

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**MICHAEL PANARIELLO, individually and on behalf
of all others similarly situated,**

Plaintiffs,

CASE NO:

v.

CLASS ACTION

**Comcast Corporation, a foreign
Corporation**

Defendant

_____ /

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Michael Panariello, individually and on behalf of all others similarly situated, brings this statewide class action against Defendant, COMCAST CORPORATION, and alleges upon personal knowledge, and upon information and belief as to all matters based upon, *inter alia*, and the investigation made by and through his attorneys, as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, Michael Panariello, resides in Broward County, Florida, and he brings this class action on behalf of himself and all other individuals in the state of Florida who have a “Service Protection Plan” offered by the Defendant, COMCAST CORPORATION, as described herein.
2. Defendant is a limited liability company, incorporated under the laws of the state of Colorado, but maintaining its principal place of business in Philadelphia, Pennsylvania.

3. Defendant's "Service Protection Plan" claimed that it covered costs relating to inside wiring, customer owned equipment connected to Comcast services, and on-site education about its products.

4. Defendant is registered to do business, and is doing business, in the state of Florida and may be served through its registered agent in the state of Florida.

JURISDICTION AND VENUE

5. Diversity of citizenship exists in this case for purposes of subject matter jurisdiction. The Plaintiffs are residents of the state of Florida, and/or purchased the service protection plan for their homes in Florida. The class representative, Michael Panariello, is a citizen of the state of Florida. Defendant, Comcast Corporation, is a corporation formed under the laws of Colorado and its principal place of business is in Philadelphia, Pennsylvania.

6. This Court has personal jurisdiction over Defendant because Defendant is engaged directly through its agents in systematic and ongoing business transactions in the state of Florida and within this district, including but not limited to, the supply of and the marketing of Internet, Cable TV, and Telephone services.

7. Defendant has caused injury to persons within the state of Florida, and/or persons who receive Comcast services in Florida, while it was engaged in the solicitation of services and activities within the state of Florida, including but not limited to, injury to class members in Florida caused by false advertisement and unfair and deceptive trade practices, such that specific personal jurisdiction arises under Florida statute 48.193 (1)(a)(6)(a).

COMMON FACTUAL ALLEGATIONS

8. Defendant, Comcast Corporation, sold to its customers a “Service Protection Plan” (SPP) to cover costs of inside wiring, customer owned equipment connected to Comcast services, on-site services, and education about its products.

9. Comcast Corporation’s SPP did not cover all inside wiring as it represented since it did not include wiring inside the walls of customers’ homes, among other things.

10. Comcast Corporation represented to customers that the SPP covered wiring inside the home and service calls related to inside wiring.

CLASS ALLEGATIONS

11. The plaintiff, Michael Panariello, individually and on behalf of the Class Members in the state of Florida who are similarly situated pursuant to Rules 23(a) and 23(b)(2) and/or 23(b)(3) of the Federal Rules of Civil Procedure. The Class that Plaintiff seeks to represent is defined as follows:

All persons who purchased the Service Protection Plan (SPP) from Comcast Corporation for use in the state of Florida for repairs inside their home or dwelling for personal or family or household use before March 23, 2016. Excluded from this class definition are Plaintiff’s counsel, counsel for Defendant Comcast Corporation, employees of the Defendant, Comcast Corporation, and Court employees and personnel.

12. Subject to additional information obtained through further investigation and discovery to be conducted, the foregoing definition of the Class may be expanded or narrowed by amendment or an amended complaint.

13. **Numerosity**: The Class is composed of thousands of persons in the state of Florida, the joinder of whom in one action is impractical. While the exact number and identity of Class Members are not presently known, they can be identified through the review of records in

defendant's possession, custody and control, and/or through other formal discovery. According to Mindy Kramer, Comcast's vice president of public relations for the Florida region, "Comcast has roughly 3 million customers across Florida."¹

14. **Commonality**: Defendant, Comcast Corporation, has engaged in a standardized course of conduct that affects all Class Members. The critical question of law and fact common to the Plaintiff's Class that will be materially advanced in the litigation is:

- a. Whether Defendant's SPP was unfair and deceptive, as defined by Florida Statutes, when it sold a service plan that it represented to cover all costs of inside wiring when, in fact, the service plan did not include all inside wiring within a Class Members' home; that is, wiring inside the walls of a Class Members' homes;
- b. Whether Comcast Corporation made false or misleading representations to Class Members regarding the SPP offered to them;
- c. Whether Comcast Corporation's material representations regarding the SPP deceived customers into purchasing the plan;
- d. Whether Comcast Corporation's representations of the SPP created the false impression that the service plan offered services not covered by it;
- e. Whether Comcast Corporation's statements regarding the SPP were not in accord with the facts and its representations; and
- f. The Class wide measure of damages.

