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SUPREME COURT OF THE STATE OF NEW YORK	
COUNTY OF NASSAU	
X	

JEFFERY BARD and IRWIN BARD individually and on behalf of all others similarly situated Plaintiffs,

INDEX NO._____

Plaintiffs,

v.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CABLEVISION SYSTEMS CORPORATION, CSC HOLDINGS, LLC, CABLEVISION SYSTEMS LONG ISLAND CORPORATION, CABLEVISION SYSTEMS NEW YORK CITY CORPORATION, CABLEVISION SYSTEMS SUFFOLK CORPORATION, and CABLEVISION SYSTEMS HUNTINGTON CORPORATION,

Defendants.

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Plaintiffs Jeffery Bard and Irwin Bard (collectively "Plaintiffs"), by and through their attorneys, Napoli, Bern, Ripka & Shkolnik, LLP, on behalf of themselves and all others similarly situated (collectively the "Class"), hereby complain of defendants Cablevision Systems Corporation, Cablevision Systems Long Island Corporation, Cablevision Systems New York City Corporation, Cablevision Systems Suffolk Corporation, Cablevision Systems Huntington Corporation, and CSC Holdings, LLC ("CSC" and collectively with all other Cablevision Systems Corporation defendants, "Cablevision" or "Defendants") and allege upon information and belief as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this action as a class action on behalf of all Cablevision service subscribers who were affected by "Hurricane Sandy" related outage of certain services including television, internet and/or telephone. This action seeks recovery of monies paid to Cablevision

in consideration of cable services and damages for Cablevision's failure to provide services in violation of its contractual obligation to its customers. Additionally, Cablevision advertised that it offered such services it failed to provide to its customers. More specifically, this class action seeks restitution for all Cablevision customers who have lost any services as a result of "Hurricane Sandy" related outages regardless of whether they affirmatively seek such return of monies paid. Further, this class action seeks injunctive relief prohibiting Cablevision from billing, invoicing, charging or in any way seeking payment for services not provided due to "Hurricane Sandy" related outages.

JURISDICTION

- 2. Jurisdiction is proper under New York Civil Practice Laws and Rules ("CPLR") §301. This Court has personal jurisdiction over Defendants in that Defendants' principal place of business is located in New York and continually conducts business within the State of New York.
 - 3. Venue is proper under CPLR §503.

PARTIES

A. Plaintiffs and Proposed Class Members

- 4. Jeffery Bard is a citizen of the State of New York and resides in Suffolk County in city of Huntington and is a subscriber of Cablevisions' "Triple Play" package.
- 5. Irwin Bard is a citizen of the State of New York and resides in Nassau County in city of Oyster Bay and is a subscriber of Cablevisions' services.
- 6. The Class consists of all Cablevision customers as of October 29, 2012, the date of "Hurricane Sandy" and the subsequent loss of services related to this tragedy. Class plaintiffs are all Cablevision customers who reside within the State of New York.

B. Cablevision

- 7. Defendant CSC Holdings, LLC is a corporation organized under the laws of Delaware and registered to do business in the State of New York, with its principal office located at 1111 Stewart Avenue, Bethpage, New York 11714. CSC is a subsidiary of Cablevision and it owns and controls Cablevision's cable television, Internet and telephone operating subsidiaries.
- 8. Cablevision Systems Corporation is a corporation created and existing under the laws of the State of Delaware, with headquarters located at 1111 Stewart Avenue, Bethpage, New York 11714.
- 9. Cablevision Systems Long Island Corporation, is a corporation created and existing under the laws of the State of New York, with headquarters located at 1111 Stewart Avenue, Bethpage, New York 11714.
- 10. Cablevision Systems New York City Corporation, is a corporation created and existing under the laws of the State of Delaware, with headquarters located at 1111 Stewart Avenue, Bethpage, New York 11714.
- 11. Cablevision Systems Suffolk Corporation, is a corporation created and existing under the laws of the State of New York, with headquarters located at 1111 Stewart Avenue, Bethpage, New York 11714.
- 12. Cablevision Systems Huntington Corporation, is a corporation created and existing under the laws of the State of New York, with headquarters located at 1111 Stewart Avenue, Bethpage, New York 11714.
- 13. Cablevision cable television and Internet revenues are in excess of \$4 billion annually, which produces and distributes media content to hundreds of millions of consumers worldwide.

