

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

**GEORGE WISE and BARBARA  
GILBERT-WISE**, for Themselves and All  
Other Arkansans Similarly Situated,

Plaintiffs,

v.

**VERIZON WIRELESS SERVICES, LLC,  
CELLCO PARTNERSHIP, both d/b/a  
VERIZON WIRELESS, and  
KORTNEY CHAPMAN,**

Defendants.

Case No. \_\_\_\_\_

---

**CLASS ACTION COMPLAINT**

---

Plaintiffs George Wise and Barbara Gilbert-Wise, for themselves and for all other Arkansas citizens similarly situated, for their complaint against Defendant Verizon Wireless Services, LLC and CELLCO Partnership, both d/b/a Verizon Wireless (and collectively referred to herein as “Verizon”), and Defendant Kortney Chapman allege as follows:

1. This is a class action case brought by Arkansas citizens to recover actual financial losses for themselves and for other Arkansans that took Verizon’s bait of a supposed two for one iPhone deal that, in truth, was purposefully deceptive, false, unconscionable, fraudulent, and also allowed Verizon to be unjustly enriched in monies received from Plaintiffs and the Class members they seek to represent.

## **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over this civil state law claim.

3. Defendant Verizon operates business within the State of Arkansas, and within this County, and further, derives substantial revenue from the State of Arkansas and Pulaski County.

4. Defendant Chapman is a citizen of Arkansas and a resident of Pulaski County.

5. Venue is proper in Pulaski County in that the conduct complained of occurred in Pulaski County and Plaintiffs reside in Pulaski County.

6. This action is brought under Arkansas law, by Plaintiffs who are citizens of Arkansas, and on behalf of similarly situated citizens of Arkansas. Any and all claims that sound, appear, or could possibly be interpreted as being federal in nature are expressly disavowed.

## **PARTIES**

7. Plaintiffs George Wise and Barbara Gilbert-Wise (“Plaintiffs”) are citizens of Arkansas and residents of Pulaski County, Arkansas.

8. Defendant Verizon Wireless Services, LLC and CELLCO Partnership both d/b/a as Verizon Wireless (hereafter, collectively referred to as “Verizon”) are foreign entities that operate in Arkansas and derive substantial revenue from within Arkansas. Verizon Wireless Services, LLC is a Delaware limited liability company with an operational headquarters at One Verizon Way, Basking Ridge, NJ 07920. CELLCO Partnership is a business partnership having the same operational headquarters at One Verizon Way, Basking Ridge, NJ 07920.

9. Defendant Kortney Chapman was at the time of the events complained of an employee and agent of Verizon, and his place of business was at a store at 410 S University Avenue in Little Rock, Arkansas.

## **FACTUAL ALLEGATIONS**

10. Plaintiffs have been Verizon customers since it acquired Alltel Wireless in or about 2008.

11. In or about May 2019, Verizon marketed, within the State of Arkansas, a supposed Mother's Day deal (the "Mother's Day Promotion") by falsely promising:

We've also got deals on phones for Mom when adding a new line on Verizon Unlimited:

- Buy one Samsung Galaxy S10+, get \$750 off Galaxy 10, 10+, 10e or Note 9.
- Buy one Samsung Galaxy S10 5G, get \$750 off Galaxy 10, 10+, 10e or Note 9.
- Buy iPhone XR, iPhone XS MAX, iPhone XS, or iPhone X and get a free iPhone XR (or take \$750 off a second iPhone X model).
- Save \$300 on Pixel 3. Plus get \$800 off a second Pixel 3 XL.

### **Exhibit A (Screenshots of Mother's Day Promotion Advertisement).**

12. On May 11, 2019, based upon these advertisements containing this promotion, Plaintiff George Wise went to the Verizon store at 410 S. University Avenue in Little Rock, Arkansas, to, consistent with the advertised promotion, purchase a new iPhone for his wife for Mother's Day, add another cellular phone line to his Verizon account, and to receive a "free" iPhone as promised by the advertisement.

13. At the Verizon store, Verizon's employee and agent Kortney Chapman promised Mr. Wise that he qualified for the advertised promotion and then falsely, deceptively, and unconscionably represented to Mr. Wise that if he added an additional phone line to his account and purchased another iPhone, then he would receive a second iPhone free of charge — all consistent with Verizon's Mother's Day Promotion.

