

KING & FERLAUTO, LLP
1880 CENTURY PARK EAST, SUITE 820
LOS ANGELES, CALIFORNIA 90067
PHONE (310) 552-3366
FACSIMILE (310) 552-3289

KING & FERLAUTO, LLP

1880 CENTURY PARK EAST, SUITE 820
LOS ANGELES, CALIFORNIA 90067-1627
PHONE (310) 552-3366
FACSIMILE (310) 552-3289

William T. King, SBN 028361
Thomas M. Ferlauto, SBN 155503

Attorneys For: Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL CIVIL WEST**

PHILIP KENT COHEN, on behalf of
himself, similarly situated consumers, and
the general public

Plaintiffs,

vs.

DIRECTV, INC., a California corporation;
and DOES 1 through 20, Inclusive,

Defendants.

) CASE NO.

) A PROPOSED CLASS ACTION

) COMPLAINT FOR:

) 1) VIOLATION OF CALIFORNIA
) CONSUMER LEGAL REMEDIES ACT
) (Civil Code Section 1750, et. seq.); AND
) 2) UNFAIR BUSINESS PRACTICES
) (Business And Professions Code Section
) 17200, et. seq.)

Comes now PHILIP KENT COHEN, (“Plaintiff”) on behalf of himself, similarly situated
consumers, and the general public, and for causes of action as against DIRECTV, INC., and
DOES 1 through 20, (collectively “Defendants”) and each of them, alleges as follows:

PARTIES

1. Plaintiff is an individual resident of the State of California and a resident of Los
Angeles County, California.

2. Defendant, DIRECTV, INC. (“DirecTV”), is a California corporation with its
principal place of business in California, and doing business in Los Angeles County, California.
DirecTV is a direct-to-home satellite broadcaster.

3. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants DOES 1 through 20, inclusive, are unknown to Plaintiffs, who therefore sues said Defendants by such fictitious names. Plaintiffs will seek leave of Court to amend this pleading to show the true names and capacities of such Defendants when the same have been ascertained. Plaintiffs are informed and believe, and thereupon allege, that each of the fictitiously named Defendants was a legal cause of the injuries and damages suffered and alleged herein, or subject to the jurisdiction of the Court herein as necessary parties for the relief requested.

4. The Defendants, and each of them, were the agents, employees, partners, or joint venturers of each of the remaining Defendants, and were acting within the course and scope of said agency, employment, partnership or joint venture at all relevant times. To the extent that any such act of any Defendant was not initially authorized, the same was subsequently ratified by the remaining Defendants.

CLASS ACTION ALLEGATIONS

5. Named Plaintiff brings this action as a representative action on behalf of the general public and as a proposed class action on behalf all other similarly situated Plaintiff Class members. The proposed Plaintiff Class, which Plaintiff seeks to represent is defined as follows:

- a. Residents of the United States of American who subscribe to DirecTV's High Definition Programming Package (the "HD Package").

6. Excluded from the class are Defendants, any entity in which Defendants have a controlling interest, any employees, officers, directors of Defendants, and any legal representatives, heirs, successors, and assignees of Defendants, and any judge assigned to hear this action.

7. This action has been brought and may properly be maintained as a class action pursuant to California Code of Civil Procedure Section 382 and Civil Code Section 1781, as well as under Federal Rule of Civil Procedure 23(a)(1)-(4), 23 (b)(1), (2), or (3), and applicable case

law, to which the California trial courts have been directed by the California Supreme Court to look for guidance.

8. *Numerosity (Code of Civil Procedure § 382; Civil Code § 1781(b)(1); Federal Rule of Civil Procedure 23(a)(1))*: Members of the Class are so numerous that joinder is impracticable. Named Plaintiff is informed and believes, and on that basis alleges, that there are thousands of members of the proposed Plaintiff Class. Class members may be notified that this action is pending by published and/or mailed notice.