¹ Jennifer Sorentroue, *Comcast to cap home data usage for Palm Beach customers*, Palm Beach Post (October 19, 2016), <http://www.mypalmbeachpost.com/business/comcast-cap-home-data-usage-for-palm-beach-county-customers/1Ml4gfIWsecdfT1ir2nlO/>

15. **Typicality**: Plaintiff's claims are typical of the claims of the members of the class, as all such claims arise out of defendant's conduct in securing Class Members to agree to purchase its SPP to cover wiring repairs inside the home, but in fact did not cover all wiring inside the home.

16. **Adequacy of Representation**: Plaintiff's will fairly and adequately protect the interest of the members of the Class and has no interest adverse to other members of the class. Plaintiff has retained counsel that are experienced in the prosecution of complex litigation and class actions.

17. **Predominance and Superiority**: The class action in this instance is appropriate for certification because questions of law and fact common to the Members of the Class predominate over questions affecting only individual members, and this class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of the class is impracticable. The common liability issues in this class action may be resolved efficiently on a class-wide-basis. Should individual Class Members be required to bring separate actions, assuming Class Members are aware of the deception, this Court and or courts throughout the state of Florida would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties in the courts system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single court. Moreover, class treatment is the only realistic means by which the Class plaintiffs and other members of the class, with relatively small individual claims, can effectively litigate against a large, well-represented corporate entity such as the defendant.

ESTOPPEL AND TOLLING OF THE STATUE OF LIMITATIONS

18. Comcast Corporation should be estopped from relying on any statutes of limitation or repose by virtue of its acts of fraudulent concealment, which include Comcast Corporation's intentional concealment from Plaintiff, Class Members, and the general public that the Service Protection Plan were misrepresented, while continually marketing the Service Protection Plan described herein.

19. Given Comcast Corporation's affirmative actions of concealment by failing to disclose this known but non-public information about the SPP— information over which Comcast Corporation had exclusive control— and because Plaintiff and Class Members therefore could not reasonably have known that the SPP was deceptive, Defendant is estopped from relying on any statutes of limitations or repose that might otherwise be applicable to the claims asserted herein.

CAUSES OF ACTION AND CLAIMS FOR RELIEF

COUNT I - VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

20. Plaintiff, individually, and on behalf of all others similarly situated, incorporates by reference paragraphs 1 through 19 as though expressly stated herein in this paragraph.

21. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Florida Statute section 501.201 ("FDUTPA"). The stated purpose of the Act is to "protect the consuming public... from those who engage in unfair methods of competition, or unconscionable, defective, deceptive, or unfair acts or practices in the conduct of any trade or commerce." Florida Statute 501.202 (2).

22. Plaintiff and all Class Members are "consumers" and the transaction at issue in the Complaint constitutes "trade or commerce" as defined by Florida Statutes 501.203 (7) and (8), respectively.

23. Florida Statute 501.204 (1) declares unlawful “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

24. Consumers and the consuming public under FDUTPA include Florida residents and nonresidents of Florida.

25. In violation of FDUTPA, Comcast Corporation committed fraud, deception, false promises, misrepresentation, and the knowing concealment, suppression, or admission of material facts in its sale and marketing and/or advertisement of its SPP.

26. Comcast Corporation engaged in fraud, deception, false promise, misrepresentation, concealment, suppression, or omission of material facts in violation of FDUTPA in the following ways:

- a. Defendant charged the Class Representative and Class Plaintiffs a fee for a SPP to cover repairs of wiring inside the home, when in fact, Comcast refused to cover all wiring inside the home of Class Plaintiff and Class Members.
- b. Comcast Corporation deceived Class Representative and Class Members by misleading and/or deceiving them by materially representing services that it knew it would not provide.
- c. Comcast Corporation committed fraud on the Class Representative and Class Members when it deceived them as to the SPP and inducing them to pay for services which were not covered.
- d. Comcast Corporation engaged in false representation when it represented to the Class Representative and Class Members services that it knew would not be included in the SPP.

e. Comcast Corporation falsely represented and deceived the Class Representative and Class Members by omitting the fact that it did not provide wiring for all repairs inside its consumers' homes.

27. Comcast Corporation engaged in the concealment, suppression, or omission of the aforementioned material facts with the intent that others, such as Plaintiff, Class Members, and/or the general public would rely upon the concealment, suppression, and omission of such material facts.

