

1 Ray E. Gallo (SBN 158903)
2 rgallo@gallo.law
3 Dominic Valerian (SBN 240001)
4 dvalerian@gallo.law
5 GALLO LLP
6 1299 Fourth St., Suite 505
7 San Rafael, CA 94901
8 Telephone: 415.257.8800

9 Hank Bates (SBN 167688)
10 hbates@cbplaw.com
11 CARNEY, BATES & PULLIAM, PLLC
12 519 West 7th Street
13 Little Rock, AR 72201
14 Telephone: 501.312.8500

15 Attorneys for Plaintiff

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF ALAMEDA

18 Brandon Hodges, for himself, and all
19 others similarly situated,

20 Plaintiff,

21 vs.

22 Comcast Cable Communications, LLC, a
23 Delaware limited liability company; and
24 Does 1-50, inclusive,

25 Defendants

Case No. Rg18893764
CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF BASED ON:**

1. Violation of 47 U.S.C. § 551(a)
2. Violation of 47 U.S.C. § 551(b)
3. Violation of 47 U.S.C. § 551(d)
4. Violation of Cal. Pen. Code § 637.5(a)(1)
5. Violation of Cal. Pen. Code § 637.5(d)
6. Violation of Bus. & Prof. Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

**ENDORSED
FILED
ALAMEDA COUNTY**

FEB 21 2010

**CLERK OF THE SUPERIOR COURT
By TANIA PIERCE
Deputy**

BY FAX

1 Plaintiff, for himself and all others similarly situated, complains as follows:

2 1. This is a California class action against Comcast Cable Communications, LLC
3 (“Comcast”), the nation’s largest cable provider, for violating cable television subscribers’
4 statutory privacy rights.

5 2. The allegations herein that relate to Plaintiff’s personal actions are made based on
6 his personal knowledge. The balance are made on information and belief based on the
7 investigation of counsel.

8 **Parties**

9 3. Plaintiff Brandon Hodges is, and at all relevant times was, an individual residing in
10 Oakland, California.

11 4. Defendant Comcast Cable Communications, LLC is a Delaware limited liability
12 company with its principal place of business in Philadelphia, Pennsylvania.

13 5. Plaintiff is unaware of the true identities of those Defendants sued herein as Does 1
14 through 50, inclusive, and therefore sue such Defendants by these fictitious names. Plaintiff will
15 seek leave of Court to amend this Complaint to identify these fictitiously named Defendants when
16 identified. Each fictitiously named Defendant is liable in some manner for the injuries and
17 damages alleged by Plaintiff.

18 **Venue**

19 6. Venue is proper in this county under Code of Civil Procedure § 395 because
20 Plaintiff Brandon Hodges resides in Alameda County and his contract with Comcast was to be
21 performed in Alameda County.

22 **Comcast’s Collection of Personally Identifiable Information**

23 7. Comcast’s cable system automatically, generates, transmits, and collects data about
24 subscribers’ cable television viewing activity (“video activity data”), including which channels,
25 programs, and advertisements subscribers view and for how long.¹

26
27 ¹ Comcast Customer Privacy Notice, Updated January 1, 2018, § I. Collection of Information,
28 Information We Collect When You Use The Services, <https://www.xfinity.com/corporate/customers/policies/customerprivacy> (last visited Feb. 19, 2018).

1 8. Comcast disclosures show that the video activity data Comcast collects is
2 personally identifiable information (“PII”) under 47 U.S.C. § 551 and individually identifiable
3 information (“III”) under Cal. Pen. Code § 637.5(f)(2):

4 a. The Comcast Customer Privacy Notice in place from August 1, 2015 to
5 January 1, 2018 acknowledged that Comcast may “combine information
6 about, [the subscriber’s] use of [Comcast’s] cable services with other
7 information [Comcast] obtain[s] from [its] business records (such as [the
8 subscriber’s] Comcast account number or device identifiers), or from third
9 parties, to deliver better and more relevant products, services and
10 advertising.” Video activity data linked to an account number or device
11 identifier is PII because Comcast can identify the subscriber associated with
12 the video activity data from its records linking account numbers and device
13 identifiers with specific subscribers.

