EBS licenses to siphon money from T-Mobile to itself.

21 49. According to the whistleblower, the scheme works as follows: WCO,
22 through Winnick and/or Katerndahl, enters into verbal discussions with an EBS
23 licensee and agrees on a price for purchasing the license. WCO then makes a sham,
24 non-binding written offer to purchase the license that it knows and intends will be
25 communicated to T-Mobile pursuant to T-Mobile’s ROFR. Before making the
26 sham offer, WCO and the licensee execute a secret side contract, the CCA, which
27 provides that, if T-Mobile matches WCO’s offer and purchases the license, the
28 licensee pays WCO a material portion of the purchase price. WCO and the licensee

1 try to hide this kickback arrangement from T-Mobile by using an NDA. In reality,
2 WCO does not intend to honor its offer; its sole purpose is to trigger the ROFR in
3 T-Mobile's lease agreement, coercively force T-Mobile to decide within 30 days
4 whether to purchase the license, and allow WCO to pocket the kickback in the
5 likely event T-Mobile exercises its ROFR.

6 50. According to the whistleblower, WCO's offers are not backed by
7 legitimate financing, but a fake line of credit agreement between WCO and
8 Defendant Vasudevan's entity, SCH. SCH purports to provide WCO access to **\$2**
9 **billion** in financing, specifically earmarked for WCO to target spectrum licenses
10 leased by T-Mobile. In exchange, SCH receives, among other things, 8% of
11 WCO's kickbacks. SCH's line of credit is a sham. SCH is a California company
12 with no apparent history, no public presence, and no lines of business, which is run
13 by a former movie producer (Vasudevan) out of a modest apartment in a multi-unit
14 building in Cupertino.

15 51. Following these discussions, the whistleblower provided a four-page
16 narrative that described WCO's scheme in detail, consistent with his verbal
17 descriptions, as well as various documents that corroborate the whistleblower's
18 allegations.³

19 52. Although the defendants in the *Albright* case did everything they
20 could to obstruct discovery, T-Mobile was able to obtain some documents, all of
21 which corroborate the whistleblower's narrative. Specifically, documents obtained
22 by subpoena from Academia—a spectrum broker run by Bitzarakis that WCO uses
23 as a conduit with EBS licensees to implement the fraud—demonstrate how the
24 scheme works:

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27
28 ³ At WCO's insistence, the whistleblower's narrative, and the documents attached
to that narrative, have been branded "Confidential" and thus cannot be filed publicly
with this complaint.

- 1 a. On behalf of WCO, Bitzarakis reaches out to EBS license holders
2 by email to gauge their interest in selling the EBS licenses they
3 hold. For example, on December 14, 2020, Bitzarakis emailed two
4 Albright contacts, Rashmi Radhakrishnan and Jacquelyn Fetrow,
5 “regarding a potential sale of Albright College’s EBS licenses.”
6 Bitzarakis stated that he “ha[d] been hired by WCO Spectrum,
7 LLC” which was “prepared to make Albright College an offer for
8 [its] EBS licenses.” On January 5, 2021, he forwarded his email
9 message to another Albright representative, Jeffrey Strader. When
10 Mr. Strader responded the same day, Bitzarakis reported to
11 Winnick, Katerndahl, Kratz and others that he got “[a]nother hit
12 today.”
- 13 b. Once an EBS license holder expresses interest in selling its license,
14 Bitzarakis negotiates the contours of the offer on WCO’s behalf.
15 On information and belief, these communications take place in
16 person, by phone, and by email. For example, in a report
17 cataloguing “in-bound” activity, Bitzarakis noted that he met with
18 Albright’s CFO on January 7, and Albright had “activated” outside
19 counsel, Todd Gray. Thereafter, Bitzarakis communicated by
20 phone and email with Mr. Gray to negotiate the terms of the
21 potential sale.
- 22 c. After an EBS licensee expresses interest, Bitzarakis, on behalf of
23 WCO, has the licensee enter into an NDA that precludes it from
24 disclosing information provided during the course of negotiations,
25 except that the licensee is permitted to “disclose any Offer to a
26 third party to which Licensee is contractually bound by an existing
27 contractual arrangement that requires disclosure of the Offer,
28 including disclosure of the Offer in the context of the initiation of

1 a right of first refusal process with respect to the sale or lease of
2 the License.” In the case of Albright, the NDA was signed by
3 Katerndahl on behalf of WCO.

4 d. In parallel, Winnick, Katerndahl, Bitzarakis, Kratz, and other
5 WCO personnel consider the value of the deal, including the
6 potential purchase price and the kickback they might be able to
7 extract on the deal. For example, a January 25, 2021 “Pipeline”
8 report circulated by email among this group reflects a potential
9 “purchase price” for the Albright College license of \$12,652,893
10 and a “DD & Costs Fee” of \$1,265,289 or 10% of the purchase
11 price.

12 e. Based on these internal discussions, Bitzarakis provides the EBS
13 license holder with a proposed non-binding offer letter and CCA
14 on behalf of WCO. For example, on February 26, 2021, Bitzarakis
15 emailed Mr. Strader an offer letter and CCA. After some
16 additional negotiation on the terms, the CCA and offer letter were
17 executed—with Katerndahl signing on behalf of WCO. Notably,
18 the offer letter stated that the proposed acquisition would be
19 “funded by WCO” which had “sourced and deployed billions of
20 dollars,” and that “WCO [was] prepared to purchase the EBS
21 license owned, controlled or operated by Licensee” at a purchase
22 price of \$16,200,000—that is \$3,547,107 *more* than the purchase
23 price first contemplated by WCO and reflected in its internal
24 Pipeline report. Indeed, Albright itself conducted an independent
25 valuation of its license and determined that “WCO[’s] price was
26 still superior.” Moreover, WCO explicitly stated that the “letter is
27 solely a non-binding offer and is not, and should not be, considered
28 a legally binding indication or agreement in any manner.” WCO

1 acknowledged that, while the offer was confidential, Albright
2 “may disclose the terms of this offer to the extent required to
3 comply with your obligations under the EBS leases.” For its part,
4 the CCA stated that if Albright’s current lessee (T-Mobile)
5 exercised its ROFR, Albright would pay WCO “commitment
6 costs” in the amount of \$1,620,000, or 10% of the purchase price
7 offered.

8 f. After the offer letter and CCA are signed, the EBS licensee
9 provides only the offer letter to T-Mobile, exactly as WCO
10 intended. The sham offer as presented to T-Mobile is false and
11 misleading, including because (i) WCO does not intend to
12 consummate the transaction if T-Mobile declines to exercise its
13 ROFR; (ii) its offers are backed by sham financing; and (iii) 10%
14 of the offered purchase price is not actually an offer for the license,
15 but rather the amount of WCO’s illegal kickback.

16 53. Beyond these documents, WCO’s own website confirms the contours
17 of its scheme. Cynically cloaked in the veneer of altruism, WCO describes its
18 work as “liberat[ing]” educational institutions “from the US telecom industry.” Its
19 website does not describe a desire to actually purchase and hold EBS spectrum
20 licenses or a vision for what it would do with licenses once purchased. Rather,
21 WCO’s stated mission is to “create maximum value for all EBS license holders,”
22 and it explains that it exists to “help license holders generate significant liquidity
23 by selling their licenses” and touts its bottom line of “286 EBS Spectrum Licenses
24 Sold”—not purchased by WCO. In reality, WCO and its co-conspirators are
25 engaged in a fraudulent scheme to generate sales to T-Mobile and to siphon money
26 from those sales to themselves.

27 54. Indeed, during the course of the *Albright* case, WCO, through its
28 counsel, admitted that WCO’s strategy is to act as a “stalking horse”—exactly what

1 the whistleblower anticipated it would do. Specifically, WCO’s counsel explained,
2 “there are breakup fees that are very common in bankruptcies across the country.
3 When you want to induce bidding, you have somebody who is the stalking-horse
4 who comes in and puts a bid and if they are the unsuccessful bidder they recover
5 costs so there is nothing at all unusual.” This defense fails for obvious reasons—
6 in the bankruptcy context where stalking horse bidders are often used, stalking-
7 horse bids are *binding* on the bidder and breakup fees customarily are far smaller
8 than the 10% fee WCO charged. By contrast here, armed with the knowledge that
9 T-Mobile enjoys a ROFR, Defendants have the freedom to make sham, *non-*
10 *binding* offers to coerce T-Mobile into action without suffering any downside if T-
11 Mobile does not take the bait.

