

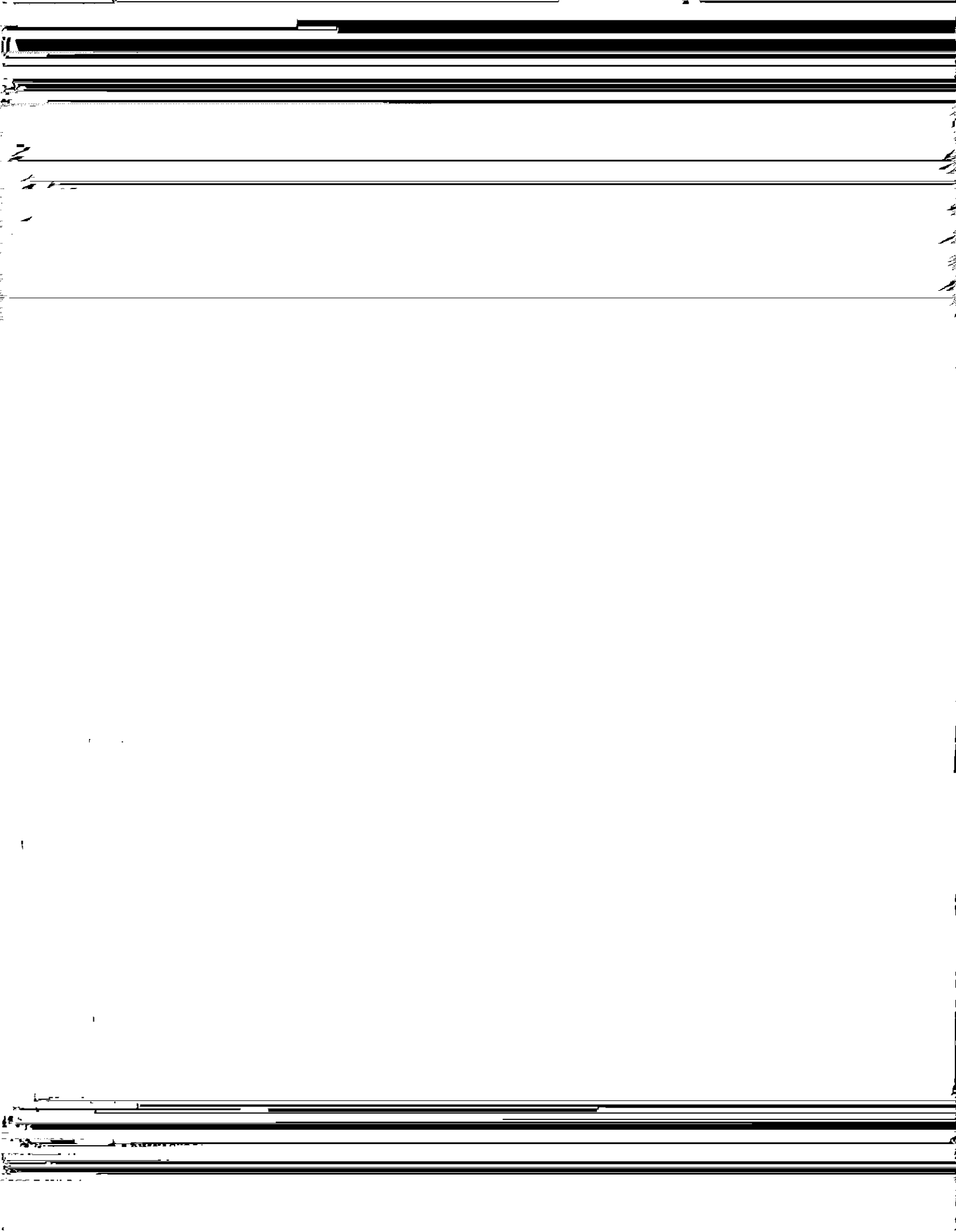
1 WILLIAM BLUMENTHAL
General Counsel
2 Federal Trade Commission
3 David M. Newman

