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and Representative Plaintiffs Bruce G. Forrest and
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IN THE SUPERIOR COURT
FOR THE DISTRICT OF COLUMBIA

)
BRUCE G. FORREST and)
)
LESLIE B. FORREST , individually and on) Case No. _____
)
behalf of themselves and all others similarly)
)
situated,)
)
)
Plaintiffs,)
)
)
v.) **CLASS ACTION COMPLAINT**
)
)
VERIZON COMMUNICATIONS, INC.)
)
1095 Avenue of the Americas)
)
New York, New York 10036)
)
)
and)
)
)
VERIZON INTERNET SERVICES, INC.)
)
1880 Campus Commons Drive)
)
Reston, VA 20191)
)
)
Defendant.) **JURY TRIAL DEMANDED**
)
)

_____)

Individual and Representative Plaintiffs Bruce G. Forrest and Leslie B. Forrest, on behalf of themselves and all others similarly situated, allege:

1. This class action is brought on behalf of all persons who have entered Access Agreements with Verizon Internet Services, Inc. (“VIS”) for provision of access to Verizon Online or Verizon DSL Internet Access Service (the “Service”).

2. Plaintiffs and tens of thousands of other persons have entered Access Agreements with VIS for provision of the Service. Plaintiffs and the other members of the proposed class have experienced significant service disruptions and delays in obtaining technical service, including installation.

3. At all times relevant to this Complaint, VIS and its parent company, Verizon Communications, Inc. (“Verizon Communications”), were aware that they would not be able to provide timely technical service and uninterrupted Internet access to Plaintiffs and the members of the Class as promised in advertising and the Access Agreement, yet they failed to disclose this information to these consumers before they signed up for the Service. Instead, in order to persuade Plaintiffs and the members of the Class to become customers, VIS and Verizon Communications affirmatively represented that subscribers to its service would experience superior access to the Internet that would be both “instant” and “without wait.”

4. Plaintiffs seek, on behalf of themselves and all others similarly situated, injunctive and monetary relief, including: (a) an order enjoining VIS and Verizon Communications from engaging in the deceptive practices complained of herein; (b) an order enjoining VIS from

entering Access Agreements until it resolves the problems experienced by Class Members; and
(c) compensatory damages.

JURISDICTION

5. This Court has jurisdiction over this action pursuant to D.C. Code § 11-921.

THE PARTIES

6. Individual and representative Plaintiffs Bruce G. Forrest and Leslie B. Forrest (collectively, “the Forrests”) are residents of the District of Columbia who signed up for Verizon DSL Internet Access Service in August, 2000. VIS was unable to provide the service to Plaintiffs as required by the Access Agreement. After numerous unsuccessful attempts to remedy the problem, the Forrests cancelled their service in December, 2000.

7. Verizon Internet Services, Inc. (“VIS”) is a Delaware corporation with its principal place of business in Reston, Virginia. VIS offers DSL access to the Internet in twenty-five states and the District of Columbia. VIS is a subsidiary of Verizon Communications, Inc.

8. Verizon Communications, Inc. is a Delaware corporation with its principal place of business in New York, New York. Upon information and belief, VIS is a wholly-owned subsidiary of Verizon Communications, which directs and controls the activities of VIS (collectively, herein, “Verizon”).

CLASS ACTION ALLEGATIONS

9. Plaintiffs seek to bring this case as a class action pursuant to D.C. SCR-Civil Rule 23 on behalf of themselves and all others similarly situated as members of a proposed Class, defined as follows:

All persons and entities throughout the United States who have entered into a Verizon Internet Services Access Agreement with Verizon Internet Services, Inc.

Excluded from the Class are Defendants, any entity in which Defendants have a controlling interest, and their legal representatives, heirs, and successors.

Numerosity

10. The proposed class is so numerous and geographically dispersed that joinder of all of its members is impractical. Tens of thousands of persons and entities in the United States have entered Access Agreements with VIS.

Common Questions of Law and Fact

11. Virtually all of the issues of law and fact in this class action are common to the class and include at least the following:

a. whether Defendants intentionally induced tens of thousands of individuals and entities to subscribe to the Service, knowing that they could not provide timely technical support and/or uninterrupted service.

b. whether Defendants have violated their contractual and legal obligations due to their inability to provide adequate service to the Class;

c. whether Defendants induced tens of thousands of individuals and entities to subscribe to their services by intentionally or negligently misrepresenting that they could provide the Service;

d. whether Defendants' acts constitute unfair and deceptive trade practices;
and

e. the nature of relief available by reason of Defendants' violations of law and contract.

