

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
– WESTERN DIVISION –**

KRISTI M. LANDERS, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

COMCAST OF MISSOURI, LLC, D/B/A
COMCAST,

Defendant.

Civil Action No. 4:16-cv-01010

PLEASE TAKE NOTICE that Defendant Comcast of Missouri, LLC (“Defendant”) removes this action from the Circuit Court of Jackson County, Missouri, to the United States District Court for the Western District of Missouri pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453. In support of this removal, Defendant states as follows.

JURISDICTIONAL STATEMENT

1. The Class Action Fairness Act of 2005 (“CAFA”), 119 Stat. 4 (2005), creates federal diversity jurisdiction over putative class actions that have: (1) minimal diversity; (2) 100 or more class members; and (3) an aggregate amount in controversy over \$5,000,000. *See* 28 U.S.C. §§ 1332(d)(2)(A), 1332(d)(5)(B), 1332(d)(6). This action satisfies every applicable prerequisite.¹

¹ Strictly speaking, CAFA’s amount in controversy requirement is located in Section 1332, which applies to actions that are filed by plaintiffs, not Section 1453, which applies to actions that are removed by defendants. Although the default rule is that an action is only removable if it could have been filed in federal court originally, Congress can “expressly provid[e]” otherwise. *See* 28 U.S.C. § 1441(a). Here, Section 1453(b) states that an action may be removed so long as it is a “class action.” *See* 28 U.S.C. § 1453(b) (“A class action may be removed.”). Nothing in Section 1453(b) suggests that removed actions must also satisfy Section 1332. *Cf.* 14B Charles A. Wright et al., *Federal Practice & Procedure* § 3724 (4th ed. 2009). Indeed, the
(continued...)

Minimal Diversity

2. CAFA requires only minimal diversity, i.e., that “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

3. Defendant is a citizen of Colorado and Pennsylvania because it is organized under the laws of the State of Colorado and has its corporate headquarters in the Commonwealth of Pennsylvania. *See Hertz Corp. v. Friend*, 559 U.S. 77, 80-81 (2010) (“[W]e conclude that the phrase ‘principal place of business’ refers to the place where the corporation’s high level officers direct, control, and coordinate the corporation’s activities. Lower federal courts have often metaphorically called that place the corporation’s ‘nerve center.’ We believe that the ‘nerve center’ will typically be found at a corporation’s headquarters.” (internal citations omitted)); 28 U.S.C. § 1332(d)(10) (“For purposes of this subsection and section 1453, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.”); *see also* Compl. ¶ 3 (“Comcast [of Missouri, LLC] is a limited liability company, incorporated under the laws of the State of Colorado and maintaining its principal place of business in Philadelphia, Pennsylvania.”).

4. Plaintiff Kristi Landers (“Plaintiff”) alleges that she is a current resident of Jackson County, Missouri. *See* Compl. ¶ 1 (“Plaintiff Kristi M. Landers . . . resides in Independence, Jackson County, Missouri.”). Defendant alleges that Plaintiff is a domiciliary and therefore citizen of Missouri because she has no present intention to relocate to another state. *See, e.g., Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 828 (1989) (distinguishing

(...continued)

plain language of Section 1453 suggests otherwise, as it incorporates Section 1332’s definition of “class action” but not its various other requirements. *See* 28 U.S.C. § 1453(a). This is an academic point here, however, as Section 1332(d) is satisfied in any event. *See infra*.

residence and domicile).

5. Plaintiff brings this action on behalf of not only herself but also a putative class of “[a]ll persons in the State of Missouri who, for personal, family or household use, on or after August 2, 2011, purchased the service plan for repairs inside the customer home offered by Defendant Comcast.” Compl. ¶ 8.

6. Accordingly, there is complete diversity between Defendant and Plaintiff and at least minimal diversity between Defendant and unnamed members of the putative class. *See* 28 U.S.C. § 1332(d)(2)(A); *see also, e.g., Grawitch v. Charter Commc’ns, Inc.*, 750 F.3d 956, 959 (8th Cir. 2014) (“Under CAFA, federal courts have jurisdiction over class actions in which ... there is minimal (as opposed to complete) diversity among the parties, i.e., any class member and any defendant are citizens of different states.” (citation omitted)).