- 14. According to Cablevision, it operates the nation's largest cable cluster, including more than five million households and businesses in the New York and Philadelphia metropolitan broadcasting areas. In certain locations, Cablevision is the only available provider of cable services.
- 15. In addition to the News 12 and MSG Varsity television networks, which Cablevision owns and operates, its subsidiary Rainbow Media Holdings ("Rainbow") owns and operates television networks AMC, IFC, Sundance Channel and WEtv and IFC Entertainment, a film production company.
- 16. Cablevision is a leading telecommunications and media company with a portfolio of operations that includes a full suite of advanced digital television, voice and high-speed Internet services, valuable local media and programming properties, and movie theatres.
- 17. Cablevision was founded in 1973 as a cable television operator with 1,500 Long Island customers. Today, Cablevision is one of the largest cable operators in the United States based on the number of video subscribers. As of December 31, 2011, it served approximately 3.25 million video customers in and around the New York metropolitan area and in Montana, Wyoming, Colorado and Utah.
- 18. Cablevision claims to offer advanced digital television, voice and high-speed Internet services to millions of households and businesses in the New York metropolitan area and throughout four Western states. Cablevision's Optimum®-branded communications services include Optimum TV® digital cable TV (known as Optimum TV in the West), Optimum Voice® home phone and Optimum Online® high speed Internet.
- 19. In the New York tri-state area, Cablevision's telecommunications properties also consist of Optimum WiFi®, the nation's largest wireless Internet network, and Optimum

Lightpath®, a leading provider of integrated business communications solutions that meets the needs of larger companies.

20. Optimum Features digital television, high-speed Internet access and digital voice for residential customers. Optimum Lightpath Develops customized, commercial telecommunications services and solutions for medium- and large-size businesses, including hospitals and schools, throughout the New York tri-state area. Optimum Business Consists of our Optimum family of products tailored to small and medium-sized businesses. CSC's telecommunications services include cable television business, including video, high speed data, and VoIP operations and the operations of the commercial data and voice services provided by Optimum Lightpath.

BACKGROUND FACTS

- 21. Prior to October 29, 2012, the Class each individually contracted with Cablevision to receive cable television, Internet and/or telephone services from Cablevision.
- 22. Cablevision advertised and/or otherwise represented that it would provide certain television, Internet, and/or telephone services.
- 23. Even during the service outages due to "Hurricane Sandy", Cablevision continued to advertise falsely that it was providing services to its customers.
- 24. As a result of "Hurricane Sandy" and the wide spread destruction that occurred, Cablevision could not provide the services it advertised or contracted to provide.
- 25. As a result of "Hurricane Sandy" and the wide spread destruction that occurred Cablevision repeatedly and uniformly made assurances to customers it would restore services as soon as possible.

- 26. As a result of "Hurricane Sandy" and the wide spread destruction that occurred Cablevision could not restore services to many of its customers for days, or even weeks.
- 27. As a result of "Hurricane Sandy" and the wide spread destruction that occurred Cablevision knowingly continued to issue invoices, seek payment, bill and otherwise demand payment of its customers for services it knowingly could not provide.
- 28. As a result of "Hurricane Sandy" and the wide spread destruction that occurred Cablevision failed to restore services to customers and instituted a secretive policy to offer "customer credits' only to customers who affirmatively and actively demanded rebates on a discretionary basis.
- 29. Cablevision knowingly failed to provide across the board rebates to all customers affected by service outages.
- 30. Cablevision can, and does, monitor each and every customer account and service. Cablevison knows:
 - (a) The identity of each customer who lost services;
 - (b) The extent of service loss for each customer;
 - (c) The amount owed to each customer for service outages due to "Hurricane Sandy" damages;
 - (d) The exact time service was lost;
 - (e) The exact time service was restored;
 - (f) The specific service that was not provided to each class member; and
 - (g) The exact amount it has overbilled each class member