12. Plaintiffs' claims are typical of the class members' claims. Plaintiff and all other members of the Class have sustained monetary and statutory damages arising out of Defendants' violations of common and statutory law as alleged herein.

Adequacy of Representation

13. Plaintiffs can and will fairly and adequately represent and protect the interests of the class and have no interests that conflict with or are antagonistic to the interests of class members. Plaintiffs have retained attorneys competent and experienced in class actions, including consumer product class actions. No conflict exists between the Plaintiffs and class members.

Superiority

14. A class action is superior to any other available method for the fair and efficient adjudication of this controversy and common questions of law and fact predominate over any individual questions that may arise.

15. In the absence of a class action, Defendants may continue the unfair and deceptive practices described herein.

16. In the alternative, this action is certifiable under the provisions of D.C. SCR-Civil Rule 23(b)(2) of the Federal Rules of Civil Procedure because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

FACTUAL ALLEGATIONS

Background

17. VIS provides ultra high-speed Internet access services through digital subscriber lines (“DSL”).

Verizon’s Promises of Superior Service

18. Verizon engages in extensive advertising designed to entice consumers to subscribe to its DSL access to the Internet.

19. Through its advertising, Verizon represents to potential subscribers, among other things, that “your Internet access will always be on,” “[y]ou’ll never have to waste time dialing up access or get frustrated by a busy signal,” and “when you want to go online to work or to play, you’ll be able to. Guaranteed.”

20. The Access Agreement, posted on Verizon’s website, provides that “the Service is generally available daily, seven days a week, except for regularly scheduled maintenance.”

Verizon’s Knowledge of Its Inability To Provide Superior Service

21. At all times relevant to this Complaint, Verizon was aware that it would be unable to provide the service it promised in its advertising and that its subscribers would experience significant problems with the Service and significant delays in obtaining technical support.

22. Verizon was aware of these problems yet failed to inform potential or existing subscribers. VIS signs up more than 3,000 new customers a day. It faces intense competition for these customers from other DSL providers and from companies providing cable-modem access to the Internet. If Verizon were to disclose to its potential new subscribers the problems with its Service, it would be unable to attract those subscribers and lose market share to its competitors.

Verizon Customers Have Experienced Significant Problems with the Service.

23. Numerous subscribers to VIS have experienced significant disruptions in their Service and significant delays in obtaining technical service.

24. The Forrests signed up for the Service in August, 2000. Although they were told Service would be implemented on August 14, 2000, they did not receive the Service. After numerous calls to technical support, significant waiting time (sometimes as long as ninety minutes) and an unsuccessful in-home service call, the Forrests cancelled their Service in December, 2000.

25. As reported in the New York Times, Lauri Sallady was unable to access her Internet account through Verizon DSL for nineteen days, preventing her from retrieving business email from the Internet and responding to email messages from clients. Verizon did not take responsibility for the problem, instead blaming the failure on NorthPoint Communications, an Internet service wholesaler.

26. As reported in the Washington Post, Andrew Leydon, Chief Executive Officer of an Internet start-up that uses the Service, could only get the Service working after three visits from technicians, and even then his email took as long as three days to reach him.

27. In October and November in greater Boston, the speed of the Service dropped sharply. Customers reported that they lost service for days and even weeks. The speed fell below that of a dial-up modem. Customers complained that when they called customer service, they spent an inordinate amount of time on hold.

28. As reported in the Boston Globe, Thomas Subak had three outages since signing up with VIS in November, 2000 and his service was slower than a dial-up modem. Steve Sharpe lost service in September, 2000 and it took three weeks to get it back.

29. As reported in Network World, one VIS subscriber subscribed to the Service in July, 2000 and still did not have the Service in November, 2000.

30. As reported in the Seattle Times, a VIS subscriber subscribed to VIS in April, 2000 and has experienced interruptions for hours at a time several times a week.

31. As reported in USA Today, one VIS subscriber had to wait 111 days before the Service started running.

32. Verizon DSL customers have also posted their complaints on the Internet:

(a) A subscriber who identifies herself as “Dissatisfied Verizon DSL Customer” complains that her service has “generally been unavailable, seven days a week, contrary to agreement. Moreover, this unavailability of service has not been due to the regularly scheduled maintenance ... During the periods that we were able to log on, service has usually been slow or interrupted in the middle of a session. This is contrary to “Whooooooooosh! It’s the best way we know to describe Verizon Online DSL -- the ultra high-speed Internet access service.” Out of the 150 base hours available, we have used about 35 hours at this time. It is untrue that ‘... you’ll have instant access to the Internet without waiting for busy signals or dial-up connections’.”