Numerosity

7. CAFA does not apply to class actions “in which . . . the number of members of all proposed plaintiff classes in the aggregate is less than 100.” 28 U.S.C. § 1332(d)(5)(B).

8. Plaintiff alleges that the putative class “consists of thousands of members and is so numerous that joinder of all of its members is impractical.” Compl. ¶ 9; *see also id.* ¶ 2 (alleging that “there are thousands of Class Plaintiffs”).

9. Defendant alleges that, since August 2, 2011, substantially more than 100 residential subscribers have purchased the service protection plan that is at issue in this action.

10. Accordingly, there are more than 100 putative class members. *See* 28 U.S.C. § 1332(d)(5)(B).

Amount in Controversy

11. CAFA requires that “the matter in controversy exceeds the sum or value of

\$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(2). It also provides that, “to determine whether the matter in controversy exceeds the sum or value of \$5,000,000,” the “claims of the individual class members shall be aggregated.” *Id.* § 1332(d)(6).

12. Plaintiff alleges that Defendant “engaged in deception” by charging subscribers a “fee for a service plan to cover repairs on wiring inside the home of the customer that did not, in fact, cover repairs for all wiring inside the home of the customer.” Compl. ¶ 23; *see also id.* ¶ 6 (“The service plan . . . did not cover all inside wiring because it does not include, among other things, wiring inside walls of customer homes.”); *id.* ¶¶ 24-29. Plaintiff alleges that this practice was common for all other subscribers who paid for the service protection plan. *See id.* ¶¶ 11-12.

13. Plaintiff asserts a claim for violation of the Missouri Merchandising Practices Act and seeks compensatory damages. Compl., Prayer for Relief ¶¶ b-e. Specifically, she alleges that Defendant “injured Named Plaintiff and Class Plaintiffs by inducing them to pay a fee for a service that did not include all the [sic] services represented by defendant Comcast.” *Id.* ¶ 25.

14. Defendant alleges that it has collected more than \$4,500,000 for the service protection plan from Missouri subscribers since August 2, 2011. That number would increase if it included fees collected after the filing of this Notice.

15. Plaintiff also seeks attorneys’ fees and costs and “further relief as may be appropriate under the circumstances.” Compl., Prayer for Relief ¶¶ d, e. Awards of attorneys’ fees and costs in class actions can amount to as much as thirty percent (30%) of a class’s recovery, which would increase the amount in controversy by 30% or, put another way, to 130% of the class’s alleged damages. *See, e.g., Harrington Enters., Inc. v. Safety-Kleen Sys., Inc.*, 42 F. Supp. 3d 1197, 1201 (W.D. Mo. 2013) (including attorneys’ fees in amount in controversy by applying “a standard 33% attorney’s fees to the . . . compensatory damages”).

16. Accordingly, the alleged aggregate amount in controversy exceeds \$5,000,000. (\$4,500,000 x 130% = \$5,850,000.) That number would increase if it included fees collected after the filing of this Notice.

17. Plaintiff also seeks punitive damages. Compl., Prayer for Relief ¶ g. Such an award could amount to up to 9 times the alleged compensatory damages, *see State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003) (“few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.”), and must be included in the amount in controversy. *See Basham v. Am. Nat’l Cty. Mut. Ins. Co.*, 979 F. Supp. 2d 883, 889 (W.D. Ark. 2013); *Cova v. Charter Commc’ns, Inc.*, No. 16-0675, 2016 WL 4368100, at *4 (E.D. Mo. Aug. 16, 2016).

18. Although Defendant denies that it has liability to Plaintiff or a putative class,² and denies that any class could be properly certified under Federal Rule of Civil Procedure 23, the aggregate amount placed “in controversy” by this case—that is, the aggregate value of the damages sought by Plaintiff and the aggregate cost of complying with the declaratory and equitable relief sought by Plaintiff—exceeds \$5,000,000.

19. Because there is minimal diversity, are more than 100 putative class members, and is more than \$5,000,000 in the aggregate in controversy, this Court has original subject matter jurisdiction. *See* 28 U.S.C. § 1332(d)(2)(A).

