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Los Angeles Superior Court

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John A. Clarke, Executive Officer/Clerk
By Amber Hayes, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

11 SHERRY FISCHER, STEWART R.
GRAHAM, TODD CROW, and GAVIN
12 McKIERNAN, individually and on behalf of
all others similarly situated,

13 Plaintiffs,

14 vs.

15 TIME WARNER CABLE INC.; THE LOS
16 ANGELES LAKERS, INC.; LOS ANGELES
DODGERS HOLDING COMPANY LLC; and
17 DOES 1-10, inclusive,

18 Defendants.

Case No.

BC512259

**CLASS ACTION COMPLAINT FOR
RESTITUTION AND INJUNCTIVE
RELIEF FOR VIOLATIONS OF
SECTION 17200 ET SEQ. OF CAL. BUS.
& PROF. CODE**

CLASS ACTION

1 CLASS ACTION COMPLAINT

2 Plaintiffs SHERRY FISCHER, STEWART R. GRAHAM, TODD CROW, and GAVIN
3 McKIERNAN ("Plaintiffs") file this class action civil Complaint on behalf of themselves
4 individually, and all other similarly situated persons, against the above-named Defendants, and
5 complain and allege as follows:

6 I.

7 INTRODUCTION

8 1. This case involves Time Warner Cable, Inc.'s ("TWC") abuse of its position as the
9 primary provider of cable television in the Counties of Los Angeles and Orange, California and as
10 a significant provider within the Counties of Riverside, San Bernardino, and Ventura, California,
11 collectively herein "Southern California." Although "cable" television programming can also be
12 accessed in certain parts of those geographic areas through alternate technologies, fiber optics
13 (AT&T U-Verse and Verizon FiOS) and satellite transmission (DIRECTV, Dish), TWC remains
14 by far the largest distributor of cable television programming to the consuming public in Southern
15 California, having millions of subscribers.

16 2. TWC secures most, but not all, of its programming content from "programmers"
17 (Viacom, Disney, Fox, Turner, Comcast (formerly NBC Universal) who require TWC (and all
18 other distributors) to (1) accept a "bundle" of channels offered by each programmer and (2)
19 exhibit all of those channels together (as a bundle) on a service known generally as "enhanced
20 basic cable." These two "bundling" practices are invidious because they (1) require consumers to
21 buy and pay for channels they do not want or watch, and (2) preclude or impair the distributors
22 from (a) competing with each other through smaller, user-friendly packages and (b) substituting
23 competing channels or networks to distribute over scarce bandwidth availability. Accordingly,
24 this network of contracts between distributors and programmers artificially restrains free
25 commerce among and between distributors and programmers, and among and between distributors
26 to the detriment of the consuming public, a substantial segment of which is required to buy and
27 pay for programming it does not watch or want while being deprived of alternative programming
28 which it may want to watch, but cannot. This case does not legally challenge the foregoing

1 network of contracts between programmers and distributors. In this case, TWC serves as both the
2 programmer and distributor.

3 3. Against this background of a marketplace, the function of which is impaired by
4 artificial contract restrictions, TWC also acquires its own programming directly from a licensing
5 source.

6 4. In February 2011, TWC acquired, for the sum of \$3 billion, the right to televise Los
7 Angeles Lakers (NBA Professional Basketball) games for a period of 20 years. The humongous
8 cost of acquiring these rights has been passed through by TWC to its Southern California, Nevada,
9 and Hawaii subscriber base as part of the "enhanced basic cable offering." Subscribers understand
10 that the added cost passed on to subscribers, directly or indirectly, of these Lakers games is
11 approximately \$4 per month. According to FCC and other studies, approximately 60% of the
12 population are not sports enthusiasts, and left to their own would not subscribe to pay for Lakers
13 telecasts. TWC markets these regional sports networks under the names TWC SportsNet and
14 TWC Deportes. TWC Deportes is the first U.S. regional sports network with a 24-hour Spanish
15 feed. TWC SportsNet and TWC Deportes launched on October 1, 2012. Home and away Lakers
16 games are shown on TWC SportsNet and TWC Deportes in the Lakers territory, designated by the
17 NBA as including all of Southern California, Nevada, and Hawaii.