14. Based upon Verizon's false, deceptive, and unconscionable Mother's Day Promotion and the false, deceptive, and unconscionable representations by Mr. Chapman, Mr. Wise added a phone line to his Verizon account, purchased a new iPhone for his wife as a gift, and fully expected that he would receive an additional iPhone free of charge to be used by his son on the phone line Mr. Wise added to his account based upon the Mother's Day Promotion.

15. Mr. Chapman then presented written agreements for Mr. Wise to sign and again assured Mr. Wise that he qualified for the "free" iPhone as advertised, that it would in fact be free, and that the new line would be added to the account per the advertisement. Based upon the representations of Verizon and its agent and employee, and Verizon's Mother's Day Promotion, Mr. Wise was fraudulently induced to sign the installment agreements as requested. **Exhibit B (the Installment Agreements).**

16. On June 8, 2019, George Wise and Barbara Gilbert-Wise received their first bill after the transaction of May 11, 2019. In spite of the promises in the advertisement and made by Verizon's employee and agent Kortney Chapman, a charge appeared for the "free" iPhone.

17. On several occasions, George Wise attempted to resolve this issue with Verizon, and although Verizon assured Mr. Wise that he qualified for the Mother's Day Promotion and that the charge for the "free" iPhone would be credited, Verizon has refused to issue a credit for the "free" iPhone, and thus, its false, misleading, unconscionable, unjust, and fraudulent charges for the "free" iPhone and additional line remain as of the date of the filing of this complaint. Indeed, Verizon has continuously refused to credit the account consistent with its false Mother's Day Promotion.

18. Mr. Wise purchased the new iPhone for his wife and added a new line to his Verizon account based upon the false, misleading, deceptive, and unconscionable advertising, and further,

has had to pay for the additional iPhone that was falsely promoted as “free.” As a result of the false, misleading, deceptive, and unconscionable advertising identified in this pleading above, Plaintiffs and the Class have commonly suffered actual financial losses from the addition of the cellular phone lines and resulting charges, and the payments and continuing payments for the two new iPhones — one of which was falsely promised to be free.

19. Plaintiffs and the Class would not have suffered these actual financial losses but for the false, misleading, deceptive, and unconscionable marketing by Verizon. Plaintiffs and the Class expressly disavow any and all allegations having any possible implication that Plaintiffs are suing to recover losses in the value of the products or services that Verizon provides to Plaintiffs and members of the Class.

20. Indeed, Plaintiffs are suing to recover their actual financial losses and the actual financial losses of members of the Class, in the form of the additional phone line costs actually incurred and incurred costs associated with the supposedly “free” iPhone, and not to recover any losses in value of any product or a service.

21. Verizon requires an arbitration agreement with its customers (referred to herein as the “Customer Agreement” or “CA”). The CA, and particularly its arbitration provision, lacks mutuality, is unconscionable, and unenforceable under the law. **Exhibit C.**

22. Indeed, Verizon’s adhesion contract reserves for itself an ability to pick and choose its rights or remedies under the CA.

23. Specifically, just under its forced arbitration provision and class action waiver terms, the CA provides:

If we don’t enforce our rights under this agreement in one instance, that doesn’t mean we won’t or can’t enforce those rights in any other instance.

24. Verizon's reservation, quoted above, allows it to choose what it wishes to do with respect to any customer, and without the worry of a contract waiver. Thus, Verizon clearly reserved for itself the option of pursuing rights and abilities not provided to Plaintiffs or other Arkansas customers.

25. In 2014, the Arkansas Supreme Court held that Alltel's substantially similar term invalidated its arbitration agreement due to the lack of mutuality. *Alltel v. Rosenow*, 2014 Ark. 375, 2014 WL 4656609 (2014).

26. Alltel's term said the following:

If we do not enforce any right or remedy available under this Agreement, that failure is not a waiver.

27. The *Alltel* decision is precedent, and Verizon's non-mutual term is effectively the same as Alltel's. Thus, under *Alltel*, Verizon's arbitration agreement lacks mutuality, is invalid, and is unenforceable as to Plaintiff and all other Arkansas citizens subscribing to Verizon's cellular phone service, including Plaintiffs and every member of the Class they seek to represent.

### **CLASS ALLEGATIONS**

28. This case is brought as a class action pursuant to Arkansas Rule of Civil Procedure ("ARCP") 23.

29. Plaintiffs bring this action on their own behalf and on behalf of the following “Class” against Verizon:

All citizens of Arkansas that from May 1, 2019 through May 31, 2019 purchased an iPhone XR, iPhone XS MAX, iPhone XS, or iPhone X from Verizon and added an additional line to their Verizon account with the promise from Verizon of a free iPhone XR being added to the new line.