20. Because this action states a basis for original subject matter jurisdiction under 28 U.S.C. § 1332, it is removable under 28 U.S.C. § 1441(a).

² By removing this action, Defendant does not concede liability, let alone liability of greater than \$5,000,000. *See Hartis v. Chi. Title Ins. Co.*, 694 F.3d 935, 945 (8th Cir. 2012). “The amount in controversy is simply an estimate of the total amount in dispute” based on the allegations of a complaint, “not a prospective assessment of defendant’s liability.” *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (citing cases).

PROCEDURAL STATEMENT

21. Plaintiff commenced this action on or about August 3, 2016 by filing a complaint in the Circuit Court of Jackson County, Missouri, under the caption *Kristi M. Landers v. Comcast of Missouri, LLC*, No. 1616-CV18788.

22. Pursuant to 28 U.S.C. § 1446(a), copies of the Complaint and any other process, pleadings and orders that Plaintiff purportedly served on Defendant as of the date of this Notice of Removal are attached collectively as Exhibit A.

23. Pursuant to 28 U.S.C. § 1446(a), it is sufficient to provide a “short and plain” allegation of jurisdiction and it is not necessary to attach evidence establishing those allegations. *See Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 551 (2014) (“A statement ‘short and plain’ need not contain evidentiary submissions.”); *Hartis*, 694 F.3d at 944-45.

24. Pursuant to 28 U.S.C. § 1446(b) and Federal Rule of Civil Procedure 6, the original Notice of Removal was timely filed within thirty (30) days of service because Plaintiff purported to serve the Complaint on Defendant on or after August 17, 2016. *See, e.g., Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999).

25. Pursuant to 28 U.S.C. § 1441(a), removal to the United States District Court for the Western District of Missouri is proper because it embraces the Circuit Court of Jackson County, Missouri, where this action was pending before it was removed. *See* 28 U.S.C. § 105.

26. Pursuant to 28 U.S.C. § 1446(d), Defendant will promptly file a copy of this Notice of Removal in the Circuit Court of Jackson County, Missouri, and give Plaintiff written notice of its filing.

27. By removing the action to this Court, Defendant does not waive any defenses that are available to it under state or federal law. Defendant expressly reserves the right to require

that the claims of Plaintiff and/or members of the putative class be decided through individual arbitration, to move to dismiss or for the entry of judgment pursuant to Federal Rules of Civil Procedure 12 and 56, and to strike or oppose the certification of any putative class pursuant to Federal Rule of Civil Procedure 23.

WHEREFORE, Defendant respectfully removes this action to the United States District Court for the Western District of Missouri pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453.

Dated: September 16, 2016

/s/ Paul S. Penticuff

Paul S. Penticuff MO # 41847
Baker Sterchi Cowden & Rice LLC
2400 Pershing Road, Suite 500
Kansas City, MO 64108
main 816.471.2121 | fax 816.472.0288

Michael W. McTigue Jr.
Meredith C. Slawe
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Michael.McTigue@dbr.com
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Michael.Daly@dbr.com

*Counsel for Defendant
Comcast Corporation*

CERTIFICATE OF SERVICE

I certify that, on the date set forth below, I caused a true and correct copy of the foregoing Notice of Removal to be served via first-class mail, postage prepaid, upon the following:

Kenneth B. McClain
Humphrey, Farrington & McClain, P.C.
221 W. Lexington, Suite 400
Independence, Missouri 64050

Counsel for Plaintiff

Dated: September 16, 2016

/s/ Paul S. Penticuff

Paul S. Penticuff

EXHIBIT A

**Service of Process
Transmittal**

08/17/2016

CT Log Number 529694695

TO: Rosemarie Pierce
Comcast Corporation
1701 John F. Kennedy Blvd, One Comcast Center - 50th Floor
Philadelphia, PA 19103

RE: Process Served in Missouri

FOR: Comcast of Missouri, LLC (Domestic State: CO)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Kristi M. Landers, Individually, and on behalf of all others similarly situated, Pltf. vs. COMCAST OF MISSOURI, LLC, Dft.

