

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

A. MICHAEL; on behalf of himself)	JURY TRIAL DEMANDED
and all others similarly situated,)	
)	
Plaintiff,)	
)	Case No.: 4:17-cv-1242551
vs.)	
)	
CHARTER COMMUNICATIONS, INC.,)	
)	
Defendant.)	

CLASS ACTION COMPLAINT

COMES NOW Plaintiff on behalf of himself and all other similarly situated, and for his causes of action states and alleges as follows:

PARTIES

1. Plaintiff A. MICHAEL is currently a citizen and resident of Illinois. Mr. Michael was a Charter Communications, Inc. subscriber in the City of St. Louis from approximately July 2011 until 2013.

2. Defendant CHARTER COMMUNICATIONS, INC. (“Charter”) is a for-profit corporation currently conducting operations in the City of St. Louis and throughout other areas in Missouri, Illinois, California, Texas, and numerous other states.

3. It is estimated that Defendant currently provides services to over 6 million subscribers throughout the United States.

JURISDICTION AND VENUE

4. Pursuant to 28 U.S.C. § 1391(b)(2), the United States District Court for the Eastern

District of Missouri is an appropriate venue for this action because Charter Communications, Inc. does substantial business with residents residing within its district, including the City of St. Louis, where the acts giving rise to Plaintiff's claims occurred.

5. The United States District Court for the Eastern District of Missouri has personal jurisdiction over Defendant because Defendant currently transacts substantial business in Missouri, including having advertising methods, products, services, and sales directed toward Missouri residents.

6. This is a civil case in which Plaintiff has statutory standing to sue in the United States District Court for the Eastern District of Missouri pursuant to 47 U.S.C. § 551(f)(1).

FACTUAL ALLEGATIONS

7. Since 2005, Defendant herein was in the business of selling and advertising for sale certain merchandise as retail products in trade or commerce within the City of St. Louis, and other cities and counties throughout the State of Missouri and various other states in which Defendant operates, to wit: internet services, television services, phone services, and leases of physical equipment such as cable boxes, cable cards, modems, and routers.

8. Since 2005 and pursuant to each monthly bill and advertisement, Defendant advertised and marketed that Defendant was selling or providing its services for the applicable monthly itemized rates, depending on the services purchased and goods leased.

9. In fact however, and as Defendant well knew at the time, Defendant's products and services were not being offered for or provided at the total dollar rates marketed, advertised, and intended.

10. Upon subscribing or purchasing Defendant's services and products, Defendant

failed to disclose that Defendant would be selling or providing for other valuable consideration, Defendant's subscribers' personally identifiable information, specifically names, addresses, and other subscriber information such as retail subscription packages/channels, to third parties unknown to the subscribers and known to Defendant.

11. Defendant Charter Communications, Inc. is a "cable operator" under 47 U.S.C. § 522(5).

12. Defendant's bills and advertisements did not include any specific terms and condition or any reference to any privacy policy or similar document described and mandated by 47 U.S.C. § 551.

13. Plaintiff was not provided at the time of installation or the time of entering into agreements with Defendant, a copy of a privacy policy required by 47 U.S.C. § 551.

14. Subsequently, Plaintiff was not provided yearly a copy of a privacy policy required by 47 U.S.C. § 551.

15. Despite not providing any privacy policy to Plaintiff, two "privacy policies" can be found after navigating Defendant's website: a "Charter Residential Subscriber Privacy Policy" and a "Charter Commercial Subscriber Privacy Policy." The essential terms are identical for the purposes of this action. (A true and correct copy of the "Charter Residential Subscriber Privacy Policy" and the "Charter Commercial Subscriber Privacy Policy" are attached as Exhibit A and Exhibit B, respectively.)

16. However, both the "Charter Residential Subscriber Privacy Policy" and the "Charter Commercial Subscriber Privacy" fail to comply with 47 U.S.C. § 551.

