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NORTHERN DISTRICT OF CALIFORNIA

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12 *Pro hac vice admittance to be sought
13 Counsel for Plaintiffs and the Proposed Putative Classes

14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA

JCS

17 STEVE BAYER and KANDI COOK,
18 on behalf of themselves and all others
similarly situated,

Case No. **CV 12 2826**

19 Plaintiffs,

CLASS ACTION COMPLAINT

20 v.

DEMAND FOR JURY TRIAL

21 COMCAST CABLE
22 COMMUNICATIONS, LLC

23 Defendant.

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28 ORIGINAL

1 Plaintiffs Steve Bayer and Kandi Cook (collectively, "Plaintiffs"), individually and on
2 behalf of all others similarly situated, by and through their counsel, bring this Class Action
3 Complaint against Defendant Comcast Corporation ("Comcast" or "Defendant"). Plaintiffs, on
4 their own behalf and on behalf of a class of similarly situated individuals, allege as follows upon
5 personal knowledge as to themselves and their own acts and experiences, and, as to all other
6 matters, upon information and belief, including investigation conducted by their attorneys.

7 **I. NATURE OF THE ACTION**

8 1. Cable and satellite television are a staple in American households, viewed by
9 many to be as ordinary and essential as gas and electric service. Comcast uses its position as the
10 nation's largest provider of cable television to collect personal information – such as names,
11 addresses, social security numbers, and credit card numbers – from tens of millions of consumers
12 across the country.

13 2. After consumers terminate their service with Comcast, however, and this
14 information is no longer needed to provide service or collect payment, Comcast continues to
15 maintain personally identifiable information on all of its previous customers indefinitely. This
16 conduct violates the Cable Communications Policy Act, 47 U.S.C. § 551, *et. seq.* ("CCPA"),
17 which requires cable operators to destroy personally identifiable information when it is no longer
18 required for the purpose for which it was collected.

19 3. Moreover, consumers are unaware that their personally identifiable information is
20 retained indefinitely by Comcast, as Comcast fails to send annual privacy notices informing
21 consumers that Comcast continues to retain their information. This conduct constitutes
22 additional violations of CCPA.

23 4. Accordingly, Plaintiffs assert claims on their own behalf and on behalf of the
24 other members of the below-defined Class for violations of CCPA, 47 U.S.C. § 551 (a) & (e),
25 plus additional claims under California state law on behalf of a California Subclass.
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1 **II. JURISDICTION AND VENUE**

2 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, which
3 confers upon the Court original jurisdiction over all civil actions arising under the laws of the
4 United States, and pursuant to 18 U.S.C. §§ 2520 and 2707 and 18 U.S.C. § 1030. This Court
5 also has supplemental jurisdiction over Plaintiffs' state statutory claims and common-law claims
6 under 28 U.S.C. § 1367.

7 6. In addition, this Court has original jurisdiction pursuant to 28 U.S.C. §
8 1332(d)(2). In the aggregate, Plaintiffs' claims and the claims of the other members of the Class
9 exceed \$5,000,000 exclusive of interest and costs, and there are numerous class members who
10 are citizens of states other than Comcast.

11 7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1301(a)(2), 1391(b)(2),
12 and 1391(c)(2) as: a substantial part of the events and/or omissions giving rise to the claims
13 emanated from activities within this District, and Comcast conducts substantial business in this
14 District. Specifically, Comcast provides cable and Internet services for residents and commercial
15 facilities in towns and cities throughout this District, subjecting it to this Court's personal
16 jurisdiction and making it a "resident" of this District for purposes of venue.

17 **III. PARTIES**

18 ***Plaintiffs***

19 8. Steve Bayer ("Bayer") is a natural person and citizen of the State of Illinois.

20 9. Kandi Cook ("Cook") is a natural person and citizen of the State of California.

21 ***Defendant***

22 10. Comcast is a Pennsylvania corporation headquartered at 1701 John F. Kennedy
23 Boulevard in Philadelphia, Pennsylvania. Comcast is the nation's largest cable operator,
24 servicing over 20 million customers. Comcast provides cable services to customers in 39 states,
25 including the State of California.

IV. FACTUAL BACKGROUND

The Cable Communications Policy Act

11. On October 30, 1984, Congress passed the Cable Communications Policy Act (“CCPA”) in order to promote competition among providers of cable services and establish a national policy concerning cable communications and their operators. An important objective of Congress in establishing such a policy was to protect cable subscribers’ sensitive personal information from misuse and improper disclosure. To that end, Congress made sure that the Act incorporated privacy guidelines jointly established several years earlier by the 34 nations comprising the Organization for Economic Cooperation and Development.