9. *Existence and Predominance of Common Questions of Fact and Law (Code of Civil Procedure § 382; Civil Code § 1781(b)(2); Federal Rule of Civil Procedure 23(a)(2) and (b)(3))*: Common questions of law and fact exist as to all members of the Class. These questions predominate over the questions affecting only individual class members. These common legal and factual questions include, among other things:

- a. Whether Defendants' marketing and advertising of its HD Package constitutes a violation of the California Consumers' Legal Remedies Act, Civil Code section 1770(a) ("CLRA");
- b. Whether Defendants' marketing and advertising of its HD Package constitutes "Unfair Competition" and "False Advertising" as those terms are defined in Business & Professions Code section 17200 et seq. and 17500 et seq.;
- c. Whether class members are entitled to recover restitution, compensatory damages, and exemplary damages; and
- d. Whether class members are entitled to an award of reasonable attorneys' fees, pre-judgment interest, post-judgment interest, and costs of suit.

10. *Typicality (Civil Code § 1781(b)(3); Federal Rule of Civil Procedure 23(a)(3))*: Plaintiff's claims are typical of those of each class member because Plaintiff, like every other member of the class, subscribed to DirecTV's HD Package based upon DirecTV's national advertising and marketing of the HD Package. Plaintiff was exposed to the same material representations and conduct concerning DirecTV's HD Package and is entitled to relief under the same causes of action as the other members of the class.

11. *Adequacy (Civil Code § 1781(b)(4); Federal Rule of Civil Procedure 23(a)(4))*: Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the members of the Class he seeks to represent; he has retained counsel competent experienced in complex class action litigation; and he intends to prosecute this action vigorously. The interests of members of the Class will be fairly and adequately protected by Plaintiff and his counsel.

12. *Superiority (Code of Civil Procedure § 382; Federal Rule of Civil Procedure 23(b)(3))*: The class action is superior to other available means for the fair and efficient adjudication of the claims of Plaintiffs and the Class. The damages suffered by each class member are such that individual prosecution would prove burdensome and expensive given the complex and extensive litigation necessitated by Defendants' conduct. Furthermore, it would be virtually impossible for the members of the Class individually to redress effectively the wrongs done to them. Even if the members of the Class, themselves, could afford such individual litigation -- the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and to the court system presented by the complex legal and factual issues raised by Defendants' conduct. By contrast, the class action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in a case where the individual costs of litigating these claims would make class litigation more economical and cost effective than individual litigation.

13. In the alternative, this action is certifiable under the provisions of Rule 23(b)(1)(2) and/or (b)(2) of the Federal Rule of Civil Procedure, which have been found applicable to the State of California, because:

- a. The prosecution of separate actions by the individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual class members, which would establish incompatible standards of conduct for Defendants;

b. The prosecution of separate actions by individual class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other class members not parties to the adjudications, or substantially impair or impede such class members' ability to protect their interests; and/or

c. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure section 410.10.

16. Venue is proper in this Court pursuant to Code of Civil Procedure sections 395 and 395.5 in that Defendants breached their duties and because liability arises in this County. Further, the Defendants maintain offices, transact business, have agents, or are found in this County.

FIRST CAUSE OF ACTION – FOR VIOLATION OF CALIFORNIA CONSUMER LEGAL REMEDIES ACT (Civil Code Section 1750, et. seq.)

[Against All Defendants]

17. Plaintiff repeats, re-alleges, and incorporates by this reference the allegations of paragraphs 1 through 16 inclusive.

18. DirecTV sells satellite television services. As an add-on service to its regular standard definition (“SD”) television package, DirecTV markets and advertises its high definition (“HD”) Package for \$10.99 per month. DirecTV represents that programming with its HD Package will provide High Definition Television (“HDTV”) “with astonishing picture clarity” which is “5 to 10 times clearer than analog broadcasts.” DirecTV further represents that its HDTV is consistent with the “720p” and “1080i” standards as defined by the Advance Television Systems Committee (the “ATSC”) and that each single HDTV channel would use

bandwidth of 19.4 Mbps (Mbps stands for *millions of bits per second* or *megabits per second* and is a measure of bandwidth).