17. Defendant sold or disclosed Plaintiff's personally identifiable information

numerous times to numerous parties during the course of Plaintiff's service relationship with Defendant and after termination of Plaintiff's services.

18. Defendant's sale or disclosure of Plaintiff's personally identifiable information violated federal law, violated Plaintiff's First Amendment rights to privacy and publicity, and/or violated contract or quasi-contract principles.

19. Defendant failed to obtain Plaintiff's and other customers' written consent prior to the disclosure and sale of their personally identifiable information.

20. Defendant has also failed to provide a meaningful or otherwise effective and readily available means for Plaintiff and other Charter customers to prohibit or limit the sale or disclosure of their personally identifiable information, otherwise referred to as an "opt-out" provision.

21. Defendant's "opt-out" provision was ineffective as invoking or participating in the "opt-out" did nothing to limit, prohibit, or prevent further disclosure of Plaintiff's and other customers' personally identifiable information.

22. Despite customers invoking the "opt-out" provision concerning the disclosure and sale of their personally identifiable information, their information was still sold, disclosed, and/or used by third parties.

CLASS ACTION ALLEGATIONS

23. Plaintiff brings this Class Action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of himself and the following Classes of similarly situated persons:

all individuals that are or were Charter Communications, Inc. subscribers from January 2005 through September 2014, who were receiving services pursuant to the following thirty (30) day terms of service with Defendant (attached as Exhibit

C) who were not provided at the time of entering into an agreement to provide cable service or yearly thereafter, a copy of an adequate privacy policy meeting federal and state requirements.

24. Excluded from the Class are Defendant and its officers, directors, agents, employees and their immediate family members, as well as the judicial officers assigned to this litigation and members of their staffs and immediate families.

25. Charter Communications, Inc. has approximately 530,402 residential subscribers in the State of Missouri. However, it is believed that Charter's practices extended across the United States in every state where Charter has conducted business. The proposed Class is believed to number above six million people. The Class members are easily identifiable through Defendant's records.

26. The proposed Class is so numerous that joinder of all Class members is impracticable.

27. There are questions of fact and law common to the Class which predominate over questions affecting only individual Class members. The questions of law and fact common to the Class arising from Defendant's actions include, without limitation, the following:

- a. whether the Defendant's products and services were being offered for or provided at the total dollar rates marketed, advertised, and intended;
- b. whether Defendant disclosed that it would be selling or providing for other valuable consideration its subscribers' personally identifiable information to third parties;

- c. whether Defendant provided its subscribers with a meaningful opportunity to opt-out of the sale or disclosure of their personally identifiable information;
- d. whether Defendant violated its subscribers' right to privacy and publicity;
- e. whether Defendant's representation that Defendant's services and products were sold for the advertised rates, without reference to the sale of subscribers' personally identifiable information, was false and made knowingly by Defendant, and was therefore a deception, fraud, false pretense, false promise, and/or misrepresentation as described at § 407.020 RSMo and a violation thereof; and
- f. whether Defendant was unjustly enriched through its selling or providing for other valuable consideration its residential subscribers' personally identifiable information to third parties.

28. Plaintiff's claims are typical of the consumers in the putative Class because he was a charter subscriber whose personally identifiable information was sold by Defendant to third parties without Plaintiff's knowledge.

29. Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the other members of the Class. The interests of the members of the class will be fairly and adequately protected by Plaintiff and his counsel, who have extensive experience prosecuting complex litigation and class actions.

30. A class action is the appropriate method for the fair and efficient adjudication of this controversy. It would be impracticable, cost prohibitive, and undesirable for each member of

the Class to bring a separate action. In addition, the presentation of separate actions by individual Class members creates the risk of inconsistent and varying adjudications, establishes incompatible standards of conduct for Defendant, and/or substantially impairs or impedes the ability of Class members to protect their interests. A single class action can determine, with judicial economy, the rights of all Class members.