18 5. Then in January 2013, TWC acquired the right to televise Los Angeles Dodgers
19 (Major League Baseball) games for a period of 25 years. TWC paid the incredible price of \$8
20 billion for these rights. TWC will market this regional sports network under the name SportsNet
21 LA, which will launch in 2014. Home and away Dodgers games will be shown on SportsNet LA
22 in the greater Los Angeles area, San Diego metropolitan area, Coachella Valley, Las Vegas
23 Valley, and Hawaii. TWC will, unless restrained by this Court, pass these costs along to its total
24 Southern California subscriber base, resulting, directly or indirectly, in additional fees passed onto
25 subscribers beginning with the 2014 season of approximately \$4 - \$5 per month per subscriber.
26 Again, a very large segment of the consuming public is not sufficiently interested in Dodgers
27 games to pay \$50 - \$60 per year, but they have no way of unsubscribing from either the Lakers or
28



1 Dodgers telecast, which together add (or will if unrestrained) about \$100 per year to the
2 subscriber's TWC bill.

3 6. In sum, TWC will extract from its customer base primarily in Southern California
4 at least \$11 billion to recoup its investment, and approximately 60% of this amount, or \$6.6
5 billion, is extracted from individuals who do not want and do not watch and do not want to pay for
6 Lakers and Dodgers telecasts and who, if given the option to do so, would opt out of such
7 telecasts.

8 7. There is no legitimate business, legal, technological, or economic reason why TWC
9 cannot offer these Lakers and Dodgers games on a standalone channel basis so that only those
10 subscribers who want and are willing to pay for them would do so and those who did not want
11 these channels could "opt out."

12 8. The Los Angeles Lakers executed its deal with TWC with the knowledge that
13 consumers, even non-sports fans, would be required to pay substantially more in their monthly
14 cable bill to watch Lakers games. It is understood, believed, and thereon alleged that the deal
15 provides the Los Angeles Lakers with ownership of the TWC SportsNet and TWC Deportes
16 networks.

17 9. The Los Angeles Dodgers executed its deal with TWC with the knowledge that
18 consumers, even non-sports fans, would be required to pay substantially more in their monthly
19 cable bill, to watch Dodgers games. It is understood, believed, and thereon alleged that the deal
20 provides the Los Angeles Dodgers with ownership of the SportsNet LA network.

21 10. TWC's practice of bundling these channels into the enhanced basic cable offering
22 is an unfair method of competition within the meaning of Business & Professions Code Section
23 17200. The purpose of this lawsuit is to secure restitution for and injunctive relief against this
24 practice.

25 11. TWC sold the rights to televise the Lakers channels TWC SportsNet and TWC
26 Deportes to other multichannel video programming distributors ("MVPDs") including Cox,
27 Charter, DIRECTV, AT&T U-Verse, and Verizon FiOS, requiring that these MVPDs include the
28 Lakers channels on their enhanced basic cable packages. Subscribers do not have the choice to



1 opt out. According to TWC, negotiations to carry the TWC SportsNet and TWC Deportes
2 networks on all cable, satellite, and telco providers are ongoing.

3 12. TWC will sell the rights to televise the Dodgers channel SportsNet LA to other
4 MVPDs including Cox, Charter, DIRECTV, AT&T U-Verse, and Verizon FiOS, requiring that
5 these MVPDs include the Dodgers channel on their enhanced basic packages without allowing the
6 subscribers the choice of opting opt.

7 13. The TWC carriage contracts with these other MVPDs for Lakers and Dodgers
8 telecasts are the seminal cause of pecuniary injury to subscribers to these MVPDs.

9 **II.**

10 **THE PARTIES**

11 14. Plaintiff Sherry Fischer is an individual residing in Los Angeles, California who is
12 a subscriber to TWC enhanced basic cable services who does not wish to subscribe to or pay for
13 either Lakers or Dodgers games.

14 15. Plaintiff Stewart R. Graham is an individual residing in Pasadena, California who is
15 a subscriber to Charter enhanced basic cable services who does not wish to subscribe to or pay for
16 either Lakers or Dodgers games.

17 16. Plaintiff Todd Crow is an individual residing in Orange County, California who is a
18 subscriber to DIRECTV enhanced basic cable services who does not wish to subscribe to or pay
19 for either Lakers or Dodgers games.

