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13 **UNITED STATES DISTRICT COURT**  
 14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 ANTHONY VALDEZ, individually and) Case No. **'18CV0663 JM JMA**  
 16 on behalf of all others similarly situated,)

17 ) **CLASS ACTION**  
 18 Plaintiff, )

19 ) **COMPLAINT FOR VIOLATIONS**  
 20 vs. ) **OF:**

21 )  
 22 ) 1. VIOLATIONS OF  
 23 ) ELECTRONIC FUNDS  
 24 ) TRANSFER ACT [15 U.S.C.  
 25 ) §1693 ET SEQ.]  
 26 )

27 Defendant(s). ) **DEMAND FOR JURY TRIAL**  
 28 )

29 Plaintiff ANTHONY VALDEZ (“Plaintiff”), on behalf of himself and all  
 30 others similarly situated, alleges the following against DIRECTV, LLC and  
 31 CABLE VISION CCTV, INC. (“Defendants”) upon information and belief based  
 32 upon personal knowledge:

33 **INTRODUCTION**

34 1. Plaintiff’s Class Action Complaint is brought pursuant to the  
 35 Electronic Funds Transfer Act, 15 U.S.C. 1693 et seq. (“EFTA”).

1           2. Plaintiff, individually, and on behalf of all others similarly situated,  
2 brings this Complaint for damages, injunctive relief, and any other available legal  
3 or equitable remedies, resulting from the illegal actions of Defendants debiting  
4 Plaintiff's and also the putative Class members' bank accounts on a recurring basis  
5 without obtaining a written authorization signed or similarly authenticated for  
6 preauthorized electronic fund transfers from Plaintiff's and also the putative Class  
7 members' accounts, thereby violating Section 907(a) of the EFTA, 15 U.S.C. §  
8 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b). Plaintiff  
9 alleges as follows upon personal knowledge as to herself and his own acts and  
10 experiences, and, as to all other matters, upon information and belief, including  
11 investigation conducted by his attorneys.  
12

### **JURISDICTION AND VENUE**

13           3. This Court has jurisdiction under 28 U.S.C. 1331, because this action  
14 is brought pursuant to the EFTA, 15 U.S.C. 1693 *et seq.*  
15

16           4. Jurisdiction of this Court arises pursuant to 15 U.S.C. 1693(m), which  
17 states that, "without regard to the amount in controversy, any action under this  
18 section may be brought in any United States district court."

19           5. Venue and personal jurisdiction in this District are proper pursuant to  
20 28 U.S.C. 1391(b) because Plaintiff resides within this District and Defendant does  
21 or transact business within this District, and a material portion of the events at issue  
22 occurred in this District.  
23

### **PARTIES**

24           6. Plaintiff, ANTHONY VALDEZ ("PLAINTIFF"), is a natural person  
25 residing in San Diego County in the state of California, and is a "consumer" as  
26 defined by 15 U.S.C. §1693a(6).  
27

28           7. At all relevant times herein, Defendant DIRECTV, LLC  
("DIRECTV"), was a company engaged in the business of providing television

1 and communication services to consumers.

2 8. At all relevant times, herein, Defendant CABLE VISION CCTV,  
3 INC. (“CCTV”), is a company engaged in the business in selling television and  
4 communication services provided by DIRECTV.

5 9. The above named Defendants, and its subsidiaries and agents, are  
6 collectively referred to as “Defendants.” The true names and capacities of the  
7 Defendants sued herein as DOE DEFENDANTS 1 through 20, inclusive, are  
8 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious  
9 names. Each of the Defendants designated herein as a DOE is legally responsible  
10 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend  
11 the Complaint to reflect the true names and capacities of the DOE Defendants  
12 when such identities become known.