31. Class members will be easily determinable based on the records of Defendant.

32. Class certification is also appropriate because Defendant has acted or refused to act on grounds generally applicable to the Classes. The Class Action is based on Defendant's acts and omissions with respect to the Class as a whole, not on facts or law applicable only to Plaintiff. All Class members were Charter subscribers and were treated similarly. Thus, all Class Members have the same legal right to an interest in relief for damages associated with the violations enumerated herein. The claims are governed by general concepts of statutory, tort, contract, and/or quasi-contract law.

**DEFENDANT'S ARBITRATION PROVISION
PRIOR TO OCTOBER 2014 IS UNENFORCEABLE**

33. First referenced on page 6 of 7 in Defendant's 30 day "Terms and Conditions of Residential Service," the following arbitration provisions is found (*emphasis added*):

DISPUTES

You hereby acknowledge and agree that Charter may elect to resolve all controversies, disputes or claims of any kind arising hereunder (whether raised by you or Charter) through binding arbitration.

It is the intent of the parties hereto that the agreement to arbitrate disputes hereunder, shall be interpreted and applied broadly such that all reasonable doubts as to whether such dispute may be fairly submitted to arbitration, shall be decided in favor of arbitration. The parties' agreement to arbitrate includes, but is not limited to, all disputes arising from or relating to this Agreement and its formation, and any and all other agreements or matters

arising between the parties (including all disputes regardless of the theory of liability).

Any such arbitration (and in the alternative without limiting the foregoing, any and all suits) arising from or concerning this Agreement shall be filed and or otherwise handled and/or decided in the state in which the Services were rendered to you, and in no other place. *You hereby irrevocably consent to the authority of the arbiter chosen by Charter or in the alternative, to the jurisdiction of such court or courts in the state in which Services were rendered to you, and agree to appear in any such action upon written notice thereof.*

In the event of litigation between the parties which is not referred to arbitration for any reason whatsoever, or in the event any court of competent jurisdiction refuses to compel arbitration of a dispute between the parties, then the parties: (i) agree to waive, to the fullest extent permitted by law, any right to trial by jury as (ii) agree to waiver any right to, or claim for, any punitive or exemplary damages against the other, and against any affiliates, owners, employees, or agents of the other; and (iii) agree that each party shall be limited in the recovery of any damages to recovery of the actual damages sustained by it. *Notwithstanding the foregoing, if Charter is permitted to seek injunctive relief under this Agreement, Charter may, at its option, bring such action in the county in which the Services were rendered.*

34. Defendant's arbitration provision was embedded deep within its terms of service and not prominent or readily apparent.

35. Defendant did not provide an opportunity for subscribers to opt-out of the arbitration provision.

36. Defendant had sole discretion to choose the arbitrator, in effect the judge and jury.

37. Defendant had the unilateral right to bring a lawsuit in court, while subscribers may only arbitrate their claims.

38. Defendant did not offer to provide any portion of arbitration fees, which means that a plaintiff could bear his or her own costs and attorney's fees, even if the collect an award, and Defendant could seek attorney's fees.

39. Defendant's provision is overly broad as it purports to bind a plaintiff to arbitration regarding any matter between the parties, which would include intentional torts.

CLAIMS FOR RELIEF

COUNT I

Initial Violation of 47 U.S.C. § 551(a)(1) for Failure to Deliver Initial Notifications

40. Plaintiff re-alleges Paragraphs 1-39.

41. Defendant violated 47 U.S.C. §§ 551(a)(1)(a-e) by failing to provide at the time of entering into the agreement with Plaintiff, a separate written statement which clearly and conspicuously informed Plaintiff of:

- a. the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;
- b. the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;
- c. the period during which such information will be maintained by the cable operator;
- d. the times and place at which the subscriber may have access to such information in accordance with subsection (d) of this section; and
- e. the limitations provided by this section with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under subsections (f) and (h) of this section to enforce such limitations.