20 17. Plaintiff Gavin McKiernan is an individual residing in Long Beach, California who
21 is a subscriber to Verizon enhanced basic cable services who does not wish to subscribe to or pay
22 for either Lakers or Dodgers games.

23 18. Defendant Time Warner Cable Inc. (TWC) is a corporation organized and existing
24 under the laws of the State of Delaware with its principal place of business at 60 Columbus Circle,
25 New York, NY. TWC is the second largest operator of cable television systems in the United
26 States and the largest cable provider for all of Los Angeles and Orange Counties, and parts of
27 Riverside, San Bernardino, and Ventura Counties in the State of California (Southern California)
28 where TWC has several million subscribers. TWC maintains offices, transacts business, and may

1 be found in this County. The acts alleged in this Complaint giving rise to Plaintiffs' claims
2 occurred in, were directed in part from, and had effects in this County.

3 19. Defendant The Los Angeles Lakers, Inc. ("Lakers") is a corporation organized and
4 existing under the laws of the State of California with its principal place of business at 555 N.
5 Nash Street, El Segundo, California 90245. The Lakers maintain offices, transact business, and
6 may be found in this County. The acts alleged in this Complaint giving rise to Plaintiffs' claims
7 occurred in, were directed in part from, and had effects in this County.

8 20. Defendant Los Angeles Dodgers Holding Company LLC ("Dodgers") is a limited
9 liability corporation organized and existing under the laws of the State of Delaware with its
10 principal place of business at 1000 Elysian Park Avenue, Los Angeles, California 90012. The
11 Dodgers maintain offices, transact business, and may be found in this County. The acts alleged in
12 this Complaint giving rise to Plaintiffs' claims occurred in, were directed in part from, and had
13 effects in this County.

14 21. The true names or capacities, whether individual, corporate, associate, or otherwise,
15 of Does 1 through 10, inclusive, are unknown to the representative Plaintiffs, who therefore sues
16 said Defendants by such fictitious names. Plaintiffs are informed and believe and thereon allege
17 that each of the Defendants sued herein as a Doe is legally responsible in some manner for the
18 events referred to herein, and will ask leave of this Court to amend the Complaint to insert the true
19 names and capacities instead of the fictional names when the same becomes known to the
20 representative Plaintiffs.

21 III.

22 JURISDICTION AND VENUE

23 22. This Court has jurisdiction over the subject matter of this civil class action pursuant
24 to sections 382 and 410.10 of the California Code of Civil Procedure and section 17203 of the
25 Business & Professions Code.

26 23. This Court has personal jurisdiction over Defendants because each Defendant has
27 availed itself of the privilege of doing business within the State of California by conducting
28 systematic and continuous business contacts within this State.

IV.

CLASS ACTION ALLEGATIONS

24. **Class Definition.** Plaintiffs bring this civil class action on behalf of themselves individually, and on behalf of all others similarly situated, as a class action pursuant to section 382 of the California Code of Civil Procedure. The "Class" that Plaintiffs seek to represent is composed of and defined as follows:

"All former and current cable subscribers in Southern California during the time period October 1, 2012 through the present (1) who were required to purchase and pay for Los Angeles Lakers telecasts but who would have terminated subscription to that network if able to do so without terminating the entire subscription; and (2) who are threatened to have to pay for Los Angeles Dodgers telecasts starting in 2014 because they are unable to reject being charged for that network."

Plaintiffs reserve the right to modify the definition of the Class (or add one or more subclasses) after further discovery. Specifically excluded from the Class are Defendants, any entity in which they have a controlling interest, any of their parents, subsidiaries, and/or affiliates; any of its officers and directors; and any members of their immediate families.

This action may properly be brought and maintained as a class action pursuant to section 382 of the California Code of Civil Procedure. This class action satisfies the numerosity, typicality, adequacy, predominance, and superiority requirements. Upon application by Plaintiffs' counsel for certification of the Plaintiff Class, the Court may also be requested to utilize and certify subclasses in the interests of ascertainability, manageability, justice, and/or judicial economy.

25. **Ascertainability.** This action may be properly brought and maintained as a class action because there is a well-defined community of interest in the litigation, and the members of the proposed Class are clearly and easily ascertainable and identifiable. The members of the Class can be readily ascertained from Defendants' subscription and accounting records. The Class members can be readily located and notified of this class action.