12. When CCPA was under debate, legislative leaders noted that both common-sense privacy concerns and the constitutional rights of citizens were at stake:

Cable systems, particularly those with a ‘two-way’ capability, have an enormous capacity to collect and store personally identifiable information about each cable subscriber. Subscriber records from interactive systems can reveal details about bank transactions, shopping habits, political contributions, viewing habits and other significant personal decisions. It is [therefore] important that national cable legislation establish a policy to protect the privacy of cable subscribers. A national policy is needed because, while some franchise agreements restrict the cable operator’s use of such information, privacy issues raise a number of federal concerns, including protection of the subscribers’ first, fourth, and fifth amendment rights. At the same time, such a policy must also recognize and unnecessarily or unreasonably impede those flows of information necessary to provide the service to the subscribers.

H.R. Rep. 98-934 at 4666-67 (1984).

13. These observations, now nearly 30 years old, are just as relevant today. Subscribers continue to disclose some of their most sensitive identifying information to their cable operator as a condition to entering into a contract for service. Now – far more than ever before – Comcast and other cable operators are equipped to rapidly collect and indefinitely retain large volumes of this valuable data in their electronic records.

1 14. There are numerous serious and troubling privacy issues implicated by Comcast's
2 practice of retaining and misusing their former customers' personal information, including the
3 risk of identity theft and conversion of personal financial accounts.

4 15. Accordingly, CCPA affords consumers significant protection with respect to the
5 collection, maintenance, and disclosure of personally identifiable information ("PII") provided
6 by the subscriber to the cable operator.

7 16. Specifically, CCPA requires cable operators to provide annual notice setting forth
8 the "nature of personally identifiable information collected;" "the nature, purpose, and frequency
9 of any disclosure" of that information; the "period during which such information will be
10 maintained;" "the times and place at which the subscriber may have access to such information;"
11 and the limitations imposed on the cable operator by this provision of CCPA. 47 U.S.C. §
12 551(a)(1).

13 17. In addition, CCPA governs the way that cable operators are to destroy the PII of
14 former subscribers. CCPA requires that cable operators must destroy the PII of former
15 subscribers "if the information is no longer necessary for the purpose for which it was collected"
16 and there are no outstanding requests or orders for such information. 47 U.S.C. § 551(e).

17 18. Under CCPA, "personally identifiable information" is not specifically defined.
18 However, the courts have concluded that it broadly encompasses "specific information about the
19 subscriber, or a list of names and addresses on which the subscriber is included."¹

20 ***Comcast's Collection of Consumers' PII***

21 19. Founded in Mississippi in 1963, Comcast has rapidly grown to become the largest
22 cable television operator and provider of home Internet service in the United States, as well as
23 the nation's third-largest provider of home telephone service. In 40 states as well as the District
24 of Columbia, Comcast offers a wide range of services that includes cable television, broadband
25 Internet, telephone service, and home security for residential customers as well as commercial

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27 ¹ See, e.g., *Scofield v. Telecable of Overland Park, Inc.*, 973 F.2d 874, 876 fn. 2 (10th Cir. 1992).

1 facilities.² Comcast serves 23 million cable television customers, approximately 17 million
2 high-speed Internet customers, and nearly 9 million voice customers.³ In 2011, the company
3 earned nearly \$56 billion in gross revenues and had a net income of approximately \$4.2 billion.⁴

4 20. Comcast requests that subscribers provide PII to Comcast in order to receive cable
5 service, including social security number, address, phone number, and credit and debit card
6 information.

7 21. Once Comcast obtains that information, it maintains a digital record system with
8 every subscriber's personal information, adding to each consumer's file as they acquire more
9 information.

10 22. Comcast's online Customer Privacy Policy provides as follows:

11 Comcast maintains personally identifiable information about you
12 in our regular business records while you are a subscriber to our
13 cable service or other services. We also maintain this information
14 for a period of time after you are no longer a subscriber if the
15 information is necessary for the purposes for which it was
16 collected or to satisfy legal requirements. These purposes typically
include business, legal, or tax purposes. If these purposes no
longer apply, we will destroy the information according to our
internal policies and procedures.⁵

17 ***Comcast's Unlawful Retention of Consumers' PII***

18 23. While Comcast's Privacy Policy claims that consumer information is destroyed
19 "according to our internal policies and procedures," in practice, Comcast simply retains
20 consumers' PII indefinitely.

22 ² http://en.wikipedia.org/wiki/Comcast#cite_note-annual_report-2 (last visited May 1, 2012).

23 ³ *Comcast Reports First Quarter 2011 Results*, [www.cmcsk.com/releasedetail.cfm?ReleaseID=](http://www.cmcsk.com/releasedetail.cfm?ReleaseID=574179)
24 [574179](http://www.cmcsk.com/releasedetail.cfm?ReleaseID=574179) (March 31, 2011).

