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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.

ECHOSTAR COMMUNICATIONS CORPORATION, a Nevada corporation; et al.,

Defendants.

ECHOSTAR COMMUNICATIONS CORPORATION, a Colorado corporation, et al.,

Third-Party Plaintiffs,

v.

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

Third-Party Defendant.

NO. CV06-0479 RAJ

DECLARATION OF DANIEL C. GALLAGHER IN SUPPORT OF JOINT MOTION FOR CERTIFICATION OF A SETTLEMENT CLASS AND PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT

I, Daniel C. Gallagher, declare as follows:

1. I am a member in good standing of the Washington State Bar. I am one of the attorneys representing Plaintiff Michael Spafford, Jr., in this matter. I make this declaration based on my personal knowledge and in support of the parties' Joint Motion for Certification of

1 a Settlement Class and Preliminary Approval of Settlement Agreement. If called to testify as to
2 the contents of this declaration, I could and would competently testify as follows.

3 2. My firm has prosecuted consumer fraud cases for the past decade. I am the
4 lawyer who conceived of this class action after receiving inquiries from several individuals
5 regarding the legality of repeated ADAD calls they reported receiving from DISH Network.
6 My firm has played a key role in the development, strategy, decision-making, and prosecution
7 of the action against EchoStar by investigating the claims, working directly with the Class
8 representative and witnesses, coordinating strategy with co-counsel, participating in formal
9 discovery, and engaging in settlement negotiations.

10 3. A critical allegation of Plaintiff's complaint concerned EchoStar's knowledge
11 and control over its Retailers and has been a central focus of investigation since I and the law
12 firm of Sandler Ahern & McConaughy began investigating these phone calls over three years
13 ago.

14 4. My office was responsible for tracking the calls made to Plaintiff back to the
15 originator of the unlawful calls. Although many hours were spent in this effort, it was
16 ultimately an exercise in futility as none of the subpoenas turned up the names and phone
17 numbers of Class Members who had been solicited.

18 5. For example, Retailers used third-party agents to make the computerized, pre-
19 recorded calls to Washington residents. This additional "firewall" often meant that the Retailer
20 designated as the seller of the product was not actually the originator of the offensive call.

21 6. Even in the rare case where an originating phone number was identified, the
22 number itself was often bogus as the Retailers and their agents often assigned bogus numbers to
23 the switching systems used to make the calls. This effectively masks the identity of the
24 originating caller. On more than one occasion, the phone number reflected in phone records of
25 call recipients as the originating number was designated as "000-000-0000," which was a road
26 to nowhere.

1 7. For those rare instances where a number actually led to a viable entity, I sent out
2 subpoenas *duces tecum* for records of the number tied to the relevant calls. I subpoenaed call
3 records from the following entities: Digitcom Services, Inc., Electric Lightwave, Inc., Level 3
4 Communications, LLC, MCI, Paetec Communications, Inc., Qwest Communications, Inc., and
5 Telemanagement Services, Inc.

6 8. Most of the entities were located outside of Washington State. We either
7 received no response to the SDTs or were informed that the number had been leased to an
8 untraceable third party.

9 9. What I learned was the only way to effectively track the ADAD calls was to
10 actually sign up for the Dish Satellite service being solicited. This would generate a link to a
11 known Retailer as the Retailers receive a commission for each sale and are assigned a Retailer
12 ID for that purpose. For the estimated tens of thousands of ADAD calls which do not result in
13 a sale, the only hard record of the call is likely to be found on the computer used to generate the
14 calls. The location of this information, if it exists, is simply unknown to Plaintiff despite
15 extensive research and discovery efforts.

16 10. Some of the tools at EchoStar's disposal that will enable it to perform under the
17 injunction include:

- 18 • Comparing contact information EchoStar has on file with information Retailers,
19 alleged to have used ADADs, provide to consumers (*e.g.*, Retailer name,
20 location, caller ID, call-back and toll-free numbers, and employee names; as
21 well as the same information for "independent contractors, affiliates or sub-
22 agents" used by Retailers with EchoStar's express approval);
- 23 • Identifying Retailers when the Retailers run credit checks through EchoStar's
24 systems on consumers who indicate they were solicited by ADAD; and
- 25 • Identifying Retailers when the Retailers activate DISH subscriptions for
26 consumers who indicate they were solicited by ADAD.

1 11. Because Class Members cannot be identified, *cy pres* relief is appropriate.

2 12. Without the ability to link specific Class Members to EchoStar or specific
3 Retailers, Plaintiff would likely not prevail on a claim for statutory damages.

4 13. It is unlikely that a Class Member would retain proof of such a call — such as
5 contemporaneous notes or a calendar used to track phone calls. Class Member call records
6 would not be helpful as Retailers used various means of blocking their identity.

7 14. Notably, under the Settlement the Class will not be releasing third-party
8 Retailers from *any* liability. EchoStar has consistently claimed these Retailers are the real
9 culprits. Hence, Class Members retain their right to pursue damage claims, including statutory
10 damage claims, against these parties who likely placed the calls to Washington consumers.

11 15. This Settlement is the result of intensive, arm's-length negotiations between
12 experienced attorneys who are familiar with class action litigation in general, and with the legal
13 and factual issues of this case in particular.

14 16. Counsel for both parties are particularly experienced in the litigation,
15 certification, trial, and settlement of nationwide class actions similar to this case.

16 17. In negotiating this Settlement, Plaintiff's counsel had the benefit of years of
17 experience combined with their familiarity with the facts of this case.

18 18. Settlement negotiations in this case were advanced by three intense mediation
19 sessions, which culminated in a memorandum of understanding. The parties continued to
20 negotiate the details of the Settlement Agreement for several months thereafter.

21 19. I support this Settlement as fair and as providing reasonable relief to the
22 members of the Class.

23 ///

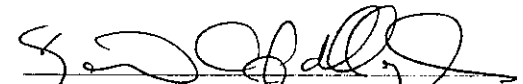
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I declare under penalty of perjury of the laws of the state of Washington and the United States that the foregoing is true and correct, and that this declaration was executed in Bainbridge Island, Washington, dated this 18th day of September, 2008.


Daniel C. Gallagher, WSBA #21940

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on September 18, 2008, I electronically filed the foregoing with
3 the Clerk of the Court using the CM/ECF system, which will send notification of such filing to
4 the following:

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DATED this 18th day of September, 2008.

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