

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ELIZABETH O’NEIL, individually and on)
 behalf of all others similarly situated,)
)
 Plaintiff,)
)
 v.)
)
 COMCAST CORPORATION and)
 COMCAST CABLE)
 COMMUNICATIONS, LLC,)
 d/b/a XFINITY MOBILE,)
)
 Defendants.)

Case No.:

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, Elizabeth O’Neil (“Plaintiff” or “O’Neil”), individually and on behalf of all others similarly situated, through her undersigned counsel, alleges for her Class Action Complaint against Defendants, Comcast Corporation and Comcast Cable Communications, LLC, d/b/a XFINITY Mobile (collectively, “Defendants” or “Comcast”), based upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including the investigation conducted by her counsel, as follows:

NATURE OF THE ACTION

1. This action arises from Defendants’ unlawful practice of opening XFINITY Mobile accounts for their cable and internet customers without such customers’ knowledge or consent and for failing to safeguard its customers’ personal information.

2. In an apparent effort to grow its fledgling mobile business segment, Comcast leveraged the personal account information of its existing cable and internet customers to allow the opening of XFINITY Mobile accounts through its online customer portal.

3. While Comcast customers are able to establish XFINITY Mobile service with a few mouse clicks, it has also caused damage to its existing cable and internet customers whose accounts have been accessed without their authorization for the purpose of unlawfully obtaining valuable merchandise in the form of new cell phones.

4. Unauthorized users infiltrated Comcast's XFINITY Mobile accounts, enabling them to purchase cell phones through the website using already established personal account information from customers' cable and internet accounts.

5. Furthermore, Defendants failed to inform its customers in a timely manner when their personal information was accessed or compromised as a result of Defendants' practices, in breach of its statutory duties to do so, thus causing its customers additional harm.

6. The above-described practices, alleged in further detail below, give rise to Plaintiff's and the putative class' claims for violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.* (Count I), breach of implied contract (Count II), and unjust enrichment (Count III).

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331(d)(2), as this is a class action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs, and is a class action in which members of the class, which number in excess of 100, are citizens of states different from Defendants.

8. Personal jurisdiction over Defendants is proper under 735 ILCS 5/2-209(b)(4) (corporation doing business within this State), and Section 2-209(c) (any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States). 735 ILCS 5/2-209(b)(4), and (c).

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events giving rise to the claim occurred in this district.

PARTIES

10. Plaintiff, Elizabeth O’Neil, is a natural person domiciled in Palatine, Illinois. Plaintiff is a member of the putative class defined herein.

11. Defendant Comcast Corporation (“Comcast Corp.”) is a corporation incorporated under the laws of the Commonwealth of Pennsylvania with its principal place of business in Philadelphia, Pennsylvania. Comcast Corp. is a global media and technology company with two primary businesses, defendant Comcast Cable and NBCUniversal, LLC, a non-party.

12. Defendant Comcast Cable Communications, LLC, d/b/a XFINITY Mobile (“Comcast Cable”) is a limited liability company formed under the laws of the State of Delaware with its principal place of business in Philadelphia, Pennsylvania. Comcast Cable is one of the nation’s largest providers of video, high-speed Internet and voice services to residential customers under the XFINITY brand, including its XFINITY Mobile service that is the subject of this action. Comcast Cable is a wholly-owned subsidiary of defendant Comcast Corp.

BACKGROUND

Comcast XFINITY Mobile

13. Comcast is the largest cable television and home internet service provider in the United States and is the third largest home telephone service provider. It serves residential and commercial customers in forty states and the District of Columbia.

14. Comcast Cable generates revenue primarily from subscriptions to its video, high-speed Internet and voice services (“cable services”), and from the sale of advertising.

15. Xfinity is a brand of Comcast Cable Communications, LLC, a subsidiary of the Comcast Corporation, used to market consumer cable television, internet, telephone, and wireless services provided by the company. The brand was first introduced in 2010. Prior to that, these services were marketed primarily under the Comcast name.

16. On April 6, 2017, Comcast announced a wireless service branded as XFINITY Mobile available exclusively to Comcast subscribers. XFINITY Mobile uses Comcast's mobile virtual network operator ("MVNO") rights to provide the service over Verizon's wireless network and Comcast's existing network of in-home and outdoor Wi-Fi hotspots.