12 55. Defendants’ scheme is wide-ranging in its reach. In total, Defendants
13 have targeted 167 T-Mobile licenses, proposing offers that, when totaled, amount
14 to at least \$1.6 billion—far more than WCO has the capacity to spend—and
15 representing spectrum used to operate wireless networks across the United States.

16 **C. Defendants’ Fraudulent and Unfair Scheme Infects Every**
17 **Purchase WCO Proposes**

18 56. The process by which WCO and its co-conspirators use sham, non-
19 binding offers to trigger ROFRs and thereby collect ill-gotten rewards is the same
20 for all T-Mobile leases that WCO targets. Each and every time WCO submits an
21 offer to an EBS license holder that is then communicated to T-Mobile and causes
22 T-Mobile to exercise its ROFR, exactly as WCO intends, it constitutes fraud and
23 is unfair. The sham offer is false and misleading, including because WCO does
24 not intend to consummate the transaction if T-Mobile declines to exercise its
25 ROFR, WCO does not have legitimate financing to back up its offers, and 10% of
26 the offered purchase price is not actually an offer for the license, but rather the
27 amount of WCO’s illegal kickback. Were it not for these sham offers, T-Mobile
28

1 would not have purchased the licenses and would not have paid a purchase price
2 higher than what the EBS license holders were willing to accept.

3 57. WCO and its co-conspirators have succeeded in their scheme to
4 defraud T-Mobile in connection with EBS licenses across the nation. Attached as
5 **Appendix A** to this complaint is a chart detailing each license for which T-Mobile
6 exercised its ROFR after WCO submitted a sham offer to purchase that license,
7 including the date on which WCO made the fraudulent offer to the licensee, the
8 date on which the licensee communicated that fraudulent offer to T-Mobile
9 pursuant to T-Mobile's ROFR, the date on which T-Mobile exercised its right to
10 purchase the license, and the date on which an Asset Purchase Agreement ("APA")
11 was executed for the license. In each of these instances, Defendants' actions were
12 unfair and deceptive, including because each offer letter transmitted to T-Mobile
13 was false and misleading.

14 58. Defendants' scheme to defraud was hatched in June 2020 or earlier,
15 and they targeted the EBS license owned by La Roche University, located in
16 Pittsburgh, Pennsylvania ("La Roche") shortly thereafter.

17 59. T-Mobile and La Roche entered into a spectrum lease agreement
18 beginning in 2007. That lease agreement included a ROFR provision which
19 entitled T-Mobile to purchase the license by matching any acceptable bona fide
20 offer. As typically is the case, T-Mobile had just 30 days to decide if it would
21 exercise its ROFR once it was triggered.

22 60. On October 27, 2020, Defendant Katerndahl, on behalf of WCO,
23 emailed La Roche an offer letter, purporting to offer \$13 million to purchase its
24 EBS license. Like Defendants' other offers, the offer letter made clear that,
25 "[a]lthough this offer is a bona fide offer . . . this letter is not, and should not be
26 considered a legally binding indication of agreement in any manner." This
27 statement was false—the offer was not, in fact, bona fide because WCO had no
28

1 intention of honoring the offer in the event that T-Mobile chose not to exercise its
2 ROFR.

3 61. On November 12, 2020, La Roche informed T-Mobile via email,
4 through counsel, that it intended to issue a ROFR notice as it had received a “third-
5 party offer.” The next day, T-Mobile received via email the ROFR notice, which
6 La Roche’s counsel represented as being triggered by a “bona fide third party offer
7 to purchase [the La Roche] license . . . for the purchase price of \$13 million.” In
8 that email, T-Mobile received a copy of WCO’s offer to purchase the La Roche
9 license for \$13 million. Neither the ROFR notice nor WCO’s offer letter identified
10 the existence of a CCA between WCO and La Roche.

11 62. Over the next several weeks, T-Mobile sought, without success,
12 additional information from La Roche about the purported offer it had received
13 from WCO. Defendants instead offered Winnick’s and Katerndahl’s assurances in
14 phone conversations with representatives of T-Mobile to justify the legitimacy of
15 their offer. For example, on a December 15, 2020 call with T-Mobile
16 representatives, Winnick indicated that WCO wanted to invest a sizable amount
17 (over \$1 billion) into spectrum and that the strategy was to buy and hold the
18 spectrum, a strategy he believed would generate significant returns as the leases
19 came due for renewal. All of these statements were false and intended to mislead
20 as part of Defendants’ scheme to defraud T-Mobile. On December 17, 2020, T-
21 Mobile wrote to La Roche’s counsel, seeking information designed to assess
22 whether WCO’s offer was, in fact, “bona fide,” including the contents of any
23 communications between La Roche and WCO in furtherance of the offer, which
24 likely would have revealed the existence of a CCA between the parties. On
25 December 24, 2020, counsel for La Roche wrote back, refusing to provide the
26 requested information.

27 63. Faced with this stonewalling and a rapidly diminishing 30-day period
28 in which to decide, T-Mobile was coerced into exercising its ROFR and executing

1 an APA for the La Roche license for \$13 million on February 12, 2021. T-Mobile's
2 decision to purchase the license for that price was the proximate result of
3 Defendants' fraudulent offer. On information and belief, Defendants received a
4 \$1.3 million kickback as a result.

5 64. The situation with La Roche was not unique. To date, Defendants
6 have coerced T-Mobile into exercising the ROFRs in the leases between T-Mobile
7 and eleven EBS licensees covering sixty-eight EBS licenses with fraudulent and
8 unfair sham offers, *see* App. A, which has translated into what is believed to be
9 more than \$10 million lining Defendants' pockets. In addition to the millions of
10 dollars T-Mobile is coerced into paying to purchase the EBS licenses, under its
11 lease agreements, T-Mobile also is required to cover EBS license holders' legal
12 fees associated with negotiating the deal. Those fees, which amount to hundreds
13 of thousands of dollars, would not have been incurred but for Defendants'
14 fraudulent conduct.

15 **IV. Defendants Affirmatively Conceal Their Fraudulent Scheme from T-** 16 **Mobile**

17 65. Defendants require every EBS license holder that engages with them
18 on the purchase of any license to enter into an NDA that precludes the license
19 holder from revealing the details of WCO's offer to any third parties, including T-
20 Mobile.

21 66. Moreover, since the whistleblower and his allegations about WCO
22 defrauding T-Mobile surfaced publicly, WCO and Academia have taken every
23 possible step to prevent the details of their fraud from becoming public. In the
24 *Albright* case, WCO and Academia brazenly obstructed discovery that would have
25 confirmed the whistleblower's allegations. As part of that case, TDI served
26 document subpoenas on WCO in Delaware and Academia in Virginia. WCO
27 responded by frivolously challenging whether the Delaware court had jurisdiction
28 to enforce a subpoena served on a Delaware LLC, and Academia did the same in

1 Virginia. After the Delaware and Virginia courts rejected those baseless
2 arguments, WCO filed a motion for a protective order in the *Albright* case seeking
3 to stop all discovery. In this filing, WCO represented that it was no longer pursuing
4 the Albright transaction and asserted that the case therefore was moot. WCO even
5 intervened *as a plaintiff* in the *Albright* case to seek dismissal based on the same
6 mootness argument. In other words, WCO abandoned a deal rather than having to
7 produce documents that would have revealed its fraud. Despite these efforts to
8 stave off T-Mobile's requests, at a hearing on March 21, 2022, the *Albright* court
9 ruled that TDI could pursue its subpoenas in Delaware and Virginia in order to
10 investigate the whistleblower's allegations concerning the Albright transaction.
11 Determined to keep their fraudulent and unfair scheme under wraps, after stalling
12 for weeks, Academia and WCO finally produced documents, but did so only after
13 improperly—and heavily—redacting them for their purported lack of relevance.