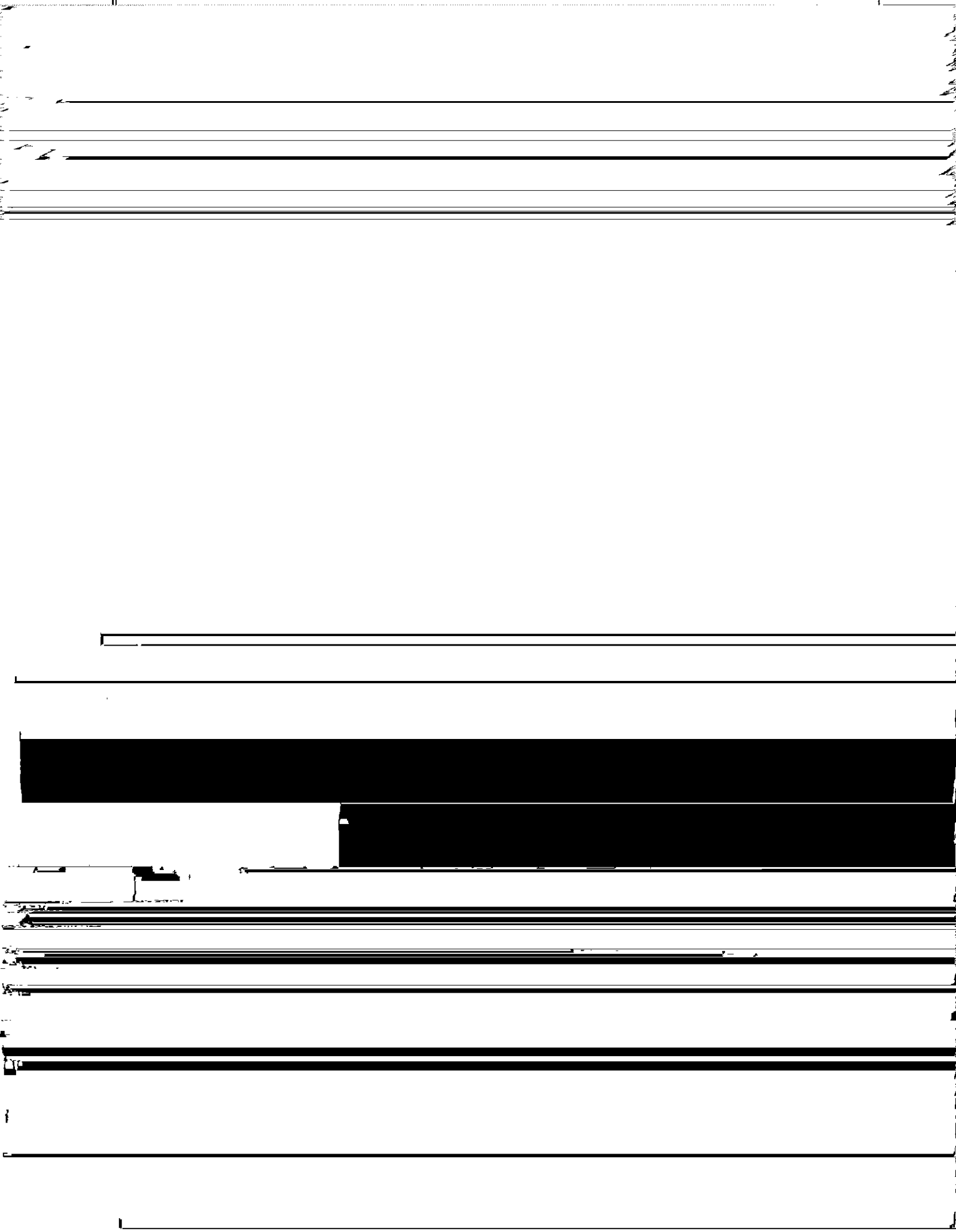
ENDORSED
FILED
San Francisco County Superior Court