17. During an earnings call on October 26, 2017, Comcast's Chairman and Chief Executive Officer, Brian L. Roberts, boasted to investors about Xfinity's explosive growth to more than 250,000 subscribers in just a few months by "bundling access to the best high-speed Internet data with a unique wireless offering." See <https://www.cmcsa.com/static-files/f7c134cc-4764-4825-aa7e-127651971152> (visited June 19, 2018, as were the other webpages cited herein). Mr. Roberts did not mention the widespread reports of fraudulent orders for new service or phones alleged herein.

18. To increase subscribers and to better compete with the likes of giants AT&T and Verizon, Comcast has been working to flesh out its XFINITY Mobile service. Furthermore, during an earnings call on January 18, 2018, Comcast's Senior EVP & CFO emphasized to investors that "XFINITY Mobile is a big opportunity to continue to drive the bundling strategy of the cable business." See <https://www.cmcsa.com/static-files/80bfd80b-e421-43d8-b28b-1be5f1b871d8>.

19. By the end of 2017, Comcast's XFINITY Mobile counted 380,000 customer lines.

Identity Theft

20. The United States Government Accountability Office noted in a June 2007 report on Data Breaches (“GAO Report”) that identity thieves use personal identifying data to open financial accounts, receive government benefits and incur charges and credit in a person’s name.¹

21. According to the Federal Trade Commission (“FTC”), identity theft victims must take numerous time-consuming and expensive steps in order to repair the impact to their good name and credit record.²

22. Comcast enabled unauthorized users to make numerous purchases of cell phones using customers’ existing cable and internet account information.

23. Comcast customers are subject to continuing damage from having their personal information compromised. Comcast failed to take reasonable steps to notify its customers that their information was compromised.

Cell Phone Fraud

24. The nature of identity theft is changing as cellular fraud emerges as a growing problem.

25. Cellular fraud is defined as the unauthorized use, tampering or manipulation of a cellular phone or service. One of the main types is known as subscriber fraud, which is illegal under the Wireless Telephone Protection Act.

26. Subscriber fraud occurs when someone signs up for service with fraudulently obtained customer information or false identification. Lawbreakers obtain the personal information and use it to set up a cell phone account in that customer’s name.

¹ See <https://www.gao.gov/new.items/d07737.pdf>.

² See FTC’s Consumer Information Website: <https://www.consumer.ftc.gov/articles/0005-identity-theft>.

27. Resolving subscriber fraud could develop into a long and difficult process for victims. It may take time to discover that subscriber fraud has occurred and even more time to prove that you did not incur the debts. Millions of dollars are lost each year due to subscriber fraud.³

Consumer Complaints

28. Defendants have been the subject of a litany of complaints from consumers who have complained to Defendants about their existing cable and internet accounts being used to open XFINITY Mobile accounts and to order cell phones by unauthorized third parties.

29. The Xfinity website, which provides a forum for customers to post reviews of their experiences and includes hundreds of complaints from current customers of various Comcast services regarding the alleged practices set forth herein. *See Xfinity mobile fraud / scam!*, Comcast Help & Support Forums, <http://forums.xfinity.com/t5/Xfinity-Mobile/Xfinity-mobile-fraud-scam/td-p/3014605>. Examples of these complaints appear below:

GaryC1:

I rec[ei]ved an email saying that I ordered Xfinity mobile and my order will be shipped soon. I have tried repeatedly to reach someone at Xfinity to report this and cancel the order. I keep getting transfe[r]red to phone numbers where I either get disconnected or are left on hold indefinitely. The fraud department does not seem to be working to resolve this issue. HELP!

This is soooo frustrating.

GiGa1:

This happened to me too... twice this week! I called on 12/16 and talked to the fraud department, they said the order would be canceled. I changed my password as suggested. I logged into my account today (12/19) and not only is fedEx still delivering two iPhones to someone in New York tomorrow (I'm in MD) but I got yet another "we received your order" email today with a new order! I called the fraud department... again... and they said they canceled the new order. I guess we'll

³ See <http://transition.fcc.gov/cgb/consumerfacts/cellphonefraud.pdf>.

see. I don't understand how this is possible. It seems really sketchy. Didn't Xfinity think it was weird that these items were being sent out of state? They charged a 911 fee for my local county but are fine with shipping them nowhere near me. Why isn't there some way to stop this from happening? It's just bizarre. Should I call the Lockport, NY cops and ask them to intercept the delivery? Comcast doesn't seem to be actually doing anything.