14 67. WCO went to similar lengths to conceal its fraud with respect to a
15 sham offer it made to purchase the EBS license held by the St. Lucie School Board
16 in Florida ("St. Lucie"). Counsel for St. Lucie approached T-Mobile on November
17 19, 2021 to relay that it had received an offer on October 22, 2021 from WCO to
18 purchase its license for \$6,795,000. After T-Mobile counter-offered \$5,000,000,
19 St. Lucie came back to T-Mobile with a ROFR notice and an offer from WCO to
20 purchase the license for \$7,550,000—an amount in excess of what St. Lucie
21 initially had shown a willingness to accept. Critically, the increased offer price
22 would have allowed WCO to take its 10% kickback and still leave St. Lucie with
23 the originally offered amount of \$6,795,000 in the event T-Mobile exercised its
24 ROFR. None of this came to be, however, because, as had happened before, T-
25 Mobile pressed for more information about the offer St. Lucie received from WCO
26 and the parties refused to provide the requested information. And once again, after
27 T-Mobile sued St. Lucie in order to compel production of information needed to
28 verify the legitimacy of WCO's offer, WCO withdrew its offer to avoid detection.

1 68. Defendants will no doubt point to the *one* instance when WCO
2 actually did sign a contract to purchase an EBS license subject to a T-Mobile lease
3 in an attempt to undermine T-Mobile’s allegations. But in reality, this situation is
4 simply an example of WCO taking steps to cover up its scheme. In January 2022,
5 WCO signed a contract to buy the EBS license held by the Owasso Public School
6 system in Tulsa, Oklahoma (“Owasso”) after T-Mobile declined to exercise its
7 ROFR. This purchase occurred shortly after the whistleblower surfaced in the
8 *Albright* case and Defendants learned that T-Mobile was on to their scheme. This
9 left WCO with little choice: it could either walk away from the Owasso deal,
10 thereby proving what the whistleblower alleged, or purchase the \$5 million
11 license—a small price to pay to cover the tracks of its exponentially larger,
12 fraudulent conspiracy. Not surprisingly, WCO chose the latter as part of its
13 attempted cover up. This in no way undermines the whistleblower’s allegations or
14 suggests that Defendants’ conduct is anything other than fraudulent and unfair.

15 **V. Each Defendant Is Engaged with Every Aspect of the Scheme to**
16 **Defraud T-Mobile**

17 69. Defendants have organized themselves into a cohesive unit with
18 specific assigned responsibilities. Defendants have long-standing and ongoing
19 relationships rooted in ongoing business dealings and a mutual interest and
20 participation in the scheme, as outlined above. Defendants’ enterprise has been
21 structured to operate as a unit in order to accomplish the common goals and
22 purposes of their fraudulent scheme.

23 70. Sometime prior to the second half of 2020, WCO, at the direction of
24 its executives Winnick and Katerndahl, initiated the scheme. With the assistance
25 of its key consultant Kratz, as well as its broker Academia (headed by Bitzarakis),
26 WCO began targeting institutions that had leased spectrum to T-Mobile under
27 agreements containing ROFR provisions. Once WCO targets a particular license,
28 Academia—through Bitzarakis—contacts the EBS licensee to negotiate the

1 fraudulent and unfair offer, including the kickback WCO is to receive. Finally,
2 WCO and its co-conspirators enlisted SCH and its principal Vasudevan to provide
3 a sham line of credit to present in the event the fraudulent and unfair offers are ever
4 challenged. In exchange, SCH and Vasudevan receive significant payments from
5 WCO derived from the fraudulent and unfair scheme.

6 71. WCO stands at the center of the fraud. Under the direction of Winnick
7 and Katerndahl, WCO developed the fraudulent and unfair scheme to make sham
8 offers to EBS licensees in order to coerce T-Mobile into exercising its ROFRs.
9 Winnick is WCO's founder and the ringleader of the scheme. Katerndahl is
10 Winnick's second-in-command and, in addition to developing the scheme with
11 Winnick, takes numerous actions in furtherance of the fraud. For instance,
12 Katerndahl executes CCAs and sham offer letters on WCO's behalf in his capacity
13 as CEO and chairman of WCO.

14 72. WCO's key consultant Kratz developed (or helped develop) the
15 fraudulent scheme and implemented it on a nationwide basis. Kratz sits alongside
16 Winnick and Katerndahl on WCO's "Investment Committee," which identifies as
17 targets EBS licenses that are leased to T-Mobile. Among other things, Kratz
18 participates in preparing "deal memos" (like the one referenced above) that are
19 used to effectuate the fraud against T-Mobile.

20 73. WCO's broker Academia and its principal Bitzarakis help identify as
21 targets EBS licenses that are subject to T-Mobile leases, and Academia and
22 Bitzarakis serve as a conduit between WCO and various EBS licensees located
23 across the country. Among other things, Bitzarakis participates in strategy
24 sessions, contacts EBS licensees about WCO potentially making offers to them,
25 and delivers the sham offers to those entities. Bitzarakis further facilitates the
26 scheme by negotiating WCO's kickbacks and documenting them under the guise
27 of CCAs, as well as the NDAs that try to hide those payments.

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1 74. Finally, WCO's supposed financier SCH and its principal Vasudevan
2 create the appearance of providing WCO with \$2 billion in financing, which is a
3 sham designed for WCO to use in the event its financial wherewithal to make its
4 substantial offers to EBS licensees is ever questioned. Under WCO's credit
5 agreement with SCH, SCH was entitled to 8% of all ill-gotten proceeds generated
6 by the fraudulent scheme. The credit agreement also was designed to be used only
7 in targeting spectrum licenses currently leased by T-Mobile; any other spectrum
8 purchases required prior consent by SCH.

9 **VI. Gary Winnick Has been Engaged in Improper Conduct for Decades**

10 75. It should come as no surprise that Gary Winnick designed and leads
11 WCO's fraudulent scheme. Winnick began his business career at the notorious
12 investment bank and junk bond dealer Drexel Burnham Lambert, where he worked
13 as a senior vice president and partner to Michael Milken. In 1989, Milken was
14 indicted on ninety-eight felony charges, including racketeering, insider trading,
15 and securities fraud, and later pleaded guilty to six counts of securities and tax
16 violations, all of which took place while Winnick was a senior executive in
17 Milken's high-yield bond group.

18 76. In 1997, Winnick founded Global Crossing Limited, a
19 telecommunications company that never turned a profit while he was at the helm.
20 Yet he took the company public a year after its founding and enriched himself to
21 the tune of \$734 million as the company floundered and ultimately imploded in
22 2002. By contrast, the Global Crossing employees who had purchased company
23 stock for their pensions saw their savings evaporate as the company's stock
24 plummeted from a high of \$60 per share to less than \$1 per share. At the time
25 Global Crossing filed for bankruptcy in 2002, it listed its debts as \$12.4 billion.

26 77. In the wake of Global Crossing's collapse, multiple lawsuits were
27 filed against Winnick and others. JP Morgan Chase and other financial institutions
28 alleged that Winnick and his business had engaged in a "massive scam" to

1 “artificially inflate” the company’s performance in order to secure loans.⁴
2 Investors and former employees of Global Crossing likewise filed a lawsuit
3 alleging a scheme to manipulate the firm’s financial results reaching to the highest
4 levels of the company. These cases were both settled, with investors and former
5 employees receiving \$325 million, of which Winnick agreed to contribute \$30
6 million.

7 78. Winnick has been hailed into court for a variety of other alleged
8 business transgressions, including claims for contractual fraud against business
9 partners, misrepresenting terms of investment deals, and breaching oral contracts
10 for his personal financial gain.⁵

11 **VII. Claim Accrual and Tolling**

12 79. As a result of Defendants’ conduct, T-Mobile was not aware of
13 Defendants’ scheme and was prevented from learning the facts necessary to
14 commence an action against Defendants for the conduct alleged herein until at least
15 October 25, 2021, when the whistleblower came forward. Until that point, the facts
16 necessary for T-Mobile to formulate a complaint and satisfy applicable pleading
17 standards were within the exclusive control of Defendants.