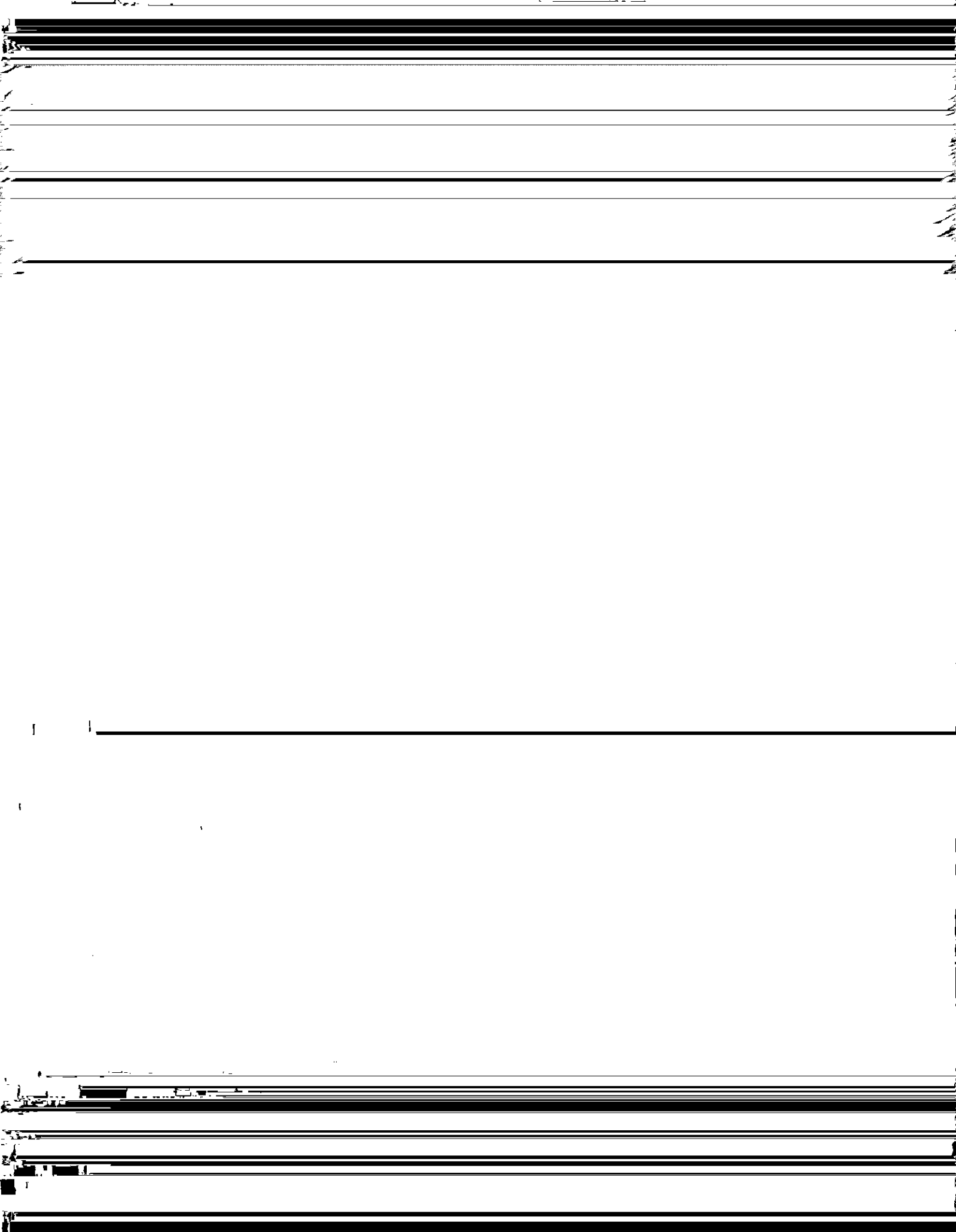
1 leaves many class members without any compensation and could leave others worse off than if
2 they had not participated in the settlement at all.² Because the only relief provided by the
3 settlement is limited to this restriction on the class members who do not wish to be

1 in at least some class members incurring charges for unwanted services.

2 In addition, even if the terms of the negative option plan were fully and clearly disclosed
3 to class members before they chose to accept the benefit, the use of negative option features







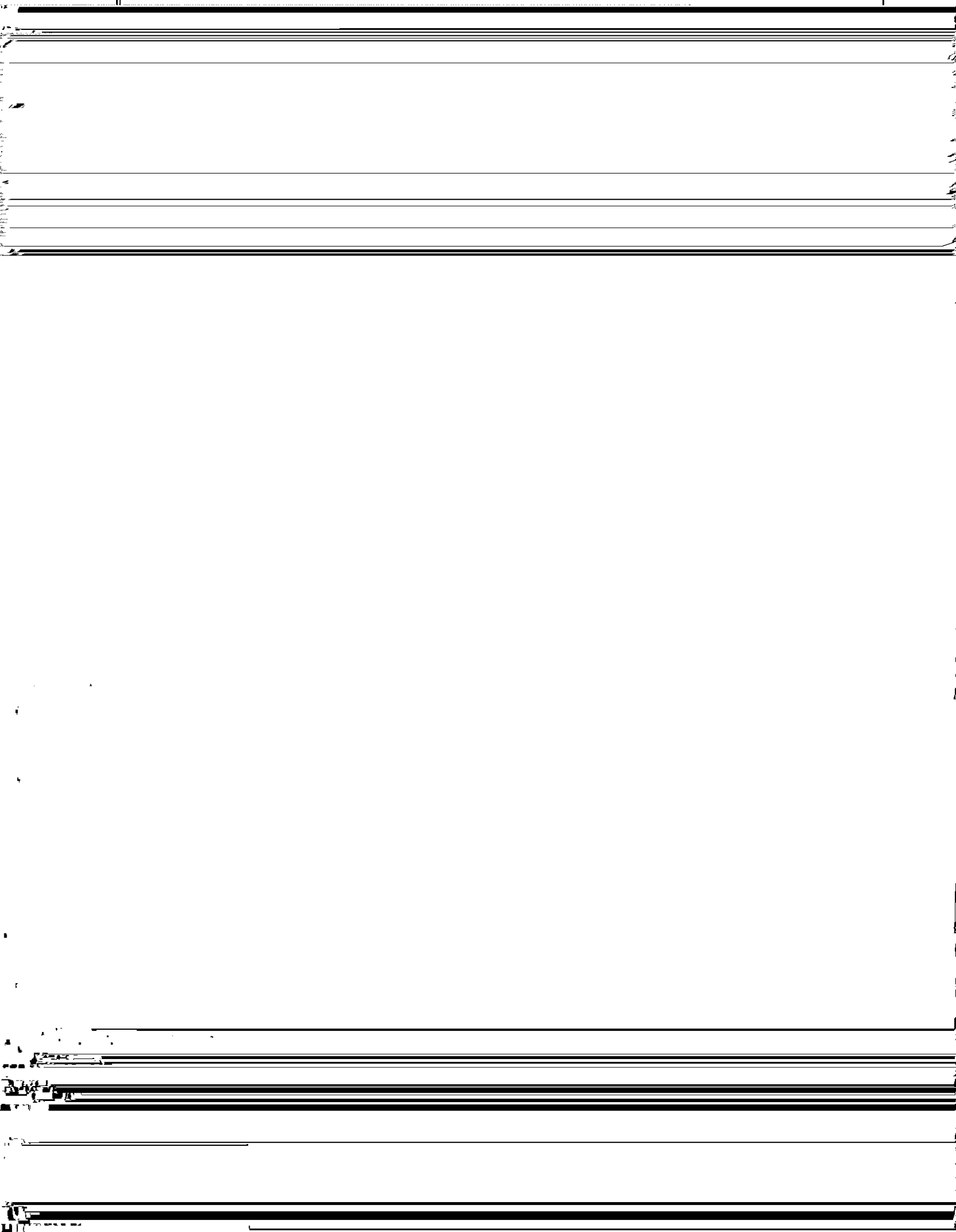
1 (e.g., from three to four DVDs at a time) for the price of their existing (non-upgraded) level of
2 service. The upgraded service renews automatically at the end of the upgraded month at the