1 26. **Numerosity.** The number of persons within the Plaintiff Class is substantial,
2 believed to amount to several million persons dispersed throughout Southern California. It is,
3 therefore, impractical to join each member of the Class as a named Plaintiff. Utilization of the
4 class action mechanism is the most economically feasible means of determining and adjudicating
5 the merits of this litigation.

6 27. **Typicality.** The claims of Plaintiffs are typical of the claims of the members of the
7 Class, and Plaintiffs' interests are consistent with and not antagonistic to those of the other Class
8 members he seeks to represent. Plaintiffs and all members of the Class have been impacted by
9 and/or sustained actual pecuniary loss and face continuing harm arising out of TWC's violations
10 and/or misconduct relating to the refusal of TWC to separately offer TWC SportsNet, and/or TWC
11 Deportes, and/or TWC SportsNet LA to other distributors and to consumers so that subscribers to
12 TWC and those other cable providers could choose to subscribe or to opt out.

13 28. **Adequacy.** The Plaintiff Class representatives have no interests that are adverse to,
14 or which conflict with, the interests of the absent members of the Class and are able to fairly and
15 adequately represent and protect the interests of such a Class. Plaintiffs have raised viable
16 statutory claims of the type reasonably expected to be raised by members of the Class, and will
17 vigorously pursue those claims. If necessary, Plaintiffs may seek leave of this Court to amend this
18 Complaint to include additional Class representatives to represent the Class or additional claims as
19 may be appropriate.

20 29. **Competency of Class Counsel.** Plaintiffs have retained and are represented by
21 experienced, qualified, and competent counsel who are committed to prosecuting this class action.
22 Counsel have experience in complex class action litigation and will assert and protect the rights
23 and interests of Plaintiffs and absent Class members.

24 30. **Commonality and Predominance.** Common questions of fact and law exist as to
25 all members of the Class that predominate over any questions affecting only individual members
26 of the Class. These common issues can be jointly tried. These common legal and factual liability
27 questions, which do not vary from Class member to Class member, and which may be determined
28

1 without reference to the individual circumstances of any Class member include, but are not limited
2 to, the following:

3 (a) whether TWC has offered Lakers telecasts via TWC SportsNet and TWC
4 Deportes on an "a la carte" basis which permits subscribers to opt in or to opt out of subscribing to
5 such telecasts;

6 (b) whether TWC has offered Dodgers telecasts via TWC SportsNet LA on an
7 "a la carte" basis which permits subscribers to opt in or to opt out of subscribing to such telecasts;

8 (c) whether TWC sold the rights to televise the Lakers and Dodgers channels to
9 other MVPDs including Cox, Charter, DIRECTV, Verizon FiOS, and AT&T U-Verse, requiring
10 that these MVPDs include the Lakers and Dodgers channels on their enhanced basic cable
11 packages without permitting subscribers the choice to opt out.

12 (d) whether TWC's conduct constitutes a violation of the "unlawful" and/or
13 "unfair" prongs of section 17200 et seq. of the California Business & Professions Code;

14 (e) the basis on which restitution to all injured members of the Class can be
15 computed; and

16 (f) whether the members of the Class are entitled to injunctive or other
17 equitable relief.

18 31. **Superiority.** Class actions serve an important function in the judicial system by
19 providing a vehicle whereby the claims of many individuals can be resolved at the same time. The
20 class action procedure both eliminates the possibility of repetitious litigation and provides small
21 claimants a method of obtaining redress. A class action is superior to other available methods for
22 the fair and efficient adjudication of this controversy, since individual litigation of the claims of all
23 Class members is impracticable. Even if every member of the Class could afford to pursue
24 individual litigation, the Court system could not. It would be unduly burdensome to the courts in
25 which individual litigation of numerous cases would proceed. Individualized litigation would also
26 present the potential for varying, inconsistent, or contradictory judgments, and would magnify the
27 delay and expense to all parties and to the court system resulting from multiple trials of the same
28 factual issues. By contrast, the maintenance of this action as a class action, with respect to some

1 or all of the issues presented herein, presents few management difficulties, conserves the resources
2 of the parties and of the court system, and protects the rights of each member of the Class.

