

THE HONORABLE JAMES L. ROBART

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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,

Plaintiff,

v.

EHOSTAR COMMUNICATIONS CORPORATION, a Nevada corporation; EHOSTAR ORBITAL CORPORATION, a Colorado corporation; EHOSTAR ORBITAL CORPORATION II, a Colorado corporation; EHOSTAR DBS CORPORATION, a Colorado corporation; ECHOSPHERE L.L.C., a Colorado limited liability company; DISH NETWORK SERVICE L.L.C., a Colorado limited liability company; EHOSTAR TECHNOLOGIES CORPORATION, a Texas corporation; and EHOSTAR SATELLITE L.L.C., a Colorado limited liability company,

Defendants.

EHOSTAR COMMUNICATIONS CORPORATION, a Colorado corporation and its subsidiaries and affiliates, including but not limited to DISH NETWORK; and EHOSTAR DBS CORPORATION, a Colorado corporation and its subsidiaries and affiliates,

Third-Party Plaintiffs,

v.

SATELLITE SYSTEMS NETWORK, LLC., a California limited liability corporation,

Third-Party Defendant.

NO. C06-479 JLR

AMENDED COMPLAINT FOR DAMAGES

[JURY DEMAND]

I. INTRODUCTION

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2 1.1 Plaintiff Michael Spafford, Jr., brings this action on behalf of himself and all
3 similarly situated Washington residents.

4 1.2 Defendant EchoStar Communications Corporation is a holding company whose
5 wholly-owned subsidiaries include Defendant EchoStar Orbital Corporation, Defendant
6 EchoStar Orbital Corporation II, Defendant EchoStar DBS Corporation, Defendant
7 EchoSphere L.L.C., Defendant Dish Network Service L.L.C., Defendant EchoStar
8 Technologies Corporation, and Defendant EchoStar Satellite L.L.C. Substantially all of
9 EchoStar Communication Corporation's operations are conducted by its subsidiaries, which
10 operate interrelated business units which provide direct satellite television products and
11 services through the registered trade name "DISH Network." Defendant EchoStar Satellite
12 L.L.C. is the major operating company for DISH Network. All Defendants will be collectively
13 referred to herein as "DISH Network."

14 1.3 DISH Network sells subscriptions to its direct broadcast satellite television
15 service through various retail, on-line, and telemarketing operations conducted by its
16 subsidiaries, business units, affiliates, contractors, distributors, and agents (collectively
17 referred to herein as "agents").

18 1.4 This action arises out of DISH Network's continual and repeated violations of
19 RCW 80.36.400 through the use by it and its agents of automatic dialing and announcing
20 devices ("ADADs") for commercial solicitations of Washington residents in order to
21 encourage them to purchase subscriptions to the DISH Network direct broadcast satellite
22 television service. Under RCW 80.36.400(3), DISH Network's violations of the ADAD
23 prohibition are also violations of the Washington Consumer Protection Act, chapter 19.86
24 RCW.

25 1.5 On information and belief, DISH Network knew of, encouraged, facilitated, and
26 benefited from the use of ADADs by its agents.

II. VENUE

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2 2.1 This action includes claims under the Consumer Protection Act, and this Court
3 has jurisdiction over this action under RCW 19.86.090.

4 2.2 Plaintiff resides in this county. Venue is proper in this Court pursuant to
5 RCW 4.12.025 because Defendants transact business in this county.

III. PARTIES

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7 3.1 Plaintiff and the proposed class are residents of this state.

8 3.2 Defendant EchoStar Communications Corporation is a corporation organized
9 under the laws of the state of Nevada with its principal place of business in Englewood,
10 Colorado. Defendant EchoStar Technologies Corporation is a corporation organized under the
11 laws of the state of Texas with its principal place of business in Englewood, Colorado.
12 Defendants EchoStar Orbital Corporation, EchoStar Orbital Corporation II, and EchoStar DBS
13 Corporation are corporations organized under the laws of the state of Colorado with their
14 principal place of business in Englewood, Colorado. Defendants EchoSphere L.L.C., Dish
15 Network Service L.L.C. and EchoStar Satellite L.L.C. are limited liability companies
16 organized under the laws of the state of Colorado with their principal place of business in
17 Englewood, Colorado.

18 3.3 On information and belief, Defendants conducted, knew of, encouraged,
19 facilitated, and benefited from ADAD telemarketing operations in Washington.

IV. FACTUAL ALLEGATIONS

20
21 4.1 DISH Network operates a direct broadcast satellite television service with
22 millions of subscribers in the United States. It sells subscriptions to its service by, among
23 other things, using ADADs to place telephone calls to potential subscribers in Washington
24 State and offering to sell its satellite television service to such potential subscribers over the
25 phone. The ADADs used by DISH Networks have the capacity to leave, and do leave,
26 recorded messages if the potential subscriber does not answer the telephone call.

1 4.2 Plaintiff Spafford has received repeated ADAD commercial solicitation calls
2 generated by DISH Network at his home and work place urging him to subscribe to DISH
3 Network's satellite TV service. The ADAD-generated calls leave a recorded message on
4 Plaintiff's answering service prompting him to press a certain key on his telephone to speak to
5 a human representative. In at least two instances, when Mr. Spafford followed the prompts
6 and spoke to the person responding, that person specifically identified himself as being part of
7 DISH Network and not a third-party supplier.