Jody2:

Yes you should absolutely file a police report. What no one seems to be getting from the bunch of BS these customer service reps are telling us is that we are now required to prove WE ARE NOT the scammers! You will be required to file a report and mail a bunch of documentation, one of which is a copy of the police report you filed for the incident along with a copy of your license or passport (like I want these people to have MORE of my PII) so they can review your claim/account. It took me several days of calling, being hung up on and calling back again and again to find this out! They also aren't telling you that they can stop ordered that haven't shipped but they can't remove the mobile service from your account! You are now financially liable for a service you never requested! This all happened to me when I was on vacation and not checking my email so I didn't have a clue until I got the text message saying thanks for setting up my mobile account. My guess is that one of the 7 iPhones ordered in my name was delivered and successfully set up. I can't even find any information in my account about that order but I was able to screen shot 7 other back orders for iPhone X to an address in Texas, I live in New Jersey! Clearly this is a HUGE data breach and Comcast or xfinity is playing stupid to avoid a media frenzy in light of the launch of their new Mobile Service division which as a company, they need to succeed to stay in business against Verizon whose created a virtual monopoly for themselves which I also thought was illegal in this country! Shame on you xfinity for ruining thousands of people's credit and Christmas holiday! I can't wait to read your name smeared across the www and you can count on me telling what's going on here to anyone and everyone who is willing to listen.

Fraud123:

I have had the same thing happen to me. Never had an [X]finity mobile account but SOMEHOW one opened in my name without my consent and 2 i[P]hone Xs were ordered to another state. How the heck do I get this resolved? The person used some other credit card that isn't in my name so I assume it is stolen or something. How in the world is Comcast so negligent to allow these obviously fraudulent orders? Am I at risk of having my credit affected or my account charged even though they used some other credit card to pay?

Swalgenbach:

This just happened to me on 1/7/18. I have spent HOURS on the phone with Xfinity. They won't believe me! Someone ordered phones in my name (I live in Colorado) and the phones are going to Pennsylvania! I would keep on them! I found out someone also opened a card in my name for payment of the initial fee. I had to file a police report in PA, CO, and FL (where the card was listed). I keep getting hung up on at Xfinity, or transferred.

FACTS RELATING TO PLAINTIFF

30. On or about November 2, 2017, Plaintiff was first alerted to several cell phones charged to her account and shipped to various addresses in the United States.

31. The orders were processed through XFINITY Mobile. Plaintiff has a Comcast Xfinity account for wireless internet at her residence. Comcast recently began offering XFINITY Mobile service to existing customers. Plaintiff did not add the mobile service to her account.

32. Plaintiff notified Xfinity of the unauthorized phone orders on that same day.

33. On or about January 1, 2018, Plaintiff was notified of several additional phones being charged to her account.

34. These orders included iPhone X cell phones, each valued at \$1,149.99.

35. Again, Plaintiff informed Xfinity of the unauthorized phone orders. This time, she was transferred to Xfinity's fraud department.

36. Plaintiff learned that after automatically opening XFINITY Mobile accounts for customers without their knowledge or consent, Defendants created the ability to purchase cell phones and order cell service through their website using already established account information from customers' Xfinity internet and cable accounts.

37. Plaintiff subsequently expended time and resources seeking to resolve the matter with Comcast, documenting the fraud and reporting the incident to local law enforcement, and communicating with the third-party shipper used by Comcasts to send to deliver the phones, among

other time-consuming and burdensome efforts to protect her personal and account information in she thought was being safeguarded by Comcast from further exploitation by criminals.

38. Alleged identity thieves infiltrated the unauthorized XFINITY Mobile accounts of numerous other Comcast customers and made similarly cell phone purchases using its customers' purportedly protected personal and account information.

39. The experience of Plaintiff is not unique, as demonstrated by the anecdotes told by other members of the Class. *See* Para. 29, *supra*; *see also, e.g., Xfinity mobile fraud / scam!*, Comcast Help & Support Forums, <http://forums.xfinity.com/t5/Xfinity-Mobile/Xfinity-mobile-fraud-scam/td-p/3014605>.

40. The above-described opening of unauthorized XFINITY Mobile accounts by Defendants resulted in fraud perpetrated by a third party, thereby compromising customers' personal information, among other consequences.