13 10. Plaintiff is informed and believes that at all relevant times, each and  
14 every Defendant was acting as an agent and/or employee of each of the other  
15 Defendants and was acting within the course and scope of said agency and/or  
16 employment with the full knowledge and consent of each of the other Defendants.  
17 Plaintiff is informed and believes that each of the acts and/or omissions  
18 complained of herein was made known to, and ratified by, each of the other  
19 Defendants.  
20 Defendants.

21 **FACTUAL ALLEGATIONS - EFTA**

22 11. On or around February 12, 2018, CCTV contacted Plaintiff and,  
23 acting as DIRECTV, offered to sell DIRECTV services to Plaintiff.

24 12. CCTV asked Plaintiff to provide his debit card number over the  
25 phone, representing that CCTV would only charge \$1, in order to determine that  
26 Plaintiff’s debt card was valid.

27 13. On or around February 14, 2018, Plaintiff cancelled the services with  
28 Defendants, prior to any installation of any equipment or activation of any services

1 from DIRECTV. CCTV represented to Plaintiff that no charges would be made on  
2 the debit card provided.

3 14. Later that day, Plaintiff discovered that Defendants made two charges  
4 to her debit card without his consent; one for \$390.58 and another for \$433.45.

5 15. Defendant's automatic withdrawals caused an overdraft on Plaintiff's  
6 bank account, causing her actual injury in the forms of additional fees.

7 16. Plaintiff never provided Defendant with any authorization to deduct  
8 these sums of money from Plaintiff's banking account.

9 17. Further, Defendants did not provide to Plaintiff, nor did Plaintiff  
10 execute, any written or electronic writing memorializing or authorizing these  
11 recurring or automatic payments.

12 18. Plaintiff alleges such activity to be in violation of the Electronic  
13 Funds Transfer Act, 15 U.S.C. 1693 et seq. ("EFTA"), and its surrounding  
14 regulations, including, but not limited to, 12 C.F.R. §§1005.7, 1005.8, and 1005.9.

15  
16 **CLASS ACTION ALLEGATIONS**

17 19. Plaintiff brings this action on behalf of herself and all others similarly  
18 situated, as a member of the proposed class (hereafter "The Class") defined as  
19 follows:

20 All persons in the United States whose bank accounts  
21 were debited on a reoccurring basis by Defendants  
22 without Defendants obtaining a written authorization  
23 signed or similarly authenticated for preauthorized  
24 electronic fund transfers within the one year prior to the  
25 filing of this Complaint.

26 20. Plaintiff represents, and is a member of, The Class, consisting of all  
27 persons within the United States whose bank account was debited on a recurring  
28 basis by Defendants without Defendants obtaining a written authorization signed  
or similarly authenticated for preauthorized electronic fund transfers within the one

1 year prior to the filing of this Complaint.

2 21. Defendants, their employees and agents are excluded from The Class.  
3 Plaintiffs do not know the number of members in The Class, but believe the Class  
4 members number in the hundreds, if not more. Thus, this matter should be certified  
5 as a Class Action to assist in the expeditious litigation of the matter.

6 22. The Class is so numerous that the individual joinder of all of its  
7 members is impractical. While the exact number and identities of The Class  
8 members are unknown to Plaintiff at this time and can only be ascertained through  
9 appropriate discovery, Plaintiff is informed and believes and thereon alleges that  
10 The Class includes hundreds, if not thousands, of members. Plaintiff alleges that  
11 The Class members may be ascertained by the records maintained by Defendants.

12 23. This suit is properly maintainable as a class action pursuant to Fed.  
13 R. Civ. P. 23(a) because the Class is so numerous that joinder of the Class members  
14 is impractical and the disposition of their claims in the class action will provide  
15 substantial benefits both to the parties and to the Court.  
16

17 24. There are questions of law and fact common to the Class affecting the  
18 parties to be represented. The questions of law and fact to the Class predominate  
19 over questions which may affect individual Class members and include, but are  
20 not necessarily limited to, the following:

21 a. The members of the Class were not provided with, nor did they  
22 execute, written agreements memorializing the automatic or recurring electronic  
23 payments.