19. The ATSC standard for direct-to-home satellite broadcast consists of SMPTE 274M, which consists of 1920 horizontal lines and 1080 interlaced vertical lines (“1080i”), and SMPTE 296M, which consists of 1280 horizontal line and 720 progressive vertical lines (“720p”). Progressive signals are generally considered to be of higher quality than interlaced signals. However, the additional resolution included in the 1080i standard results in picture quality on par with 720p.

20. To take advantage of DirecTV’s HD Package the consumer is required to purchase a special satellite dish, wiring and a decoder box costing, in some instances, more than \$1,000. These boxes are only useful in decoding DirecTV’s video signals and are of little or no use without DirecTV’s satellite service. Thus, the consumer is required to make a considerable investment in equipment to take advantage of DirecTV’s HD Package.

21. Starting in September of 2004, DirecTV started tinkering with the HDTV channels making up the HD Package in an effort to preserve bandwidth. HBO-HD, HDNet Movies, HDTV Pay Per View, BravoHD, and Showtime HD were reduced from 1920 x 1080i to a non-standard 1280 x 1080i. This amounts to a 33% reduction in resolution from the 1080i ATSC standard. Furthermore, the bandwidth for DirecTV’s HDTV channels were reduced from the required 19.4 Mbps to as low as an astonishing 6.6 Mbps. Frankly, the quality of DirecTV’s HD package has been so compromised that the video quality is lower than what SD used to be.

22. Plaintiff purchased a DirecTV HD decoder box and subscribed to DirecTV’s HD Package. Plaintiff is still a subscriber to DirecTV’s HD Package, but has noticed the drastic reduction of image quality from the channels on DirecTV’s HD Package.

23. According to the CLRA (Civil Code section 1770(a)), it is an unfair method of competition and unfair or deceptive act or practice to:

- a. represent “that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities which they do not have” [1770(a)(5)]; or
- b. advertise “goods or services with intent not to sell them as advertised” [1770(a)(9)].

24. Defendants violated the CLRA by advertising and marketing the HD package.
This violated the CLRA because:

- a. DirecTV represented that channels in its HD Package are broadcasted in the ATSC 1920x1080i standard and at 19.4 Mbps, which they are not.
- b. Defendants advertised the sale of its HD package without the intent to provide the customers with broadcasts in the ATSC 1920x1080i standard and at 19.4 Mbps.

25. Pursuant to the terms of Civil Code section 1782, Named Plaintiff notified Defendants of their violation of the California Consumer Legal Remedies Act, via certified or registered mail, with a return receipt requested. Defendants did not agree to provide an appropriate remedy -- *or any remedy at all* -- within thirty (30) days of this notification.

26. As a direct and proximate result of Defendants' violation the CLRA, Plaintiffs have been damaged as follows:

- a. Actual damages in the form of the subscription price for the HD Package.
- b. Actual damages in the form of the cost for the DirecTV HD decoder box;
- c. The incidental and consequential damages as a result of the Defendants' breach; and
- d. The pre-judgment and post-judgment interest accrued.

27. The full amount of these damages is not currently known to Plaintiff, who will seek leave of court to amend this complaint upon ascertaining the precise amount of said damages.

28. In addition to (1) the actual damages as listed above, Plaintiff prays for the other remedies provided for in Civil Code section 1780 which include (2) An order enjoining such methods, acts or practices; (3) Restitution of property; (4) Punitive damages; and (5) other relief the Court deems proper.

29. The conduct of the Defendants, and each of them, was wanton, willful, deliberate, and in conscious disregard of the rights and feelings of Plaintiff, was undertaken with the intent to cause Plaintiff injury and constitutes malice, actual, express and implied. Based on information and belief, Defendants knowingly misrepresented the quality of the video in its HD Package to convince consumer to invest in their decoder box and subscribe to the HD Package.

