

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

CHRISTOPHER MOSES, ALL AMERICAN CLEAN LLC,
THEMI SACARELLOS, ROUND THE CLOCK EAST INC.,
ANTONIO VITOLO, JAKE'S BAR AND GRILL, LLC,
ALFRED CASTIGLIONI, and CHARDONNAY'S INC.,

Plaintiffs,

v.

COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC,

Defendant.

VERIFIED COMPLAINT

Plaintiffs allege their complaint against Defendant as follows:

INTRODUCTION

1. Plaintiffs are small business owners from Indiana, Pennsylvania, Tennessee, and Massachusetts. Like many small business owners, they could use some help with marketing and technology. Earlier this year, Plaintiffs visited a website called "ComcastRISE.com." The website is operated by the Defendant, Comcast Cable Communications Management, LLC. Through this website, Comcast offers small businesses the chance to participate in a grant program offering "resources and tools to elevate your business," including consulting, creative production of a 30-second TV commercial, and a TV media schedule, among other things.

2. This all sounded like a great opportunity to Plaintiffs. The website explained that small businesses could apply and then Comcast would select the winners in a few months. If selected, Plaintiffs would have the opportunity to enter into a contractual relationship with Comcast, under which Comcast would provide the promised resources and Plaintiffs would grant Comcast rights of publicity and other terms.

3. There is a catch, though. Comcast's program is not open to white male business owners. And because Plaintiffs are all white, there is no chance they could be selected. The very language found on ComcastRISE.com prohibits Plaintiffs from participating because of their race.

4. Comcast's program is illegal. In fact, as the U.S. Supreme Court has held, when a private entity imposes a racial qualification on the receipt of a contractual benefit, such conduct "amounts to a classic violation of s. 1981." *Runyon v. McCrary*, 427 U.S. 160, 161 (1976). Section 1981, part of the Civil Rights Act of 1866, protects the equal right of all persons to make and enforce contracts and prohibits racial discrimination in the contract-making process.

5. Comcast's racial qualifications must end. Plaintiffs therefore ask this Court for an injunction preventing Comcast from imposing its race-based criteria and an award of appropriate damages and attorney fees.

THE PARTIES

6. Christopher Moses is a white male who owns All American Clean LLC, which is a commercial cleaning company based in Greenwood, Indiana. Mr. Moses is a disabled combat veteran who joined the Indiana Army National Guard right after 9/11. He served in Iraq traveling on daily convoys throughout the country to train Iraqi police officers. He also served in Bosnia and assisted local law enforcement in Mississippi following Hurricane Katrina. Mr. Moses retired at the rank of Staff Sergeant. He started All American Clean in 2012 and runs the business with his wife.

7. Themis Sacarellos owns Round the Clock East Inc., a restaurant in York, Pennsylvania, along with his father Dimos Sacarellos. Dimos is a Greek immigrant who came to America in 1967 with \$10 to his name. Now Dimos owns and operates multiple successful restaurants, including Round the Clock East, with his son Themis. Both Themis and Dimos are white males.

8. Antonio Vitolo is a white male who owns Jake's Bar and Grill, LLC, in Harriman, Tennessee. Mr. Vitolo was previously the victim of race discrimination by the Small Business Administration, as detailed in *Vitolo v. Guzman*, 999 F.3d 353 (6th Cir. 2021).

9. Alfred Castiglioni is a white male who owns Chardonnay's Inc., doing business as Chardonnay's Restaurant in Seekonk, Massachusetts.

10. Each Plaintiff individually meets the qualifications for a Comcast RISE grant. Each individual Plaintiff is over 18 years old, owns his own small business, is the primary decision maker for that business, and has been actively engaged in the

day-to-day operation of his businesses for over a year. Each plaintiff-business is registered to conduct business in one of the 48 contiguous United States, independently owned and operated, not a franchise, and has 100 or fewer employees. No Plaintiff is an employee of Comcast Corporation, its parents, affiliates or subsidiaries. Each Plaintiff's business is located within the Comcast Business or Effectv service area footprint. Apart from being white, each individual Plaintiff is eligible for the Comcast Rise Small Business Program and their businesses do not fall into any of the prohibited categories at ComcastRISE.com/legal.

11. Defendant Comcast Cable Communications Management, LLC ("Comcast" for purposes of this Verified Complaint), is a cable company that does substantial business throughout the United States, including within this judicial district.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this complaint under 28 U.S.C. § 1331.

13. Venue is appropriate in this district under 28 U.S.C. § 1391. Defendant resides in this district because it is subject to this Court's personal jurisdiction. Comcast is registered to do business in Indiana and within this district, with a registered agent at 334 North Senate Avenue, Indianapolis, IN, 46204. Furthermore, a substantial part of the events or omissions giving rise to the claims this lawsuit occurred in this district.