24 b. Defendants did not request, nor did it provide, Class members with  
25 written agreements memorializing the automatic or recurring electronic payments.

26 c. The members of the Class did not provide either a written (“wet”) or  
27 otherwise electronic signature authorizing the automatic or recurring electronic  
28 payments.

1 d. Despite not providing written or electronic authorization for  
2 payments to be drawn from their accounts, Defendants took unauthorized  
3 payments from Class members' accounts.

4 25. As someone whose bank account was debited on a reoccurring basis  
5 by Defendants without Defendants obtaining a written authorization signed or  
6 similarly authenticated for preauthorized electronic fund transfers, Plaintiff is  
7 asserting claims that are typical of The Class.

8 26. Plaintiff will fairly and adequately protect the interests of the members  
9 of The Class. Plaintiff has retained attorneys experienced in the prosecution of class  
10 actions.

11 27. A class action is superior to other available methods of fair and  
12 efficient adjudication of this controversy, since individual litigation of the claims  
13 of all Class members is impracticable. Even if every Class member could afford  
14 individual litigation, the court system could not. It would be unduly burdensome  
15 to the courts in which individual litigation of numerous issues would proceed.  
16 Individualized litigation would also present the potential for varying, inconsistent,  
17 or contradictory judgments and would magnify the delay and expense to all parties  
18 and to the court system resulting from multiple trials of the same complex factual  
19 issues. By contrast, the conduct of this action as a class action presents fewer  
20 management difficulties, conserves the resources of the parties and of the court  
21 system, and protects the rights of each Class member.

22 28. The prosecution of separate actions by individual Class members  
23 would create a risk of adjudications with respect to them that would, as a practical  
24 matter, be dispositive of the interests of the other Class members not parties to such  
25 adjudications or that would substantially impair or impede the ability of such non-  
26 party Class members to protect their interests.

27 29. Defendants have acted or refused to act in respects generally  
28

1 applicable to The Class, thereby making appropriate final and injunctive relief with  
2 regard to the members of the Class as a whole.

3 30. Defendants failed to comply with the writing and notice requirements  
4 of § 907(a) of the EFTA, 15 U.S.C. § 1693e(a) as to the Class members with respect  
5 to the above alleged transactions.

6 31. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a  
7 “preauthorized electronic fund transfer from a consumer’s account may be  
8 authorized by the consumer only in writing, and a copy of such authorization shall  
9 be provided to the consumer when made.”

10 32. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the  
11 term “preauthorized electronic fund transfer” means “an electronic fund transfer  
12 authorized in advance to recur at substantially regular intervals.”

13 33. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that  
14 “[p]reauthorized electronic fund transfers from a consumer’s account may be  
15 authorized only by a writing signed or similarly authenticated by the consumer.  
16 The person that obtains the authorization shall provide a copy to the consumer.”

17 34. Section 205.10(b) of the Federal Reserve Board's Official Staff  
18 Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that “[t]he  
19 authorization process should evidence the consumer’s identity and assent to the  
20 authorization.” *Id.* at ¶10(b), comment 5. The Official Staff Commentary further  
21 provides that “[a]n authorization is valid if it is readily identifiable as such and the  
22 terms of the preauthorized transfer are clear and readily understandable.” *Id.* at  
23 ¶10(b), comment 6.

24 35. In multiple instances, Defendants debited bank accounts of the Class  
25 members on a recurring basis without obtaining a written authorization signed or  
26 similarly authenticated by the respective Class members for preauthorized  
27 electronic fund transfers from the accounts of the respective Class members,  
28

1 thereby violating § 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section  
2 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

3 36. In multiple instances, Defendants debited Class members' bank  
4 accounts on a recurring basis without providing a copy of a written authorization  
5 signed or similarly authenticated by the respective Class members for  
6 preauthorized electronic funds transfers, thereby violating Section 907(a) of the  
7 EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. §  
8 205.10(b).