8 4.3 As a result of the misconduct by DISH Network as detailed herein, Plaintiff has
9 been injured by being subjected to unwarranted invasions of his privacy at his home and place
10 of work. In addition, in contravention of the public policy of this state, DISH Network's use
11 of ADADs for purposes of commercial solicitation deprives Plaintiff of the opportunity to
12 immediately question DISH Networks about the veracity of their claims and encourages
13 inefficient and potentially harmful use of the telephone network.

14 **V. CLASS ACTION ALLEGATIONS**

15 5.1 Plaintiff brings this lawsuit as a class action on behalf of himself and all other
16 similarly situated Washington residents, as a proposed plaintiff class pursuant to Fed. R. Civ.
17 P. 23.

18 5.2 The class is defined as:

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

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

23 5.3 The class consists of thousands of residents making joinder impractical. The
24 disposition of the claims of these class members in a single class action will provide
25 substantial benefits to all parties and to the Court.

26 5.4 There is a well-defined community of interest among members of the class.
The claims of Plaintiff are typical of the claims of the class, in that Plaintiff, like all class

1 members, received unsolicited commercial solicitations from DISH Network and its agents
2 through the use of ADADs. Plaintiff, like all class members, has been damaged by
3 Defendants' misconduct by virtue of the annoyance and inconvenience of receiving unsolicited
4 commercial solicitations in violation of Washington law and public policy. The factual bases
5 of Defendants' misconduct are common to all class members and represent a common cause of
6 misconduct resulting in injury to all class members.

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

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

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

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

16 d. Whether Defendants engaged in unfair competition and/or unfair and/or
17 deceptive acts and/or practices when they made commercial solicitations using 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 5.6 Plaintiff will fairly and adequately represent and protect the interests of the
23 class. He has retained counsel with substantial experience in prosecuting consumer class
24 actions, including actions under the Washington Consumer Protection Act. Plaintiff will
25 vigorously prosecute this action on behalf of the class. Neither Plaintiff nor his counsel has
26 any interests adverse to those of the class.

1 5.7 Plaintiff and class members have all suffered and will continue to suffer harm
2 and damages as a result of Defendants' unlawful conduct. A class action is superior to other
3 available methods for the fair and efficient adjudication of this controversy. Absent a class
4 action, class members would find the cost of litigating their individual claims to be prohibitive,
5 and will have no effective remedy at law. Because of the relatively small size of the individual
6 class members' claims, it is unlikely that individual class members could afford to seek legal
7 redress for Defendants' wrongful conduct. Absent a class action form of suit, class members
8 will continue to incur damages and Defendants' misconduct will proceed without a remedy to
9 Plaintiffs and the class. Class action treatment of common questions of law and fact is also
10 superior to multiple individual actions or piecemeal litigation in that it conserves the resources
11 of the courts and the litigants, and promotes consistency and efficiency of adjudication.

12 **VI. FIRST CLAIM FOR RELIEF:**
13 **VIOLATION OF RCW 80.36.400**

14 For his first claim against Defendants, Plaintiff alleges:

15 6.1 Reallegation. Plaintiff realleges and incorporates by reference paragraphs 1.1
16 through 5.7, above.

17 6.2 Violation. Defendants have continually and repeatedly violated
18 RCW 80.36.400(2) by using ADADs to leave recorded messages to initiate unsolicited
19 telephone conversations with Plaintiff and the class for the purpose of encouraging Plaintiff
20 and the class to purchase subscriptions to the DISH Network television service.

21 6.3 Damages. As a result of Defendants' violations of RCW 80.36.400(2), Plaintiff
22 and the class are presumed under RCW 80.36.400(3) to have suffered damages in the amount
23 of Five Hundred Dollars for each violation. The full amount of their damages will be proved
24 at trial.

1 **VII. SECOND CLAIM FOR RELIEF:**
2 **CONSUMER PROTECTION ACT VIOLATION**

3 For his second claim against Defendants, Plaintiff alleges:

4 7.1 Reallegation. Plaintiff realleges and incorporates by reference paragraphs 1.1
5 through 6.3 above.

6 7.2 Violation. Pursuant to RCW 80.36.400(3) Defendants have continually and
7 repeatedly violated chapter 19.86 RCW by using ADADs to leave recorded messages to
8 initiate unsolicited telephone conversations with Plaintiff and the class for the purpose of
9 encouraging Plaintiffs and the class to purchase subscriptions to the DISH Network television
10 service.

11 7.3 Injury. Plaintiff has been injured by virtue of the annoyance and inconvenience
12 of receiving repeated unsolicited commercial solicitations through the use of ADADs in
13 violation of Washington law and public policy. Plaintiff and the class, as Washington
14 residents who have not sought communications or information from Defendants, are within the
15 class of people that RCW 80.36.400(3) was designed to protect.

16 7.4 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
19 at trial. Class members are entitled to recover actual damages and treble damages, together
20 with their reasonable attorneys' fees and costs.

21 **VIII. PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff, on behalf of himself and the class, prays that the Court enter
23 judgment against Defendants and award the following relief:

- 24 1. Certification of the proposed class;
25 2. An injunction prohibiting further use of ADADs in Washington in violation of
26 RCW 80.36.400;

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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1 DATED at Seattle, Washington this 5th day of February, 2007.

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