Excluded from the Class shall be the judge presiding over this action and his or her immediate family members and all directors, officers, and employees of Verizon.

30. Verizon has stores scattered throughout the State of Arkansas and also sells its products and services online to all Arkansans, and therefore, the members of the Class will be scattered in potentially all of the judicial districts in Arkansas. Based upon information and belief, there are as many as 70 members within the Class.

31. Plaintiffs are members of the Class. Plaintiffs’ claims are typical of the claims of all Class members.

32. No antagonism exists between the interests of the representative Plaintiff and the interests of other Class members, and Plaintiff is fully prepared to diligently pursue this case on behalf of all Class members.

33. Plaintiffs are adequate to represent the Class and have hired counsel experienced in class action litigation and well-qualified to conduct this litigation.

34. There exist threshold and predominate common questions of law and fact in this action within the meaning of ARCP 23, and specifically whether or not Verizon’s Mother’s Day Promotion was false, misleading, deceptive, unconscionable, or unjust. Pursuant to ARCP 23, these questions of law and fact are common to the members of the Class and predominate over any questions affecting only individual Class members. Further, a class action is superior to the other available methods for the fair and efficient adjudication of the controversy because, among other

things, it is desirable to concentrate the litigation of the Class members' claims to one forum, since it will conserve party and judicial resources and facilitate the consistency of adjudications.

35. Thus, all of the elements of Rule 23 exist, and certification of the Class is warranted.

## COUNT I

### **VIOLATIONS OF THE ARKANSAS DECEPTIVE TRADE PRACTICES ACT**

36. Plaintiffs and the Class incorporate all of the paragraphs above as if fully set forth here.

37. Defendants' wrongdoing, as alleged above, violated the Arkansas Deceptive Trade Practices Act ("ADTPA").

38. Plaintiffs and the Class members are consumers.

39. The activities at issue are consumer-oriented practices.

40. Verizon violated A.C.A. § 4-88-107 (a)(1), (3), 5(B), and 5(D) by engaging in an unconscionable, false, or deceptive act or practice in business, commerce, or trade, by advertising goods and services with the intent not to sell them as advertised, and by engaging in bait and switch advertising.

41. As alleged throughout this pleading, Verizon's actions were unconscionable, false, and deceptive in that it marketed the Mother's Day Promotion in order to gain additional lines of service and in order to take money from Plaintiffs and the Class that it did not earn, all in violation of A.C.A. § 4-88-107 (a)(1) and (3).

42. Further, Verizon also violated the ADTPA by engaging in bait and switch advertising under A.C.A. § 4-88-107 (a)(5)(B) and (D) by making the attractive but insincere Mother's Day Promotion and with a tie-in sale of an additional cellular phone line.



43. Plaintiffs and the Class commonly relied upon the false, deceptive, and unconscionable acts committed by Verizon and suffered actual financial losses by purchasing the first iPhone, purchasing the second iPhone, and incurring the costs of an additional cellular phone line. Plaintiffs and the Class would not have suffered these actual financial losses but for Verizon's violations of the ADTPA.

44. Defendant Chapman was an employee and agent of Verizon. Defendant Chapman acted in concert with Verizon to violate A.C.A. § 4-88-107 (a)(1), (3), and (5)(B) and 5(D), by falsely, misleadingly, deceptively, and unconscionably representing to Plaintiff George Wise that his account qualified for the Mother's Day Promotion and that the second iPhone would be free to him under the promotion. Such statements were unconscionable, false, or deceptive acts in business, commerce, and trade. Plaintiff Wise relied upon the false, misleading, deceptive, and unconscionable statements made by Defendant Chapman, and suffered actual financial losses by purchasing the first iPhone, the second iPhone, and incurring the costs of an additional cellular phone line. Chapman also participated in unlawful bait and switch advertising in violation of A.C.A. § 4-88-107 (5)(B) and (D). Plaintiffs would not have suffered these actual financial losses but for Verizon's violations of the ADTPA committed by Chapman.

45. A.C.A. § 4-88-113(f)(1)(B) is unconstitutional in that the General Assembly amended the Arkansas Rules of Civil Procedure, which may only be amended by the Arkansas Supreme Court.