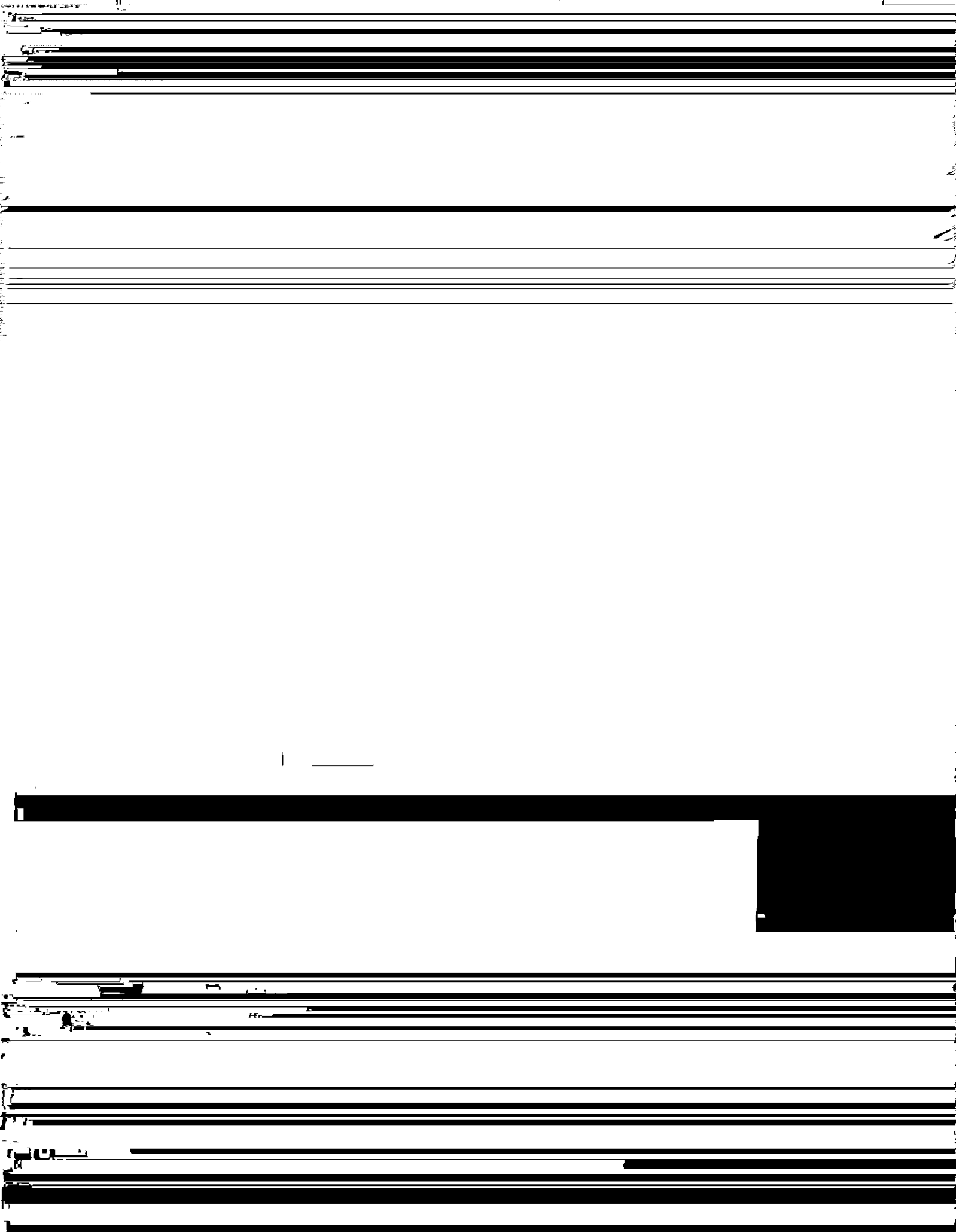
1 precluded from receiving any compensation.

