

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL SPAFFORD, JR., individually and on behalf)
of a class of Washington residents similarly situated,)

No. CV06-0479 JLR

Plaintiff,)

v.)

DEFENDANTS' ANSWER TO
PLAINTIFF'S AMENDED
COMPLAINT

ECHOSTAR COMMUNICATIONS CORPORATION,)
a Nevada corporation; ECHOSTAR ORBITAL)
CORPORATION, a Colorado corporation; ECHOSTAR)
ORBITAL CORPORATION II, a Colorado corporation;)
ECHOSTAR DBS CORPORATION, a Colorado)
corporation; ECHOSPHERE L.L.C., a Colorado limited)
liability company; ECHOSTAR TECHNOLOGIES)
CORPORATION, a Texas corporation; and)
ECHOSTAR SATELLITE L.L.C., a Colorado limited)
liability company,)

Defendants.)

ECHOSTAR COMMUNICATIONS CORPORATION,)
a Nevada corporation and its subsidiaries and affiliates,)
including but not limited to ECHOSTAR DBS)
CORPORATION, a Colorado corporation and its)
subsidiaries and affiliates,)

Third-Party Plaintiffs,)

v.)

SATELLITE SYSTEMS NETWORK, LLC,)
a California limited liability company,)

Third-Party Defendant.)

1 **Defendants EchoStar Communications Corporation, EchoStar Orbital**
2 **Corporation, EchoStar Orbital Corporation II, EchoStar DBS Corporation, Echosphere**
3 **L.L.C., DISH Network Service L.L.C., EchoStar Technologies Corporation, and**
4 **EchoStar Satellite L.L.C. (collectively "EchoStar"),¹ in response to the Amended Class**
5 **Action Complaint for Damages ("Amended Complaint") filed by Plaintiff Michael**
6 **Spafford, Jr., admits, denies, and alleges as follows:**

7 **I. INTRODUCTION**

8 1.1 Plaintiff Michael Spafford, Jr. brings this action on behalf of himself and all
9 similarly situated Washington residents.

10 1.1 **ANSWER: EchoStar admits that Plaintiff purports to bring this action on**
11 **behalf of himself and all similarly situated Washington residents, but denies that Plaintiff**
12 **has a right to relief under any of his theories of recovery.**

13 1.2 Defendant EchoStar Communications Corporation is a holding company whose
14 wholly-owned subsidiaries include Defendant EchoStar Orbital Corporation, Defendant
15 EchoStar Orbital Corporation II, Defendant EchoStar DBS Corporation, Defendant EchoSphere
16 L.L.C., Defendant Dish Network Service L.L.C., Defendant EchoStar Technologies
17 Corporation, and Defendant EchoStar Satellite L.L.C. Substantially all of EchoStar
18 Communications Corporation's operations are conducted by its subsidiaries, which operate
19 interrelated business units which provide direct satellite television products and services
20 through the registered trade name "DISH Network." Defendant EchoStar Satellite L.L.C. is the

21 ¹ **EchoStar affirmatively alleges that EchoStar Communications Corporation, EchoStar**
22 **Orbital Corporation, EchoStar Orbital Corporation II, and EchoStar DBS Corporation**
23 **were not properly named as defendants in this lawsuit, as these entities are holding**
companies that have no involvement in the marketing, promotion, and solicitation of
orders for DISH Network services. EchoStar further alleges that EchoStar Satellite
L.L.C. is the major operating company for DISH Network.

1 major operating company for DISH Network. All Defendants will be collectively referred to
2 herein as "DISH Network."

3 **1.2 ANSWER: EchoStar admits that EchoStar Communications Corporation**
4 **is a holding company whose subsidiaries, which include EchoStar Orbital Corporation,**
5 **EchoStar Orbital Corporation II, and EchoStar DBS Corporation, operate interrelated**
6 **business units, including Echosphere L.L.C., DISH Network Service L.L.C., EchoStar**
7 **Technologies Corporation, and EchoStar Satellite L.L.C., which provide satellite**
8 **television products and services through the registered trade name "DISH Network."**
9 **EchoStar denies the remaining allegations in this paragraph.**

10 **1.3 DISH Network sells subscriptions to its direct broadcast satellite television**
11 **service through various retail, on-line and telemarketing operations conducted by its**
12 **subsidiaries, business units, affiliates, contractors, distributors and agents (collectively referred**
13 **to herein as "agents").**