## **COUNT II**

### **FRAUD**

46. Plaintiff and the Class incorporate all of the paragraphs above as if fully set forth here.

47. Defendant Verizon committed fraud by making materially false representations of fact in the Mother's Day Promotion. Verizon made such materially false representations with intent to deceive Plaintiffs and the Class, and to induce each of them to purchase additional products and an additional phone line. Plaintiffs and the Class commonly relied upon Verizon's materially false representations and demonstrated such common reliance by purchasing an additional line and two iPhones during the false Mother's Day Promotion. Verizon's act of fraud proximately caused Plaintiffs and the Class to suffer common damages in the form of purchasing the first iPhone, the second iPhone, and incurring the costs of an additional cellular phone line.

48. For its acts of fraud against Plaintiffs and the Class, and because such acts were with malice, Plaintiffs and the Class are also entitled to punitive damages designed to end Verizon's further acts of fraud and to punish Verizon.

49. Defendant Chapman committed fraud by making materially false representations of fact as asserted above in relation to Plaintiff George Wise's visit to the Verizon store on University Avenue in Little Rock. Such materially false representations were made with intent to deceive Plaintiff George Wise, and to induce him to purchase additional products from Verizon and to add an additional phone line to his Verizon account. Plaintiff George Wise relied upon Chapman's materially false representations. Chapman's act of fraud proximately caused Plaintiffs to suffer damages in the form of purchasing the first iPhone, the second iPhone, and incurring the costs of an additional cellular phone line.

50. For Defendant Chapman's act of fraud against the Plaintiffs, and because such acts were with malice, Plaintiffs are also entitled to punitive damages designed to end his continued frauds and to punish his actions of fraud against the Plaintiffs.

### **COUNT III**

#### **UNJUST ENRICHMENT**

##### **(Against Verizon Only)**

51. Plaintiffs and the Class incorporate all of the paragraphs above as if fully set forth here.

52. Verizon received unjust benefits from Plaintiffs and the Class in the form of monies paid to it for additional phone lines and iPhone product purchases based upon its false, deceptive, and unconscionable representations in its Mother's Day Promotion.

53. Verizon continues to retain these unjust benefits from the Plaintiffs and the Class and refuses to return such benefits to the Plaintiffs and the Class.

54. It would be inequitable to allow Verizon to continue to retain these benefits that it has unjustly received from Plaintiffs and the Class and that it refuses to voluntarily return, and therefore, this Court must, in equity, order Verizon to return all such unjust benefits to Plaintiffs and the Class.

#### **JURY DEMAND**

Plaintiffs demand a trial by jury of twelve on all issues so triable.

## PRAYER

WHEREFORE, Plaintiffs and the Class pray for entry of Judgment in their favor and against Defendant that:

- a. Certifies the Class pursuant to ARCP 23 against Verizon;
- b. Declares Verizon's Customer Agreement and arbitration agreement as lacking mutuality, invalid, and unenforceable as to Plaintiffs and the Class;
- c. Awards Plaintiffs and the Class their actual financial losses for Verizon's violations of the ADTPA and their costs and attorneys' fees against Verizon for such violations;
- d. Awards Plaintiffs their actual financial losses for Defendant Chapman's violations of the ADTPA and their costs and attorneys' fees against Chapman for such violations;
- e. Awards Plaintiffs and the Class compensatory damages proximately caused by Verizon's fraud, and further, an award of punitive damages for Verizon's acts of malice against the Plaintiffs and the Class designed to deter Verizon from further acts of fraud and to punish Verizon for its intentional acts of misconduct;
- f. Awards Plaintiffs compensatory damages proximately caused by Chapman's fraud, and further, an award of punitive damages for Chapman's acts of malice against the Plaintiffs designed to deter Chapman from further acts of fraud and to punish his intentional acts of misconduct;
- g. Orders Verizon to provide restitution to Plaintiffs and the Class for all unjust benefits it has received from them in the form of monies paid for additional phone lines and additional products; and,

h. Provides all other just and equitable relief for which Plaintiff and the Class are entitled.

DATE: March 10, 2020

Respectfully,

**POYNTER TUCKER**  
**An Association of Law Firms**

A handwritten signature in blue ink, appearing to read "Scott Poynter", is written over a horizontal line.

Scott Poynter

Scott Poynter  
scott@poynterlawgroup.com  
Clarke Tucker  
clarke@clarketucker.com  
Daniel Holland  
daniel@poynterlawgroup.com  
407 President Clinton Ave., Suite 201  
Little Rock, AR 72201  
Ph. (501) 812-3943