DOCUMENT(S) SERVED: Summonses, Attachment(s), Motion, Order, Notice, Petition

COURT/AGENCY: 16th Judicial Circuit Court, Jackson County, MO
Case # 1616CV18788

NATURE OF ACTION: VIOLATION OF THE MISSOURI MERCHANDISING PRACTICES ACT

ON WHOM PROCESS WAS SERVED: C T Corporation System, Clayton, MO

DATE AND HOUR OF SERVICE: By Process Server on 08/17/2016 at 11:20

JURISDICTION SERVED : Missouri

APPEARANCE OR ANSWER DUE: Within 30 days after service, exclusive of the day of service (Document(s) may contain additional answer dates)

ATTORNEY(S) / SENDER(S): KEVIN DANIEL STANLEY
HUMPHREY, FARRINGTON & MCCLAIN
221 W LEXINGTON
SUITE 400
INDEPENDENCE, MO 64050
816-836-5050

ACTION ITEMS: CT has retained the current log, Retain Date: 08/18/2016, Expected Purge Date: 08/23/2016

Image SOP

SIGNED: C T Corporation System
ADDRESS: 120 South Central Avenue
Suite 400
Clayton, MO 63105
TELEPHONE: 314-863-5545

Page 1 of 1 / AS

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.



IN THE 16TH JUDICIAL CIRCUIT COURT, JACKSON COUNTY, MISSOURI

Judge or Division: JENNIFER PHILLIPS	Case Number: 1616-CV18788
Plaintiff/Petitioner: KRISTI M LANDERS	Plaintiff's/Petitioner's Attorney/Address KEVIN DANIEL STANLEY HUMPHREY, FARRINGTON & MCCLAIN 221 W LEXINGTON SUITE 400 INDEPENDENCE, MO 64050
Defendant/Respondent: COMCAST OF MISSOURI, LLC DBA: COMCAST	vs. Court Address: 308 W Kansas INDEPENDENCE, MO 64050
Nature of Suit: CC Other Tort	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: COMCAST OF MISSOURI, LLC
DBA: COMCAST

C/O CT CORPORATION SYSTEM
120 SOUTH CENTRAL AVE
CLAYTON, MO 63105

PRIVATE PROCESS SERVER

COURT SEAL OF

JACKSON COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

05-AUG-2016
Date

Clerk

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.

leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years.

(for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).

other _____

Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal) Subscribed and sworn to before me on _____ (date).

My commission expires: _____ Date _____ Notary Public

Sheriff's Fees

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary \$ 10.00

Supplemental Surcharge \$ _____

Mileage \$ _____ (_____ miles @ \$ _____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

**SUMMONS/GARNISHMENT SERVICE PACKETS
ATTORNEY INFORMATION**

Under the Missouri e-filing system now utilized by the 16th Judicial Circuit Court, once a case has been accepted for filing, a clerk prepares the necessary documents for service. The summons/garnishment is sent to the attorney by an e-mail containing a link so that the filer may print and deliver the summons/garnishment, pleadings and any other necessary documents to the person designated to serve the documents.

Pursuant to State statutes, Supreme Court Rules and Local Court Rules, attorneys are required to print, attach and serve specific documents with certain types of Petitions and other filings.

Please refer to the Court's website for instructions on how to assemble the service packets at:

16thcircuit.org → Electronic Filing Information → Required Documents for Service – eFiled cases → Summons/Garnishment Service Packet Information.

Please review this information periodically, as revisions are frequently made. Thank you.

Circuit Court of Jackson County

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

KRISTI M. LANDERS, Individually,)	
And on behalf of all others)	
similarly situated,)	
)	
Plaintiff,)	
v.)	Case No. 1616-CV18788
)	
COMCAST OF MISSOURI, LLC)	
D/B/A COMCAST,)	Division 12
)	
Defendant.)	

MOTION FOR APPOINTMENT OF PRIVATE PROCESS SERVER

COMES NOW Plaintiff, by and through counsel, and hereby moves for the appointment of Robert Anderson (Jackson County Process No. PPS16-0151) as a private process server in this case. Mr. Anderson is currently appointed as a private process server by this Court.

HUMPHREY, FARRINGTON & McCLAIN, P.C.