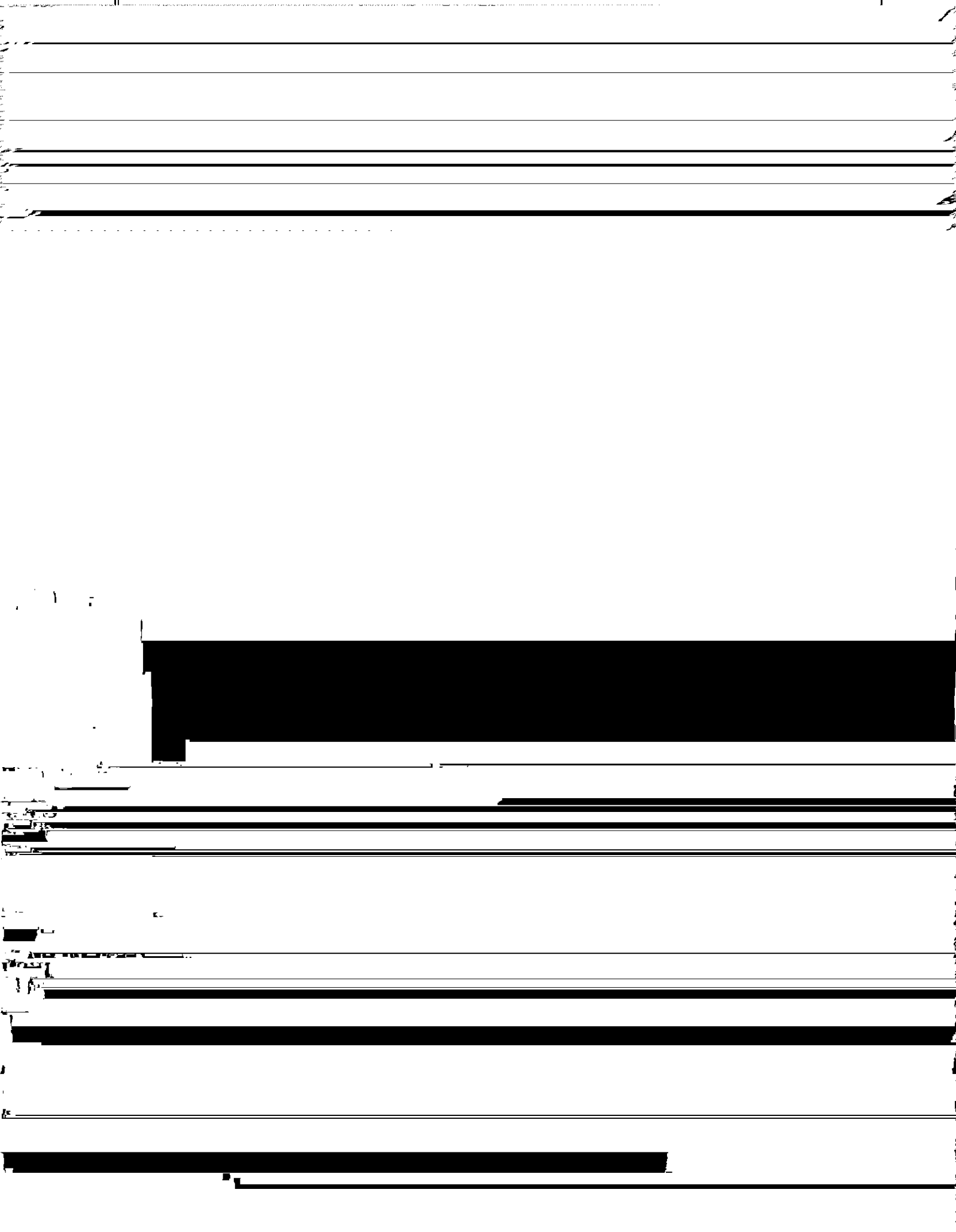
2 A. Inadequate Disclosure of the Negative Option to the Class