CLASS ACTION ALLEGATIONS

41. This action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), as set forth below.

42. *Class Definition.* Plaintiff brings this action individually and on behalf of the following class of similarly situated persons (the "Class"), of which Plaintiff is a member:

All consumers for whom XFINITY Mobile accounts were opened without their permission and subsequently billed for cell phones ordered by unauthorized third parties.

Excluded from the Class are Defendants and any of their respective officers, directors or employees, the presiding judge, Class counsel and members of their immediate families, and persons or entities who timely and properly exclude themselves from the Class.

43. *Illinois Sub-Class.* In the alternative, Plaintiff brings this action individually and on behalf of a sub-class of Illinois consumers only who are members of the above-defined class.

44. *Numerosity.* The members of the Class are so numerous and geographically dispersed throughout the United States such that joinder of all members is impracticable. Plaintiff believes that there are thousands of persons in the Class. The exact number and identity of Class members is unknown to Plaintiff at this time and can only be ascertained from information and records in the possession, custody or control of Defendants.

45. *Commonality.* There are questions of law or fact common to the Class including, *inter alia*, the following:

a. whether Defendants engaged in a pattern and practice of opening XFINITY Mobile accounts without Plaintiff's and the Class members' knowledge or consent;

b. whether Defendants' acts and/or omissions alleged herein are prohibited by or violate the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.*, including but not limited to whether or not Defendants acted with the requisite intent or acted willfully;

c. whether Defendants failed to use reasonable care to secure and safeguard its customers' sensitive personal information;

d. whether Defendants omitted or concealed material facts from its communications to Plaintiffs and the Class regarding the compromising of customers' personal and account information;

e. whether Defendants' conduct constitutes breach of an implied contract;

f. whether Defendants have been unjustly enriched by opening these unauthorized XFINITY Mobile accounts and whether it would be unjust for it to retain such benefits under the circumstances alleged herein;

g. whether the Court has subject matter jurisdiction and whether venue in this district is proper;

h. whether Plaintiff and the members of the Class are entitled to their damages and the appropriate measure thereof; and

i. whether equitable or injunctive relief is appropriate.

46. *Typicality.* The claims of Plaintiff are typical of the claims of the Class alleged herein. Plaintiff and all the members of the Class have been injured by the same wrongful practices of Comcast. Plaintiff's claim arises from the same practices and course of conduct that give rise to the claims of the members of the Class and are based on the same legal theories.

47. *Adequacy.* Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has retained counsel who are competent and experienced in the prosecution of complex and class action litigation. The interests of Plaintiff are aligned with, and not antagonistic to, those of the Class.

48. *Fed. R. Civ. P. 23(b)(2) Requirements.* The prerequisites to maintaining a class action for injunctive and equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) exist, as Defendant has acted or has refused to act on grounds generally applicable to the Class thereby making appropriate final injunctive and equitable relief with respect to the Class as a whole.

49. Defendant's actions are generally applicable to the Class as a whole, and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole.

50. Defendant's uniform common course of conduct makes declaratory relief with respect to the Class as a whole appropriate.

51. *Fed. R. Civ. P. 23(b)(3) Requirements.* This case satisfies the prerequisites of Fed. R. Civ. P. 23(b)(3). The common questions of law and fact enumerated above predominate over

questions affecting only individual members of the Class, and a class action is the superior method for fair and efficient adjudication of the controversy.

52. The likelihood that individual members of the Class will prosecute separate actions is remote due to the extensive time and considerable expense necessary to conduct such litigation, especially in view of the relatively modest amount of monetary, injunctive and equitable relief at issue for individual Class members.

53. This action will be prosecuted in a fashion to ensure the Court's able management of this case as a class action on behalf of the Class.

COUNT I

(Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*)

54. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 53, *supra*, as though fully stated herein.

55. This count is brought on behalf of Plaintiff and other Illinois Class members and on behalf of those Class members from other states that have enacted a uniform deceptive trade practices act in the same or substantially similar form as that described herein.

56. At all times relevant hereto, there was in full force and effect the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.* ("ICFA").

57. ICFA is a regulatory and remedial statute intended to protect consumers, including Plaintiff and the Class, against unfair business practices. Specifically, Chapter 2 of the ICFA prohibits unfair acts or practices used or employed in the conduct of any trade or commerce. 815 ILCS 505/2.