All along, DirecTV knew it was going to reduce the resolution and bandwidth for its HD Channels to the quality of SD. Accordingly, Plaintiff is entitled, pursuant to the terms of California *Civil Code* section 3294, to an award of exemplary damages against Defendants, in a sum to be established at trial sufficient to deter future similar conduct by Defendants.

30. As a result of Defendants' violation of the CLRA, Plaintiffs have been required to employ an attorney. As a result, in addition to any other relief, Plaintiff shall seek, pursuant to Civil Code section 1780(d), the recovery of all reasonable attorney's fees and litigation costs.

SECOND CAUSE OF ACTION – FOR UNFAIR BUSINESS PRACTICES

(Business And Professions Code Section 17200, et. seq.)

[Against All Defendants]

31. Plaintiffs hereby repeat, re-allege and incorporate paragraphs 1 through 30 though fully set forth verbatim in this cause of action.

32. The statements and conduct referred to above were and are unlawful, unfair or fraudulent business acts or practices (under Business And Professions Code section 17200, et seq.) and unfair, deceptive, untrue or misleading advertising (under Business And Professions Code section 17500, et seq.).

33. The statements made by Defendants as set forth above were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known, to be untrue or misleading.

34. As set forth above, Defendants disseminated statements concerning the HD Package as part of a plan or scheme with the intent not to sell their goods as advertised.

35. As a result of Defendants' unfair business practices as alleged above, it was likely that Plaintiff and other similarly situated consumers would be deceived.

WHEREFORE, Plaintiff demands judgment against the Defendants, and each of them, jointly and severally, as follows:

ON THE FIRST CAUSE OF ACTION (Civil Code Section 1750):

a. For actual damages, in an amount according to proof at time of trial;

- b. For an order enjoining Defendants, their agents, employees, representatives, and anyone acting on their behalf or in concert with them, as follows: A prohibitory injunction preventing Defendants from representing to consumers that the channels on DirecTV's HD Package are HDTV, including calling the package the HD Package.
- c. For restitution to Plaintiffs of any property belonging to Plaintiffs which was obtained by Defendants as a result of the Defendants' violation of the California Consumers Legal Remedies Act, including subscription fees for the HD Package as well as the cost of DirecTV HD decoder boxes;
- d. For punitive damages, according to proof at time of trial;
- e. For other relief the Court deems proper; and
- f. Pursuant to Civil Code section 1780(d), the recovery of all reasonable attorney's fees and litigation costs.

ON THE SECOND CAUSE OF ACTION (Business And Professions Code Section 17200):

- a. For an order enjoining Defendants, their agents, employees, representatives, and anyone acting on their behalf or in concert with them, as follows: A prohibitory injunction preventing Defendants from representing to consumers that the channels on DirecTV's HD Package are HDTV, including calling the package the HD Package.
- b. For restitution to Plaintiffs of any property belonging to Plaintiffs which was obtained by Defendants as a result of the Defendants' violation of the California Consumers Legal Remedies Act, including subscription fees for the HD Package as well as the cost of DirecTV HD decoder boxes.

ON ALL CAUSES OF ACTION:

- a. For the creation of a liquid recovery fund into which Defendant would pay the damages and restitution prayed for above which would be distributed to the class members as appropriate and to the extent possible, with the unpaid residuals to be distributed in a manner designed either to further the purposes of the underlying causes of action, or to promote justice for all Californians.
- b. For any further relief that the court deems just and proper;

KING & FERLAUTO, LLP
1880 CENTURY PARK EAST, SUITE 820
LOS ANGELES, CALIFORNIA 90067
PHONE (310) 552-3366
FACSIMILE (310) 552-3289

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

c. For costs of suit and reasonable attorneys' fee.

DATED: November ____, 2004

KING & FERLAUTO, LLP

By: _____
Thomas M. Ferlauto
Attorney For Plaintiff