/s/ Kevin D. Stanley

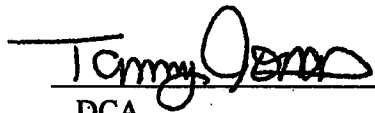
 KENNETH B. MCCLAIN #32430
 JONATHAN M. SOPER #61204
 KEVIN D. STANLEY #48008
 221 W. Lexington, Suite 400
 Independence, Missouri 64050
 Telephone: (816) 836-5050
 Facsimile: (816) 836-8966
kbm@hfmlegal.com
jms@hfmlegal.com
kds@hfmlegal.com

ATTORNEYS FOR PLAINTIFF

ORDER FOR APPOINTMENT OF PRIVATE PROCESS SERVER

It is hereby ordered that Plaintiff's Motion for Appointment of Private Process Server is sustained and the above named individuals are hereby appointed to serve process in the above captioned matter.

DATE: 05-Aug-2016


DCA

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

KRISTI M. LANDERS, Individually,)	
And on behalf of all others)	
similarly situated,)	
)	
Plaintiff,)	
v.)	Case No. 1616-CV18788
)	
COMCAST OF MISSOURI, LLC)	
D/B/A COMCAST,)	Division 12
)	
Defendant.)	

NOTICE OF LEAD COUNSEL

Comes now Kenneth B. McClain, pursuant to Local Rules, and gives notice that he shall serve as lead counsel for Plaintiff in this case.

HUMPHREY, FARRINGTON & McCLAIN, P.C.

 /s/ Kenneth B. McClain

KENNETH B. MCCLAIN	#32430
JONATHAN M. SOPER	#61204
KEVIN D. STANLEY	#48008

221 W. Lexington, Suite 400
Independence, Missouri 64050
Telephone: (816) 836-5050
Facsimile: (816) 836-8966
kbm@hfmlegal.com
jms@hfmlegal.com
kds@hfmlegal.com

ATTORNEYS FOR PLAINTIFF

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE**

KRISTI M LANDERS,

PLAINTIFF(S),

**CASE NO. 1616-CV18788
DIVISION 12**

VS.

COMCAST OF MISSOURI, LLC,

DEFENDANT(S).

**NOTICE OF CASE MANAGEMENT CONFERENCE FOR CIVIL CASE
AND ORDER FOR MEDIATION**

NOTICE IS HEREBY GIVEN that a Case Management Conference will be held with the Honorable **JENNIFER PHILLIPS** on **21-NOV-2016** in **DIVISION 12** at **10:00 AM**. All Applications for Continuance of a Case Management Conference should be filed on or before Wednesday of the week prior to the case management setting. Applications for Continuance of a Case Management Conference shall comply with Supreme Court Rule and 16th Cir. R. 34.1. Continuance of a Case Management Conference will only be granted for good cause shown because it is the desire of the Court to meet with counsel and parties in all cases within the first 4 months that a case has been on file. All counsel and parties are directed to check Case.NET on the 16th Judicial Circuit web site at www.16thcircuit.org after filing an application for continuance to determine whether or not it has been granted.

A lead attorney of record must be designated for each party as required by Local Rule 3.5.1. A separate pleading designating the lead attorney of record shall be filed by each party as described in Local Rule 3.5.2. The parties are advised that if they do not file a separate pleading designating lead counsel, even in situations where there is only one attorney representing the party, JIS will not be updated by civil records department, and copies of orders will be sent to the address currently shown in JIS. Civil Records does not update attorney information from answers or other pleadings. The Designation of Lead Attorney pleading shall contain the name of lead counsel, firm name, mailing address, phone number, FAX number and E-mail address of the attorney who is lead counsel.

At the Case Management Conference, counsel should be prepared to address at least the following:

- a. A trial setting;
- b. Expert Witness Disclosure Cutoff Date;
- c. A schedule for the orderly preparation of the case for trial;
- d. Any issues which require input or action by the Court;
- e. The status of settlement negotiations.

MEDIATION

The parties are ordered to participate in mediation pursuant to Supreme Court Rule 17. Mediation shall be completed within 10 months after the date the case is filed for complex cases, and 6 months after the date the case is filed for other circuit cases, unless otherwise ordered by the Court. Each party shall personally appear at the mediation and participate in the process. In the event a party does not have the authority to enter into a settlement, then a representative of the entity that does have actual authority to enter into a settlement on behalf of the party shall also personally attend the mediations with the party.