14 b. Comcast touts its ability to target viewers and measure purchasing behavior
15 at the household level through its addressable advertising service. With this
16 service, Comcast lets advertisers direct advertising to specific subscribers
17 by name or characteristics. To help measure the efficacy of the addressable
18 advertisements, Comcast provides household level advertisement exposure
19 data to a “third-party matching agent” such as Experian, which combines
20 Comcast’s video activity data with household-level purchasing data.² For
21 the third-party matching agent to link Comcast’s household-level
22 advertisement exposure data with the advertiser’s purchasing data, the
23 matching agent needs a unique identifier from Comcast and the advertiser
24 (or its data provider). Comcast cannot provide such a unique identifier
25 unless the advertisement exposure data it collects is personally identifiable.

26
27 ² Sam Thielman, *Comcast to Tap Set-Top Data for Advanced Advertising Service*, Adweek, Jan.
28 30, 2014, [http://www.adweek.com/tv-video/comcast-tap-set-top-data-advanced-advertising-
service-155335/](http://www.adweek.com/tv-video/comcast-tap-set-top-data-advanced-advertising-service-155335/) (last visited Feb. 19, 2018).

9. Comcast also collects personally identifiable demographic data about its subscribers, including their age, gender, presence and age of children, education, occupation, ethnicity, marital status, household size, property ownership, mortgage/loan/insurance data, automotive ownership, general interests, magazine subscriptions, and wealth/financial status.³ This data is personally identifiable because it is linked to and concerns a particular subscriber. Comcast maintains this information in its audience database and uses it for a variety of advertising purposes including, *inter alia*, measuring the popularity of programs among subscribers based on their characteristics and targeting advertisements to specific households and groups of households based on their characteristics.

Statutory Violations

10. Comcast’s treatment of personally identifiable video activity data and demographic data violates several provisions of the Cable Communications Policy Act of 1984 (the “Cable Act”), 47 U.S.C. § 521 *et seq.* Comcast is subject to the Cable Act’s protections for subscriber privacy set forth in 47 U.S.C. § 551 because it is a “cable operator” as the term is defined in 47 U.S.C. § 551(a)(2)(C).

11. The Cable Act requires cable operators to provide written notice to their subscribers, upon contracting and annually thereafter, “which clearly and conspicuously informs the subscriber of—”, among other things, “the period during which [PII collected ... with respect to the subscriber] will be maintained by the cable operator....” 47 U.S.C. § 551(a)(1). Throughout the relevant period, Comcast’s Privacy Notice has failed to clearly and conspicuously tell subscribers how long Comcast would maintain their personally identifiable information, including video activity data and demographic data. Instead, the Privacy Notice opaquely states that Comcast maintains information that personally identifies the subscriber while he or she subscribes to one or more of Comcast’s services and for a period of time after the subscriber no longer subscribes to a Comcast service “if the information is necessary for the purposes for which it was

³ Comcast Spotlight, Audience Intelligence: Data, <https://www.comcastspotlight.com/ad-solutions/overview/audience-intelligence-data> (last visited Feb. 19, 2018).

1 collected or to satisfy legal requirements.”⁴ This statement does not disclose how long Comcast
2 maintains subscribers’ PII.

3 12. The Cable Act requires that cable operators obtain the “written or electronic
4 consent of the subscriber concerned” prior to using the cable system to collect PII concerning any
5 subscriber (subject to certain inapplicable exceptions). 47 U.S.C. § 551(b). Comcast violated (and
6 continues to violate) this requirement by systematically and automatically collecting personally
7 identifiable video activity data from subscribers for advertising purposes without their prior
8 written or electronic consent.