25 ⁴ *2010 Form 10-K, Comcast Corporation*, United States Securities and Exchange Commission
26 (March 14, 2011).

27 ⁵ <http://www.comcast.com/Corporate/Customers/Policies/CustomerPrivacy.html> (last visited
28 April 30, 2012).

1 24. This indefinite retention of PII is prohibited by CCPA, which requires cable
2 operators to “destroy personally identifiable information if the information is no longer necessary
3 for the purpose for which it was collected.” 47 U.S.C. § 551(e).

4 25. Comcast also fails to provide CCPA-mandated privacy notices to customers
5 whose accounts have been closed, but whose information is still retained by Comcast. Those
6 consumers are thus unaware that their information is retained indefinitely by Comcast.

7 26. CCPA requires that cable operators provide written notice at least once a year
8 regarding the retention and disclosure of PII, “clearly and conspicuously” informing the
9 consumer of “the nature of personally identifiable information collected ... and the nature of the
10 use of such information; [] the nature, frequency, and purpose of any disclosure which may be
11 made of such information, including an identification of the types of persons to whom the
12 disclosure may be made; [] the period during which such information will be maintained by the
13 cable operator; [and] the times and places at which the subscriber may have access to such
14 information.” 47 U.S.C. § 551(a).

15 27. After the termination of services, Comcast fails to provide notice to consumers
16 regarding the type of PII collected and retained, and any disclosure of that information that may
17 have occurred.

18 ***Consumers Place a High Value on Their PII***

19 28. At a Federal Trade Commission (“FTC”) public workshop in 2001, then-
20 Commissioner Orson Swindle described the value of a consumer’s personal information as
21 follows:

22 The use of third party information from public records, information
23 aggregators and even competitors for marketing has become a
24 major facilitator of our retail economy. Even [Federal Reserve]
25 Chairman [Alan] Greenspan suggested here some time ago that it’s
something on the order of the life blood, the free flow of
information.⁶

26 _____
27 ⁶ *The Information Marketplace: Merging and Exchanging Consumer Data*,
<http://www.ftc.gov/bcp/workshops/infomktplace/transcript.htm> (last visited May 20, 2012).

1 29. Though Commissioner's Swindle's remarks are more than a decade old, they are
2 even more relevant today, as consumers' personal data functions as a "new form of currency"
3 that supports a \$26 billion per year online advertising industry in the United States.⁷

4 30. The FTC has also recognized that consumer data is a new – and valuable – form
5 of currency. In a recent FTC roundtable presentation, another former Commissioner, Pamela
6 Jones Harbour, underscored this point by observing:

7 Most consumers cannot begin to comprehend the types and amount
8 of information collected by businesses, or why their information
9 may be commercially valuable. Data is currency. The larger the
10 data set, the greater potential for analysis – and profit.⁸

11 31. Recognizing the high value that consumers place on their PII, many companies
12 now offer consumers an opportunity to sell this information to advertisers and other third parties.
13 The idea is to give consumers more power and control over the type of information that they share
14 – and who ultimately receives that information. And by making the transaction transparent,
15 consumers will make a profit from the surrender of their PII.⁹ This business has created a new
16 market for the sale and purchase of this valuable data.¹⁰

20 ⁷ See *Web's Hot New Commodity: Privacy*,
21 <http://online.wsj.com/article/SB10001424052748703529004576160764037920274.html> (last visited May
22 20, 2012).

23 ⁸ *Statement of FTC Commissioner Pamela Jones Harbour* (Remarks Before FTC Exploring
24 Privacy Roundtable), <http://www.ftc.gov/speeches/harbour/091207privacyroundtable.pdf> (last visited
25 May 20, 2012).

26 ⁹ *You Want My Personal Data? Reward Me for It*,
27 <http://www.nytimes.com/2010/07/18/business/18unboxed.html> (last visited May 20, 2012).

28 ¹⁰ See *Web's Hot New Commodity: Privacy*,
<http://online.wsj.com/article/SB10001424052748703529004576160764037920274.html> (last visited May
20, 2012).

1 32. In fact, consumers not only place a high value on their PII, but also place a high
2 value on the *privacy* of this data. Thus, the question is not *whether* consumers value such
3 privacy; the question is “*how much* [consumers] value” that privacy.¹¹

4 33. Researchers have already begun to shed light on how much consumers value their
5 data privacy – and the amount is considerable. Indeed, studies confirm that “when [retailers’]
6 privacy information is made more salient and accessible, some consumers are willing to pay a
7 premium to purchase from privacy protective websites.”¹²

8 34. When consumers were surveyed as to how much they valued their personal data in
9 terms of its protection against improper access and unauthorized secondary use – two concerns at
10 issue here – they valued the restriction of improper access to their data at between \$11.33 and
11 \$16.58 per website, and prohibiting secondary use to between \$7.98 and \$11.68 per website.¹³

12 35. Given these facts, any company that transacts business with a consumer and then
13 retains that consumer’s PII in contravention of statutorily guaranteed privacy protections has thus
14 deprived that consumer of the full monetary value of the consumer’s transaction with the
15 company.