18 80. Defendants expressly concealed the truth about the scheme by, among
19 other things, compelling EBS license holders to sign NDAs, refusing to comply
20 with T-Mobile’s efforts to learn more about WCO’s business through formal
21 discovery or otherwise, and making intentional misrepresentations to T-Mobile.
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25 ⁴ Timothy L. O’Brien, *A New Legal Chapter for a 90’s Flameout*, New York Times
26 (Aug. 15, 2004), <https://www.nytimes.com/2004/08/15/business/a-new-legal-chapter-for-a-90-s-flameout.html>; see also Complaint, *JP Morgan Chase Bank v. Winnick*, 350 F.Supp.2d 393 (S.D.N.Y. 2006).

27 ⁵ See *Stein v. Winnick*, Case No. 20SMCV01985 (L.A. Super. Ct. Dec. 22, 2020);
28 *MacDonald v. Winnick, et al.*, Case No. 22STCV03151 (L.A. Super. Ct. 2022);
Shooker, et al. v. Superior Ct. of L.A. County, 111 Cal. App. 4th 923 (2003).

1 81. As a result, Defendants are equitably estopped from asserting that any
2 otherwise applicable period of limitations has run, and the discovery rule applies
3 to toll the statute of limitations until at least October 25, 2021.

4 **CLAIMS FOR RELIEF**

5 **COUNT I**

6 **(Violations of RICO, 18 U.S.C. § 1962(c) – Against All Defendants)**

7 82. T-Mobile repeats and realleges the allegations set forth above as
8 though fully set forth herein.

9 83. At all relevant times, Plaintiffs were and are each a person within the
10 meaning of 18 U.S.C. §§ 1961(3) and 1962(c).

11 84. At all relevant times, Defendants were and are each a person within
12 the meaning of 18 U.S.C. §§ 1961(3) and 1962(c).

13 85. At all relevant times, each of the Defendants was, and is, a person that
14 exists separate and distinct from the RICO enterprise, as described herein.

15 86. WCO, SCH, and Academia are distinct entities, with their own
16 independent existence and functions.

17 87. WCO is organized under the laws of Delaware and does business in
18 California. It holds itself out as an investment firm whose mission is to create
19 maximum value for EBS spectrum license holders. Winnick is WCO's founder,
20 Katerndahl acts as its CEO and Chairman, and Kratz serves as a key consultant.
21 Academia, organized under the laws of Virginia and doing business in Connecticut,
22 acts as a middleman and broker in the spectrum market, led by its principal
23 Bitzarakis. SCH is a California company that purportedly acts as a financier and
24 provides a revolving line of credit to WCO; it is led by its principal Vasudevan.

25 **The RICO Enterprise**

26 88. Defendants constitute an association-in-fact enterprise (the
27 "Enterprise") within the meaning of 18 U.S.C. § 1961(4). Defendants are a group
28 of persons associated together in fact for the common purpose of carrying on an

1 ongoing criminal enterprise. In particular, the Enterprise has a common goal of
2 defrauding T-Mobile of tens of millions of dollars through a coordinated and
3 sustained scheme of deceptive conduct and material misrepresentations made in
4 connection with WCO's sham offers to purchase EBS licenses. This conduct is
5 designed to funnel kickbacks from T-Mobile to Defendants to support their
6 criminal activities and reward and incentivize participation in the scheme.

7 89. The members of the Enterprise have long-standing and ongoing
8 relationships rooted in ongoing business dealings and a mutual interest and
9 participation in common criminal activities.

10 90. The Enterprise has longevity sufficient to permit the Defendants to
11 pursue the Enterprise's goal of defrauding T-Mobile to Defendants' profit. The
12 scheme at the heart of the Enterprise has been in operation since at least June 2020.

13 91. The Enterprise has organized itself into a cohesive unit with specific
14 assigned responsibilities, and is structured to operate as a unit in order to
15 accomplish the common goals and purposes of its fraudulent scheme, including as
16 follows:

- 17 a. Gary Winnick maintains command and control of the Enterprise
18 on a strategic level and is the principal authority figure with the
19 final say on business decisions. He has taken actions, and directed
20 other members of the Enterprise to take actions, necessary to
21 accomplish the overall goals of the Enterprise. From and through
22 his business relationships, including his position as founder of
23 WCO, he has conducted and participated in the operation and
24 management of the Enterprise and its affairs, and has been a central
25 participant in the orchestration, planning, and execution of the
26 scheme to defraud T-Mobile. Winnick has benefited financially
27 from the kickbacks paid pursuant to the CCAs executed by WCO
28 and the EBS license holders.

1 b. Carl Katerndahl is responsible for command and control of the
2 Enterprise on a strategic and tactical level, and has taken actions
3 and directed other members of the Enterprise to take actions,
4 necessary to accomplish the overall goals of the criminal
5 Enterprise, including executing CCAs and sham offer letters on
6 WCO's behalf in his capacity as CEO and chairman of WCO.
7 From and through his business relationships, including his position
8 as CEO and chairman of WCO, he has conducted and participated
9 in the operation and management of the Enterprise and its affairs,
10 and has been a central participant in the orchestration, planning,
11 and execution of the scheme to defraud T-Mobile. Katerndahl has
12 benefited financially from the kickbacks paid pursuant to the
13 CCAs executed by WCO and the EBS license holders.

14 c. Tyler Kratz has been involved in, and held positions of
15 responsibility with respect to, the strategic planning and execution
16 of the scheme to defraud T-Mobile, and has taken actions, and
17 directed other conspirators to take actions, necessary to
18 accomplish the overall aims of the criminal Enterprise, including
19 sitting on WCO's "Investment Committee," which identifies as
20 targets EBS licenses that are leased to T-Mobile. From and
21 through his business relationships, including his position as a
22 consultant of WCO and member of the "Investment Committee,"
23 he has conducted and participated in the operation and
24 management of the Enterprise and its affairs, and has been a central
25 participant in the orchestration, planning, and execution of the
26 scheme to defraud T-Mobile. On information and belief, Kratz has
27 benefited financially from the kickbacks paid pursuant to the
28 CCAs executed by WCO and the EBS license holders.

1 d. Directly and through its agent officers, directors, board members
2 and/or employees, WCO has been an active participant and central
3 figure in the operation and management of the Enterprise and its
4 affairs, and in the orchestration, planning, perpetration, and
5 execution of the scheme to defraud T-Mobile. WCO has been
6 responsible for making sham offers and entering into agreements
7 with EBS license holders, SCH, and others that directly facilitated
8 the criminal activities of the Enterprise. WCO has, with the other
9 Defendants, been responsible for regularly and systematically
10 concealing and/or failing to disclose material information from T-
11 Mobile and seeking to conceal the full extent and true nature of the
12 Enterprise's scheme to defraud. WCO directly benefitted from the
13 scheme to defraud.

14 e. Andreas Bitzarakis has been involved in, and held positions of
15 responsibility with respect to, the planning and execution of the
16 scheme to defraud T-Mobile. He has taken actions, and directed
17 other conspirators to take actions, necessary to accomplish the
18 overall aims of the criminal Enterprise. This includes identifying
19 EBS licenses to target that are subject to T-Mobile leases and
20 serving as the middleman for negotiations between WCO and the
21 EBS license holders, which entails communicating WCO's sham
22 offers to the EBS license holders and negotiating the terms of
23 WCO's kickbacks and documenting them under the guise of
24 CCAs. From and through his business relationships, including his
25 position as the principal of Academia, he has conducted and
26 participated in the operation and management of the Enterprise and
27 its affairs, and has been a central participant in the orchestration,
28 planning, and execution of the scheme to defraud T-Mobile. On

1 information and belief, Bitzarakis has benefited financially from
2 the kickbacks paid pursuant to the CCAs executed by WCO and
3 the EBS license holders.