9 13. The Cable Act requires cable operators to provide subscribers access to all PII
10 regarding themselves which the cable operator collected and maintains. 47 U.S.C. § 551(d).
11 Comcast does not provide cable subscribers who request access to their PII with a copy of all PII
12 regarding that subscriber that Comcast has collected and maintains. Rather, when subscribers
13 request access to the PII associated with their account, Comcast provides only the subscriber’s
14 name, partial social security number, address, and telephone number without providing any of the
15 video activity data or demographic data that Comcast maintains.

16 14. Comcast’s conduct also violates the California Invasion of Privacy Act (“CIPA”),
17 Cal. Penal Code § 630 *et seq.* Comcast is subject to CIPA’s cable subscriber privacy protections
18 set forth in Cal. Pen. Code § 637.5 because it is a “person” that owns, controls, operates, or
19 manages a “cable television corporation” as those terms are defined in Cal. Pen. Code § 637.5(f).

20 15. CIPA prohibits any “person who owns, controls, operates, or manages a ... cable
21 television corporation” from “us[ing] any electronic device to record, transmit, or observe any
22 events ... that take place inside a subscriber’s residence, workplace, or place of business, without
23 obtaining the express written consent of the subscriber.” Cal. Pen. Code § 637.5(a)(1). Comcast
24 violated and continues to violate this prohibition by using electronic devices—namely subscribers’
25

26 ⁴ Comcast Customer Privacy Notice, Updated January 1, 2018, § VII. Other Important
27 Information, Data Retention, [https://www.xfinity.com/corporate/customers/policies/
28 customerprivacy](https://www.xfinity.com/corporate/customers/policies/customerprivacy) (last visited Feb. 19, 2018).

1 cable boxes⁵—to record, transmit, and observe events that take place inside subscribers’
2 residences, including which channels, programs, and advertisements they watch and when they
3 watch them, without subscribers’ express written consent.

4 16. CIPA requires that “[u]pon a subscriber’s application for ... cable television
5 service, ... a ... cable television corporation shall provide the applicant with a separate notice in
6 an appropriate form explaining the subscriber’s right to privacy protection afforded by [Cal. Pen.
7 Code § 637.5].” Cal. Pen. Code § 637.5(e). Comcast does not provide a separate notice explaining
8 subscribers’ privacy rights under CIPA, but relies on the same Customer Privacy Notice it uses to
9 fulfill its Cable Act notice obligations to satisfy this requirement. Comcast’s Privacy Notice does
10 not satisfy this requirement because, *inter alia*, it is not separate from the notice Comcast provides
11 pursuant to the Cable Act and it does not inform subscribers of their privacy rights under CIPA,
12 including the protections of Cal. Pen. Code § 637.5(a)(1).

13 17. CIPA requires that “[a]ny individually identifiable subscriber information gathered
14 by a ... cable television corporation shall be made available for subscriber examination within 30
15 days of receiving a request by a subscriber to examine the information on the premises of the
16 corporation.” Cal. Pen. Code § 637.5(d). Comcast does not provide cable subscribers who request
17 access to their individually identifiable subscriber information with a copy of all of the
18 individually identifiable subscriber information that Comcast gathered. Rather, when subscribers
19 request access to their individually identifiable subscriber information, Comcast provides only the
20 subscriber’s name, partial social security number, address, and telephone number without
21 providing any of the video activity data that Comcast maintains.

22 18. Comcast is continuing to engage in all of the unlawful conduct alleged herein so
23 Plaintiff, Class members, and the general public face continuing, present adverse effects and
24 likelihood of future injury from Comcast’s conduct.

25 **Plaintiff**

26 19. Plaintiff Brandon Hodges subscribed to Comcast cable television service for his

27 ⁵ Plaintiff reserves the right to assert CIPA violations as to any further devices subsequently
28 disclosed or discovered.

residence in Oakland from in or about December 2015 to January 31, 2018.