The parties shall confer and select a mutually agreeable person to act as mediator in this case. If the parties are unable to agree on a mediator the court will appoint a mediator at the Case Management Conference.

Each party shall pay their respective pro-rata cost of the mediation directly to the mediator.

POLICIES/PROCEDURES

Please refer to the Court's web page www.16thcircuit.org for division policies and procedural information listed by each judge.

/S/ JENNIFER PHILLIPS
JENNIFER PHILLIPS, Circuit Judge

Certificate of Service

This is to certify that a copy of the foregoing was electronic noticed, faxed, emailed and/or mailed or hand delivered to the plaintiff with the delivery of the file-stamped copy of the petition. It is further certified that a copy of the foregoing will be served with the summons on each defendant named in this action.

Attorney for Plaintiff(s):

**KEVIN DANIEL STANLEY, HUMPHREY, FARRINGTON & MCCLAIN, 221 W
LEXINGTON, SUITE 400, INDEPENDENCE, MO 64050**

Defendant(s):

COMCAST OF MISSOURI, LLC

Dated: 04-AUG-2016

Jeffrey A. Eisenbeis
Court Administrator

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

Kristi M. Landers, Individually, and)
on behalf of all others similarly situated,)
19001 E. Susquehanna Ridge)
Independence, Missouri 64056)
))
and)
))
Plaintiff,)
v.)
))
COMCAST OF MISSOURI, LLC)
D/B/A COMCAST,)
Serve Registered Agent:)
C T Corporation System)
120 South Central Avenue)
Clayton, Missouri 63105)
))
Defendant.)

Case No. _____
Division _____

PETITION

COME NOW Kristi M. Landers, on behalf of herself and all others similarly situated for violations of the Missouri Merchandising Practices Act (MMPA). For her complaint against Defendant Comcast of Missouri, LLC d/b/a Comcast and/or xfinity (hereafter "Comcast"), Kristi M. Landers, on behalf of herself and all others similarly situated, alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Kristi M. Landers (hereafter "Named Plaintiff") resides in Independence, Jackson County, Missouri.
2. Named Plaintiff brings this action on behalf of herself and on behalf of the class of all persons similarly situated as more specifically described herein ("Class Plaintiffs"). Upon information and belief, there are thousands of Class Plaintiffs.
3. Comcast is a limited liability company, incorporated under the laws of the State of Colorado and maintaining its principal place of business in Philadelphia, Pennsylvania. Comcast

is registered to do business, and is doing business, in the State of Missouri and may be served through its registered agent at the address listed in the caption.

4. Jurisdiction and venue are proper in this Court.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

5. This action involves Comcast selling to its customers service plan to cover costs related to inside wiring, customer-owned equipment connected to Comcast services and on-site education about products.

6. The service plan offered by defendant Comcast did not cover all inside wiring because it does not include, among other things, wiring inside walls of customer homes.

7. Defendant Comcast represented to customers that the service plan covered wiring inside the home and service calls related to inside wiring.

CLASS ALLEGATIONS

8. Named Plaintiff seeks to bring this case as a state-wide class action, under Missouri law, on behalf of herself and all others similarly situated in the State of Missouri as members of a proposed class, defined as follows:

All persons in the State of Missouri who, for personal, family or household use, on or after August 2, 2011, purchased the service plan for repairs inside the customer home offered by defendant Comcast. Excluded from the class definition are Plaintiff's counsel, counsel for defendant Comcast, employees of defendant Comcast and Court employees and personnel.

Numerosity

9. Upon information and belief, the proposed class consists of thousands of members and is so numerous that joinder of all of its members is impractical. While the exact number of class members is unknown to Plaintiff at the present time, Plaintiff believe the members of the

class to be so numerous and geographically disbursed as to render joinder of all class members in this action impractical.

10. Class members may be identified by records maintained by Comcast and notice may be provided (if deemed necessary by this Court) by means of published notice.