3 A class member choosing to accept a benefit in a class action settlement is in a different

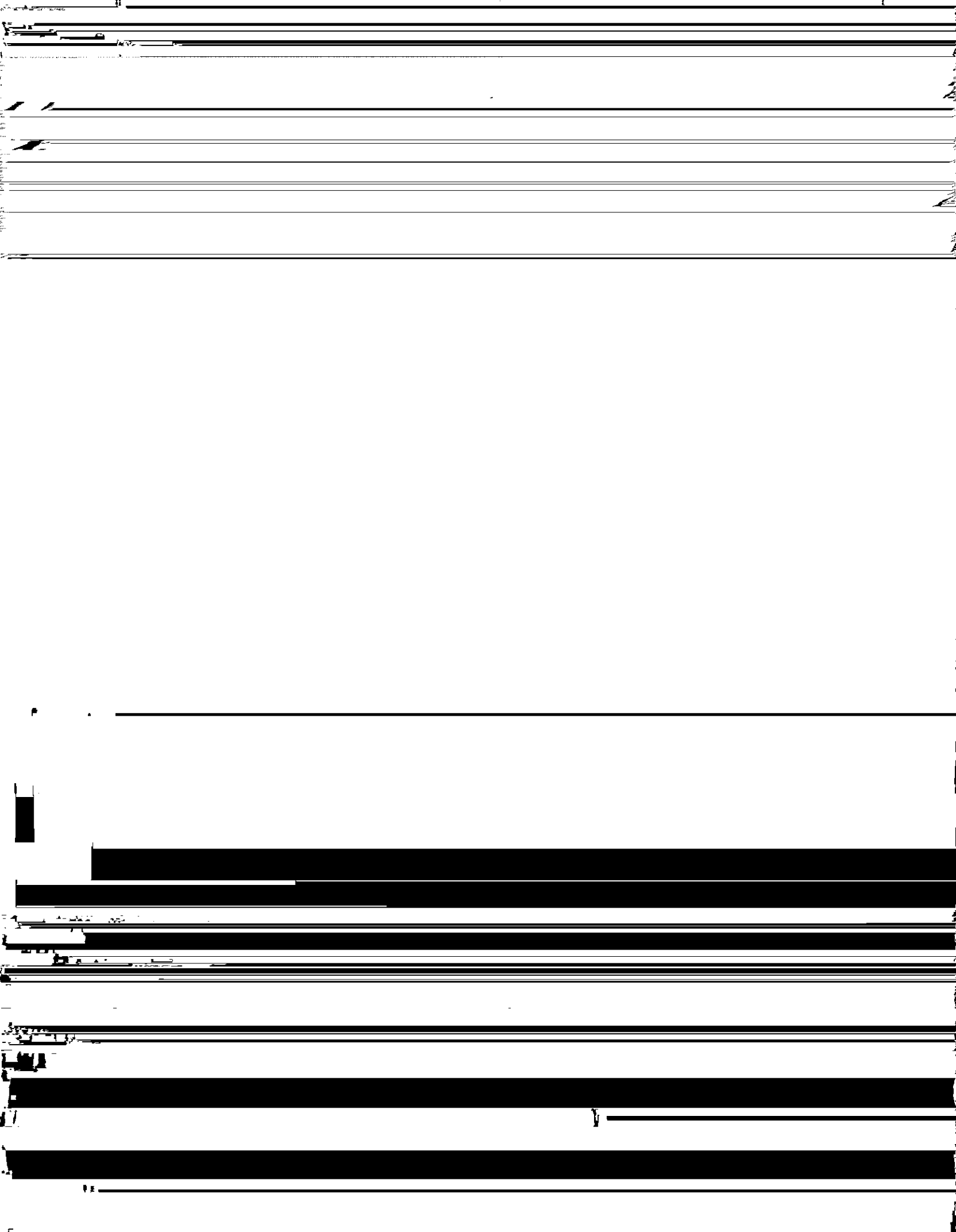
4 position than a consumer considering a "free trial" offer in the context of a