16 ***Facts Pertaining to Plaintiff Bayer***

17 36. In or about July 2006, Bayer signed up for Comcast cable services. Bayer
18 provided Comcast with PII including his address, telephone number, and social security number,
19 in order to receive the service.

20 37. In or about July 2007, Bayer canceled his service with Comcast.

21 38. On information and belief, as of the date of this filing, Comcast still retains
22 Bayer’s PII.

23 ¹¹ Hann *et al.*, *The Value of Online Information Privacy: An Empirical Investigation* (Mar. 2003)
24 at 2, available at <http://www.comp.nus.edu.sg/~ipng/research/privacy.pdf> (emphasis added) (last visited
25 April 25, 2012).

26 ¹² Tsai, Cranor, Acquisti, and Egelman, *The Effect of Online Privacy Information on Purchasing*
Behavior, 22(2) *Information Systems Research* 254, 254 (June 2011).

27 ¹³ *Id.*

1 Excluded from the Retention Class are Comcast and its subsidiaries and affiliates; all persons
2 who make a timely election to be excluded from the Class; governmental entities; and the judge
3 to whom this case is assigned and any immediate family members thereof.

4 45. Plaintiff brings Count II, as set forth below, on behalf of themselves and as a class
5 action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil
6 Procedure on behalf of a class defined as:

7 All persons in the United States who signed up for cable service
8 with Comcast, and who were never issued annual written notices
9 from Comcast regarding Comcast's retention or disclosure of their
personally identifiable information (the "Notice Class").

10 Excluded from the Notice Class are Comcast and its subsidiaries and affiliates; all persons who
11 make a timely election to be excluded from the Class; governmental entities; and the judge to
12 whom this case is assigned and any immediate family members thereof.

13 46. Plaintiff Cook brings Counts III-V, as set forth below, on behalf of herself and as
14 a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of
15 Civil Procedure on behalf of a class defined as:

16 All persons residing in the State of California who signed up for
17 cable service with Comcast, and whose personally identifiable
18 information was retained by Comcast after the termination of
services (the "California State Class").

19 Excluded from the California State Class are Comcast and its subsidiaries and affiliates; all
20 persons who make a timely election to be excluded from the Class; governmental entities; and
21 the judge to whom this case is assigned and any immediate family members thereof.

22 47. The Retention Class, Notice Class, and California State Class shall be referred to
23 collectively as "the Class" below unless otherwise specified.

24 48. Certification of Plaintiffs' claims for classwide treatment is appropriate because
25 Plaintiffs can prove the elements of their claims on a classwide basis using the same evidence as
26 would be used to prove those elements in individual actions alleging the same claims.

1 49. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the
2 class are so numerous that individual joinder of all Class members is impracticable. On
3 information and belief, there are thousands of consumers who have been affected by Comcast’s
4 wrongful conduct. The precise number of the Class members and their addresses is presently
5 unknown to Plaintiffs, but may be ascertained from Comcast’s books and records. Class
6 members may be notified of the pendency of this action by recognized, Court-approved notice
7 dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or
8 published notice.

9 50. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2)**
10 **and 23(b)(3).** This action involves common questions of law and fact, which predominate over
11 any questions affecting individual Class members, including, without limitation:

- 12 a. whether Comcast engaged in the conduct as alleged herein;
- 13 b. whether Plaintiffs and the other Class members are entitled to actual, statutory, or
14 other forms of damages, and other monetary relief and, if so, in what amount(s);
15 and
- 16 c. whether Plaintiffs and other Class members are entitled to equitable relief, including
17 but not limited to injunctive relief and restitution.

18 51. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs’ claims are
19 typical of the other Class members’ claims because, among other things, all Class members were
20 comparably injured through the uniform misconduct described above.

21 52. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).**
22 Plaintiffs are adequate representatives of the Class because their interests do not conflict with the
23 interests of the other Class members they seek to represent; they have retained counsel
24 competent and experienced in complex class action litigation; and Plaintiffs intend to prosecute
25 this action vigorously. The Class members’ interests will be fairly and adequately protected by
26 Plaintiffs and their counsel.