28. The material representations, practices, and omissions by the Defendant are likely to affect consumers' choice of and/or conduct regarding the purchase of the SPP. The issue is not whether Plaintiff and Class Members relied on the misrepresentations, practices, concealment, and omissions of the material facts, but whether the misrepresentations, practices, concealment, and omissions of the material facts were likely to deceive a consumer who wished to purchase a SPP in the state of Florida from acting reasonably in the same circumstances. Plaintiff and Class members need not prove individual reliance. Since proof of reliance is not necessary, issues relating to causation and damages will be common to Plaintiff and all Class Members. To the extent reliance is required by law, damages are sufficient sufficiently shown by the fact that Plaintiff and Class members purchased the SPP.

29. As a direct and proximate cause of the violation of FDUTPA, described herein, Plaintiff and Class Members have been injured in that they purchased the SPP based on non-disclosure of material facts alleged herein, including but not limited to, nondisclosure that Comcast Corporation would not provide services related to all inside wiring.

30. Comcast Corporation's unlawful conduct is continuing with no indication that Comcast Corporation's unlawful conduct will cease.

31. Comcast Corporation's actions in connection with the sale and marketing of its SPP as set forth herein evidences a lack of good faith, honesty in fact, and observance of fair dealing so as to constitute unconscionable commercial practices, in violation of FDUTPA, Florida Statute 501.201, *et seq.*

32. Comcast Corporation acted willfully, knowingly, intentionally, unconscionably and with reckless indifference when it committed these acts of consumer fraud described herein.

33. Said acts and practices on the part of Comcast Corporation were and are illegal unlawful pursuant to Florida Statute 501.204.

34. As a direct and proximate result of Comcast Corporation's violations of FDUTPA, Plaintiff and Class Members have suffered damages, regardless of whether they had wiring inside their homes.

COUNT II – WRONGFUL and/or UNJUST ENRICHMENT

35. Plaintiff, individually, and on behalf of all others similarly situated, incorporate by reference paragraphs 1 through 19 as though expressly stated herein in this paragraph.

36. The unlawful acts of Comcast Corporation resulted in it being unjustly enriched by Plaintiff and Class Members who purchased the SPP.

37. In short, defendant's unfair and unlawful actions, as described herein, have enabled defendant to receive money and other benefits in violation of the law at the expense of the Plaintiff and Class Members.

38. As a result, Comcast Corporation has retained money which, in justice and equity, belongs to Plaintiff and Class Members. Comcast Corporation has been unjustly enriched and must return this unlawfully retained money to Plaintiff and Class Members. Further, Plaintiff, on behalf of

himself, and the Class, demands judgment against Comcast Corporation for himself and each member of the Class, for the establishment of a common fund, plus attorney's fees, interest and costs.

COUNT III- DECLATORY RELIEF

39. Plaintiff, individually, and on behalf of all others similarly situated, incorporate by reference paragraphs 1 through 19 as though expressly stated herein in this paragraph.

40. Comcast Corporation acted or refused to act on grounds that apply generally to the Plaintiff and Class Members, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole within the meaning of Fed. R. Civ. P. 23.

41. The continuation of the SPP only causes further damage to the Plaintiff and Class Members and unsuspecting consumers.

42. Plaintiff seeks a declaration that: (a) defendant's current marketing of the SPP be enjoined and (b) that all future marketing of the SPP's of defendant be modified to reflect accurately what the service plan is and or provide inside wiring in all situations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and Class Members, prays for a judgment against Comcast Corporation as follows:

- a. Enter an Order certifying this action to proceed as a class action, and naming Plaintiff as the representative for the Class and their counsel as counsel for the Class;
- b. Enter an award in favor of Plaintiff and the Class that includes compensatory, exemplary or punitive damages, treble damages, and statutory damages, including interest thereon, in an amount to be proven at trial;

- c. Enter an award in favor of Plaintiff and the Class for compensatory damages that includes reimbursement of the funds paid for the SPP, plus interest.
- d. Enter an Order enjoining Comcast Corporation from further deceptive advertising, and marketing, and sales practices with respect to the SPP.
- e. Declare that Defendant must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale of the SPP, or order Comcast Corporation to make full restitution to Plaintiff and Class Members.
- f. Enter an Order permanently enjoining Defendant from continuing to engage in the unlawful and inequitable conduct alleged herein;
- g. Granting Plaintiff and the Class Members all equitable remedies permitted by law against Comcast Corporation;
- h. Enter an award of attorneys' fees and costs, as allowed by law;
- i. Enter an award of pre-judgment and post-judgment interest, as provided by law;
- j. Grant Plaintiff and the Class Members leave to amend the Complaint to conform to the evidence produced at trial; and
- k. Grant such other relief against the Defendant as the Court may deem just and proper under the circumstances and applicable law.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all claims so triable.

Dated: January 13, 2017

Respectfully submitted by:

/s/ Angelo Marino, Jr. _____

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