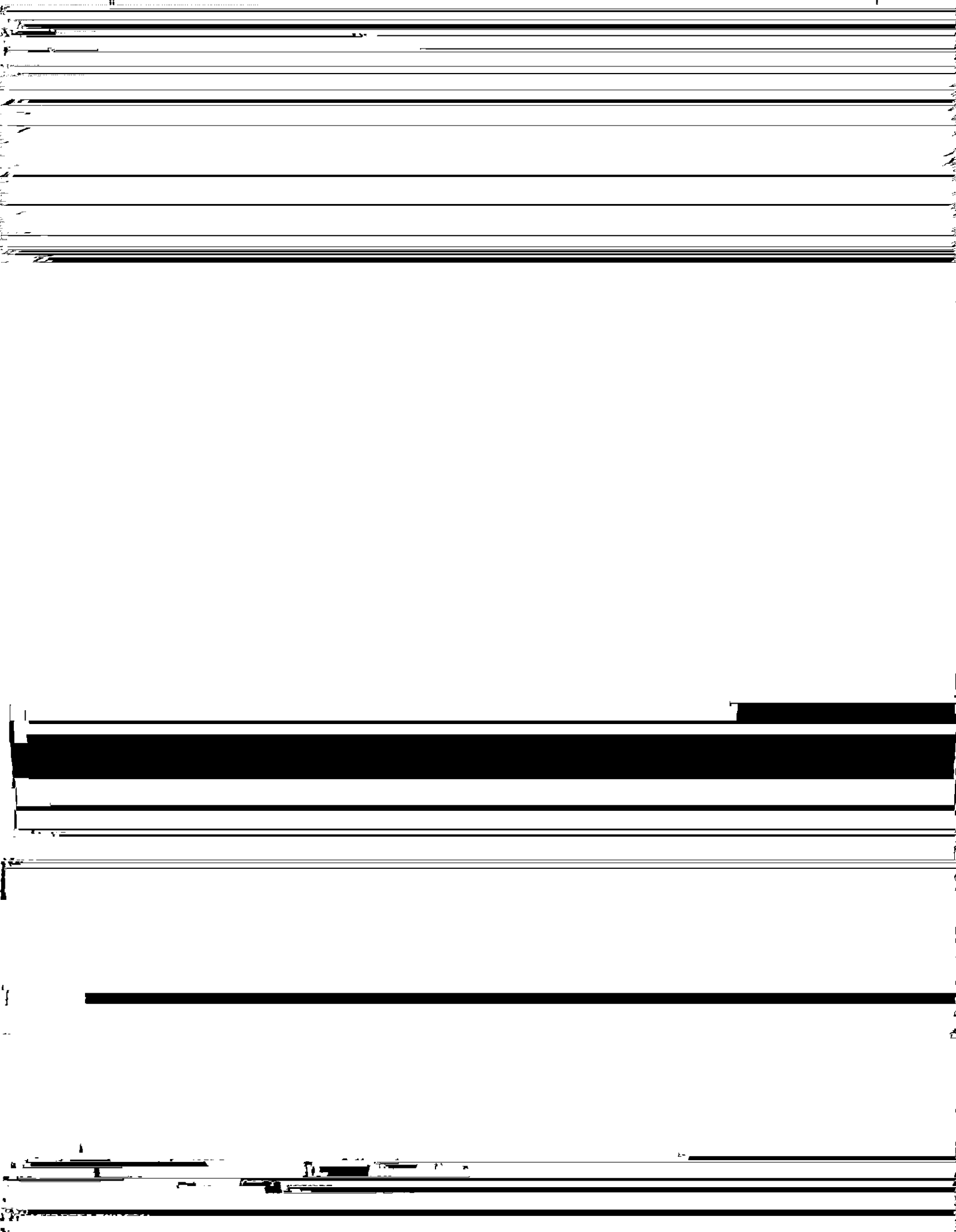












IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MICHAEL ERIKSON, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

AMERITECH CORPORATION,

Defendant.

)
) No. 99 CH 18873
) (Consolidated with
) 99 CH 11536, 00 L 011474,
) 00 L 00500, 01 CH 3373)
)
)
)

ENTERED
SEP 18 2002
JUDGE
BOHANNON

MEMORANDUM ORDER

Plaintiff Michael Erikson brought this class action lawsuit against Ameritech. The issue currently before this court is whether it should approve the parties' proposed class action settlement.

A. BACKGROUND

This case has an unusual procedural history. Plaintiff filed this class action lawsuit, 99 CH 18873, on December 30, 1999 as a successor action of a previously dismissed action, McDermott v. Ameritech Corporation (98 L 8301). The Amended Complaint sought

The Amended Complaint states various claims against Ameritech including breach of contract and consumer fraud. Other similar cases were filed in Illinois, Michigan and Ohio, though not in

T. 25. [REDACTED] Ameritech also denies

5/13-501 (et. seq.). Such a filed tariff is binding law. Ill. Cent. Gulf R.R. Co. v. Sankey

198 Ill. 2d 56 398

N.E.2d 3 (1979)). The tariff specifies the nature and extent of a public utilities' obligation to its

Ill. Cent. Gulf R.R. Co. v. Sankey, 198 Ill. App. 3d 53, 55, 409 N.E.2d 557, 559 (2nd)

The court further dismissed the Amended Complaint based on the voluntary payment

cannot be recovered by the

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] L. 1. Under M-21 system in five states: Illinois Indiana Ohio.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