20. When Plaintiff's Comcast cable television subscription began, and at least once a year thereafter, Comcast provided Plaintiff with a copy of its Customer Privacy Notice, which suffered from the above alleged deficiency.

21. Comcast never sought or obtained Plaintiff's electronic or written consent to collect his video activity data (personally identifiable or otherwise) using its cable system.

22. Upon the start of his cable subscription, Comcast provisioned Plaintiff with a set-top cable box. Plaintiff watched cable television using the set-top cable box during his cable subscription. Throughout Plaintiff's subscription to Comcast's cable television service, Comcast collected and maintained Plaintiff's personally identifiable video activity data and demographic data pursuant to the standardized practices alleged above.

23. Mr. Hodges requested that Comcast produce the PII associated with his account in or about November 2017. In response, Comcast provided Mr. Hodges with only his name, the last four digits of his social security number, his service address, and his telephone number.

24. Mr. Hodges, who is no longer a Comcast cable television subscriber, faces a threat of imminent or actual harm because, *inter alia*, Comcast continues to maintain and use his wrongfully obtained video activity data; Comcast is in continuing breach of its statutory duty to provide him with his PII and individually identifiable subscriber information; and he cannot make an informed decision about whether to subscribe to Comcast cable television in the future without knowing whether Comcast has ceased its unlawful practices.

Class Allegations

25. Pursuant to Code of Civil Procedure Section 382, Plaintiff brings this action on behalf of themselves and the following class (the “Class”):

All persons in California with a residential Comcast cable television subscription at any time during the applicable statutory limitations period(s).

26. Excluded from the Class are the following individuals: Officers and directors of Comcast and its parents, subsidiaries, and affiliates, all judges assigned to hear any aspect of this litigation, and all of the foregoing persons' immediate family members.

1 27. Plaintiff reserves the right to modify or amend the definition of the proposed Class
2 before the Court determines whether certification is appropriate.

3 28. Numerosity: The Class is so numerous that joinder of all Class members is
4 impracticable.

5 29. Commonality: There are questions of law and fact common to the Class that
6 predominate over any questions affecting only individual members of the Class, including:

- 7 a. Whether the video activity data and demographic data that Comcast
- 8 collects, maintains, and uses, is PII under the Cable Act and/or III under
- 9 CIPA;
- 10 b. Whether Comcast clearly and conspicuously informs subscribers of the
- 11 period during which it maintains the personally identifiable video activity
- 12 data and demographic data it collects;
- 13 c. Whether Comcast obtains prior written or electronic consent to collect
- 14 video activity data for advertising purposes using its cable system;
- 15 d. Whether Comcast uses an electronic device to record, transmit, or observe
- 16 events that take place inside its subscribers' residences; and
- 17 e. Whether Comcast obtains subscribers' express written consent to record,
- 18 transmit, or observe their viewing activity.

19 30. Typicality: Plaintiff's claims are typical of Class members' claims because
20 Comcast systematically collected, maintained, and used Plaintiff's and Class members' personally
21 identifiable information in the same manner.

22 31. Adequacy of Representation: Plaintiff is a member of the Class, Plaintiff's interests
23 do not conflict with the interests of other Class members, and Plaintiff's counsel are competent
24 and experienced in litigating consumer class actions.

25 32. Superiority of Class Action: A class action is superior to other available means for
26 the fair and efficient adjudication of this controversy. Individual joinder of all Class members is
27 not practicable, and questions of law and fact common to the Class predominate over any
28 questions affecting only individual members of the Class. Class action treatment will allow those

1 similarly situated persons to litigate their claims in the manner that is most efficient and
2 economical for the parties and the judicial system.

3 **First Cause of Action**
4 **Violation of 47 U.S.C. § 551(a)**
5 **(On behalf of Plaintiff and the Class)**

6 33. Plaintiff incorporates all preceding paragraphs as though repeated here.