- 31. Cablevision has knowingly billed customers, and more specifically the Class while refusing to make restitution to all of its customers for this substantial and material interruption of service unless the customer affirmatively takes steps to recover overpayments.
- 32. Pursuant to its own terms of service, Cablevision had promised to give each customer a credit for each "known program or service interruption in excess of 24 consecutive hours. . ." See Agreement for iO TV, ¶ 4 (available at http://www.optimum.net/Terms/iO).
- 33. While Cablevision's terms of service disavow liability for disruptions of "service resulting in part or entirely from circumstances beyond Cablevision's reasonable control," *Id.*, this storm and its resulting damages should have placed Cablevision on notice that it should not bill customers, and more specifically Class, during service outages and immediately return any overpayments.
- 34. To date, Cablevision has refused to offer any other refund or credit to the Class as a whole, and instead only provided refunds to customers that affirmatively and actively demanded rebates on a discretionary basis.
- 35. Notwithstanding that all Cablevision customers are similarly situated with respect to the "Hurricane Sandy" outages, Cablevision has only agreed to rebate some of its most favored customers on a discretionary basis and in varying amounts, and only after the customers' contacted Cablevision for the rebate.
- 36. Upon information and belief for certain customers who have called to disconnect their service because of the interruption, Cablevision has been far more generous, and has offered greater credits.

CLASS ACTION ALLEGATIONS

37. Plaintiffs, repeat, reiterate, and re-allege each and every allegation set forth in the prior paragraphs with the same force and effect as though set forth fully herein.

- 38. Plaintiffs bring this Class action pursuant to CPLR §901, on behalf of themselves and all other similarly situated customers who contracted with Cablevision prior to October 29, 2012, to receive cable television, Internet and/or telephone service on or after October 29, 2012.
- 39. Excluded from the Class are Defendants and its affiliates, parents, subsidiaries, employees, officers, agents, and directors; government entities or agencies, its affiliates, employees, officers, agents, and directors in their governmental capacities; any judicial officer presiding over this matter and the members of their immediate families and judicial staff; and class counsel.
- 40. As provided in CPLR §901(a)(1), the proposed Class "is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable."
- 41. As provided in CPLR §901(a)(2), "there are questions of law or fact common to the Class which predominate over any questions affecting only individual members." Specifically, the common questions of fact or law include whether, (i) whether Cablevision breached its agreements with the Class; (ii) whether Cablevision has been unjustly enriched at the Class expense; (iii) the damages to which the Class are entitled for Cablevision's substantial and material interruption of service; and (iv) whether Cablevision should be enjoined from employing its negotiating strategies at the expense of its customers in the future.
- 42. As provided in CPLR §901(a)(3), the proposed lead plaintiff representatives claims are typical of those of the proposed class because the proposed lead Plaintiffs are based upon the same legal theories. The proposed representative party's grievances, like the proposed class' grievances, all arise out of the same business practices and course of conduct of Defendants. Further, the Plaintiffs' damages arise out of a pattern of nearly identical and repetitive business practices conducted by the Defendants.

- 43. As provided by CPLR §901(a)(4), the representative Plaintiffs can adequately represent the class. No conflict of interest exists between the representatives and the class members or with respect to the claims for relief requested.
- 44. The representatives and their chosen attorneys are familiar with the subject matter of the lawsuit and have full knowledge of the allegations contained in this complaint so as to be able to assist in its prosecution. In addition, the representative's attorneys are competent in the relevant areas of the law and have sufficient experience to vigorously represent the Class. Furthermore, the resources available to counsel ensure that the litigation will not be hampered by a lack of financial capacity. Plaintiffs' attorneys have sufficient financial resources and are willing to absorb the costs of the litigation.
- 45. As provided by CPLR § 901(a)(5), a class action is superior to any other available methods for adjudicating this controversy. The proposed class action is the surest way to fairly and expeditiously compensate so large a number of injured persons; to ensure Defendants are enjoined from further engaging in this wrongful widespread business practice; to keep the courts from becoming paralyzed by hundreds, perhaps thousands of repetitive cases, and; to reduce transaction costs so that the injured Class can obtain the most compensation possible, class treatment presents a superior mechanism for fairly resolving similar issues and claims without repetitious and wasteful litigation.