14 **1.3 ANSWER: EchoStar admits that various EchoStar subsidiaries and**
15 **business units distribute EchoStar receiver systems and solicit orders for DISH Network**
16 **programming services through direct marketers, independent retailers, consumer**
17 **electronics stores, independent distributors, and telecommunication providers. EchoStar**
18 **also admits that those subsidiaries and business units offer receiver systems and**
19 **programming through their own direct sales channels. EchoStar denies the remaining**
20 **allegations in this paragraph.**

21 **1.4 This action arises out of DISH Network's continual and repeated violations of**
22 **RCW 80.36.400 through the use by it and its agents of automatic dialing and announcing**
23 **devices ("ADADs") for commercial solicitations of Washington residents in order to encourage**

1 them to purchase subscriptions to the DISH Network direct broadcast satellite television
2 service. Under RCW 80.36.400(3), DISH Network's violations of the ADAD prohibition are
3 also violations of the Washington Consumer Protection Act, chapter 19.86 RCW.

4 **1.4 ANSWER: EchoStar denies the allegations in this paragraph.**

5 1.5 On information and belief, DISH Network knew of, encouraged, facilitated and
6 benefited from the use of ADADs by its agents.

7 **1.5 ANSWER: EchoStar denies the allegations in this paragraph.**

8 **II. VENUE**

9 2.1 This action includes claims under the Consumer Protection Act, and this Court
10 has jurisdiction over this action under RCW 19.86.090.

11 **2.1 ANSWER: EchoStar admits that Plaintiff purports to bring claims under**
12 **the Consumer Protection Act, but denies that Plaintiff has a right to recover under any of**
13 **his theories of recovery. In addition, EchoStar affirmatively alleges that RCW 19.86.090**
14 **speaks for itself and that paragraph 2.1 alleges matters of law, which do not require a**
15 **response.**

16 2.2 Plaintiff resides in this county. Venue is proper in this Court pursuant to RCW
17 4.12.025 because the Defendants transact business in this county.

18 **2.2 ANSWER: EchoStar affirmatively alleges that RCW 4.12.025 speaks for**
19 **itself and that paragraph 2.2 alleges matters of law, which do not require a response. To**
20 **the extent that a response is required, EchoStar lacks knowledge or information sufficient**
21 **to form a belief as to the truth or falsity of the allegations set forth in this paragraph, and**
22 **on that basis, denies these allegations.**

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III. PARTIES

3.1 Plaintiff and the proposed class are residents of this state.

3.1 **ANSWER: EchoStar lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in this paragraph, and on that basis, denies these allegations.**

3.2 Defendant EchoStar Communications Corporation is a corporation organized under the laws of the state of Nevada with its principal place of business in Englewood, Colorado. Defendant EchoStar Technologies Corporation is a corporation organized under the laws of the state of Texas with its principal place of business in Englewood, Colorado.

Defendants EchoStar Orbital Corporation, EchoStar Orbital Corporation II, and EchoStar DBS Corporation are corporations organized under the laws of the state of Colorado. Defendants Echosphere L.L.C., Dish Network Service L.L.C. and EchoStar Satellite L.L.C. are limited liability companies organized under the laws of the state of Colorado with their principal place of business in Englewood, Colorado.

3.2 **ANSWER: EchoStar admits the allegations in this paragraph.**

3.3 On information and belief, Defendants conducted, knew of, encouraged, facilitated, and benefited from ADAD telemarketing operations in Washington.

3.3 **ANSWER: EchoStar denies the allegations in this paragraph.**

IV. FACTUAL ALLEGATIONS

4.1 DISH Network operates a direct broadcast satellite television service with millions of subscribers in the United States. It sells subscriptions to its service by, among other things, using ADADs to place telephone calls to potential subscribers in Washington State and offering to sell its satellite television service to such potential subscribers over the phone. The

1 ADADs used by DISH Networks have the capacity to leave, and do leave, recorded messages if
2 the potential subscriber does not answer the telephone call.