3 Plaintiffs anticipate no difficulty in the management of this action as a class action.

4 Additionally, the prosecution of separate actions by individual Class members may create a
5 risk of multiple adjudications with respect to them that would, as a practical matter, be dispositive
6 of the interests of the other members of the Class not parties to such adjudications or that would
7 substantially impair or impede the ability of such nonparty Class members to protect their
8 interests. The prosecution of individual actions by Class members could establish inconsistent
9 results and result in establishing incompatible standards of conduct for Defendants.

10 V.

11 **FIRST CAUSE OF ACTION**

12 Violation of Cal. Bus. & Prof. Code § 17200 et. seq.

13 Against All Defendants and All Does

14 32. Plaintiffs and each of them hereby repeat and allege and incorporate by reference
15 each allegation set forth in Paragraphs 1-31, inclusive, of this Complaint with the same force and
16 effect as if set forth in full herein.

17 33. Section 17200 of the Business & Professions Code proscribes "any unlawful, unfair
18 or fraudulent business act or practice." This sweeping statute is written in the disjunctive and
19 broadly covers the foregoing three varieties of unfair competition. The statute's purpose is to
20 protect both consumers and competitors in commercial markets for goods and services.

21 34. Each named Plaintiff is a "person" within the meaning of Business & Professions
22 Code section 17201.

23 35. TWC's conduct constitutes an "unfair" and "unlawful" business act or practice.
24 TWC's bundling forces consumers to buy telecasts they do not want or watch without affording
25 the consumer the right to opt out. The practices have caused cable subscribers in Southern
26 California to part with money they would not have, if given free choice. TWC's bundling is
27 therefore unethical, oppressive, and unscrupulous. There is no practicable way consumers could
28 avoid this injury.

36. TWC's bundling results in Defendants making huge profits, much of which is extracted from unwilling consumers who have no opportunity to delete unwanted telecasts. The ill-gotten revenues and profits make the TWC bundling practice unlawful and unfair under Section 17200 of the California Business & Professions Code.

37. Plaintiffs and Class members are entitled to equitable relief in the form of an injunction to prevent future violations and restitution of the money paid to TWC, Lakers, and Dodgers for TWC SportsNet, TWC Deportes, and TWC SportsNet LA telecasts they otherwise would have rejected. Plaintiffs and Class members are also entitled to prejudgment interest.

38. Under section 17203, the entry of permanent and mandatory injunctive relief against Defendants is necessary to require that such unfair and/or unlawful conduct not be permitted to continue in the future. Plaintiffs are entitled to seek an injunction under the UCL whether or not restitution is also available.

39. Plaintiffs' efforts in securing the requested relief will result "in the enforcement of an important right affecting the public interest" for "(a) significant benefit, whether pecuniary or nonpecuniary, has been conferred on . . . a large class of persons, (b) the necessity and financial burden of private enforcement . . . are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any." Cal. Civ. Proc. Code § 1021.5. Accordingly, Plaintiffs request that the Court award attorneys' fees pursuant to Code of Civil Procedure section 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all other members of the Class, pray that this Court adjudge and decree as follows:

1. That this is a proper class action maintainable pursuant to the applicable provisions of section 382 of the California Code of Civil Procedure and that the named Plaintiffs are appropriate to be appointed as representatives of the Class;

2. That it be adjudged and decreed, as alleged in the First Cause of Action, that Defendants have engaged in unlawful and/or unfair business acts or practices in violation of section 17200 *et seq.* of the California Business & Professions Code and that the Court order

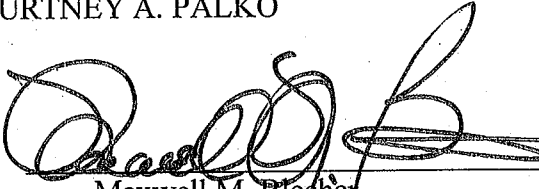
1 restitution, prejudgment interest thereon, and injunctive relief to Plaintiffs and Class members
2 pursuant to section 17203;

3 3. That the Court award, pursuant to Cal. Civ. Proc. Code section 1021.5, reasonable
4 attorneys' fees to Plaintiffs; and

5 4. That the Court award Plaintiffs and the members of the Class such other and further
6 relief as is just and proper.

7 Dated: June 18, 2013

BLECHER COLLINS PEPPERMAN & JOYE, P.C.
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10 By: 

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