STATEMENT OF CLAIM

14. Comcast offers a grant program for small businesses called “Comcast RISE Small Business Program.” RISE is an acronym for “Representation, Investment, Strength and Empowerment.” According to a report by Comcast, Comcast RISE was launched in late 2020, and will award 13,000 businesses owned by people of color across the country with technology, makeovers, marketing services, and millions of dollars of grants by 2022.” An image from a recent report from Comcast is below:

Comcast RISE, which was launched in late 2020, will award 13,000 small businesses owned by people of color across the country with technology makeovers, marketing services, and millions of dollars in grants by 2022.



15. The details of Comcast RISE are available at ComcastRISE.com. According to this website, “small businesses have been dealing with the ongoing impact of the pandemic, social unrest, and environmental events.” Comcast also says that “[s]mall businesses owned by people of color or women have been some of the hardest hit.” The website continues: “According to the National Bureau of Economic Research, between February and April 2020, the number of active Black-owned businesses declined by 41%, Latinx-owned businesses declined by 32%, and Asian-owned businesses dropped by 25%, versus just 21% for the general population.”

Because of these racial and gender disparities, Comcast explains that “Comcast RISE was created to invest in the success of these critical businesses.”

16. Comcast’s website further explains the purpose is “to provide marketing, creative, media, and technology services to small businesses owned by people of color or women.” Below is an image from ComcastRISE.com:



Comcast RISE, a multi-year commitment to provide marketing, creative, media, and technology services to small businesses owned by people of color or women.

17. Comcast’s website lays out the eligibility requirements, which contain an explicit racial qualification that “at least 51% [of the applying business must be] owned and operated by someone who identifies as Black, Indigenous, a Person of Color, or a female.” Below is an image from Comcast RISE containing the eligibility requirements:

ELIGIBILITY

You are eligible to apply for this program if your business:

- Is at least 51% owned and operated by someone who identifies as Black, Indigenous, a Person of Color, or a Female**
- Is independently owned and operated; and not a franchise location**
- Is registered to conduct business in the US**
- Has been operating for one or more years**
- Is located within the Comcast Business or Effectv service area footprint**

18. Lest there be any doubt as to Comcast’s requirements, a FAQ on the website asks: “Is this program only open to businesses owned by people of color?” The answer is unequivocal: “Yes; the current program eligibility is focused on businesses owned by people of color, including Black, indigenous, Hispanic, and Asian American owners, among others.”

19. Anticipating the next obvious question, the FAQ continues: “Why are only businesses owned by people of color eligible?” The answer: Comcast has been “leaning in” to support “businesses owned by people of color” “because these marginalized communities are hit hardest by the effects of the pandemic.”

20. Elsewhere, Comcast again reaffirms that only “small and medium-sized businesses owned by people of color” are “eligible to apply for marketing and technology services.” Other requirements include:

- a. The owner is at least 18 years old, the primary decisionmaker, and actively engaged in the day-to-day operation of the business;
- b. No more than 25 full-time and part-time employees for the Tech Makeover;
- c. No more than 100 full-time and part-time employees for the Consultation, Media and Creative;
- d. For the Tech Makeover, cannot be a home-based business, a business operating at a residential address, or a business that does not have a permanent, fixed location;
- e. Established business operations for at least one calendar year;
- f. Registered to conduct business in the United States (with minor exceptions that do not apply here);
- g. Independently owned and operated; and
- h. Employees and independent contractors of Comcast Corporation and its affiliates are not eligible.

21. Eligible applicants are invited to complete a thorough application at ComcastRISE.com/rise-apply. Applicants provide personal information, details about their business, answers to several questions, and “a link to a video of you telling us more about your business.”

22. In exchange for Comcast agreeing to review a completed application, applicants “grant Sponsor the non-exclusive, royalty-free, and irrevocable rights to use, reproduce, copy, publish, display, distribute, perform, translate, adapt, modify, and otherwise exploit the Submission and to incorporate the Submission in other works in any and all markets and media worldwide in perpetuity.” In addition, “[a]ll Submissions and Videos become property of [Comcast] and will not be acknowledged or returned.”

23. Upon receiving a completed application, Comcast agrees to evaluate eligible applications based on three criteria: “completeness of submission,” “originality of submission,” and “persuasiveness of responses to questions provided on why the applicant should be considered for the Comcast RISE program.”

24. Comcast agrees that RISE grant recipients will receive one or more of the following business services:

- A. Consultation: general business and marketing consulting providing insights on how to grow their business
- B. Media: a linear TV media schedule, over a 90-day period from Effectv
- C. Creative Production: turnkey :30 TV commercial production for their business

- D. Technology Makeover: This will include some combination of Comcast Business Internet, Voice, cybersecurity malware protection and video surveillance services with no monthly service charge for up to a 12-month period and computer equipment from a selection of desktops, laptops or tablets. Tech Makeover services can only be awarded to one business location for a 12-month consecutive period.
- E. Additional Benefits: marketing and data insights via the Comcast RISE monthly newsletter, as well as a virtual listing, including contact information on the Comcast RISE website to all eligible applicants.