7 34. In violation of 47 U.S.C. § 551(a)(1)(C), Comcast failed to clearly and
8 conspicuously notify subscribers (including Plaintiff) in writing, at the requisite times, of the
9 period during which it maintains their PII, including video activity data and demographic data.

10 **Second Cause of Action**
11 **Violation of 47 U.S.C. § 551(b)**
12 **(On behalf of Plaintiff and the Class)**

13 35. Plaintiff incorporates all preceding paragraphs as though repeated here.

14 36. In violation of 47 U.S.C. § 551(b), Comcast used its cable system to collect
15 personally identifiable video activity data concerning its subscribers (including Plaintiff) for
16 advertising purposes without their prior written or electronic consent.

17 37. Comcast's collection of video activity data concerning its subscribers for
18 advertising purposes is not permitted under 47 U.S.C. § 551(b)(2) because such collection is not
19 for the purpose of: (A) obtaining information necessary to render a cable service or other service
20 provided by the cable operator to the subscriber; or (B) detecting unauthorized reception of cable
21 communications.

22 **Third Cause of Action**
23 **Violation of 47 U.S.C. § 551(d)**
24 **(On behalf of Plaintiff)**

25 38. Plaintiff incorporates all preceding paragraphs as though repeated here.

26 39. In violation of 47 U.S.C. § 551(d), Comcast failed to provide Plaintiff with access
27 to all PII regarding Plaintiff that Comcast collected and maintains after Plaintiff requested access
28 to his PII. Among other things, Comcast maintains personally identifiable video activity data and
demographic data about Plaintiff but did not produce it in response to Plaintiff's request for his
PII.

Fourth Cause of Action
Violation of Cal. Pen. Code § 637.5(a)(1)
(On behalf of Plaintiff and the Class)

40. Plaintiff incorporates all preceding paragraphs as though repeated here.

41. In violation of Cal. Pen. Code § 637.5(a)(1), Comcast used an electronic device—namely subscribers’ cable boxes—to record, transmit, and observe events that took place inside Plaintiff’s and Class members’ residences, including which channels, programs, and advertisements Plaintiff and Class members watched and when they watched them, without the express written consent of Plaintiff and Class members.

Fifth Cause of Action
Violation of Cal. Pen. Code § 637.5(d)
(On behalf of Plaintiff)

42. Plaintiff incorporates all preceding paragraphs as though repeated here.

43. In violation of Cal. Pen. Code § 637.5(d), Comcast failed to make all of the individually identifiable subscriber information it gathered concerning Plaintiff available for examination within 30 days upon receiving a request for such information from Plaintiff. Among other things, Comcast failed to make the individually identifiable video activity data concerning Plaintiff that it gathered available for examination.

Sixth Cause of Action
Violations of the Unfair Competition Law
Bus. & Prof. Code § 17200 *et seq.*
(On behalf of Plaintiff and the Class)

44. Plaintiff incorporates all preceding paragraphs as though repeated here.

45. California Business and Professions Code § 17200 *et seq.*, the Unfair Competition Law (the “UCL”), prohibits unfair, unlawful, and fraudulent business practices.

46. Comcast violated the UCL’s unlawful prong by, *inter alia*:

- a. Failing to clearly and conspicuously notify subscribers (including Plaintiff) in writing, at the requisite times, of the period during which it maintains their PII, including video activity data and demographic data, in violation of 47 U.S.C. § 551(a);
- b. Using its cable system to collect Plaintiff’s and Class members’ personally identifiable video activity data without their prior written or electronic

1 consent in violation of 47 U.S.C. § 551(b);

- 2 c. Failing to provide Plaintiff with access to all PII regarding Plaintiff that
3 Comcast collected and maintains after Plaintiff requested access to his PII
4 in violation of 47 U.S.C. § 551(d);
- 5 d. Using an electronic device—namely subscribers’ cable boxes—to record,
6 transmit, and observe events that took place inside Plaintiff’s and Class
7 members’ residences, including which channels, programs, and
8 advertisements Plaintiff and Class members watched and when they
9 watched them, without the express written consent of Plaintiff, in violation
10 of Cal. Pen. Code § 637.5(a)(1); and
- 11 e. Failing to make all of the individually identifiable subscriber information it
12 gathered concerning Plaintiff available for examination within 30 days upon
13 receiving a request for such information from Plaintiff in violation of Cal.
14 Pen. Code § 637.5(d).