9 37. The size and definition of the Class can be identified through  
10 Defendant's records and/or Defendant's agents' records.  
11

12  
13 **COUNT I:**  
14 **DEFENDANTS VIOLATED THE ELECTRONIC FUNDS TRANSFER**  
15 **ACT**  
16 **(On Behalf of Plaintiff and the Class)**

17 38. Plaintiff reincorporates by reference all of the preceding paragraphs.

18 39. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a  
19 "preauthorized electronic fund transfer from a consumer's account may be  
20 authorized by the consumer only in writing, and a copy of such authorization shall  
21 be provided to the consumer when made."

22 40. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the  
23 term "preauthorized electronic fund transfer" means "an electronic fund transfer  
24 authorized in advance to recur at substantially regular intervals."

25 41. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that  
26 "[p]reauthorized electronic fund transfers from a consumer's account may be  
27 authorized only by a writing signed or similarly authenticated by the consumer.  
28 The person that obtains the authorization shall provide a copy to the consumer."

42. Section 205.10(b) of the Federal Reserve Board's Official Staff



1 Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that “[t]he  
2 authorization process should evidence the consumer’s identity and assent to the  
3 authorization.” *Id.* at ¶10(b), comment 5. The Official Staff Commentary further  
4 provides that “[a]n authorization is valid if it is readily identifiable as such and the  
5 terms of the preauthorized transfer are clear and readily understandable.” *Id.* at  
6 ¶10(b), comment 6.

7 43. In multiple instances, Defendants have debited Plaintiff’s and also the  
8 putative Class members’ bank accounts on a recurring basis without obtaining a  
9 written authorization signed or similarly authenticated for preauthorized electronic  
10 fund transfers from Plaintiff’s and also the putative Class members’ accounts,  
11 thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section  
12 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

13 44. In multiple instances, Defendants have debited Plaintiff’s and also the  
14 putative Class members’ bank accounts on a recurring basis without providing a  
15 copy of a written authorization signed or similarly authenticated by Plaintiff or the  
16 putative Class members for preauthorized electronic fund transfers, thereby  
17 violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b)  
18 of Regulation E, 12 C.F.R. § 205.10(b).

19  
20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, ANTHONY VALDEZ, individually, and on  
22 behalf of all others similarly situated, respectfully requests judgment be entered  
23 against Defendants, for the following:

24 45. That this action be certified as a class action on behalf of The Class  
25 and Plaintiff be appointed as the representative of The Class;

26 46. Statutory damages of \$1,000.00, per Class Member, pursuant to the  
27 Electronic Fund Transfer Act, §916(a)(2)(A);

28 47. Actual damages;

1 48. Costs and reasonable attorneys' fees pursuant to the Electronic Fund  
2 Transfer Act, §916(a)(3);

3 49. For prejudgment interest at the legal rate; and

4 50. Any other relief this Honorable Court deems appropriate.  
5

6 **TRIAL BY JURY**

7 51. Pursuant to the seventh amendment to the Constitution of the United  
8 States of America, Plaintiff is entitled to, and demands, a trial by jury.  
9

10 Respectfully submitted this 3rd Day of April, 2018.

11  
12 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

13  
14 By: /s/ Todd M. Friedman  
15 Todd M. Friedman  
16 Law Offices of Todd M. Friedman  
17 Attorney for Plaintiff  
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ANTHONY VALDEZ, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Law Offices of Todd M. Friedman, P.C. 21550 Oxnard St., #780, Woodland Hills, CA 91780 (866) 206-4741

DEFENDANTS

DIRECTV, LLC; CABLE VISION CCTV, INC.; and DOES 1-10, inclusive,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'18CV0663 JM JMA

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. §1693 et seq. Brief description of cause: Electronic Funds Transfer Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/03/2018 SIGNATURE OF ATTORNEY OF RECORD s/Todd M. Friedman

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Man Claims DirecTV, Cable Vision Made Unauthorized Withdrawals from Bank Account](#)

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