Common Questions of Law and Fact

11. There are questions of law and fact arising in this action which are common to Named Plaintiffs and all potential members of the class including, but not limited to:

- a. Whether defendant Comcast engaged and continues to engage in unfair merchandising practices, as defined by the MMPA, by selling a service plan represented to cover all costs relating to inside wiring when the service plan does not include all inside wiring within a customer's home – specifically the wiring inside the walls of a customer's home;
- b. Whether defendant Comcast made false or misleading representations to customers regarding the service provided under the service plan offered to customers and the representations were, as a result, unlawful under the MMPA;
- c. Whether the representations regarding the service plan made by defendant Comcast tended to deceive customers who purchased the service plan and the representations were, as a result, unlawful under the MMPA;
- d. Whether the representations regarding the service plan made by defendant Comcast tended to create a false impression as to the services covered

under the service plan offered by defendant Comcast and the representations were, as a result, unlawful under the MMPA;

- e. Whether defendant Comcast made statements regarding the services provided under the service plan that were not in accord with the facts and the representations were, as a result, unlawful under the MMPA; and
- f. The class-wide measure of damages.

Typicality

12. The claims of Named Plaintiff are typical of the claims of the members of the class. Named Plaintiff and members of the class each agreed to purchase services from Comcast that covered all wiring repairs inside the home that, in fact, did not cover all wiring inside the home. Named Plaintiff and members of the class were subject to similar representations made by Comcast regarding the services being provided.

Adequacy of Representation

13. Named Plaintiff will fairly and adequately represent the interests of the members of the class. Named Plaintiff has retained counsel competent and experienced in class action and complex litigation. Named Plaintiff has no interests which are adverse to or in conflict with other members of the class.

Superiority

14. The common questions of law and fact arising in this action predominate over any questions solely affecting individual class members. Specifically, the core facts of the claim are common to Named Plaintiff and all class members and Named Plaintiff and all class members

will be pursuing the same legal theories based upon these core facts. More generally, the factual and legal issues concerning the scope and effect of Comcast's conduct alleged herein are:

- a. Central to the claims of Named Plaintiff and all class members;
- b. Substantially identical with respect to the burden of demonstrating liability; and
- c. Consist of the most important and fundamental issues to be determined at trial.

15. The class action mechanism is superior to any alternatives that might exist for the fair and effective adjudication of this cause of action. Proceeding as a class action would permit the large number of injured parties to prosecute their common claims in a single forum simultaneously, efficiently and without unnecessary duplication of evidence, effort and judicial resources. A class action is the only practical way to avoid the potentially inconsistent results that numerous individual trials are likely to generate. Moreover, class treatment is the only realistic means by which Named Plaintiff and other members of the class, with relatively small individual claims, can effectively litigate against a large, well-represented corporate entity such as Comcast. Numerous, repetitive individual actions would also place an enormous burden on the Missouri Courts as they are forced to review duplicative evidence and repeatedly decide over the same issues relating to the conduct of Comcast.

16. There are no unusual difficulties likely to be encountered in the management of this case as a class action and Named Plaintiff and his counsel are not aware of any reason why this case should not proceed as a class action under the state common law and statutory claims.

COUNT I

VIOLATION OF THE MISSOURI MERCHANDISING PRACTICES ACT

17. Named Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

18. Named Plaintiff, Class Plaintiffs and Comcast are all “person[s]” for purposes of the MMPA. R.S.Mo. § 407.010, et seq.

19. The services provided by Comcast are “merchandise” for purposes of the MMPA.

20. Named Plaintiff and Class Plaintiffs purchased the merchandise for personal, family or household purposes.

21. Pursuant to the MMPA, it is unlawful for a person to use “any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact” in connection with the sale of merchandise in the State of Missouri. Such acts are unlawful whether committed before, during or after the sale, advertisement or solicitation in question.

22. Pursuant to the MMPA, any person who purchases merchandise for personal, family or household purposes, and suffers an ascertainable loss of money as a result of the use of unlawful acts in connection with such sale, may bring a civil action to recover actual and punitive damages from the person that committed the unlawful act.

23. In selling its services to Named Plaintiff and Class Plaintiffs, Comcast engaged in deception in that Comcast charged Named Plaintiff and Class Plaintiffs a fee for a service plan to cover repairs on wiring inside the home of the customer that did not, in fact, cover repairs for all wiring inside the home of the customer.