AS AND FOR A FIRST CAUSE OF ACTION

(Breach of Contract)

46. Plaintiffs, repeat, reiterate, and re-allege each and every allegation set forth in the prior paragraphs with the same force and effect as though set forth fully herein.

- 47. Pursuant to its contract maintained with each Class member, Cablevision is required to (i) provide the television, Internet and/or telephone services to each member of the Class; and (ii) give each of the members of the Class a credit on account of any interruption of service.
- 48. Cablevision failed to (i) provide services; or (ii) provide any credit to each member of the Class for the substantial and material interruption of services related to "Hurricane Sandy" destruction of cable systems. As a result, Cablevision has breached its contract with its customers.
- 49. The Class members have suffered damages as a result of Cablevision's breach of contract.

AS AND FOR A SECOND CAUSE OF ACTION

(Unjust Enrichment)

- 50. Plaintiffs, repeat, reiterate, and re-allege each and every allegation set forth in the prior paragraphs with the same force and effect as though set forth fully herein.
- 51. The members of the Class paid Cablevision with the reasonable expectation if they pay for services that they would receive full, uninterrupted services for the period during which they made payment.
- 52. Cablevision knew, or reasonably should have known, that it would not be able to provide such service to the Class.
- 53. Cablevision, nonetheless, accepted the Class members' payments without making restitution for the substantial and material interruption of services.
- 54. Each of the members of the Class has suffered damages as a result of Cablevision's conduct.

AS AND FOR A THIRD CAUSE OF ACTION

(Injunctive Relief)

- 55. Plaintiffs, repeat, reiterate, and re-allege each and every allegation set forth in the prior paragraphs with the same force and effect as though set forth fully herein.
- 56. Injunctive relief is appropriate under CPLR §6301. Defendants are, are procuring, or suffering to be done, an act in violation of the proposed class's rights respecting the subject matter of the action. Plaintiffs and the proposed class are entitled to a judgment restraining Defendants from the commission and continuance of billing during service outages and immediately return any overpayments.
- 57. Plaintiffs and the members of the proposed class have made a clear showing of the likelihood of the merits because Defendants' policy and general business practice of billing customers for services not provided is contrary to the customers' contracts and are unjust under New York law.
- 58. Plaintiffs and the members of the proposed class will and continue to suffer irreparable harm through Defendants' unlawful retention of monies owed to its customers. Allowing Defendants to continue their wrongful practice increases the complexity of the analysis required to determine the monies owed to Class members causing irreparable harm.
- 59. The balance of equities favors the members of the proposed Class because it would be inequitable to allow Defendants to, as a matter of business practice, charge clients, some of whom have lost their homes and are displaced due to "Hurricane Sandy", to continue to hold and enjoy profits from who have lost so much and without providing any services in exchange.

60. The injunction is in the public interest to prevent and restrain Defendants from

continuing its wrongful billing business practices.

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class seek judgment

as follows:

(a) awarding each of the Class members damages, plus interest, costs and attorneys' fees;

(b) entering permanent restraints, directing that Cablevison cease any future attempts to

bill, invoice, or charge customers for periods where there is service outages greater than

24 hours;

(c) awarding punitive damages;

(d) awarding Plaintiffs attorneys' fees and costs incurred in prosecuting this action; and

(h) granting Plaintiffs such other and further relief as the Court deems just and equitable.

JURY DEMAND

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

Dated: November 13, 2012

New York, New York

Respectfully submitted,

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