42. Plaintiff was not given, handed, mailed, nor otherwise provided notice in the form of a separate written statement any copy of any of Defendant's privacy policies, nor was Plaintiff given notice of which, if any, of Defendant's policies would apply to his particular service.

43. Defendant's failure to provide this separate written statement and the information required to be included in accordance with the same statute violates 47 U.S.C. §§ 551(a)(1)(A-E).

44. As a result of Defendant's initial violation at the outset of each agreement with Plaintiff, Plaintiff is entitled to statutory damages in accordance with 47 U.S.C. § 551(f).

COUNT II

Subsequent Violations of 47 U.S.C. § 551(a)(1) for Failure to Deliver Yearly Notifications

45. Plaintiffs re-allege Paragraphs 1-44.

46. Just as Defendants failed to make the initial disclosures at the time of entering into agreements with Plaintiff, Defendant failed to subsequently provide Plaintiff with the same notification pursuant to 47 U.S.C. §§ 551(a)(1)(A-E), at least once a year thereafter during his subscription.

47. Defendant's yearly failure to provide this information in accordance with the statute violates 47 U.S.C. §§ 551(a)(1)(A-E).

48. As a result of each of these violations, Plaintiff is entitled to statutory damages in accordance with 47 U.S.C. § 551(f).

COUNT III

Violations of 47 U.S.C. § 551(a)(1)(A-E) for Failure to Clearly and Conspicuously Disclose the Nature of Personally Identifiable Information being Collected, Sold, Used, and,

Distributed by Defendant

49. Plaintiff re-alleges Paragraphs 1-48.

50. Even if Plaintiff was provided a copy of the "Charter Residential Subscriber Privacy Policy" or the "Charter Commercial Subscriber Privacy Policy," these policies were not

clearly and conspicuously worded as to reasonably inform Plaintiff of the nature of the personally identifiable information to be collected and the nature of the use of their information.

51. Additionally, the “Charter Residential Subscriber Privacy Policy” and the “Charter Commercial Subscriber Privacy Policy” fail to clearly and conspicuously inform Plaintiff concerning the nature, frequency, and purpose of the disclosures of Plaintiff’s personally identifiable information.

52. Additionally, the “Charter Residential Subscriber Privacy Policy” and the “Charter Commercial Subscriber Privacy Policy” fail to clearly and conspicuously inform Plaintiff concerning Plaintiff’s rights as subscribers of Defendant’s products and services under 47 U.S.C. § 551(f) and (h).

53. Defendant’s failure to provide this information in accordance with the statute violates 47 U.S.C. §§ 551(a)(1)(A-E).

54. As a result of each of Defendant’s violations, Plaintiff is entitled to statutory damages in accordance with 47 U.S.C. § 551(f).

COUNT IV

Violations of 47 U.S.C. § 551(c)(1) for Failure to Obtain Prior Written or Electronic Consent of Plaintiffs prior to Disclosing Plaintiffs’ Personally Identifiable Information

55. Plaintiff re-alleges Paragraphs 1-54.

56. Defendant failed to obtain the prior written or electronic consent of Plaintiff prior to disclosing their personally identifiable information that was subject to the limitations set forth in 47 U.S.C. § 551(c).

57. As a result of each of Defendant's violations, Plaintiff is entitled to statutory damages in accordance with 47 U.S.C. § 551(f).

COUNT V

Violations of 47 U.S.C. § 551(c)(2)(C) for Failure to Provide Subscribers and Opportunity to prohibit or limit disclosures

58. Plaintiff re-alleges Paragraphs 1-57.

59. Defendant failed to provide Plaintiff and other subscribers an opportunity to prohibit or limit such disclosures as outlined in 47 U.S.C. § 551(c)(2)(C)(i).

60. Any "opt-out" provision was not made known to Plaintiff so that he was given a reasonable opportunity to invoke the "opt-out" prior to the disclosure of his personally identifiable information.