1 57. CCPA mandates, among other things, that a cable operator “destroy personally
2 identifiable information if the information is no longer necessary for the purpose for which is
3 was collected.” 47 U.S.C. § 551(e).

4 58. After Plaintiffs’ accounts and the accounts of each of the members of the
5 Retention class were terminated, Comcast continued to maintain Plaintiffs’ PII even though such
6 information was no longer necessary to maintain for the purpose for which it was collected.

7 59. The foregoing conduct violates 47 U.S.C. § 551(e).

8 60. Plaintiffs and the Retention Class have suffered injuries as a result of Comcast’s
9 violation of 47 U.S.C. § 551. Comcast’s failure to destroy the PII of Plaintiffs and the Retention
10 Class, as required 47 U.S.C. § 551, constitutes injury in the form of a direct invasion of their
11 federally protected privacy rights. In addition, Comcast’s failure to comply with CCPA has
12 deprived Plaintiffs and the Retention Class of their ability to make informed decisions with
13 respect to their privacy.

14 61. Moreover, since Plaintiffs and the Retention Class purchased cable services from
15 Comcast, and Comcast was obligated to comply with CCPA, Comcast’s failure to destroy their
16 PII deprived them of the full value of the services that they bargained and paid for. Because
17 Plaintiffs and the Retention Class ascribe monetary value to their ability to control their PII,
18 Plaintiffs and the Retention Class have sustained, and continue to sustain, monetary and
19 economic injuries as a direct and proximate result of Comcast’s violation of 47 U.S.C. § 551.

20 62. Plaintiffs’ and the Retention Class’ PII constitutes personal property. Comcast’s
21 failure to comply with 47 U.S.C. § 551 has also deprived Plaintiffs and the Retention Class of the
22 opportunity to control that personal property for its own financial gain. Accordingly, Plaintiffs
23 and the Retention Class have sustained, and continue to sustain, monetary and economic injuries
24 as a direct and proximate result of Comcast’s violation of 47 U.S.C. § 551.

25 63. CCPA provides a private right of action to consumers who have been aggrieved
26 by a violation of 47 U.S.C. § 551. Specifically, any person aggrieved by any act of a cable
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1 operator violating 47 U.S.C. § 551 may recover “actual damages but not less than liquidated
2 damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is
3 higher.” 47 U.S.C. § 551(f)(2)(A).

4 64. In addition, any person aggrieved by any act of a cable operator violating 47
5 U.S.C. § 551 may recover punitive damages and “reasonable attorneys’ fees and other litigation
6 costs reasonably incurred.” 47 U.S.C. § 551(f)(2)(B)&(C).

7 65. Plaintiffs, on behalf of themselves and the Retention Class, therefore seek redress
8 as provided by 47 U.S.C. § 551, including liquidated damages to the full extent permitted by
9 CCPA, punitive damages, and reasonable attorneys’ fees and other litigation costs.

10 COUNT II

11 **Failure to Provide Adequate Notice** 12 **Violation of § 551(a) of the Cable Communications Policy Act** 13 **(On Behalf of the Notice Class)**

14 66. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1-54 as
15 though fully set forth herein.

16 67. After the termination of services, Comcast continued to maintain Plaintiffs’ PII
17 and the PII of each of the members of the Notice Class.

18 68. Plaintiffs and each of the members of the Notice Class did not receive a yearly
19 privacy notice from Comcast as required under CCPA.

20 69. The foregoing conduct violates 47 U.S.C. § 551(a).

21 70. Plaintiffs and the Notice Class have suffered injuries as a result of Comcast’s
22 violation of 47 U.S.C. § 551. Comcast’s failure to issue annual notices under CCPA, as required
23 47 U.S.C. § 551, constitutes injury in the form of a direct invasion of the federally protected
24 privacy rights of Plaintiffs and the Notice Class. In addition, Comcast’s failure to comply with
25 CCPA has deprived Plaintiffs and the Notice Class of their ability to make informed decisions
26 with respect to their privacy.

27 71. Moreover, since Plaintiffs and the Notice Class purchased cable services from
28 Comcast, and Comcast was obligated to comply with CCPA, Comcast’s failure to issue the

1 requisite annual notices deprived them of the full value of the services that they bargained and
2 paid for. Because Plaintiffs and the Notice Class ascribe monetary value to their ability to
3 control their PII, Plaintiffs and the Notice Class have sustained, and continue to sustain,
4 monetary and economic injuries as a direct and proximate result of Comcast's violation of 47
5 U.S.C. § 551.

6 72. Plaintiffs' and the Notice Class' PII constitutes personal property. Comcast's
7 failure to comply with 47 U.S.C. § 551 has also deprived Plaintiffs and the Notice Class of the
8 opportunity to control that personal property for their own financial gain. Accordingly, Plaintiffs
9 and the Notice Class have sustained, and continue to sustain, monetary and economic injuries as
10 a direct and proximate result of Comcast's violation of 47 U.S.C. § 551.