(b) Another VIS subscriber Lars Spiller complains that: “Every night when I go to use my Verizon DSL connection I get an error 718 from WinPoet Dialer. It means essentially that their servers are slammed and they can’t respond. If I find something to do and try repeatedly over a half hour or so, I can eventually connect. It is the DSL equivalent of a busy signal. When I call Verizon it always takes over a half of an hour and results in me talking to a person ... who tells me that I should try rebooting my machine. Verizon DSL is unreliable, their customer service is very bad ...”

(c) Tom Case posted the following complaint on complaints.com on November 11, 2000: “Earlier this year, I signed up for (then) BellAtlantic InfoSpeed DSL service. For the first month or so, the service was good. After that time, I would have gotten faster downloads using a 14.4. modem. I called Customer Service (what a joke!), and was connected to a person who didn’t know a computer from a microwave oven. This was confirmed when the CS rep, while flipping through a guidance manual they must issue to the know-nothing folks they hire to help out their customers, told me to clean out my browser’s cache... “cache” being pronounced as a two-syllable word. Many calls and letters resulted in no improvement to my download speeds. Finally, having had enough, I asked for my service to be discontinued, and my monthly \$50 fees to be refunded. To this day, nearly SIX MONTHS LATER, I have not received a refund, despite many calls and letters. I guess I should be patient... it took them three months to stop billing me after my refund had been promised. I am currently advising everyone I know, and lots of folks I don’t know, about the shoddy service provided; the inept customer service; and the lack of the courtesy of responding to my complaints. I STRONGLY recommend using ANYONE else but BA/Verizon for DSL service.”

(d) Gerri Wesley posted the following complaint on complaints.com on June 17, 2000: “The DSL service from Bell Atlantic is so bad, I am hoping to find a way to go to the FCC and sue you guys for FRAUD. A ludicrous tech support structure with know-nothing, do-nothing technicians and supervisors, who only mouth platitudes and tell you that it’s not their job to fix your service. But they are the only ones who can escalate your problems to the technicians that can. Being told by your tech support group that one just has to wait 24 to 48 to 72 hours when the service is down until the important support group decides to get around to looking at your

profile or routers or switches. But they'll bore the living hell out of you with an explanation of how complicated this service is while at the same time denying that fundamentally, your DSL service is not very good or reliable. Being made to uninstall and reinstall and reinstall a service that works because your support techs are too sorry, lazy or whatever to escalate a ticket and those stupid little manuals are all they have. Yet you have no problem charging people for this foolishness even though the service is down more than it is up. Finally, you lock yourselves behind the doors of email addresses that do not offer responses, web sites that allow no feedback and an autonomous bureaucracy that sucks up cash and provides no real service, but a whole lot of aggravation. FRAUD??? You bet!!! Further, I think someone should break you up too!"

(e) Torsten Kunert posted this complaint on complaints.com on December 30, 2000: "Dear Sir/Madam I had to delay the launch of my start company RentWave.com by one month after they failed to live up to their promises. [T]heir word meant nothing after they assured me they would activate DSL service on the 20 November. The actual activation date was 04 December 2000, 15 days later. What a company will not do to lure business away from their competition. We spent nine hours on the phone with them and had our technicians come out for a total of 29 hours. We had to postpone the launch of our site and our self management system which was supposed to be available to 15,000 property managers and real estate agents. The damages were high and they did not make the slightest effort to help a company out of a mishap they created. My honest opinion, they have too much on their plate, wireless, DSL, phone services...they took on too much in too little time...the customer has to suffer, big time. Thanks for your time reading my complaint."

(f) Another subscriber reports having problems with VIS: “I would lose my connection to the internet. I have called tech support every week since I received [sic] my modem. They cannot fix it for some reason. I have spent countless hours on the phone waiting and talking to people who do not know how to fix the problem. I just want my services to function properly. Nothing else. Get what I paid for and not feel cheated. I then called last week to cancel my DSL and internet service with Verizon. They informed me that my service would not be able to be cancelled until December 22 due to some technical difficulties.”

FIRST CAUSE OF ACTION
(Breach of Contract)

34. Plaintiffs reallege each allegation contained in each of the paragraphs above as if fully set forth herein.

35. The Access Agreements entered by Plaintiffs and the members of the Class provide that the Service will be generally available, seven days a week except for regularly scheduled maintenance.