States' Petition to Intervene, having allowed the

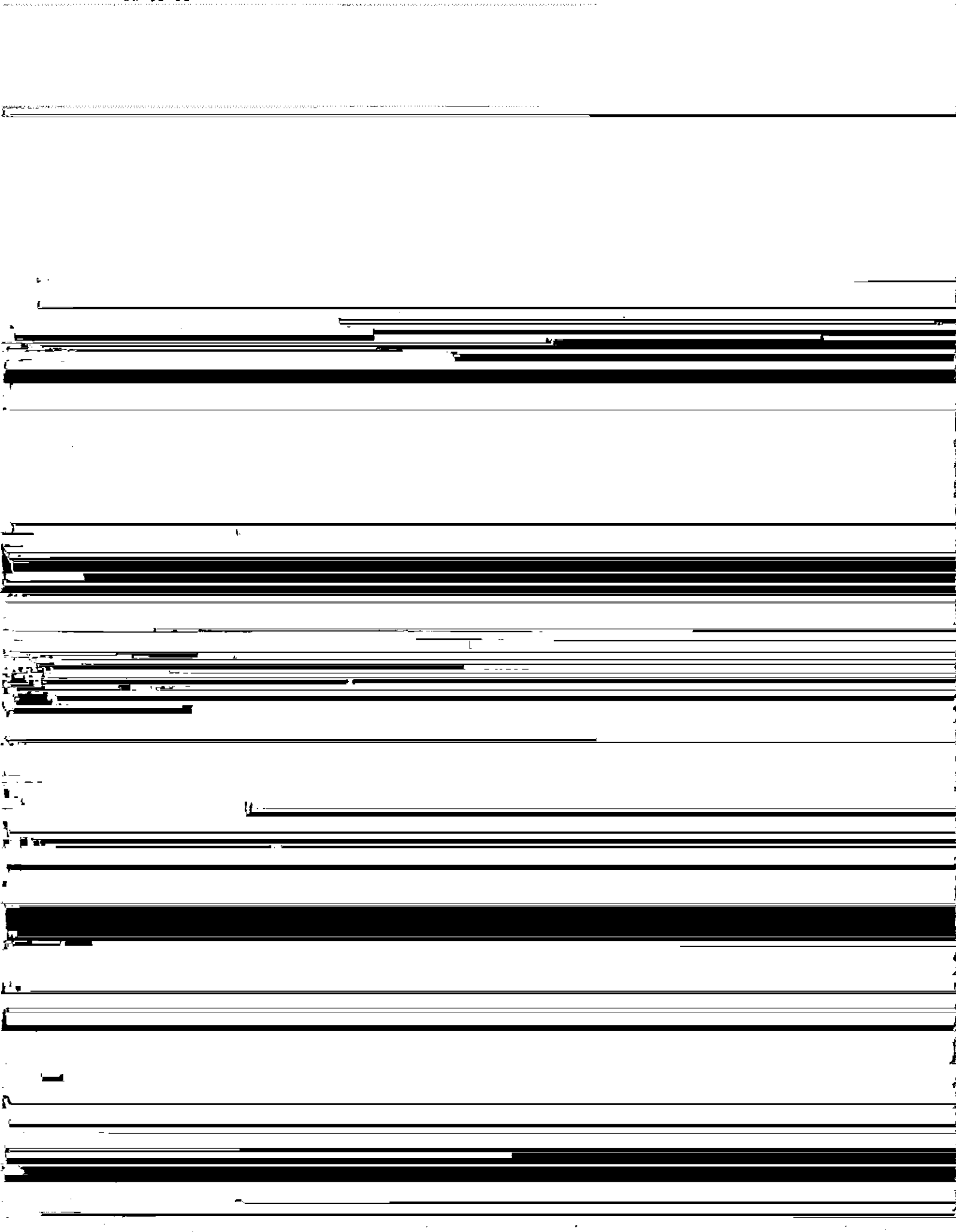
[REDACTED]

[REDACTED]

States' Petition to Intervene. The objectors made a number of criticisms of the Settlement and

[REDACTED]

6. the reaction of members of the class to the settlement;
7. the opinion of competent counsel. and



kind on which reasonable minds can and do differ. On balance, this court rejects the bleak

part of the Plaintiff's case. The

in testimony in Ohio

disclosures, to mean anything, ought to be given at the time of sale, not just on advertisements or

This section of meaningful provisions

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

majority of Ohio customers pay a flat rate, that the Ohio claims were brought on behalf of

~~businesses and not individual customers and that since such businesses have no cause of action~~

under the Ohio Consumer Fraud Act, counsel anticipated problems on certifying the class and proving common law fraud.

For these reasons, this court sees a very mixed result on the first Korshak factor. The

~~plaintiff's case itself is not strong and although the Settlement is better than nothing, it is~~

problematical, flawed and of little value to the class.

The second Korshak factor — the defendant's ability to pay is not important here.

Attorneys General of five states and the other objectors' attorneys are equally competent counsel and they see things differently. The high level of competence on both sides is equal and therefore this factor is a wash.



SETTLEMENT

The burden of persuading this court of the fairness, reasonableness and adequacy of a

IV. CONCLUSION

that the proposed Settlement is fair, reasonable and adequate. Therefore, the court denies the request to approve this Settlement.

ENTERED

SEP 18 2002

JUDGE

R. P. Davis #181

Subject: Notice of Class Action Settlement. Please Read.

Under a proposed class action settlement, you may be eligible to receive a free benefit from Netflix.

A class action lawsuit entitled Chavez v. Netflix, Inc. was filed in San Francisco Superior Court (case number CGC-04-434884) on September 23, 2004. The lawsuit alleges that Netflix failed to provide "unlimited" DVD rentals and "one day delivery" as promised in its marketing materials. Netflix has denied any wrongdoing or liability. The parties have reached a settlement that they believe is in the best interests of the company and its subscribers.

By excluding yourself, you preserve your right to bring a lawsuit against Netflix

concerning the Released Claims. However, you will not get the benefit described

above.

Option 4. Make An Objection To The Settlement In Court

By making an objection to the settlement in court, you will not get the benefit described