11 73. CCPA provides a private right of action to consumers who have been aggrieved
12 by a violation of 47 U.S.C. § 551. Specifically, any person aggrieved by any act of a cable
13 operator violating 47 U.S.C. § 551 may recover "actual damages but not less than liquidated
14 damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is
15 higher." 47 U.S.C. § 551(f)(2)(A).

16 74. In addition, any person aggrieved by any act of a cable operator violating 47
17 U.S.C. § 551 may recover punitive damages and "reasonable attorneys' fees and other litigation
18 costs reasonably incurred." 47 U.S.C. § 551(f)(2)(B)&(C).

19 75. Plaintiffs, on behalf of themselves and the Notice Class, therefore seeks redress as
20 provided by 47 U.S.C. § 551, including liquidated damages to the full extent permitted by
21 CCPA, punitive damages, and reasonable attorneys' fees and other litigation costs.

22 **COUNT III**

23 **Violation of the California Customer Records Act,** 24 **Cal.Civ.Code § 1798.80, et seq.** 25 **(On Behalf of the California State Class)**

26 76. Plaintiff Cook ("Plaintiff" for purposes of this Count III) adopts and incorporates
27 by reference paragraphs 1-54 of this Complaint as if fully set forth herein.

28 77. The California Customer Records Act ("CCRA") provides, in pertinent part, that

1 A business shall take all reasonable steps to dispose, or arrange for
2 the disposal, of customer records within its custody or control
3 containing personal information when the records are no longer to
4 be retained by the business by (a) shredding, (b) erasing, or (c)
otherwise modifying the personal information in those records to
make it unreadable or indecipherable through any means.

5 Cal.Civ.Code § 1798.81.

6 78. Under the CCRA, “personal information” is defined as

7 any information that identifies, relates to, describes, or is capable
8 of being associated with, a particular individual, including, but not
9 limited to, his or her name, signature, social security number,
10 physical characteristics or description, address, telephone number,
11 passport number, driver’s license or state identification card
12 number, insurance policy number, education, employment,
employment history, bank account number, credit card number,
debit card number, or any other financial information, medical
information, or health insurance information[.]

13 Cal.Civ.Code § 1798.80 (emphasis added).

14 79. Plaintiff and the other members of the California State Class cancelled their
15 subscription to and no longer use Comcast’s services. Therefore, Comcast no longer has any
16 reason to retain the sensitive personal information of Plaintiff and the California State Class.
17 Nonetheless, Comcast has continued to retain this personal information in its records.

18 80. In addition, on information and belief, Comcast has not taken a single step toward
19 shredding, erasing, encrypting, or otherwise modifying Plaintiff’s and the California State Class’
20 personal information so as to make it unreadable or undecipherable by others.

21 81. Plaintiff and the California State Class have suffered injuries as a result of
22 Comcast’s violation of the CCRA. Comcast’s failure to destroy their PII as required by the
23 CCRA constitutes injury in the form of a direct invasion of their statutory rights. In addition,
24 Comcast’s failure to comply with the CCRA has deprived Plaintiff and the California State Class
25 of their ability to make informed decisions with respect to their privacy.

26 82. Moreover, since Plaintiff and the California State Class purchased cable services
27 from Comcast, and Comcast was obligated to comply with the CCRA, Comcast’s failure to
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1 destroy their PII deprived them of the full value of the services that they bargained and paid for.
2 Because Plaintiff and the California State Class ascribe monetary value to their ability to control
3 their PII, Plaintiff and the California State Class have sustained, and continue to sustain,
4 monetary and economic injuries as a direct and proximate result of Comcast's violation of the
5 CCRA.

6 83. Plaintiff's and the California State Class' PII constitutes personal property.
7 Comcast's failure to comply with the CCRA has also deprived Plaintiff and the California State
8 Class of the opportunity to control that personal property for its own financial gain.
9 Accordingly, Plaintiff and the California State Class have sustained, and continue to sustain,
10 monetary and economic injuries as a direct and proximate result of Comcast's violation of the
11 CCRA.

12 84. The CCRA provides a private right of action to consumers. Specifically, it states
13 that "[a]ny customer injured by a violation of this title may institute a civil action to recover
14 damages." Cal.Civ.Code § 1798.84(b). In addition, the CCRA provides that "any business that
15 violates, proposes to violate, or has violated this title may be enjoined." Cal.Civ.Code §
16 1798.84(e).