15 47. Comcast’s UCL violations resulted in the loss of money or property to Plaintiff in
16 that Comcast’s unlawful collection of Plaintiff’s video activity data diminished the value of
17 Plaintiff’s Comcast cable service to a level below the price Plaintiff paid for it. Plaintiff would not
18 have paid as much—or at all—for Comcast’s service had he known of Comcast’s unlawful
19 activity described herein.

20 **Prayer for Relief**

21 **WHEREFORE**, Plaintiff and the Class pray for relief and judgment as follows:

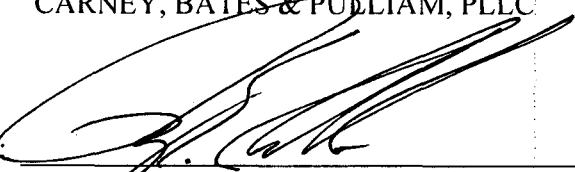
- 22 1. For statewide public injunctive relief requiring Comcast to:
- 23 a. clearly and conspicuously notify cable subscribers in writing, at the
24 requisite times, of the period during which it maintains their PII, including
25 video activity data and demographic data (under the Cable Act and UCL);
- 26 b. stop using its cable system to collect cable subscribers’ personally
27 identifiable video activity data for advertising purposes without their prior
28 written or electronic consent (under the Cable Act and UCL);

- c. destroy all personally identifiable video activity data collected from cable subscribers for advertising purposes without prior written or electronic consent and any information derived in whole or part from such data (under the Cable Act and UCL);
 - d. change its procedures to provide cable subscribers who request access to their PII with access to all such PII in Comcast's possession, including video activity data and demographic data (under the Cable Act and UCL);
 - e. stop using its cable system to record, transmit, or observe video activity data about cable subscribers without their express written consent (under CIPA and the UCL);
 - f. destroy all video activity data collected from cable subscribers through Comcast's cable system without their express written consent (under CIPA and the UCL);
 - g. provide cable subscribers who request access to their individually identifiable subscriber information with access to all such information gathered by Comcast within 30 days, including video activity data (under CIPA and the UCL).
2. For liquidated damages to Plaintiff and each Class member computed at the rate of \$100 a day for each day of violation of 47 U.S.C. § 551 or \$1,000, whichever is higher, pursuant to 47 U.S.C. § 551(f)(2)(A).
 3. For statutory damages of \$5,000 per violation of Penal Code § 637.5 for Plaintiff and each Class member pursuant to Penal Code § 637.2(a)(1).
 4. For an award of punitive damages to Plaintiff and each Class member pursuant to 47 U.S.C. § 551(f)(2)(B).
 5. For attorney's fees and expenses pursuant to all applicable laws including, without limitation, 47 U.S.C. § 551(f)(2)(C) and Code of Civil Procedure §1021.5.
 6. For pre-judgment interest on any amounts awarded.
 7. For such other and further relief as the Court deems just and proper.

1
2 DATED: February 20, 2018

RESPECTFULLY SUBMITTED,

3 GALLO LLP
4 CARNEY, BATES & PULLIAM, PLLC

5
6 By 
7 Ray E. Gallo

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all matters so triable.

DATED: February 20, 2018

RESPECTFULLY SUBMITTED,

GALLO LLP
CARNEY, BATES & PULLIAM, PLLC

By: 

Ray E. Gallo