4 f. Directly and through its principal Bitzarakis, Academia has been
5 an active participant and central figure in the operation and
6 management of the Enterprise and its affairs, and in the
7 orchestration, planning, perpetration, and execution of the scheme
8 to defraud T-Mobile. Academia has been responsible for
9 identifying EBS licenses to target that are subject to T-Mobile
10 leases and serving as the middleman for negotiations between
11 WCO and the EBS license holders, including communicating
12 WCO's sham offers to the EBS license holders and negotiating the
13 terms of WCO's kickbacks and documenting them under the guise
14 of CCAs. Academia, with the other Defendants, has been
15 responsible for regularly and systematically concealing and/or
16 failing to disclose material information from T-Mobile and
17 seeking to conceal the full extent and true nature of the
18 Enterprise's scheme to defraud. Academia directly benefitted
19 from the scheme to defraud.

20 g. Ashok Vasudevan has been involved in the execution of the
21 scheme to defraud T-Mobile and has taken actions necessary to
22 accomplish the overall aims of the criminal Enterprise, including
23 purporting to extend a sham \$2 billion line of credit to WCO.
24 From and through his business relationships, including his position
25 as the principal of SCH, he has conducted and participated in the
26 operation of the Enterprise and its affairs, and has been a central
27 participant in the orchestration and execution of the scheme to
28 defraud T-Mobile. On information and belief, Vasudevan has

1 benefited financially from the kickbacks paid pursuant to the
2 CCAs executed by WCO and the EBS license holders.

3 h. Directly and through its agent principal Vasudevan, SCH—which
4 is Vasudevan’s alter ego—has been involved in the execution of
5 the scheme to defraud T-Mobile and has taken actions necessary
6 to accomplish the overall aims of the criminal Enterprise,
7 including purporting to extend a sham \$2 billion line of credit to
8 WCO. On information and belief, SCH has benefitted from the
9 scheme to defraud.

10 92. Each of the Defendants know of the existence of, and have conducted
11 or participated in the operation or management of, the Enterprise and its affairs.

12 93. At all relevant times, the Enterprise has been engaged in, and its
13 activities affected, interstate and foreign commerce within the meaning of 18
14 U.S.C. § 1962(c). The Enterprise has engaged with EBS license holders in various
15 states, made sham offers to EBS license holders in multiple states, and caused T-
16 Mobile, located in the State of Washington, to exercise ROFRs in lease agreements
17 with EBS license holders situated across the country.

18 *Pattern of Racketeering Activity*

19 94. Defendants conducted or participated in, directly or indirectly, the
20 management or operation of the Enterprise and its affairs through a “pattern of
21 racketeering activity” within the meaning of 18 U.S.C. § 1961(5) and in violation
22 of 18 U.S.C. § 1962(c). Specifically, they have consistently and regularly
23 committed multiple acts of mail and wire fraud in violation of 18 U.S.C. §§ 1341
24 and 1343 spanning a period of at least June 2020 through October 2021. These
25 multiple acts shared a common purpose, goal, result, participants, victim, and
26 method of commission. They are not isolated or sporadic incidents, but were
27 coordinated as part of a continuous scheme to defraud.

1 95. Defendants’ scheme to defraud used sham offers to trick T-Mobile
2 into believing the ROFRs in T-Mobile’s lease agreements had been triggered,
3 coercively force T-Mobile to decide within 30 days whether to purchase the
4 license, and pocket the millions of dollars in kickbacks in the likely event T-Mobile
5 exercises its ROFRs. This scheme played out in separate and independent
6 transactions related to each and every EBS license with a ROFR exercise date pre-
7 dating October 25, 2021, which are included in the table at Appendix A.

8 96. Defendants accomplished their scheme to defraud by regularly and
9 systematically misrepresenting and failing to disclose material information to T-
10 Mobile. Specifically, Defendants represented to T-Mobile, through the EBS
11 license holders, that WCO’s offers to purchase EBS licenses were real offers when
12 they were not. WCO had no intent to consummate the transactions contemplated
13 by those offers, its offers were backed by sham financing, and 10% of the purported
14 “offer” was to cover WCO’s illegal kickback, not to form part of the purchase price
15 (facts Defendants took great lengths to conceal).

16 97. Defendants knew the offers to be fraudulent when they submitted
17 them. Defendants had no intention to honor the offers in the event that T-Mobile
18 chose not to exercise its ROFR—Defendants’ intent was at all times to induce T-
19 Mobile to exercise its ROFRs so that the Enterprise could profit from the agreed-
20 to kickbacks. Defendants secured the sham financing from SCH to provide a cover
21 story were their offers ever questioned. Because SCH and Vasudevan could not
22 provide the financing they purported to offer, SCH and Vasudevan also knew the
23 offers to be fraudulent.

24 98. Each and every time Defendants made an offer to purchase an EBS
25 license that was subject to a T-Mobile ROFR lease, the offer was fraudulent, and
26 each mail or wire communication made in connection with those offers violates 18
27 U.S.C. §§ 1341 and 1343. The details of Defendants’ communications through the
28 mails and wires in furtherance of their fraudulent scheme of which T-Mobile is

1 currently aware are set forth in **Appendix B**. In addition to the instances of mail
2 and wire use that are outlined in Appendix B, Defendants' use of the mail and wires
3 also include, but are not limited to, the following:

- 4 a. Emails, telephone calls, and other communications by wire and
5 mail from or caused to be sent by WCO, Academia, Winnick,
6 Katerndahl, Kratz, and Bitzarakis to EBS license holders (i)
7 negotiating the sham offers to purchase EBS licenses, (ii)
8 exchanging and executing agreements to facilitate the sham offers
9 to purchase EBS licenses, including NDAs, CCAs, and offer
10 documents, (iii) including or incorporating false or misleading
11 statements, omitting material information about the sham offers,
12 and (iv) otherwise promoting or furthering the scheme to defraud.
- 13 b. Emails, telephone calls, and other communications by wire and
14 mail by and among each of the Defendants (i) facilitating and
15 accomplishing the sham offers to purchase EBS licenses, and (ii)
16 otherwise promoting or furthering the scheme to defraud.
- 17 c. Emails, telephone calls, and other communications by wire and
18 mail to T-Mobile (i) supporting the sham offers to purchase EBS
19 licenses in furtherance of the scheme to defraud, (ii) including or
20 incorporating false or misleading statements, omitting material
21 information about the sham offers, and (iii) otherwise promoting
22 or furthering the scheme to defraud.
- 23 d. Fund transfers between and among Defendants as payment and
24 reward for participation in the scheme and as incentive and
25 motivation for continuing to participate in the scheme.
- 26 e. Fund transfers between and among Defendants and third parties
27 with the intent that those funds be used to further the scheme to
28 defraud.

1 105. Defendants have unlawfully, knowingly, and willfully combined,
2 conspired, confederated, and agreed together and with others to violate 18 U.S.C.
3 § 1962(c) as described above, in violation of 18 U.S.C. § 1962(d).

4 106. By and through each of Defendants' close business and contractual
5 relationships with one another, and their close coordination with one another in the
6 affairs of the Enterprise, each Defendant knows the nature of the Enterprise and
7 each Defendant knows that the Enterprise extends beyond the individual
8 Defendant's role. Moreover, through the same connections and coordination, each
9 Defendant knows that Defendants were engaged in a conspiracy to commit
10 predicate acts, and that the predicate acts were part of a pattern of racketeering
11 activity, and each agreed to pursue the same criminal objective.

12 107. Each Defendant agreed to facilitate, conduct, and participate in the
13 conduct, management, or operation of the Enterprise's affairs through a pattern of
14 racketeering activity in violation of 18 U.S.C. §§ 1962(a) and 1962(c). In
15 particular, each Defendant is a knowing, willing, and active participant in the
16 Enterprise and its affairs, and each Defendant shares a common purpose, namely,
17 the orchestration, planning, perpetration, and execution of the scheme to defraud
18 T-Mobile. In the absence of agreement, the Enterprise could not have operated as
19 it did. Further evidence of coordination among Defendants is particularly within
20 the control of Defendants.