61. Assuming the "opt-out" provision was made known to Plaintiff or other subscribers, even had Plaintiff or other subscribers invoked the "opt-out" provision, Defendant continued to disclose or failed to prevent others from disclosing or using Plaintiff's' and other subscribers' information.

62. As a result of each of Defendant's violations, Plaintiff is entitled to statutory damages in accordance with 47 U.S.C. § 551(f).

COUNT VI

Violations of Missouri's Merchandising Practices Act

63. Plaintiff re-alleges Paragraphs 1-63.

64. Defendant's representation that Defendant's services and products were being sold for the advertised rates, without reference to the sale of Plaintiff's personally identifiable

information, was false and made knowingly by Defendant, and was therefore a deception, fraud, false pretense, false promise, and/or misrepresentation as described at § 407.020 RSMo and a violation thereof.

65. Pleading alternatively, Defendant's representation that the services and products were being sold for the advertised rates, without reference to the sale of Plaintiff's personally identifiable information, constituted the omission or suppression of a material fact in violation of the provisions of § 407.020 RSMo in that Defendant's did not contract to purchase a license or other authority to disseminate Plaintiff's personally identifiable information in violation of their right to privacy and right to publicity.

66. Defendant's representation that Defendant's services and products were being sold as a "No contract" obligation, was false and made knowingly by Defendant, and was therefore a deception, fraud, false pretense, false promise, and/or misrepresentation as described at § 407.020 RSMo and a violation thereof.

67. Plaintiff suffered damages as a direct and proximate result of Defendants actions which violated their rights to privacy and publicity.

68. Defendant's conduct as described herein was intentional and in violation of § 407.020 RSMo, and the regulations of the Attorney General of Missouri promulgated thereunder, and as a direct and proximate result of Defendant's illegal conduct, Plaintiff has suffered ascertainable loss in money in an amount yet to be determined.

69. Defendant's conduct was intentional, wrongful, reckless, and malicious and entitles Plaintiff to the recovery of punitive damages as authorized by statute at § 407.025.1 RSMo.

COUNT VII

**Conversion of Plaintiffs' Right to Privacy and Publicity of their Personally Identifiable
Information**

70. Plaintiffs re-allege Paragraphs 1-69.

71. Plaintiff was the owners of his personally identifiable information and entitled to possess it.

72. Defendant took possession of Plaintiff's personally identifiable information with the intention of exercising some control of Plaintiff's information.

73. Defendant, without consent and unknown to Plaintiff, disclosed and sold Plaintiff's personally identifiable information, depriving Plaintiff the opportunity to sell his own information for consideration.

74. As a result of the misuse and sale of Plaintiff's personally identifiable information, Plaintiff is entitled to recover damages for the conversion of their personal property rights.

COUNT VIII

Unjust Enrichment

75. Plaintiffs re-allege Paragraphs 1-74.

76. Plaintiff was the owners of their personally identifiable information and entitled to possess it.

77. Defendant took possession of Plaintiff's personally identifiable information with the intention of exercising some control of Plaintiff's information in order to provide Plaintiff with Defendant's services and goods.

78. Defendant, without consent and unknown to Plaintiff, disclosed and sold Plaintiff's personally identifiable information, depriving Plaintiff the opportunity to sell their own

information for consideration.

79. Defendant received valuable consideration from third parties in exchange for Plaintiff's personally identifiable information.

80. The retention of any benefit derived by Defendant from the sale of Plaintiff's information was inequitable and unjust in that Plaintiff received no consideration for the unknown sale of their personally identifiable information.

WHEREFORE, having stated Plaintiff's cause of action to the Court, Plaintiff prays for judgment against Defendant in such amount as is allowable by law, including injunctive relief, statutory damages for each and every violation, rescission of any agreements, for punitive damages, attorney fees, and costs as provided for by statute, for pre-judgment and post-judgment interest, and for such other relief as the Court deems just and reasonable in the circumstances.

Respectfully Submitted,

SWMK Law, LLC

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