24. In marketing and selling its services to Named Plaintiff and Class Plaintiffs, Comcast engaged in deception in that Comcast conveyed information to Named Plaintiff and Class Plaintiffs regarding the type of services being provided that had the tendency or capacity to mislead or deceive Named Plaintiff and Class Plaintiffs and that created a false impression regarding the type of services being provided.

25. In marketing and selling its services to Named Plaintiff and Class Plaintiffs, Comcast engaged in fraud in that Comcast conveyed information to Named Plaintiff and Class Plaintiffs regarding the type of services that was not accurate and that conduct involved falsehood or deception which injured Named Plaintiff and Class Plaintiffs by inducing them to pay a fee for a service that did not include all the services represented by defendant Comcast.

26. In marketing and selling its services to Named Plaintiff and Class Plaintiffs, Comcast engaged in misrepresentation in that Comcast conveyed information to Named Plaintiffs and Class Plaintiffs regarding the type of service that was not in accord with the facts.

27. In marketing and selling its services to Named Plaintiff and Class Plaintiffs, Comcast made untrue statements of material fact regarding the type of service being provided.

28. In marketing and selling its services to Named Plaintiff and Class Plaintiffs, Comcast engaged in misrepresentation in that Comcast omitted material facts that were necessary in order to make the statements that Comcast made to Named Plaintiff and Class Plaintiffs not misleading. Specifically, defendant Comcast represented that the service plan provided coverage for all repairs of wiring inside the customer's home when, in fact, it did not provide coverage for all wiring repairs inside the customer's home.

29. In marketing and selling its services to Named Plaintiff and Class Plaintiffs, Comcast has omitted material facts in that Comcast failed to inform Named Plaintiff and Class Plaintiffs of the true nature of the services being provided. Specifically, to the extent that defendant Comcast contends it provided services to Named Plaintiff and Class Plaintiffs, Comcast failed to inform Named Plaintiff and Class Plaintiffs that, among other things, wiring repairs for wiring inside the walls of a customer's home were not covered by the service plan.

PRAYER FOR RELIEF

WHEREFORE, Named Plaintiff and Class Plaintiffs pray this Court enter judgment Against Defendant and in favor of Named Plaintiff and Class Plaintiffs, and award the following relief:

- a. Certifying this action as a state-wide class action under Missouri law, pursuant to Missouri Rule of Civil Procedure 52.08 and R.S.Mo. § 407.025;
- b. Awarding each Named Plaintiff and each Class Plaintiff compensatory damages for the acts complained of herein;
- c. Awarding Named Plaintiff compensatory damages for their efforts on behalf of the class;
- d. Awarding Named Plaintiff and Class Plaintiffs costs and attorneys' fees against Defendant, as allowed by law, and/or awarding counsel for the class attorneys' fees; and
- e. Granting punitive damages and any other and further relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL OF ALL ISSUES

Plaintiff demands a trial by jury in this case.

Respectfully submitted,

HUMPHREY, FARRINGTON & McCLAIN, P.C.

/s/ Kevin D. Stanley

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ATTORNEYS FOR PLAINTIFF

JS 44 (Rev 09/10)

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

CIVIL COVER SHEET

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s):

First Listed Plaintiff:
Kristi M. Landers ;
1 Citizen of This State;
County of Residence: Jackson
County

Defendant(s):

First Listed Defendant:
Comcast of Missouri, LLC ;
5 Incorporated and Principal Place of Business in
Another State; Colorado
County of Residence: Outside This District

County Where Claim For Relief Arose: Jackson County

Plaintiff's Attorney(s):

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Basis of Jurisdiction: 4. Diversity of Citizenship

Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff: 1 Citizen of This State

Defendant: 5 Incorporated and Principal Place of Business in Another State

Origin: 2. Removed From State Court

State Removal County: Jackson County

State Removal Case Number: 1616-CV18788

Nature of Suit: 370 Fraud Actions

Cause of Action: 28 U.S.C. § 1332, et seq. as amended by CAFA

Requested in Complaint

Class Action: Class Action under State Statute or Rule

Monetary Demand (in Thousands):

Jury Demand: Yes

Related Cases: Is NOT a refiling of a previously dismissed action

Signature: /s/ Paul S. Penticuff

Date: 9/16/2016

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.