21 108. The participation and agreement of each of the Defendants was
22 necessary to allow the commission of this pattern of racketeering activity.

23 109. T-Mobile has been injured in its business and property by reason of
24 the Defendants' violations of 18 U.S.C. § 1962(d), in an amount to be determined
25 at trial. The injuries to T-Mobile directly, proximately, and reasonably foreseeably
26 resulting from or caused by these violations of 18 U.S.C. § 1962(d) include, but
27 are not limited to, millions of dollars in overcharges; lost opportunities; and
28

1 attorneys' fees and costs, including the attorneys' fees and costs associated with
2 exposing and prosecuting Defendants' fraudulent, criminal activities.

3 110. Pursuant to 18 U.S.C. § 1964(c), T-Mobile is entitled to recover treble
4 damages, plus costs and attorneys' fees, from Defendants.

5 **COUNT III**

6 **(Fraud – Against All Defendants)**

7 111. T-Mobile repeats and realleges the allegations set forth above as
8 though fully set forth herein.

9 112. Defendants targeted institutions owning EBS licenses that had leased
10 those licenses to T-Mobile under agreements with ROFR provisions. Defendants
11 worked collectively to convey fraudulent offers to those institutions with the intent
12 and knowledge that the offers would be conveyed to T-Mobile pursuant to the
13 ROFR provisions in T-Mobile's leases. Specifically, WCO made the fraudulent
14 offers; as employees and consultants of WCO, Winnick, Katerndahl, and Kratz,
15 formulated the fraudulent offers and caused them to be made; and Academia,
16 through its principal Bitzarakis, conveyed the offers to the institutions. These sham
17 offers were false and misleading because they were not real—WCO had no intent
18 to consummate the transactions contemplated by those offers, its offers were
19 backed by sham financing, and 10% of the purported "offer" was to cover WCO's
20 illegal kickback, not to form part of the purchase price.

21 113. Defendants WCO, Winnick, Katerndahl, Kratz, Academia, and
22 Bitzarakis knew the offers to be fraudulent when they formulated, made, and
23 conveyed them. Defendants knew WCO had no intention to honor the offers in the
24 event that T-Mobile chose not to exercise its ROFR. They also knew that WCO's
25 purported financing from SCH was a sham.

26 114. SCH and its principal Vasudevan participated in this fraud by
27 providing a sham financing arrangement that could be used to substantiate the
28 fraudulent offers, including in the event that T-Mobile challenged the legitimacy

1 of those offers. In return, SCH and Vasudevan were entitled to, among other
2 things, 8% of WCO's kickbacks. SCH and Vasudevan knew that the purported
3 line of credit extended from SCH to WCO was a sham and knew that the sham
4 financing was being used to make fraudulent offers to purchase licenses subject to
5 leases with T-Mobile.

6 115. All Defendants worked together to formulate, make, and convey the
7 fraudulent offers with the intent that T-Mobile would, in response to those offers,
8 exercise its ROFRs, thus guaranteeing WCO and its coconspirators the illegal
9 kickbacks based on prices artificially inflated by Defendants and negotiated under
10 the guise of CCAs.

11 116. T-Mobile did, in fact, rely on the existence of the fraudulent purported
12 "offers" when it exercised its ROFRs and purchased EBS licenses it had previously
13 leased. T-Mobile had no reason to believe the offers to be fraudulent when it
14 received ROFR notices from the EBS license holders. As such, its reliance was
15 justified.

16 117. T-Mobile's reliance on Defendants' fraudulent offers was a
17 substantial factor in causing its harm. As a proximate result of the fraudulent
18 offers, T-Mobile was damaged in an amount totaling what is believed to be more
19 than \$10 million. As such, T-Mobile has suffered compensatory damages in an
20 amount to be proven at trial, but in no event less than the amount of kickbacks
21 Defendants received.

22 118. Defendants also are liable for punitive damages because their actions,
23 as described herein, involve a pattern and practice of fraudulent, oppressive,
24 willful, despicable, and malicious misconduct that was committed with trickery
25 and deceit. Defendants' fraudulent offers were intentional misrepresentations of
26 material facts known to Defendants and were made with the intent to deprive T-
27 Mobile of property or legal rights or otherwise cause injury. Defendants' conduct
28

1 was in conscious disregard of T-Mobile's rights, so as to justify an award of
2 exemplary and punitive damages.

3 **COUNT IV**

4 **(Aiding and Abetting Fraud – Against Defendants Winnick, Katerndahl,
5 Kratz, Academia, Bitzarakis, SCH, and Vasudevan)**

6 119. T-Mobile repeats and realleges the allegations set forth above as
7 though fully set forth herein.

8 120. Defendants Winnick, Katerndahl, and Kratz were aware that WCO
9 was submitting offers in a scheme to defraud T-Mobile and knew that these offers
10 were false. These Defendants provided substantial assistance to the fraud when
11 they hatched the fraudulent scheme and, in strategy sessions, decided which
12 particular T-Mobile spectrum leases it would target for purposes of defrauding T-
13 Mobile. As employees and consultants of WCO, Winnick, Katerndahl, and Kratz
14 also formulated the fraudulent offers and caused them to be made.

15 121. Defendants Academia and Bitzarakis also were aware that WCO was
16 submitting offers in a scheme to defraud T-Mobile and knew that these offers were
17 false. Academia and Bitzarakis substantially assisted this fraud by, among other
18 things, helping WCO target specific EBS license holders that leased spectrum to
19 T-Mobile, negotiating sham offers (and delivering those offers) to the EBS license
20 holders, and negotiating WCO's kickbacks and the NDAs that attempted to keep
21 those kickbacks secret.

22 122. Defendants SCH and Vasudevan also were aware that WCO was
23 submitting offers in a scheme to defraud T-Mobile and knew that these offers were
24 false. SCH and its principal Vasudevan substantially assisted this fraud by
25 providing a sham financing arrangement that could be used to substantiate the
26 fraudulent offers, including in the event that T-Mobile challenged the legitimacy
27 of those offers. The sham financing agreement between SCH and WCO entitled
28 SCH to, among other things, 8% of WCO's kickbacks and specifically

1 contemplated that WCO would target spectrum licenses under lease to T-Mobile
2 and any other spectrum purchases required prior consent by SCH.

3 123. Defendants Winnick, Katerndahl, Kratz, Academia, Bitzarakis, SCH,
4 and Vasudevan's conduct was a substantial factor in causing harm to T-Mobile.
5 T-Mobile has suffered compensatory damages in an amount to be proven at trial,
6 but in no event less than the amount of kickbacks Defendants received.

7 124. Defendants also are liable for punitive damages because their actions,
8 as described herein, involve a pattern and practice of fraudulent, oppressive,
9 willful, despicable, and malicious misconduct that was committed with trickery
10 and deceit.

11 COUNT V

12 **(Conspiracy to Commit Fraud – Against All Defendants)**

13 125. T-Mobile repeats and realleges the allegations set forth above as
14 though fully set forth herein.

15 126. On information and belief, commencing in June 2020, Defendants
16 WCO, Winnick, Katerndahl, Kratz, Academia, and Bitzarakis entered into an
17 agreement, combination, and conspiracy with each other with the intent to defraud
18 T-Mobile.

19 127. Each of said Defendants acted in furtherance of his or its own personal
20 financial gain in entering into the agreement, combination, and conspiracy.
21 Together, these Defendants conspired to submit fraudulent offers to EBS license
22 holders with the intent that those fraudulent offers would be conveyed to T-Mobile,
23 causing T-Mobile to exercise its ROFR.

24 128. Defendants SCH and Vasudevan agreed to and joined the conspiracy
25 to provide sham financing as a means of covering the tracks of Defendants'
26 fraudulent scheme. SCH and Vasudevan authored sham documents that purported
27 to offer a \$2 billion line of financing—specifically earmarked for WCO to target
28 spectrum licenses under lease to T-Mobile—with the intent that T-Mobile would

1 believe the offers supported by that sham financing were real. In exchange, SCH
2 and Vasudevan were promised 8% of the ill-gotten proceeds from the fraudulent
3 scheme.