58. Defendants' practice of wrongfully opening XFINITY Mobile accounts without the consent, knowledge, or authorization of Plaintiff and the Class members is an unfair act or practice prohibited by Chapter 2 of the ICFA. 815 ILCS 505/2.

59. Plaintiff and the Class were deceived by Comcast's failure to protect their personal information. Comcast intended for Plaintiff and the Class to rely on Comcast to protect the personal information furnished to it, in such a manner that the information would not be susceptible to access from unauthorized third parties.

60. Comcast instead handled Plaintiffs and the Class' personal information in such a manner that it was compromised.

61. Comcast's failure to disclose the ease with which XFINITY Mobile accounts can be opened in their names and the lax security protocols associated with those accounts induced Plaintiff and other class members to remain Comcast customers despite the risks they face and the damage Comcast has caused them by authorizing cell phone equipment purchases and other unauthorized activity on their accounts.

62. Comcast violated 815 ILCS 505/2 by failing to properly implement adequate, commercially reasonable security measures to protect Plaintiffs' and the other Class members' private financial information.

63. Comcast also violated 815 ILCS 505/2 by failing to immediately notify affected customers of the nature and extent of the security breach pursuant to the Illinois Personal Information Protection Act, 815 ILCS 530/1, *et seq.*, which provides:

Sec. 10. Notice of Breach.

(a) Any data collector that owns or licenses personal information concerning an Illinois resident shall notify the resident at no charge that there has been a breach of the security of the system data following discovery or notification of the breach. The disclosure notification shall be made in the most expedient time possible and

without unreasonable delay, consistent with any measures necessary to determine the scope of the breach and restore the reasonable integrity, security, and confidentiality of the data system.

64. 815 ILCS 530/20 provides that a violation of 815 ILCS 530/10 “constitutes an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act.”

65. The unfair act or practice alleged herein proximately caused actual damage to Plaintiff and the Class.

COUNT II

(Breach of Implied Contract)

66. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 53, *supra*, as though fully stated herein.

67. For Xfinity internet or cable services, Comcast customers were required to provide their personal information for payments.

68. In providing such personal information, Plaintiff and the other members of the Class entered into an implied contract with Comcast whereby Comcast became obligated to reasonably safeguard Plaintiff and the other Class members’ sensitive, non-public, information.

69. Under the implied contract, Comcast was obligated to not only safeguard customers’ personal information, but also to provide customers with prompt, adequate notice of any security breach or unauthorized access of said information.

70. Comcast breached the implied contract with Plaintiff and the Class by failing to take reasonable measures to safeguard their personal information.

71. Comcast also breached its implied contract with Plaintiff and the Class by failing to provide prompt, adequate notice of the unauthorized access of customers’ personal information by third-party thieves.

72. Plaintiff and the Class suffered and will continue to suffer damages, which has an ascertainable value to be proven at trial.

COUNT III

(Unjust Enrichment)

73. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 53, *supra*, as though fully stated herein.

74. As a result of Comcast's unlawful and deceptive actions described above, Comcast was enriched at the expense of Plaintiffs and the Class through the purchases of cell phones by third party thieves resulting from XFINITY Mobile accounts that Defendants unlawfully and/or deceptively opened for customers.

75. Comcast appreciated the benefits in the form of increased revenue and the acquisition of new XFINITY Mobile subscribers.

76. Comcast's acceptance and retention of the aforesaid benefits under the circumstances alleged herein would be inequitable absent the repayment of such amounts to Plaintiffs and the Class.

77. As a result of the foregoing, Plaintiff and the Class have been damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of members of the Class, prays for judgment in their favor and against Defendants and for the following relief:

A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23, certifying the Class defined herein and designating Plaintiff as representative of the Class and his undersigned counsel as Class counsel;

B. Awarding Plaintiff and the Class (1) their actual damages or damages, (2) such exemplary or statutory damages as allowed by law, and (3) the costs of this action together with reasonable attorneys' fees as determined by the Court;

C. Awarding Plaintiff and the Class all allowable pre- and post-judgment interest on the foregoing awarded damages;

D. Granting appropriate injunctive and declaratory relief; and

E. Awarding such other and further available relief and any other relief the Court deems just and appropriate.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Date: June 19, 2018

Respectfully submitted,

ELIZABETH O'NEIL

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