3 **4.1 ANSWER: EchoStar admits that various EchoStar subsidiaries and**
4 **business units provide direct broadcast satellite (“DBS”) services to customers across the**
5 **United States under the tradename “DISH Network.” EchoStar denies the remaining**
6 **allegations in this paragraph.**

7 4.2 Plaintiff Spafford has received repeated ADAD commercial solicitation calls
8 generated by DISH Network at his home and work place urging him to subscribe to DISH
9 Network’s satellite TV service. The ADAD generated calls leave a recorded message on
10 Plaintiff’s answering service prompting him to press a certain key on his telephone to speak to
11 a human representative. In at least two instances, when Mr. Spafford followed the prompts and
12 spoke to the person responding, that person specifically identified himself as being part of
13 DISH Network and not a third party supplier.

14 **4.2 ANSWER: EchoStar denies the allegations in this paragraph.**

15 4.3 As a result of the misconduct by DISH Network as detailed herein, Plaintiff has
16 been injured by being subjected to unwarranted invasions of his privacy at his home and place
17 of work. In addition, in contravention of the public policy of this state, DISH Network’s use of
18 ADADs for purposes of commercial solicitation deprives Plaintiffs of the opportunity to
19 immediately question DISH Network about the veracity of their claims and encourages
20 inefficient and potentially harmful use of the telephone network.

21 **4.3 ANSWER: EchoStar denies the allegations in this paragraph.**

1 V. CLASS ACTION ALLEGATIONS

2 5.1 Plaintiff brings this lawsuit as a class action on behalf of himself and all other
3 similarly situated Washington residents, as a proposed Plaintiff class pursuant to Civil Rule 23.

4 5.1 **ANSWER: EchoStar admits that Plaintiff purports to bring this lawsuit in**
5 **the manner set forth in paragraph 5.1, but denies that Plaintiff has a right to relief under**
6 **any of his theories of recovery.**

7 5.2 The class is defined as:

8 All Washington residents who received one or more commercial
9 solicitations from DISH Network directly or through its agents
through the use of an automatic dialing and announcing device.

10 Excluded from the class is the judge to whom this case is
11 assigned and any member of the judge's immediate family.

12 5.2 **ANSWER: EchoStar admits that Plaintiff purports to bring an action on**
13 **behalf of a proposed class as defined in paragraph 5.2, but denies that any such class**
14 **should be certified and further denies that Plaintiff or any members of the proposed class**
15 **have a right to relief under any of their theories of recovery.**

16 5.3 The class consists of thousands of residents making joinder impractical. The
17 disposition of the claims of these class members in a single class action will provide substantial
18 benefits to all parties and to the Court.

19 5.3 **ANSWER: EchoStar denies the allegations in this paragraph.**

20 5.4 There is a well-defined community of interest among members of the class. The
21 claims of the Plaintiff are typical of the claims of the class, in that Plaintiff, like all class
22 members, received unsolicited commercial solicitations from DISH Networks and its agents
23 through the use of ADADs. Plaintiff, like all class members, has been damaged by Defendants'

1 misconduct by virtue of the annoyance and inconvenience of receiving unsolicited commercial
2 solicitations in violation of Washington law and public policy. The factual bases of
3 Defendants' misconduct are common to all class members and represent a common cause of
4 misconduct resulting in injury to all class members.

5 **5.4 ANSWER: EchoStar denies the allegations in this paragraph.**

6 5.5 There are numerous questions of law and fact common to Plaintiff and the class,
7 and these questions predominate over any questions that may affect individual class members,
8 and include, but are not limited to, the following:

9 a. Whether DISH Network and its agents' use of ADADs for commercial
10 solicitation is a violation of RCW 80.36.400;

11 b. Whether DISH Network and its agents' use of ADADs for commercial
12 solicitation is a violation of chapter 19.86 RCW;

13 c. Whether DISH Network and its agents knew or should have known that
14 its use of ADADs was in violation of Washington law and benefited from such use;

15 d. Whether Defendants engaged in unfair competition and/or unfair
16 deceptive acts and/or practices when they made commercial solicitations using
17 ADADS;

18 e. Whether Plaintiff and the class are entitled to compensatory damages,
19 and the measure of such damages;

20 f. Whether as a result of Defendants' intentional violations, Plaintiff and
21 the class are entitled to punitive damages, and the amount of such damages;

22 **5.5 ANSWER: EchoStar denies the allegations in this paragraph.**

1 5.6 Plaintiff will fairly and adequately represent and protect the interests of the
2 class. He has retained counsel with substantial experience in prosecuting consumer class
3 actions, including actions under the Washington Consumer Protection Act. Plaintiff will
4 vigorously prosecute this action on behalf of the class. Neither Plaintiff nor his counsel has any
5 interests adverse to those of the class.