4 129. Defendants' conspiracy was a substantial factor in causing harm to T-
5 Mobile. As a direct and proximate result of Defendants' conspiracy to defraud, T-
6 Mobile was damaged in an amount totaling what is believed to be more than \$10
7 million. As such, T-Mobile has suffered compensatory damages in an amount to
8 be proven at trial, but in no event less than the amount of kickbacks Defendants
9 received.

10 130. Defendants are also liable for punitive damages because their actions,
11 as described herein, involve a pattern and practice of fraudulent, oppressive,
12 willful, despicable, and malicious misconduct that was committed with trickery
13 and deceit. Defendants' conspiracy was conducted with malice in conscious
14 disregard of T-Mobile's rights. Defendants acted with a specific motive, purpose,
15 and actual intent to injure and defraud T-Mobile, as to justify an award of
16 exemplary and punitive damages in an amount to be proven at trial.

17 **COUNT VI**

18 **(Cal. Penal Code § 496(c) – Against All Defendants)**

19 131. T-Mobile repeats and realleges the allegations set forth above as
20 though fully set forth herein.

21 132. California Penal Code section 4969(c) provides a statutory right of
22 action for recovery of treble damages, costs of suit, and reasonable attorneys' fees
23 against any "person who buys or receives any property that has been stolen or that
24 has been obtained in any manner constituting theft or extortion, knowing the
25 property to be stolen or obtained, or who conceals, sells, withholds, or aids in
26 concealing, selling, or withholding any property from the owner, knowing that
27 property to be stolen or obtained" in violation of section 496(a).

1 133. “Theft,” in turn, is defined by California Penal Code section 484(a)
2 as feloniously stealing or taking the personal property of another or knowingly and
3 designedly, by any fraud or fraudulent representation or pretense, defraud any
4 other person of money, among other acts.

5 134. Through the carefully planned sham “offer” scheme discussed above,
6 Defendants intentionally and knowingly stole an amount believed to be more than
7 \$10 million from T-Mobile by fraudulently diverting portions of the purchase price
8 for EBS licenses in the form of illegal kickbacks to themselves in a manner
9 constituting theft and extortion. Defendants received and thereafter had possession
10 of T-Mobile’s stolen funds knowing they were stolen, including because they
11 perpetrated the theft.

12 135. Defendants worked collectively to convey fraudulent representations
13 in the form of offers to institutions with EBS licenses with the intent and
14 knowledge that the offers would be conveyed to T-Mobile pursuant to the ROFR
15 provisions in T-Mobile’s leases. Specifically, WCO made the fraudulent offers;
16 as employees and consultants of WCO, Winnick, Katerndahl, and Kratz,
17 formulated the fraudulent offers and caused them to be made; Academia, through
18 its principal Bitzarakis, conveyed the offers to the institutions; and SCH, through
19 its agent and alter ego Vasudevan, served as sham financial backing for the
20 fraudulent offers. These sham offers were a false pretense because they were not
21 real—WCO had no intent to consummate the transactions contemplated by those
22 offers, its offers were backed by sham financing, and 10% of the purported “offer”
23 was to cover WCO’s illegal kickback, not to form part of the purchase price.

24 136. All Defendants worked together to formulate, make, and represent the
25 fraudulent offers with the intent that T-Mobile would, in response to those offers,
26 exercise its ROFRs, thus guaranteeing WCO and its coconspirators the illegal
27 kickbacks based on prices artificially inflated by Defendants and negotiated under
28 the guise of CCAs.

1 137. T-Mobile relied on the existence of the fraudulent purported “offers”
2 when it exercised its ROFRs and purchased EBS licenses it had previously leased.
3 T-Mobile had no reason to believe the offers to be fraudulent when it received
4 ROFR notices from the EBS license holders.

5 138. Defendants committed these acts with the intent to defraud T-Mobile.
6 By representing fraudulent offers to purchase the spectrum licenses, Defendants
7 intended to induce T-Mobile into exercising its ROFRs at a price artificially
8 inflated by Defendants’ sham offer and higher than T-Mobile would have paid
9 absent Defendants’ fraudulent scheme so that Defendants could obtain the excess
10 price paid for the licenses in the form of kickbacks.

11 139. Defendants also concealed these fraudulently diverted kickbacks, and
12 the arrangements under which Defendants obtained them, from Plaintiffs through,
13 *inter alia*, the use of NDAs.

14 140. As a direct and proximate result of Defendants’ violations of
15 California Penal Code section 496, T-Mobile was damaged in an amount totaling
16 what is believed to be more than \$10 million. As such, T-Mobile has suffered
17 compensatory damages in an amount to be proven at trial, but in no event less than
18 the amount of kickbacks Defendants received.

19 141. Defendants are also liable for punitive damages because their actions,
20 as described herein, involve a pattern and practice of fraudulent, oppressive,
21 willful, despicable, and malicious misconduct that was committed with trickery
22 and deceit.

23 142. T-Mobile also is entitled to treble damages, costs of suit, and
24 attorney’s fees pursuant to California Penal Code section 496(c).

25 **COUNT VII**

26 **(Conversion – Against All Defendants)**

27 143. T-Mobile repeats and realleges the allegations set forth above as
28 though fully set forth herein.

1 144. T-Mobile had a right to possess the money it spent exercising its
2 ROFR for multiple EBS licenses and acquiring those licenses at improperly
3 inflated prices.

4 145. Defendants substantially interfered with T-Mobile's property through
5 their carefully planned sham "offer" scheme discussed above, in which Defendants
6 knowingly, intentionally, and fraudulently coerced T-Mobile into exercising its
7 ROFR for multiple EBS licenses, ultimately causing T-Mobile to expend an
8 amount believed to exceed \$10 million to acquire such licenses at improperly
9 inflated prices, with Defendants taking possession of T-Mobile's inflated
10 payments in the form of kickbacks.

11 146. T-Mobile did not consent to Defendants taking possession of T-
12 Mobile's money. And had T-Mobile known of Defendants' sham "offer" scheme,
13 designed to force T-Mobile to exercise its ROFRs and pay artificially inflated
14 prices for EBS licenses, it would not have paid the artificially inflated prices for
15 those EBS licenses.

16 147. Defendants damaged T-Mobile by wrongfully converting portions of
17 the purchase price for EBS licenses in the form of illegal kickbacks to themselves,
18 and illegally exerting dominion and control over those kickbacks.

19 148. T-Mobile is entitled to recover the funds wrongfully converted by
20 Defendants through the above-alleged scheme, i.e., the amount of the kickbacks.
21 As such, T-Mobile has suffered compensatory damages in an amount to be proven
22 at trial, but in no event less than the amount of kickbacks Defendants received.

23 149. Defendants are also liable for punitive damages because their actions,
24 as described herein, involve a pattern and practice of fraudulent, oppressive,
25 willful, despicable, and malicious misconduct that was committed with trickery
26 and deceit.

COUNT VIII

**(Violation of California Unfair Competition Law, Cal. Bus. & Prof. Code §
17200 – Against All Defendants)**

150. T-Mobile repeats and realleges the allegations set forth above as though fully set forth herein.

151. Plaintiffs and Defendants are all persons within the meaning of the California’s Unfair Competition Law (“UCL”). *See* Cal. Bus. & Prof. Code § 17201.

152. The statute makes unlawful “unfair competition,” which is defined as “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.” Cal. Bus. & Prof. Code § 17200.

153. Defendants violated the UCL by engaging in conduct that constitutes unfair, unlawful, and fraudulent business acts or practices.

154. Defendants’ business acts are unlawful within the meaning of Business and Professions Code section 17200 because they violate, *inter alia*, the federal RICO statute, California Penal Code section 496, and also give rise to the common law causes of action set forth herein.