25. In exchange for these benefits, RISE grant recipients “will be required to execute and return an affidavit of eligibility, release of liability, [and] publicity release.”

26. Since 2020, Comcast awarded over 8,000 small businesses RISE grants, boasting grant recipients in 590 cities across 34 states.

27. The current grant period continues until June 17, 2022.

28. Plaintiffs carefully reviewed the Comcast RISE website and all the eligibility requirements. Apart from being white, Plaintiffs meet all eligibility requirements for a Comcast RISE grant. And Plaintiffs are not excluded by any of the other requirements on the Comcast RISE website.

29. Because they were ineligible to apply because of their race, Plaintiffs did not apply.

30. Had it not been for the racial criteria, Plaintiffs would have applied. Plaintiffs remain able and ready to apply for Comcast RISE.

31. Plaintiffs’ businesses would benefit from a Comcast RISE grant and Plaintiffs would apply if the racial criteria were eliminated.

32. Defendant's explicit race-based criteria prevents Plaintiffs from competing for a Comcast RISE grant on an equal footing with non-white applicants.

**CAUSE OF ACTION
VIOLATION OF THE CIVIL RIGHTS ACT OF 1866
42 U.S.C. § 1981**

33. Plaintiffs reallege and incorporate by reference the allegations set forth above as if fully set forth herein.

34. Under the Civil Rights Act of 1866, “[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts ... as is enjoyed by white citizens.” 42 U.S.C. § 1981(a). The term “make and enforce contracts” includes the “making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.” 42 U.S.C. § 1981(b). The rights protected in Section 1981 “are protected against impairment by nongovernmental discrimination and impairment under color of state law.” 42 U.S.C. § 1981(c).

35. This section of the Civil Rights Act, commonly referred to as “Section 1981,” “prohibits racial discrimination in the making and enforcement of private contracts,” *Runyon*, 427 U.S. at 168, and it applies equally to all races, *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273 (1976).

36. When a private company offers a contractual opportunity, yet imposes a “racial exclusion,” such conduct “amounts to a classic violation of s. 1981.” *Runyon*, 427 U.S. at 172.

37. Plaintiffs desire to make and perform a contract with Comcast as described above, yet Comcast prohibits Plaintiffs from receiving a contract because of their race.

38. Plaintiffs, who are white, do not enjoy the same right to make, enforce, and perform a contract with Comcast as do non-white small business owners.

39. Plaintiffs are able and ready to apply for a Comcast RISE grant.

40. Comcast's practice and policy for the Comcast RISE grant program therefore violates Section 1981.

RELIEF REQUESTED

Plaintiffs respectfully request that this Court:

A. Immediately enter a preliminary restraining order prohibiting Comcast from imposing the racial qualifications in the Comcast RISE grant program;

B. Enter a declaratory judgment that Comcast's racial qualifications violate 42 U.S.C. § 1981;

C. Enter an order permanently enjoining Comcast from using race qualifications in the Comcast RISE grant program;

D. Award Plaintiffs appropriate damages, including nominal and punitive damages if appropriate, and attorneys' fees under 42 U.S.C. § 1988; and

E. Grant Plaintiffs such other and further relief as the court deems appropriate.

Dated: April 4, 2022

Wisconsin Institute for Law & Liberty

/s/ Katherine D. Spitz

Richard M. Esenberg (*pro hac vice pending*)

Daniel P. Lennington (*pro hac vice pending*)

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Plaintiffs,

v.

COMCAST CABLE COMMUNICATIONS MANAGEMENT LLC,

Defendant.

VERIFICATION

1. I am a plaintiff in this case.
2. I have personal knowledge of myself, my activities, my intentions, and my business, which is also a plaintiff in this lawsuit, including those set out in the foregoing Verified Complaint. If called upon to testify, I would competently testify as to the matters relevant to me and my claims.
3. I verify under the penalty of perjury under the laws of the United States that the factual statements in this Verified Complaint concerning myself, my activities, my intentions, and my business are true and correct.

Dated: 03/23/2022

Signature Christopher Moses

Printed Name: Christopher Moses

IN THE UNITED STATES DISTRICT COURT
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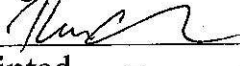
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Dated:

3/21/22

Signature



Printed

Themis Sacarellos

Name:

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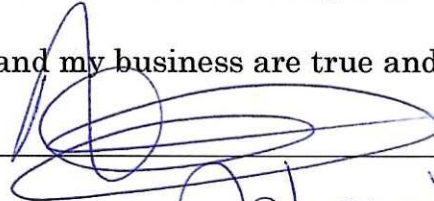
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Dated: 3/22/22

Signature

Printed Name:


Antonio Vitolo

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Dated: 3/23/22

Signature Alfred Castiglioni

Printed Name: Alfred Castiglioni