6 **5.6 ANSWER: EchoStar lacks knowledge or information sufficient to form a**
7 **belief as to the truth or falsity of the allegations set forth in this paragraph, and on that**
8 **basis, denies these allegations.**

9 5.7 Plaintiff and class members have all suffered and will continue to suffer harm
10 and damages as a result of Defendants' unlawful conduct. A class action is superior to other
11 available methods for the fair and efficient adjudication of this controversy. Absent a class
12 action, class members would find the cost of litigating their individual claims to be prohibitive,
13 and will have no effective remedy at law. Because of the relatively small size of the individual
14 class members' claims it is unlikely that individual class members could afford to seek legal
15 redress for Defendants' wrongful conduct. Absent a class action form of suit, class members
16 will continue to incur damages and Defendants' misconduct will proceed without a remedy to
17 Plaintiffs and the class. Class action treatment of common questions of law and fact is also
18 superior to multiple individual actions or piecemeal litigation in that it conserves the resources
19 of the courts and the litigants, and promotes consistency and efficiency of adjudication.

20 **5.7 ANSWER: EchoStar denies the allegations in this paragraph.**

1 VI. FIRST CLAIM FOR RELIEF:

2 VIOLATION OF RCW 80.36.400

3 For his first claim against Defendants, Plaintiff alleges:

4 6.1 Reallegation. Plaintiff realleges and incorporates by reference paragraphs 1.1
5 through 5.7 above.

6 6.1 **ANSWER**: EchoStar realleges and incorporates by reference its responses
7 to paragraphs 1.1 through 5.7 above with the same force and effect as though set forth
8 fully herein.

9 6.2 Violation. Defendants have continually and repeatedly violated RCW
10 80.36.400(2) by using ADADs to leave recorded messages to initiate unsolicited telephone
11 conversations with Plaintiff and the class for the purpose of encouraging Plaintiff and the class
12 to purchase subscriptions to the DISH Network television service.

13 6.2 **ANSWER**: EchoStar affirmatively alleges that RCW 80.36.400(2) speaks
14 for itself, and that paragraph 6.2 alleges matters of law, which do not require a response.
15 EchoStar denies the remaining allegations in this paragraph.

16 6.3 Damages. As a result of Defendants' violations of RCW 80.36.400(2), Plaintiff
17 and the class are presumed under RCW 80.36.400(3) to have suffered damages in the amount
18 of Five hundred dollars for each violation. The full amount of their damages will be proved at
19 trial.

20 6.3 **ANSWER**: EchoStar affirmatively alleges that RCW 80.36.400(2) and (3)
21 speak for themselves, and that the first sentence of paragraph 6.3 alleges matters of law,
22 which do not require a response. EchoStar denies the remaining allegations in this
23 paragraph.

VII. SECOND CLAIM FOR RELIEF:

CONSUMER PROTECTION ACT VIOLATION

For his second claim against Defendants, Plaintiff alleges:

7.1 Reallegation. Plaintiff realleges and incorporates by reference paragraphs 1.1 through 6.3 above.

7.1 ANSWER: EchoStar realleges and incorporates by reference its responses to paragraphs 1.1 through 6.3 above with the same force and effect as though set forth fully herein.

7.2 Violation. Pursuant to RCW 80.36.400(3) Defendants have continually and repeatedly violated chapter 19.86 RCW by using ADADs to leave recorded messages to initiate unsolicited telephone conversations with Plaintiff and the class for the purpose of encouraging Plaintiffs and the class to purchase subscriptions to the DISH Network television service.

7.2 ANSWER: EchoStar affirmatively alleges that RCW 80.36.400(3) speaks for itself, and that paragraph 7.2 alleges matters of law, which do not require a response. EchoStar denies the remaining allegations in this paragraph.

7.3 Injury. Plaintiff has been injured by virtue of the annoyance and inconvenience of receiving repeated unsolicited commercial solicitations through the use of ADADs in violation of Washington law and public policy. Plaintiff and the class, as Washington residents who have not sought communications or information from Defendants, are within the class of people that RCW 80.36.400(3) was designed to protect.

7.3 ANSWER: EchoStar affirmatively alleges that RCW 80.36.400(3) speaks for itself, and that the last sentence of paragraph 7.3 alleges matters of law, which do not require a response. EchoStar denies the remaining allegations in this paragraph.