155. Defendants’ business acts and practices are “fraudulent” under the UCL because they extended purported “offers” that they had no intention of consummating, rendering them false and likely to mislead T-Mobile and the public. Indeed, Defendants made these fraudulent “offers” to members of the public, including EBS license holders, with the intent that they would be conveyed to T-Mobile and trigger T-Mobile’s ROFR. Defendants concealed the fact that these “offers” were a sham, including because Defendants had no intention of consummating or following through on those offers.

156. Defendants’ business acts and practices are “unfair” under the UCL for at least the following reasons:

- 1 a. Defendants' conduct harms competition because they are not
2 competing in good faith but are using sham, non-binding offers to
3 coerce T-Mobile into purchasing licenses at prices higher than the
4 licensees are willing to accept that it otherwise would not have
5 purchased; and
- 6 b. The gravity of the harm to T-Mobile resulting from Defendants'
7 acts and practices outweighs any legitimate utility of that conduct.

8 157. As a result of Defendants' unlawful, fraudulent, and unfair conduct,
9 T-Mobile has suffered an ascertainable loss in the form of, among other things, the
10 amounts it paid to purchase EBS licenses that were siphoned off to Defendants as
11 kickbacks.

12 158. T-Mobile is likely to continue to be damaged by Defendants'
13 unlawful, fraudulent, and unfair business acts and practices because Defendants
14 are likely to continue to use sham, non-binding offers to coerce T-Mobile into
15 exercising its ROFRs.

16 159. Because Defendants are likely to continue using sham, non-binding
17 offers to coerce T-Mobile into exercising its ROFRs in the future, T-Mobile has no
18 other adequate remedy at law to address this threat of continuing harm.

19 160. In accordance with Business and Professions Code section 17203, T-
20 Mobile is entitled to an order enjoining Defendants from continuing to conduct
21 business through unlawful, fraudulent and unfair acts and practices and an order
22 for restitution of all monies which Defendants unjustly acquired through their
23 deceptive and unfair acts.

24 **COUNT IX**

25 **(Tortious Interference with Business Expectancy and Contractual**
26 **Relationship – Against All Defendants)**

27 161. T-Mobile repeats and realleges the allegations set forth above as
28 though fully set forth herein.

1 162. T-Mobile had valid lease agreements with EBS license holders. T-
2 Mobile's lease agreements contained ROFR provisions that entitled T-Mobile to
3 match any bona fide third-party offers to purchase the EBS license subject to the
4 lease agreement.

5 163. Defendants knew about the lease agreements between T-Mobile and
6 the EBS license holders, as well as the specific terms of those agreements,
7 including the ROFR provisions.

8 164. Defendants, by submitting sham offers to the EBS license holders,
9 intentionally and purposely induced T-Mobile to exercise its ROFR under the lease
10 agreements. Defendants' acts constitute an intentional act designed to disrupt the
11 contractual lease arrangement between T-Mobile and each EBS license holder.

12 165. Defendants further disrupted T-Mobile's contracts with EBS license
13 holders by artificially inflating their sham offers to account for WCO's 10%
14 kickback. As a result, when T-Mobile exercised its ROFRs and matched the
15 "offers," it was not only paying the EBS license holder to purchase the license, it
16 also unknowingly was forced to fund WCO's 10% kickback. Defendants actively
17 concealed this fact from T-Mobile by having EBS license holders sign NDAs under
18 which they could not reveal to T-Mobile the specific terms of Defendants' offers
19 (including the 10% kickbacks Defendants received as part of those offers).

20 166. As a result of Defendants' actions, the lease arrangements between T-
21 Mobile and the EBS license holders were disrupted. Specifically, Defendants'
22 sham offers caused T-Mobile to exercise its ROFR and purchase the EBS license
23 it had previously leased, bringing an end to the parties' lease agreement.

24 167. Defendants' actions have tortiously interfered with T-Mobile's
25 business expectancy and with its contractual relationships with multiple EBS
26 license holders.

27 168. Defendants' conduct in tortiously interfering with T-Mobile's
28 business expectancy and with its contractual relationships with multiple EBS

1 license holders was a substantial factor in causing T-Mobile's harm. As a
2 proximate consequence of the contractual and business expectancy disruption
3 induced by Defendants' fraudulent and unfair acts, T-Mobile has incurred
4 substantial costs and is entitled to damages in an amount to be proven at trial, but
5 in no event less than the amount of kickbacks Defendants received.

6 169. Defendants are also liable for punitive damages because their actions,
7 as described herein, involve a pattern and practice of fraudulent, oppressive,
8 willful, despicable, and malicious misconduct that was committed with trickery
9 and deceit.

10 COUNT X

11 **(Unjust Enrichment – Against All Defendants)**

12 170. T-Mobile repeats and realleges the allegations set forth above as
13 though fully set forth herein.

14 171. Defendants are engaged in a fraudulent and unfair scheme by which
15 they collectively make sham, non-binding offers to purchase EBS licenses in order
16 to coerce T-Mobile into exercising its ROFRs under various lease agreements and
17 into purchasing EBS licenses for more than the licensees are willing to accept.

18 172. After T-Mobile purchased the EBS licenses Defendants targeted,
19 Defendants received a material portion of the purchase price through secret side
20 agreements dubbed CCAs.

21 173. Defendants' receipt of a portion of the purchase price is a result of
22 Defendants' fraudulent and unfair scheme.

23 174. Under the circumstances, it would be inequitable for Defendants to
24 retain the above-described benefits.

25 175. As a result of Defendants' unjust enrichment, T-Mobile was damaged
26 in an amount to be determined at trial. T-Mobile seeks full disgorgement and
27 restitution of Defendants' unjust enrichment.

28

COUNT XI

(Negligent Misrepresentation – Against All Defendants)

1
2
3 176. T-Mobile repeats and realleges the allegations set forth above as
4 though fully set forth herein.

5 177. Defendants made multiple statements of material facts, including
6 representations as to the “bona fide” nature of their sham offers, in order to induce
7 T-Mobile into exercising its ROFRs under long-standing contractual provisions
8 with EBS license holders.

9 178. Defendants’ representations were untrue, and Defendants had no
10 reasonable grounds to think otherwise.

11 179. Defendants were negligent in making these misstatements because
12 they should have known the statements were false. Defendants had no intention of
13 participating in the spectrum marketplace in good faith. Instead, Defendants
14 specifically inserted themselves into the market solely for the purpose of exploiting
15 T-Mobile’s ROFR provisions and enriching themselves through their illegal
16 kickback dealings. Each Defendant should have known that WCO had no intention
17 of purchasing the EBS licenses for which it made non-binding offers.

18 180. In making the misrepresentations, Defendants intended or expected to
19 induce T-Mobile’s reliance.

20 181. T-Mobile did, in fact, rely on these misrepresentations when it
21 exercised its ROFRs and purchased EBS licenses it had previously leased. T-
22 Mobile had no reason to believe the offers to be misrepresentations when it
23 received ROFR notices from the EBS license holders. As such, its reliance was
24 reasonable and justified.

25 182. T-Mobile’s reliance on Defendants’ misrepresentations was a
26 substantial factor in causing its harm. As a proximate result of Defendants’
27 misrepresentations, T-Mobile was damaged in an amount totaling what is believed
28 to be more than \$10 million. As such, T-Mobile has suffered compensatory

1 damages in an amount to be proven at trial, but in no event less than the amount of
2 kickbacks Defendants received.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, T-Mobile prays for relief and judgment against Defendants
5 as follows:

- 6 A. Compensatory damages according to proof at trial;
7 B. Treble damages according to statute;
8 C. Restitution and disgorgement of all profits and unjust enrichment;
9 D. Necessary and appropriate injunctive relief;
10 E. An award of T-Mobile's reasonable attorneys' fees and costs and
11 expenses according to statute;
12 F. Punitive damages;
13 G. Prejudgment interest; and
14 H. Such other and further relief as the Court may deem just and proper.

15 **DEMAND FOR JURY TRIAL**

16 Pursuant to Federal Rule of Civil Procedure 38, T-Mobile demands a trial
17 by jury in this action of all issues so triable.

18
19 Dated: June 2, 2023

Respectfully submitted,

20
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