17 85. Plaintiff, on her own behalf and on behalf of the other members of the California
18 State Class, seeks judgment in her favor and against Comcast, and awarding her and the other
19 members of the California State Class injunctive relief and the maximum damages available
20 under Cal.Civ.Code § 1798.84.

21 COUNT IV

22 **Breach of Implied Contract** 23 **(On Behalf of the California State Class)**

24 86. Plaintiff Cook ("Plaintiff" for purposes of this Count IV) adopts and incorporates
25 by reference paragraphs 1-65 and 76-85 of this Complaint as if fully set forth herein.
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1 87. Those who subscribed to Comcast's cable service, including Plaintiff, were
2 required by Comcast to provide their social security number, address, phone number, and credit
3 card and debit card information.

4 88. In providing this personal data to Comcast, Plaintiff and other members of the
5 California State Class entered into an implied contract with Comcast (the "Contract"). Pursuant
6 to the Contract, Comcast became obligated to safeguard this data through all reasonable
7 measures. This obligation includes complying with industry standards.

8 89. The industry standard applicable to the credit-card transaction described above is
9 set forth in Requirement 3.1 of the Data Security Standard (DSS) promulgated by the Payment
10 Card Industry Security Standards Council. Specifically, that standard requires the merchants to
11 implement the following security measures:

12 Keep cardholder data storage to a minimum by implementing data retention and
13 disposal policies, procedures and processes, as follows.

14 Implement a data retention and disposal policy that includes:

- 15 • Limiting data storage amount and retention time to that which is required
 for legal, regulatory, and business requirements
- 16 • Processes for secure deletion of data when no longer needed
- 17 • Specific retention requirements for cardholder data
- 18 • A quarterly automatic or manual process for identifying and securely
 deleting stored cardholder data that exceeds defined retention
 requirements[.]¹⁴

19 90. Comcast breached its Contract with consumers by failing to adopt and comply
20 with the foregoing industry-standard practices, and by failing to destroy PII after the information
21 is no longer necessary for the purpose for which it was collected.

22 91. In addition, because the laws existing at the time and place of the making of the
23 Contract are and were incorporated into the Contract, the Contract included obligations for the
24 parties to abide by all applicable laws, including CCPA and the CCRA.

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27 ¹⁴ PCI Security Standards Council LLC, Navigating PCI DDS: Understanding the Intent of the
Requirements, v2.0 (October 2010), p. 20.

1 92. Plaintiff and the California State Class performed their obligations under the
2 Contract by paying the consideration owed to Defendant for the provision of cable service, and
3 by complying with all applicable laws then in force.

4 93. Comcast's failure to perform its contractual obligations imposed by CCPA and
5 the CCRA – i.e., the timely destruction of consumers' PII – constitutes a material breach of the
6 Contract.

7 94. Plaintiff and the California State Class have suffered actual damages as a result of
8 Comcast's breach in the form of the value Plaintiff and the California State Class ascribe to the
9 confidentiality and timely destruction of their PII. This amount is tangible and can be calculated
10 at trial.

11 95. Further, a portion of the services purchased by Plaintiff and the California State
12 Class were intended to pay for Comcast's costs in timely destroying its customers' PII, as
13 required by CCPA and the CCRA.

14 96. Because Plaintiff and the California State Class were denied of services that they
15 bargained and paid for and were entitled to receive—i.e., confidentiality of their PII and timely
16 destruction of same—Plaintiff and the California State Class incurred actual monetary damages
17 in that they overpaid for the services they bargained for.

18 97. Accordingly, Plaintiff and the California State Class seek an order declaring that
19 Comcast's conduct constitutes a breach of contract, and awarding Plaintiff and the California
20 State Class damages in an amount to be calculated at trial.

21 **COUNT V**

22 **Violation of Cal. Penal Code § 637.5**
23 **(On Behalf of the California State Class)**

24 98. Plaintiff Cook ("Plaintiff" for purposes of this Count V) adopts and incorporates
25 by reference paragraphs 1-54 of this Complaint as if fully set forth herein.

26 99. Section 637.5 of the California Penal Code provides in pertinent part:
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1 Individual subscriber viewing responses or other individually
2 identifiable information derived from subscribers *may be retained*
3 *and used by a satellite or cable television corporation only to the*
4 *extent reasonably necessary for billing purposes and internal*
5 *business practices, and to monitor for unauthorized reception of*
6 *services.* A satellite or cable television corporation may compile,
7 maintain, and distribute a list containing the names and addresses
8 of its subscribers if the list contains no other individually
9 identifiable information and if subscribers are afforded the right to
10 elect not to be included on the list. However, a satellite or cable
11 television corporation shall maintain adequate safeguards to ensure
12 the physical security and confidentiality of the subscriber
13 information.