36. Plaintiffs and the members of the Class have not received uninterrupted access. Plaintiffs and members of the class have experienced significant disruptions in access that were due to reasons other than regularly scheduled maintenance.

37. As a result of Verizon's breach of contract, Plaintiffs and the other members of the class have suffered and are entitled to damages, in an amount to be proven at trial.

SECOND CAUSE OF ACTION
(Violation of Virginia Consumer Protection)

38. Plaintiffs reallege each allegation contained in each of the paragraphs above as if fully set forth herein.

39. Virginia Code §§ 59.1-200 protects consumers from fraudulent business practices.

40. Verizon engaged in, among other unlawful practices, unfair and deceptive acts in the marketing practice alleged herein, to wit, by misrepresenting and failing to disclose that its Service had significant problems and by:

a. using deception, false promises and misrepresentation in connection with the sale of the Service;

b. misrepresenting that the Service had certain characteristics;

c. misrepresenting that the Service was of a particular standard and quality;
and

d. advertising the Service with the intent not to sell the Service as advertised.

41. By the misrepresentations and non-disclosure of material facts alleged above, Verizon deceived and continue to deceive existing and new DSL Internet Access Service customers. This conduct constitutes unlawful, unfair, deceptive and fraudulent business practices within the meaning of the Virginia Consumer Protection Act.

42. As a result of Defendants' misrepresentations, Plaintiffs and other members of the class have suffered damages, in an amount to be proven at trial.

43. Pursuant to Section 59.1-204 of the Virginia Consumer Protection Act, Plaintiffs and the members of the class are entitled to receive actual damages, or \$500, whichever is greater. The Plaintiffs may also be awarded reasonable attorneys' fees and court costs.

THIRD CAUSE OF ACTION
(Untrue, Deceptive or Misleading Advertising)

44. Plaintiffs reallege each allegation contained in each of the paragraph above as if fully set forth herein.

45. With the intent to sell the Service to the public and to increase consumption of the Service, Verizon published and disseminated, circulated before the public, in newspapers and other publications, advertisements regarding the Service that were untrue, deceptive and misleading to induce the public to subscribe to VIS's internet access service, in violation of Virginia Code § 18.2-216.

46. Pursuant to Virginia Code § 18.2-216 and § 59.1-68-3, Plaintiffs are entitled to recover damages and reasonable attorneys' fees due to Defendants' foregoing violations.

47. As a direct and proximate result of Defendants' conduct, statements and omissions, the Plaintiffs and other members of the Class have suffered and are entitled to compensatory damages, in an amount to be proven at trial.

FOURTH CAUSE OF ACTION
(Negligent Misrepresentation)

48. Plaintiffs reallege each allegation in each of the paragraphs above as if fully set forth herein.

49. Verizon negligently misrepresented to Plaintiff and the members of the Class that it could provide Plaintiff and the Class members unlimited access to the Internet.

50. At the time that Verizon made said representations described herein, Verizon lacked sufficient facts upon which to make such representations, and/or the facts available to Verizon did not reasonably lead to the conclusion that said representations were accurate.

51. Plaintiffs and the members of the Class relied upon Defendants' negligent misrepresentations in agreeing to subscribe to the Service. Such reliance was foreseeable and intended by Defendants.

52. These negligent misrepresentations and omissions were reasonably relied upon by the Plaintiffs and the other Class members to their detriment.

53. As a direct and proximate result of Defendants' negligent conduct, statements, and omissions, the Plaintiffs and the other members of the Class have suffered and are entitled to compensatory damages, in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Individual and Representative Plaintiffs, on behalf of themselves and all others similarly situated, request of this Court the following monetary and equitable relief:

- A. An order certifying that the action may be maintained as a class action and appointing Plaintiffs and Plaintiffs' undersigned counsel to represent the class;
- B. Compensatory and consequential damages suffered by Plaintiffs and members of the class in an amount to be determined at trial, including any damages as may be provided for by statute;
- C. A temporary, preliminary and/or permanent order providing for equitable and injunctive relief enjoining Defendants from engaging in the deceptive, fraudulent and misleading advertising policies, acts and practices complained of herein;

- D. A temporary, preliminary and/or permanent order providing for equitable and injunctive relief enjoining Defendants from entering new Access Agreements unless and until the problems experienced by Class Members are resolved;
- E. Reasonable attorneys' fees;
- F. Costs of suit;
- G. Pre-and post-judgment interests; and
- H. Such other and further relief as this Court may deem necessary or proper.

DATED: January ____, 2001

COHEN, MILSTEIN, HAUSFELD &
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By: _____

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