14 Cal. Penal Code § 637.5(b) (emphasis added).

15 100. If a cable operator violates the above section of the California Penal Code, the
16 subscriber may assert a private right of action for invasion of privacy. Section 637.5 provides in
17 pertinent part:

18 Any aggrieved person may commence a civil action for damages
19 for invasion of privacy against any satellite or cable television
20 corporation, service provider, or person that leases a channel or
21 channels on a satellite or cable television system that violates the
22 provisions of this section.

23 Cal. Penal Code § 637.5(i) (the "California Penal Code").

24 101. Plaintiff and the other members of the California State Class cancelled their
25 subscription to and no longer use Comcast's services. Therefore, Comcast no longer has any
26 reason to retain the sensitive personal information of Plaintiff and the California State Class.
27 Nonetheless, Comcast has continued to retain this personal information in its records.

28 102. In addition, on information and belief, Comcast has not taken a single step toward
shredding, erasing, encrypting, or otherwise modifying Plaintiff's and the California State Class'
personal information so as to make it unreadable or undecipherable by others.

103. Plaintiff and the California State Class have suffered injuries as a result of
Comcast's violation of the California Penal Code. Comcast's failure to destroy their PII as
required by the California Penal Code constitutes injury in the form of a direct invasion of their
statutory rights. In addition, Comcast's failure to comply with the California Penal Code has

1 deprived Plaintiff and the California State Class of their ability to make informed decisions with
2 respect to their privacy.

3 104. Moreover, since Plaintiff and the California State Class purchased cable services
4 from Comcast, and Comcast was obligated to comply with the California Penal Code, Comcast's
5 failure to destroy their PII deprived them of the full value of the services that they bargained and
6 paid for. Because Plaintiff and the California State Class ascribe monetary value to their ability
7 to control their PII, Plaintiff and the California State Class have sustained, and continue to
8 sustain, monetary and economic injuries as a direct and proximate result of Comcast's violation
9 of the California Penal Code.

10 105. Plaintiff's and the California State Class' PII constitutes personal property.
11 Comcast's failure to comply with the CCRA has also deprived Plaintiff and the California State
12 Class of the opportunity to control that personal property for its own financial gain.
13 Accordingly, Plaintiff and the California State Class have sustained, and continue to sustain,
14 monetary and economic injuries as a direct and proximate result of Comcast's violation of the
15 California Penal Code.

16 106. Plaintiff, on her own behalf and on behalf of the other members of the California
17 State Class, seeks judgment in her favor and against Comcast, and awarding her and the other
18 members of the California State Class injunctive relief and the maximum statutory damages
19 available under California Penal Code.

20 VII. JURY DEMAND

21 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by
22 jury of all claims in this Complaint so triable.

1 **VIII. REQUEST FOR RELIEF**


2 WHEREFORE, Plaintiffs, individually and on behalf of the other members of the Classes
3 proposed in this Complaint, respectfully request that the Court enter an Order awarding the
4 following relief:

- 5 A. Declaring that this action may be maintained as a class action, and certifying the
6 Classes as requested herein;
- 7 B. Enjoining Comcast from the unlawful practices and statutory violations asserted
8 herein;
- 9 C. An Order awarding liquidated damages pursuant to CCPA;
- 10 D. An Order awarding punitive damages pursuant to CCPA;
- 11 E. An Order awarding compensatory damages pursuant to the California statutes and
12 common-law causes of action asserted herein;
- 13 F. An Order awarding attorneys' fees and costs pursuant to CCPA; and
- 14 G. Such other and further relief as may be just and proper.
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1 Dated: May 31, 2012

Respectfully submitted,

2 STEVE BAYER and KANDI COOK, on
3 behalf of themselves and all others similarly
4 situated,

5 By: 
6 One of the Attorneys for Plaintiffs
7 and the Proposed Putative Classes

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25 *Pro hac vice admittance to be sought

26 4814-3680-3087, v. 1

CIVIL COVER SHEET

Handwritten initials/signature in blue ink.

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

STEVE BAYER and KANDI COOK, on behalf of themselves and all others similarly situated

(b) County of Residence of First Listed Plaintiff Illinois (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address and Telephone Number) Todd C. Atkins (CASB 208879), Siprut PC, 701 B Street, Suite 1170, San Diego, CA 92101, 619-255-2380

DEFENDANTS

COMCAST CABLE COMMUNICATIONS, LLC

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

JCS Attorneys (If Known)

E-filing

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status. Includes categories like Citizen of This State, Citizen of Another State, Foreign Nation, etc.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with multiple columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 47 USC section 551

Brief description of cause: Unlawful retention of personal identification information

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

DATE 05/31/2012

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature in blue ink.

ORIGINAL